

# PARLIAMENT OF KENYA

## THE SENATE

### THE HANSARD

Wednesday, 13<sup>th</sup> December, 2017

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

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

#### PRAYER

**The Speaker** (Hon. Lusaka): Hon. Senators, we have a Supplementary Order Paper. So, I request that you switch to it.

#### NOTICES OF MOTION

##### APPROVAL OF SENATORS TO SERVE IN THE SBC

**Sen. Dullo:** Mr. Speaker, Sir, I beg to give Notice of the following Motion:-  
THAT, pursuant to Standing Order No. 178 and 183(3), the Senate approves the following Senators to be Members of the Senate Business Committee:-

- (1) Sen. Moses Wetangula - Minority Leader;
- (2) Sen. James Orenge - Deputy Minority Leader;
- (3) Sen. Mutula Kilonzo Jnr. - Minority Whip;
- (4) Sen. Petronilla Were; and
- (5) Sen. Ledama Olekina

##### APPROVAL OF SENATORS TO THE SPEAKER'S PANEL

**Sen. Dullo:** Mr. Speaker, Sir, I beg to give Notice of the following Motion:-  
THAT, pursuant to Standing Order No. 17, the Senate approves the following Senators to be Members of the Speaker's Panel:-

- (1) Sen. (Prof.) Margaret Kamar;
- (2) Sen. Steve Lelegwe Ltumbesi;
- (3) Sen. Rose Nyamunga; and
- (4) Sen. Cleophas Malalah Wakhungu.

I thank you, Mr. Speaker, Sir.

**STATEMENTS**

**The Speaker** (Hon. Lusaka): Hon. Senators, let us start with requests for statements.

DELAYED COMPENSATION FOR PERSONS DISPLACED  
BY THE MANOONI DAM PROJECT

Hon. Senators, since the Senator for Makueni, Sen. Mutula Kilonzo Jnr. is not in the House, we defer the Statement.

*(Statement deferred)*

**SENATORS' GENERAL STATEMENTS**

INTERNATIONAL DAY FOR THE ELIMINATION OF  
VIOLENCE AGAINST WOMEN

**Sen. Halake:** Thank you, Mr. Speaker, Sir. A few weeks ago, I wanted to make a Statement on Elimination of Gender Based Violence (GBV). That was on the 25<sup>th</sup> of November, which is the International Day for Elimination of GBV mostly against women and anybody that is perceived to be vulnerable or has a different sexual orientation. Even though this has been overtaken by events, it is important for this House to not let it pass.

Therefore, pursuant to Standing Order No. 46 (2) (a), I would like to still go ahead and make this Statement. This statement is, of course not only of general topical issue, but it also seeks to create awareness not just in this House, but to Kenya at large. It also seeks to address GBV and support international and local actions against GBV.

Mr. Speaker, Sir, 25<sup>th</sup> November is dedicated to elimination of GBV around the world. It is important that this House does not just let it pass, even though, unfortunately, I did not issue the Statement on time. The United Nations (UN) started a campaign for 16 days called – it was called “16 Days of Activism against GBV” which was basically to create awareness and to bring attention to the issues around GBV.

With this Statement, I would like to revisit a little bit the issue of the definition of the GBV. Sometimes, it is thought that GBV is just physical, but it is a lot more than that. GBV, as defined by The United States Agency for International Development (USAID), is basically any harmful threat or act directed at any individual or group based on actual or perceived biological sex, gender identity and/or expression, sexual orientation and/or lack of adherence to varying socially constructed norms around masculinity and femininity.

It is rooted in gender inequalities, patriarchy and power imbalances. This is why this House, as a powerful House, must understand what really constitutes GBV. As we know, GBV is as much sexual violence and a power tool, just like any other tool. Typically, GBV is characterized by the use of threat of physical, psychological, sexual, economic, legal, political, social and other norms of control and abuse.

Mr. Speaker, Sir, as a Senator who is here on behalf of a special group, the women, it is important that we understand what really constitutes GBV and the fact that it

is much more than just physical. It is psychological, economic, legal, political and social and has impact across the individual during their life time. It also has a direct cost to families both economically and in global health. As you might know, HIV, for instance, affects women much more than it does men. This is also quite related to some of these socially constructed imbalances, sexual abuse and GBV.

Mr. Speaker, Sir, why does this matter? It matters because it is widely recognized that violence against women including harassment and harmful practices are major barriers to fulfilment of human rights. It is also a direct challenge to women's inclusion and participation in sustaining peace and development. Without tackling this, we will never fulfill the sustainable development agenda of Vision 2030.

Around the world, one in every three women has experienced physical or sexual violence in her life. 750 million women were married before reaching the age of 18 and the statistics for our county are worse than this. Therefore, that is why this really matters. The populations that are more affected by this are those of women and girls, who bear the brunt of it much more than anybody else and they are at most risk, disproportionately affected by GBV. It is experienced across the entire spectrum of gender and identities or expressions; both men and boys also experience GBV. However, vulnerable groups experience GBV much more than anybody else.

Mr. Speaker, Sir, the least visible victims and survivors of violence are the most vulnerable in our community. They include adolescents, who suffer a lot; the little girl who moves from one house to another because, all of a sudden, she is a bride; the baby who gets cut with a razor in a Female Genital Mutilation (FGM) ceremony; the woman beaten by a partner behind closed doors; the silenced women rights defenders and the teenagers in a bedroom being bullied on cyber space. All these constitute GBV victims.

Mr. Speaker, Sir, what has our country done about GBV? The country has done a lot. It is surprising that even with all these legislations, there is very little in terms of the real outcomes that we are experiencing at the moment. Just to name a few, we have the Constitution of Kenya, which is the supreme law of our county that promotes equality and freedom from discrimination. We have The Sexual Offences Act, The Children Act, The Protection against Domestic Violence Act, The Prohibition of FGM Act, The Marriage Act, The Criminal Procedure Code, The Matrimonial Property Act and The Election Offences Code. All these are supposed to help eliminate GBV, but with all these legislations, we still have very little to show for the outcome that we desire.

Mr. Speaker, Sir, in addition to the various pieces of legislations cited above, there are other policy interventions including the National Guidelines on Management of Sexual Violence, the National Framework towards Response and Prevention of GBV in Kenya and The National Monitoring and Evaluation Framework towards Prevention and response to Sexual and GBV in Kenya.

**The Speaker** (Hon. Lusaka): Order, Senator! Under Standing Order No. 46, you only have 10 minutes.

**Sen. Halake:** I am done, Mr. Speaker, Sir. So, basically, the call to action for this Senate is this; do we amend existing laws to make them more effective? Clearly, even with this long list of laws, the women and children, the boys and girls continue to suffer GBV. Do we come up with other policies that instill a culture of zero tolerance? Do we stimulate country level conversation focused on addressing the barriers that the women, children – boys and girls – face? How do we play a role? This is exactly what this

Statement is about. In highlighting our commitment, preventing and responding to gender based violence, how do we strengthen efforts of our Government and stakeholders to face up to this?

My call to action, therefore, is for Senators to:

- i. Understand what it is, know who it affects and intervene. Senators can act through legislation, policies and institutions and find other innovative ways to help prevent and address gender based violence;
- ii. Listen to the experiences of others;
- iii. Support survivors; and
- iv. Look at other ways in which we can add our voice.

Mr. Speaker, Sir, I thank you for giving me this opportunity to highlight and not let this House just let such a huge 16 days of activism pass without us saying anything about the issues of gender based violence. Again, as I said in this House before, in any situation, there is always the victim, aggressor and the bystander. What I appeal at every opportunity to the House is not to be a bystander but prevent gender based violence so that we have pre-emptive measures to support.

I thank you.

**The Speaker** (Hon. Lusaka): Thank you. Let us now move to Statements to be issued.

Let me call upon Sen. Khaniri.

#### UPSURGE OF ROAD ACCIDENTS IN THE COUNTRY

**Sen. Khaniri:** Mr. Speaker, Sir, thank you for the opportunity.

I rise pursuant to Standing Orders No. 46(2)(a), to make a Statement on an issue of general topic of concern – the upsurge in incidences of road accidents in the country.

First, I wish to register my condolences to the families, across the country who have lost loved ones to road carnage in the recent past. More specifically, to the Oguso family of Mahanga village and Mahanga Friends Church in Vihiga County, who lost 16 members in one accident and nine from the same family on Monday night, 11<sup>th</sup> December, 2017. It pains my heart to lose nine members of the same family in a single accident. I promise this family that I will stand with them during this period of grief and mourning.

One of the many striking features and changes in public transport in Kenya were the “Michuki Rules” which, among other measures, ensured Public Service Vehicles (PSV) were fitted with speed governors, functioning seat belts, uniforms for PSV crew and discouraged overloading. These measures, though considered radical at the onset, brought sanity and actually reduced incidents of road accidents across the country. But since old habits die hard, the country struggled to turn back to old habits.

For instance, it is unfortunate that most travelers assume that using a seat belt will benefit a police officer on a road block. Most public service vehicles lack proper functioning speed governors and even when available, they are often disconnected from the vehicle. The measures, though still in force with improvements, have suffered the setback of partial and lacklustre enforcement.

It is important to recognize the efforts and commitment by the Kenya Red Cross and other private emergency service providers in responding to accident victims. The

Kenya Red Cross has continually and swiftly responded to scenes of road accidents across the country and offered lifesaving emergency medical care. I am working on a Motion that will seek to ensure Government allocates funds to the Kenya Red Cross to enable them improve even more on their responsiveness and efficiency. I also commend various county governments for the purchase and management of ambulance services.

Mr. Speaker, Sir, I believe there is need to ensure that all drivers are properly trained on defensive driving and first aid. Drivers should also check on cases of fatigue and ensure that the vehicles they are driving are road worthy. There is need to also check on night travel. As people plan to travel upcountry and to other holiday destinations for Christmas, drivers should be extra careful especially when driving on unfamiliar roads. Emergency response by the police to accident scenes also needs to improve. Lastly, there is need to check on vehicles carrying abnormal and wide load.

The National Transport and Safety Authority (NTSA) should urgently identify and publicize black spots across the country. These dangerous spots should be adequately marked and properly manned especially during this time of increased traffic on the road.

The NTSA, established by the National Transport and Safety Authority Act 33 of 2012, was expected to promote sanity in road transport for both public and private vehicles. Article 4 of the Act explicitly outlines the functions of the Authority which, unfortunately, has over-concentrated on drunk driving at the expense of other functions. Allegations of corruption are rife in the Authority; it is a case of the same 'monkeys' in different forests.

As much as road safety is mainly an aspect of personal commitment and the behavior of the individual road user and passenger, the Government has the responsibility and means to enforce and ensure compliance. In all the recent accidents, it is important to note that aspects of dangerous driving, over-speeding and mechanical failure were cited. Road accidents can affect all of us from leaders, as was the case of the late Nyeri County Governor, to anybody from any corner of our country.

The recent incidents of road carnage are both alarming and dangerous. I request the Government to conduct speedy investigation of the circumstances that led to the accident at Kamukuywa Bridge on Monday 11<sup>th</sup> December, 2017, that claimed the lives of 16 people from Vihiga County. Losing one member of a family is very painful; nine is unimaginable.

I request the Government, both at the County and national levels, to organize specific intervention – especially financial – to assist the families meet funeral expenses and even consider some form of compensation. The life of a citizen matters and as such, the Government should ensure it is protected to the fullest extent.

I thank you.

**The Speaker** (Hon. Lusaka): Thank you. Sen. Wetangula, you may take the Floor.

**The Senate Minority Leader** (Sen. Wetangula): Thank you, Mr. Speaker, Sir, for the opportunity to also send my heartfelt condolences to the families and friends of those who have lost lives in road accidents.

One of the papers today says we lost 72 lives in 24 hours. In particular, the accident that occurred in Kamukuywa bridge in Bungoma, my county, where a family and close family friends from Vihiga County, Mahanga Village, coming from a very hearty visit to their daughter married in trans Nzoia, met instant death because of

recklessness on our roads. From information available, a sugarcane ferrying truck had rolled on the road. There was no sign or reflector placed anywhere to indicate that there was danger ahead and this Nissan matatu rammed into this track and there was the tragedy.

We are losing too many lives on our roads. As I send my condolences to the families and friends of those who perished both in Bungoma County and Salgaa, I join what the distinguished Senator for Vihiga County has said and even go further; the owner of that truck and the driver – more particularly, the driver because I do not think the owner is vicariously responsible in a situation like that – is a candidate for a charge of homicide. I do not want for us to see that that truck driver will be arraigned in court with dangerous parking or careless driving.

Such a person is not any different from criminals who butcher people every other day in the inner cities of our country. Losing eight members of your family, leave alone one, is not an easy thing. I saw this gentleman yesterday on television and it was something to behold.

Of even particular importance to note, is the accident at Salgaa where NTSA were chasing a truck on the highway in a manner that you see in Hollywood movies. If a truck had passed a road block, one would expect common sense that they can call the next road block and tell them that there is such a tuck coming, stop it. They were chasing a truck and in a state of panic, the truck driver ripped off vehicles, terminating lives instantly.

Today, I saw the Chief Executive Officer (CEO) of NST--- Whatever it is called. No wonder, I cannot even remember it because it is not functioning. I saw him justifying the act of his officers. A person like that, if he cannot reconsider his position, should be sacked, forthwith, because he is unable to handle the docket that he has been given to do.

I urge the courts to be very tough on dangerous drivers, the police to act prudently, diligently and with speed to bring such drivers to book and take them to court. In comparable jurisdictions, a driver like that is given no opportunity to drive ever again. His licence must be cancelled and should never be considered to be put on the road to drive again. That is part of the punishment that such people get so that we learn that every choice, intended or unintended, has serious consequences.

Let me finish by urging the Government --- I saw yesterday the President decrying accidents. The duty of the President is not to decry; it is to act. We want to see action to save lives of Kenyans and go back to what Mr. Michuki did to bring sanity to our roads. Within two months, you would have voted Kenyan matatu operators and drivers as the most disciplined in this country. Mr. Michuki went and it is now business as usual. They are molesting women on matatus, stealing from everybody and doing all manner of things. They are daring the Government even to tango with them. This has to come to an end.

It is a very sad day for the village of Mahanga in Vihiga County, which is now gripped by a dark, gloomy cloud or mourning concentrated in one home and the neighborhoods.

**The Speaker** (Hon. Lusaka): Hon. Senators, this was a personal statement. Sen. Wetangula has expressed his sentiments on behalf of the rest.

Hon. Senators, we also have very interesting Motions which will require Division. Therefore, I direct that we move on to Order Nos.10, 11 and 12 before we come back to the Statements.

## MOTIONS

NOTING OF COB ANNUAL COUNTY GOVERNMENTS BUDGET  
IMPLEMENTATION REVIEW REPORT FOR FY 2016/2017

THAT, the Senate notes the Annual Report by the Controller of Budget on County Governments Budget Implementation Review for Financial Year 2016/2017, laid on the Table of the House on Wednesday, November 8<sup>th</sup>, 2017.

*(Sen. Dullo on 5.12.2017)*

*(Resumption of Debate interrupted on 5.12.2017)*

I now order that the Division Bell be rung for two minutes.

*(Division Bell was rung for two minutes)*

Hon. Senators, I now order that the door be closed and the bars drawn.

*(Door was closed and bars drawn)*

Hon. Senators, we now proceed to vote on Motion No. 10. I will give each one minute to do so. We can now start the voting.

**The Senate Minority Leader** (Sen. Wetangula): On a point of order, Mr. Speaker, Sir.

**The Speaker** (Hon. Lusaka): Sen. Wetangula, what is your point of Order?

**The Senate Minority Leader** (Sen. Wetangula): Mr. Speaker, Sir, I do not know if the Chair has guided the House in terms of alternate or proxy votes in delegations. We have a precedent from the previous Speaker that each head of delegation must write to him and indicate the Members of the delegation and the order of priority as to who votes in the absence of the head of delegation. This is because we have had fraudulent voting on this Floor before.

We know this is a matter that is bipartisan where everybody will vote the same way. However, we can have a situation where it really matters who votes. It is good to have general direction to Members, particularly the heads of delegations that your office be furnished with a proxy note for those who will vote in their absence.

**The Speaker** (Hon. Lusaka): Thank you, Sen. Wetangula. I received signatures from all sides of the political divide. Therefore, we are well constituted and ready for the voting.

Can we start the voting? You have one minute each. The voting is on. Any Senator who may need to be assisted to vote, please, come forward. That is if you are unable to log in.

**DIVISION****ELECTRONIC VOTING**

*(Question, that the Senate notes the Annual Report of the Controller of Budget on County Governments Budget Implementation Review for FY 2016/2017, laid on the Table of the House on Wednesday, November 8<sup>th</sup>, 2017, put and the Senate proceeded to vote by County Delegations)*

**The Speaker** (Hon. Lusaka): Hon. Senators, this is a matter affecting counties. Just in case you had forgotten, those who are not heads of delegations are not supposed to vote. If you are two or three from one delegation, then there is the head of the delegation who is supposed to vote. You do not have to vote if the head of the delegation is here because they are supposed to vote. In this case, we have three Senators who voted by mistake or it could be that somebody used the card for Sen. Adan Fatuma Dullo who is not here and we also have Sen. Makori Beatrice Kwamboka and Sen. (Rev.) Waqo Naomi Jilo having voted. So, the votes are null and void.

Having said that, the valid votes are as follows:

**AYES:** Sen. (Dr.) Ali, Wajir County; Sen. Cheruiyot, Kericho County; Sen. Faki, Mombasa County; Sen. Haji, Garissa County; Sen. Halake, Isiolo County; Sen. Khaniri, Vihiga County; Sen. Kibiru, Kirinyaga County; Sen. Kihika, Nakuru County; Sen. Kinyua, Laikipia County; Sen. (Dr.) Langat, Bomet County; Sen. Loitiptip, Lamu County; Sen. Madzayo, Kilifi County; Sen. Malalah, Kakamega County; Sen. Moi, Baringo County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Mutula Kilonzo Jr., Makueni County; Sen. Mwangi, Nyandarua County; Sen. Mwaruma, Taita-Taveta County; Sen. Mpaayei, Kajiado County; Sen. Olekina, Narok County; Sen. Omogeni, Nyamira County; Sen. Outa, Kisumu County; Sen. Sakaja, Nairobi County; Sen. Wako, Busia County; Sen. Wambua, Kitui County; and, Sen. Wetangula, Bungoma County.

**NOES:** Nil

**The Speaker** (Hon. Lusaka): Hon. Senators, the results of the Division are as follows:

**AYES:** 26

**NOES:** 0

**ABSTENTIONS:** 0

The "Ayes" have it.

*(Question carried by 26 votes to 0)*

**ADOPTION OF SESSIONAL PAPER NO.6 OF 2016 ON NATIONAL  
URBAN DEVELOPMENT POLICY**

THAT, this House adopts the Sessional Paper No.6 of 2016 on the National Urban Development Policy, laid on the Table of the House on Tuesday, October 10<sup>th</sup>, 2017

*(Sen. Murkomen on 5.12.2017)*



*(Resumption of Debate interrupted on 6.12.2017)*

**The Speaker** (Hon. Lusaka): Hon. Senators, we are now proceeding to vote. You have one minute. Those who need to be assisted to vote to come forward.

## DIVISION

### ELECTRONIC VOTING

*(Question, that this House adopts the Sessional Paper No. 6 of 2016 on the National Urban Development Policy, laid on the Table of the House on Tuesday, October 10<sup>th</sup>, 2017, put and the Senate proceeded to vote by County Delegations)*

**AYES:** Sen. Cheruiyot, Kericho County; Sen. Faki, Mombasa County; Sen. Haji, Garissa County, Sen. Halake, Isiolo County; Sen. Khaniri, Vihiga County; Sen. Kihika, Nakuru County; Sen. Kinyua, Laikipia County; Sen. Loiptip, Lamu County; Sen. Madzayo, Kilifi County; Sen. (Eng.) Maina, Nyeri County; Sen. (Eng.) Mahamud, Mandera County; Sen. Malalah, Kakamega County; Sen. Moi, Baringo County; Sen. Mpaayei, Kajiado County; Sen. Murkomen, Elgeyo Marakwet County; Sen. Mutula Kilonzo Jnr, Makueni County; Sen. Mwangi, Nyandarua County; Sen. Mwaruma, Taita Taveta County; Sen. Olekina, Narok County; Sen. Omogeni, Nyamira County; Sen. Outa, Kisumu County; Sen. Sakaja, Nairobi County; Sen. Wako, Busia County; Sen. Wambua, Kitui County; Sen. (Rev.) Waqo, Marsabit County and Sen. Wetangula, Bungoma County.

**NOES:** Nil

**The Speaker** (Hon. Lusaka): Order, Members! Again we still have the same problem. I repeat, if you are not head of delegation or you have not been designated, please do not vote. In that regard, we had Sen. Haji Farhiya Ali and Sen. Nyamunga Rose voting. So, these are the results:-

**AYES:** 26

**NOES:** 0

**ABSENTIONS:** 0

*(Question carried by 26 votes to 0)*

Let us move on to the next Order.

### ADOPTION OF THE NATIONAL IRRIGATION POLICY, 2017

THAT, this House adopts the National Irrigation Policy, laid on the Table of the House Tuesday, 10<sup>th</sup> October, 2017

*(Sen. Kihika on 7.12.2017)*

*(Resumption of Debate interrupted on 7.12.2017)*

**The Speaker** (Hon. Lusaka): Voting starts now; I give you one minute. Assisted voters should come forward.

### DIVISION

#### ELECTRONIC VOTING

*(Question, that House adopts the National Irrigation Policy, laid on the Table of the House on Tuesday, October 10<sup>th</sup>, 2017, put and the Senate proceeded to vote by County Delegations)*

**AYES:** Sen.(Dr.) Ali, Wajir County; Sen. Haji, Garissa County; Sen. Halake, Isiolo County; Sen. Khaniri, Vihiga County; Sen. Kibiru, Kirinyaga County; Sen. Kihika, Nakuru County; Sen. Kinyua, Laikipia County; Sen. Loitiptip, Lamu County; Sen. Madzayo, Kilifi County; Sen. (Eng.) Mahamud, Mandera County; Sen.(Eng.)Maina, Nyeri County; Sen. Malalah, Kakamega County; Sen.(Dr.) Milgo, Bomet County; Sen. Moi, Baringo County; Sen. Mpaayei, Kajiado County; Sen. Murkomen, Elgeyo Marakwet County; Sen. Mutula Kilonzo Jnr., Makueni County; Sen. Mwangi, Nyandarua County; Sen. Mwaruma, Taita-Taveta; Sen. Olekina, Narok County; Sen. Omogeni, Nyamira County; Sen. Sakaja, Nairobi County; Sen. Wako, Busia County; Sen. Wambua, Kitui County; Sen. Waqo, Marsabit County; Sen. Wetangula, Bungoma County.

**NOES:** Nil

**The Speaker** (Hon. Lusaka): Hon. Senators, the results of the division are as follows:

**AYES:** 26

**NOES:** Nil

**ABSTENTIONS:** Nil

*(Question carried by 26 votes to 0)*

**The Speaker** (Hon. Lusaka): You can open the door and draw the bars.

*(The door was opened and the Bars drawn)*

Order, Members! We will do Order Nos. 8 and 9 and come back to Statements.

#### APPROVAL OF SENATORS TO SERVE IN THE SBC

**The Senate Majority Leader** (Sen. Murkomen): Mr. Speaker, Sir, I beg to move the following Motion:-

THAT, pursuant to Standing Orders 178 and 183 (3), the Senate approves the following Senators to be Members of the Senate Business Committee:-

1. Sen. Moses Wetangula - Senate Minority Leader;
2. Sen. James Orengo - Deputy Senate Minority Leader;
3. Sen. Mutula Kilonzo Jnr. - Minority Whip;

4. Sen. Petronilla Were; and,
5. Sen. Ledama Olekina.

Mr. Speaker, Sir, if you remember sometimes about a month ago - I cannot remember the exact date - we brought the names of persons who were serving in the Senate Business Committee from the Jubilee Party side. At that point in time, the Minority side had requested you for time to consult before participating in the Senate Business Committee.

Finally, except, of course, those who are provided for statutorily, that is, the Senate Minority Leader, Sen. Wetangula and the Minority Whip, Sen. Mutula Kilonzo Jnr., the others would not have found a way of attending Senate Business Committee meetings without the approval of this House. Therefore, these names are coming to ensure that the business of the House runs smoothly. Even as we go to the long recess, the Senate Business Committee will be playing a key role in preparing the business of the House when we come back.

For that reason, I beg to move this Motion, and according to what Sen. Wetangula calls tradition, invite him to second.

We have also consulted that we make it as brief as possible so that we vote on the two Motions. We have too many Statements and I have a number of responses here. The Senators would like to get the responses before they go on recess. Considering that tomorrow we have a huge business of voting for nominees to the EALA and so forth, it would be necessary to complete the Statements that are available today.

I beg to move and invite the Senate Minority Leader to second.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Speaker, Sir, as I second, may the distinguished Senator for Elgeyo-Marakwet be advised that traditions of this House are not according to me, the Senator for Bungoma County, but the practice of the House and that is what it is.

This Motion does not require any serious debate. It is a list from the side that I am heading. I hope that as they take their duties in the Senate Business Committee, good sense will prevail upon our colleagues on the opposite side that embracing bipartisanship in doing our business will be more helpful than engaging in confrontational and unsolicited jibes on the Floor of the House.

I second.

*(Question proposed)*

*(Question put and agreed to)*

**The Speaker** (Hon. Lusaka): Next order!

#### APPROVAL OF SENATORS TO SERVE IN THE SPEAKER'S PANEL

**The Senate Majority Leader** (Sen. Murkomen): Mr. Speaker, Sir, I beg to move the following Motion:-

THAT, pursuant to Standing Order 17, the Senate approves the following Senators to be Members of the Speaker's Panel:-

1. Sen. (Prof.) Margaret Kamar;

2. Sen. Steve Lelegwe Ltumbesi;
3. Sen. Rose Nyamunga; and,
4. Sen. Cleophas Malalah Wakhungu.

Mr. Speaker, Sir, again, about three months ago we tabled names for persons to serve in the Speaker's Panel. At that point in time we said that they would serve temporarily until the bigger picture was going to be established in so far as who would be placed in what Committee.

Therefore, Sen. (Prof.) Kamar and the Deputy Majority Whip, Sen. Kang'ata, served temporarily for the period that I have indicated. However, having consulted the Senate Minority Leader, we now have a full picture of the leadership of both sides. We also have a fairly full picture of who will serve in what Committee. Both sides of the House have come to the conclusion that the persons listed are going to serve in your Panel.

We are cognizant of the fact that this could not have been done without you. If you had rejected these names, it would never have gone through because the Standing Orders give you greater leeway in determining the persons who will serve in the Panel with you. We thank you for approving these names for these persons to serve in the Panel.

Mr. Speaker, Sir, these four ladies and gentlemen join the list of illustrious Kenyans with illustrious careers, who have served in that capacity, including yours truly. It is very prestigious to be able to preside over the affairs of the House.

My advice would be that when they are sitting there, they must forget their political partisanship. They must forget that they are in Jubilee, Amani National Congress (ANC), like Sen. Malala or Orange Democratic Movement (ODM), like Sen. Nyamunga. While they are presiding over the House, they must act fairly, give everybody a fair chance and ensure that there is order in the business of this House. I wish them the very best as they serve in that capacity and we will give them our maximum cooperation.

With those many remarks, I beg to move and invite the Senate Minority Leader to second.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Speaker, Sir, I second the Motion. In doing so, I want to encourage those who have been given the privilege to serve on the Speaker's Panel to realise at all times that when they sit on the Chair of the Speaker, they temporarily cease being Members of either side of the House and preside over the proceedings of the House without fear, favour or prejudice.

Mr. Speaker, Sir, in choosing our two representatives, we have carefully examined their backgrounds and their professional standing. Sen. Nyamunga is a lawyer and is in her second term in Parliament, having served the first term in the "Lower House". I have no doubt that she will discharge her responsibilities fully.

Sen. Cleophas Malala was the Deputy Speaker of the County Assembly of Kakamega before he was kicked upstairs to become a Senator and I have no doubt that with that experience, he will also assist you in presiding over the proceedings of this House.

Sen. (Prof.) Kamar is not new to all of us; she is very competent, conscientious and does not carry the narrow-minded blinkers of ethnicity and other political parochialism. She is definitely going to do a very good job. I have very little to say about the gentleman, Sen. Lelegwe, but I have no doubt that those who picked on him must

have also made the same considerations. I am told he was the Speaker of Samburu County Assembly so he also brings some degree of experience from his background.

As I finish, I want to encourage the speakers who will be assisting you. In the last Parliament, we had one or two Members of the Panel – unfortunately one came from the side that I lead – who was extremely draconian every time he sat on the Chair. We hope that these two ladies and gentlemen will conduct themselves with absolute decorum befitting of the “Upper House” of Parliament of the Republic of Kenya.

I beg to second.

*(Question proposed)*

*(Question put and agreed to)*

**The Speaker** (Hon. Lusaka): Order No.7

### STATEMENTS

#### DELAYED COMPENSATION FOR PERSONS DISPLACED BY MANOONI DAM PROJECT

**Sen. Mutula Kilonzo Jnr:** Mr. Speaker, Sir I rise pursuant to Standing Order No 46 (2) (b) to seek a Statement from the Senate Majority Leader on the delayed compensation for persons who were displaced during the construction of Manooni Dam-Makueni County.

The Senate Majority Leader should in the Statement:

- a) State the size of land acquired/taken for construction of the said dam.
- b) State the number of people whose land was acquired to pave way for the project in 1984 and the acreage thereof.
- c) State whether the members of the public from the area were consulted before the land was acquired.
- d) Explain the reasons why persons whose land was acquired to pave way for the project have not been compensated to date.
- e) Give reasons why the dam has never been utilized by the local community since its construction.
- f) State the reason the Ministry of Water and Irrigation has not allocated any funds for desilting or expansion of the dam.

**The Senate Majority Leader** (Sen. Murkomen): Mr. Speaker, Sir, out of observation, the Jubilee Government is doing a lot of work in Makueni. The requests that Sen. Mutula Kilonzo Jnr has sought about dams, for example, Thwake Dam and others, I wish there were these numbers of projects in my county. Sen. Mutula Kilonzo Jnr. should give us time to answer one after the other because we have Thwake and others.

Honestly, if you see the list that is there today, the Senate Majority Leader has been overwhelmed in terms of getting these answers. This is just out of abundance of generosity because the Standing Orders do not state that it is the work of the Senate Majority Leader, but since the business of the House needed to move, we have been doing so.

I request, with your great permission---. Tomorrow, we are tabling the names of all the Committees and, hopefully, we will approve them. I request that these questions be committed to the relevant Committees and they come back with an answer the first week after we come back from recess.

**Sen. Mutula Kilonzo Jnr:** Mr. Speaker, Sir, since I am part and parcel of the people constituting Committees, I have no problem since, we will not suffer the delay through the hands of the Senate Majority Leader complaining that we are overwhelming him yet he has been given the mandate.

Thank you.

#### STATUS OF THE *INUA JAMII* CASH PROGRAMME

**The Senate Majority Leader** (Sen. Murkomen): This is a very long Statement. I am sure the Senator has the copy and has read it. Should I read it?

**Hon. Senators:** Yes!

**The Senate Majority Leader** (Sen. Murkomen): Mr. Speaker, Sir, the response is as follows:-

- (1) The difference between the *Inua Jamii* programme and the Older Persons Cash Transfer Programme.

*Inua Jamii* Cash Transfer Program is a brand name for the four cash transfer programmes implemented by the Government as part of the overall social protection intervention through the non-contributory social assistance for the most poor and vulnerable citizens.

The vulnerable category targeted under this program are the elderly persons with severe disability, orphaned, vulnerable children and populations experiencing drought and famine in four northern and north eastern counties in Mandera, Turkana, Wajir and Marsabit.

The programmes that are implemented in the State Department of Social Protection in the Ministry of East Africa Community, Labor and Social Protection are:

- i) The Older Person's Cash Transfer Programme.
- ii) Cash transfer for orphans and vulnerable children.
- iii) Persons with severe disabilities cash transfer.
- iv) The Hunger Safety Net Programme

The fourth one is implemented by the National Drought Management Authority in the State Department of Special Programs under the Ministry of Devolution and Planning. The composite budget for the three *Inua Jamii* programs in the Ministry of East Africa Community, Labor and Social Protection for financial year 2017/2018 is as indicated in the table below.

S/No	Programme	Amount (Ksh)
1.	Older Persons Cash Transfer (OP-CT)	7,876,110,114
2.	Persons with Sever Disability Cash Transfer (PWSD-CT)	1,180,000,000
3.	Cash Transfer for Orphans and Vulnerable Children (CT-OVC)	8,595,585,988
	<b>TOTAL</b>	<b>17,651,696,102</b>

In the revised budget for Financial Year 2017/2018, an additional Kshs6.5 billion has been allocated to cater for an enhanced cash transfer programme for older persons of 70 years and above. Consequently, the Government recently embarked on a national registration exercise of all deserving vulnerable senior citizens aged 70 years and above in preparation for enrolment in the programme.

(2) The criteria used to identify the registered beneficiaries of the programme.

To target and enroll beneficiaries into the cash transfer programmes, procedures as defined in the operations manual are used to sensitise communities on the programme's eligibility criteria. Thereafter, there is targeting of the specific vulnerable persons who meet the criteria undertaken.

The eligibility criteria for The Older Persons Cash Transfer (OPCT) is: An extremely poor household with an older person of 65 years and above, household not enrolled in any other cash transfer programme, household with no member receiving pension, household that has resided in a particular location for more than a year and potential beneficiary must be a Kenyan citizen.

The eligibility criteria for Cash Transfer to Orphans and Vulnerable Children (CT-OVC) is: Extremely poor household with one or more OVCs as a permanent member, a household not benefitting from any other social assistance programme, a household with a caretaker who is chronically ill or unable to perform his or her duties.

The eligibility criteria for persons with severe disabilities is: An extremely poor household with a severely disabled person, a household not enrolled in any other cash transfer programme, a household with no member receiving pension, a household that has resided in a particular location for more than a year. The beneficiary should be a Kenyan citizen. The above criteria apply to beneficiaries in all the 47 counties.

(3) Management of the funds.

The three cash transfer programmes: OPCT, PWST, and CT-OVC are coordinated by the State Department of Social Protection under the Ministry of East Africa Community, Labour and Social Protection. The State Department has established a social assistance unit to run the day to day implementation of the cash transfer at the national level.

There is also a social protection secretariat which manages an integrated single registry for the programme.

At the county and sub-county levels, the county coordinators and sub-county officers of the department of children services and that of social development are responsible for the implementation of the cash transfer programme.

The Ministry has institutionalised the involvement of communities through the constituency social assistance committees to provide oversight in identification of beneficiaries.

Membership of the committees includes the area Member of Parliament (MP) and the local leaders nominated by the MP, the County Women Representative and the representatives of faith based organisations besides the technical department heads of the ministry.

On the payment structure, the cash transfer stipend is delivered to the beneficiaries through contracted Payment Service Providers (PSPs). The current PSPs are Equity Bank limited and Kenya Commercial bank (KCB).

(4) Mode of payment used to pay the beneficiaries.

Payment to the beneficiary households are made on bi-monthly basis through the contracted payment service at a rate of Kshs2,000 per month. The programme currently has two PSPs namely; Equity Bank Limited and KCB. The PSP uses an electronic payment that employs a two-factor authentication by national Identification and biometric fingerprints.

Mr. Speaker, Sir, that is the answer from the Minister. It is signed by Mrs. Phyllis Kandie, (EGH); Cabinet Secretary.

**The Speaker** (Hon. Lusaka): Sen. Mutula Kilonzo Jnr., do you want to react to that?

**Sen. Mutula Kilonzo Jnr.:** I will allow the Senate Minority Leader to have a go first.

**The Speaker** (Hon. Lusaka): Fair enough. Sen. Moses Wetangula.

**The Senate Minority Leader** (Sen. Wetangula): Thank you, Mr. Speaker, Sir. I have listened to the answer by the Senate Majority Leader. Could he clarify - and if he does not have the information now, he can bring it later – a tabulated list of recipients of these social safety net funds in each county broken down to each sub-county so that, as representatives of the people in the counties, we can be able to tell who are getting these monies?

Second, this House has been treated before to answers on these social safety net funds and the Internally Displaced Persons (IDP) resettlement funds. It turned out that the bulk of the money ends up in the pockets of the bureaucracy and not the intended recipients.

Could the Government consider devolving these funds after carrying out a proper census of the eligible recipients so that the disbursement of these funds is administered at the county level by the county governments where it is easier for members who qualify where they are left out, they can go to their county headquarters and lodge claims or complains, whatever may be the case?

**The Speaker** (Hon. Lusaka): Sen. Mutula Kilonzo Jnr., the Floor is yours.

**Sen. Mutula Kilonzo Jnr.:** Thank you, Mr. Speaker, Sir, allow me to refer to page two of the schedule that the Senate Majority Leader has presented through the Cabinet Secretary, Category No.1 - Older Persons Cash Transfer. Those are people above 65 years. There is a note under the schedule ...

*(Sen. Khaniri and Sen. Kang'ata consulted with  
the Senate Majority Leader)*

**The Speaker** (Hon. Lusaka): Order! The Senate Majority Leader, please, listen to what is being raised.

**Sen. Mutula Kilonzo Jnr.:** Mr. Speaker, Sir, the Cabinet Secretary says that in the revised budget for 2017, an additional of Kshs6.5 billion was allocated to cater for the enhanced cash transfer for older persons aged 70 years and above. This is the confusion. There is a criterion for OPCT above 65 years. During the period of elections, the Cabinet Secretary was doing another one of 70 years. In this one, the category of eliminating the persons who were either poor or who do not have somebody who earns in the category of 65 years was not the one of 70 years. So, 70 years covers everybody and the above 65 years covers a few people.



As a result, this has caused confusion.

Could the Senate Majority Leader clarify if the programme where there is additional of Kshs6.5 billion covers everybody else who is not in the OPCT for 65 years and above. Does the 70 years include everybody because everybody in Makueni County above 70 years registered for this programme. Therefore, they have a legitimate expectation that they will get the Kshs2,000. So, that clarification is important.

Finally, in the old cash transfer programme, the members above 65 years have been receiving this money biannually. It makes no sense to give a person who is suffering money twice a year.

I have a number of questions to the Senate Minority Leader. First, what is the reason why this Kshs2,000 is not paid every month? Why do they have to go to KCB for their money? In a case like Makueni County where you have possibly three of them who hire a matatu that costs them almost Kshs20,000; and they spend a whole day traveling to go and collect Kshs2,000 then spend half of it on the matatus----

Is it not possible for the national Government to increase the base of the persons who can pay in terms of banks because there is no reason why KCB and Equity banks are favoured above other commercial banks? Why can we not have what they call “*Mtaani Agents*” who can go to the villages and pay these people their Kshs2,000 so that they withdraw it in full rather than them incurring other expenses?

**The Senate Majority Leader** (Sen. Murkomen): Mr. Speaker, Sir, those are very valuable questions. The question by the Minority Leader that all the beneficiaries of the programme should be provided per county or constituency is necessary. The best thing is for the Committee on Labour and Social Welfare, which we will inaugurate tomorrow, to call the Cabinet Secretary for East Africa Community, Labour and Social Protection to come here so that Members can ventilate on these issues.

I cannot pretend to know the number of people who get this money from Elgeyo Marakwet County. We need to have that list. As a follow up, let us channel this to the Committee on Labour and Social Welfare so that they can take up the issue.

On the issue of 70 years and above, this could be merged together with what Sen. Mutula Kilonzo Jr. said. Why should someone travel to go and collect their money from very far? Similarly, why can these funds not be administered at the ward level, so that the social funds managers at the county level are responsible for disbursing this money? Further, why should people go to the bank when we generally have mobile cash transfer systems?

I must be honest to say that some elderly people of 70 years and above cannot operate a mobile phone and, therefore, they fall prey to fraudsters and specifically to family members. There are family members who are fraudsters. That has necessitated the requirement. Therefore, my suggestion to this is that the Ministry should have a mobile payment system. Once a month, someone should go around on a motor bike and pay the elderly in a particular center instead of 50 elderly people paying for transport to go to Kapsowar from Embobut.

Mr. Speaker, Sir, I am sure you know Kapsowar and Embobut. Many Senators here may not know the place, but you worked in my county. In order to ensure that this process becomes easy, one person should go to pay 100 people, rather than 100 people chasing payment at the headquarters. These are some of the suggestions that the

Committee on Labour and Social Welfare will have to get back to the Ministry when the questions are brought here.

Mr. Speaker, Sir, on the issue of persons 70 years and above, the implementation has not started but the registration has been done. This means that persons aged 70 years and above will, as of right from a policy position, be entitled to this money. The challenge is that there were people aged 65 years who were on the waiting list, knowing that come the next financial year, when it is enhanced, they would be beneficiaries. We will pray for those people to reach 70 years so that they become beneficiaries.

However, if you look at the answer that we have been given by the Cabinet Secretary, there are people less or above 60 years but benefit from funds related to disability, severe poverty or from other systems. However, for the elderly people, so that everybody can get it, it is now been pegged on 70 years. I had asked the Cabinet Secretary for East Africa Community, Labour and Social Protection this question before; whether those who were already benefiting from 65 years will continue with it to the end. However, the new registration will only be 70 years and above.

**The Speaker** (Hon. Lusaka): Thank you, Sen. Murkomen.

Let us move on to the next Statement.

STATUS OF KAREBE GOLD MINE COMPANY LTD  
IN NANDI COUNTY

Senate Majority Leader, you are to issue a statement on the Status of Karebe Gold Mine Company in Nandi County.

The Senator is not here. So, I will defer the statement.

**The Senate Majority Leader** (Sen. Murkomen): Mr. Speaker, Sir we defer generally because the Senator read the Statement and said he still has some follow up issues before it can be brought here. So, he requested - or we could say he "stood it over" generally.

**The Speaker** (Hon. Lusaka): The statement is deferred.

*(Statement deferred)*

Senate Majority Leader, you are to issue another Statement on the Thwake Multi-Purpose Dam Project.

COMPENSATION FOR PERSONS AFFECTED BY THWAKE  
MULTI-PURPOSE DAM PROJECT

**The Senate Majority Leader** (Sen. Murkomen): Mr. Speaker, Sir, this is a letter written by the Minister for Water and Irrigation. It sates as follows:-

My Ministry is implementing Thwake Multipurpose Dam Project in Kitui and Makueni counties. The dam which when completed will have a storage capacity of 681 million cubic meters of water will have a displacement effect. In this regard, a total of 9,158 areas of land will be acquired for the Dam Project displacing a total of approximately, 1,792 persons in Mbooni East, Kathonzweni and Lower Yatta sub-counties.

To date, a total of 1,563 Project Affected Persons (PAPs) have been fully compensated. The State Department of Irrigation is making arrangements to compensate the remaining 229 persons before commencement of works by the end of January, 2018. The total compensation value of the land and development therein is approximately Kshs3.550 billion. My Ministry, through the State Department of Irrigation has to date remitted Kshs2.850 billion to the National Land Commission (NLC) for acquisition of land. The Department has been monitoring the process of payment hence receiving returns from the NLC. Copies of correspondence on the same are attached to this letter.

Compensation to the Thwake Dam PAPs is categorized in two components; the land and developments therein. Whereas development within each parcel of land is attributed to a specific PAP, the same is not the case for land ownership mostly due to the succession issues on family land.

At the start of the acquisition of land for the dam project, most of the parcels of land earmarked for acquisition were ancestral land. This necessitated subdivision of the respective parcels of land among the beneficiaries and initiation of succession process in order to identify legitimate owners for compensation. In order to expedite the succession process, the State Department of Irrigation and the NLC approached the Judiciary for limited grant which was granted. The process of the land succession was therefore fast tracked and by December, 2016 most of the succession cases had been resolved. To date, there are less than 10 pending cases.

In this regard, initial compensation to the persons affected which commenced in May, 2015 was mostly on the developments as the land succession process went on. After the succession process was finalized, most of the PAPs who had been compensated for their developments pending finalization of land succession have been fully compensated for their acquired land. This explains the circumstances under which some project affected persons are being paid in installments.

Thwake Multi-purpose Dam Project is co-financed by the Government of Kenya (GOK) and the African Development Bank (AFDB). The AFDB through a loan agreement and protocol agreement both signed on 27<sup>th</sup> January, 2014 between the GOK and the AFDB, will provide a total of Kshs8,023,550,223.00 for the dam project. The GOK will provide the rest of the funds, which is approximately, Kshs34,498,449,777.00. The total cost of the project is approximately Kshs42.522 billion.

Out of the Kshs8,023,550,223.00 contribution from the AFDB, Kshs7,869,177,576.00 will be provided as Grant through the protocol of agreement.

Mr. Speaker, Sir, that is a huge amount of money. The letter is signed by the Minister for Water and Irrigation, Hon. Hon. Eugene Wamalwa.

**Sen. Mutula Kilonzo Jnr.:** Thank you Mr. Speaker, Sir. My concern at the time of asking this question was on the payment by installments. Perhaps, a minute to explain; we had problems with succession in the Standard Gauge Railway (SGR) in Makueni. This is because most of the land has not been granted title deeds. Therefore, it has not been transmitted to successive heirs of the respective families.

However, the Ministry chose to pay the people of Thwake in installments. The effect of this, and it is against the Constitution, is that people who have not moved from their land have now been paid. They have not moved or found alternative land, but they are now spending the money. As a result, this action will create squatters. I hope that the Committee on Agriculture, Livestock and Fisheries will resolve this question. It is against

the Constitution and that is why we passed the law and the Land Acquisition Act. This was applied in Makueni on the SGR.

When land is acquired from the public, it must be paid for promptly and not in installments. For purposes of this Statement, and because it is now water under the bridge, it should be noted that the Cabinet Secretary (CS) and the National Land Commission have violated the law in paying the project affected persons in installments. The Senate Majority Leader will note that part of the compensation is graves. As you pay these persons in installments, they continue to bury the dead. The people they are burying are not part of the schedules that were supposed to be paid two years ago, hence the danger of paying the project affected persons in installments. It should be noted and I will raise this issue even further when it comes to the Committee on Agriculture, Livestock and Fisheries.

For purposes of transparency, could the Senate Majority Leader provide this Senate with the list of the 1,563 persons who have been paid and the list of the 229 persons? I intend to display this list in Makueni County.

**The Senate Majority Leader** (Sen. Murkomen): Mr. Speaker, Sir, Sen. Mutula Kilonzo Jnr. has raised very important issues, which can be part of the follow up to the question. Most importantly, the compensation list should be public so as to avoid possibilities of those people having been told that they will be given Ksh.1 million, but the records indicate Ksh.10 million. As a matter of right, the National Land Commission and the Ministry should publish the names of those people and the amount paid to them. It can be a basis for establishing the truth, if there was someone who received the money, yet the other family members are not getting it. I totally agree.

In the follow up to this question, we will write to the Ministry to ask them to give the details of those who have been paid. We will ask the Committee to follow up from there.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Speaker, Sir, in the follow up, could the Senate Majority Leader also consider a policy shift? I can give you an example of Nzoia Sugar Company. In the old days when the Government decided to take 12,500 acres of land from the nucleus on Nzoia, it went to Trans Nzoia, purchased an equivalent parcel of land or thereabout and resettled families.

The danger of cash compensations is that it has created the so-called Internally Displaced People (IDP's) in some areas. The heads of families take money, abandon their families, go and squander the money, then come back to squat on the roadside or behind a shop in a local market, in the same area. They then emerge every time when there is stock of IDP's to be compensated. Through this we end up spending good money for bad causes.

Could the Government and the Ministry concerned re-formulate the policy on compensation, such that if one is surrendering their two acres of land for construction of a dam, they are given an alternative parcel of land depending on the area? It can either be an equal two acres or three to four acres. People can then move with their families.

At the end of the day, as soon as the compensation comes, the man starts looking for another wife and forgets that he had a family. He disappears and only realizes that he had a family when the money is over. Later, they come back to become a nuisance to everybody.

**The Senate Majority Leader** (Sen. Murkomen): Mr. Speaker, Sir, again, I totally agree with the Senate Minority Leader. I have witnessed that. About Kshs2.8 billion was used to compensate squatters in my location in Embobut Forest. Everybody was getting about Kshs400,000 and there was madness in the area. Half or a quarter of the people went on to marry other wives, while others went drinking. Some bought motorbikes thinking that they had now become rich, but could not repair them thereafter.

As a matter of policy, when I am fighting for compensation of the people of Elgeyo-Marakwet, I will not accept a situation of payment of cash. This is because it will render so many people homeless. The Committee should lead us towards amending the relevant legislation for us to give directions. As a matter of priority, compensation should be an equivalent land; land for land. The rest can then be negotiated, though with certain exceptions. We need to think through this. This is an issue that should go to the Committee. I know of other equivalent projects taking place in my County. My people are already saying that they do not want money. They just want an equivalent land and some amount for relocation. That is well taken. We should escalate it to amending the relevant legislation.

**The Speaker** (Hon. Lusaka): The Senate Majority Leader to issue a Statement on alleged dumping of asbestos in Kikumbulyu Ward, Kibwezi West in Makueni County.

ALLEGED DUMPING OF ASBESTOS IN NGULU-  
KIKUMBULYU, MAKUENI COUNTY

**Sen. Kihika**: Mr. Speaker, Sir, we wish to request for additional time for us to bring the answer to that question. The answer has not been availed to us at this point.

**Sen. Mutula Kilonzo Jnr.**: Mr. Speaker, Sir, I have no problem. This is because I have seen correspondence from your office where you have been reminding the Ministry to send the responses. Maybe, you can send a last reminder before we come back from the recess. This is a very important issue for the people of Kikumbulyu North. We do not expect to have poisonous substances dumped in our area without following the law.

**The Speaker** (Hon. Lusaka): Thank you. The Senate Majority Leader to issue a Statement on spillage of substance in Thange Area, Kibwezi East Constituency in Makueni County.

**Sen. Kihika**: Mr. Speaker, Sir, I wish to request that we defer the answers to questions from (e) to (n) for an addition of two weeks to be able to bring the answers to the House.

STATUS OF OIL SPILLAGE AT THANGE,  
MAKUENI COUNTY

DELAYED COMPENSATION FOR PERSONS DISPLACED BY  
MULIMA DAM PROJECT

KETRACO SULTAN HAMUD-MWINGI HIGH  
VOLTAGE POWER LINE PROJECT

STATUS OF INCLUSION OF PWDs IN THE PUBLIC SERVICE

## ALLEGED ABUSE OF HUMAN RIGHTS OF PWDs

MAINSTREAMING OF LEARNERS WITH DISABILITY  
IN THE EDUCATION CURRICULUMALLEGED SHOOTING OF LIVESTOCK BY SECURITY OFFICERS  
IN LAIKIPIA COUNTYDISPLACEMENT OF SAMBURU PASTORALISTS IN  
LAIKIPIA COUNTYSTATUS OF LAND OWNED BY THE ADC  
IN LAIKIPIA COUNTYSTATUS OF INSECURITY IN NGOMENI WARD, MWINGI NORTH  
CONSTITUENCY IN KITUI COUNTY

**The Speaker** (Hon. Lusaka): Yes, Sen. Wambua.

**Sen. Wambua:** Thank you, Mr. Speaker, Sir. I take note that the Statement that I had sought lies within the questions that Sen. Kihika is seeking to defer. That Statement has been on the Order Paper for more than a month. It is a security situation where people are losing their lives. I do not know what the difficulty is to provide the answers to the questions that we have raised.

I stand to seek guidance from the Chair whether we should really continue deferring this question or not. If the Cabinet Secretary (CS) in charge of security is unable to deal with this matter, then I would request that the House, through your guidance, would find authority in some Standing Order to order either for the establishment of an *ad hoc* Committee to deal with this matter or require that the CS and the Inspector-General of Police avail themselves to respond to this matter.

As I conclude - I mentioned the last time it was deferred - the following day after I sought this Statement, more people were killed. It is a painful thing and for us it is just a matter of responding to a question, but for the people affected, it is life and death.

Thank you.

**The Speaker** (Hon. Lusaka): Let us hear from Sen. (Dr.) Musuruve, and then you will respond to all of them.

**Sen. (Dr.) Musuruve:** Thank you, Mr. Speaker, Sir, for the opportunity you have given me. I would like to just emphasise that it is important for the Senate Majority Leader to realise that issues of disability are issues of great concern. Most of the time, persons with disabilities (PWDs) are ignored and when this happens, the cyclic nature of poverty will continue with their lineage.

We are in an age where we are talking about mainstreaming of PWDs and you can imagine between 10 to 15 per cent of the population being mainstreamed. The issue of poverty will still continue in the lives of PWDs.

I also want to say that the issue of abuse of PWDs is still continuing even right now. If you just drive along Uhuru Highway, you will see PWDs being abused. So many

of them are being dumped on the streets to beg and do other things. So, this is an issue that really needs to be addressed.

On the issue of the new curriculum, as we are speaking, it is being rolled out. It is important that we get to know whether the Ministry of Education has done anything in terms of piloting for mainstreaming of learners with disability in the school curriculum. This is because, at the end of the day, if a pilot has not been done, the learners will still continue to be disadvantaged and when they finish the many years in school, they may end up not getting jobs. Therefore, I want to say that through the Chair, kindly insist that the relevant committees or the relevant authorities address these issues of disability.

I want to thank you because I know that you are a great friend of PWDs and there are many people who are friends of PWDs. So, kindly intervene on this matter that is of importance to the lives of PWDs that form between 10 to 15 per cent of our population. We cannot afford to ignore that group of our population if we intend to move ahead and develop.

Remember - I am bringing it to this House - when we are talking of Sustainable Development Goals (SDGs) and Millennium Development Goals (MDGs), it is anchored on the slogan of "Leave no one behind". I want to say in this House that we need to really address issues of PWDs because we do not want to leave them behind.

Thank you.

**The Speaker** (Hon. Lusaka): Yes, Sen. Mutula Kilonzo Jnr.

**Sen. Mutula Kilonzo Jnr.:** Mr. Speaker, Sir, I have four statements that have not been answered. First, I sympathise with Sen. Kihika of Nakuru County. This is what started in the last Senate. They started by delaying for two weeks, it went to four weeks, then two months and there are Senators who left this Senate in the last Session without receiving their responses for the questions they had requested for.

Secondly, I agree with my colleague, Sen. Wambua, that there are certain matters particularly on security that even if a Statement is not issued in this House, there should have been some action taken, for example, to arrest banditry where there is a conflict which ought to be given through the leadership at the Senate Majority level.

So, it is not enough to say that you have not received a written request. These Senators offered facilities to the leadership of the Minority and Majority to be able to make a phone call and a vehicle to drive to these Ministries.

Mr. Speaker, Sir, in a case of insecurity, I would like you to give directions and possibly an order, that it would not be enough excuse to say that the Ministry has not issued a Statement. The question should be; why have they not issued that Statement and what is the reason for having not followed up that Statement? As we go for Christmas holidays, the affected families do not know why their people are being attacked yet all of us are going to enjoy our holidays. That is an embarrassment to the Senate Majority Leader.

Mr. Speaker, Sir, your direction on this matter is very important. We will cry here more than the bereaved, but Sen. Kihika is not going to give us the answers we need. However, your directions are going to be good enough as precedent that we should not sit here and be giving excuses time and again because when we give these people sitting in the Ministries that opportunity, they will not answer those questions.

In the last Senate, they even refused to come for meetings, but started with these excuses. Please note that.

Thank you.

**The Speaker** (Hon. Lusaka): Yes, Sen. Olekina.

**Sen. Olekina:** Thank you, Mr. Speaker, Sir, for giving me this opportunity to comment on this delay of Statements. I am not sure if Sen. Kihika has requested to defer Statements up to (n). I was earlier informed that one of my statements was ready. When I look at these statements from (e) to (n), it means that she would not read all the other statements.

Secondly, I would like to insist that prior to issuing a Statement, we should be given advance copies so that at least we interrogate the answers because we know as soon as the Statement has been issued, that is the end of it. Therefore, I would really like to request that you instruct the Senate Majority Leader to ensure that the Members requesting Statements are given Statements prior to, so that they can get the information.

Thirdly, I know the delay in issuing Statements is partly our fault in the sense that we have not established the Committees, but given that this country has various Ministries and all the Senate Majority Leader has to do is to communicate to those Ministries, that should not be an excuse as to why we cannot get answers.

We are now about to go on recess. I raised a Statement based on the issue of the killing of cows in Laikipia and the compensation of those herders, but I have not gotten those replies. I know one herder whose wife was admitted in a hospital and later passed on. Now that we are going for Christmas holidays, these people do not have answers from their Government, from this House and their leaders, which puts us in a very awkward position. I want to echo the words of the distinguished Senator for Kitui County, Sen. Wambua; that it is imperative that we care about the people we represent.

Therefore, I would like to request that you direct that all these Statements that we requested be forwarded to the relevant committees. I know we are coming back from recess sometime in February, but prior to that, something must be done in terms of those Statements so that we do not fall into the same problem that the distinguished Senator for Makueni has alluded to on the issues of Members leaving this House without ever getting answers to their questions.

Mr. Speaker, Sir, I would like to end by re-emphasizing that whatever statements that are issued should be fully satisfactory and the only way we can interrogate them is when we have advance responses. Otherwise if this cannot be sent to the relevant committees immediately, I do not see the reason why we should set up *ad hoc* committees to investigate these matters. I thank you.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Speaker, Sir, I join the distinguished Senator for Narok County in urging those responsible for bringing answers-- There are certain issues where we can use the lack of committees as an excuse but where the loss of human life is involved, it is not a question of a committee. Human lives have been lost in very callous circumstances. In this particular case, people were butchered. This is a situation where issues of committee or no committee do not matter. In fact, the majority leadership should have taken not more than a week to bring an answer to this House because we lead people and not trees or wildlife. It is the people of this country that matter.

I urge that you should not encourage this. It is fine that we are forming committees, but we should not use the lack of committees not to address issues of loss of



lives either through banditry, police recklessness or now road carnage that we are seeing running away completely without anybody checking.

**The Speaker** (Hon. Lusaka): I direct that all those questions be put to the relevant committees. Like the Members have said, those who are going to head the committees should take matters of security seriously. We should not allow a situation where you come to explain yet people are dying. We want you to take matters of security very seriously as a House. We would like to get responses promptly when they are sought by honourable Members. So, I direct that the questions be put to the relevant committees and when we come from recess, we will need answers as requested.

*(Statements deferred)*

**The Speaker** (Hon. Lusaka): Next we will have the Senate Majority Leader issue a statement on the status of female prisoners and children held in prisons and remand facilities in Kenya.

STATUS OF FEMALE PRISONERS AND  
CHILDREN HELD IN PRISONS

**Sen. Kihika:** Mr. Speaker, Sir, I rise to respond to the question on the status of the female prisoners and children held in prisons and remand facilities in Kenya. We have a total of 2,543 prison officers. Out of this number, 2,322 are female officers while 221 are male officers. Our department upon recruitment of new staff takes them through an initial mandatory paramilitary training at the Department Staff Training College situated near Ruiru Town within Kiambu County.

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

*[The Temporary Speaker (Sen. Nyamunga) in the Chair]*

The training curriculum covers a range of areas pertaining to prisons procedures and practices, gender studies and human rights. All newly recruited officers are equipped with skills on how to handle different and vulnerable cases of prisoners including women in our facilities.

In addition, the Government has injected specialized manpower into our department by recruiting and transferring persons with specialized trainings in key areas. Some of these officers are deployed in our female facilities to specifically---

**Sen. Kwamboka:** On a point of order, Madam Temporary Speaker.

**The Temporary Speaker** (Sen. Nyamunga): There is a point of order by Sen. Kwamboka.

**Sen. Kwamboka:** Is it in order for me to get the response itself so that I go through it as she responds because I do not have a copy?

**The Temporary Speaker** (Sen. Nyamunga): What happened? She should have been served with a copy!

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

Sen. Kwamboka, I think we should defer that question to a later date.

*(Statement deferred)*

Next!

STATUS OF KENYA REGARDING THE HAGUE CONVENTION ON  
THE CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION

**Sen. Kihika:** Madam Temporary Speaker, I rise to respond to the questions raised by Sen. Halake on the position of Kenya on the Hague Convention on the Civil Aspects of International Child Abduction. Allow me to inform this august House that I am aware of the Hague Convention on the Civil Aspects of International Child Abduction on a Multilateral Treaty concluded under the Hague Conference on Private International Law on 25<sup>th</sup> October, 1980. It entered into force on 1<sup>st</sup> December, 1983 and as of 2<sup>nd</sup> August, 2017, there were 98 states party to the Convention.

The Convention seeks to protect children from the harmful effects of abduction and retention across international boundaries by providing a procedure to bring about their prompt return. The primary objectives of the treaty are:

(1) to secure the prompt return of children wrongfully removed or retained in any contracting state; and,

(2) to ensure that the rights of child custody and of access under the law of one contracting state are effectively respected in the other contracting states.

The Convention prescribes a quick and efficient procedure of returning a child wrongfully abducted from one contracting state to another or wrongfully retained to their state of habitual residence. This prescription is effected by an appointed central authority of a contracting state, ordinarily a government ministry, department or agency of the member.

The Convention provides a structure to support family relationships by providing a civil non-criminal procedure to return a child when abducted or taken away by a parent or custodian. The primary intention of the Convention is to preserve whatever status quo child custody arrangement existed immediately before an alleged wrongful removal or retention of a child, thereby deterring a parent or custodian from crossing international boundaries.

**Sen. Halake:** On a point of order, Madam Temporary Speaker.

**The Temporary Speaker** (Sen. Nyamunga): There is an intervention by Sen. Halake. Sen. Kihika, you can have your sit temporarily.

*(Sen. Kihika took her sit)*

**Sen. Halake:** Madam Temporary Speaker, what is being read is what is in the public domain that is known about the Convention. My interest was not in learning more because I know quite a lot about the international convention on the rights of the children. I just wanted to know why our country would opt out of that right for our children. They

should just give us the answer right away as opposed to repeating what is in the statement itself.

**The Temporary Speaker** (Sen. Nyamunga): Yes, Sen. Kihika.

**Sen. Kihika:** Thank you, Madam Temporary Speaker. In responding to the question, I would like to say the Senator is aware of the background. Therefore, I would seek your indulgence to skip the background that forms part of the answer.

Kenya is a State party to the United Nation Convention of the Rights of the Child (UNCRC) which provides that the children have the right to maintain personal relationships and direct contact with both parents on a regular basis.

In accordance with Article 2(6) of the Constitution of Kenya 2010, any treaty or convention ratified by Kenya becomes part of the laws of Kenya. In this regard, the UNCRC and the African Charter on the Rights and welfare of the Child are part of the laws of Kenya.

Further, the Constitution of Kenya 2010 has a progressive Bill of Rights that includes the rights of a child. Article 53 of the Constitution provides that the principles of the best interest of the child shall be of paramount importance in every matter concerning the child.

To fully realise these undertakings, the Government has also enacted the Children Act 2001 that incorporates the international conventions of the rights of the child to which Kenya is a State party, embodying the principles and spirits espoused by these international conventions, including the principle of the best interest of the child.

The Children Act 2001 establishes the Office of the Director of Children Services in charge of the Department of Children Services in the State Department of Social Protection, and the Ministry of East African Community, Labour and Social Protection that safeguards the welfare of children.

The Department of Children Services works in collaboration with other relevant stakeholders such as the National Police Service, the Judiciary, the Kenya Prison Service, the Office of the Director of Public Prosecutions, the Ministry of Interior and Coordination of National Government, Non-Governmental Organisations, Faith-based Organisations, the Probation and Aftercare Services Department, the Immigration Department, the Ministry of Foreign Affairs, and mobile service providers.

The Government has also established and operationalised the National Council for Children's Services which exercises the general supervision and control over the planning, financing, and coordination of child rights and welfare activities and advises the Government on all aspects thereof.

In addition, the following interventions are being carried out by the Department of Children Services to prevent kidnappings and abductions:

- (1) The establishment of a toll Free Hotline No.116 to report cases of child abduction.
- (2) Child Protection Units (CPUs) that are managed by the National Police Service to investigate cases of child abductions; for example, one is based in the Criminal Investigation Training School in South C.
- (3) The National Council for Children Services have the area advisory councils which have structures used to create awareness in the community on child protection, including protection from abductions.
- (4) The department carries out repatriation of abducted children
- (5) The department also carries out tracing and reunification of abducted children.

(6) The department has three rescue centres.

The Children Act 2001 also provides that on application of a qualified person, a child's court has the power to make judicial orders for the protection of children. These judicial orders include wardship orders requiring that a child be placed under the protection and custody of the court and production orders requiring any person who is harbouring, concealing or otherwise unlawfully detaining a child or who intends to remove a child from Kenya or from the local limits of the jurisdiction of the court to disclose any information regarding the whereabouts of the child and / or produce the child before the court and / or restrain the person from removing the child from the jurisdiction of the court for such period as the court may specify.

For international reciprocity, the Cabinet Secretary responsible for children matters, with the approval of the National Assembly, may enter into an agreement with the Government of any country or territory on such terms and conditions as he may think fit, whereby a child who has been ordered by a court under the provisions of the Act be committed to the care of a fit person or sent to an institution, may be received into that country and then placed in an institution or received into the care of a fit person or returned to his parent or guardian.

An order of a court of a country or territory with which an agreement has been entered into which could lawfully have been made by a court in Kenya if the person had been within its jurisdiction shall there upon the person being received in Kenya have the same effect and be enforceable as if the order had been made by the court in Kenya.

**Sen. Halake:** Thank you, Madam Temporary Speaker. I am very disappointed with the answer because it did not answer the question that was requested for in the statement. It went on, winded and described what local courts can do. The idea of having ratified or being a signatory to an international convention of that nature is so that you have a right to deal bilaterally with other countries as a country and bring our children back. However, what is being described here grossly does not answer a single question that was put.

The question was very simply; why is Kenya not a signatory to an international convention that protects our children that are not in our jurisdiction? What were described in the answer were local arrangements that would never help the mothers and fathers whose children have been abducted. All those arrangements that have been described do not answer the question. The question is very simple. Why is Kenya not a signatory to the Hague Convention on the Civil Aspects of International Child Abduction? Why are we opting out of this international convention that would protect our children? Why would a country do that and, instead, put in place other systems that would not hold water outside of a jurisdiction? So, that answer did not do anything.

There was one answer about the Cabinet Secretary. We do not want to be at the mercy of a Cabinet Secretary helping us. We want our laws and the country to be signatory to that. So, even as a mother whose children have been removed, you do not have to be at the mercy of the Cabinet Secretary who will act as he sees fit.

To me, that was not answered at all. I am not convinced that Kenya has done its best to protect its children that are outside the jurisdiction. I know these things may look far-removed, but it is a reality. A mother whose children were taken to Australia came to me and she could not afford to get anything. So, what were given are local arrangements that will not serve on the international jurisdiction.

I beg to have comprehensive answers to this question because it was not answered at all.

**Sen. Kihika:** Madam Temporary Speaker, the Senator's concerns are noted. We shall be requesting the Ministry of Foreign Affairs and International Trade to do better in answering her question. We would request additional time to get that answer back.

**The Temporary Speaker** (Sen. Nyamunga): Anymore response, Sen. Halake, in terms of time?

**Sen. Halake:** Madam Temporary Speaker, as we put that to the Ministry, my question is: Do they really intent to do it at all? Is the usefulness of that convention in their judgment, irrelevant? It would be interesting to know because they did not mention that they are either looking into it or why the country would opt out of it. That would be of interest to me.

**The Temporary Speaker** (Sen. Nyamunga): That is noted.

#### DELAYED RELEASE OF FUNDS TO COUNTY ASSEMBLIES

**The Temporary Speaker** (Sen. Nyamunga): The Senate Majority Leader is meant to issue a statement on the alleged delay by the National Treasury to release funds to county assemblies.

**Sen. Kihika:** Madam Temporary Speaker, I wish to request for an additional two weeks to get this Statement.

**The Temporary Speaker** (Sen. Nyamunga): The Member who requested the statement is not around. However, that is appropriate.

*(Statement deferred)*

Hon. Senators, I defer Orders No.13-15 to tomorrow since the Movers are not in the Chamber.

#### MOTIONS

##### ADOPTION OF SESSIONAL PAPER NO.2 OF 2016 ON THE NATIONAL SLUM UPGRADING AND PREVENTION POLICY

THAT, this House adopts the Sessional Paper No.2 of 2016 on the National Slum Upgrading and Prevention Policy, laid on the Table of the House on Tuesday, October 10<sup>th</sup>, 2017.

##### AUDIT ON DISTRIBUTION OF TEACHERS IN ALL PUBLIC SCHOOLS IN THE COUNTRY

THAT WHEREAS Article 43 (1) (f) of the Constitution of Kenya explicitly provides for the right to education for all;

AND WHEREAS it is the responsibility of the State to ensure that the right to education is enjoyed by all;

OBSERVING THAT that the Teachers Service Commission

(TSC) is the constitutionally mandated body to handle matters of employment, deployment, remuneration and discipline of teachers in all public schools;

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

CONCERNED THAT currently there exist great disparities in the distribution of teachers in schools across the country, with major teacher shortage being experienced in rural and marginalized areas;

FURTHER CONCERNED that there is major inequality in the distribution and allocation of teachers among schools across the country leading to either oversupply or undersupply of teachers in some public schools;

NOW THEREFORE, the Senate calls upon the Ministry of Education, Science and Technology in conjunction with the TSC to conduct a countrywide audit on the distribution of teachers in all public schools across the Country and report to the Senate within three months.

#### NATIONWIDE REGISTRATION OF ALL PLWDS

AWARE THAT the National Council for Persons with Disabilities was established through the Persons with Disabilities Act, 2003;

FURTHER AWARE THAT registration of persons living with disabilities is a function of the National Council for Persons with Disabilities;

ALSO AWARE THAT persons living with disabilities are estimated to be about 10% of any given population;

COGNISANT THAT for purposes of registration of persons living with disability, it is a mandatory requirement for one to undergo medical examination by a registered medical officer in a registered and certified health facility;

AWARE THAT medical services are now a devolved function;

CONCERNED THAT of the nearly 4 million Kenyans living with disabilities who reside in Kenya, there is a very small fraction of the number which is duly registered;

FURTHER CONCERNED THAT without proper registration, many persons living with disabilities are denied services because they lack the necessary proof of disability;

ALSO CONCERNED THAT owing to lack of accurate data on persons living with disabilities, the government at both levels cannot plan properly for his category of people;

NOW THEREFORE, the Senate calls upon the National Council for Persons with Disabilities in collaboration with Ministry of East African Community, Labour and Social Protection and county governments, to

carry out a nationwide registration of all persons living with disabilities in order to determine their exact population to facilitate effective service for this marginalized group of our society.

*(Motions deferred)*

### **ADJOURNMENT**

**The Temporary Speaker** (Sen. Nyamunga): Hon. Senators, there being no other business, the House stands adjourned until tomorrow, Thursday 14<sup>th</sup> December, 2017 at 2.30 p.m.

The Senate rose at 4.55 p.m.