

# PARLIAMENT OF KENYA

## THE SENATE

### THE HANSARD

Thursday, 1<sup>st</sup> December, 2016

*The House met at the Senate Chamber,  
Parliament Buildings, at 2.30 p.m.*

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

#### PRAYER

**The Speaker** (Hon. Ethuro): Sen. Karaba, I am told you have a Petition.

**Sen. Karaba:** Mr. Speaker, Sir, it is a Report.

**The Speaker** (Hon. Ethuro): A Report on what? Approach the clerks-at-the Table to assist you.

#### POINT OF ORDER

##### WITHDRAWAL OF THE CYBER SECURITY AND PROTECTION BILL, 2016

**Sen. Kagwe:** Mr. Speaker, Sir, I rise in accordance with Standing Order No.145 (1) on withdrawal of Bills. We had published the Cyber Security and Protection Bill, 2016. We have subsequently consulted extensively with the Government and other stakeholders and agreed to republish a Bill that includes the views of everybody. We will not do that if I do not rise on Standing Order No.145 (1) to withdraw the Bill so that we can republish it.

**The Speaker** (Hon. Ethuro): Order, Members! I direct that the Bill be withdrawn and then subject to Standing Order No.145 (3) you may reintroduce it.

**Sen. Kagwe:** Thank you, Mr. Speaker, Sir.

*(Bill withdrawn)*

#### PAPERS LAID

##### REPORT ON PETITION: MISMANAGEMENT OF ECDE SECTOR IN LAIKIPIA COUNTY

**Sen. Karaba:** Mr. Speaker, Sir, I beg to lay the following Paper on the Table:-

Report of the Standing Committee on Education on a Petition on the mismanagement in the early childhood development sector in Laikipia County.

*(Sen. Karaba laid the document on the Table)*

REPORT ON PETITION BY SOCATT: ANNULMENT OF  
PFMA REGULATIONS 25(1), 37 AND 38

**Sen. Billow:** Mr. Speaker, Sir, I beg to lay the following Paper on the Table:-  
Report of the Senate Standing Committee on Finance, Commerce and Budget on the Petition by members of the SOCATT regarding the annulment of Regulations 25 (1), 37 and 38 of the Public Finance Management County Governments Regulations 2015.

REPORT ON PETITION: REJECTED GARISSA COUNTY GOVERNMENT  
BUDGET ESTIMATES FOR FY 2016/2017

Report of the Senate Standing Committee on Finance, Commerce and Budget on the Petition by Members of Garissa County Assembly on rejected Garissa County Government budget estimates for the Financial Year 2016/2017

*(Sen. Billow laid the documents on the Table)*

**The Speaker** (Sen. Karaba): Proceed, Sen. Karaba.

**Sen. Karaba:** Mr. Speaker, Sir, I am waiting for the Papers to be brought anytime now so that I can lay them.

REPORT OF ICT COMMITTEE ON WORK PLANNING  
RETREAT HELD IN KILIFI

**Sen. Mutula Kilonzo Jnr.:** Mr. Speaker, Sir, I beg to lay the following Paper on the Table:-

Report of the Standing Committee on Information, Technology on work-planning retreat held in Kilifi County from 30<sup>th</sup> August to 2<sup>nd</sup> September, 2016.

*(Sen. Mutula Kilonzo Jnr. laid the document on the Table)*

**Sen. (Dr.) Khalwale:** Mr. Speaker, Sir, I rise on behalf of the Chairman of the Committee on County Public Accounts who is not in the House at the moment to lay the following Papers on the Table:-

REPORT OF THE SBC ON COMPLAINT BY GOV. KIDERO ON  
THE CONDUCT OF SEN. MBUVI SONKO

Report of the Senate Business Committee on its enquiry into a complaint that was made by the Governor of Nairobi County, Dr. Evans Kidero, regarding the conduct of Sen. Mike Gideon Mbuvi Kioko Sonko.

## REPORT OF THE AUDITOR-GENERAL ON IFMIS EFFECTIVENESS

Report of the Auditor General on IFMIS effectiveness audit for the period July 2010-2014.

*(Sen. (Dr.) Khalwale laid the documents on the Table)*

**NOTICE OF MOTION**ADOPTION OF REPORT OF THE SBC ON THE COMPLAINT BY GOV. KIDERO ON THE  
CONDUCT OF SEN. MBUVI SONKO

**Sen. (Dr.) Khalwale:** Mr. Speaker, Sir, I beg to give Notice of the following Motion.

THAT, this Senate adopts the Report of the Senate Business Committee on its enquiry into a complaint that was made by the Governor of Nairobi County, Dr. Evans Kidero regarding the conduct of Sen. Mike Gideon Mbuvi Kioko Sonko laid on the Table of this House today, Thursday, 1<sup>st</sup> December, 2016.

**MESSAGE FROM THE PRESIDENT**

## APPROVAL OF NOMINEES TO THE CLIMATE CHANGE COUNCIL

**The Speaker** (Hon. Ethuro): Hon. Members, before we proceed to the next Order, I have a Communication on a message from the President seeking approval of Parliament for appointment of Mr. Suresh Patel, Mr. John Kioli, Ms. Cynthia Wechabe and Dr. Jane Mutheu Mutune to the National Climate Change Council.

Hon. Senators, pursuant to the provision of the Standing Order No.42 (1) of the Senate, I wish to convey a Message from His Excellency the President asking Parliament to approve the following nominees to the National Climate Change Council:-

- (i) Mr. Suresh Patel
- (ii) Mr. John Kioli
- (iii) Ms. Cynthia Waichage
- (iv) Dr. Jane Mutheu Mutune

In the Message, His Excellency the President conveys that; in exercise of powers vested in him under Section 7 of the Climate Change Act, 2016, he has nominated the said persons from the entities listed in sub-section 2, (f), (g), (h) and (i) of the Act respectively. Further, section 7 (4) of the same Act, provides that the names of the persons nominated for appointment under sub-section 2 (f), (g), (h) and (i) shall be submitted to Parliament for approval before appointment.

Hon. Senators, I therefore wish to inform you that this is the second time that the two Houses of Parliament are required to approve appointments of candidates to public offices. As you may recall, consultations were held between the Speakers of the Senate

and the National Assembly when Parliament was required to approve the appointment of the Inspector General of Police.

It was then agreed that joint vetting be conducted by the relevant Standing Committees of the two Houses. Under the circumstances therefore, I direct as follows:-

1. The vetting of the nominees to the National Climate Change Council shall be conducted jointly by the Committees of the two Houses mandated to deal with matters environment. The vetting process will therefore be conducted by the Standing Committee on Land and Natural Resources of the Senate and the relevant departmental Committee of the National Assembly.

2. The Chairpersons of the two committees will co-chair the joint sittings and the secretariat will comprise officers of the two Houses.

3. The quorum of the joint sittings will be their respective quorum of each of the Committees as required by the respective Standing Orders.

4. As contemplated under Rule 9 (6) of the joint rules, unless a decision is reached by consensus, any vote to be taken in the joint sitting of the Committee shall be by separate Houses. This will ensure that the numerical difference of the individual Members representing the Houses in the joint sittings has no effect on the decisions of the joint sittings of the Committees.

Hon. Senators, Section 8 of the Public Appointments (Parliamentary Approval) Act 2011 provides that the relevant Committee should table its Report for consideration within 14 days from the date when the notification of nomination is conveyed to the House.

The Act also requires that the public be given a seven-day notification for submission of views regarding the suitability of nominees proposed for appointment to an office requiring the approval of Parliament. In this regard and in accordance with the provision of Article 259(5)(a) of the Constitution as read together with Section 5 of the said Act, the counting of the seven-day notification to the public shall start running on the day following the day when the notice is published in the dailies.

Further, Section 9 of the said law provides thus:-

“If after the expiry of the period for consideration specified in Section 8, Parliament has never approved nor rejected the nomination of a candidate, the candidate shall be deemed to have been approved.”

Hon. Senators, it is, therefore, advisable that the concerned committees expeditiously proceed to notify the nominees and the public. Thereafter, the two committees should commence the joint approval hearings and again table the report in good time to enable the Houses of Parliament to consider the report. This message, together with the resumes of the nominees stand committed to the Standing Committee on Lands and Natural Resources sitting jointly with the relevant committee of the National Assembly as earlier explained.

I thank you.

## STATEMENTS

It is now time for Statements. There is one Statement to be requested by Sen. (Dr.) Khalwale. Are you ready?

## KILLING OF MR. STANISLAUS NAMAYI MUKOMA BY POLICE

**Sen. (Dr.) Khalwale:** Mr. Speaker, Sir, pursuant to Standing Order No.45(2)(b), I rise to seek a Statement from the Chairperson of the Standing Committee on National Security and Foreign Relations on the killing by the police of Mr. Stanislaus Namayi Mukoma. Until the time of his death, he was a motor cycle mechanic at Shibale in Mumias, Kakamega County. He hailed from Mushikosi Village, Ishibanda Sub-Location of Kisa South Location of Khwisero Sub-County.

In the Statement, I would like the Chairperson to explain the following:-

(a) What were the circumstances leading to his shooting and being set on fire by the police?

(b) What support will the Government give to the two widows and seven children that Mr. Namayi has left behind?

(c) Whether the Government will underwrite the hospital and funeral costs of the deceased?

(d) What action is being taken against the police officers who shot him and, thereafter, set his body on fire?

(e) Whether the Government will compensate the family of the deceased for the spare parts in his shop that were burnt when his shop and garage were razed down on that day?

**Sen. Khaniri:** Mr. Speaker, Sir, I am not requesting for a statement, but I rise under this Order ---

**The Speaker** (Hon. Ethuro): Order! I thought it was something in addition to Sen. (Dr.) Khalwale's.

Vice Chairperson of the Committee on National Security and Foreign Relations, when can you bring a response to that?

**Sen. Adan:** Mr. Speaker, Sir, I request two weeks to respond to that Statement.

**Sen. (Dr.) Khalwale:** Mr. Speaker, Sir, we are trying to bury this youth the coming week. While waiting for those two weeks, could the Vice Chairperson undertake to make a contribution to his two widows because it is your police officers who killed him and set his body on fire?

**Sen. Adan:** Mr. Speaker, Sir, Sen. (Dr.) Khalwale is asking for something that is beyond my authority, and I believe that of the relevant authority as well. I request him to give us more time to investigate this matter.

**Sen. Khaniri:** Mr. Speaker, Sir, on which one? Sen. (Dr.) Khalwale's or I now raise mine?

**The Speaker** (Hon. Ethuro): Sen. (Dr.) Khalwale's matter has been disposed of.

## FATE OF PENDING STATEMENTS AT CLOSE OF SESSION

**Sen. Khaniri:** Thank you, Mr. Speaker, Sir. I rise under this Order of Statements just to raise a protest on the Floor of the House. As we all know the Session is coming to an end. On the Order Paper today, we have an Adjournment Motion that will mark the end of this Session and we will resume next year. We all know that at the end of the Session, unfinished business normally dies. If you have to bring it, you do so afresh.

I want it to be on record that during this Session, I have requested for 18 Statements, out of which, only six have been responded to. Twelve Statements are still pending. Most of them are with the Committee on Finance, Commerce and Budget, some with the Committee on National Security and Foreign Relations and others committees. Some of these Statements were requested as early as February this year. I know that some of them are ready like the one on the mining by COVEC Company in Maragoli. However, it has not seen light of the day. I received it close to two months ago, but it has never been on the Order Paper all this while. I know the Statement on the registration of People with Disabilities (PWDs) was ready more than two months ago but it has never been scheduled for issuance.

When I look on the Order Paper, I see some of my colleagues – I am not envious or jealousy – who have many statements to be issued. Like today, there is a colleague who has five Statements requested by one Senator that are supposed to be issued. I have 12 Statements pending.

Mr. Speaker, Sir, I need your ruling on this because the Session is coming to an end. I did my job as the Senator, requested for these various statements some of which are very important and of national interest like the Statement on the new regulations on interest rates and the funds that were set aside by the Government to mitigate on the *El Nino* effects. These are very important Statements that I expected would be disposed of.

I seek your guidance on this matter.

**Sen. (Dr.) Khalwale:** On a point of order, Mr. Speaker, Sir. Sen. Khaniri is not alone in that regard. Could you consider in your ruling, directing the chairpersons to give us the written answers even when we are on recess? That way, we can at least have something with which to approach the people who elected us. I say this with reference to many statements like my colleague has said, but specifically on the collapse of a section of Bukhungu Stadium. I would be happy to have the written Statement so that as I meet the two million people of Kakamega County, I will tell them what the Government is doing about the collapse of the Kshs1 billion project.

Mr. Speaker, Sir, I would request that you seriously consider it because this is what makes this Senate weak; that a governor can preside over a project of Kshs1 billion, it collapses and nothing happens.

**The Speaker** (Hon. Ethuro): Order, Members. I sympathize with the position and the frustrations of Sen. Khaniri, having worked so hard to seek 18 Statements and he only got six responses. There are two others which are ready, but the Chairpersons of the Committees have failed to prosecute them because they were not on the Order Paper. I am not sure whether the support by Sen. (Dr.) Khalwale measures to that particular magnitude. Sen. (Dr.) Khalwale has made one reasonable request and I will grant him. I direct that for all the pending Statements, the Chairpersons should actively continue to look for the answers and give them to the Members once they are ready. That is reasonable, fair and should be done.

Back to Sen. Khaniri's Statements, if it is true that the Statements were not on the Order Paper, that is laxity on the part of our staff. But that is usually redeemed in a number of ways. One, a Member would usually come to the Floor - which I do not encourage but nonetheless it is still effective- to remind the Chair of the Statement. We have always directed that the Statement is brought back to the Order Paper. The Member

could also approach the Speaker for the matter to be re-introduced. The Chairperson of the Committee could also approach the Speaker for the matter to be re-introduced.

We have a tracker of all the Statements and whenever a Statement is sought and the Chairperson promises the period within which to reply, the matter will be on the Order Paper at the lapse of that period. Depending on whether or not they are ready, we have always disposed them in terms of when to make it available on the Order Paper. It is possible that this could have escaped the attention of everybody including you, but it is a matter that we can redeem.

If you see five Statements by a Member on the Order Paper, it is not because the Member canvassed. Last week, we referred most of the Statements to Wednesday and Thursday. It is possible that because of that referral, the Statements happened to be on the same day. Unless I get information to the contrary, I imagine that, that would be the case. There is no deliberate attempt to favour one Member against another.

What is it, Sen. Billow?

**Sen. Billow:** Mr. Speaker, Sir, I have heard your statement on that. However, I want to clarify a couple of issues on Statements and Petitions before our Committee because the Member mentioned that many of them are with the Committee on Finance, Commerce and Budget. He mentioned the two issues of *El Nino* and interest rates as the questions he had sought. The question on *El Nino* was discussed in this House and I presented the response. It may not have been satisfactory, but I presented it. The argument by the National Treasury was that money has been disbursed to Ministries to spend on *El Nino*.

Regarding the issue of interest rates, we have given many Statements that had been sought. To the best of our knowledge, the tracker that has been given and which we discussed last week in our Committee shows that we do not have any pending Statements, except the one by Sen. Ndiema on the counties whose money is in the collapsed banks. I will deliver it today as directed by you.

Mr. Speaker, Sir, the Committee on Finance, Commerce and Budget only has four Petitions left. One of them is from a Member of County Assembly (MCA) from Busia County regarding a ward. We agreed to visit that ward early next year to see some of the issues that they raised. Because of the nature and complexity of the Petition from Bungoma that the Senator is party to, it had to drag because there are many issues, including huge amounts of money that they were not able to account for. They have been given time to produce evidence.

The issue of Vihiga County is a court case. The Governor of Vihiga has refused to honour the summons for two months in a row and the matter has gone to court. In fact, this morning, we were briefed by the Legal Department that the matter is still in court. Therefore, we are not able to execute that petition. That leaves us with only one from the famous petitioner Gesicho regarding Sukuk Bonds, which we have already dealt with, together with the one for Busia. Otherwise, we do not have any other pending matter.

Regarding the issue of Vihiga County, it is the governor who has consistently defied the summons in writing through his lawyers and now the matter is stuck in court. We have ordered for his arrest, but he went to court to block that arrest. We are still waiting for that case to be heard.

**POINT OF ORDER**

## ISSUANCE OF INJUNCTION AGAINST THE SENATE

**Sen. (Dr.) Khalwale:** On a point of order, Mr. Speaker, Sir. It is in respect of the important last comment by the Chairperson of the Committee on Finance, Commerce and Budget, that after his Committee ordered for arrest, the Governor of Vihiga went to court and got an order to stop his arrest. Under the Constitution, this Committee is vested with the powers of the High Court. It was sitting as a *quasi judicial* organ. If it is vested by the powers of the High court, is it possible that another High Court can veto a decision of the Committee?

Mr. Speaker, Sir, it would be important that you make a considered ruling. I do not see a situation where the High Court sitting in Kakamega can make a decision about a criminal, who then goes to the High Court in Mombasa, which issues orders as it is an appellant.

Mr. Speaker, Sir, we ask you to make a decision so that we know whether the powers of the High Court that we have given under Article 125 of the Constitution are subordinate to the powers of the High Court as provided for in the same Constitution.

I thank you.

**The Speaker** (Hon. Ethuro): That is a very important matter that requires further deliberation. So, I want to invite Sen. Mutula Kilonzo Jnr. to say what he has to say.

**Sen. Mutula Kilonzo Jnr.:** Mr. Speaker, Sir, Article 125 is a question of interpretation as to whether the person approaches the court for violation for a fundamental right in which the High Court enjoys an unlimited jurisdiction. In the case of violation of any constitutional issue on fundamental rights, the High Court then would have jurisdiction. It is just a question of interpretation, but to the extent that the High Court can attempt to injunct the Senate under Article 125, that, in my view, would be what we call an order issued *per incuriam*. It means issued in ignorance of the law.

*(Laughter)*

**The Speaker** (Hon. Ethuro): Order, Sen. Mutula Kilonzo Jnr.! I hope the Members who are asking for more information will be ready also to receive the invoice.

Sen. Mutula Kilonzo Jnr., the issue raised by Sen. (Dr.) Khalwale is the issue of the competences of courts of similar standing. So, that would be looked into in the future, Sen. (Dr.) Khalwale. It is an interesting area.

*(Loud consultations)*

Order! We are not in court and the Senior Counsel is not on record on this matter. More fundamentally, the way we conduct business here is that the Member should be interested to contribute. It is not for his neighbours to canvass for his contribution.

**Sen. Kagwe:** Thank you, Mr. Speaker, Sir. I assure you none of my neighbours has canvassed for me to speak. However, in view of the very important issue that has been raised by Sen. (Dr.) Khalwale, would it be in order for you to instruct not



necessarily the Members here, but the legal team that represents the Senate to proceed to court and challenge that matter as proposed by Sen. (Dr.) Khalwale?

**The Speaker** (Hon. Ethuro): I had promised to consider the matter. First, of course, is to look at the legal provisions and have our own understanding as an institution. On that basis, it is possible to effect your suggestion. So that will be part of the package.

## STATEMENTS

### PUBLICATION AND DISTRIBUTION OF BOOKS AND OTHER MATERIAL TO SCHOOLS

**Sen. (Prof.) Lesan:** Thank you, Mr. Speaker, Sir. Pursuant to Standing Order 45 2(b), I rise to seek a Statement from the Chairperson of the Standing Committee on Education regarding the publication and distribution of books and other educational materials to primary and secondary schools.

In the Statement, the Chairperson should:

(1) Explain the process of publication and distribution of books and other educational materials to public primary and secondary schools under the free basic education programme.

(2) Explain the roles of the following institutions in the publication and distribution of books and other educational materials.

(a) Kenya Literature Bureau;

(b) Kenya Institute of Education;

(c) Kenya Schools Equipment Scheme;

(d) Jomo Kenyatta Foundation; and

(e) The Heads of Public Primary and Secondary Schools.

(3) State the total budgetary allocation to the free basic education programme since 2003 and indicate the corresponding budgetary allocations to the Kenya Literature Bureau, Kenya Institute of Education, Kenya School Equipment School (KSES), Jomo Kenyatta Foundation and all public schools for the publication and distribution of books and other educational materials.

(4) State the books and the learning materials to pupil ratio since the commencement of the free basic educational programme.

(5) Explain the initiatives and the strategy the Ministry of Education is pursuing to integrate ICT in the publication and distribution of books and other educational materials of public schools.

(6) Explain how the curriculum development links to the publication and distribution of books and other educational materials to public schools, especially on the frequency of the changes of curriculum development.

**Sen. Karaba:** Mr. Speaker, Sir, I will be able to issue that Statement as soon as we reconvene after recess. There is enough time between now and February. I am happy with the Ministry of Education which today released the Kenya Certificate Primary Education (KCPE) results. For the first time, there is not a single student whose result has been cancelled. Therefore, through the Chair, allow me to commend the Minister for Education for doing a commendable job. This is the first time since Kenya gained

Independence in 1963, examination results are released without cancellation of any sort. During the examination period, there was no leakage in the KCPE examinations. Therefore, not a single pupil was disqualified.

**The Speaker** (Hon. Ethuro): Order, Senator! You are prosecuting a very important matter in a very casual manner. I direct that at some stage this afternoon you will make a statement about the KCPE 2016 results to this House in an appropriate way. Kenyans are happy that we have capacity. All we lack is commitment. Once you have that commitment, anything can be done well in this Republic. That needs to be appreciated.

*(Applause)*

*(Interruption of Statements)*

### COMMUNICATIONS FROM THE CHAIR

#### VISITING DELEGATION OF RADIO JAMBO LISTENERS ACCOMPANIED BY HON. JOHNSTON SAKAJA

Hon. Senators, I would like to acknowledge the presence in the Public Gallery this afternoon of a visiting Member of National Assembly, the Hon. Johnston Sakaja, together with listeners of *Radio Jambo* who are here to follow proceedings of the Senate.

On behalf of the Senate, and on my own behalf, I welcome them to the Senate and I wish them well for the remainder of their stay. You may also wish to appreciate that the Hon. Johnston Sakaja is also the Chairperson of the Joint Committee of National Cohesion.

**Sen. Mutula Kilonzo Jnr.:** Thank you, Mr. Speaker, Sir. The Hon. Sakaja and I, organised for the young men and women in the Gallery to come to Parliament. Hon. Sakaja as the Chairperson of the Joint Committee of National Cohesion has demonstrated that we might disagree politically as politicians, but when we sit to have a cup of tea, we share a good laughter.

Thank you.

**The Speaker** (Hon. Ethuro): Order, Sen. Mutula Kilonzo Jnr. How do you compare disagreement to a cup of tea?

**Sen. Mutula Kilonzo Jnr.:** Mr. Speaker, Sir, it is a phraseology like the one I used yesterday about the singing and birds.

**The Speaker** (Hon. Ethuro): Order, Senator! This is different.

**Sen. Mutula Kilonzo Jnr.:** Yes, Mr. Speaker, Sir. Those listeners who participate in radio broadcast do not sometimes understand that when people are exchanging views, they are not necessarily enemies. There is a misapprehension about what happens in Parliament. Therefore, Radio Jambo will be the first radio station to air that show this evening from Parliament Buildings live.

**The Speaker** (Hon. Ethuro): That is better. The concern was that when you have a disagreement, you can only have a cup of tea instead of creating an opportunity to deal with the differences or say that in spite of the differences, it is not personal enmity. Assure people that you can sit, talk and share.

**Sen. Cheruiyot:** Mr. Speaker, Sir, I also wish to join my colleagues in welcoming the visiting delegation. I am a regular listener to a radio talk show that Junior and Hon. Sakaja feature as guests.

**The Speaker** (Hon. Ethuro): Order, Sen. Cheruiyot! There is no Senator in this House known as Junior.

**Sen. Cheruiyot:** Mr. Speaker, Sir, my apologies. I was referring to Sen. Mutula Kilonzo Jnr.

I am a regular listener to that talk show though I hardly ever agree with what Sen. Mutula Kilonzo Jnr. normally says. Many times, he misleads the country while Hon. Sakaja is very often right in the things he pushes. Therefore, I welcome them to the Senate.

**Sen. (Dr.) Machage:** Mr. Speaker, Sir, I appreciate the visit of Hon. Sakaja and his team to the Senate. I am sure he has noticed the difference between the Senate and the National Assembly and especially the manner in which business is conducted in this House. I hope he will transmit this information he has so far learnt to the other House.

**Sen. Murkomen:** Mr. Speaker, Sir, I join you in welcoming my fellow Radio Jambo listeners and the team that has been brought here by my friends, Hon. Sakaja and “Kilonzo Jnr.” We thank the Media as a Senate---

**The Speaker** (Hon. Ethuro): Order, Senator! Again, there is no Kilonzo Jnr. There is Senator.

**Sen. Murkomen:** Mr. Speaker, Sir, the junior Senator Mutula Kilonzo.

*(Laughter)*

Sen. Mutula Kilonzo Jnr. is my good friend and my senior colleague in the legal profession.

I wanted to say that media plays a critical role in dissemination of information and the influence that its listeners and this team has in terms of disseminating proper information to Kenyans cannot be overemphasized at a time like this. More particularly, Kenyans are going to make a decision on the next lot of Senators replacing so many of us who are going to be governors except for me and a few others.

Mr. Speaker, Sir, I welcome them to the Senate. Allow me to say one thing about hon. Sakaja and perhaps pass that message to our sister House. It is very encouraging to see a Member of the National Assembly bringing a team to the Senate, particularly when there is a crowd in the “Lower House” that does not believe in institutional partnership of the two Houses.

I congratulate hon. Sakaja for demonstrating leadership at such a very young age and showing the way we should partner as two Houses delivering the same responsibilities to the people of Kenya.

**Sen. Haji:** Mr. Speaker, Sir, I join you and my colleagues in welcoming hon. Sakaja and his team. I congratulate him for the good work he has done as a steward of our party; The National Alliance (TNA) then. He is demonstrating his leadership again by being with us in this House. I welcome him.

**Sen. (Eng.) Muriuki:** Mr. Speaker, Sir, I take this opportunity to welcome Hon. Sakaja and his team from Radio Jambo. I understand that this is the program where our colleague, Sen. Mutula Kilonzo Jnr., bashes the Government and hon. Sakaja corrects

that. From now onwards, I promise to be listening to *Radio Jambo* so that I can also participate.

**The Speaker** (Hon. Ethuro): Order, Members! Let us make progress. I will allow Sen. Kagwe, Sen. Kanainza and Sen. Ndiema a few minutes. Be brief in a maximum of one minute.

**Sen. Kagwe:** Mr. Speaker, Sir, I join my colleagues in welcoming the *Radio Jambo* team. They are doing a very good job. I also welcome hon. Sakaja who is also the Chairperson of TNA. It is good for him to establish this very good way of relating between the two Houses. The last time that some Senators were in the National Assembly, they came back without pants.

(Laughter)

That is in the past and hopefully, we will relate better in the future than we did then. I thank hon. Sakaja for introducing better relationships.

**The Speaker** (Hon. Ethuro): What is it, Sen. (Prof.) Lonyangapuo?

**Sen. (Prof.) Lonyangapuo:** Mr. Speaker, Sir, did you hear Sen. Kagwe talk of TNA? There is no party called TNA. What did he mean by saying that Hon. Sakaja is the chairperson of TNA?

**Sen. Kagwe:** Mr. Speaker, Sir, I meant that he was the Chairperson of TNA and is now a candidate for governor of Nairobi County.

**Sen. Kanainza:** Mr. Speaker, Sir, I welcome my chairperson, hon. Sakaja. He is the *jakom* of Kenya Young Parliamentarian Association. I appreciate the role he has played in bringing up Bills and now an Act of Parliament that champions the rights of the youth especially the 30 per cent Procurement Bill. I also welcome the crew from *Radio Jambo* to the Senate. I am a fan of *Radio Jambo*.

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

**Sen. (Dr.) Machage:** Mr. Speaker, Sir, to my knowledge, there is only one *jakom* in this country alias *Baba*. Is Sen. Kanainza in order to use a terminology that we may not understand because it is neither in English nor Swahili? Was that in reference to the *jakom* I know or somebody else?

**Sen. Kanainza:** Mr. Speaker, Sir, I meant that hon. Sakaja has been a leader as demonstrated by being the chairperson of the Kenya Young Parliamentarians Association.

**The Speaker** (Hon. Ethuro): Order, Senator! The challenge was on a specific word.

**Sen. Kanainza:** Mr. Speaker, Sir, I was referring to hon. Sakaja who hails from Kakamega County, Ikolomani Constituency.

**Sen. Ndiema:** Mr. Speaker, Sir, I also join you in welcoming this team led by the hon. Sakaja, a young man who is also my constituent. He is also my Chairman in the Joint Committee on Cohesion and Equal Opportunities. Indeed, this is a demonstration of his commitment to bring about cohesion in this country. He has played a big role in ensuring that communities which have sometimes been disagreeing live in harmony. By coming here, he has demonstrated that he values harmony between the two Houses of Parliament.

**Sen. Sang:** Mr. Speaker, Sir, I join my colleagues and yourself in welcoming this interesting team from Hon. Sakaja and the Radio Jambo team. Hon. Sakaja and Sen. Mutula Kilonzo Jnr. are some of the sharpest parliamentarians that we have. I was a Member of the National Cohesion and Integration Committee where Hon. Sakaja is the Chairperson. When you see him working hard to ensure that the position of Senate is respected in the National Assembly, this is a man who believes in devolution. No wonder he is running for the position of the governor. We wish him well but in the remaining eight months, we ask him to pursue the same agenda of ensuring the Members of the National Assembly support the Senate.

In this House, Sen. Mutula Kilonzo Jnr. and I have over 20 Bills that have been passed by this House but pending in the National Assembly. They have never seen the light of the day in the National Assembly. We wish to send hon. Sakaja to negotiate---

**The Speaker** (Hon. Ethuro): Order, Sen. Sang. I am not asking you to conclude. You are making important points. However, I appreciate the comradeship you have with the two gentlemen you have mentioned but for my purposes and for your own, they remain hon. Sakaja and Sen. Mutula Kilonzo Jnr. That is the only reference you should make.

**Sen. Sang:** Mr. Speaker, Sir, you know they are my buddies and age mates.

**The Speaker** (Hon. Ethuro): That one you will do outside this House.

*(Laughter)*

**Sen. Sang:** Much obliged, Mr. Speaker, Sir. I ask Hon. Sakaja to help us in ensuring that some of those Bills that have been passed by this House find their way to the Order Paper in the National Assembly. Since I know of the influence he wheels in the National Assembly, I have no doubt that this is not a request far off what he is able to do. Thank you.

**The Speaker** (Hon. Ethuro): Hon. Senators. Before we proceed, I have another Communication to make. The Communication will affect Order Nos.10 and 11. It is about the procedure.

PROCEDURE TO BE FOLLOWED IN CONSIDERING THE  
PRESIDENTIAL MEMORANDA ON BILLS

Hon. Senators, as you may recall, on Wednesday 30<sup>th</sup> November, 2016, I read a Message from the National Assembly forwarding the Presidential Memoranda on the Petroleum (Exploration, Development and Production) Bill (National Assembly Bill No. 44 of 2015) and the Energy Bill (National Assembly Bill No. 50 of 2015) for consideration by the Senate.

The two Bills were subject to Constitutional timeline of 27<sup>th</sup> August, 2016, having been extended by 12 months by the National Assembly. Indeed, Parliament passed the Bills within the timelines but His Excellency the President declined to assent to the two Bills and referred them to Parliament in a Memorandum with recommendations for reconsideration.

As indicated in my Communication yesterday, this is not the first time that the Senate has received a Memorandum from His Excellency the President regarding refusal

to assent to Bills. Indeed, last year, we received and considered President's Memoranda on the Public Audit Bill and Public Procurement and Assets Disposal Bill.

Hon. Senators, the procedure to be followed in considering the Memoranda before us is the same as the one used last year when considering the two memoranda on the Public Audit Bill and the Public Procurement and Asset Disposal Bill, as provided for in Article 115 (2) (3) and (4) of the Constitution which states as follows:-

“(2) If the President refers a Bill back for reconsideration, Parliament may, following the appropriate procedures under this Part-

amend the Bill in light of the President’s reservations; or

(b) pass the Bill a second time without amendment.

(3) If Parliament amends the Bill fully accommodating the President’s reservations, the appropriate Speaker shall re-submit it to the President for assent.

(4) Parliament, after considering the President’s reservations, may pass the Bill a second time, without amendment, or with amendments that do not fully accommodate the President’s reservations, by a vote supported—

(a) by two-thirds of members of the National Assembly; and

(b) two-thirds of the delegations in the Senate, if it is a Bill that requires the approval of the Senate.

Hon. Senators, for avoidance of doubt, this means that:-

(a) The Senate, pursuant to Article 115(2) may amend the Bills in light of the President’s reservations or amend the Bills in a manner that fully accommodates the President’s reservations. This would require the vote of a majority of the delegations in the Senate, which is 24 delegations; or

(b) Pursuant to Article 115(4) of the Constitution, pass the Bills a second time, without amendment, or with amendments that do not fully accommodate the President’s reservations. This would require the vote of two-thirds of the delegations in the Senate, which is 32 delegations.

Hon. Senators, further, I wish to give directions on what would happen in the event that the Senate does not obtain the 24 delegations required to accept the President’s reservations or where the Senate does not obtain the 32 delegations required to reject or vary the President’s recommendations.

As I ruled previously, the only action that would take the agenda forward is either an acceptance or a rejection of the President’s recommendations by the respective requisite numbers. The Senate must pronounce itself on the President's recommendations by either accepting or rejecting the recommendations. There is no room for deeming of either an acceptance or a rejection.

I thank you.

*(Loud consultations)*

Order, Members! Now, I will go to the Statements to be issued.

*(Resumption of Statements)*

## STATEMENTS

Statement (a), where is the Chairperson of the Committee on National Security and Foreign Relations?

CIRCUMSTANCES THAT LED TO INJURING OF  
GOVERNOR ISAAC RUTTO

**Sen. Adan:** Mr. Speaker, Sir, I have already shared the Statement with him, so I will go direct to the response.

I wish to state that on 6<sup>th</sup> November, 2016 at about 2.30 p.m., Gov. Isaac Rutto stormed a football match at Silibwet Football pitch while accompanied by his supporters and disrupted an ongoing match between Silibwet Football Club and Bunge Football Club. The Governor demanded to know why some of his supporters had been arrested. The actions of the Governor and his supporters elicited reactions from the football fans who started pelting stones at the Governor and his supporters. During the commotion, the Governor was hit with a stone on his face and hurriedly whisked away by his bodyguards. In the meantime, the police dispersed the rioters and the crowd. Neither the Governor nor any other person has reported any case of injury to any police station to warrant further investigation.

On provisions of security to the political aspirants, the Government will provide security to all lawfully organised campaign rallies whenever the organisers notify the police as required by the law. On the question of the suspect being arrested, I wish to state that there were four and not three suspects who were arrested on the day of the fracas and not a day before as alleged. They were charged at the Bomet Law court. They are:-

- (1) Mr. Livingstone Chepkwony
- (2) Mr. Kenneth Kibet
- (3) Mr. Haroun Kibet

They were all charged with the offence of riding motorcycles without insurance contrary to Section 103(b)(iii) of the Traffic Act Offence Cap 403 Laws of Kenya. On 7<sup>th</sup> November, 2016, they pleaded guilty and were each fined Kshs5,000. The other person was Mr. Jackson Kibet Kirui, who was charged with the offence of incitement to violence and disobedience of law contrary to Section 96(c) of the Penal Code on 11<sup>th</sup> November, 2016 and entered a plea of not guilty. The case is pending before court.

Mr. Speaker, Sir, the Governor made an address at Merigi Market on 22<sup>nd</sup> February, 2016 and not 19<sup>th</sup> August, 2016. He said he was equivalent to His Excellency the President and Deputy President and he would mobilise over 10,000 youth to evict the County Commissioner from office in three days and make Bomet County ungovernable. The Directorate of Criminal Investigation (DCI) Bomet County opened an enquiry File No.3 of 2016 and the file was forwarded to the Director of Public Prosecution for advice.

The Government is guided by the rule of law, therefore, does not intend to use the police to intimidate members of the Opposition. Security will be provided to all political aspirants and politicians irrespective of their political affiliation, as long as they notify the police as required by law.

Hooligans are normally used by some politicians to further their selfish political interests and it is not yet clear where the money to pay them comes from. The Government is not aware of counties perpetuating hooliganism from county resources. The Government will not tolerate acts of hooliganism in political activities and will deal firmly with the perpetrators and financiers of such acts according to the law.

Security will be provided to all aspirants, including women aspirants as long as they notify the police as required any law. The Government deals with any person breaching the law during political functions and programmes according to the law of Kenya. The Government will continue to monitor political activities as we approach the next general elections to avert any attacks during political functions and programmes.

**Sen. (Prof.) Lonyangapuo:** Mr. Speaker, Sir, I appreciate the timely response to this statement as given by the Vice Chairperson. However, I had asked four simple questions, but she has gone to give a lot of response to what I did not ask. My simple question was: What led to the Governor being injured?

*(Loud consultations)*

Mr. Speaker, Sir there are new noise makers here.

*(Several Senators stood up in their places)*

**The Speaker** (Hon. Ethuro): Order, Sen. (Prof.) Lonyangapuo! You have actually invited them yourself. I was willing to ignore those points of order. Since you want to listen to them, I will, therefore, ask Sen. Murkomen to speak.

**Sen. Murkomen:** On a point of order, Mr. Speaker, Sir. Is it in order for Sen. (Prof.) Lonyangapuo to try to mislead this House that the questions that the Chairperson would answer are the ones that he asked and you as the Speaker allowed this House to put supplementary questions?

Once those questions were asked in this House, they stopped being personal questions of Sen. (Prof.) Lonyangapuo and became a property of this House. You are aware that you are the one who allowed us to put as many questions as possible to the Chairperson so that they could be answered at a go. So, is he in order to try to curtail the Chairperson from answering questions that were raised in this House and which are the property of this House and not one individual Senator?

**The Speaker** (Hon. Ethuro): Vice Chairperson, did anyone stop you from answering all the issues that had been raised?

**Sen. Adan:** Mr. Speaker, Sir, I have tried to answer the four questions asked by Sen. (Prof.) Lonyangapuo from the way that they were framed. He has a copy of the response. I have also answered the additional questions that were asked by other Senators. So, it is very clear and I do not see why he is complaining.

**Sen. (Prof.) Lonyangapuo:** Mr. Speaker, Sir, if my colleagues had waited to listen to how I was proceeding with the interrogation of this statement, she would not have invited so many questions. First, I appreciate the response and the way it has been framed. However, the response says that the Governor demanded to know---

**The Speaker** (Hon. Ethuro): Order, Sen. (Prof.) Lonyangapuo! What Sen. Murkomen raised was that you and other Members sought a statement in what has now



become the practice. They rode on it. The impression that I am getting is that you are contesting that. So, let me make it abundantly clear because we have done so before. All those issues are valid and questions that were raised must be responded to. For now, you can sieve yourself to the ones that you are interested in, raise the relevant clarifications on them. If you want to deal with others as well, it is up to you.

**Sen. (Prof.) Lonyangapuo:** Mr. Speaker, Sir, that is what I am doing by dealing with what I raised. In the first one that I raised on the circumstances that led to the Governor being injured, the response is stated that the Governor accompanied by his supporters disrupted a match. It proceeds to say that the governor demanded to know why some of his supporters had been arrested.

Mr. Speaker, Sir, I do not understand the two statements. If the governor went there to ask for the release of some of his supporters who had been arrested, how would that be 'storming'? Secondly, the Vice Chairperson has stated that the action of the governor and his supporters elicited reaction from football fans. The Vice Chairperson should have been candid enough to indicate that the action of the supporters of the opponent could also have elicited reactions from the fans.

**Sen. Sang:** On a point of order, Mr. Speaker, Sir. Is Sen. (Prof.) Lonyangapuo in order to answer his own questions? Why did he request for the Statement when he has the answers? He should have given a personal statement because he seems to understand the situation better.

**Sen. (Prof.) Lonyangapuo:** Mr. Speaker, Sir, it looks like my neighbour is in another world today; he is very excited. I said that the action of the governor and his supporters elicited reactions from football fans who came from various political alienations. Are you implying that the supporters of the said governor also stoned him? I want that to be cleared.

The Vice Chairperson has avoided to respond to the question why police threw a teargas canister directly at the face of the governor. Instead, she has referred to a stone, whereas everyone, including the media knows that a teargas canister was thrown at the face of the governor.

*(Loud consultations)*

Senators should wait for their time to seek clarifications like I have done. They are behaving like football fans.

**The Speaker** (Hon. Ethuro): Order, Members. Sen. (Prof.) Lonyangapuo must be allowed to seek his clarifications. It is only the Chair who has the right to respond.

**Sen. (Prof.) Lonyangapuo:** Mr. Speaker, Sir, I am happy because my colleague and 'president' of pastoralists, Sen. Billow Kerrow, has assisted me in ensuring they are quiet.

Lastly, the Vice Chairperson has not stated the action taken against the police who were brutal towards the governor and his supporters. These people should also be protected. I agree that when---

**The Speaker** (Hon. Ethuro): Order, Sen. (Prof.) Lonyangapuo. That should be your last clarification.

**Sen. (Prof.) Lonyangapuo:** Mr. Speaker, Sir, campaign rallies should be strictly adhered to so that anybody who comes to any meeting---

**The Speaker** (Hon. Ethuro): Order, Sen. (Prof.) Lonyangapuo. You should not explain clarifications.

Hon. Members, before we proceed, allow me to make a Communication because I have to deal with other matters.

*(Interruption of Statements)*

## COMMUNICATIONS FROM THE CHAIR

### INVITATION TO LEADERSHIP SUMMIT ON PEACEFUL ELECTIONS

**The Speaker** (Hon. Ethuro): Hon. Members, I wish to remind you about the Summit on Peaceful Elections, National Cohesion and Unity for Socio-Economic Development.

As I announced earlier, all Members of Parliament have been invited to a leadership summit on peaceful elections. The meeting is organized by the Kenya Private Sector Alliance (KEPSA).

As you may all be aware, the private sector is concerned about the impact of elections on the economic growth of country. The Summit is scheduled to take place from 2<sup>nd</sup> to 3<sup>rd</sup> December, 2016 at Leisure Lodge Resort, Kwale County.

### HOSTING OF THE ACP/EU JOINT PARLIAMENTARY ASSEMBLY

**The Speaker** (Hon. Ethuro): Hon. Senators, I wish to notify all Senators that this December, our Parliament will have the honor of hosting the 32<sup>nd</sup> Session of the African Caribbean Pacific (ACP) and the European Union (EU) Joint Parliamentary Assembly (JPA) to be held at the Kenyatta International Convention Centre (KICC), Nairobi, Kenya from 17<sup>th</sup> to 21<sup>st</sup> December, 2016.

The meeting will be preceded by the 44<sup>th</sup> Session of the ACP Parliamentary Assembly also to be held in Nairobi from 14<sup>th</sup> to 16<sup>th</sup> December, 2016. The ACP/EU JPA brings together Members of Parliament, representing 78 ACP states that have signed the Cotonou Agreement for meetings with counterpart Members of the European Parliament, representing 27 EU member states.

The upcoming Session is expected to be attended by about 320 Members of Parliament from across the ACP and EU states, as well as officials from ACP Secretariat, the ACP and EU Councils, the European Commission as well Non-Governmental Organisations (NGOs) and political groups involved in implementing various thematic areas of the Cotonou Agreement.

Hon. Senators, one of the most important benefits that Kenya stands to gain by hosting the JPA is the deepening of our relations with other countries as well expanding our economic ties with EU as a trading partner. Through the JPA, Kenya will demonstrate our hospitality to the international community and guests, intending to refocus Kenya as a preferred venue for international conferences. Consequently, this will lead to an increase in spending and injection of money into the local economy.

Most importantly, noting that the Economic Partnership Agreement (EPA) between the East African Community (EAC) and the EU is yet to be concluded, Kenya

will be able to negotiate for more favourable terms of trade with the EU even as the EAC organizes its member states to ratify the new EPAs. This will cushion Kenya from transiting to the Generalized System of Preferences (GSP) regime in January 2017, which is less favourable since Kenyan exports to the EU attract duties under the said regime.

Hon. Senators, the Senate will be represented during the said meetings of the ACP PA and ACP/EU JPA by Sen. Kembi-Gitura, the Deputy Speaker of the Senate. A number of Senators may also receive invitations to attend the said meetings and workshops scheduled to take place alongside the said JPA.

That notwithstanding, I hope that each one of us will take interest in the said events and endeavour to interact, network and share experience with colleagues from other jurisdictions.

I thank you.

*(Resumption of Statements)*

CIRCUMSTANCES THAT LED TO INJURING OF GOVERNOR  
ISAAC RUTTO

Sen. (Prof.) Lesan, do you want to seek further clarifications?

**Sen. (Prof.) Lesan:** Mr. Speaker, Sir, I want to express my sympathy to the Governor for the injuries that he got. I want to seek clarifications on two items. The Governor was referred for treatment both locally and in South Africa for the injuries that he sustained on the face. I would like to know from the Vice Chairperson who exactly referred a little cut on the nose to be treated outside the country.

Two, I would like to know who met the expenses incurred in the treatment of the Governor and the welcoming party that included a huge number of idlers from Trans Mara and Narok?

I would like to know from the Vice Chairperson because there are 2,600 workers who are illegally on the payroll with no define duties in Bomet County. Are these the same hooligans and goons who cause all kinds of problems in Bomet? Those are three classifications for now although I have several. Nonetheless, my sympathies to my Governor.

*[The Speaker (Hon. Ethuro) left the Chair]*

*[The Temporary Chairperson (Sen. (Dr.) Machage took the Chair)]*

**The Temporary Speaker** (Sen. (Dr.) Machage): Do we have a point of clarification in our Standing Orders?

**Sen. Sang:** Mr. Temporary Speaker, Sir, I want to thank the Chairperson for that elaborate response. I have several clarifications to seek.

First, now that the Vice Chairperson of Committee on National Security and Foreign Relations has confirmed that the Governor indeed stormed a peaceful football match, could she tell us what steps the Government has taken to deal with this Governor? If not, could she indicate to this House whether it is legal for anybody to storm and disrupt other people's functions?

Secondly, with regard to the medical treatment that the Governor got, could she confirm whether Bomet County does not have guided cameras to do the surgeries? The Governor had indicated when he returned back that he underwent some medical treatment through guided cameras. Further, could she confirm to this House that those guided cameras are not found anywhere in this country to have necessitated him to go to South Africa for treatment?

**Sen. (Prof.) Lonyangapuo:** On a point of order, Mr. Temporary Speaker, Sir. We are hearing new terminologies here today and Sen. Sang is not a doctor. Could he explain to us what these guided cameras are because I did not understand what he meant? Could he elaborate to the House?

**The Temporary Speaker** (Sen. (Dr.) Machage): I hope you are not taking advantage of his lack of knowledge of medicine. You have been challenged, Sen. Sang, to substantiate.

**Sen. Sang:** Mr. Temporary Speaker, Sir, when the Governor arrived back from South Africa, in a press conference---

**The Temporary Speaker** (Sen. (Dr.) Machage): Substantiate on one particular issue and that is the one of guided cameras.

**Sen. Sang:** Mr. Temporary Speaker, Sir, when the Governor arrived from South Africa, he addressed the Press and indicated that he went to South Africa for treatment. When asked by reporters what kind of treatment he received, he said he underwent a surgery through guided cameras. So I am just picking the words of the Governor so that the Vice Chairperson would help us understand what these guided cameras are and whether they are not available in Bomet County or in the country which necessitated him to travel to South Africa.

**The Temporary Speaker** (Sen. (Dr.) Machage): Let me help you on this. Sen. (Prof.) Lonyangapuo, refer to Fiber Optic Operational Equipments (FOOE) just to cut the story short. I hope you are satisfied with that.

**Sen. Adan:** Thank you, Mr. Temporary Speaker, Sir. I have stated and reported the statement as I was given by the relevant authority which is the Ministry of Interior and Coordination of National Government. According to them, that is what clearly transpired in Bomet at that time.

With regard to the issue of teargas being thrown on the face of the Governor, this information is not there according to the statement that I was given. However, it is something that I need to clarify because according to statement that I have, that is not reported.

According to the report that I have, no police officer was arrested. Therefore, there is nowhere indicated that they were involved in any harassment in that particular event.

With regard to the question on who catered for the international treatment, this is new information or request. I will have to investigate and report back to this House.

Secondly, the expenses for the welcoming him is also the same and I have to ask for more information on that.

Regarding the illegal employees of the county staff who were part of the hooligans, is also a matter that I need to investigate.

With regard to steps taken against the Governor as a result of his storming the event is also a new matter that I really need to investigate and report back to this House.

Finally, the issue on guided cameras, I do not know whether we have these facilities in Bomet. So, I will have to find out and report to this House.

**Sen. Sang:** Mr. Temporary Speaker, Sir, surely, if the Ministry has confirmed that the Governor stormed a football match, why is she telling us that they have to wait and ask for more information? This is was an obvious criminal act by the Governor. What has the Ministry done? Then the Ministry needs to pronounce that this is legal and, therefore, we will allow people to storm other people's functions with impunity. This is not something for her to tell us that she needs more time to find out more. This is what the Government should have done unless they are telling us it is legal to disrupt other people's functions.

**The Temporary Speaker** (Sen. (Dr.) Machage): Unfortunately, Sen. Sang, we only have the Vice Chairperson in this House. We do not have the Director-General of Police here and neither do we have the investigative arm of Government in this House. So, we can only listen to her and it is only her who can guide us on what she thinks needs to be done. However, I appreciate the fact that she has said she needs more information. So, the relevant question really to ask is: When will the answers to those questions be presented to the floor of this House?

**Sen. Adan:** On a point of information, Mr. Temporary Speaker, Sir.

**The Temporary Speaker** (Sen. (Dr.) Machage): Whom do you want to inform Vice Chairperson?

**Sen. Adan:** Mr. Temporary Speaker, Sir, Sen. Sang.

**The Temporary Speaker** (Sen. (Dr.) Machage): You do not have to inform him. You just stand because I have already given you the mandate to talk.

**Sen. Adan:** Mr. Temporary Speaker, Sir, if Sen. Sang listened to my answer, I have reported that investigations were carried out and the file forwarded to Director of Public Prosecutions (DPP) and I do not know the content of the file. Therefore, it is a matter that I need to find out whether maybe prosecution of the Governor or other people who were involved have been reported to the DPP.

Thank you.

**The Temporary Speaker** (Sen. (Dr.) Machage): When do you hope to give those answers to this House?

**Sen. Adan:** Mr. Temporary Speaker, Sir, I will have to inform the relevant Ministry. Once I have the Statement ready before we resume, I can share it with the relevant Senators who sought further clarifications on the statement.

**The Temporary Speaker** (Sen. (Dr.) Machage): Chairperson, do you have anything to say on Statement 2(b)?

#### INVASION OF BOMET POLICE STATION

**Sen. Adan:** Mr. Temporary Speaker, Sir, I have something that was asked by Sen. (Prof.) Lesan. I do not know whether it is answering Statement 2(b). However, I have something for Sen. (Prof.) Lesan.

**The Temporary Speaker** (Sen. (Dr.) Machage): You have something for the House.

**Sen. Adan:** Mr. Temporary Speaker, Sir, I have shared with Sen. (Prof.) Lesan. I will therefore go directly to the answers. He asked about five questions. I wish to state as follows:-

On 7<sup>th</sup> April, 2016, at 8.00 a.m., police officers on patrol at the Moi University, Bomet Campus construction site, impounded a garbage truck, registration No.036CG061A belonging to the County Government of Bomet which was found dumping garbage at the site. The truck was escorted to the Bomet Police Station where the driver was arrested and placed in cells. The same day, at about 5:30 p.m., the Governor of Bomet County, hon. Isaac Rutto, accompanied by a group of his supporters stormed Bomet Police Station and demanded to know why the garbage truck had been impounded by police.

The driver of the garbage truck who had been arrested earlier was charged before a court of law by Bomet Police Station PCR224/2016 after which he was released on bond. He had denied the charge of trespass contrary to Section 5(1b) of the Trespass Act, Chapter 294 Laws of Kenya. He later absconded and a warrant of arrest was issued. The warrant is still in force and not many other arrests were made.

There were no casualties and there was no destruction of property following the invasion. Following the invasion, Inquiry file No.4/216 was opened by the Directorate of Criminal Investigation, Bomet County. The matter is still pending under investigation. Public and private property in Bomet is secured including land and property belonging to Moi University, Bomet Campus.

**Sen. (Prof.) Lesan:** Mr. Temporary Speaker, Sir, I just want to seek clarification on this issue. There is a file that was opened on this inquiry. It is pending since April and yet it was a minor event. How long shall we take to have this investigation concluded and action taken? Secondly, I ask the national Government to protect the Governor from himself.

**The Temporary Speaker** (Sen. (Dr.) Machage): The Chair needs to understand the questions asked. Kindly repeat those questions so that I may also understand.

**Sen. (Prof.) Lesan:** Mr. Temporary Speaker, Sir, the question I was asking is a very simple one. The two issues that have been tackled this afternoon are issues that could never really have happened if the Governor did not act the way he acted. It is these actions that are self-inflicting.

Perhaps some counseling should be done to the Governor to ensure he does not do this kind of thing that eventually hurts him and cause moral decadence and disobedience by the young people of Bomet because of the very bad example that is being set by the Governor. The first person to be protected from this kind of thing which actually causes injury to the Governor is the Governor himself. That is fairly straightforward.

**The Temporary Speaker** (Sen. (Dr.) Machage): Vice Chairperson, respond!

**Sen. Adan:** Mr. Temporary Speaker, Sir, how long the case will take is something that is beyond our control. We will inform the relevant authorities to fast track the process and make sure the matter is concluded. How we can help the Governor to stop behaving the way he is behaving or inflicting himself is personal unless he is in conflict with the law. If he is in conflict with the law, action will be taken. However, if personal behavior does not interfere with anybody's rights, it is something beyond the control of the relevant departments in Government.

**The Temporary Speaker** (Sen. (Dr.) Machage): Very well. After all, the observation of self-infliction is subjective.

UNLAWFUL ISSUANCE OF TITLE DEEDS IN  
THE MWEA TRUST LANDS

Who has the answer to this Statement?

**Sen. Kivuti:** Mr. Temporary Speaker, Sir, I have it.

**The Temporary Speaker** (Sen. (Dr.) Machage): Chairperson, Standing Committee on Lands and Natural Resources, proceed. I believe you are answering on behalf of the committees that were involved.

**Sen. Kivuti:** Yes, Mr. Temporary Speaker, Sir. We had joint committee sessions. The last meeting was on Tuesday, the day before yesterday. We had an occasion to listen to the Cabinet Secretary for---

**The Temporary Speaker** (Sen. (Dr.) Machage): What is it, Sen. Karaba?

**Sen. Karaba:** On a point of Order, Mr. Temporary Speaker, Sir. Earlier on, the Speaker ruled that Sen. Kivuti is an interested party. He should not be featuring too much. He should not even be chairing this Committee. I stand to be advised.

**The Temporary Speaker** (Sen. (Dr.) Machage): Can you quote that ruling and the day it was made? Could you present the written documentation of that ruling from the HANSARD?

**Sen. Karaba:** Mr. Temporary Speaker, Sir, it is in the HANSARD. I remember because I was here. Even in other meetings, he was not there. I do not know how it happens that he is the Chairperson of this Committee.

**The Temporary Speaker** (Sen. (Dr.) Machage): Order! Sen. Kivuti stood on his capacity as the Chairperson of the Standing Committee on Lands and Natural Resources. The Committee is not only recognized by this House but created by this House. I will take the earlier concern and discard the second concern. Sen. Kivuti, what do you have to say?

**Sen. Kivuti:** Mr. Temporary Speaker, Sir, I would like my colleague to allay his fears. I am only reporting what the joint committee is doing. We are not ready with the---

**The Temporary Speaker** (Sen. (Dr.) Machage): Order, Sen. Kivuti! I wanted your comment on the said order by the Chair. If that order was given to you, then you have no right to prosecute this Statement. Let us listen to Sen. Muthama.

**Sen. Muthama:** Mr. Temporary Speaker, Sir, I want to put the record straight because I am a Member of the Joint committee. The meetings that have been taking place but have never been chaired by Sen. Kivuti, but by Sen. Orengo. When Sen. Kivuti attended the last meeting, he was an interested party. His deliberations were based on the positions that he believed in and the group he was representing. Therefore, I concur with Sen. Karaba that he has never been attending other meetings thus has no responsibility to report anything to do with this Joint Committee. Sen. Adan is a co-chairperson in that committee.

**The Temporary Speaker** (Sen. (Dr.) Machage): Very well. For purposes of civility and decorum to this House, you do not lose any respect by allowing your colleague who is also mandated by our Standing Orders to read that Statement. More often than not, in the tradition of this House, even Members of committees have read

statements on behalf of the chairpersons to good conclusion. I want to stop this argument and order that Sen. Adan reads the Statement.

**Sen. Adan:** Mr. Temporary Speaker, Sir, let me report to the House that we have had several sittings regarding this matter. Unfortunately, we have not concluded. The last meeting was yesterday where we summoned the Principal Secretary (PS), the Cabinet Secretary (CS) of Lands and the Chairperson of National Lands Commission. The Cabinet Secretary for Interior and Coordination of National Government did not come because he had an engagement elsewhere but he sent an apology. We have not dispensed of with this matter and the Committee is planning to carry out further investigation on this matter. So, we will report when we resume.

**The Temporary Speaker** (Sen. (Dr.) Machage): Sen. Karaba, you have heard the answer.

**Sen. Karaba:** Mr. Temporary Speaker, Sir, I am satisfied with the position taken by the Speaker.

**Temporary Speaker** (Sen. (Dr.) Machage): What is it, Sen. Kivuti?

**Sen. Kivuti:** On a point of order, Mr. Temporary Speaker, Sir. I would like to be on record that in this matter, there is a Communication to the Speaker and he promised to look at it today. Since he has not dispensed with it, I wanted it to be on record.

**Temporary Speaker** (Sen. (Dr.) Machage): May I bring it to your attention that the Speaker is on the Chair now. I am not privy to what you are talking about. You mean the substantive Speaker?

**Sen. Kivuti:** Yes, Mr. Temporary Speaker, Sir. I mean the substantive Speaker.

**Temporary Speaker** (Sen. (Dr.) Machage): Very well, that is for records. I order that in the answer that will be read to this House, a copy of the HANSARD that ordered for Sen. Kivuti to desist from Chairing this Committee as an interested party to be also attached so that no controversies maybe raised. I know it is partly for the knowledge of the House but for clarity, it will be noble to do that.

Let us move to the next Statement (d) on the Standing Committee on Roads. Please give the microphone to the Chairman. Move to the Dispatch Box.

#### STATUS OF RABUOR-CHIGA-KIBOS ROAD

**Sen. Obure:** Mr. Temporary Speaker, Sir, this request for statement was made by Sen. Gwendo and it is in respect to Rabuor-Chiga-Kibos Road in Kisumu County. I wish to respond as follows:-

The Government is aware that Rabuor-Chiga-Kibos Road is in need of repair to motorable standards. On the question of whether the road could be upgraded from Class D to Class C; I would like to respond that the road was upgraded to national Government road through the special issue of the Kenya Gazette Supplement No.4 of 22<sup>nd</sup> January, 2016 and the new road classification is C853 which is under the purview of the Kenya Rural Roads Authority (KeRRA).

Mr. Temporary Speaker, Sir, on what funds would be allocated to improve this road; my response is that in this Financial Year 2016/2017, the sum of Kshs10 million has been earmarked for routine maintenance by the Kisumu East Constituency Roads Committee. The works to be done include light grading, heavy bush clearing, culvert cleaning, installation of culverts and spot gravelling works.



Mr. Temporary Speaker, Sir, the last question was on what measures were in place to protect the road from additional damage due to perennial flooding. The answer is that the Government will continue to maintain the road through its annual roads maintenance programmes to ensure that the drainages are protected even during the perennial flooding.

**Temporary Speaker** (Sen. (Dr.) Machage): Sen. Gwendu.

**Sen. Gwendu:** Mr. Temporary Speaker, Sir, I would like to thank the Chair of the Committee for his answers even though I have a few concerns. In my statement, I had made an observation that this road serves a large community. It serves the Kano people. It is important in their economic livelihoods. From this answer, the Government is aware that Rabuor-Chiga-Kibos Road is in need of repair. What is the Government doing about this road? What are the specific measures that will be taken to ensure that this road is repaired?

Mr. Temporary Speaker, Sir, from his answer, he said that road has been upgraded to national Government and is under the purview of KeRRA yet it is still expected to be maintained by the Kisumu East Constituency Roads Committee. How is it that we are expecting the Kisumu East Constituency Committee to maintain a national road?

Lastly, he is saying that the Government will continue maintaining the road through its annual roads maintenance programme. I find this answer preposterous because as it is in my statement, I made it clear that with the floods, it makes it impossible for people to transport their goods considering that road is used to transport sugar cane, rice and other goods that work to improve the livelihoods of the people.

**Sen. Obure:** Mr. Temporary Speaker, Sir, there is no doubt whatsoever that the Government appreciates that this is an important road that serves a large section of the population in that county. It facilitates the movement of people and goods in the area and it is, therefore, an important road for purposes of the economy of that county. Earlier, I said that on 22<sup>nd</sup> January, 2016, the Government through the CS responsible for infrastructure raised this road to a higher level from Class D to Class C so that it becomes a national Government road. The objective was so that more funds can be channeled to improve this road to higher standards and to ensure that the road is maintained using this high flow of resources so that it can serve the people of that area more effectively.

Mr. Temporary Speaker, Sir, I am confident as you can see that this was only done in January this year and we know that there is The Kenya Roads Bill (National Assembly Bill No.26 of 2015) which is under consideration by both Houses of Parliament. It is anticipated that when this is done, the concerns raised by the hon. Member will be fully addressed through higher allocation of resources for the maintenance of that road.

**Temporary Speaker** (Sen. (Dr.) Machage): What is it, Sen. (Prof.) Lonyangapuo?

**Sen. (Prof.) Lonyangapuo:** On a point of order, Mr. Temporary Speaker, Sir. I appreciate the way Sen. Obure is responding to the questions although he is talking as a former Minister of Roads. I now wish---

**The Temporary Speaker** (Sen. (Dr.) Machage): Order, Sen. (Prof.) Lonyangapuo. Sen. Obure is talking as the Chairman of the Committee on Roads and

Infrastructure. He was a former Minister but he is talking in his capacity as the Chair of that relevant Committee to this House. Can you withdraw that?

**Sen. (Prof.) Lonyangapuo:** Mr. Temporary Speaker, I was giving him a lot of credit because he was my boss. I wanted to say that I wish Jubilee leaders would be here to listen to what Sen. Obure is saying because---

**Temporary Speaker** (Sen. (Dr.) Machage): What is it, Sen. Lesuuda?

**Sen. Lesuuda:** Mr. Temporary Speaker, Sir, I rise on a point of order on how we work in this House. Just as you have said, the Committees Chairs respond to questions asked by Senators, and I believe that is what Sen. Obure is doing. He has a sole responsibility to answer questions regardless of whether any other leader is in the House.

**Temporary Speaker** (Sen. (Dr.) Machage): Very well. What makes Sen. (Prof.) Lonyangapuo think a Committee Chair in the House is inferior in status to a former Minister?

**Sen. (Prof.) Lonyangapuo:** Mr. Temporary Speaker, I was giving credit to the Chairman---

**Temporary Speaker** (Sen. (Dr.) Machage): You were not. A Chair of the Senate Committee is superior to the current status of Ministers in this country.

**Sen. (Prof.) Lonyangapuo:** Mr. Temporary Speaker, Sir, that is why we have the majority and the minority side. The majority side should be taking notes when Chairs are giving responses because sometimes they hit a deadlock.

**Temporary Speaker** (Sen. (Dr.) Machage): It is properly spoken now. Chair, do you have anything to add?

**Sen. Obure:** Not much, Mr. Temporary Speaker, Sir, except to appreciate the kind words expressed by my former Permanent Secretary.

*(Laughter)*

**The Speaker** (Hon. Ethuro): I also happen to have been his former Assistant Minister.

**Sen. Gwendo:** Mr. Speaker, Sir, I am confident in the response given by Sen. Obure because he was a former Minister for Roads and knows that a budget of Kshs10 million cannot maintain a road. I hope that the response that he is giving is insinuating that the Committee will actually push into seeing that sufficient funds are allocated for improving this road.

**Sen. Obure:** Mr. Temporary Speaker, Sir, I know she is talking about the very important road for the economy of the area. However, this is largely what informed the decision to upgrade this road from Class D to C. I am confident that now that road will attract much more funding for maintenance as opposed to the lower grade where it was only attracting a mere Kshs10 million annually as maintenance funds.

I can assure the hon. Member that more resources will from now on after this new classification, be channeled for maintenance of that road.

**The Temporary Speaker** (Sen. (Dr.) Machage): Very well. We have very many Statements on the Order Paper today.

Let us move on to Statement (E).

**Sen. Ndiema:** On a point of order, Mr. Temporary Speaker, Sir. Having looked at the listed statements, my Statement on county government funds held in closed

Imperial, Dubai and Chase banks is not appearing yet the Speaker had directed that it would be responded to this week. We are coming towards the end of the week and I am not seeing it. I wish that you would direct that it be answered today.

**The Temporary Speaker** (Sen. (Dr.) Machage): I am sure that there are many Senators who are in your status. All the same, I can see the Chairperson of the Committee on Finance, Commerce and Budget. You can respond to that statement, if you are ready.

STATUS OF COUNTY GOVERNMENTS FUNDS  
HELD IN IMPERIAL, DUBAI AND CHASE BANKS

**Sen. Billow:** Mr. Speaker, Sir, the Senator for Trans-Nzoia County had sought to know a number of issues regarding county government funds which are held in banks that collapsed or were shut down by the Central Bank of Kenya (CBK); that is Imperial, Dubai and Chase banks. The Senator wanted to know the amount of funds from various county governments which have been deposited in these banks, specifying the amount per county as at the time these banks went under. There are also a number of other issues relating to that.

The national Treasury sent circulars to each county government to provide the information, but county governments have not obliged for reasons that they believe is in distinct dependence between the two levels. We have sought information from the Kenya Deposit Insurance Fund (KDIF). They have provided us with information that shows that the total amount of money belonging to county governments in Chase Bank amounts to Kshs836 million from a number of counties. There are no funds belonging to counties in Imperial or Dubai banks. The counties, include Machakos County Government which had a number of accounts in Chase Bank and the total is Kshs132 million.

We also have Machakos County Assembly Housing Fund which amounts to almost Kshs70 million. So, Machakos County has over Kshs200 million in that Bank. Nyandarua County Assembly Mortgage and Car Loan Fund had Kshs200 million. Nyaribari Chache Sub-County Health who also had their account there had a small amount of Kshs317,374. Kilifi County Government had substantial amount of Kshs38.5 million and the Kilifi County Assembly had almost Kshs49 million. Kisii County Assembly had the highest amount of money in chase Bank; Kshs260 million for the Kisii County Assembly. Nairobi County Assembly Ward Development Fund of Kshs4.989 million. Lastly, the Uasin Gishu County Government had Kshs12.8 million. Kericho County Executive Staff Mortgage Fund had Kshs50 million. The last one is Trans-Nzoia County which had a bursary fund account with about Kshs6.67 million in that bank.

Mr. Temporary Speaker, Sir, Chase Bank has since been opened and customers continue to make transactions. They may not withdraw all the money they want because there are certain limits still in force. However, let me inform the House that the procedure in law is that the Constitution allows the County Executive Member (CEC) Member for Finance to determine where a county government can open an account for collection of local revenue and imprest purposes. Many counties have ended up opening bank accounts in many commercial banks, but there is no specific authority that the Controller of Budget or the National Treasury has to limit the county governments from operating bank accounts. It is a matter that we are looking at so that we can bring amendments to the law to limit that.

Mr. Temporary Speaker, Sir, most of the funds, for example, Kshs112 million for Machakos County Government, relates to money for mortgage and car loans. We may not get all the answers, but that is the response that I have in relation to this.

**Sen. Ndiema:** Mr. Temporary Speaker, Sir, the Statement is unsatisfactory because it does not answer all the questions that I had asked. I asked whether there was authorization for depositing the money in the bank, instead of it being used to meet the purposes for which it was allocated for by the Government and the measures that the counties are taking. The Chairperson has said that he has not been able to get answers from the counties. I sought this Statement in April this year. Ministries which are not devolved units normally respond to questions.

**The Temporary Speaker** (Sen. (Dr.) Machage): Order, Sen. Ndiema. We do not have to recap because the Chairperson specified that despite not being able to get the answer from the counties, he was able to get the answer from other sources. What you wanted was an answer.

**Sen. Ndiema:** Mr. Temporary Speaker, Sir, I am entitled to seek clarifications. The counties are answerable to the Senate and they cannot run away from answering to the Senate. They are independent from the national Government, but the Constitution provides the counties must answer to the Senate. Why are the counties refusing to answer queries asked by Senate in accordance with its mandate in the Constitution?

Mr. Temporary Speaker, Sir, the answers are not adequate. I do not understand why the funds that my county had for bursaries were held in an account, instead of being disbursed directly to students. I am asking these questions with regard to all the counties. Machakos County, for example, has kept a lot of money in the banks. Why was this money kept there?

**The Temporary Speaker** (Sen. (Dr.) Machage): Sen. Muthama, are you on a point of order?

**Sen. Ndiema:** Mr. Temporary Speaker, Sir, I want to seek another clarification.

**The Temporary Speaker** (Sen. (Dr.) Machage): I need to confirm something that I have on my screen.

Continue.

**Sen. Ndiema:** Mr. Temporary Speaker, the Chairperson sought this answer initially from the Cabinet Secretary in charge of the national Treasury and the Controller of Budget and they were not able to give an answer. The Controller of Budget and the National Treasury are supposed to control all the funds and know where each county has put the funds. Does this mean that the Government does not know where counties put their money? It is a dangerous situation if the national Government, the National Treasury and the Central Bank of Kenya do not know where public funds are kept. We had to get the information from a different organisation, yet we have Government institutions charged with the responsibility of overseeing and ensuring safety of public funds.

**Sen. Karaba:** On a point of information, Mr. Temporary Speaker, Sir.

**The Temporary Speaker** (Sen. (Dr.) Machage): Sen. Karaba, whom do you want to inform?

**Sen. Karaba:** Mr. Temporary Speaker, Sir, I want to inform Sen. Ndiema.

**The Temporary Speaker** (Sen. (Dr.) Machage): You are out of order.

Continue, Chairperson.

**Sen. Billow:** Mr. Temporary Speaker, Sir, I agree with the Senator that placing such huge amounts of funds in the banks is a major risk; this money could be lost. If Chase Bank did not open its doors, there would not have been a way to get this money. A total of Kshs836 million that belongs to the counties is a huge amount of money. The Controller of Budget and the National Treasury have no powers over the county governments with regard to opening of bank accounts in commercial banks or to superintend over how those accounts are run. It is the responsibility of the Senate to oversight the county assemblies.

Mr. Temporary Speaker, Sir, now that we have the list of the 10 counties which have Kshs836 million in the Chase Bank, we will invite them and demand explanation to get the specific answers on some of the issues that have been raised. Initially, we did not know which counties had kept the money because they had refused to respond.

Lastly, as we have seen in the Report of the Auditor-General, some of the counties have opened numerous accounts in commercial banks where they are able to use the money without going through the Integrated Financial Management Information System (IFMIS) and, therefore, avoid accountability. The main reason for opening bank accounts in commercial banks is because they can easily withdraw money without being noticed or going through the IFMIS. Therefore, it is wrong and illegal. Counties are only allowed to open accounts for purposes of imprest or collection of revenue, which should be transferred to the Revenue Account in the Central Bank of Kenya.

The Controller of Budget submits reports in every quarter on the implementation of budget. When she seeks information on the bank accounts, they invariably hide some of the accounts. For example, if a county has 10 bank accounts, they only mention two or three accounts. This is why the auditors raise this issue many times. Therefore, there is a major risk that money is being stolen in the counties because they are able to open accounts wherever and whenever they want and they do not disclose to the auditors.

**The Temporary Speaker** (Sen. (Dr.) Machage): Very well.

**Sen. Muthama:** Mr. Temporary Speaker, Sir, I want to seek more clarification.

**The Temporary Speaker** (Sen. (Dr.) Machage): Proceed, Sen. Muthama.

**Sen. Muthama:** Mr. Temporary Speaker, Sir, I wish to thank the Chairperson for giving us truthful answers that will help this House. The Chairperson should try as much as possible to consult with the Cabinet Secretary and come out clearly to state why governors are diverting money, which is transferred by the National Treasury, to different banks accounts. For example, Machakos County has five accounts in Chase Bank; Kisii County has more than six counties and Nyandarua has got more than seven bank accounts. Why does the National Treasury allow this? Funds are being squandered and stolen in the counties. We need to arrest this situation so that we can control the funds.

**Sen. Mutula Kilonzo Jnr.:** Mr. Temporary Speaker, Sir, this is a serious issue. As we are going to the next general elections, I suspect that these accounts will continue to be opened. Before we investigate the already existing accounts, the Commission of Revenue Authority and Treasury have issued circulars on various issues that are not as important as this. One of the things that we should demand is a circular to be issued by Treasurer so that any Governor or County Executive Committee (CEC) Member of Finance who opens an account contrary to those directions will have an action point. Otherwise, it appears as if everybody has a liberty to deposit money because it is an

avenue that is used by county governments to obtain either interest or an incentive from these banks.

**Sen. Obure:** Thank you, Mr. Temporary Speaker, Sir. I also want to thank the Chairman of Committee on Finance, Commerce and Budget for the clarifications he has issued.

Now that Chase Bank is opened, does the Chairman have any indication whether these counties have been able to access this money?

**Sen. Ndiema:** Mr. Temporary Speaker, Sir, I want to thank the Chairman for being candid enough. However, as you can see, this answer is not signed. It is just a paper. Perhaps, it can be formalized. As he has suggested if the Cabinet Secretary in charge of National Treasury can at an appropriate time be called, we discuss these issues so that we find a permanent solution even if it means legislation. This House can legislate to ensure that counties do not open banks anyhow. We have heard that a county has several accounts in Chase Bank. What is the need for several accounts? So, that is very important and you can direct that the Chairman implements what he has suggested.

**The Temporary Speaker** (Sen. (Dr.) Machage): Only one allegation the Chairman has to clarify; the accusation by Sen. Ndiema that you are giving us a document that is unauthenticated; it is not signed. It is just a paper. That is a serious allegation to be recorded. Let me also advise the Members that the answers we get here are from the Chairmen. Whatever paper he may be holding unless he wants to table, it is immaterial as far as this Chair is concerned because what goes on record is the answer from the Chair and not the answer from the sources of his information.

Mr. Chairman, what have you to say?

**Sen. Billow:** Thank you, Mr. Temporary Speaker, Sir. He can take the answer I have given to the bank. This is the answer we discussed at our Committee this morning.

**Sen. Ndiema:** On a point of order, Mr. Temporary Speaker, Sir. Can he table it so that it becomes the official position because this is a House of records?

**The Temporary Speaker** (Sen. (Dr.) Machage): It is already in the HANSARD.

**Sen. Ndiema:** Mr. Temporary Speaker, Sir, he summarised.

**The Temporary Speaker** (Sen. (Dr.) Machage): Tabling that document is not a big issue. However, if you have to do so, then I will have to authenticate whether it is properly signed or whether it is a document that can be accepted for this House for tabling. Do you want to table?

**Sen. Billow:** Mr. Temporary Speaker, Sir, if you want the one that has been signed by the Kenya Deposit Insurance Fund (KDIF), I can table it later. It is not with me now, but we have the actual printout. I thought he wanted the details of the banks which I do not want to table because he wants to see the KDIF letter. This is the official answer because this is what we went through with our Committee and agreed to discuss today.

There are two issues I want to quickly clarify. We have already written to the national Treasury, the Controller of Budget and the Commission of Revenue Allocation for a meeting in early February to come up with proposals to seek amendments to the Public Finance Management Act to limit these powers of the counties. This is because neither the Central Bank nor the Controller of Budget has powers to limit a county government from opening accounts in the commercial banks and transferring money

from their accounts in Central Bank to those accounts. This is what they are exploiting. It is one of the loopholes that we, as a Senate, have to seal.

The Chase Bank has a limited window for withdrawal of money since it has been opened. It is because of that limitation that these counties have still got substantial amounts of money and are not able to withdraw all the money they want. So that limitation is still in force.

**The Temporary Speaker** (Sen. (Dr.) Machage): I had earlier indicated that we have so many Statements, especially from the Chairperson of the Committee on National Security and Foreign Relations. However, we have also pending matters that have been ruled over by the Speaker to be done. These Statements either had been suspended and they are very important.

I will go to Sen. Karaba. First of all, can you table the papers you wanted to lay on the Table and then proceed to give the important Statement on the results of the 2016 KCPE examinations?

I can see a lengthy document. Please, be brief because I may not allow all these to be read.

*(Interruption of Statements)*

#### **PAPER LAID**

REPORT OF THE EDUCATION COMMITTEE ON THE  
BASIC EDUCATION (AMENDMENT) BILL 2015  
(NATIONAL ASSEMBLY BILL NO.35 OF 2014)

**Sen. Karaba:** Mr. Temporary Speaker, Sir, I beg to lay the following Paper on the Table:-

Report of the Standing Committee on Education on the Basic Education (Amendment) Bill 2014 (National Assembly Bill No.35 of 2014)

*(Sen. Karaba laid the document on the Table)*

**The Temporary Speaker** (Sen. (Dr.) Machage): We revert back to Statements. Can you come back Sen. Karaba and continue with the so demanded Statement?

*(Resumption of Statements)*

#### RELEASE OF KCPE 2016 RESULTS BY THE CS, EDUCATION

**Sen. Karaba:** Thank you, Mr. Temporary Speaker, Sir. Today, 1<sup>st</sup> December 2016, marked the release of KCPE results by the Minister for Education at the Kenya Institute of Education which has now changed to Kenya Institute of Curriculum Development. You have noted that the paper is a bit lengthy, but I will be able to reduce it by reading only what is important.

However, to lay emphasis and assertion to ensure that the 2016 examinations were credible, the Ministry of Education instituted various reforms to address the challenges experienced during the 2015 examinations.

To make sure the examinations were credible; the Ministry of Education instituted various forms of measures to address the challenges experienced during the administration of examinations in 2015. This included adopting a multi-sectoral examination administration approach, the creation of an exclusive examination season in third term and the appointment of school headteachers as centre managers.

I am proud to announce that the measures introduced by the Ministry of Education and other critical agencies worked incredibly well. Indeed, for the first time in many years, the national examinations were not leaked. The administration of the examinations was the smoothest in recent memory. Various stakeholders assisted in the administration including the Teachers' Service Commission, the Kenya National Examinations Council and the Ministry for Interior and Coordination of National Government, among others. We thank them all for the collaborated effort.

Many useful lessons can be drawn from the successful administration of the 2016 National Examinations. The most significant, however, is that with effective collaboration and coordination amongst the relevant agencies of Government, virtually any national task and objectives of Government can be met. Going forward, therefore, the Ministry of Education will endeavor to ensure effective cooperation and collaboration with all relevant actors to fully reform and strengthen the education system.

Secondly, we have learnt that the Government has all the machinery and capacity to run a clean, transparent and credible national examination. All we need is careful planning and a committed staff who operate with high level of integrity.

With regard to payment of school fees by the Government, the Government is committed to ensuring that every child gets access to education at all levels. As of now, children enrolled in public schools are accessing free primary and free day secondary education. That included payment of the KCPE and Kenya Certificate of Secondary School (KCSE) examination fees by the Government. The government will from next year extend the payment of examination fees to all KCPE and KCSE students in private schools. This is a commendable move by the Government and testimony of its determination to improve access to education for all children.

It is the Government's desire to make education affordable and accessible to Kenyan children. For this reason, the Ministry of Education wishes to announce that fees charged in all public schools in 2017 will remain the same as it was this year. That should answer Sen. (Prof.) Lonyangapuo. Principals to schools who will not follow the guidelines will not be tolerated. The release of the examination results should not be a ritual but a moment for the careful reflection of all parties involved in the education process.

On a gloomy note, I wish to state that the Ministry is aware of some private schools that operate multiple examination centres with an aim of engaging in unethical practices meant to enable them to record favorable rankings in national examinations. This is a form of malpractice since the proprietors of these schools are clearly using innocent pupils in an unscrupulous marketing exercise for their businesses. As it were, these schools register weaker pupils at sister or satellite examination centres so as not to bring down the mean scores of their main marketing schools. We have discovered that



the majority of these schools that offload weaker pupils usually have a smaller candidature between 20 and 30 of their best candidates.

These abnormal centres are the ones that top charts wherever school ranking is done. Indeed, some of these schools will, today, be captured celebrating in our TV channels. Fortunately, these schools have nowhere to hide. We will name and shame them. I wish to announce that the Ministry has resolved to stamp out this unethical practice once and for all. For a start, the Kenya National Examinations Council (KNEC) will not register these schools as centres for national examinations starting 2017.

About 942,022 sat the 2016 KCPE examination. Of this, 49.7 percent were girls and 50.3 percent boys. The gender composition has comparatively remained the same over the last three years. The analysis of candidature trends by gender in the last three years indicates that the percentage increase in the number of girls has constantly been higher than that of boys. In terms of counties, nearly half, that is 23 of the regions registered more girls than boys in KCPE Examinations. These counties which I must highly commend are; Mombasa, Nyandarua, Kiambu, Machakos, Kitui, Embu, Meru, Makueni, Nairobi, Trans-Nzoia, Uasin Gishu, Nakuru, Kericho, Nandi, Elgeyo Marakwet, Busia, Bungoma, Kakamega, Vihiga, Kisii, Kisumu and Nyamira.

The Government recognizes the right of learners with disabilities as enshrined in the Kenya Constitution, 2010. This year, 1950 candidates with special needs sat the KCPE Examination with the highest candidate scoring 421 marks out of the possible 500. Earlier this year, His Excellency the President Uhuru Kenyatta directed that the Ministry prepares and administers special national examinations papers for candidates with special needs. In order to implement this directive, interventions were put in place in the 2016 National Exams for candidates with special needs.

We congratulate the people responsible for field administration. This success would not have been possible without the effort of 168,000 contracted professionals who invigilated and supervised the administration of the examinations and 5000 plus examiners who were involved in the marking of English compositions, Kiswahili and Kenya sign language compositions.

I wish to mention that the performance of candidates in this year's examination was slightly lower than that of 2015. Girls performed better than boys in languages; English, Swahili and Kenya Sign Language, while boys performed better than girls in Mathematics, Science and Social Sciences and Religion. The number of candidates with more than 400 marks decreased by 31 percent to 5,190 compared to 7,560 last years. The top candidate this year scored 436 marks out of the maximum possible 500. That means the candidate would not have placed among the top 90 for last year. This candidate would have been around position 93 compared to last year.

During the 2016 KCPE Examinations, candidates obtained aggregate as follows; those who scored 400 were 5,143, a percentage of 0.54 percent. Those who scored 301 to 400 total to 207,141 which is 21 percent. Those who scored between 201 and 300 marks were 501,552. That is more than 52 per cent. Those who had the lowest marks; that is between 101 to 200 were 221,438 accounting for 23.5 per cent. Those who scored 100 and below were 6,747.

Mr. Temporary Speaker, Sir, as stated earlier concerning examination leakage, I promised during the release of the 2015 examinations that I will not apologies again to

Kenyans over leakage in national examination. I wish to categorically state that there was no examination leakage in 2016 KCPE Examination.

Regarding examination irregularities, various security measures were put in place during the administration and management of the 2016 KCPE Examinations to help stamp out cheating. I wish to report that all the attempted cases of examination malpractices, totaling to only 21, were detected and dealt with appropriately before they could happen.

I wish to inform the country that for the first in the history of the KCPE Examination, there was no cancellation of results for any candidate.

I also wish to appreciate my colleagues, hon. Joseph Nkaissery, Cabinet Secretary (CS) Ministry of Interior and Coordination of National Government; hon. Joe Mucheru, Cabinet Secretary (CS), Ministry of Information and Communication Technology; and our security agencies for the support that they gave to the Ministry during the administration and management of the 2016 KCPE Examination.

With regard to ranking, Parliament recently passed a law requiring the Ministry of Education to rank schools and candidates when releasing national examinations. Tied to the law was a requirement that we conduct research, consult widely and come up with regulations that provide a basis for the ranking. Unfortunately, due to the short period between the time that the law was enacted and when KCPE Examination was administered, the Ministry was unable to prepare for its implementation. I, therefore, wish to inform the country that the Ministry has not provided any ranking for the 2016 KCPE Examination candidates and centres. The Ministry will, however, put in place a watertight mechanism to help implement the Form 1 selection.

As the KCPE results are released today, I assure all parents and guardians that appropriate arrangements are in place to admit the candidates into public secondary schools based on merit, quotas, equity, affirmative action and candidates' choices. The selection will also ensure that children from disadvantaged backgrounds continue with their education.

I also wish to assure the public that all candidates who scored 400 marks and above will be admitted to national schools irrespective of their gender, religion or centre. The Form 1 selection exercise will commence next week on 9<sup>th</sup> December, 2016.

I wish to inform parents, candidates and guardians that KCPE Examination results will be collected by their respective schools from the Sub-County Director of Education offices. Candidates should, therefore, collect their results from their respective examination centres. Individual candidate results can also be accessed by sending a candidate's index number through Short Message Service (SMS) to 22252 immediately after this event. Headteachers will be required to download and print the online result slips for candidates in their schools and authenticate them before they are released to parents, guardians and candidates.

It is now my pleasure to declare the 2016 KCPE Examination results released and wish all candidates success in their future endeavours. At the same time, I wish every Kenyan a Merry Christmas and prosperous New Year.

**The Temporary Speaker** (Sen. (Dr.) Machage): You have just read the Statement of the Cabinet Secretary (CS), a press release. I would have expected you to do otherwise and give us a Statement by the Chairperson. I am so orthodox on some of these things.

**Sen. Muthama:** On a point of order, Mr. Temporary Speaker, Sir. This is on a different matter and not what has been ---

**The Temporary Speaker** (Sen. (Dr.) Machage): It will have to wait because there are reactions to that quotation of the Cabinet Secretary's (CS's) Speech.

**Sen. Muthama:** Mr. Temporary Speaker, Sir, may I also raise one or two issues on the response that Sen. Karaba has just read. I had kept one or two things. I concur with the Statement that was read by Sen. Karaba. One think that has come out very clearly is that the top candidate who had 436 marks cannot be placed among the top 10 of last year's results. The reason is the way the Cabinet Secretary (CS) managed to supervise these exams. It allowed the right candidates to sit for the examinations without rigging. Of course, that has been the problem. If you look at the way the examinations were conducted before, you realise that most candidates who scored very well mostly came from private schools. It is because that is where there is money and rich parents who can manage to compromise the examiners.

*[The Temporary Speaker (Sen. (Dr.) Machage) left the Chair]*

*[The Temporary Speaker (Sen. Sang) took the Chair]*

For that reason, I wish to congratulate the hard working Cabinet Secretary; Dr. Matiang'i. This is a very good example of how Kenyans can work. It took one individual to manage the examinations in this country. He laid down the strategies and plans which worked and they were implemented. You even wonder when the President stands in public and asks: "What do you want me to do with those who are corrupt in this country?" A good example is Dr. Matiang'i and the President should learn from his CS. If he wants to lay down plans to eliminate corruption, it can be done and Kenyans will live a peaceful life without hearing who is the best and worst thief and where the money is being taken to. That way, we will have a well-managed country.

**Sen. Billow:** Mr. Temporary Speaker, Sir, I also take this opportunity to thank the Chairperson for the speech. I also join him in congratulating the Cabinet Secretary (CS) for Education, Dr. Matiang'i, who has done pretty well in terms of supervising the examinations. This year, I send my congratulations to him and his entire team for the change. For the first time, we are told that there is no cheating in examinations and even released one month earlier than scheduled. Everything went smooth, and I think he played hard ball many times with those in the education sector. He has been called all sorts of names, and I am one of those who have been urging him to go on even if they sacked him but to keep on doing what is right.

Mr. Temporary Speaker, Sir, having said that, I also want to congratulate all the students who sat for the Kenya Certificate of Primary Education (KCPE) and have done well. I want to wish them a better future. I also want to comment on the academic performance. You heard the Chairman saying that the Government is committed to affording every Kenyan an opportunity to succeed. However, that opportunity is not given to every Kenyan equitably.

If you look at the performance of the counties which have been released today, Mandera County is number 47 followed by Garissa County. In that order, all the counties in the Arid and Semi- Arid Lands (ASAL) or poor parts of this country are the ones that

are trailing except for West Pokot, Turkana and Samburu who have done well. I must take the opportunity to congratulate the leaders in the education sector in those three counties who despite the circumstances in which they are; poverty, drought and conflicts, they have done well.

Mr. Temporary Speaker, Sir, for North Eastern region, the biggest challenge has been the teachers who left for upcountry who until today have not been replaced. We have a serious problem and I think it is important that the Ministry – as the Chairman said, we should not be looking at usual releasing of results but we should look at transforming the lives of all Kenyans by looking at the performance in those areas that are consistently performing poorly in academics.

It is important that the Ministry finds out what is going on in those counties. Why should they be at the bottom year in, year out? What do they lack? Is it the quality or number of teachers? It cannot be that the people in those counties are dumb or the students are retarded. Is there anything to do with the mental capability of the students? It has to do with management of education in those counties. It is time that the Ministry takes this matter seriously so that we do not continue performing poorly in those regions.

Mr. Temporary Speaker, Sir, it is not fair that you come and put them on the same table when announcing the results. You must compare an apple with an apple and an egg with an egg. You cannot compare two situations that are completely different; one where there are no schools, teachers, books and another that has all the learning facilities. So, I want to urge him to look at that issue.

I take the opportunity to thank the Ministry for the good stewardship of the national examinations this year. Thank you.

**The Temporary Speaker** (Sen. Sang): Sen. Obure!

**Sen. Obure:** Thank you, Mr. Temporary Speaker, Sir, for this opportunity to make a few remarks. First, I want to thank the Chairman of the Committee on Education, Sen. Karaba, for the report he has just presented to this House regarding the national examination results which were released today. Today, we are witnessing a new order and a milestone in the management of our national examination system. In the past, the days national examination results were released was a day of mourning, disappointment, pain and grief for many candidates because their results would have been cancelled or withdrawn on the basis of allegations of cheating and other irregularities.

Mr. Temporary Speaker, Sir, it is pleasing to hear that there were no irregularities in the examinations that were conducted. No candidate is experiencing any disappointment or pain. This is an important thing. I, therefore, want to take this opportunity to congratulate the CS for Education, Dr. Fred Matiang'i. He has done all of us proud, he has set the pace and we can see that what has appeared to be impossible before is possible that we can look forward to achieving desired results for the common good of everybody in this country.

Mr. Temporary Speaker, Sir, this has come out of the desire to do good. It is a desire to restore the integrity of our national examination system. It is a desire to ensure that the performance of our education sector is comparable to any in the world. It is a desire to ensure that graduates at all levels of our examination system can be equated with the best in the world. Therefore, it is important that this tempo is maintained and we do not allow ourselves to go back to the old days. We hope there will be more people like Matiang'i, not just in the education sector but in other sectors of the economy but also in

other Ministries and Government departments in the exemplary manner Dr. Matiang'i has done.

Mr. Temporary Speaker, Sir, this should be a happy day for Kenyans and we hope that his efforts will be recognized by all people of goodwill. I thank the Chairman and once again express my delight in that we have done well this time and we hope to do well in future and do well also in other sectors. Thank you.

**The Temporary Speaker** (Sen. Sang): Very well. Sen. Lesuuda!

**Sen. Lesuuda:** Thank you, Mr. Temporary Speaker, Sir, for giving me this opportunity to add my voice to the statement read by the Chair of Committee on Education. I want to start by congratulating all the students and all those who were involved in ensuring that we have made history in how our exams are conducted, the period and the manner exams are marked quickly. If you were listening to CS Dr. Matiang'i, you would wonder what we have been doing as a country in terms of managing exams, giving out the results and ensuring that Form One students go to school together with the other students.

Mr. Temporary Speaker, Sir, I have two point to make. One is to congratulate the CS. It clearly states that it starts from the head. If the head knows what it is doing, everybody else will follow suit. We always say that it is all about the public and how they behave. Public policy says how the top person conducts himself, the juniors will also do that. I want to congratulate the CS and encourage him to keep up that spirit. We remember how we were all rushing for quick fixes of closing schools when there was burning of schools and he said he will not close the schools but we will make sure that the candidates will sit for the examinations and it happened so. We pray that he will continue with the same spirit.

As we prepare for the release of Kenya Certificate of Secondary Education (KSCE), there is a motion we have always discussed in this House by Sen. Musila about schools withholding certificates. We have sung this and said schools should have a mechanism of knowing the needy students so that they can get their certificates and maybe get a plan just the way we do with the Higher Education Loans Board (HELB). We need to think how they can repay the money to the schools later.

There must be many other things that have contributed to the success of the KCPE examination. We thank the Government for scraping the registration fees. I echo what my colleague, Sen. Billow, has said. We should ask the Cabinet Secretary and his team to look at some of the factors that contribute to poor performance in some counties. We should encourage those schools and meet some of their needs.

Mr. Temporary Speaker, Sir, I congratulate girls for doing well. In most counties, more girls sat for the Kenya Certificate of Primary Education (KCPE) Examination. The Government needs to focus on counties like Samburu and Wajir, which have cultural practices to ensure that our girls go to school and complete their studies.

I urge the Cabinet Secretary to focus on private schools and how they operate. We wish him well as he continues with his work. I congratulate the pupils from Samburu County for performing well regardless of the hardship issues that they continue to face.

Thank you, Mr. Temporary Speaker, Sir.

**Sen. Mutula Kilonzo Jnr.:** Thank you, Mr. Temporary Speaker, Sir. First, I want to congratulate the Cabinet Secretary, Dr. Matiang'i, for demonstrating leadership in a country where we are grappling with a serious question as to whether we have

surrendered this country to cartels. I am now persuaded that the school fires were caused by exam cartels that Dr. Matiang'i has sent into bankruptcy and oblivion.

Secondly, I wish to congratulate Prof. Magoha and his team because they have set the standards and done the marking. Thirdly, I wish to congratulate the top five counties; Kirinyaga County with a mean score of 274, Elgeyo-Marakwet at 271, Makueni County at 267, Nandi County at 267 and Uasin Gishu County at 266. If you compare the well-to-do counties with Makueni County, I can only conclude that we have done very well as a county.

Mr. Temporary Speaker, Sir, Dr. Matiang'i has just proved that anything is possible in this country. I hope that as we progress towards our elections, we can have results announced in a day, just like we have had these examinations conducted seamlessly. The headlines are encouraging; no one will ever buy a grade in this Republic. If we can improve the education sector, we can instill the confidence. Private schools are perpetuated by the notion that public schools are mismanaged; that is a fact. If our children can go to public schools and get good grades, then cartels who are thriving and making million of shillings in running private schools will soon run out of business and education will go back where it has been. When all this money is invested in the education sector, we can have confidence. Those who used to look at the late hon. Michuki as a performer now know that we do not need so many people.

Sen. Muthama has correctly said that we do not need to ask what to do. Dr. Matiang'i did not go to every examination centre or opened every examination paper. The message to President Uhuru is that he does not need to be in every office or institution. We can kill corruption by jailing two people for a long time; nobody will dare to steal a coin. Some people are proud of the things they are doing, yet others are languishing in poverty. Let Kenyans who work hard get their examinations results on merit, and we jail thieves.

Thank you.

**Sen. (Prof.) Lonyangapuo:** Mr. Temporary Speaker, Sir, I join colleagues in thanking the Ministry and the Cabinet Secretary. The Chairperson of the Committee on Education should relay our gratitude to the Ministry following the results and the examination process that begun with stringent measures to restore order in the way the examinations are conducted in Kenya. For the first time, we have received Kenya Certificate of Primary Education (KCPE) results earlier than normal. They used to be announced every year between 27<sup>th</sup> and 28<sup>th</sup> December. We commend the Ministry and the Kenya National Examination Council (KNEC) for releasing the results a month earlier.

Mr. Temporary Speaker, Sir, we need to ask ourselves where we started going wrong. Kenya is known as a nation with good products, for example, trained personnel that have ruled the world in nursing, medicine and teaching. You will find them in Europe, particularly England. They are also in America, Australia, South Africa, South Sudan and Ethiopia. The human resource from Kenya also restored Rwanda.

Given that Ministry of Education has never changed, what led to the cheating in examinations? Cartels were able to infiltrate schools. They would walk from one school to another and the principals of those schools would buy examination papers.

Mr. Temporary Speaker, Sir, now that the Ministry has restored sanity in the examination process, it should go back to the history and archives to find out who messed

up the system in the KNEC. Even if they are retired, a thief is never tired. They may have even infiltrated universities. Since it is only the Cabinet Secretary and the Permanent Secretary that changed and not the staff, Dr. Matiang'i should be keen. It is time for him and his team to take a fresh oath. All the people working in the Ministry of Education need to be vetted afresh.

As Sen. Mutula Kilonzo Jnr. mentioned, Kirinyaga County was ranked top with a mean score of 274, followed by Elgeyo-Marakwet County with 271. First of all, the mean score of 274 is low. What was the mean score of the top county in 2015, 2014 and 2013? We need to compare the mean scores to find out why the results have gone down. Most of the counties that performed well have more private schools than public schools.

Kirinyaga County may be having more registered Class VIII academy schools than public schools. I know in Elgeyo-Marakwet County is the same because they are my neighbours. We need to ask ourselves why parents opted to take their children to academies. Is it that cheap? Kenya does not have regulations in education and that is what they love most. Why do we have shortage of teachers? Today, we are told there is shortage of about 100,000 in the country. That is why Uasin Gishu County and others have improved. They are encouraging private schools to come up. In West Pokot County, for example, we do not have more than three academies. This means that some counties will not perform well because of shortage of teachers. We have 2,400 primary school teachers in my county. We have a shortage of 1,940 teachers. A staggering figure of over 40 per cent of teachers is needed in the public sector. So, if the Minister for Education is introducing these stringent measures, let him get us the teachers.

Mr. Temporary Speaker, Sir, Sen. Khaniri has introduced a Motion which will be discussed asking the Ministry of Education to name every station where the current teachers are located. Which stations are they? Which schools are they? Which counties are they? You will be surprised that Nairobi County or the ones that are leading have more teachers than what they need. Some schools have more teachers than others.

Now that we have counties, county governors should be encouraged to build houses for teachers so that teachers are fully motivated. I do not know what they do with NGCDF money nowadays. It should be used to build houses and offices for teachers in both primary and secondary schools. This is the only way we can have enough teachers in the rural areas. Many teachers prefer to teach in Nairobi and other urban centres where facilities are good. For example, The Alliance High School has more than 80 teachers with a population of 1,500 students while Chewoyoit, which is in my county and having the same number of students, has only 40 teachers. Therefore, if we want the performance of other schools to improve, we should deploy more teachers there.

**The Temporary Speaker** (Sen. Sang): Sen. (Prof.) Lonyangapuo, please, conclude.

**Sen. (Prof.) Lonyangapuo:** Mr. Temporary Speaker, Sir, therefore, this need to be encouraged and supported. We know Prof. Magoha and thank him. He is very strict and we need more of such people. The same spirit that we have seen in the Ministry of Education should be taken to the Ministry of Health so that whatever that is happening there can be rectified.

I support.

**The Temporary Speaker** (Sen. Sang): Hon. Senators, you only have one minute to contribute because we have two other important Motions that we have to conclude this evening.

**Sen. Cheruiyot:** Mr. Temporary Speaker, Sir, let me congratulate the Cabinet Secretary for Education, Dr. Fred Matiang'i, for being an outlier. For those people who travel, Robert Forster tells us that, "The road not travelled: For daring to dream and imagine." This means that you can redeem the image of education sector in this country. Congratulations the Cabinet Secretary and your team. Bravo!

Thank you.

**Sen. Elachi:** Thank you, Mr. Temporary Speaker, Sir. I also want to join our colleagues in the Senate to thank the Ministry of Education, especially the Cabinet Secretary, Dr. Fred Matiang'i. As parents, we are proud of him because he has brought sanity back to the education sector. We would like him now to rein in on the universities. Furthermore, we would like to see children going to good schools. Those who have performed well either from public or private be admitted to national schools without discrimination.

Finally, I want to tell parents to prepare and not to spend much on Christmas because your children will be joining secondary school in January. I know they are not used to this. However, we must salute the CS, Dr. Fred Matiang'i, for bringing sanity in the education sector.

**Sen. Karaba:** Mr. Temporary Speaker, Sir, as you thank the Ministry of Education, it is also important that you thank Chairman of Committee on Education. I am happy that you have thanked me for that.

**The Temporary Speaker** (Sen. Sang): Order, Senator! You cannot solicit to be thanked in this House.

**Sen. Karaba:** Mr. Temporary Speaker, Sir, I have received congratulations from Members, and I am very happy about it because they are genuine. When we are comparing counties that have done well with others, we should also note that there are some counties which have improved. I would encourage that there should be benchmarking among the counties. Let people go to counties which are not doing well like Samburu County and find out the reason for the poor performance.

In conclusion, I also want to congratulate my County of Kirinyaga for the good performance which placed them in number one.

Secondly, it is also important that the HANSARD report which shows that we have congratulated the CS should be availed to him. Let him see how the Senate has appreciated his efforts to improve performance in national examinations. Indeed, he has done a unique job. This is how we can get rid of corruption because it is known that corruption starts from schools. There is one time I attended an international conference and we learnt that corruption starts from school. So, Dr. Matiang'i has now ended corruption in schools.

**The Temporary Speaker** (Sen. Sang): The HANSARD of this House is public record. I am sure the Minister can still access it, or if you so wish as the Chairperson, you can avail it to him.



MANAGEMENT OF COMMUNITY AND PUBLIC LAND  
IN MACHAKOS COUNTY

**Sen. Muthama:** Mr. Temporary Speaker, Sir, this is a different matter that has been sanctioned by the Chairperson, Committee on Land and Natural Resources.

On 25<sup>th</sup> February 2016, pursuant to Standing Order No.45 (2) (b), I sought a Statement from the Chairperson of the Standing Committee on Land and Natural Resources regarding the management of community and public land in Machakos County. On 3<sup>rd</sup> May 2016, the Cabinet Secretary for Land, Housing and Urban Development responded to the Committee and the Chairperson responded to my Statement on 13<sup>th</sup> October 2016 in the Chamber. Thereafter, the House deliberated on the response and found it unsatisfactory.

Members raised concerns about the ongoing subdivisions of land in question and resolved that henceforth, the demarcation, allotment and issuance of title deeds of the said pieces of land in question be stopped until the issue is resolved. The Chair directed the Standing Committee on Lands and Natural Resources to invite the Cabinet Secretary for Land, Housing and Urban Development and the Chair of National Land Commission (NLC) to a meeting with Senators to deliberate on this important matter. Indeed, he directed that all committee meetings scheduled on the same time be suspended to allow Senators time to attend and participate in this important meeting.

The Cabinet Secretary for Land, Housing and Urban Development appeared before the meeting of Senators on 16<sup>th</sup> of November 2016 and it was agreed that he responds substantively by 29<sup>th</sup> November 2016. He also undertook to write a letter to stop the demarcation, allotment and the issuance of title deeds regarding the plots of land LR No.149/R and LR No.149/2.in Kiima Kiu and LR/104259 in Athi River, Machakos County.

I would like the Committee to report on the status and when the Cabinet Secretary wrote the letter to state the said demarcation, allotment and freeze on issuance of title deeds on the said pieces of land. Secondly, they should produce the response as has been received from the Cabinet Secretary on the management of the land in question.

Mr. Temporary Speaker, Sir, I beg the indulgence of the Chair because we are about to go on recess and resume early next year. By the time we come back, we might find that the exercise has been completed and the land has been irregularly demarcated and allotted to the wrong people at the expense of the needy people of Machakos who I represent on this matter.

**Sen. Elachi:** On a point of order, Mr. Temporary Speaker, Sir.

**The Temporary Speaker** (Sen. Sang): What is your point of order, Sen. Elachi?

### PROCEDURAL MOTION

#### EXTENSION OF SITTING TIME FOR THE SENATE

**Sen. Elachi:** Mr. Temporary Speaker, Sir, I rise under Standing Order Nos.33 (a) and 34 to move:

THAT, the sitting of the Senate be extended until conclusion of the business appearing on the Order Paper.

I ask the Senator for Kericho to second.

**Sen. Cheruiyot:** Mr. Temporary Speaker, Sir, I second.

*(Question put and agreed to)*

*(Resumption of Statements)*

MANAGEMENT OF COMMUNITY AND PUBLIC LAND  
IN MACHAKOS COUNTY

**The Temporary Speaker** (Sen. Sang): Sen. Muthama has clearly indicated that there was a commitment by the Cabinet Secretary to issue the Statement. It is only the chairperson who can confirm whether that has been done or not. You indicated that it has not been done. We need to know the commitment by the Cabinet Secretary (CS) who should write a letter to stop the said demarcation, allotment and issuance of title deeds on the said piece of land. The question is whether that has been done. What do you have to say?

**Sen. Elachi:** Mr. Temporary Speaker, Sir, I will be lying to the House. The best I can do is commit myself to have the Statement he has read and attach with the HANSARD so that we request the CS to stop what he is doing and meet with the leaders of Machakos County to discuss the matter further.

**The Temporary Speaker** (Sen. Sang): Very well. I direct that you and Sen. Muthama consult right now and agree what needs to be done and then communicate to me right away. Sen. Mutula Kilonzo Jnr., kindly consult with Sen. Elachi and Sen. Muthama on the same and advise me.

Sen. (Prof.) Lonyangapuo, you were supposed to finalize the Order on Statements with your weekly ritual.

BUSINESS FOR THE WEEK COMMENCING  
TUESDAY, 14<sup>TH</sup> FEBRUARY, 2017

**Sen. (Prof.) Lonyangapuo:** Mr. Temporary Speaker, Sir, this is a Statement by the Senate Majority Leader on the business of the Senate for the week commencing 14<sup>th</sup> February, 2017, pursuant to the provisions of Standing Order No.45.

Hon. Senators, I wish to draw the attention of the Senate to the proposed Motion in the Order Paper pursuant to Standing Order No.28(3), to adjourn today, Thursday, 1<sup>st</sup> December, 2016, until Tuesday 14<sup>th</sup> February, 2017 in accordance with the Senate calendar.

During this Session, we have managed to transact and conclude many Bills, Motions and Statements including carrying out various inquiries and investigation in line with the mandate of the Senate. I take this opportunity to thank you for your dedication and immense effort towards clearing the workload that was before the Senate. It has indeed been a fruitful Session. I look forward to seeing you all next year which will be the 5<sup>th</sup> Session of this Parliament.

Hon. Senators, during the first week of the fifth Session, the Senate will proceed as follows;

(a) Tuesday 14<sup>TH</sup> February, 2017, the Senate will meet to approve Senators to serve in the Senate Business Committee.

(b) Wednesday 15<sup>th</sup> February, 2017, the Senate will consider business that will be scheduled by the Senate Business Committee.

(c) Thursday, 16<sup>th</sup> February, 2017, the Senate will continue with the consideration of business that will not be concluded on the Order Paper for Wednesday.

Hon. Senators, there are several Bills awaiting Division at Second Reading sand Committee of the Whole in today's Order Paper. In the event that we are not able to dispose them, I will consult the Senate Minority Leader with a view to request the Speaker to call for a Special Sitting to transact the same. I once more, thank you for the time and energy that you have put in towards the service of the Senate and the nation. I wish you a restful recess. Merry Christmas and prosperous New Year.

I thank you and hereby lay the Statement on the Table; Sen. (Prof.) Kindiki, the Senate Majority Leader.

*(Sen. (Prof.) Lonyangapuo laid the document on the Table  
on behalf of Sen. (Prof.) Kindiki)*

**The Temporary Speaker** (Sen. Sang): Very well. That concludes the Order on Statements.

Next Order.

## MOTION

### ADOPTION OF REPORT ON THE 2017 BUDGET POLICY STATEMENT

**Sen. Billow:** Mr. Temporary Speaker, Sir, I beg to move the report of the Committee on the 2017 Budget Policy Statement.

On behalf of the Standing Committee on Finance, Commerce and Budget and as required under our Standing Orders, we presented this Report to the Members to have a look at it.

**The Temporary Speaker** (Sen. Sang): Order, Senator! Move the Motion.

**Sen. Billow:** Sorry, Mr. Temporary Speaker, Sir. I beg to move:-

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 House on Wednesday, 30<sup>th</sup> November, 2016.

**The Temporary Speaker** (Sen. Sang): Very well.

**Sen. Billow:** Mr. Temporary Speaker, Sir, the Members of the Senate have a critical role in review and approval of Government economic and spending policies which are contained in the Budget Policy Statement as clearly manifested in the functions of the Senate in Article 96 of the Constitution.

Mr. Temporary Speaker, Sir, the BPS sets out the annual revenues amounts to be raised by the national Government and at the same time, its key expenditure policies. Therefore, the role of the Senate is primarily being to protect the counties to look at the

financing of the counties, and to ensure that there is a unified economic policy in counties for all Kenyans; and also, to improve national and intra-county business climate.

Mr. Temporary Speaker, Sir, BPS of 2017 can be categorised into two:-

(a) The national policies and programmes which have a direct impact on the economic performance of counties; and

(b) On the proposals on division of revenue between the two levels of Government.

So, in order to enhance the economic performance of counties and national Government, after looking at the entire report, the Committee came up with a number of recommendations. This is on (v) of the Report. I will quickly gloss over them because Members can have an opportunity to look at them, for example:-

(a) The progress on the 5,000 megawatts energy projects is still unclear. The National Treasury should provide a status report, not just on this one but generally on all the capital expenditure programmes.

(b) We are also concerned about the Public Private Partnership (PPP) projects and their implementation which seems to be moving very slowly. It is important that we get to know the status and impact on the economy.

(c) The operationalization of the cash transfer single registry window for social safety net funds at the national and county which we recommended at the Senate to avoid duplication is yet to be seen; and a number of others, including National Treasury to look at these issues regarding development of a framework to harmonize revenue policies across counties and between the national and county government.

Again, the most important thing is Kenya's debt for which the Senate Committee has expressed serious concern because our debt is expanding at an alarming level. Debt servicing is likely to take up to 40 per cent of Government revenue next financial year. It is already taking 40 per cent. We are concerned that in the next few years, we will be spending much more than half of our entire revenue servicing debt. This is because of the deficit in the Budget which has continued to remain above 6 per cent in spite of the Government's assurance that they will keep it low.

Mr. Temporary Speaker, on the revenue allocations, we are concerned about the inconsistency by the National Treasury's parameters used for determination of revenue for the county governments. In the past, they have used average of the annual growth rate of revenues. This year, they are using more less the average inflation rate. We cannot have this inconsistency in terms of determination of the amount of money that should go to the county governments. The National Treasury needs to appreciate that there has to be predictability in revenues that will go to the counties. That is one of our concerns.

Then there is the issue of the roads. Over 31,000 kilometres were transferred to the counties. This time, the Division of Revenue Bill should have money to take care of this. There is an Intergovernmental Budget and Economic Council (IBEC) meeting to address this and other issues related to division of revenue.

We will not go into further details on this issue because the Division of Revenue Bill and the County Allocation of Revenue Bill will come at an appropriate time when we will discuss this issue. However, I would like to raise a number of issues:-

(1) The commitment of the Government, both at national and county levels to the BPS. This statement informs the economic policies, and, therefore, determines how resources are allocated based on the priorities of the government at both levels; but when

the budgets are done, both levels tend to move away from these estimates sometimes significantly. We have seen it in the national Government but in counties, it is even worse. These are not academic papers or papers just done for the sake of it. They are supposed to guide and influence the budgeting process, and therefore, both levels must strictly adhere to the provisions of these policies once they are approved by both Houses.

(2) I must also express concern on the utilization of these resources at both levels. This Policy Statement does not dwell at length on the challenges being faced on utilization; not just on absorption capacities in both levels but on misuse, misappropriation, mismanagement and literally corruption at both levels of Government that is denying Kenyans the opportunity to benefit from these resources. This is an area of major concern. Reports for 2014/2015 have been published with regard to the counties. It is estimated that as much as half of the entire revenue which went to the county governments, may not have been accounted for. That money is likely to have disappeared. County governors made one of the dumbest statements I have ever heard. They blamed the entire looting on Integrated Finance Management Information System (IFMIS). A system is as good as its users. So, when you created fictitious debts and pay, you cannot say that IFMIS is responsible; or many other inflated contracts, procurement process that have been used which are inimical to the laws that we have.

Therefore, IFMIS is not the problem. It is the use; the lack of integrity. Governors have a responsibility under Section 30 of the County Governments Act. They are responsible. They are the Chief Executive Officers (CEOs). The buck stops with them on the management of resources in the counties. Therefore, to blame the system is wrong. The system is not wrong. There is massive mismanagement and looting which is going on in our counties. The county governments must be held to account. I appreciate the work the Senate is doing in this regard.

In addition, there are misplaced priorities and lack of value for money. In some of the counties, you will find white elephant projects. They have stalled. They cost billions of shillings yet they have not been completed. This is matter of concern.

More importantly, as I conclude, the issue of pending bills is a time bomb. We have seen, starting from my county where the auditor says it was Kshs2.6 billion in June, 2015. Today, the figure could be double that amount. It is happening everywhere. The governors, who will inherit in the next dispensation, will have counties that will have been burdened by debts. They will not be able to pay because under the Public Finance Management (PFM) Act, there should not be any debt. The Controller of Budget approves money for them based on requisition for specific projects. It is important that those issues are addressed by the counties, especially, the county assemblies which have a clear responsibility under the Constitution to ensure that money is spent well.

Mr. Temporary Speaker, Sir, without spending a lot of time, I urge Members to look at this BPS which is what the Government says they have done and will do. Some of things that they have done are not dealt with, throughout this year. We have raised it here with all the Ministries. We did not get an opportunity to receive any submissions from the Standing Committees of the Senate because of time. No Committee was able to submit their report. However, we made significant observations on the BPS. This is provided for here.

I take the opportunity to thank the Committee Members and others who have provided us with information, including, the Commission on Revenue Allocation (CRA)

and the Council of Governors (CoG) who have given us an input; a written memoranda on this BPS.

Mr. Temporary Speaker, Sir, with those few remarks, I beg to move and request the Senator for Makueni to second.

**Sen. Mutula Kilonzo Jnr.:** Mr. Temporary Speaker, Sir, I rise to second the Motion that we adopt the report on the Budget Policy Statement 2017. I need not repeat the sentiments of my Chairman. Only to say that as usual, the Senate has been unable to interrogate the Budget Policy Statement in detail because of the timelines. The proposals to change the timelines have not seen the light of day as a result of which the Committee on Information, Communication and Technology which had serious issues to raise about the Budget Policy Statement have not found their way here.

Since I chair the meeting on ICT, let me point out two issues. One, this Government has planned to spend Kshs4.3 billion in Universal Service Fund. This Fund is supposed to roll out 3G-O network across the country. Only 17 per cent of Kenya's land area is covered by 3G network, 54 per cent is covered by 2G network and the rest of the country has no network. The Universal Service Fund has been lying at the Communications Authority (CA) without being used as a result of which although the Committee on Legal Affairs and Human Rights led by Sen. Wako and Sen. Sang, the intention to have an electronic based election of transmission of results will not be possible until the Universal Service Fund is rolled out in its entirety in the whole country. I was hoping that a serious statement to that effect would be issued. It has an effect on e-procurement because it affects last mile connectivity.

The second issue is on pending bills which the Chairperson has mentioned. We have discovered that, in fact, there are lots of pending Bills in the ICT sector because the national Government has not followed the Budget Policy Statement. There is a programme called the Constituency Wi-Fi Programme where the Ministry of ICT rolls out ICT in schools in various regions. From the interrogation of the Budget Policy Statement for the last year, the ICT Committee has concluded that that programme was not in the Budget Policy Statement. The Ministry for Information, Communication and Technology, although the programme is useful and I have uploaded it, has created a pending bill. So, there must be value for the Budget Policy Statement as the Chairperson has said. Somebody must follow it because it must dictate something.

The Chairperson has also said that the parameters used for the division of revenue, although there appears to be an increase – for example, there is an increase of almost Kshs2 billion for Makueni County in the Financial Year 2017/2018 – are not correct because it is an average as opposed to consistent growth. If there is growth in revenue and the economy, there must be corresponding growth in the revenue allocated to counties. The national Government has re-classified roads. Under Article 187(2), these functions are supposed to be followed by funds, but what is more important other than the funds under the Constitution is capacity. I am not sure whether counties that have not dug boreholes, dams and fish ponds and have the capacity to conduct the work of the Ministry of Roads and Infrastructure. These things should have been followed maybe through the Committee chaired by Prof. Karega Mutahi, an assessment of the capacity of counties.

Lastly, the other reason that your Committee of Legal Affairs and Human Rights, my Committee on Information Communication Technology and others appear disinterested in this process is because this is the third time that we are doing this. The

Chairperson, Sen. Billow, has been doing a tremendous job in ensuring that we follow the timelines. However, it has been an academic exercise. This is just paper work for us, but everybody ignores us and nobody follows. So, chances are that, in fact, I am not quite sure the reason we insist on doing these things if we cannot follow it. The recommendations of this Senate on everything, including the ones affecting counties have never been implemented and I doubt they will ever be implemented. We talk too much and nobody listens. God save this county and the Senate.

*(Question proposed)*

**The Temporary Speaker** (Sen. Sang): There is no interest on this particular one. I now ask the Mover to reply.

**Sen. Billow:** Mr. Temporary Speaker, Sir, I thank the Senator for Makueni County on the issues that he has raised. It just because of time, but I am sure Members would want to contribute. There is one important issue that I want to say here and is important for the purpose of division of revenue, allocation of money to counties. The term for the Commission on Revenue Allocation is supposed to end at the end of December. We have advised Parliament to advertise those positions. The Senate should appoint their five, the National Assembly their two to enable the President to appoint the Chairman and we conclude this matter so that they can hand over. In fact, tomorrow, Friday, is their farewell party for the Commission.

It is a pity that we are moving very slowly particularly in Parliament in getting--- I know that the advertisements have been done, but I think it is important in order to ensure that we get the right people. I urge Parliament to ensure that those people who have been shortlisted are interviewed by the relevant Senate and the National Assembly committees. In 2010, they were interviewed by the Committee on Finance, Commerce and Budget.

I urge both Houses to allow relevant committees to interview those people who have been shortlisted so that we can get the people who are appropriately qualified to handle that docket because it is very important. It is the main institution that ensures the survival of counties in terms of the resources that are given.

With those few remarks, I beg to reply.

**The Temporary Speaker** (Sen. Sang): Sen. Billow, from the numbers in the House, would we kindly proceed to make ---

**Sen. Billow:** Mr. Temporary Speaker, Sir, I seek your indulgence to defer putting of the question on this Motion under Standing Order No.54(3) to a date other than today so that we can then do the Division on that day.

**The Temporary Speaker** (Sen. Sang): Very well. So, ordered. Putting of the question is deferred to the next time it is on the Order Paper.

*(Putting of the Motion deferred)*

Next Order.

**STATEMENTS****MANAGEMENT OF COMMUNITY AND PUBLIC LAND  
IN MACHAKOS COUNTY**

**Sen. Muthama:** On a point of order, Mr. Temporary Speaker, Sir. You just asked us to consult with my colleague, Sen. Elachi. We have reached a conclusion which we briefed the Chair. So, I seek the indulgence of the Chair to have some guidelines on that.

**The Temporary Speaker** (Sen. Sang): Very well. On this issue raised by Sen. Muthama, I now direct that the Clerk of the Senate shall write to the Cabinet Secretary (CS) requesting him to comply with the commitment that he gave to this House and that the same letter should be copied to both the Senate and Sen. Muthama. I so, direct.

Next Order.

**Sen. Muthama:** On a point of order, Mr. Temporary Speaker, Sir.

**The Temporary Speaker** (Sen. Sang): What is your point of order, Sen. Muthama?

**DETENTION OF MR. PHILIP MBITHI MUTISO  
BY TANZANIAN AUTHORITIES**

**Sen. Muthama:** Mr. Temporary Speaker, Sir, we have a few Statements that have been listed to be responded to. I have received a reply from the Chairperson of the Committee on National Security and Foreign Relations. It has not been mentioned although it is listed as Statement (h). May I know the position on that Statement because it was to be dealt with today?

**The Temporary Speaker** (Sen. Sang): Sen. Muthama, you have confessed that you have a written response. You are luckier than many of the Senators whose Statements appear on the Order Paper and they do not have responses. However, the Chairperson of the Committee is not present. That applies to a number of Statements including yours truly. We will defer them until the next time they will appear on the Order Paper.

*(Statement deferred)*

**MOTION****ADOPTION OF REPORT OF THE SBC ON THE COMPLAINT BY  
GOV. KIDERO ON THE CONDUCT OF SEN. MBUVI SONKO**

**Sen. (Prof.) Lonyangapuo:** Mr. Temporary Speaker, Sir, I beg to move the following Motion:-

THAT, the Senate adopts the Report of the Senate Business Committee (SBC) on its inquiry into a complaint made by Governor (Dr.) Evans Kidero regarding the conduct of Senator Mike Gideon Mbuvi Kioko Sonko, laid on the Table of the House on Thursday 1st December, 2016.



Mr. Temporary Speaker, Sir, allow me to give a brief background to the Report. The Governor of Nairobi City County, Dr. Evans Kidero, lodged a complaint with the Speaker of the Senate regarding events that took place during a sitting of the County Public Accounts and Investments Committee (CPAIC) held on 15<sup>th</sup> June, 2016.

Gov. (Dr.) Kidero had appeared before the Committee to respond to audit queries raised by the Auditor-General regarding financial operations of Nairobi County Executive, while Sen. Mike Sonko was attending the sitting as a friend of the Committee and the Senator for Nairobi City County. During the sitting, an altercation arose which forced the Chairperson of the Committee to prematurely adjourn the sitting.

In his letter to the Speaker of the Senate, Gov. (Dr.) Kidero stated that Sen. Sonko had acted in an indecorous and unparliamentary manner towards him and other officers of the county government who accompanied him to the meeting. The Governor, therefore, sought an assurance from the Speaker that public officers appearing before Senate committees would be protected from physical and verbal abuse and that a credible inquiry into the matter would be undertaken.

Mr. Temporary Speaker, Sir, the Chairperson of the Committee, Sen. (Prof.) Anyang'-Nyong'o, had also reported the matter to the Senate on 16<sup>th</sup> June, 2016. The Ethics and Anti-Corruption Committee (EACC) also wrote to the Speaker on 17<sup>th</sup> June, 2016, raising concerns regarding the conduct of Sen. Sonko and Gov. (Dr.) Kidero during the said meeting. The Commission called for an investigation into the matter and that appropriate action be taken in respect to the officers involved.

Further, the Chairperson of the Council of Governors, Gov. Peter Munya, wrote to the Speaker on 17<sup>th</sup> June 2016 raising concern regarding the treatment of county governors appearing before the Senate and its committees. This, therefore, is a matter that generated substantial interest both within and outside Parliament.

Mr. Temporary Speaker, Sir, having considered the complaint by Gov. (Dr.) Kidero and noting the need to uphold the standards and dignity of the Senate, the Speaker referred the matter to the Senate Business Committee for its consideration and appropriate action. Consequently, the Committee proceeded to hold an inquiry into the matter. During the inquiry, the Committee invited and heard from Gov. (Dr.) Kidero and Sen. Mbuvi as well as witnesses called by Gov. (Dr.) Kidero. The Committee also received the testimony of the Chairperson of the County Public Accounts and Investment Committee (CPAIC) Sen. (Prof.) Anyang'-Nyong'o, considered the official HANSARD record of the Committee proceedings as well as the incident report on the matter as filed by the Chief Serjeant-at-Arms.

The issue which the Committee needed to determine during its inquiry was as follows:-

**The Temporary Speaker** (Sen. Sang): Sen. (Prof.) Lonyangapuo, you cannot take us through verbatim reading of the report, give highlights. You are well experienced on matters of Motions and Bills. Give us highlights, please.

**Sen. (Prof.) Lonyangapuo:** Mr. Temporary Speaker, Sir, as I highlight, let me mention the three areas that we needed to inquire into:-

- (a) Whether the allegations made by the Gov. Kidero against Sen. Mbuvi in relation to the meeting held on 15<sup>th</sup> June, 2016 were substantiated;
- (b) That if the allegation were found to have been substantiated, whether the allegation constituted a breach of the Standing Orders; and

(c) The appropriate recommendation to make, including its applicable disciplinary action to be taken.

Mr. Temporary Speaker, Sir, as you have guided, I want to say that the Committee, the RBC, the Senate Business Committee sat and appointed a small committee to look into it and considered every evidence that was brought before it by the people I have just mentioned and other witnesses. Based on the findings that came out of these presentations by the witnesses, and having refused as sanctions provided for in the National Assembly Powers and Privilege Act and the Senate Standing Orders as well as practices from other Commonwealth jurisdictions, the Senate Business Committee recommends that:-

(a) Disciplinary action be taken against Sen. Mbuvi by requiring him to apologise to the Senate at the Bar of the Senate.

(b) The offensive words uttered by Sen. Mbuvi with regard to Gov. (Dr.) Kidero, more specifically the allegation that “Gov. (Dr.) Kidero was a thief and a murderer”, be expunged from the HANSARD record of the proceedings of the CPAIC, sitting of 15<sup>th</sup> June 2016.

Those were the recommendations of the Senate Business Committee during its inquiry and observations of the matter. Having looked at all the recommendations this is what we are tabling. These recommendations are discussed in greater detail in the report of the Committee and are also considered in the ongoing periodic review. Therefore, I recommend that the Senate Business Committee to this House requests fellow Senators to consider and adopt this Report in a nutshell.

I beg to move.

**Sen. Elachi:** Mr. Temporary Speaker, Sir, I beg to second the Motion. I believe the Senator will be given the recommendations that came out of these report so that when we come back from recess, he will be able to apologise to this House and to Gov. (Dr.) Kidero.

Mr. Temporary Speaker, Sir, having said that, it is also important for all of us, politicians, to adhere and respect our rules and Standing Orders. We looked at different countries including Canada, India and the United States and they have the same rules and regulations. In any committee, we should do business as provided for by the Standing Orders.

I beg to second.

*(Question Proposed)*

**The Temporary Speaker** (Sen. Sang): Hon. Senators, this is not a matter affecting counties. Therefore, we do not need delegations in voting.

*(Question put and agreed to)*

Very well. Next Order!

**COMMITTEE OF THE WHOLE**

CONSIDERATION OF THE PRESIDENTIAL MEMORANDUM ON THE  
PETROLEUM (EXPLORATION, DEVELOPMENT AND PRODUCTION)  
BILL (NATIONAL ASSEMBLY BILL No. 44 OF 2015)

CONSIDERATION OF THE PRESIDENTIAL MEMORANDUM ON THE  
ENERGY BILL (NATIONAL ASSEMBLY BILL No.50 OF 2015)

*(Committee of the Whole deferred)*

**BILLS***Second Readings*

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

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

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

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

THE CONSTITUTION OF KENYA (AMENDMENT)  
BILL (NATIONAL ASSEMBLY BILL No. 26 OF 2013)

THE CONSTITUTION OF KENYA (AMENDMENT) (No. 2)  
BILL (NATIONAL ASSEMBLY BILL No. 2 OF 2015)

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

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

*(Bills deferred)*

**COMMITTEES OF THE WHOLE**

THE PRESERVATION OF HUMAN DIGNITY AND  
ENFORCEMENT OF ECONOMIC AND SOCIAL RIGHTS BILL  
(SENATE BILL No. 8 OF 2015)

THE PERSONS WITH DISABILITIES (AMENDMENT)  
BILL (SENATE BILL NO. 13 OF 2015)

THE BASIC EDUCATION (AMENDMENT) BILL  
(NATIONAL ASSEMBLY BILL NO. 35 OF 2014)

THE NATIONAL CEREALS AND PRODUCE BOARD  
(AMENDMENT) BILL (SENATE BILL NO. 15 OF 2015)

THE COUNTY STATUTORY INSTRUMENTS BILL  
(SENATE BILL NO. 10 OF 2015)

THE PHYSICAL PLANNING BILL  
(NATIONAL ASSEMBLY BILL NO. 46 OF 2015)

*(Committee of the Whole deferred)*

## **BILL**

### *Second Reading*

THE KENYA ROADS BILL (NATIONAL ASSEMBLY  
BILL NO. 26 OF 2015)

The Mover is not in the House.

*(Bill deferred)*

## **MOTIONS**

INSTALLATION OF CCTV CAMERAS  
IN ALL POLICE STATIONS AND POSTS

THAT, CONCERNED about the numerous reports of the arbitrary arrests of innocent people by the police;

FURTHER CONCERNED that a large number of those arrested are allegedly locked up in police cells without being recorded either in the Occurrence Book or elsewhere;

DEEPLY CONCERNED that some of the arrested people disappear without a trace and that many who are subsequently traced are found dead away from where they were known to have been locked up;

ALARMED by the recent incident where three young men were locked up for hours at Syokimau Police Post without any record indicating they had been at the police post, only for them to be found days later, in another area far from the police post, having been brutally killed;

APPRECIATING that the Closed Circuit Television (CCTV) system installed by the Government in Nairobi has helped a lot in criminal investigations;

NOW THEREFORE the Senate calls upon the National Government to-

- (a) install CCTV cameras in all police stations and police posts in order to record each and every person going in and out of the station;
- (b) have the CCTV system designed in such a way that it is capable of capturing the Occurrence Book entries every twelve hours; and,
- © ensure the CCTV system is connected to a central depository in order to minimize chances of subsequent tampering.

ADOPTION OF REPORT ON DISORDERLY CONDUCT IN  
CPAIC BY THE GOVERNOR OF MURANG'A COUNTY

THAT, the Senate adopts the Report of the Sessional Committee on the County Public Accounts and Investments on the disorderly conduct of Honourable Mwangi Wa Iria, the Governor of Murang'a County, laid on the Table of the House on Tuesday 29th November, 2016.

COUNTRYWIDE AUDIT ON THE DISTRIBUTION  
OF TEACHERS IN PUBLIC SCHOOLS

WHEREAS Article 43(1)(f) and 53(1)(b) of the Constitution guarantees every citizen a right to education and every child a right to free and compulsory basic education, respectively;

NOTING that the Teachers Service Commission is mandated to handle employment, deployment, remuneration and discipline of teachers in public schools in Kenya;

CONCERNED that there are great disparities in the distribution of teachers in public schools across the country leading to oversupply in some schools and undersupply in others and ultimately leading to major teacher shortage especially in rural and marginalized areas;

APPRECIATING efforts made by the national government to improve the teacher pupil ratio to international standards in all public schools through yearly employment of teachers;

FURTHER CONCERNED that the statistics on the number and distribution of teachers in public schools is not readily available;

NOW THEREFORE, the Senate directs the Ministry of Education, Science and Technology to conduct a countrywide audit on the distribution of teachers in all public schools indicating the requisite establishment per school and the corresponding number of teachers who are in-post and further that the Ministry submits a report to the House on the matter within ninety (90) days.

IMPLEMENTATION OF THE NATIONAL SPECIAL NEEDS  
EDUCATION POLICY FRAMEWORK, 2009

AWARE that Article 43 (1) (f) of the Constitution of Kenya provides that every person has the right to education and that Article 53 (1) (b) of the Constitution provides that every child has the right to free and compulsory basic education;

COGNIZANT that Article 54 (1) (b) of the Constitution provides that a person with any disability is entitled to access educational institutions and facilities for persons with disabilities that are integrated into society to the extent compatible with the interests of the person;

RECOGNIZING that education in Kenya is a shared function of both the county and national governments;

CONCERNED that while significant gains have been made under the Free Education Programme introduced in the year 2003, access and participation of children with special needs is generally low across the country and their needs have not been specifically addressed;

NOW THEREFORE the Senate directs the Standing Committee on Education to inquire into the performance of the Ministry of Education, Science and Technology in the implementation of the policy statements and strategies made in the National Special Needs Education Policy Framework, 2009 and report back to the Senate within three months.

ADOPTION OF EALA REPORTS AND RESOLUTIONS  
PURSUANT TO STANDING ORDER NO.235

THAT, the Senate notes the Report of the Standing Committee on National Security and Foreign Relations on the EALA Reports and Resolutions pursuant to standing order 235 laid on the Table of the House on Tuesday, 19th April, 2016.

ADOPTION OF REPORT OF THE 38TH SESSION OF THE  
UNESCO GENERAL CONFERENCE IN PARIS, FRANCE

THAT, the Senate adopts the Report of the Standing Committee on Education on the 38th Session of the UNESCO General Conference in Paris, France held at UNESCO Headquarters from 3rd to 18th November, 2015 laid on the Table of the House on 14th April, 2016.

*(Motions Deferred)*

**MOTION FOR ADJOURNMENT**

ADJOURNMENT OF THE HOUSE PURSUANT TO THE  
APPROVED CALENDAR FOR THE 2016 SESSION

**The Temporary Speaker** (Sen. Sang): Senate Majority Leader, proceed.

**Sen. Elachi:** Mr. Temporary Speaker, Sir, pursuant to Standing Order No.28 (3), the Senate do adjourn until Tuesday, 14<sup>th</sup> February, 2017.

First of all, I wish to thank all the Senators---

**The Temporary Speaker** (Sen. Sang): Order, Senator. You need to do it the proper way; I would like to move that...

**Sen. Elachi:** Thank you, Mr. Temporary Speaker, Sir. I beg to move:-

THAT, pursuant to Standing Order No.28 (3), the Senate do adjourn until Tuesday, 14<sup>th</sup> February, 2017.

We have come to the end of this Session with a lot of high hopes that we started from a foundation that we laid. In four years, I believe Kenyans are able to understand what the role of the Senate is in this country. We have been able to ensure that counties have received monies and resources. We have ensured that for the last four years, regardless of the challenges that we faced, the Senate has played its oversight role over counties.

Mr. Temporary Speaker, Sir, we have been able to deal with many Bills that have come from the National Assembly even when our Bills have gone there and up to date, we have very critical Bills that never came back to this House. However, the most important thing is that the Senate has been able to build a foundation so that although we know that next year is an election year, when we come back, we shall be able to finish the business that we have so that when the new Senate comes in, they will appreciate the work we will have done.

We have different challenges in different counties. We know that health is a devolved function and we hope that before we go for elections, this Senate will assist counties to do what is required, especially with regard to remuneration of those who work within the health sector. We hope that those who aspire to be governors will do that diligently. They should bring change and services that Kenyans wanted when they were passing the new Constitution.

Mr. Temporary Speaker, Sir, today, counties have different accounts in different commercial banks. I think it is time this Senate and the National Treasury sat down to ensure that we have one account at the Central Bank of Kenya so that each county can run smoothly without the many commercial accounts. For example, to date, we have Kshs836million of county governments lying at Chase Bank because they are unable to withdraw it. They should be made to answer questions why they opened commercial accounts knowing very well what the Public Finance Management (PFM) Act says. These are some of the questions that every Senator should go back and ask their governor whether they have money lying in different commercial accounts. That is money being stolen by people. We have said that corruption is a cosmetic word. It is better to be brunt and call it "stealing".

This Senate stood together regardless of our political divide. We have our own difference, but in times of running the Senate business, I believe we stood above our political divides. I hope that as we go for the campaigns, we can still maintain and show the country that we are there to compete, but not to cause divisions along ethnic lines. I hope that 2017 politics will be peaceful. In the end, Kenyans will appreciate that it was a competition and whoever wins be congratulate by the loser.

Finally, we deferred many businesses because we could not raise the requisite numbers to vote. It is sometimes important to carry ourselves beyond our limits in serving Kenyans. It is our wish to see Kenya move forward in terms of development.

We will have the devolution conference next year. I ask all governors to attend it because it is we, as Senate, who have made sure billions of shillings have been sent to the counties. Therefore, we need to work as a team for the benefit our people. I hope in 2017, governors will also rise above the politics and sit with Senators for the sake of devolution. For those who will be contesting gubernatorial seats, you should be ready for the shock of your life because you might find empty coffers and a lot of debt incurred by current governors throughout the country.

I know that we, Senators, will be blamed at that time. Therefore, it is not just something for governors, but both of us. It is because at that time, Kenyans will turn their backs and never remember that we never had money for oversight. They will only remember the work of the Senator was to ensure that their monies are safe. I pray that Kenyans will understand where the Senate has come from and how it has suffered. Without resources, it is not easy to oversight. I hope that Kenyans will change the culture of believing that a politician must have the Constituency Development Fund for them to feel that there is something that they are doing. We now need to embrace the new Constitution where the role of a Member of Parliament (MP) is to oversight and make laws to govern and protect our country.

I thank the Government for standing in every difficult time regardless of how we have felt about them and seen counties move. We know very well that governors have been unable to raise the bar of revenue collection. It is a pity that the law had envisaged that in three years, counties would collect more revenue. It had also been envisaged that some counties would even forego their share of revenue from the national Government and donate it to counties that are struggling. To date, even Nairobi County itself cannot celebrate because they are in debt just like other counties. In fact, they have more debt compared to when they took over from defunct City Council. This is despite structures of collecting revenue and more revenue being introduced for them to survive.

I wish every Senator and our staff a Merry Christmas and a happy New Year.

For parents whose children performed well in just released results of the KCPE, please, make sure you have school fees to take them to the next level.

With those few remarks, I beg to move and ask my colleague, the Minority Whip to second.

**The Temporary Speaker** (Sen. Sang): Sen. Elachi, are you sure that those are very few remarks?

Proceed, Sen. Muthama.

**Sen. Muthama:** Thank you, Mr. Temporary Speaker, Sir. I stand to second the Motion on Adjournment that has been moved by my colleague, Sen. Elachi. First, I give credit to the leadership of the House and the Speaker for conducting a successful but difficult Session. This House has worked around the clock, but there have been serious barriers in the process of trying to achieve and deliver services to Kenyans. Nevertheless, Senators have done their work.

I am sure that Kenyans have understood that the Constitution that brought devolution is working. Governors have been given powers to work and distribute the



money that has been allocated to the counties. However, they have not worked to the expectations of Kenya.

Mr. Temporary Speaker, Sir, we have been frustrated by the “Lower House”. We have faced challenges with regard to some Bills which the National Assembly has decided to pass without consulting the Senate, as it is required by the Constitution. We have raised these issues, but they have not been considered. We were denied funds for oversight, yet we represent larger areas and we are paid the same salaries as Members of the National Assembly.

Mr. Temporary Speaker, Sir, my county has eight constituencies and the electorate expect me to listen to them and address their grievances. However, my salary is equal to that of a Member of the National Assembly. The Women Representatives in the National Assembly also have funds to facilitate their movement, but the Senators have been denied the same. I can only conclude that this is happening because someone somewhere is putting effort to ensure that devolution does not succeed.

The same happened when the Senate requested for more funds to be allocated to the counties. I thank God that the extra money was not allocated to the counties because of the corruption that we are facing in the country. The national Government is not doing much in the fight against corruption. I am in the Opposition and have been at the forefront in criticizing corruption.

Even within the opposition coalition where I belong, I am surprised to hear that some of our Members are linked to much talked about loss of funds at the National Youth Service (NYS). The NYS saga is mega corruption in this country.

Mr. Temporary Speaker, Sir, there is falsehood that is being spread from our opposition side of leadership that so and so stole and so and so is doing this and that. It is even worse on the Government side. We have the President and his own sister being mentioned in corruption scandals. Even the Deputy President has been put in a corner to defend himself and his officers. Therefore, without taking sides, the biggest question is who will stand to protect poor Kenyans.

If you look in our archives of what has been happening in this country and the speeches by first President, the late Jomo Kenyatta, serious issues were raised yet nothing was done. In Moi’s Government, we had the “five bearded sisters”; Anyona, Martin Shikuku, among other as the best debaters in the August House. At some point, Martin Shikuku was referred to as the people’s watchman. All those debates and archives were to defend the poor yet no action was taken.

I was in the Tenth Parliament under President Kibaki where we had Cabinet Ministers who stepped aside to be investigated. The issues were concluded just as they are being concluded now in the Fifth year of President Uhuru Kenyatta. For how long shall we pretend to be true representatives of the people from whom every five years we go back to ask them to elect us to come back here? All we see from the elected leaders are nice suits imported from Italy and big Mercedes Benz cars. Their issues are not resolved whereas they vote in every general election. This is a shame to the head of State to say; what exactly do you want me to do? I have done my part with the corruption.” If the Head of State can raise that question, is this the end of our lives in this country?

The President needs to take action. He just needs to make a few steps from where he is sitting, leave the people he is sitting with and tell them that he belongs to the people

who elected him. He should take the risk. I know our President very well but his courage will be determined by what action he takes against corrupt people regardless of the outcome of his re-election. He should defy his tribesmen who are holding him captive under one party. He went ahead to encourage those with him in the Jubilee Coalition to come up with one political party. It is unacceptable for him to say that he does not know what to do with corruption. If it is true that people are bewitched, then President Uhuru Kenyatta is bewitched. That is not the man I knew. He could not have performed in that manner.

**The Temporary speaker** (Sen. Sang): What is it, Sen. (Prof.) Lonyangapuo?

*(Sen. Muthama remained on his feet)*

Order, Sen. Muthama. You cannot be on your feet.

**Sen. (Prof.) Lonyangapuo:** Mr. Temporary, Speaker Sir, is Sen. Muthama in order to mislead us by saying that the Head of State looked hopeless. The Head of State was addressing his heads of department on site. It was privileged information that we were not supposed to have got. He was bold enough to ask the question when all of us were watching. He was not addressing us.

**The Temporary Speaker** (Sen. Sang): Sen. Muthama, you have to be relevant to the Motion. It is a Motion of Adjournment.

**Sen. Muthama:** Mr. Temporary, Speaker Sir, I do not think I used the word “hopeless”. I said that President Uhuru Kenyatta demonstrated courage albeit with some weakness when he said ‘I do not know’. That is an open statement. Those are not my own words but the words of the Head of State. He said that. I have talked about his courage. Why is it that there is no point of order when I talk about his courage? I have been accused of hate speech but I have never been found guilty because I measure my words.

We have seen what has happened in counties. I attended the County Public Accounts and Investment Committee sitting when they were dealing with the auditor’s query on Machakos County. Sen. (Prof.) Lonyangapuo who is now trying to silence me was chairing the County Public Accounts and Investments Committee. He is an eye witness and has received devastating statements about Machakos County Government. The most worrying thing is that the MCAs who are supposed to play the role of oversight are the ones who accompanied the Governor as his witnesses. They came to support the crimes that he has committed and said that he had done nothing.

The governors must be jailed just as it happened in Nigeria. I want to ask the County Public Accounts and Investments Committee to come up with very firm recommendations as they complete the hearing of the auditor’s queries which assist us to ensure that these people are sent to where they belong so as to stop corruption in this country.

As we go on recess, we are going to be faced by challenges of the upcoming elections which is something that every Kenyan is looking up to. I want to advise the Government and IEBC to stick to the Motion that was negotiated and agreed upon outside Parliament. I understand that there was voting today in the National Assembly where they amended some of the agreed clauses. One of them is the one that says that we should not have more than 500 registered voters in every polling station. The information I have is that it has been amended to 700 registered voters.

Mr. Temporary Speaker Sir, could I have two more minutes? We do not have many contributors in the House.

**The Temporary Speaker** (Sen. Sang): You have expended your time. You could have 30 more seconds.

**Sen. Muthama:** Mr. Temporary Speaker, Sir, thank you. We should stick to the agreed points of the Motion so that we do not create misunderstandings in this country.

With those many remarks, I wish every Senator and every elected person in the Republic of Kenya a Merry Christmas and a happy New Year.

*(Question proposed)*

**Sen. Cheruiyot:** Mr. Temporary Speaker, Sir, I rise to support this Motion of Adjournment but with a very heavy heart. I am in a reflective mood this evening. This has been a wonderful Session for me. At a personal level, I came alive to the happenings of the Senate. Being a new Member, I learnt many things and made my contribution in a small way into securing the gains of this country. This is especially in regard to devolution and protecting the rights and interests of the citizens of Kericho County who elected me.

As we head to this sessional break, we do it knowing there are many things that we have learnt in this House. I only wish that the relevant authorities could take time to listen to the experience Senators have especially in matters of devolution and the challenges that our county governments are facing. We sit in committees every day and I have specific experience because I sit in the Committee on Finance, Commerce and Budget where petitions are filed every week from different counties. We get to read and see the rot in the counties and the challenges that devolution is facing at this very nascent period of its existence. As a Senator, you then realise that there is only so much that you can do.

We can come to this House and speak as much as we can. Unfortunately, if there is no goodwill from other leaders and sectors of Government, including the Executive – since they are the ones who give direction – we cannot do much. I am convinced beyond reasonable doubt that if the Executive, deep down in its heart, felt that there was reason to strengthen the Senate so that we can stop the looting in counties, they have the capacity to do so.

Mr. Temporary Speaker, Sir, we know how the National Assembly that we continue to blame every now and then responds. We have also seen from past experiences how they have made about-turns on issues that perhaps, in principle, they did not agree with. However, because of the respect or maybe otherwise, that they have for the Executive, they have had to make certain concessions. One wonders what is so difficult with this issue of oversight. For example, the issue of the oversight fund that we have discussed for so long in this House should not be misconstrued at one moment to believe that we are looking for this fund to enrich ourselves.

I look at the calibre of leaders that are in this House. Some of them have had the opportunity to oversee funds that are 100 times larger than the amounts that we are overseeing. Maybe some of us can be suspected because we are still young – you know with being young comes being broke - people can imagine other things. However, there are people like Sen. (Prof.) Lonyangapuo who served as a Cabinet Secretary (CS) and

oversaw a very integral Ministry. When he asks for Kshs17 million to Kshs20 million so that he can go around West Pokot County, this is so that he ensures that the money allocated to his county is used for the needs of the residents of West Pokot County. Unfortunately, he is not being given this money. One wonders why it is so difficult and why people do not want to live by such realities of our time.

Devolution is real and we cannot gainsay it. Residents of this country have felt it. If there is a game changer that has happened in this county in the last 50 years of its existence, it is devolution. This House, as the first line of defense of devolution, deserves more respect than it gets.

Mr. Temporary Speaker, Sir, I do not want to lament, but appreciate the kind of work that has been done during this particular period. The debates that I have witnessed here have been extremely enlightening to me as a young leader. I listened to the nuggets of wisdom that the experienced leaders drop here each and every afternoon that we have gathered and it has been a fulfilling experience.

As we head to recess, I call upon the Senators most of whom are blessed with enormous resources not to stand aside and watch as things go down the drain. This is the most critical time. I am convinced that now more than ever - when some people are fronting their manifestos and declaring their candidature for governorship - the people of Kericho need their Senator to rise to the moment. Before someone speaks about the things they intend to do for the county, it is incumbent upon the Senator to tell them the amount of funds that we have sent to the county and what we have been able to achieve and not achieved.

Mr. Temporary Speaker, Sir, I believe that leaders are suppose to lead and not to be led. I strongly feel that we should execute our mandate properly within the two months that we will be on recess to share with our citizenly and help them understand what devolution means. The position of a Senator is not just another political seat; it is a seat that can transform the lives of the people and ensure that all the poor children in the society get good education and study in decent classrooms. This is because Early Childhood Development Education (ECDE) is a devolved function. People should also be able to get piped water.

Governors should stop spending hundreds of millions on the Council of Governors (CoGs) and instead focus on improving rural infrastructure and providing basic needs and medication in the hospitals. If that happens, we will appreciate the gains that we have worked tirelessly for. As leaders, we should never forget how much it took us to get the new Constitution. It should not escape our minds that there are people who lost their lives trying to produce this document. We now have 47 county governments that depend on the national Government to transform the lives of *wananchi*. The residents of the communities that we come from yearned for an opportunity to have services closer to them.

Mr. Temporary Speaker, Sir, we have achieved some of these things, but we still have challenges in the devolved health care system. We even have quacks carrying out operations. It is an indictment on us, as leaders, to have someone walking into a hospital, putting on a white coat and carrying out procedures on innocent *wananchi*. I do not believe we are as innocent as we may pretend to be.

Mr. Temporary Speaker, Sir, despite being denied the chance to sit on the table where some of these key decisions are made in the counties, I still believe that we have

the capacity to rise up to the challenge and show leadership. Sometimes, it takes someone to rise up and do something for things to change.

This afternoon, we have spoken well about the good job that has been done by Cabinet Secretary for Education, Dr. Matiang'i. If there is anything that we can take out of his success, it is that if anybody is determined and sets it in their mind that there is something they want to achieve, for sure, they will achieve it.

We are breaking for a long recess. However, I am happy for the time we have been here together. I wish my colleagues who are here and those who left early a nice break; a time to reflect. Let us come back re-energised so that we can conclude the remaining months of this term and move this country forward.

**Sen. (Prof.) Lonyangapuo:** Mr. Temporary Speaker, Sir, I join my colleagues in supporting this Adjournment Motion. The Mover, Sen. Elachi and the seconder, Sen. Muthama, have eloquently presented it. We will break for about two months. The oversight funds that we have been requesting for would have been useful at this time. This money would not have been for our use, but to help us establish a technical team that would have enabled the office of the Senator to thoroughly look at the happenings in the county.

It is regrettable that the famous Sen. Sang Bill that would have compelled all leadership elected and stakeholders in the every county to be meeting once in a while to look at the progress in the counties did not sail through. The mess that we are seeing today through the issues raised by the Auditor-General would have diminished. This is because the counties would have benefited from the knowledge of the Senator who would have explained how the counties would focus on projects and how rules should not be broken.

I understand the frustrations that Sen. Muthama has gone through this week. The Governor has been appearing before the County Public Accounts and Investments Committee (CPAIC). Major issues are being raised in the Committee. The Governor looked mesmerized. However, the chain of human beings who were there – I had time to sit down with Governor Mutua and I asked him: “I thought we used to work together, what happened?” He said: “This is not a small department. This is a Government and everybody is inside it.” Do you remember someone once said that pick-pockets are found in the bus when the driver is ahead driving? This is when you need more transparency than working closely with the people. When the President was talking to the agencies of Government whose staff were earning salaries of over Kshs1 million per month and results coming to zero--- That is why I was told, Sen. Muthama, that it was not an ugly presentation. We expect the President to move to stage two. He should deal with the people who are not listening to him.

Mr. Temporary Speaker, Sir, let us visit where we can manage to reach. I know the election year is nearby. I am also told our colleagues in the “Lower House” are today going for recess. Some of them have not been visiting their counties; it is their constituencies that are sub-counties. What Senators have been saying that there is a mess on the ground, let them go and get it. When they return in February, they should tell us what they saw. Many things are lacking in the counties.

I am told Sen. Sang will tomorrow morning be visiting a hospital that is in a mess. Even the latrines in the hospital have broken down. Rumour has it that characters there are running up and down pretending to work. Where were they yesterday and last week?

Suppose Sen. Sang was empowered, how much work would have been done? If Senators are empowered to be keen, every employee will be alert because they do not know when oversight will strike.

Mr. Temporary Speaker, Sir, lastly, it is a shame that the people who were supposed to be working with Sen. Muthama were like bodyguards of the Governor of Machakos County. They were the Leaders of the Majority and the Minority. Practically, the House was “dead”. The mace was missing. Things are that bad. However, do we blame the governor? No. As the Senate, there are some things we need to review. Could we revisit the powers of the Senate that were “killed” before this Senate was born? Is there a way they can be restored so that the future Senators can safeguard devolution?

I do not want dwell on this further but to wish all of us safe journeys back home and Merry Christmas and a Happy New Year. I thank the County Public Accounts Investment Committee chaired by Sen. (Prof.) Anyang’-Nyong’o, Sen. Billow’s team and all other committees of this House. Today, the Governor of Machakos said: “It is only the Committees of Senate that seem to be working; we are not hearing the other committees.” Even when they are refusing to come, they are also hearing that we are working.

With those few remarks, I support.

**The Temporary Speaker** (Sen. Sang): Mover, proceed to reply.

**Sen. Elachi:** Thank you, Mr. Temporary Speaker, Sir. I want to thank all the Senators, the Speaker, the leadership of our House and the staff. I hope that you will all have a prosperous 2017.

Thank you.

## ADJOURNMENT

**The Temporary Speaker** (Sen. Sang): Hon. Senators, it is now time to adjourn the Senate. The Senate stands adjourned until Tuesday, 14<sup>th</sup> February, 2017, at 2.30 p.m.

The House rose at 7.20 p.m.