

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Wednesday, 28th December, 2016

Special Sitting

*(Convened via Kenya Gazette Notice
No. 10682 of 23rd December, 2016)*

*The House met at the Senate Chamber,
Parliament Buildings, at 10.10 a.m.*

[The Speaker (Hon. Ethuro) in the Chair]

PRAYERS

COMMUNICATION FROM THE CHAIR

CONVENING OF A SPECIAL SITTING OF THE SENATE

The Speaker (Hon. Ethuro): Honourable Senators, let me take this opportunity to welcome you back for this Ninth Special Sitting of the Fourth Session of the Senate and thank you for finding time from your holidays and your busy schedules to attend this Special Sitting. I am sure each of you had scheduled family and county commitments and it is because of the value you attach to the business of the Senate, that you have created time to be here.

Hon. Senators, by a letter dated 22nd December, and pursuant to Standing Order No.29(1) of the Senate, the Senate Majority Leader supported by the requisite number of Senators, requested the Speaker to convene a Special Sitting of the Senate to consider among other things the approval of the nominees to the National Climate Change Council, approval of the Report of the Standing Committee on Finance, Commerce and Budget on the Budget Policy Statement and consideration of the Election Laws (Amendment) (No.3) Bill (National Assembly Bill No.63 of 2015) among other urgent business as listed in the Order Paper and the Gazette Notice convening this Special Sitting.

Following consideration of the request by the Senate Majority Leader, I was satisfied that it met the requirements of Standing Order No.29(2). It is in this respect that I convened this Special Sitting of the Senate via Gazette Notice No.10682 dated 23rd December, 2016.

Hon. Senators, as required by Standing Order No.29(5), the Gazette Notice specified the business to be transacted at this sitting and it is the business scheduled in

today's Order Paper. Indeed, as specified and in accordance with Standing Order No.29(5) of the Senate, the business listed shall be the only business before the Senate during this Special Sitting, following which the Senate shall stand adjourned until Tuesday, 14th February, 2017 at 2.30 p.m. in accordance with the Senate Calendar.

Hon. Senators, it is in the public domain that some of the businesses listed for debate today have elicited a lot of emotions during debate in the National Assembly leading to rise in political temperatures in the country. I want to take this opportunity to ask honourable Senators to debate issues in a sober manner consistent with the tenets of our Senate as a House of review.

Hon. Senators, I would like to reiterate that in accordance with Article 123 of the Constitution and Standing Order No.71, for the Senate to approve business scheduled in today's Order Paper, the support of a majority of all delegations, that is 24 delegations, is required. I therefore appeal to you all to remain in the Chamber for the transaction of business as scheduled.

I thank you.

Sen. (Dr.) Khalwale: On a point of order, Mr. Speaker, Sir. I thank you for the communication. In keeping with the respect we have for the House, as soon as you summoned us, you can see we are here in very large numbers. However, as I thank you, I would like you to clarify something very important. The experience I have gone through this morning is that I have been denied access to this House. I took refuge at the parking at the Kenyatta International Convention Centre (KICC) and on my way to this Chamber, police dogs barked at me. I would like you to clarify whether it is by the order of the Speaker of the Senate that, today, during a Special Sitting of the Senate, we have Anti-Riot Police, police dogs and all the roads leading to this Senate barricaded. If it is not by your order, could you, therefore, confirm to this House that this Senate has lost its independence from the Executive and that we have been held captive by the Executive?

Sen. Ong'era: On a point of order, Mr. Speaker, Sir. Further to what the distinguished Senator for Kakamega has raised, I would like to know why we Senators were restrained to enter into this distinguished august House. We were told that we could not enter with our cars. Who was coming to debate these issues if not us? It is us, the most important people who were coming to discuss these issues and if we are restrained from entering in the normal manner deserving a Senator and that, instead, I have to leave my car very far away and walk, then what am I coming to do here?

We have a lot of parking here and also on the upper side of the other House. Since we are only 67 Senators, how many parking slots do we need? It is a shame. We want a clarification whether the Executive has taken the Legislature captive or whether the doctrine of separation of powers still exists.

Sen. (Dr.) Machage: Mr. Speaker, Sir, in your communication, could you further confirm to the country that the second Senate of the Republic of Kenya since inception has had a tradition of maturity, peace, no wrangles and no fights?

Sen. Khaniri: Mr. Speaker, Sir. I join my colleagues in thanking you for the communication you have just made. Let me make it very clear from the onset that when I look around this Senate, I can proudly say that I am the longest serving legislator in this House; save for Sen. Kiraitu Murungi and maybe Sen. G.G. Kariuki but, continuously, I am the longest serving Member of this House; of course, with Sen. Abu Chiaba who is my age mate in terms of parliamentary service.

Mr. Speaker, Sir, I stand with a very heavy heart. I left my House in Vihiga at 5.00 a.m. to make it for this session. I travelled through the night to be here to honour the summons that you had given. I have three fundamental issues to raise.

(The Speaker consulted the Clerk-at-the-Table)

Mr. Speaker, Sir, I need your full attention.

The Speaker (Hon. Ethuro): Proceed, Sen. Khaniri.

Sen. Khaniri: Mr. Speaker, Sir, I have three fundamental issues that I want to raise in regard to the session today.

First and foremost, is the issue that has been raised by Sen. (Dr.) Khalwale and ably supported by Sen. Ong'era; the cordoning off of the precincts of Parliament. As I said, I have served in this Parliament for the last 21 years, uninterrupted. I have never seen anything like this before. This is a very important House where the laws of the land are made. Members of Parliament (MPs) both in the "Lower" House and this House are very important citizens of this country. They must be given full access to Parliament, particularly when you call us for a Special Session like this.

Mr. Speaker, Sir, I was blocked from driving into my work place. I find this ridiculous and unacceptable. We are awaiting your ruling, further to which, depending on the ruling you give, some of us are thinking of taking legal action against those who are blocking us from entering our place of work. That is my first issue.

Mr. Speaker, Sir, secondly, I do not want to anticipate debate but I have had a chance to look at the Order Paper before us this morning. I believe what has been listed as Order No.5 which is of course, the first Bill that we will debate is the Election Laws (Amendment) Bill, No.3. I believe this is the main reason we have been called here today.

I am looking at our Standing Orders and I want to draw your attention to a number of Standing Orders. The first one would be Standing Order No.127 (1). It states:-

“Except with the leave of the Senate, not more than one stage of a Bill may be taken at any one sitting.”

It is a very important Bill. I can see it has been listed for stage one which is First Reading and further listed for stage two which is Second Reading. I believe that would be the debate. I want your guidance on that. Are we not contravening the provision of Standing Order No.127?

The second Standing Order that I want to bring to your attention is Standing Order No.130 (1). It states:-

“A Bill having been read a First Time shall stand committed to the relevant Standing Committee without question put.”

(Sen. Murkomen stood up in his place)

I am on a point of order and I would want the Speaker to respond to my issues. Mr. Speaker, Sir, there is no rush. We are here. You called us.

The Speaker (Hon. Ethuro): Order, Sen. Khaniri! Then, what are you responding to?

What is it, Sen. Murkomen?

Sen. Murkomen: On a point of order, Mr. Speaker, Sir. I respect Sen. Khaniri, the Senator for Vihiga. He is making very valid points as per the Standing Orders. However, I thought the relevant time to raise the point of order; especially on Standing Order No.127 is when that business is called. We have not reached it. I thought the reactions which most of us have requested started by Sen. (Dr.) Khalwale and Sen. Ong'era were related to your communication, especially the decorum in the House and so on; then, when the next order is called and we reach the relevant order, those points of order are raised. I am saying this, well informed that there is a discussion around that issue elsewhere; that we will come to that when the order is called. I thought your communication per se, is what you will give us a few minutes to debate.

The Speaker (Hon. Ethuro): Order, Sen. Murkomen!

I was beginning to form the same opinion, Sen. Khaniri; that you should raise those issues at the point of those specific orders. Let Sen. Khaniri proceed.

What is it Sen. (Dr.) Khalwale?

Sen. (Dr.) Khalwale: On a point of order, Mr. Speaker, Sir. The Senator for Elgeyo-Marakwet is perfectly in order to stand on that point of order; but if you may remember, in your communique, you referred to the Order Paper by mentioning the business before us today. Sen. Khaniri is pointing out the issues on the Order Paper which you referred to in your communication.

So, if you allow the Senator for Elgeyo-Marakwet to deny Sen. Khaniri an opportunity to have you hear him, it will be assuming that the Senator for Elgeyo-Marakwet is in the Chair. He is not.

The Speaker (Hon. Ethuro): Order, Members! Let me stand so that there is avoidance of doubt on who is on the Chair. I have not denied the prolific Senator for Vihiga an opportunity. I am only guiding on how we should do the business. In my communication I made generalities on the business on the Order Paper. We have now gone ahead on the Order Paper to schedule the orders. So, when you raise an issue that is a bit substantive then the right place to do so is at that particular order. That is all we are saying.

Proceed, Sen. Khaniri.

Sen. Khaniri: Mr. Speaker, Sir, I want to thank you for your wise guidance. The remainder of my issues is related to that Order and, therefore, I will raise them at that stage. I wait for your ruling on the first issue that I raised.

Thank you.

The Speaker (Hon. Ethuro): Hon. Members, my screen is full. Sen. Orengo, kindly limit yourself to not more than two minutes.

Sen. Orengo: Thank you, Mr. Speaker, Sir. I want to ride on what Sen. Khaniri and Sen. Ong'era have raised. I was looking for a copy of the Powers and Privileges Acts. There were very old provisions which are found in our legislation and in many parliaments in the Commonwealth. When Parliament is in session, even if you have a civil process to serve on a Member of Parliament, by dint of the Powers and Privileges Act, you will not be allowed to serve civil process on a Member of Parliament who is moving between his home and Parliament.

What is happening outside Parliament is beyond what is in the Powers and Privileges Act. This means that when Parliament is sitting, nothing should appear as if there is restriction of a Member of Parliament getting into the palaces or premises of

Parliament, if I may put it that way. What happened to me this morning, as it happened to other Members of Parliament is that I could not access Parliament using my car. When I had a gentle conversation with the members of the police, it was as if I would not have access to Parliament if I did not obey what they were telling me.

You should look at this seriously because even courts cannot serve a civil process on a Member of Parliament under the Powers and Privileges Act, if you are moving between your home and Parliament. That is something which only you, Mr. Speaker, Sir, can defend. Remember the king who went to the Houses of Parliament in the House of Commons looking for Members of Parliament to arrest them. The speaker protected the Members of Parliament by telling the king that he could not see the Members he was looking for. That was to protect the Members of Parliament. More importantly, are the provisions of the Constitution in Article 117 and Article 118. I am dealing with the issue that you raised.

For purposes of this, Article 117 (2) states:-

(2) Parliament may, for the purpose of the orderly and effective discharge of the business of Parliament, provide for the powers, privileges and immunities---

Parliament has provided for this but the Executive seems to be doing everything to undermine those privileges and immunities which Parliament has enacted. This is a matter which should be taken seriously.

Secondly, Article 118 states:-

(1) Parliament shall-

(a) conduct its business in an open manner, and its sittings and those of its committees shall be in public; and

(b) facilitate public participation---

(2) Parliament may not exclude the public, or any media, from any sitting unless in exceptional circumstances----

Mr. Speaker, Sir, we want your direction on this because when the 'Lower House' was sitting at some point, the media was not allowed to cover the proceedings of the National Assembly. The media needs to understand whether there are exceptional circumstances. It should not be at this point in time, but I am just saying that as the debate goes on, I hope that there will be no exceptional circumstances to bar the media from covering the proceedings of the Senate.

Sen. Sang: Mr. Speaker, Sir, I wish to associate myself with the comments and concerns raised by my colleagues in this House. We hope and we have always known that the security of Members of Parliament is a responsibility of the Parliamentary Service Commission. Are the police officers who are barricading access to Parliament under the instruction of Parliamentary Service Commission or whose instruction are they working on? It is important for Parliament to operate independently.

We also appreciate the fact that the National Police Service is supposed to be an independent institution. If there is need for enhanced security in Parliament that can only come from the Parliamentary Service Commission and not any other authority. Can you confirm that it is under the Parliamentary Service Commission?

This is a House of reason and we have handled more controversial issues in this House. We have never had to require this kind of security arrangements. We want to know why we are being inconvenienced in accessing this House.

On a lighter note, Sen. (Dr.) Khalwale, on my way to Parliament, the dogs that were there did not bark at me. I am informed that dogs are trained to bark and identify offensive weapons, dangerous substances---

(Laughter)

Now that the Senator has raised it himself could the Parliament security confirm to us that Sen. (Dr.) Khalwale has been searched for us to be sure that our security is guaranteed as we engage in this House? This is because the dogs barked at Sen. (Dr.) Khalwale.

The Speaker (Hon. Ethuro): Order. Could we hear from Sen. Wetangula?

Sen. (Dr.) Khalwale: On a point of order, Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): What is it Sen. (Dr.) Khalwale?

Sen. (Dr.) Khalwale: On a Point of order, Mr. Speaker, Sir. Just like Sen. Sang, most of us have looked after animals. On many occasions, we are accompanied by the family dog when we are on that exercise. He knows that the dog only obeys two instructions. It has been trained to only bark at Sen. (Dr.) Khalwale if he has an offensive weapon, or the person holding the dog has told it: *Saa!* "I want to confirm that I have no weapon. The dog barked because the police have instructions to tell the dog" *saa!* "when it sees a CORD Senator

(Laughter)

The Senate Minority Leader (Sen. Wetangula): Mr. Speaker, Sir, allow me to belatedly wish all our colleagues a merry Christmas and a happy new year. We also appreciate the fact that our colleagues from both sides of the House have turned up in large numbers for today's business. I heard some saying on radio that they are going to vote. They did not say that they were coming to consider a Bill. They said they were coming to vote which is very absurd.

We want you to make a serious ruling on this. Article 118 of the Constitution says:-

Parliament shall-

(a) conduct its business in an open manner, and its sittings and those of its committees shall be in public;

Mr. Speaker, Sir, if you look at both sides of the gallery, a Bill such as this, would attract enough members of the public to fill both sides of the gallery. Kenyans are interested to hear what the distinguished Senators of Murang'a and Busia want to say about this Bill. There are those who have no radios or TVs. We also have old colleagues, like George Nthenge, who I have seen routinely coming to sit in the gallery to listen to debates. Why are the galleries empty? Why is Parliament barricaded?

In the last sitting of the National Assembly, Sen. Orenge, Sen. (Dr.) Khalwale and I happened to be in these precincts. One, it took me 45 minutes for the gate to be opened for me to come to my own office in this Building. The second day, I walked from the Holy Family Basilica. The Police would not allow my car to come to Parliament, where I work. Thirdly, I saw something I have never seen in my life. I thank you because this did not happen to you today. My own distinguished former classmate, hon. Justin Muturi,

was escorted to the Chamber by policemen with cocked guns. I stood there with Sen. Orengo and Sen. (Dr.) Khalwale and we saw it. Is this the Parliament we want to have?

Mr. Speaker, Sir, today, I want to remind you of the great words of one of the most celebrated Swahili writers, Shabaan Bin Robert, in his book *Kusadikika*. He says; *Mara mingi nchi huficha mashujaa wake mpaka janga kuu litokee*. Such is a day where if you are the hidden *shujaa*, *janga kuu limetokea*, *lazima ujitokeze uonekane kama shujaa*. One would expect you, as our Speaker, to suspend this Sitting and demand that the Executive withdraws the cordon of Parliament for us to conduct our affairs freely and openly.

Mr. Speaker, Sir, Kenyans know that even at the most vibrancy of debates in this House, there is not a single Senator who has ever poured water on each other, there is not a single Senator who folded his fist on another, there is not a single Senator who has sprayed a chemical on the face of another, there is not a single Senator who has opened his mouth to bite another Senator or used unprintable words on the Floor of this House. Even those Senators who sometimes veer off from the path of decorum, it is still within the acceptable parameters of parliamentary debate.

For you, as the Speaker of this House, on a day such as this, all editorials in the newspapers for the last four days have been saying that the whole country is looking at the Senate and the Speaker of the Senate, to bring down the temperatures of the country. We then come here and it looks like it is a military garrison. It looks like we are in a state of war and conflict. This is not how to conduct business. We want to speak without fear and we shall not speak in fear. I encourage Members.

I laud young Sen. Sang, the distinguished Senator for Nandi, for being the only Senator across the floor to join issue with what Senators Dr. Khalwale, Ong'era and others have said.

(Loud consultations)

Mr. Speaker, Sir, I am only talking about what I have heard so far. If there are others who will speak, I welcome them. This Senate is not about this side or the other. We either hang separately or hang together, either way, we are hanging.

(Laughter)

The Speaker (Hon. Ethuro): Order, Sen. Wetangula! You need to qualify that statement. I already told you my screen is full.

The Senate Minority Leader (Sen. Wetangula): Mr. Speaker, Sir, if your screen is full, then my statement was only limited to what I have heard so far. When I hear more, I will even seek a second opportunity to congratulate those who will stand up to be counted like I did to Sen. Sang.

(Laughter)

Let me finish by urging you that this Senate must be seen as a Senate. It is not a chief's baraza where one comes with armed people to protect the chief from possible molestation by his people. This is a House of Parliament and it must remain so. I have

more than 10 requests in my office of people who wanted me to give them cards to go to the public gallery and listen to these distinguished Members debating these issues. They cannot come because they cannot even access the precincts of Parliament. Is this part of Kahawa or Langata Barracks or is it the Senate of the Parliament of Kenya where the people's elected representatives camp? Before we go to the Business, we want your direction.

The Speaker (Hon. Ethuro): Members, I will just give two more from each side and we conclude.

Sen. Murungi: Mr. Speaker, Sir, first I thank the Leader of Minority for wishing us a Merry Christmas, although belatedly, and a Happy New Year. It is customary also to wish people a prosperous New Year. I therefore, remind and wish him a prosperous New Year. About the success in elections, he has to contend with Sen. Okong'o.

(Laughter)

Mr. Speaker, Sir, I share the concerns of Members regarding access to Parliament. About the absence of many people in the public gallery, the Minority Leader did not notice that there is a lady in the public gallery.

(Senators spoke off the record)

She is a person. He was saying there is nobody. There is somebody in the public gallery. Secondly, under the Police Act, it is the duty of the police to protect Kenyans and their property. I am not saying that it is not the duty of the police to protect the Members of Parliament. It is the duty of the police to ensure that the Members of Parliament access Parliament. We have had occasions where goons and other people had been stationed in the roads to make sure that Members of Parliament do not access Parliament. Police have a duty to make sure that the roads are clear for us to access Parliament.

The rules are not being operated in a vacuum. The police were acting on the experience they had with the Lower House where the debate on this Bill degenerated into physical fights. Members conducted themselves in a very dishonorable manner. However, I agree with my colleagues that this is a very dignified House. At no time has there been a physical fight between one Senator and another. However, the police might not know the difference. You might as well communicate to say that even as we debate on these Bills today, the scenes that were witnessed in the Lower House are not going to be seen in this House. We should conduct ourselves with a lot of decorum.

We are going to be dignified; in our tradition as a House that is going to conduct itself with dignity as we debate today.

However, I have an issue regarding the summoning of Parliament for this Special Sitting. Many of us have left families behind, come from far because under the Standing Orders you can only summon us on matters which are "urgent and exceptional" according to Standing Order No. 29(2):-

"The Speaker may only allow a request on matters that are exceptional and urgent."

If you look at the Standing Orders and the Order Paper before us today, there are many matters there which are neither urgent nor exceptional but just routine business of the Senate.

Whereas the Standing Order No. 29(5) says that the only business to be transacted is the business which is specified in the Gazette Notice and we are not contesting, we are just saying that next time you call us for a Special Sitting, please make sure that the business you are calling us for is urgent and exceptional because there are many matters which we are going to deal with today which could have been dealt with even after we come back in January or February.

So, we have come because we have to obey you and the Standing Orders, but let not these powers be abused. Let the Senate be the Senate.

Sen. Hassan: On a point of order, Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): What is it Sen. Omar?

Sen. Hassan: Mr. Speaker, Sir, did you notice that when Sen. Murungi was speaking, Sen. Kivuti walked in and, for all practical purposes, what he was dressed in from the waist down is what, in the definition of young people, is known as a jeans. The fabric of the jacket makes it appear like he has just walked out of a club. I think even as the dress code is defined in your Speaker's rules, you need to have a further definition that, that extreme style of dressing is not acceptable.

(Laughter)

The Speaker (Hon. Ethuro): Sen. (Prof.) Kindiki, are you seeking the floor?

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Speaker, Sir, I am.

My concern is in connection with the point of order that has been raised about attempts to create a situation of fear and anxiety among Members of this House. We have never had any incident inside this House. Even the one or two Senators that almost veered off did so elsewhere and not here because there is one who accidentally blew a whistle but they never did so here. There is another one who had not gone to the gym and wanted to do gymnastics but they did not do it here.

It is not right for anybody to ask policemen and women to come and camp around Parliament when the Senate is meeting and yet there are no chaos, no insults, no intrigues. We have come here to persuade each other as leaders in this country, using reason and logic. The majority will have their way but even the minority must have their say.

Lastly, allow me to say that we are not oblivious of the fact that part of the agenda that has brought us here, especially the election laws is quite emotive. We are leaders in this country; we do not live in Mars. As we even sit here - this should go out to all those people who thought we have come here for acrimony and stampede - that here we come soberly to discharge our legislative duties and then go home in peace.

Some of us have driven ourselves because our drivers are on holiday and you cannot ask such a person who has driven himself to go and park in River Road, considering that we even have two presidential candidates in this House; the only House with presidential candidates for 2017 and more for 2022.

Allow me just to condemn in the strongest terms possible, any attempt by police officers - who should be all over this country from Tharaka-Nithito Mombasa

to Busia protecting Kenyans and looking for bandits and thieves that are terrorizing our villages. They should not come here and intimidate us and run their fingers all over leaders. Those have nothing to do with Government but have something to do with somebody somewhere who sat and instructed police to come here and try to intimidate us. That person should be condemned. He should be identified and brought here or in the court of public opinion for national ridicule and shame

I condemn.

(Applause)

The Speaker (Hon. Ethuro): Sen. Murkomen.

Sen. Murkomen: Mr. Speaker, Sir, I join my colleagues in condemning the kind of barricading I have seen around Parliament. This must be contextualized.

I think it is easy for us, politicians and Parliamentarians and those who have privileged positions to shift blame to others, but we must also ask ourselves what visited us as elected leaders that we could engage ourselves in such behavior that would attract the necessity of having policemen around Parliament.

This is not the first time I have been shocked about this. The other week when the National Assembly had a Special Sitting, the whole place around Parliament was impossible to operate in. In fact, it was impossible for us to access our offices.

Looking at the context, we are elected, called hon. Members but we carry pepper sprays to spray others in the Chamber. We carry knives as we were told. We carry hot *pili pili* to Parliament. We carry whistles. In fact, the last time whistles were carried to Parliament, a Member of this House was part of it.

Mr. Speaker, Sir, I want to be very honest; we must first condemn ourselves before we talk about the police. We must condemn our behaviour as leaders. If you see a leader insulting another in a language that Sen. Wetangula called un-Parliamentary, for example, calling the Head of State “a fool” and using other unprintable words within Parliament, I think we must---. As we condemn the action visited upon us by police being in our precincts, we should condemn ourselves and our actions as parliamentarians.

The Speaker (Hon. Ethuro): What is it Sen. (Prof.) Anyang'-Nyong'o?

Sen. (Prof.) Anyang'- Nyong'o: Mr. Speaker, Sir, is Sen. Murkomen in order to associate the behaviour of Members of Parliament in the National Assembly with this Senate? I want to be very clear that you called the Senate to a Special Sitting today and, on this day, the policemen are out there. Is it possible to attribute the behaviour of another House to this House on a different day? This is absolutely wrong and Sen. Murkomen should withdraw those statements.

The Speaker (Hon. Ethuro): Sen. Murkomen, that is a valid challenge.

Sen. Murkomen: Mr. Speaker, Sir, the Bible says that if a leg or toe is injured, the whole body is in pain. Parliament is both the National Assembly and the Senate. The behaviour of one House affects the integrity of the other House.

(Loud Consultations)

Hon. Senators: No! No!

The Speaker (Hon. Ethuro): Order, Members!

Sen. Murkomen: Mr. Speaker, Sir, it is a point of debate.

The Speaker (Hon. Ethuro): Order, Members! Sen. Murkomen, you can see the mood of the House. They have demonstrated that they do not share your sentiment; just abandon it.

Sen. Murkomen: Mr. Speaker, Sir, even as I abandon it, we need to be honest with the message we are passing to the National Assembly. The embarrassment that has visited the precincts of Parliament is regrettable. As I said earlier, I have an office in this Parliament which I was unable to access two weeks ago. Sen. Wetangula also said that he watched MPs armed themselves to fight. Even as we condemn police presence within Parliament, we must condemn bad behaviour.

The Speaker (Hon. Ethuro): Conclude, Sen. Murkomen.

Sen. Murkomen: Mr. Speaker, Sir, I believe and share the sentiments of the Senate Majority Leader and the Senate Minority Leaders. This is a House that has presidential candidates, two of them from Ford Kenya. From the whispers around this House, we have so many other ambitious presidential candidates for 2032 and beyond. I assure the nation that the Senators who are gathered here today are only armed with their brains to convince their colleagues on the position they believe in and they do not need the police.

In fact, when I walked in, I told the police that it was not necessary for them to be within the precincts of Parliament because the Senators are all about issues and they will use their brains to convince each other.

The Speaker (Hon. Ethuro): Order, Members. It is one hour since we began. Do you really wish to proceed along these lines? I will allow the last two Senators; Sen. Mong'are and Sen. (Prof.) Lonyangapuo.

Sen. Okong'o: Thank you, Mr. Speaker, Sir. On the issue of barricading Parliament, I request that you direct that the Committee on National Security and Foreign Relations, under the experienced Sen. Yusuf Haji, to take action. You should order the removal of the barricades so that Parliament can have its own supremacy to exercise its mandate.

Sen. Hassan: On a point of order, Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): What is it Sen. Omar?

Sen. Hassan: Mr. Speaker, Sir, I want to talk to the same issue and add my voice in this regard.

The Speaker (Hon. Ethuro): Proceed, Senator.

Sen. Hassan: Mr. Speaker, Sir, there is a concept of 'securitization' of democracy where pseudo-democracy is exercised in a situation or atmosphere of fear. I want to join hands with Sen. Wetangula who has called on the fact that for us to have a Parliament or a Senate that is barricaded by police officers as we debate is injurious to the perception of democracy in this House. It makes it appear that the Jubilee side, or any other side that is attached to the State, is being readied for a confrontation.

Sen. Wetangula sent me a message at 7.53 a.m. saying that Parliament had been barricaded. I thought in a military sense that Sen. Wetangula is under siege or, as Sen. Murkomen would call it, *siege*.

(Laughter)

Sen. Murkomen: On a point of order, Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): What is it, Sen. Murkomen?

Sen. Murkomen: Mr. Speaker, Sir, is it in order for Sen. Hassan to attribute a term that is well known to Sen. Gideon Moi to me? Could he have possibly confused me with Sen. Gideon Moi?

(Laughter)

The Speaker (Hon. Ethuro): Proceed, Sen. Hassan. You have one more minute to go.

Sen. Hassan: Mr. Speaker, Sir, the last time there was a siege in this country, a man from Sen. Murkomen's backyard called the siege, *sieke*. I actually believed that it is a dialect from that area; I did not believe it was a grammatical error or a typo. I believed Sen. Murkomen would call a siege, *sieke*.

To clarify what the deputy party leader of Ford Kenya has told me, Ford Kenya has only one presidential candidate. Therefore, anybody else saying he is a presidential candidate is not in that party and he must take the necessary legislative role to move out of the party and seek that ambition elsewhere. I ask that---

The Speaker (Hon. Ethuro): Order, Sen. Omar! You cannot make such a substantive argument on democracy and, at the same time, you do not want parties to exercise internal democracy.

Sen. Hassan: Mr. Speaker, Sir, Ford Kenya has already exercised internal democracy and already nominated its presidential candidate. However, the candidate did not present himself then, as the Ford Kenya presidential candidate. The wheels of democracy are self-sustaining and propelling. Therefore, as we---

(Loud Consultations)

Sen. Sang: On a point of order, Mr. Speaker, Sir. We know very well that Sen. Hassan Omar is the Secretary General of Wiper Party. Is he in order to give us a lecture on Ford Kenya when we know that it has two factions? Yesterday, when the other candidate declared his interests for the presidency, he indicated that he knew that he would be fought. This is the start of the fight, just one day after the declaration. Could he restrict himself to Wiper Party and allow internal democracy within the two factions of Ford Kenya as it were; one led by Sen. Monga're and the other led by the Senate Minority Leader.

The Speaker (Hon. Ethuro): Sen. Hassan Omar, restrict yourself to what is before us.

Sen. Hassan: Mr. Speaker, Sir, absolutely! I will not delve further into that point. It is just to pity Sen. Sang who misguided himself on account of what he has read or insinuated.

On this salient point, when the tools of State coercion are littered all over Parliament, it sends an extremely negative signal. If the National Assembly is meeting, let them do it. For the sake of this Senate, let there be no police presence. Senators are friends irrespective of whether they are adversaries in their political terms. It is wrong and immoral for the police to barricade the road to Parliament. This is a Parliament in a democratic order and we are not about to reverse it.

Mr. Speaker, Sir, I support what the Senate Minority Leader suggested; that we adjourn until the police removes the barricade so that people can see that we are in an atmosphere of democracy. Democracy is not only practised but should be seen to be practised.

(Applause)

What message are you sending when I see images of police barricade? Why do police need to be in Parliament?

Mr. Speaker, Sir, can you order that so that we come back? Kenya is not about to be a police state.

Sen. (Prof.) Lonyangapuo: Mr. Speaker, Sir, as you heard the Senators speak; it is surprising that we are displaying characteristics of a state that has failed.

(Applause)

Mr. Speaker, Sir, that is not the Kenya we are in. We have few places that the police should be right now. Along the Kerio Valley, we have problems. Cattle rustling has become a menace for about three months now. These giant machines that have blocked the roads to Parliament should be taken there and any other places like Kenya-Somalia border today. We need these machines there.

Mr. Speaker, Sir, this is neither good at the Senate nor elsewhere. We were elected by the people to represent them; the most honourable people are here. You can imagine that we shall start fighting like chicken in the market. We cannot!

Lastly, the nation is watching us. The world is also staring at the machines that are outside Parliament Buildings. They are wondering what has happened to Kenya. If you read history, during the time of the late President Jomo Kenyatta-even during tough times- police were not brought right to the doorstep of the legislator's route. During the 24 years when President Moi was in power, it never happened. The 10 years of President Kibaki, it never happened. Who is this other one that is giving out instructions to belittle the Head of State?

(Laughter)

Mr. Speaker, Sir, who is this other leader? Who is giving out instructions to belittle the leadership of President Uhuru Kenyatta?

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Speaker, Sir, this being a House of record, is the Senator for West Pokot County in order to mislead Kenyans that there have not been intrusions on parliamentary privilege before when we know that Members of Parliament have been arrested inside this Parliament Buildings? So, let us be sober. Which one is worse? Is it a barricade or an arrest of a Member of Parliament? Let us state facts as they are and condemn what we must condemn but not to distort history.

(Loud consultations)

The Speaker (Hon. Ethuro): Order, Members! We have been on this for about one and a quarter hours. It must come to an end. On the police matter, I want to confirm that my instructions were clear that we do not need any police presence.

(Applause)

This morning when I came and I saw the police, I called the Cabinet Secretary in charge of security matters. The confusion might be on the basis of parliamentary precincts and where the police could be. Definitely, they are not within the parliamentary precincts but outside.

(Loud consultations)

Order, Members! You asked me to rule. You cannot hear the ruling. I am directing the police that we do not need them.

(Applause)

An hon. Senator: And we adjourn!

The Speaker (Hon. Ethuro): We will not adjourn because we have business to carry out. We are already here and nobody has been denied the access. Secondly, even if the police came, they will facilitate the Members to access the Building rather than objecting them.

(Loud consultations)

So, if there were attempts to prevent any Member of the Senate from accessing Parliament - to come and carry out a duty that he or she has been called to come and perform - that is wrong as stated by Sen. Orenge from the Parliamentary Powers and Privileges Act and the constitutional provisions that he quoted. It is actually the Speaker who should ask the police to assist. We have not sought assistance from the police. There was no need for me to seek police assistance because the Members of this House for the last four years have acted in an exceptional manner.

(Applause)

They have exhibited dignity and decorum at all times. I am quoted on this one, and I do not except anything less on this matter. We come here as parliamentarians not to fight but to debate. That is why we have institutions of democracy. We debate and persuade each other and at the end, we vote. I assure you as the Senate Majority Leader said, the minority will have their say and the majority will have their way. That is the democracy I know and the one I will defend through this institution.

So, for the police to create unnecessary fear and attention, it is the last thing that we need in this country. I am happy that from your voice reactions - which we do not usually tolerate - they have helped me to determine that you have given assurance to ourselves and to the nation that you will act in the way you are expected. Therefore,

nobody else should instill fear in the way we conduct our business. That is the assurance. I promise the media that our proceedings will be live. The media will cover all our proceedings.

I direct the Chair of the Committee on National Security and Foreign Relations to investigate so that this matter does not just end here. The Chair should investigate and bring a report to this House on the circumstances under which the police came to Parliament. This is not a police state. This is a democratic state.

(Applause)

Next Order!

An Hon. Senator: Point of Order!

The Speaker (Hon. Ethuro): It is overruled. We need to make progress.

I see Sen. (Prof.) Anyang'-Nyong'o is about to be consumed. I have no intention to allow him to be consumed. What is it that is burning you, Professor?

Sen. (Prof.) Anyang'-Nyong'o: Mr. Speaker, Sir, let me raise two issues on the basis of your ruling. One is the principle of separation of powers between Parliament, the Executive and other Government organs.

Secondly, Sen. Orengo and Sen. Wetangula read part of the Article 118 of the Constitution. I want to read it in full and draw your attention to my point.

(Sen. Mutula Kilonzo Jnr. consulted loudly)

If Sen. Mutula Kilonzo Jnr. can give me time, I will be very grateful. Please, listen to me.

Article 118(1) of the Constitution of the Republic of Kenya says:-

“Parliament shall—

(a) conduct its business in an open manner, and its sittings and those of its committees shall be open to the public; and---

The Speaker (Hon. Ethuro): Order, Sen. (Prof.) Anyang'-Nyong'o! You are being repetitive. Sen. Orengo read the same Article.

Sen. (Prof.) Anyang'-Nyong'o: No, Mr. Speaker, Sir. They did not finish the whole Article. Let me just read on record, if you allow me.

The Speaker (Hon. Ethuro): order, Senator!

Sen. (Prof.) Anyang'-Nyong'o: Let me read Article 118(2).

The Speaker (Hon. Ethuro): Just one only.

Sen. (Prof.) Anyang'-Nyong'o: Article 118(2) says:-

“Parliament may not exclude the public, or any media, from any sitting unless in exceptional circumstances the relevant Speaker has determined that there are justifiable reasons for the exclusion.”

Mr. Speaker, Sir, we have excluded the public and the media who are usually in the Public Gallery from this sitting. Should somebody go to court after we have held this sitting and declare it was unconstitutional, how would you defend yourself, based on this

principle of the Constitution of the Republic of Kenya? We must be very open and transparent to each other. We are holding an unconstitutional sitting of the Senate. If somebody goes to court and declares this sitting a nullity, we have no defence.

The Speaker (Hon. Ethuro): With due respect to Sen. (Prof.) Anyang'-Nyong'o, Sen. Orendo had already given a better treatise to those provisions and I acknowledged it. You do not need to read because everybody can read for himself here. More importantly, no Member of the public will be denied. I have directed before and I can even do so now that already the Chairperson of the Committee on Legal Affairs and Human Rights is eager, willing and ready to prosecute this business when it shall be committed to him if you do so. There are also people out there who are interested in coming to the Committee. So, they will be allowed.

(Loud consultations)

Order, Members! Let us proceed.

I have two messages from the National Assembly to read.

MESSAGES FROM THE NATIONAL ASSEMBLY

AMENDMENT OF THE COUNTY ASSEMBLIES SERVICES BILL (SENATE BILL NO. 27 OF 2014)

Hon. Senators, I wish to report to the Senate that pursuant to Standing Order No.40(3) and (5), I received the following message from the Speaker of the National Assembly on 6th December, 2016, regarding the amendments by the Assembly to the County Assemblies Services Bill (Senate Bill No.27 of 2014).\

Pursuant to the provisions of the Standing Order Nos.41 and 144 of the National Assembly Standing Orders, I hereby convey the following message from the National Assembly:-

“Whereas, the County Assemblies Services Bill (Senate Bill No. 27 of 2014), published by the Kenya Gazette Supplement No.98 of 5th May 2014, as a Bill originating from the Senate to make further provisions on the County Assembly Services Board and the County Assembly Service was referred to the National Assembly for consideration following its passage by the Senate on 5th May 2016;

Whereas, on 12th December 2016, the National Assembly passed the Bill with an amendment of the transition and saving provisions;

Now therefore, in accordance with the provisions of Article 110(4) of the Constitution and Standing Order No.144 of the National Assembly Standing Orders, I hereby refer the said amendment to the Senate for consideration.”

Hon. Senators, this message was received on 6th December, 2016, when the Senate was on recess. Pursuant to Standing Order No.40(5), I conveyed the same to all Senators via a letter referenced: Sen/L&P/MSG.2016(63) of 8th December, 2016.

Article 112(1)(b) of the Constitution provides that if one House passes an ordinary Bill concerning counties and the second House passes the Bill in an amended form, it shall be referred back to the originating House for reconsideration. It is in this

regard, therefore, that I direct the Committee on Legal Affairs and Human Rights to deliberate on the National Assembly amendments and report to the Senate.

Further, pursuant to Standing Order No.151 of the Senate Standing Orders, I direct that the National Assembly amendment to the County Assemblies Services Bill (Senate Bill No.27 of 2014) be listed in the Order Paper when the Senate resumes its sittings for the 5th session.

PASSAGE OF THE LAND VALUE INDEX LAWS (AMENDMENT) BILL
(NATIONAL ASSEMBLY BILL NO.40 OF 2016)

Hon. Senators, I wish to report to the Senate that pursuant to Standing Order No.40(3) and (5), I received the following message from the Speaker of the National Assembly on 13th December, 2016, regarding the passage by the National Assembly of the Land Value Index Laws (Amendment) Bill (National Assembly Bill No.40 of 2016).

“Pursuant to the provisions of Standing Order Nos.41(1) and 142 of the National Assembly Standing Orders, I hereby convey the following message from the National Assembly:-

Whereas, the Land Value Index Laws (Amendment) Bill (National Assembly Bill No.40 of 2016) was published by the Kenya Gazette Supplement No.166 of 23rd September 2016, as a Bill concerning county governments seeking to provide for the assessment of land value index in respect of compulsory acquisition of land by *inter-alia* amending the Land Act, Land Registration Act and the Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities Act, and;
Whereas the National Assembly considered and passed the said Bill on Thursday 1st December, 2016 with amendments and in the form attached hereto;

Now therefore, in accordance with the provisions of Article 110(4) of the Constitution and Standing Order No.152 of the National Assembly Standing Orders, I hereby refer the said Bill to the Senate for consideration.”

Hon. Senators, this message was received at a time when the Senate was on recess. Pursuant to Standing Order No.40(5), I transmitted the message to every Senator vide a letter referenced: Sen/L&P/MSG.2016(64) of 15th December, 2016.

Pursuant to Standing Order No.148 which requires that a Bill originating in the National Assembly be proceeded with by the Senate in the same manner and a Bill as a Bill introduced in the Senate by way of First Reading, in accordance to Standing Order No.129, I direct that the Bill be listed for First Reading when the Senate resumes its sitting for the Fifth Session.

I thank you.

Sen. Hassan: On a point of order, Mr. Speaker, Sir. The Senate, as we say, is a House of records. The record is extremely stubborn. Sometimes we must also not appear to renege on every undertakings that this Senate has taken upon itself. Just before we proceeded for the recess, I recall, in the most casual and arbitrary manner, the National Assembly torpedoed the regulations that would have led to the establishment of the Senate Oversight Fund. We came to this Senate and the Senate Majority Leader, Sen.

(Prof.) Kindiki, led the charge and even asked that we suspend all business from the National Assembly until and unless we determine conclusively matters around that fund.

So, what you have just done is to renege totally on the commitments that we took as the Senate to determine and consider and dispense of business from the National Assembly. So, all these business that is listed here today is business from the National Assembly. My view is that we finish the business that is listed a Senate Bills and the National Assembly Bills and business be suspended until and unless we make a determination on the oversight fund.

(Applause)

We must live by the tenets upon which we agree on. The Senate cannot be ridiculed. Do not convene us on a Special Sitting when we have just worked so hard to destroy this Senate. No Senator here can do any oversight or business for the last four years. Constantly you convene us in December holidays. Some of us have young families and we suspend our itinerary to be here to defend the country and ourselves from ridicule.

I urge you at this point in time for us to exercise an input that the business of that oversight fund be a matter for consideration. No Senator will be able to operate – not in this or the next Senate – if the oversight fund is not made available to all Senators.

Therefore, we should adjourn this business today on the commitment we made last before we went on recess. If you recall very well, we suspended very many businesses---

The Speaker (Hon. Ethuro): Order Senator!

(Sen. Hassan spoke off record)

(Loud consultations)

Order Members, I think you are in a good mood today and the points of order are becoming your tool of trade. I would like to participate but unfortunately it is 11.30 a.m.

An Hon. Senator: Why are you rushing?

(Laughter)

The Speaker (Hon. Ethuro): We are not rushing because we have a lot of business which we must conclude today; because this is the day gazetted for that business.

Just to highlight the two messages I read, I thank Sen. Hassan for reminding us of some of our own utterances and that is true. Records are stubborn and so we are on record but on that particular matter, Members can remind the Senate Majority Leader to make that suggestion because he has not negated it. You did not follow the proceedings of the National Assembly when they met last. We gave the names and they have also given the names for a joint committee to resolve the matter as provided for in the Standing Orders. So, that matter is on course and alive and it should not be an issue. That is the position now. Whether they amend or not, it is a legitimate process which we must accept.

Secondly, one of the messages is about a Bill for a matter affecting counties. We have argued that this is a legitimate business of the Senate and that is what they have done it. The second Bill is actually our own Bill which is the County Assembly Services Bill. So, that is business that must also come back to us. So, under the circumstances, all is well.

Let us proceed.

PAPERS LAID

CRA RECOMMENDATIONS ON EXPENDITURE CEILINGS FOR COUNTY GOVERNMENTS FOR THE FY 2017/2018

Sen. Kagwe: Mr. Speaker, Sir, thank you very much. I beg to lay the following Paper on the Table of the Senate today, Wednesday, 28th December, 2016:-

The Commission of Revenue Allocation Recommendations to the Senate on Recurrent Expenditure Ceilings for County Assemblies and Executives for the Financial Year 2017/2018.

I thank you.

(Sen. Kagwe laid the document on the Table)

Sen. (Dr.) Khalwale: On a point of order, Mr. Speaker, Sir. Just a few minutes ago, you made a ruling and assured the country that these proceedings will be open to the country in keeping with the provision of the Constitution which was quoted by Sen. (Prof.) Anyang'-Nyong'o. However, we are now getting feedback that these proceedings are no longer live.

The Speaker (Hon. Ethuro): Sen. (Dr.) Khalwale, we will check on it. Let us have the Chair of the Committee on Land and Natural Resources.

REPORT ON THE JOINT SITTING ON THE VETTING OF NOMINEES FOR THE APPOINTMENT TO THE NATIONAL CLIMATE COUNCIL

Sen. Khaniri: Mr. Speaker, Sir, I rise to lay on the Table of this House the Report on the Joint Sitting of Senate Standing Committee on Land and Natural Resources and the National Assembly Departmental Committee on Environment and Natural Resources on the Vetting of Nominees for the Appointment to the National Climate Council. I thank you.

(Sen. Khaniri laid the document on the Table)

NOTICES OF MOTION

ADOPTION OF REPORT OF THE JOINT SITTING ON THE VETTING OF NOMINEES FOR APPOINTMENT TO THE NATIONAL CLIMATE CHANGE COUNCIL

Sen. Khaniri: Mr. Speaker, Sir, I rise to give notice of the following Motion:-

THAT, pursuant to Section 7 of the Climate Change Act, 2016, Section 8(1) of the Public Appointments (Parliamentary Approval) Act, 2011 and Senate Standing Order No.65, the Senate adopts the Report of the Joint Sitting of the Senate Standing Committee on Land and Natural Resources and the National Assembly Departmental Committee on Environment and Natural Resources on the Vetting of Nominees for the Appointment to the National Climate Council laid on the Table of the Senate on Wednesday, 28th December, 2016, and approves the recommendation of the Committee as follows:-

- (1) Approves the nomination of Mr. Suresh Patel and Mr. John Kioli for appointment to the National Climate Change Council.
- (2) Rejects the nomination of Ms. Cynthia Wachabe and Dr. Jane Mutheu for appointment to the National Climate Change Council.
- (3) Recommends that the appointing authority submits nominees of the female gender to represent the marginalised communities and Commission for University Education as prescribed by the Public Appointments (Parliamentary Approval) Act.

The Speaker (Hon. Ethuro): Next Order.

EXTENSION OF THE MANDATE OF SESSIONAL COMMITTEES
UNTIL THE COMMENCEMENT OF THE FIFTH SESSION

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Speaker, Sir, I beg to give notice of the following Motion:-

THAT, pursuant to Standing Order No.210(3), the Senate resolves on the mandate of sessional committees appointed in the Fourth Session be extended until the commencement of the Fifth Session.

I thank you.

The Speaker (Hon. Ethuro): Order, Members. Before the next order, I propose that we deal with the votes first. So, we will do the business from Orders No.8, 9, 10, 11, 12, 13 and 14.

What is it, Sen. Haji?

Sen. Haji: On a point of order, Mr. Speaker, Sir. I would like to inform the House that the police have been removed from where they were. Therefore, you will not expect me to make any other report because they have been removed.

(Laughter)

The Speaker (Hon. Ethuro): What is it, Sen. Wetangula?

The Senate Minority Leader (Sen. Wetangula): Mr. Speaker, Sir, we thank the distinguished Senator for Garissa for what he has said. However, you directed him and his Committee not to remove the police but to investigate and report to the House the circumstances under which the police were brought to cordon off Parliament.

So, that onus cannot be discharged by the police moving away. How did they come in the first place? That is what the Chair directed the Chairperson of the Committee to investigate. I urge my brother, Sen. Haji, whom I know has nothing to do with what

has happened out there, to relax, call the Committee, investigate, call all those concerned and bring a report.

The Speaker (Hon. Ethuro): What is it, Sen. Njoroge?

Sen. Njoroge: On a point of order, Mr. Speaker, Sir. In addition to what you had directed the Chairperson of the Committee on National Security and Foreign Relations, would it be fair enough for him also to investigate and find out who ordered the police to withdraw from where they have been since morning?

The Speaker (Hon. Ethuro): What is it, Sen. (Dr.) Khalwale?

Sen. (Dr.) Khalwale: On a point of order, Mr. Speaker, Sir. I have no reason why I would doubt the Chairperson. If it is true, then, we really must thank you because you have just confirmed that this Senate is not an extension of the Executive.

As I thank you, I would also like to ask the Executive to also be in charge of the various departments that are in the Government. I would be scared to imagine that it would be the President who ordered the police to cordon off this Parliament. If it is true that Gen. Nkaissery was doing it unilaterally ---

The Speaker (Hon. Ethuro): Order, Sen. (Dr.) Khalwale! This matter has been resolved. Why do we flog a dead horse?

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, I wanted to make a statement at a man called Nkaissery.

The Speaker (Hon. Ethuro): Order! First, it is not right for you to conclude on matters that we have already resolved. We have asked the Chairperson of the Committee to deal with the other issues that you are attempting to interrogate now prematurely. My directive to the Chairperson still stands. My wording was very careful; the circumstances in which the police made their presence around Parliament.

Members, we must make progress. I order the Division Bell to be rung for 30 seconds.

(The Division Bell was rung)

Order Members. We should now proceed. Draw the Bar and close the door.

(The Bar was drawn and doors closed)

(Several Senators consulted while standing)

The Standing Order on voting is very clear. Resume your seats, log in and vote. Sit next to your neighbor if you wish to consult.

(The Senators proceeded to vote)

The Speaker (Hon. Ethuro): Order, hon. Senators. We are now at Order No.9, the County Statistics Bill (Senate Bill No.11 of 2016). Let us commence voting.

(Voting in progress)

We are now at Order No. 10, the Treaty making and Ratification (Amendment) Bill (Senate Bill No.5 of 2016)

Voting in progress)

Hon. Members, we will vary our procedure a bit because Order No.14 is a constitutional Order. This requires a variation of the procedure during voting. In order to do so, I will announce the results of the divisions that we have taken so far.

Sen. (Dr.) Machage: On a point of order, Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): Order! Why would you not approach me? You do not have to make everything in Plenary. We are still voting.

(Sen. (Dr.) Machage spoke off record)

The Speaker (Hon. Ethuro): Which Order will it affect?

Sen. (Dr.) Machage: Order No.11.

The Speaker (Hon. Ethuro): Order No.11 is gone. We have done 12 and 13.

(Sen. (Dr.) Machage spoke off record)

Order! You will not enter a shouting match with the Chair. Let us proceed.

Hon. Members, I therefore, wish to announce the results of the Division on Order No.8.

MOTION

ADOPTION OF REPORT ON THE 2017 BUDGET POLICY STATEMENT

(Sen. Billow on 1.12.2016)

(Resumption of Debate interrupted on 1.12.2016)

DIVISION

ELECTRONIC VOTING

(Question, that the Senate Adopts the Report of the Standing Committee on Finance, Commerce and Budget on the 2017 Budget Policy Statement Laid on the Table of the Senate on Wednesday, 30th November, 2016, put and the Senate proceeded to vote by County Delegations)

AYES: Sen. Abdirahman, Wajir County; Sen. Adan, Isiolo County; Sen. (Prof.) Anyang'-Nyong'o, Kisumu County; Sen. Boy Juma Boy, Kwale County; Sen. Cheruiyot, Kericho County; Sen. Chiaba, Lamu County; Sen. G. G. Kariuki, Laikipia County; Sen. Haji, Garissa County; Sen. Hassan, Mombasa County; Sen. Kagwe, Nyeri County; Sen. Kajwang' M., Homa Bay County; Sen. Karaba, Kirinyaga County; Sen. Kembu-Gitura,

Murang'a County; Sen. (Dr.) Khalwale, Kakamega County; Sen. Khaniri, Vihiga County; Sen. (Prof.) Kindiki, Tharaka Nithi County; Sen. (Prof.) Lesan, Bomet County; Sen. Leshore, Samburu County; Sen. (Prof.) Lonyangapuo, West Pokot County; Sen. (Dr.) Machage, Migori County; Sen. Mbuvi, Nairobi County; Sen. Melly, Uasin Gishu County; Sen. Moi, Baringo County; Sen. Mungai, Nakuru County; Sen. Munyes, Turkana County; Sen. Mutula Kilonzo Jnr., Makueni County; Sen. Mositet, Kajiado County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Murungi, Meru County; Sen. Mwakulegwa, Taita Taveta County; Sen. Ndiema, Trans Nzoia County; Sen. Ntutu, Narok County; Sen. Obure, Kisii County; Sen. Orenge, Siaya County; Sen. Sang, Nandi County; Sen. Wako, Busia County; Sen. Wamatangi, Kiambu County; and Sen. Wetangula, Bungoma County.

NOES: 0

The Speaker (Hon. Ethuro): Hon. Senators, I wish to announce the results as follows:-

AYES: 38

NOES: 0

ABSTENTIONS: 0

(Question carried by 38 votes to 0)

BILLS

Second Reading

THE COUNTY STATISTICS BILL
(SENATE BILL NO.11 OF 2016)

(Sen. Lesuuda on 10.11.2016)

(Resumption of Debate interrupted on 10.11.2016)

DIVISION

ELECTRONIC VOTING

*(Question, that the County Statistics Bill (Senate Bill No.11 of 2016)
be now read a Second time, put and the Senate proceeded to
vote by County Delegations)*

AYES: Sen. Abdirahman, Wajir County; Sen. Adan, Isiolo County; Sen. (Prof.) Anyang'-Nyong'o, Kisumu County; Sen. Boy Juma Boy, Kwale County; Sen. Cheruiyot, Kericho County; Sen. Chiaba, Lamu County; Sen. G. G. Kariuki, Laikipia County; Sen. Haji, Garissa County; Sen. Hassan, Mombasa County; Sen. Kagwe, Nyeri County; Sen. Kajwang M.; Homa Bay County; Sen. Karaba, Kirinyaga County; Sen. Kembu-Gitura, Murang'a County; Sen. (Dr.) Khalwale, Kakamega County; Sen. Khaniri, Vihiga County; Sen. (Prof.) Kindiki, Tharaka Nithi County; Sen. (Prof.) Lesan, Bomet County; Sen. Leshore, Samburu County; Sen. (Prof.) Lonyangapuo, West Pokot County; Sen. (Dr.)

Machage, Migori County; Sen. Mbuvi, Nairobi County; Sen. Melly, Uasin Gishu County; Sen. Moi, Baringo County; Sen. Mungai, Nakuru County; Sen. Munyes, Turkana County; Sen. Mutula Kilonzo Jnr., Makueni County; Sen. Mositet, Kajiado County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Murungi, Meru County; Sen. Mwakulegwa, Taita Taveta County; Sen. Ndiema, Trans Nzoia County; Sen. Ntutu, Narok County; Sen. Obure, Kisii County; Sen. Orenge, Siaya County; Sen. Sang, Nandi County; Sen. Wako, Busia County; Sen. Wamatangi, Kiambu County; and Sen. Wetangula, Bungoma County.

NOES: 0

The Speaker (Hon. Ethuro): Hon. Senators, I wish to announce the results as follows:-

AYES: 38

NOES: 0

ABSTENTIONS: 0

(Question carried by 38 votes to 0)

(The Bill was read a Second Time and committed to a Committee of the Whole tomorrow)

Second Reading

THE TREATY MAKING AND RATIFICATION (AMENDMENT)
BILL (SENATE BILL NO.5 OF 2016)

(Sen. Haji on 15.11.2016)

(Resumption of Debate interrupted on 15.11.2016)

DIVISION

ELECTRONIC VOTING

(Question, that the Treaty Making and Ratification (Amendment) Bill (Senate Bill No.5 of 2016) be now read a Second Time, put and the Senate proceeded to vote by County Delegations)

AYES: Sen. Abdirahman, Wajir County; Sen. Adan, Isiolo County; Sen. (Prof.) Anyang'-Nyong'o, Kisumu County; Sen. Boy Juma Boy, Kwale County; Sen. Cheruiyot, Kericho County; Sen. Chiaba, Lamu County; Sen. G. G. Kariuki, Laikipia County; Sen. Haji, Garissa County; Sen. Hassan, Mombasa County; Sen. Kagwe, Nyeri County; Sen. Kajwang' M., Homa Bay County; Sen. Karaba, Kirinyaga County; Sen. Kembu-Gitura, Murang'a County; Sen. (Dr.) Khalwale, Kakamega County; Sen. Khaniri, Vihiga County; Sen. (Prof.) Kindiki, Tharaka Nithi County; Sen. (Prof.) Lesan, Bomet County; Sen. Leshore, Samburu County; Sen. (Prof.) Lonyangapuo, West Pokot County; Sen. (Dr.) Machage, Migori County; Sen. Mbuvi, Nairobi County; Sen. Melly, Uasin Gishu County;

Sen. Moi, Baringo County; Sen. Mungai, Nakuru County; Sen. Munyes, Turkana County; Sen. Mutula Kilonzo Jnr., Makueni County; Sen. Mositet, Kajiado County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Murungi, Meru County; Sen. Mwakulegwa, Taita Taveta County; Sen. Ndiema, Trans Nzoia County; Sen. Ntutu, Narok County; Sen. Obure, Kisii County; Sen. Orenge, Siaya County; Sen. Sang, Nandi County; Sen. Wako, Busia County; Sen. Wamatangi, Kiambu County; and Sen. Wetangula, Bungoma County.

NOES: 0

The Speaker (Hon. Ethuro): Hon. Senators, I wish to announce the results as follows:-

AYES: 38

NOES: 0

ABSTENTIONS: 0

(Question carried by 38 votes to 0)

(The Bill was read a Second Time and committed to a Committee of the Whole tomorrow)

Second Reading

THE WAREHOUSE RECEIPTS SYSTEM BILL
(NATIONAL ASSEMBLY BILL No.12 OF 2015)

(Sen. (Prof.) Kindiki on 16.11.2016)

(Resumption of Debate interrupted on 16.11.2016)

DIVISION

ELECTRONIC VOTING

(Question, that the Warehouse Receipts System Bill (National Assembly Bill No.12 of 2015) be now read a Second Time put and the Senate Proceeded to vote by county delegations)

AYES: Sen. Adan, Isiolo County; Sen. (Prof.) Anyang'-Nyong'o, Kisumu County; Sen. Cheruiyot, Kericho County; Sen. Chiaba, Lamu County; Sen. Haji, Garissa County; Sen. Kagwe, Nyeri County; Sen. (Dr.) G.G. Kariuki, Laikipia County; Sen. Kembu-Gitura, Murang'a County; Sen. (Prof.) Kindiki, Tharaka Nithi County; Sen. Leshore, Samburu County; Sen. (Prof.) Lesan, Bomet County; Sen. (Prof.) Lonyangapuo, West Pokot County; Sen. Karaba, Kirinyaga County; Sen. Mbuvi, Nairobi County; Sen. Melly, Uasin Gishu County; Sen. Moi, Baringo County; Sen. Mositet, Kajiado County; Sen. Mungai, Nakuru County; Sen. Munyes, Turkana County; Sen. Murungi, Meru County; Sen. Murkomen, Elgeyo Marakwet County; Sen. Ndiema, Trans Nzoia County; Sen. Ntutu, Narok County; Sen. Sang, Nandi County; Sen. Wamatangi, Kiambu County

NOES: Sen. Abdirahman, Wajir County; Sen. Boy Juma Boy; Kwale County; Sen. Hassan, Mombasa County; Sen. Kajwang' M., Homa Bay County; Sen. (Dr.) Khalwale, Kakamega County; Sen. Khaniri, Vihiga County; Sen. (Dr.) Machage, Migori County; Sen. Mutula Kilonzo Jnr, Makueni County; Sen. Mwakulegwa, Taita Taveta County; Sen. Obure, Kisii County; Sen. Orenge, Siaya County and Sen. Wako, Busia County.

ABSTENTIONS: Sen. Wetangula, Bungoma County

The Speaker (Hon. Ethuro): Hon. Senators, I wish to announce the results as follows:-

AYES: 25

NOES: 12

ABSTENTION: 1

(Question carried by 25 votes to 12)

(The Bill was read a Second Time and committed to a Committee of the Whole tomorrow)

Second Reading

THE IMPEACHMENT PROCEDURE BILL
(SENATE BILL NO.8 OF 2016)

(Sen. (Eng.) Muriuki on 17.11.2016)

(Resumption of Debate interrupted on 17.11.2016)

DIVISION

ELECTRONIC VOTING

(Question, that the Impeachment Procedure Bill (Senate Bill No.8 of 2016) be now read a Second Time put and the Senate proceeded to vote by county delegations)

AYES: Sen. Abdirahman, Wajir County; Sen. Adan, Isiolo County; Sen. (Prof.) Anyang'-Nyong'o, Kisumu County; Sen. Boy Juma Boy, Kwale County; Sen. Cheruiyot, Kericho County; Sen. Chiaba, Lamu County; Sen. G. G. Kariuki, Laikipia County; Sen. Haji, Garissa County; Sen. Hassan, Mombasa County; Sen. Kagwe, Nyeri County; Sen. Kajwang' M., Homa Bay County; Sen. Karaba, Kirinyaga County; Sen. Kembi-Gitura, Murang'a County; Sen. (Dr.) Khalwale, Kakamega County; Sen. Khaniri, Vihiga County; Sen. (Prof.) Kindiki, Tharaka Nithi County; Sen. (Prof.) Lesan, Bomet County; Sen. Leshore, Samburu County; Sen. (Prof.) Lonyangapuo, West Pokot County; Sen. (Dr.) Machage, Migori County; Sen. Mbuvi, Nairobi County; Sen. Melly, Uasin Gishu County; Sen. Moi, Baringo County; Sen. Mungai, Nakuru County; Sen. Munyes, Turkana County; Sen. Mutula Kilonzo Jnr., Makueni County; Sen. Mositet, Kajiado

County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Murungi, Meru County; Sen. Mwakulegwa, Taita Taveta County; Sen. Ndiema, Trans Nzoia County; Sen. Ntutu, Narok County; Sen. Obure, Kisii County; Sen. Orengo, Siaya County; Sen. Sang, Nandi County; Sen. Wako, Busia County; Sen. Wamatangi, Kiambu County; and Sen. Wetangula, Bungoma County.

NOES: 0

The Speaker (Hon. Ethuro): Hon. Senators, I wish to announce the results as follows:-

AYES: 38

NOES: 0

ABSTENTIONS: 0

(Question carried by 38 votes to 0)

(The Bill was read a Second Time and committed to a Committee of the Whole tomorrow)

Second Reading

THE LOCAL CONTENT BILL
(SENATE BILL NO.13 OF 2016)

(Sen. Moi on 22.11.2016)

(Resumption of Debate interrupted on 30.11.2016)

DIVISION

ELECTRONIC VOTING

(Question, that the Local Content Bill (Senate Bill No.13 of 2016) be now read a Second Time put and the Senate proceeded to vote by county delegations)

AYES: Sen. Abdirahman, Wajir County; Sen. Adan, Isiolo County; Sen. (Prof.) Anyang'-Nyong'o, Kisumu County; Sen. Boy Juma Boy, Kwale County; Sen. Cheruiyot, Kericho County; Sen. Chiaba, Lamu County; Sen. G. G. Kariuki, Laikipia County; Sen. Haji, Garissa County; Sen. Hassan, Mombasa County; Sen. Kagwe, Nyeri County; Sen. Kajwang' M., Homa Bay County; Sen. Karaba, Kirinyaga County; Sen. Kembu-Gitura, Murang'a County; Sen. (Dr.) Khalwale, Kakamega County; Sen. Khaniri, Vihiga County; Sen. (Prof.) Kindiki, Tharaka Nithi County; Sen. (Prof.) Lesan, Bomet County; Sen. Leshore, Samburu County; Sen. (Prof.) Lonyangapuo, West Pokot County; Sen. (Dr.) Machage, Migori County; Sen. Mbuvi, Nairobi County; Sen. Melly, Uasin Gishu County; Sen. Moi, Baringo County; Sen. Mungai, Nakuru County; Sen. Munyes, Turkana County; Sen. Mutula Kilonzo Jr., Makueni County; Sen. Mositet, Kajiado County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Murungi, Meru County; Sen.

Mwakulegwa, Taita Taveta County; Sen. Ndiema, Trans Nzoia County; Sen. Ntutu, Narok County; Sen. Obure, Kisii County; Sen. Orengo, Siaya County; Sen. Sang, Nandi County; Sen. Wako, Busia County; Sen. Wamatangi, Kiambu County; and Sen. Wetangula, Bungoma County.

NOES: 0

The Speaker (Hon. Ethuro): Hon. Senators, I wish to announce the results as follows:-

AYES: 38

NOES: 0

ABSTENTIONS: 0

(Question carried by 38 votes to 0)

(The Bill was read a Second Time and committed to a Committee of the Whole tomorrow)

The Speaker (Hon. Ethuro): Order, Members. I bring your attention to Standing Order No.76 on Roll Call Voting. We will open the doors, the bars and allow the Division Bell to ring for 30 seconds. We will take a roll call of the numbers first. This is for purposes of Order No.14.

Order, Members. Let the Doors be closed and Bars drawn.

(The Doors were closed and the Bars drawn)

Order, Senators, I, therefore, wish to put the question for Order No.14. You may start voting now.

Sen. Murkomen: On a point of order, Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): You can approach the Chair.

Sen. Murkomen: No, Mr. Speaker, Sir, it is a point of order on the voting.

The Speaker (Hon. Ethuro): I have guided you to approach the Chair.

(Sen. Murkomen approached the Chair)

The Speaker (Hon. Ethuro): Order Sen. Murkomen, your point of order is not allowed.

I will now proceed to announce the results.

Second Reading

THE CONSTITUTION OF KENYA (AMENDMENT BILL)
(SENATE BILL NO. 16 OF 2015)

(Sen. Sijeny on 10.2.2016)

(Resumption of Debate interrupted on 21.7.2016)

DIVISION**ROLL CALL VOTING**

(Question, that the Constitution of Kenya (Amendment) Bill (Senate Bill No.16) be now read a Second Time put and Senators proceeded to vote)

AYES: Sen. Adan; Sen. (Prof.) Anyang’-Nyong’o; Sen. Bule; Sen. Chelule; Sen. Cheruiyot; Sen. Chiaba; Sen. Elachi; Sen. Gwendo; Sen. Hassan; Sen. M. Kajwang; Sen. Karaba; Sen. (Prof.) Kindiki; Sen. Kisasa; Sen. (Prof.) Lesan; Sen. Leshore; Sen. Lesuuda; Sen. Madzayo; Sen. Mbuvi; Sen. Melly; Sen. Mungai; Sen. Munyes; Sen. Murkomen; Sen. Murungi; Sen. Mutula Kilonzo Jnr.; Sen. Mwakulegwa; Sen. Nabwala; Sen. Njoroge; Sen. Onchwangi; Sen. Ong’era; Sen. Ongoro; Sen. Orenge; Sen. Sang; Sen. Sijeny; Sen. Wako; Sen. Wamatangi; Sen. Wangari and Sen. (Dr.) Zani.

Teller of the Ayes: Sen. Njoroge

NOES: Sen. Abdirahman; Sen. Haji; Sen. (Dr.) G.G Kariuki; Sen. (Dr.) Khalwale; Sen. (Prof.) Lonyangapuo and Sen. Musila.

Teller of the Noes: Sen. M. Kajwang

ABSENTIONS: Sen. (Dr.) Machage; Sen. Ndiema and Sen. Obure.

The Speaker (Hon. Ethuro): The results of the Roll Call vote are as follows:-

AYES: 37

NOES: 6

ABSENTIONS: 3

Hon. Members, the requirement is that the ‘Ayes’ should be at least 45 for the Bill to pass and so, the ‘Noes’ have it.

(Question negated by 6 votes to 37)

All is not lost. Standing Order No. 63 (2) states that:-

“Notwithstanding paragraph (1), whenever a Bill or a Special Motion that requires a special majority in the Senate fails to obtain the required majority when the question on the Bill or the Motion is put and the vote results in a majority of the “Ayes” but the “Noes” have not numbered at least one third of all the Senators, the Speaker may direct that a further vote be taken on the particular question and the further vote shall be taken within five sitting days from the day the first vote was taken”.

This matter will be given another opportunity under this particular Standing Order.

Open the doors and draw the Bar.

Sen. Hassan: On a point of order, Mr. Speaker, Sir. My brother, Sen. Khaniri, is a stickler of procedure. Standing Order No. 77 (5) says:-

“When called out, each Senator shall, there upon rise in his or her place and declare assent or dissent to the question in the following manner: “I vote Yes” or “I vote No” or “I abstain” or use appropriate Kenyan sign language.”

In future, if anybody votes in any manner other than the prescribed, I shall protest the outcome of any vote, for example, when Senators stand up to give stories on whom they have consulted, why they will vote “No” today but vote “Yes” tomorrow.

For the sake of this Senate, I urge you to ensure that people vote in the manner prescribed by the Standing Orders.

Sen. (Dr.) Machage: On a point of order, Mr. Speaker, Sir. I rise under Standing Order No. 75. It is obvious that some Members were confused on what to vote for. In that case, I demand that the voting is repeated immediately.

Sen. Murkomen: On a point of order, Mr. Speaker, Sir. Standing Order No. 77 is very clear. Each one of us should sit down and when called upon they stand and state whether they vote “Yes”, “No” or “Abstain”.

Did you realize that the Senate Minority Leader, Sen. Khaniri and some other Senators were seated when we started voting? They never voted “Yes”, “No” or “Abstain.” They just kept walking to the toilet and coming back. Is that not a violation of the Standing Orders?

Mr. Speaker, Sir, where did the courage to vote go?

Sen. Ongoro: Mr. Speaker, Sir, it is a sad day that we have lost this vote. I support the Speaker’s ruling that gave us time to talk to our colleagues so that the Bill is not lost *in toto* but gets a chance as the Speaker ruled. We may not repeat it now with the current atmosphere in the House.

I thank the Speaker for using that window and giving the Bill another chance. We, the lady legislators, will talk to our colleagues who have not understood the provisions within the Bill. I believe when it is brought back, it will pass.

Thank you, Mr. Speaker Sir, for that opportunity.

Sen. Mutula Kilonzo Jnr.: Mr. Speaker, Sir, thank you for your direction. You should have mentioned that there is a case pending in court on this matter before we proceed to vote. However, that is not my issue.

There is a pending constitutional Bill that has been omitted from the Order Paper today. I do not know the wisdom behind it because it concerns counties more than anything else. That is the one on the Equalisation Fund.

Mr. Speaker, Sir, this Senate has spoken loudly about this issue. The national Government is already distributing what they call projects under the Equalisation Fund because we have never bothered to pronounce ourselves. In your directions, can you order the next time the Bill is before the House for a Division, we should pronounce ourselves.

Thank you.

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, I thank and laud you for confirming that this Bill will be given another opportunity. Please do it. As you extend that olive branch, let the Mover of the Bill rise to the occasion and ensure that the Bill is palatable. The only problem is that, it is providing that the nominated Members be re-nominated twice. The Members who have not voted against are worried that we are shortchanging thousands of women out there who would like to be given an opportunity to be nominated. Why would somebody want to benefit from nomination always?

(Loud consultations)

Sen. Ndiema: Mr. Speaker, Sir, I agree and support your decision that this matter should be brought up again for a re-vote. Is it in order that where there are issues to be straightened, amendments are made before the final decision is made? I do not know whether under these circumstances amendments can be entertained.

The Speaker (Hon. Ethuro): Order Members. We need to break. First, I agree to the suggestion by Sen. Mutula Kilonzo Jnr. that, indeed, the matter on the Equalisation Fund is pending and we will definitely bring it up the next time we are meeting.

On the one raised by Sen. Hassan on Standing Order No.77(5); you must also look at Standing Order No.80(1) and (2) about decorum during division.

“No Senator shall be obliged to vote in a division, but those present and not voting shall either –

(a) in case of an electronic vote, press the “Abstain” button; or

(b) in the case of a roll call vote, record their abstention with the Clerk.

(2) It shall be disorderly conduct for a Senator to fail to record his or her abstention in a division.

(4) During a division, Senators shall maintain order in the Senate and shall be in their designated seats and shall remain seated until the result is announced.”

Now, “but those present and not voting shall either ---” Yes, some Members were here at the beginning of the Division, but were not on their seats at the time their names were being called out. So, that is a grey area. The determination cannot be binding if the Member was seated throughout. For some reason, some Members find it convenient to be away from their designated seats at that particular time. That is the difficulty that I have, hon. Members. I will consult to find out the reason they do so.

The most important point raised by Sen. Hassan which I want to reaffirm is that you have a responsibility to vote whichever way. You can go any extreme of “Yes” or “No”. You can also be in the middle ground. For a Senator, elected by the people or nominated on behalf of those people, not having the courage to pronounce him or herself, then you make the point raised by Sen. Mutula Kilonzo Jnr. unnecessary that some things are happening because the Senate has not pronounced itself on the equalisation fund. That is the same argument. The expectation is that you are big enough and man or woman enough to state a position on behalf of your delegation and on your own behalf.

I will definitely entertain Sen. Hassan in the future exploring more along those lines.

(Laughter)

ADJOURNMENT

The Speaker (Hon. Ethuro): Order, Members! The Senate stands adjourned until this afternoon at 2.30 p.m.

The Senate rose at 1.20 p.m.