

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Thursday, 17th November, 2016

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

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

PRAYER

STATEMENTS

The Speaker (Hon. Ethuro): Order, Members! Let us begin with the Statements to be sought.

STATUS OF NORTHERN COLLECTOR TUNNEL WATER PROJECT

Sen. Njoroge: Mr. Speaker, Sir, last week you directed that there was a response to be issued today by the Chairperson of the Standing Committee on Lands and Natural Resources. It was concerning the Northern Collector Tunnel Water Project in Murang'a County.

The Speaker (Hon. Ethuro): Order, Sen. Njoroge! Do you have a copy of the Order Paper? You cannot, in the first instance, just abuse the process. Check Statement (e) on the Order Paper. If you do so next time, I will throw you out. We have taken deliberate steps to make sure that Order Papers are available to you in advance and on entry. The Members know what I am talking about.

SUPPLY OF SUBSIDIZED FERTILIZERS TO FARMERS BY NCPB

Sen. (Prof.) Lonyangapuo: Mr. Speaker, Sir, I rise pursuant to Standing Order No.45(2)(b) to seek for a Statement from the Chairperson of the Standing Committee on Agriculture, Livestock and Fisheries regarding the supply of subsidized fertilizers to the farmers by the National Cereals and Produce Board (NCPB).

In the Statement, the chairperson should state:

(a) How much fertilizer has the Government purchased and stocked in the National Cereals and Produce Board (NCPB) depots for the ongoing short rains; September to December, 2016?

(b) How much money did the Government spend to purchase the fertilizer?

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(c) Has the fertilizer been made available for purchase by farmers for the current short rains planting season?

(d) Could the Chairperson table evidence of this disbursement or absorption per county?

(e) What is the total amount of money set aside for purchase of fertilizer in preparation for the long rains for the year 2017 and has the fertilizer been purchased yet?

(f) Could the Chairperson inform the Senate when the fertilizer is expected in the National Cereals and Produce Board depots if it has not been purchased yet?

The Speaker (Hon. Ethuro): The Chairperson Standing Committee on Agriculture, Livestock and Fisheries, respond to that.

Sen. Ndiema, you are the Vice Chairperson.

Sen. Ndiema: Mr. Speaker, Sir, the Statement sought is similar to the one that was sought by Sen. Karaba. I have the answer to that Statement today. I am ready to issue it. If there will be any supplementary information that will be sought, I shall provide.

The Speaker (Hon. Ethuro): Sen. (Prof.) Lonyangapuo!

Sen. (Prof.) Lonyangapuo: Mr. Speaker, Sir, that is new to me. The Chairperson should seek to proceed with Sen. Karaba's Statement and respond to mine as soon as possible. They may not be the same, word for word.

The Speaker (Hon. Ethuro): Order, Sen. (Prof.) Lonyangapuo! The Chairperson has more information than you. I agree completely with him; let him proceed with the Statement previously sought by Sen. Karaba. It is up to you to see what has been covered in what you are looking for. If there is anything else, you can raise it either in terms of supplementary, interrogation or a separate Statement.

Let us go to Statements to be issued starting with Statement (a).

COLLECTION OF LEVIES FROM BUSINESSES FOR PLAYING MUSIC

The Speaker (Hon. Ethuro): Members, let us be alert because we have many statements today and we must dispose as many as possible. So, I will not allow frivolous points of order or lengthy statements.

Let us have the Chairman of the Committee on Labour and Social Welfare, Sen. Madzayo.

Sen. Madzayo: Mr. Speaker, Sir, could I be bypassed and then come back later?

The Speaker (Hon. Ethuro): Why did you not just say so at the very beginning?

Sen. Madzayo: I was not aware of it.

The Speaker (Hon. Ethuro): Order, Senator! That is why we have Order Papers to make you aware.

Sen. Madzayo: Mr. Speaker, Sir, I am guided.

The Speaker (Hon. Ethuro): We will get back to you.

(Statement deferred)

Let us go to Statement (b) to be issued by the Chair of the Committee on Agriculture, Livestock and Fisheries.

FARMERS' PREPAREDNESS FOR THE PLANTING SEASON

Sen. Ndiema: Mr. Speaker, Sir, I seek your indulgence because I have given a copy to be made for Sen. Karaba so that when I read the response, he can follow.

The Speaker (Hon. Ethuro): Let us have Statement (c).

KILLING OF MS. EDNA OSORO AND MS. IRENE ONYANSI
IN KISII COUNTY

The Speaker (Hon. Ethuro): The Chairperson of the Committee on National Security and Foreign Relations.

Sen. Haji: Mr. Speaker, Sir, unfortunately, I do not have this Statement. I made all the effort to get it yesterday but according to them, they have not yet received the request. However, they told me that it will be available next week.

The Speaker (Hon. Ethuro): What have they not received? Is it the request?

Sen. Haji: Yes.

The Speaker (Hon. Ethuro): So, when are they promising to deliver?

Sen. Haji: Any time next week. I am sure it will be available by Thursday next week.

Sen. Obure: Mr. Speaker, Sir, I think the Chairman may have forgotten something because he gave me a copy of the response last week. It may not be adequate and maybe they want to obtain more information.

(Laughter)

Sen. Haji: Mr. Speaker, Sir, I confused it with the statement that was requested by Sen. Muthama regarding somebody who was arrested at the border. I have the statement. So, if he gives me a copy, I will give a response.

The Speaker (Hon. Ethuro): Order, Senators. We are under Item 2 on Page 1,197 of your Order Paper which is Statements to be issued. So, when I tell you (c) please, read (c) and do not confuse it with another one.

We will skip Statement (d) because I cannot see the Member and Statement (e) because I cannot see the Chair but we will come back to them.

Let us go to Statement (f) to be issued by the Chair of the Committee on National Security and Foreign Relations.

STATUS OF THE NATIONAL SECURITY
COMMUNICATION SYSTEM

Sen. Haji: Mr. Speaker, Sir, I gave the response to this Statement earlier and part of it yesterday. I have also consulted my colleague, Sen. M. Kajwang. The only outstanding issue was whether the money that was supposed to be paid has been paid or not. The answer is that the money must have been paid to the Treasury since the Office of the President does not handle money that is paid to the Government. Maybe he could

seek another statement from the County Public Accounts and Investments Committee (CPAIC) to find out whether that money was received by the Treasury.

Sen. M. Kajwang: Mr. Speaker, Sir, you ruled on this yesterday and I appreciate that the detailed statement was read yesterday. I have looked at the Statement and it is correct that the only part that is not satisfactory is on whether Safaricom paid the fees for the 4G frequency licence.

Mr. Speaker, Sir, I concur and I will direct my question to the Committee on Finance, Commerce and Budget because it can confirm whether these monies were received in the Consolidated Fund.

The Speaker (Hon. Ethuro): Senator, how do you propose to do so?

Sen. M. Kajwang: Mr. Speaker, Sir, I propose to generate another statement request that is specific to the proceeds of the 4G licence.

The Speaker (Hon. Ethuro): Sen. Haji, this matter would have rested yesterday if you had read it. You postponed it for one day in order to postpone for more days.

Sen. Haji: Yes, because earlier, I dealt with it twice and I felt I was being taken round, not by you but by those who wanted the statement.

The Speaker (Hon. Ethuro): We will also skip Statements (g) because the Member is not there, (h) because I cannot see both the Chair and the Member, (i) because the Member is not here, (j) because the Member is present but the Chair is not and (k) because the Chair is present but the Member is not.

We will have Statement (l) issued because both the Chair and the Member are present.

CIRCUMSTANCES THAT LED TO INJURING OF GOVERNOR ISAAC RUTTO

Sen. Haji: Mr. Speaker, Sir, our efforts to get this Statement today failed but we are still pursuing the Ministry so that we can issue it next week.

Sen. (Prof.) Lonyangapuo: Mr. Speaker, Sir, I have heard the Chairperson. However, I am surprised because this Statement was very urgent to the extent that the Speaker directed that it be issued today. This touches on the life of the Governor of Bomet County who has been missing in the county for over two weeks. It is essential that the Chairperson properly briefs this House on his whereabouts.

Sen. Haji: Mr. Speaker, Sir, I think the whereabouts of Governor Ruto is public knowledge because he went to South Africa. If we asked for that information from the Cabinet Secretary, he will say the same thing.

I agree with him that this Statement was supposed to be issued today but it is not available. However, we will continue pursuing them until we get the Statement.

The Speaker (Hon. Ethuro): By when?

Sen. Haji: Wednesday next week.

The Speaker (Hon. Ethuro): So ordered.

(Statement deferred)

We will skip Statement (m) because I do not see both the Chair and the Member.

Do we have anybody to issue Statement (n)?

We will go through the Statements for a second and last chance. We will begin with Statement (a) which is to be issued by the Chair of the Committee on Labour and Social Welfare.

COLLECTION OF LEVIES FROM BUSINESSES FOR PLAYING MUSIC

Sen. Madzayo: Mr. Speaker, Sir, this is in response to the questions raised by my colleague, Sen. Kanainza. In her questions, she asked the following. What is the role of the Music Copyright Society of Kenya (MCSK), Performers Rights Society of Kenya (PRISK) and Kenya Association of Music Producers (KAMP)? Who is entitled to collect levies? There are various questions that follow.

With your permission, let me respond.

(1) MCSK is licensed by the Kenya Copyright Board (KCB) to collect royalties for public performance on behalf of composers, publishers, producers of sound records and performance of music.

(2) There are three societies which are entitled to collect these levies and royalties for exploitation of music in public performances.

(3) The tariffs are currently under discussion with the users. As such, the levies currently charged are those that were gazetted in May, 2015 by the Attorney-General as required under the Act.

(4) Why are MCSK, KAMP and PRISK staff always accompanied by police?

It is strictly for security reasons or purposes. However, the real reasons could be that the enforcement that is required is to enable the police to assist the licensing officers in collecting these levies.

(5) Which laws give MCSK powers to collect the levies? These powers are in Section 46 Cap.130 of the Laws of Kenya.

(6) Explain if they have powers to arrest on the spot?

They do not have the powers to arrest on the spot. The police have been trained to have social contact and deal with queries on issues raised. There are specific policies and instructions to license its staff with regard to collecting the levies for the Society.

(7) Clarify the percentage of monies collected by MCSK to artists and administration.

Currently, the administrative to royalty payment ratio for members of MCSK to artists and administration is 36 per cent as per the last audited accounts.

(8) Has anybody been prosecuted for playing music in public?

Yes, the collecting societies are the complaints in most cases and details are available with them.

(9) Has the revenues been injected to support upcoming artistes? Most of the monies are spent on administrative costs and paying royalties to members of MCSK. As a social welfare programme that supports its younger members, the same fund also serves as a benevolent fund and caters for medical cost for its members. So far, the Society has spent Kshs18 million in the last financial year.

Sen. Kanainza: Mr. Speaker, Sir, I believe the statements are supposed to be signed by the Cabinet Secretary (CS) in charge. However, the Statement that has just

been read by the Chairperson has been signed by the acting Executive Director of the KCB. Is it in order?

Another concern is that it is not clear how musicians benefit directly from these levies. Just the other day, one of the musicians in Kenya died. However, this fund could not help her at all.

Another clarification I would like to seek is on the use of police when executing --

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The Speaker (Hon. Ethuro): Order, Senator! Just go straight to the clarification.

Sen. Kanainza: Mr. Speaker, Sir, my clarification is on how police officers behave when they accompany MCSK officers in visiting businesses. It is improper because we have other levies that business people pay to MCSK officers when they are not accompanied by police officers. So, the answer given by the Chairperson is unsatisfactory.

About the tariffs, I sought this question more than four months ago. However, the Chairperson is talking about tariffs being harmonised. It would be important that we have a standard tariff depending on the type of business that somebody conducts.

Sen. M. Kajwang: Mr. Speaker, Sir, the Chairperson said that police officers who accompany the officials ---

The Speaker (Hon. Ethuro): Order, Senator! Seek clarification. Do not repeat what the Chairperson has said. We were all present and we heard him.

Sen. M. Kajwang: Mr. Speaker, Sir, thank you. I am guided. It is not correct that these police officers do not arrest on the spot. I have had a real life situation where copyright enforcers looking for software licence---

The Speaker (Hon. Ethuro): Order, Senator! What is your clarification?

Sen. M. Kajwang: Mr. Speaker, Sir, I am just challenging the assertion that the police do not arrest because I have been in that situation. Could the Chairperson confirm that it is, indeed, true that the police do not arbitrarily arrest young people in matatus, buses and offices?

Secondly---

The Speaker (Hon. Ethuro): Of all the things that you said, that is the only thing that you needed to say because that is the clarification.

Sen. M. Kajwang: Mr. Speaker, Sir, thank you. Brevity is a difficult game for politicians. I will attempt to work within your framework. There are three organisations here. For the sake of brevity, I will just call them MCSK, KAMP and PRISK. A matatu operator is expected to get licenses from these three bodies.

The Speaker (Hon. Ethuro): What is your clarification again on the three bodies?

Sen. M. Kajwang: Mr. Speaker, Sir, what effort is the Government making to reduce these barriers on young people commonly known as matatu operators? It is not fair to subject them to licensing from these three different bodies.

The Speaker (Hon. Ethuro): So, do you still consider yourself a politician or not? You basically know it. It is only that you are just deciding to go a longer route. You always conclude better. Just start with that conclusion.

Sen. (Prof.) Lonyangapuo: Mr. Speaker, Sir, are these three bodies registered under the law? If they are, why are policemen required if the law stipulates what they are supposed to do? It is waste of money---

The Speaker (Hon. Ethuro): Order! I was about to grade you “A plus.” That is the kind of clarification you should be seeking during Statements Hour; very precise.

Proceed Chair.

Sen. Madzayo: Mr. Speaker, Sir, the questions are quite informative. I request to be given a week to be in a position to respond. I need to confirm whether or not the police arrest them on site. I will require about seven days to respond, maybe on Thursday next week.

(Sen. Hassan spoke off record)

Sen. Madzayo: Mr. Speaker, Sir, as to whether they are registered under the law, I cannot answer immediately because I did not have the instructions. I have to seek for those instructions before I respond effectively. Otherwise, I stand guided.

The Speaker (Hon. Ethuro): Order, Chair! Where do you get the instructions from?

Sen. Madzayo: From the Ministry.

The Speaker (Hon. Ethuro): Your instructions are from the Members.

(Loud consultations)

Sen. Hassan: On a point of order, Mr. Speaker, Sir. The clarifications that I sought are so concise that if he searched on Google or obtained from the Cabinet Secretary, Tuesday, should be good enough for him to respond to these queries. I think the period of time he is proposing is too long.

The Speaker (Hon. Ethuro): Order, Chair. I am equally concerned about the rate at which you want to do the business of this House; we will take eternity for nothing. Every time a supplementary statement or a clarification is sought, you need more time. Some things are basic. We invest in committees and the first assignment of the committee is to look at the constitutional, institutional and legal framework of your mandate. Some of those things should be obvious, especially with the kind of expertise you have. You are an advocate of the High Court, a former Judge of the High Court and a Senator of the Republic of Kenya.

Sen. Madzayo: Mr. Speaker, Sir, I am obliged.

The Speaker (Hon. Ethuro): I will give you the last chance. The response should come on Tuesday next week. Also, you should be ready to respond to any clarifications sought on that day. Every time a Statement is sought, you should imagine other relevant possibilities and matters.

Sen. Madzayo: Mr. Speaker, Sir, I stand guided.

Sen. Kanainza: Mr. Speaker, Sir, I am guided by your direction. As he brings the response to those other clarifications, he should give us the statistics of those who have benefited from this revenue that is injected to the upcoming---

(Sen. Madzayo consulted with Sen. Hassan)

The Speaker (Hon. Ethuro): Order, Chair! The Member is talking to you.

Sen. Kanainza: Mr. Speaker, Sir, I request the Chair to also give us statistics of those who have benefited from the revenue injected to support the upcoming artists.

The Speaker (Hon. Ethuro): Order, Sen. Kanainza. You also need to be clearer. Which statistics are you referring to?

Sen. Kanainza: Mr. Speaker, Sir, he should, at least, mention a number; that was part of my question. He has indicated here that most of the monies are spent on administrative matters as well as supporting its younger members. He should give us the list because recently---

The Speaker (Hon. Ethuro): Are you talking about the number of beneficiaries?

Sen. Kanainza: Yes, Mr. Speaker, Sir. I believe that is clear. The Ministry should give the standard tariffs to be charged, because the people doing *matatu*---

The Speaker (Hon. Ethuro): Order! That is sufficient.

Sen. Kanainza: Most obliged, Mr. Speaker, Sir.

FARMERS PREPAREDNESS FOR THE PLANTING SEASON

Sen. Ndiema: Thank you, Mr. Speaker, Sir. This is a response to a Statement sought by Sen. Karaba of Kirinyaga County regarding the preparedness for the planting season and supply of fertilizers and farm inputs to farmers.

The first question was on the measures that the Government is taking to ensure there is adequate supply of seeds and fertilizers to farmers throughout the country. The Ministry of Agriculture, Livestock and Fisheries has put in place measures to ensure adequate seed and fertilizers supply and distribution to farmers. The formal supply for most seeds is less than 30 per cent, except maize whose supply is about 62 per cent. Maize is grown by most farmers in Kenya as the main staple food crop. Maize seed production by Kenya Seed Company is currently 35,000 metric tonnes, which is expected to be increased to 60, 000 metric tonnes by 2018. Currently, the seed companies in the country have 48, 000 metric tonnes of maize seed, against an annual demand of 35, 000 metric tonnes, which is adequate for farmers to plant during the 2016 short rains and 2017 long rains.

There is enough seed to meet farmers requirements to plant 492, 515 hectares of other cereals; wheat, sorghum and millet, and 1.69 million hectares of pulses. Over 80 per cent of seeds of pulses and drought tolerant crops such as beans, sorghum and millet are acquired from the informal system.

With regard to fertilizers supply and distribution, the Ministry is implementing a national subsidy fertilizer program, which is part of the three tier fertilizer cost reduction strategy, a flagship project of the Kenya Vision 2030, that is, bulk procurement, blending and manufacturing. The subsidy fertilizer program is largely meant for open market prices stabilization, while assisting smallholder farmers to access affordable fertilizer.

The quantities of fertilizers procured are based on the budgetary allocation, consideration of what counties indicate as their annual requirements, national recommendation but subsidies fertilizers procured annually be 20 to 30 per cent of the national requirement. That is about 650, 000 metric tonnes. This is critical in ensuring that the private sector fertilizer dealers also remain vibrant and in business.

The Speaker (Hon. Ethuro): You can skip that and go to the next bullet.

Sen. Ndiema: Mr. Speaker, Sir, fertilizer distribution to counties is mainly through the elaborate National Cereals and Produce Board (NCPB) depot network and cooperative societies. Fertilizer allocation to various counties is based on intensity of agricultural activities, county uptake trends and seasonality at the time of the distribution.

Mr. Speaker, Sir, in preparation for the 2016 short rains planting season, the Ministry is distributing 17, 100 metric tonnes of various types of fertilizer. The breakdown is indicated in Table 1 as follows:-

Fertilizer Type	Quantity procured in metric tonnes
	2016/2017
DAP	3, 550
NPK 23:23:0	2, 000
CAN	2, 550
NPK 17:17:17	1, 000
NPK 10:26:10 (Blend 3)	3, 000
NPK 25:5:5	2, 000
NPK 22:6: 12	1, 000
Kelphos Single Superphosphate	2, 000
TOTAL	17, 000

Mr. Speaker, Sir, the details of the distribution of the above quantities is also shown in annexes 1 and 2. It is a long list showing the counties and depots as follows:-

Annex 1: Distribution of 2016 AGPO Fertilizers (Quantity in 50

Kilogram bags

REGIONS/NCPB DEPOT	BLEND 3	NPK 25:5:5	NPK 22:6:12 (Blend 5)	Kelphos Single Superphosphate (SSP), 19% P ₂ O ₅ Granular)	TOTAL
NAIROBI/EASTERN REGION					
Loitoktok	540	0	0	0	540
Kithimani	1080	0	0	0	1080
GCP	0	0	0	2240	2240
Machakos	1620	0	0	0	1620
Nairobi Silos	0	0	0	0	0
Makueni	0	0	0	0	0
Kibwezi	0	0	0	0	0
Thika	1080	2500	0	2800	6380
Tala	1080	0	0	0	1080
Emali	1080	0	0	0	1080
Konza	0	0	0	0	0
Sub-Total	6480	2500	0	5040	14,020
SOUTH/RIFT REGION					

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Bomet	1120	0	0	1680	2800
Elburgon	540	0	0	1120	1660
Enosean	540	0	0	0	540
Fort Tenan	540	0	0	0	540
Kabarnet	540	0	0	0	540
Kedowa	540	0	0	0	540
EldamaRavine	540	0	0	2100	2640
Kericho	540	17500	0	2000	20040
Kilgoris	540	0	0	0	540
Kipkelion	540	0	0	0	540
Kirindoni	540	0	0	0	540
Maralal	540	0	0	0	540
Marigat	540	0	0	0	540
Mulot	540	0	0	1120	1660
Naivasha	540	0	0	0	540
Nakuru	540	0	0	3180	3720
Narok	540	0	0	4480	5020
Ndanai	540	0	0	560	1100
Nyahururu	540	0	0	0	540
Sotik	540	0	0	960	1500
Subukia	540	0	0	560	1100
Kipipiri	540	0	0	0	540
OlKalau	540	0	0	1120	1660
Solai	540	0	0	0	540
Olenguruone	540	0	0	0	540
Sub Totals	14080	17500	0	20000	51580
NORTH/RIFT REGION					
Kapenguria	0	0	0	560	560
Turbo	0	0	0	0	0
Moi's Bridge	0	0	0	560	560
Mosoriot	0	0	0	0	0
Kitale	0	0	0	0	0
Ziwa	0	0	0	0	0
Lessos	0	5000	560	560	5560
Eldoret	0	0	0	0	0
Kipkaren River	0	0	0	1120	1120
Ainabkoi	0	0	0	0	0
Kapsowar	0	0	0	0	0
Kipkabus	0	0	0	0	0
Meteitei	0	0	0	0	0
Iten	0	0	0	0	0
Sub Totals	0	5000	0	2800	7800

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LAKE AND WESTERN					
Kisumu	0	0	0	0	0
Muhoroni	0	0	0	0	0
Bondo	0	0	0	0	0
Yala	0	0	0	0	0
Kisii	1080	2500	0	0	3580
Nyansiongo	1080	2500	0	0	3580
Migori	0	0	0	0	0
Awendo	0	0	0	0	0
Kehancha	0	0	0	0	0
Ntimaru	0	0	0	0	0
Kendu Bay	0	0	0	0	0
Homa Bay	0	0	0	0	0
Kakamega	1080	0	0	1120	2200
Malava	1080	0	0	0	1080
Butere	0	0	0	0	0
Chavakali	1080	0	0	560	1640
Hamisi	1080	0	0	1120	2200
Webuye	1080	0	0	1120	2200
Kipkaren River	1080	0	0	0	1080
Lugari	5800	0	0	0	10800
Malaba	1680	0	0	0	1680
Tongareni	0	0	0	0	0
Natiri PMC	0	0	0	0	0
Kapsokwony	3000	0	0	0	3000
Bungoma	5400	0	0	0	5400
Tamlega	0	0	0	0	0
Sub Total	24520	5000	0	3920	38440
NORTHERN REGION					
Meru	1080	2500	2500	1680	7760
Mwingi	1080	0	0	0	1080
Kitui	1080	0	0	0	1080
Embu	4000	2500	5000	2240	8320
Nanyuki	1080	2500	0	400	1480
Kiganjo	1080	2500	0	1120	2200
Sagana	2080	2500	5000	1680	6680
Maragua	1080	0	7500	0	16080
Isiolo	2360	0	0	0	2360
Maua	0	0	0	0	0
Mwea	0	0	0	1120	1120
Sub Total	14920	10000	20000	8240	48160

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COAST REGION					
Kwale	0	0	0	0	0
Garsen	0	0	0	0	0
Kilifi	0	0	0	0	0
Mombasa	0	0	0	0	0
Voi	0	0	0	0	0
Hola	0	0	0	0	0
Mokowe	0	0	0	0	0
GRAND TOTALS	60000	40000	20000	40000	160000

**Annex 2: Distribution of 9, 100 Metric Tonnes procured from M/S Holbud Limited
(Quantity in 50 Kilograms Bags)**

COUNTY	REGIONS/ NCPB DEPOT	DAP	NPK 23:23:0	NPK 17:17:17	CAN	TOTAL
Bomet	Sotik	2,240	-	-	560	2, 800
Bungoma	Webuye	-	1, 120	-	560	1, 680
Bungoma	Kapsokwony	-	-	-	-	-
Bungoma	Bungoma	-	1, 120	-	560	2, 240
Busia	Malaba	-	560		560	1, 120
Elgeyo Marakwet	Iten	-	-	560	-	560
Embu	Embu	2, 240	1, 120	1, 120	5, 040	9, 520
Embu	Ishiara		1, 120		1, 120	2, 240
Isiolo	Isiolo	-	1, 120	-	560	1,680
Kajiado	Loitokitok	1, 680	1, 120	-	560	3, 360
Kakamega	Kakamega	-	1, 120	-	560	1, 680
Kakamega	Malava	-	-	-		
Kakamega	Butere	-	1, 120	-	560	1, 680
Kakamega	Lugari	-	1, 120	-	560	1, 680
Kakamega	Tamlega	-	-	-	-	-
Kericho		1, 680				1, 680
Kiambu	Thika	1, 680	560	2, 800	1, 680	6, 720
Kilifi	Kilifi	-	-	-	560	560
Kirinyaga	Mwea	1, 680	1, 120	2, 240	560	5, 600
Kisii	Kisii	2, 240	1, 120	560	1, 120	5, 040
Kisumu	Kisumu	-	560	-	560	1, 120
Kisumu	Muhoroni	2, 240	1, 120	-	560	3, 920
Kitui	Mwingi	2, 240	-	-	560	2, 800
Kitui	Kitui	2, 240	-	-	560	2, 800
Kwale	Kwale	2, 240	560	-	560	3, 360
Laikipia	Nyahururu	-	-	-	-	-
Laikipia	Nanyuki	1, 680	560	560	2, 240	5, 040

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Machakos	Kithimani	1, 680	560	560	560	3, 360
Machakos	Machakos	2, 240	1, 120	560	3, 920	7, 840
Machakos	Tala	1, 680	1, 120	560	1, 120	4, 480
Machakos	Email	1, 120			560	1, 680
Machakos	Konza	1, 680	560	-	560	2, 800
Makueni	Makueni	2, 240	1, 120	-	560	3, 920
Makueni	Kibwezi	2, 240	1, 120	-	-	3, 360
Makueni	Emali	-	-	-	560	560
Meru	Meru	2, 240	1, 120	560	2, 800	6, 720
Meru	Maua	2, 240	-	-	560	560
Migori	Migori	-	560	-	560	2, 800
Migori	Awendo	-	560	-	1, 120	1, 680
Migori	Kehancha	2, 240	-	-	-	2, 240
Mombasa	Mombasa	1, 680	1, 120	-	560	3, 360
Murang'a	Maragua	1, 680	1, 120	1, 680	4, 480	8, 960
Murang'a	Sagana	2, 240	1, 120	1, 680	1, 120	6, 160
Nairobi	GCP	1, 120	560	2, 240	-	3, 920
Nakuru	Subukia	-	560	-	560	1, 120
Nakuru	Solai	-	560	-	1, 120	1, 680
Nakuru	Olenguruone	2, 240	560	-	-	2, 800
Narok	Narok	2, 240	560	1, 120	1, 680	5, 600
Narok	Ndanai	-	560	-	600	1, 160
Nyamira	Nyasiongo	2, 240	560	560	1, 120	4, 480
Nyandarua	Kipipiri	-	560	-	1, 120	1, 680
Nyandarua	OlKalaou	-	560	-	1, 120	1, 680
Nyeri	Kiganjo	2, 240	1, 120	1, 520	1, 120	6, 000
Nyeri	Karatina	2, 240	800			3, 040
Siaya	Bondo	1, 680	1, 120	-	560	3, 360
Siaya	Yala	2, 240	1, 120	-	560	3, 920
Taita Taveta	Voi		1, 120	-	560	1, 680
Uasin Gishu	Ziwa	1, 680	-	-	-	1, 680
Uasin Gishu	Eldoret	1, 680	-	560	-	2, 240
Uasin Gishu	Kipkaren Salient	2, 120	-	-	-	2, 120
Uasin Gishu	Ainabkoi	-	-	560	-	560
Uasin Gishu	Kipkaren River	-	1, 120	-	560	1, 680
Vihiga	Chavakali	-	1, 120	-	560	1, 680
Vihiga	Hamisi	-	-	-	-	-
GRAND TOTAL		71, 000	40, 000	20, 000	51, 000	182, 000
GRAND TOTAL IN MT		3, 550	2, 000	1, 000	2, 250	9, 100

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In addition to the above quantities, a tender for 195,500 metric tonnes has been announced whose closing date is 18th November, 2016, with deliveries in mid January 2017 for the long rains. The specifics of the types of fertilizer are also given in Table 2 below.

Lots	Type of Fertilizer	Quantity MT	Remarks
1.	Diammonium Phosphate (DAP 18:46:0)	50,000	Open to all
2.	Chemically compounded NPK 23:23:0	34,000	Open to all
3.	Chemically compounded NPK 17:17:17	15,000	Open to all
4.	Calcium Ammonium Nitrate (CAN) 26%N)	50,000	Open to all
5.	Sulphate of Ammonia (SA)	1,000	Open to all
6.	Blend 3, NPK CaMgS:10:26:10:4:5	7,000	Youth
7.	Blend 4, NpkCaMgS; 26:0:0:10:0:5	7,000	Women
8.	Blend 5, NPK:22:6:12+3S+2CaO+2Mgo+0.2Zn+0.2	2,500	People with disability
9.	Kelphos Single Superphosphate (SSP) 19% p205 granulated	3,000	Women
10.	Blend 6, NPK;9:16:6+25CaO+5S+2MgO+0.5Zn+0	5,000	Youth
11.	Blend 6, NPK;9:16:6+25CaO+5S+2MgO+0.5Zn+1Bo, granulated	5,000	Youth
12.	Blend 7, NPK;27:10:0+15CaO, granulated	5,000	Women
13.	Organic Hyper Phosphate 28% P205 15%CaO, granulated	5,000	Youth
14.	Blend 8, NPK; 14:29:8+4Cao+0.1Mgo+5S+0.13Zn+0.17B+0.21	2,000	People with disability
15.	Blend 9, NPK; 13:25:6+9Cao+5S+0.28Zn+0.14B+0	2,000	Women
16.	Blend 10, NPK; 11:23:23+4S+0.32Zn+0.19B+0.2Cu	2,000	Women
	GRAND TOTAL	195,500	

Mr. Speaker, Sir, the other question was with regard to the measures that the Government has put in place to cushion farmers in the event of depressed short rainfall (*La Niña*) as predicted by the Kenya Meteorological Department (KEMD). The response is as follows:-

The KEMD has forecasted a *La Nina* phenomenon. The climate outlook for October, November and December indicates that much of the country is generally likely to experience the depressed rainfall mainly driven by the evolving *La Niña* conditions.

The Ministry of Agriculture, Livestock and Fisheries has put in place measures to ensure adequate seed supply and distribution to farmers. This includes purchase and distribution of drought tolerant seeds. The Ministry through Traditional High Value Programme which targets the pro-poor has been involved in purchase and distribution of seeds. The purpose of Traditional High Value Crops Programme is to promote sustainable seed systems in Arid and Semi-arid Lands (ASALs).

The Speaker (Hon. Ethuro): Order, Chairperson. You may now go to the last two bullets.

Sen. Ndiema: Mr. Speaker, Sir, these seeds are sorghum, millet, beans, green grams, pigeon peas, cowpeas, dolichos, open pollinated maize, cassavas and sweet potatoes.

This year, the programme plans to distribute 597 metric tonnes of assorted drought tolerant seeds to 25 counties in different phases of drought, to reach 91 sub-counties targeting over 100,000 small-scale farmers in ASALs. It is expected that approximately 86,675 acres will be planted for food and nutrition security at a cost of Kshs143,222,320. Counties have been advised to distribute the seed in areas with irrigation facilities for better impact. The Ministry is also undertaking sensitization of farmers on *La Niña* phenomenon and appropriate actions spearheaded by counties.

Sen. Karaba: Thank you, Mr. Speaker, Sir. It is a good answer, but I am not convinced whether what the Chairperson has said is the correct position on the ground. He has said that a lot has been distributed this year, including the release of drought-tolerant seeds to 25 counties, which is not true. He has also said that the Ministry has given out fertilizer to various depots, including Sagana. That is not true because I was there recently and there was no fertilizer.

The Speaker (Hon. Ethuro): Order, Sen. Karaba.

Sen. Karaba: Mr. Speaker, Sir, a lot of fertilizer has not been delivered. I wonder whether the Chairperson is convinced that what he has stated is true on the ground. If it was true, we would not be complaining. We have not had fertilizer in the depots, which is leading to shortage of food in various places. Why can we not have fertilizer supplied before the planting season? Why should the fertilizer be distributed tomorrow when planting has already started? We need topdressing fertilizer. NPK17:17:17 fertilizer is for coffee and not maize. Why are the farmers given the wrong fertilizer?

Sen. (Prof.) Lonyangapuo: Mr. Speaker, Sir, Sen. Karaba has covered most of what I had prepared as a statement earlier. I want the Chairperson to address the following: During the short rains, planting in most areas starts in September and harvesting is done around December and January. This Statement was signed yesterday 16th November, 2016 and it claims that the Ministry is distributing 17,000 metric tonnes of various fertilizers. Is the country prepared for the food shortage that will occur? Why is the Ministry distributing fertilizer two-and-a-half months after the planting season?

With regard to the long rains, the Chairperson has stated that a tender for 195,000 metric tonnes---

The Speaker (Hon. Ethuro): Order, Sen. (Prof.) Lonyangapuo! Seek your clarification.

Sen. (Prof.) Lonyangapuo: Mr. Speaker, Sir, I am basing my argument on that. The tender advertisement will close tomorrow and the first consignment will arrive in January, 2017. Last year, we sought the same Statement, which was responded to. The fertilizer arrived in April whereas the planting season during the long rains was around February onwards. Could the Chairperson tell this House and Kenyans at large whether the Ministry is still serious with the issue of food security or they want to continue importing food?

The Speaker (Hon. Ethuro): Sen. (Prof.) Lonyangapuo, those are two clarifications. One is about delivery in April or January. The other one is on importation of food.

Sen. Melly: Thank you, Mr. Speaker, Sir. I want to seek two clarifications. I come from a county that depends on agriculture not only for food, but also as a source of income. One, what has the Ministry done to deal with the cartels who buy fertilizer in bulk from the National Cereals and Produce Board (NCPB) and later sell it to retailers, and the retailers in turn sell it to the farmers at a higher price, when NCPB runs short of fertilizer? Two, all of us understand that agriculture is a devolved function---

The Speaker (Hon. Ethuro): Order, Senator! Seek your clarification. You are explaining to us that you are from an agricultural county; who does not know where you come from?

Sen. Melly: Mr. Speaker, Sir, I beg to proceed. My first clarification on the cartels who buy fertilizer is clear---

The Speaker (Hon. Ethuro): Order, Senator! You are being repetitive. Seek your second clarification?

Sen. Melly: Mr. Speaker, Sir, what have the counties done in terms of storage and distribution of fertilizer to farmers who are in need?

The Speaker (Hon. Ethuro): Very well.

Sen. Ndiema: Mr. Speaker, Sir, I gave a response to the effect that the Ministry is distributing fertilizer. In the annexes that I did not read several counties, including Kirinyaga County are covered. It is indicated that fertilizer is being distributed to farmers for the short rains in that area.

The Speaker (Hon. Ethuro): Order, Senator. I also have a copy of your response, but I do not see the counties.

Sen. Ndiema: Mr. Speaker, Sir, it is in Annex 2.

The Speaker (Hon. Ethuro): Is annex 2 the same as Table 2 on page 4?

Sen. Ndiema: Mr. Speaker, Sir, there is Annex 1, which shows the depots and Annex 2, which shows the areas where the fertilizer is distributed.

Looking at Annex 1 on the depots, I believe Sagana is in Kirinyaga County, or at least supplies fertilizer to Kirinyaga. That is the nearest depot to farmers in Kirinyaga, particularly those planting rice.

Sen. Karaba: On a point of order, Mr. Speaker, Sir. Is the Chairman in order to imagine that I do not come from Sagana yet Sagana is in Kirinyaga? I was there yesterday and there was not a single bag of fertilizer. What is he trying to contest? He is saying that there is fertilizer, while I am saying that there is no fertilizer? Who is correct?

The Speaker (Hon. Ethuro): Order, Senator. The Chair is just trying to confirm that Sagana is a depot supplying your county. The contestation is whether what is given here is what obtains on the ground.

Proceed, Sen. Ndiema.

Sen. Ndiema: Mr. Speaker, Sir, this is the response from the Ministry and the Chair can only provide the information that has been given, which is that the Ministry is distributing. It is likely that it has been distributed for the purpose of the short rains. Maybe it was there and has been collected by the farmers because the planting season started a long time ago. If he went there yesterday, maybe it is no longer there or maybe it

has been moved from Sagana to another place. This is because the term used here is that it is being distributed.

The tender is closing tomorrow for fertilizer to be available in January. That is a Statement which is an undertaking by the Ministry. We can only wait until that time to question why the fertilizer has not arrived on the promised date. We cannot anticipate delay.

The Speaker (Hon. Ethuro): Order, Chair. Remember that clarification was sought by Senator (Prof.) Lonyangapuo, and he had a basis for doing so since there is a history. This is because last year, you made the same promise for January only to deliver in April. So, all the House and the country require is a reassurance that this time round, it will be delivered as promised in January. That could not have been lost to the Chair.

Sen. Ndiema: Mr. Speaker, Sir, as the Committee on Agriculture, Livestock and Fisheries, we undertake to keep a keen eye on this promise to ensure that it is implemented as promised. If there will be any delay, certainly, as a Senate Committee, we shall take the necessary steps.

On the issue of cartels, it is true that there have been cases where some cartels or unscrupulous businessmen have fraudulently purported to take maize to the farmers only to divert it. This is common knowledge although it is not rampant. The Ministry in this response has indicated that this time - I hope they will do so - farmers are being identified and registered to ensure that it is only farmers who benefit from the subsidized fertilizer and that cartels are not given opportunity to profit where they do not deserve.

The Speaker (Hon. Ethuro): Sen. (Prof.) Lonyangapuo.

Senator (Prof.) Lonyangapuo: Mr. Speaker, Sir, I can confirm to the Chairperson that yesterday, I called the Eldoret, Bungoma and Kakamega depots to inquire whether the fertilizer was there, and it was not. Sen. Karaba is right because it is not even in the areas where we normally have it. Could the Chairperson be compelled to request the Cabinet Secretary (CS) and the Ministry officials to come and address this issue because as a House, we must prepare to have food for our people next year?

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

Sen. Melly: Mr. Speaker, Sir, on the issue of Sen. Karaba, I think he should clarify whether there is already fertilizer at the depots. For example, Eldoret, which is the biggest depot has no fertilizer as we talk. Could he confirm whether the same cartels, which I am referring to, have already diverted the same fertilizer since it is not in the depots?

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

Sen. Hassan: Mr. Speaker, Sir, I am rising on a point of order based on this discussion. I have previously said in this Senate many times that this issue of question and answer is just one of asking a question and then you are given a cliché answer that “the government denies, contends, says, and we confirm”.

As we progress, we need to have this kind of interrogation in a more critical way that maybe the Committee needs to retreat and take some questionnaires to the sites to verify these issues. This is because it will be a question of push and pull, Sen. Karaba says that he saw it while the Senator for Trans Nzoia says; “this is what I have been told to say.”

It is important as we move forward, that some of these clarities are sought as per your order in your previous points, that the Committee is told to extract the HANSARD and go back to verify some of these areas.

Sen. Kembi-Gitura: Mr. Speaker, Sir, I quite agree with the intervention by the Senator for Mombasa County because that is the same. I have been raising these questions and answers on various occasions. We are discussing very important facts---

(Loud Consultations)

Mr. Speaker, Sir, it is becoming very difficult even to hear myself because Sen. Murkomen has just come and is sitting next to me.

The Speaker (Hon. Ethuro): Order, Sen. Kembi-Gitura. You may wish to recognize that Sen. Murkomen is your leader in this House.

Sen. Murkomen: Yes, Mr. Speaker, Sir.

Sen. Kembi-Gitura: Yes, Mr. Speaker, Sir, but he is supposed to lead from the front.

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

Sen. Kembi-Gitura: Yes, Mr. Speaker, Sir, I think the issue raised on---

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

Sen. Murkomen: Mr. Speaker, Sir, thank you for reminding the Deputy Speaker of my responsibilities in this House. As a matter of fact the office and the position I hold in this House is the cause of the excitement when I arrived. So, I must not be put to blame since one cannot make noise alone.

(Laughter)

The Speaker (Hon. Ethuro): Proceed Sen. Kembi-Gitura.

Sen. Kembi-Gitura: Mr. Speaker, Sir, I have heard what Sen. Murkomen has said, but let me proceed with the issue at hand.

I think we have to reconsider the issue of answers in this House. I am sure you will allow me to say that when I was an Assistant Minister for Agriculture and for Foreign Affairs, we took time before we brought answers to the House as Sen.(Dr.) Machage, and I am sure, yourself will recall. We took time and interrogated matters and even went through the files so that we were able to deal with supplementary questions. However, the Hon. Senator, who is the Chairperson, can only deal with the answer as written for him. Therefore, as the Senator for Mombasa says, maybe he can read the answer very well, but not be able to deal with the supplementary questions.

Maybe now that we are revising our Standing Orders, these questions should be answered at the Committee Stage by the Cabinet Secretary (CS) in charge so that when the answer comes and is property of the House, the Chairperson and their Committee are able to stand by the answer as given, because they shall have interrogated the statement including the supplementary questions that may arise out of such an important Statement.

If fertilizer is not in Sagana and that is the same depot that supplies the County of Murang'a over and above Maragwa, then it means the rains that have come could go to waste because they will not help the farmer because the planting season would have

passed by the time the fertilizer comes. The top dressing fertilizer is not going to be there. I think it is time we revised the Standing Orders on how we want questions tackled and dealt with in the House.

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

The Speaker (Hon. Ethuro): Who do you want to inform, Sen. (Dr.) Machage?

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

He has finished and the Floor was not his. Sen. Chelule.

Sen. Chelule: Mr. Speaker, Sir, I am concerned that it is not only about the supply of fertilizer but also about the quality. I want to ride on the statement by Sen. Karaba. The quality of fertilizer we receive in different stations in this country----

The Speaker (Hon. Ethuro): Order, Senator! It is statement hour and it is time for clarifications. It is in fact, the second tier. Yes, Sen. Cheruiyot!

Sen. Cheruiyot: Mr. Speaker, Sir, I want to seek a clarification on the answer that has been given about the distribution of fertilizer. I have seen parts of Kericho County; Fort Tenan and Kipkelion. I wanted to report that I was there last weekend and this problem is persistent. We do not have those fertilizer and farmers are complaining.

The Speaker (Hon. Ethuro): Sen. Kanainza!

Sen. Kanainza: Mr. Speaker, Sir, I agree with the Deputy Speaker that these questions should be answered at the Committee stage. The Chair is also affected. I know Trans Nzoia is the basket of our Kenyan food but unfortunately, they do not have fertilizer. Kakamega depot also does not have. My concern is that why is the national Government is holding on this function yet we know agriculture is a devolved function?

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

Sen. (Prof.) Lonyangapuo: One more, Mr. Speaker, Sir, in my earlier statement, I had wanted to know the total amount of money that had been set aside during this financial year to purchase fertilizer so that we know the true figure.

The Speaker (Hon. Ethuro): Order, Members. Before I allow the Chair to say something because I do not think he has any serious response in his own admission, if not a confession, on the issue raised on by Senators Kembi-Gitura and Hassan.

You may wish to recall what others have said including Sen. (Dr.) Khalwale and what Sen. (Dr.) Machage was about to say especially those of us who served as Assistant Ministers or Ministers. You will also remember as an Assistant Minister, you are still given information the same way our Chairs are given. I think we have run away from the problem. Chairs and Committees need to be diligent. Get the statement; interrogate it on the basis of your knowhow. We facilitate Chairs, assist them, and give them capacity to know these things including for the case of Sen. Ndiema as raised by Sen. Kanainza. Which harm is there to call the NCPB Depot in Trans Nzoia?

The system we are craving for will not salvage this problem. This problem has always been there because the Members give direct information. They come direct from their counties. They have the most up to date information. So, they will contradict you if that information is not correct. So, it is for the Committee to go the extra mile. Do not rely on what you get from the Ministry alone. You should be able to call other entities

including national National Cereals and Produce Board (NCPB) and local depots to give accurate information and give to the House and the Committee.

So, having observed that, let the Chair and the Committee go back. We want a factual response on Tuesday because this is about issues of bread and butter for the country. Every time an issue of this nature comes, I expect the Committees to take the extra diligence to make sure they get the correct information because we cannot afford to get it wrong. It means food insecurity, lack of food, failure to confront the current drought and famine that the country is facing. It is so important that we have no choice but to deliver on this.

Sen. Ndiema: Thank you, Mr. Speaker, Sir. While I have given a response to the answers that were sought, what happens is that when supplementary questions arise, that is the time we realize there are certain things we need to check. There was no reason prior to anticipate that what is stated here is not correct. I tend to agree with the idea that where there are issues that arise like these, we invite the Cabinet Secretary to the Committee and all Members in this House come to interrogate. As Members of Committees and Senators, we are incapacitated. We have asked for money to enable us oversight, create systems in counties to check on depots and so forth but the National Assembly has deliberately frustrated our work and refused us money to oversight. That is the reason we cannot do some of these things.

Nevertheless, we shall comply with your directive and I invite those Senators to bring queries. We are going to ask the Cabinet Secretary next week to come and respond. We shall inform the House. Thank you.

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

Sen. Karaba: On a point of order, Mr. Speaker, Sir. I am trying to agree with what the Chairman has said. I want to caution him that the rains have already started. Farmers have planted without fertilizers and there is no top dressing fertilizers in the depots. So, we are already disadvantaged as far as fertilizers are concerned. Even after he consults the Cabinet Secretary, the decision of the Ministry will belated in the sense that farmers have already experienced the problems in planting and top dressing. Therefore, we are expecting poor crop this year. That is adding insult to the injury. We are talking about drought and that is shortage of food and you are talking of intended shortage of food in the potential arable farms or counties which can produce enough food but they do not have fertilizer. Who do you blame? The Ministry of Agriculture, Livestock and Fisheries should pull up their socks. I hope they will do it.

The Speaker (Hon. Ethuro): Order, Sen. Karaba. I sympathize with your submissions but I would like to remind the Chair that once a Member has sought a statement, the Chair and the Committee prosecute the statement on behalf of the Senator who requested. So, you must look at it, consider the possibilities and verify especially on such critical matters to be sure that what you bring to the House will not be contested by the Members. In law of evidence, we say every document you assume is a forgery until you prove it is not.

Next statement!

KILLING OF MS EDNA OSORO AND MS IRENE
ONYANSI IN KISII COUNTY

Sen. Haji: Thank you, Mr. Speaker, Sir. I want to very sincerely apologise to you, the House and my colleague, Sen. Obure, for having misunderstood the Statement that I was supposed to give which I am now ready to do so. I do not want to read all the questions, but I will go straight to the answer to save time.

On 6th October 2016 at about 6.00 p.m., Administration Police Officers from Kwekwe Response Team were clearing hawkers and *boda boda* riders who had obstructed free flow of traffic at Daraja Mbili Market. However, one of *boda boda* riders attempted to wrestle a gun from one of the officers. Unfortunately, the rifle accidentally discharged ammunition as the officer was struggling with the rider resulting to the shooting of two women; Irene Kerubo aged 36 years and Emily Osoro aged 21 years. Irene Kerubo was shot in the abdomen and rushed to Kisii Teaching and Referral Hospital where she succumbed to the injuries while undergoing treatment. Ms. Edina was shot in the chest and died on the spot. The accidental discharge sparked riots and demonstrations by the hawkers and *boda boda* riders.

The following motor vehicles had their window screens damaged during the riots:-

- 1) GKB 264D
- 2) GKD 3339
- 3) KBA 403C
- 4) KCF 464D

Mr. Speaker Sir, the rioters mobbed and broke into Kisii Bata Shop and looted assorted shoes valued Kshs62 million. This prompted police officers to move in, in order to restore normalcy.

The Kisii DCIO immediately commenced investigations into the incident vide Criminal Case No.641/395/216 and all the firearms were confiscated from the officers and taken to CID Headquarters in Nairobi for ballistic examination. Once investigations are concluded action will be taken against anyone found culpable.

The Government is aware that hawkers and the traders encroach on the road in Daraji Mbili Market, especially during market days thus inconveniencing other road users besides causing huge traffic snarl ups. The situation is aggravated by trucks which offload merchandise along the road while matatu operators pick and drop passengers along the road. To solve the problem, the county government is identifying the piece of land away from the road to put up a new market which will accommodate all the traders.

Sen. Obure: Mr. Speaker, Sir, I want to thank the Chairman for this response. However, I want to point out that my request on the steps that the Government is taking to ensure that justice is served to the families of the deceased has not been responded to.

Further, I want to clarify that the information the Chairman has been providing about the rifle accidentally discharging ammunition may not be correct. My understanding from those who were at the site was that this information is not quite accurate. I will ask him to go into this a little further. The Daraja Mbili Market is actually a disaster in waiting. We have already lost these two businesswomen because of the conflict between road users and the traders. What is the Kenya National Highway

Authority (KeNHA) doing to improve the road network around Daraja Mbili Market? We have been told about designs and the plans to do so. What have they done to avert this disaster in waiting?

The Chairman has also talked about the county government having identified a piece of land. Where is this land? What is the status of the proposed market presumably to be built by the county government? When is the completion date for this new market?

Sen. Hassan: Mr. Speaker, Sir, I want clarity from the Chairman on how you can investigate a matter where you already formed an opinion. What he gave is already an opinion of what happened and you tell us that you are investigating the matter further. So, how do you investigate a matter that an opinion has already been formed, in fact, at an almost an official level?

Secondly, in the circumstances of shootings by police officers, it is required that there is an inquest. Is there any inquest that has been instituted since that shooting to establish the circumstances of the shooting? Thirdly, there is a matter that has been reported in the media that these police officers are attached to the escorts of the Deputy President. Is it true? If it is true, how then does it become Kwekwe?

Sen. Abdirahman: Thank you, Mr. Speaker, Sir. My question is closely related to that of my brother Hassan. I want to ask the Chairman to tell us exactly how fast this matter can be handled. I always realise when it involves police, officers you are asking the Criminal Investigations Department (CID) who are essentially a unit in the police force and a department to the investigations. Many a times we do not get the actual truth. This is a matter that has caught the public attention and it is up to them to do so the earliest. Can the Chairman tell us how soon this matter will be concluded with a view to getting justice for the families of those affected?

Sen. (Dr.) Machage: Mr. Speaker, Sir, now that it is confirmed that Edna Osoro and Irene Kerubo died as a result of bullets shot from the police, can the Chairman, Standing Committee on National Security and Foreign Relations confirm that the Government will compensate their families for this loss of life or will pay the cost incurred both in hospitalisation and mortuary expenses and feeding mourners that you have in funeral expenses?

Sen. (Prof.) Lonyangapuo: Mr. Speaker, Sir, there is a disturbance from my neighbour here.

The Speaker (Hon. Ethuro): Order, Sen. (Prof.) Lonyangapuo! I thought it was mutual. Proceed.

Sen. (Prof.) Lonyangapuo: Mr. Speaker, Sir, this issue by the Chairperson, Standing Committee on National Security and Foreign Relations is very interesting. If you listen to the Statement very well, there was a scuffle.

The Speaker (Hon. Ethuro): Order, Sen. (Prof.) Lonyangapuo! Ask for clarification.

Sen. (Prof.) Lonyangapuo: Mr. Speaker, Sir, I am asking for clarification. There was no riot whatsoever that happened. How can there be a scuffle when there was no riot? So, we need to know clearly---

The Speaker (Hon. Ethuro): Order, Sen. Murkomen! Indeed, Standing Orders are very clear between the Speaker and the Chair and you should not obstruct.

Proceed.

Sen. (Prof.) Lonyangapuo: Mr. Speaker, Sir, it should be clear that we do not respond the way the police want us by covering up. We should state what exactly happened. We know the victims were businesspeople and there was no harm intended. Therefore, the scuffle was not to the extent that the police wanted to remove a gun. So, the Statement was not clear enough.

Sen. Haji: Thank you, Mr. Speaker, Sir. The question of justice for parents of the deceased persons is valid. However, since the matter is still under investigation, I will try to find out from the Cabinet Secretary of Interior and Coordination of National Government whether they have any provision. If it is discovered that the police were at fault by killing these people, I will inform the House how long we will take to compensate their families.

Mr. Speaker, Sir, Sen. Obure's assertion that this might not have been an accidental discharge is very difficult for me to tell because I am not on the ground and I was not a witness to what happened. If I ask the Cabinet Secretary, I am sure that he will still tell me that the matter is under investigation. Sen. Obure asked where the new market is and when it will be completed. Those are valid questions which I will endeavor to get an answer.

Mr. Speaker, Sir, Sen. Hassan has asked if it is possible for one to investigate on something when they have already formed an opinion. According to the Statement, there was a struggle and the gun discharged. The Department of Criminal Investigations (CID) is investigating the matter to find the police officer whose gun discharged and led to the death of the victims. After that, action will be taken against the concerned officer. I do agree that he could have secured the gun by putting it in safety mode before it discharged itself. I will ask the Cabinet Secretary to provide a better Statement. I am sure the CID will take the matter to court for inquest when they finish the investigations. I will seek more clarification from the Cabinet Secretary on whether the escort of the Deputy President was involved in the shooting. We will hopefully get an answer to that problem as soon as investigations are completed.

Sen. (Prof.) Lonyangapuo said that the victims were not demonstrating yet what has been said is even more serious because they are said to have attempted to grab the gun and that is how they met their fate.

As to the question on whether the Government will compensate the families of the victims, I hope that the parents will go to court to seek justice if they were killed innocently.

The Speaker (Hon. Ethuro): Chairman, when do we get it?

Sen. Haji: Mr. Speaker, Sir, this takes me back to the probing which Sen. Ndiema read into. Getting the Statement is a big hurdle for us and to get supplementary Statement may also be very difficult. To be honest, I will require about two weeks to come and say something in the House.

The Speaker (Hon. Ethuro): So ordered.

CORPORAL PUNISHMENT IN TRAINING
INSTITUTIONS

(Statement dropped)

STATUS OF THE NORTHERN COLLECTOR WATER
TUNNEL PROJECT

I do not see the Chairperson or the Vice-Chairperson. Could we hear from Sen. Obure?

Sen. Obure: Mr. Speaker, Sir, this response is supposed to have been provided by the Chairperson of the Committee, but I will request that you indulge me to respond to it in his absence.

The Speaker (Hon. Ethuro): Proceed.

Sen. Obure: Mr. Speaker, Sir, there are a number of requests made by Sen. Njoroge. In the first one, he wanted to know when the project was launched. The masterplan and feasibility study for developing new water resources for Nairobi City was launched for implementation on 18th September, 2012. The masterplan included implementation of the Northern Collector Tunnel---

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

Sen. Njoroge: On a point of order, Mr. Speaker, Sir. The last time we were here, the Chairperson answered all the questions which Sen. Obure is trying to answer. However, there were some clarifications that were sought by Members and some documents were to be presented today. My concern is that what Sen. Obure is saying is not what we were waiting for today. This is because we were waiting for those documents---

The Speaker (Hon. Ethuro): I do recall that the Statement had actually been submitted but there were some outstanding documentation. Thank you, Sen. Njoroge.

Sen. Obure: Mr. Speaker, Sir, I apologize. I was out of town. We had a meeting this morning and I was given the impression that this was due to be responded to. I will look at the HANSARD and find out what was required and what was to be provided. We will report back on Tuesday.

The Speaker (Hon. Ethuro): The Statement should be placed in the Order Paper on Tuesday. Check on the HANSARD so as to narrow down to the essentials.

The Speaker (Hon. Ethuro): What is it, Sen. Njoroge? I thought we have satisfied your request.

Sen. Njoroge: On a point of order, Mr. Speaker, Sir. I will be out of the country next week. If allowed, I would wish to be present when those documents are being presented. It was my prayer that the documents be presented either on 28th or 29th November, 2016.

The Speaker (Hon. Ethuro): Order Members, the Statement will appear on the Order Paper on 28th November, 2016. That has been resolved.

STATUS OF HIGHER EDUCATION LOANS BOARD LOANS ADVANCED
TO UNIVERSITY STUDENTS

(Statement dropped)

THE PROLONGED DROUGHT AND FAMINE IN
VARIOUS COUNTIES

The Speaker (Hon. Ethuro): Sen. Bule is not in the House, so that Statement is also dropped.

(Statement dropped)

LEADERSHIP CRISISAT MOI UNIVERSITY

Sen. Sang is not in the House, so that Statement is also dropped.

(Statement dropped)

The Speaker (Hon. Ethuro): Sen. Obure, you need to find out if you have been given a responsibility.

WATER HYACINTH MENACE IN LAKE VICTORIA

Sen. Obure: Mr. Speaker, Sir, I will find out the status of this one and report on Tuesday.

Sen. M. Kajwang: Mr. Speaker, Sir, I request for a more definite commitment from the Committee. This is a matter of life and death for the people who border Lake Victoria.

The Speaker (Hon. Ethuro): The statement will be on the Order Paper on Tuesday next week.

Let us proceed to statement (k). The Member is not there. Sen. Haji, is this the first time, it is appearing or subsequent?

DETENTION OF MR. PHILIP MBITHI MUTISO BY TANZANIAN AUTHORITIES

Sen. Haji: Mr. Speaker, Sir, I am not in a position to respond. I attempted to get a statement from the Ministry of Foreign Affairs. They have not responded but we are still pursuing it.

The Speaker (Hon. Ethuro): The statement to appear on the Order Paper next Thursday.

(Statement deferred)

Statement (l) has already been disposed.
Statement (m) is dropped.

COMPENSATION OF LAND OWNERS AFFECTED BY KETRACO
NETWORK EXPANSION PROJECT

(Statement dropped)

The Speaker (Hon. Ethuro): Before we allow the Senate Majority Leader – I hope he is as active as his deputy, I have a communication to make.

(Interruption of Statements)

COMMUNICATION FROM THE CHAIR

VISITING DELEGATIONS FROM SOUTH EASTERN KENYA UNIVERSITY AND KENYATTA UNIVERSITY

The Speaker (Hon. Ethuro): Hon. Senators, let me acknowledge the presence, in both the Speaker's and Public Gallery, this afternoon, of the visiting students from South Eastern Kenya University and Kenyatta University. In our usual tradition of receiving and welcoming visitors to Parliament, I send a warm welcome to them, and on your behalf and on my own behalf, wish them a fruitful visit.

I thank you.

Sen. Murkomen: Mr. Speaker, Sir, allow me one minute to join you in welcoming our students. In the university, I was a student leader in the Christian Union and student politics. It gives me great pleasure to see young people here. I remember that in my first year, just the other day in 2001, I sat in the Gallery. I think I saw you.

The Speaker (Hon. Ethuro): Order, Senator! This is 2016; 2001 cannot be the other day.

Sen. Murkomen: Mr. Speaker, Sir, I think I saw you and Sen. (Prof.) Anyang'-Nyong'o among others in the Chamber. I remember dreaming as a young man that if God gives me chance to serve the country, I will have an opportunity to sit inside the Chamber. Little did I know that in less than 15 years, I will be here. So, those are the leaders of not so long future. Therefore, I welcome them. It is a great opportunity to learn from the "Upper" House.

Sen. (Prof.) Lonyangapuo: Mr. Speaker, Sir, may I join you in thanking the students for choosing to come to the Senate to see how we work. I also remind them that I know their Vice Chancellor, Prof. Munuvi personally. He is a very good administrator. When the university was being opened, I played a role. I was the Permanent Secretary (PS) then. This university is constructed right in the bush. We need to remember people like the late hon. Mulu Mutisya. He set aside thousands of acres of land for the university. That is the right place for these students to study. Whenever you are there, remember that we are aware. The Dean of the School of Agriculture is from my neighbourhood in Turkana. We expect you to learn a lot and build our country Kenya.

(Sen. Karaba stood up in his place)

The Speaker (Hon. Ethuro): Order, Senator!
Proceed, Sen. Karaba.

Sen. Karaba: Mr. Speaker, Sir, I was trying to press this microphone on and it is not responding. It was not there before. There is something wrong with these machines.

When we press them to accept our demand, they do not respond. That is why I am getting late to say that I am happy to have heard and seen the students from South Eastern University and Kenyatta University. Let them learn.

As the Chairperson of the Committee on Education, I also used to be a student leader in the University of Nairobi. It is good that they can see what student leaders can be once they qualify to be leaders like us. I welcome them.

Sen. Kanainza: Mr. Speaker, Sir, I join you in welcoming the students from our universities. I urge them to register as voters and participate in the elections in 2017. If they wish to be nominated to represent the youth as I do today, they must be members of a political party. I request them to join the Orange Democratic Movement (ODM).

Sen. (Dr.) Machage: Mr. Speaker, Sir, it pleases us to see young people get interested in the activities of Parliament, especially so, youths at the university level. You do not have to have qualified in Senate, parliamentary affairs or political science to be a Member of Parliament (MP). Therefore, all of you are eligible. All you have to do is love your country, be patriotic and show leadership.

Sen. Sijeny: Mr. Speaker, Sir, I also wish to congratulate the students. For them to reach where they are, they have worked very hard. I urge you to continue working very hard, especially the ladies. There is a lot of work to be done in politics. We welcome you aboard. We urge you to mentor many other young people so that we can take these leadership positions and move the country forward in the right direction.

(Resumption of Statements)

STATEMENTS

BUSINESS FOR THE WEEK COMMENCING
TUESDAY, 22ND NOVEMBER, 2016

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Speaker, Sir, I am privileged to present to the Senate the business of next week commencing 22nd November, 2016 which is as follows:-

On Tuesday, there will be a Senate Business Committee (SBC) at 12.30 p.m. to schedule the business of the week. That meeting will schedule the business for next week.

On Wednesday, based on the decisions of the SBC, the Senate is expected to concentrate on a number of Bills, including the following that are at the stage of Committee of the Whole:-

(1) The National Hospital Insurance Fund (Amendment) Bill (Senate Bill No.9 of 2015).

(2) The County Government (Amendment) Bill (Senate Bill No.18 of 2014).

(3) The Agriculture, Fisheries and Food Authority (Amendment) Bill (National Assembly Bill No.17 of 2015).

(4) The Parliamentary Powers and Privileges Bill (National Assembly No.35 of 2014).

Mr. Speaker, Sir, on Thursday, the Senate will consider Bills on Second Reading, deliberate on Motions and any other business that will be scheduled by the SBC.

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

[The Deputy Speaker (Sen. Kembi-Gitura) took the Chair]

Finally, last week we had intended, and, the Speaker directed that we raise the quorum for voting on a number of Bills that have been pending for a while. We have about six Bills which are pending division for Second Reading.

Mr. Deputy Speaker, Sir, there are other four Bills which are pending division after Committee Stage. That is a total of 10 Bills. Unfortunately, two of those Bills require 75 per cent threshold. For that reason, we have not been able to raise those numbers. The Whips tried their best; I saw a bit of whipping. I appeal that we go out of our way and make sure we dispose of these Bills next week. I say so because we have only two weeks left to the end of this Session. Exactly two weeks from now, the Fourth Session will come to an end. The uncertainty around the Fifth Session cannot be over-emphasized. It will be practically difficult to get the numbers because of the elections. I do not even want to imagine it. I appeal that we set aside Thursday next week to vote. Our effort to work with Wednesday has not been successful. We should all come here in the afternoon, vote and then proceed to our respective counties.

I now lay this Paper to the Table of the Senate.

(Sen. (Prof.) Kindiki laid the document on the Table)

The Deputy Speaker (Sen. Kembi-Gitura): What is your point of Order, Sen. Obure?

Sen. Obure: On a point of Order, Mr. Deputy Speaker, Sir. The Senate Majority Leader is making every effort to mobilize Members to come and deal with these pending Bills. However, Thursday next week, which he proposes is even more difficult. I suggest Wednesday. A lot of people move out to the counties on Thursdays.

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Deputy Speaker, Sir, I have no problem with Wednesdays. The problem is simple. We are unable to come and vote. If majority of our colleagues prefer Wednesday, I have no problem. I plead with us to finish with these Bills. We have exactly two weeks to the end of the Fourth Session.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Karaba!

Sen. Karaba: Mr. Deputy Speaker, Sir, with regard to the matter which has been raised by the then Majority Leader, I had proposed Wednesday. My Committee is travelling to Turkana on Thursday and we will depart from the airport at around 3.00 p.m. Therefore, it is difficult for us to be here on Thursday afternoon. Wednesday is the best day.

Secondly, if the Whips are not helping so much, the leadership of the Senate can use the chairpersons of various Committees to bring their Members here. On Wednesday, I will come with all my Members. By the way, they are always here when there is such crucial business.

The Deputy Speaker (Sen. Kembi-Gitura): Do you want the chairpersons of the committees to take over the work of the Whips?

Sen. Karaba: Not exactly, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. Kembi-Gitura): Well, I am sure you are trying to look for a solution, that is good.

Sen. (Eng.) Muriuki what is your point of order?

Sen. (Eng.) Muriuki: Mr. Deputy Speaker, Sir, mine is to comment on the issue of Thursday and Wednesday. About a year ago, we had actually picked and resolved that we shall reserve Wednesday for whipping for the purpose of voting. Therefore, there is nothing new on the issue of voting on Wednesday.

It is also good to appreciate what Sen. Karaba is saying as the Chairperson of a committee. If that route can work, the chairpersons can also whip over and above whatever the official whip is doing, it could be worth it. That way, we can have one day which if we have an agenda, we can come and do our core business.

Sen. (Dr.) Machage: Mr. Deputy Speaker, Sir, more often than not, it is the Senate leadership that actually reduces the quorum of voting in this House. Would I, therefore, be in order to demand through you that the Senate Majority Leader makes sure that the team he leads is in the House on Wednesday?

The Deputy Speaker (Sen. Kembi-Gitura): Sen. (Dr.) Machage, you are not clear. You talked about leadership then you talk about the team that he leads. I am not quite clear about what you are saying. Kindly clarify.

Sen. (Dr.) Machage: Mr. Deputy Speaker, Sir, the CORD leadership is not in the House. When we talk about leadership, that includes the Senate Majority Leader and the Senate Minority Leader representing both sides of the House. I hope I am understood.

The Deputy Speaker (Sen. Kembi-Gitura): Senate Majority Leader, you have heard what he has said.

Sen. Musila: Mr. Deputy Speaker, Sir, I agree with my friend, Sen. Karaba, that Wednesdays have been reserved for voting. If the leadership of the House from both sides ensures that this decision is adhered to, we will have no problem with that.

Mr. Deputy Speaker, Sir may I have your indulgence to thank you for acknowledging the students from the Southern Kenya University and Kenyatta University (KU), Kitui Campus. They are my constituents.

The Deputy Speaker (Sen. Kembi-Gitura): Order, Sen. Musila!

Sen. Musila: Mr. Deputy Speaker, Sir, I asked for your indulgence. I knew you had done it earlier and wanted to go on record that I had---

The Deputy Speaker (Sen. Kembi-Gitura): Order, Sen. Musila! I cannot refuse to grant you indulgence even if it means reversing the Order Paper. Therefore, let us finish with this issue and then I will allow you to acknowledge the students.

Sen. Musila: Much obliged, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Mutula Kilonzo Jnr.!

Sen. Mutula Kilonzo Jnr.: Mr. Deputy Speaker, Sir, although this might sound drastic, I propose that the persons who are supposed to whip also need to be whipped because they are not here.

Secondly - the House Business Committee and this is not an unknown practice - we can be innovative; the Senate Majority Leader and the Senate Minority Leader should call all their Members personally when there are Bills or matters that affect the coalitions. Both sides must be full House. These are matters that concern this country.

Members should not come here because it is either a Jubilee coalition or a CORD coalition affair. These matters that we are voting for concern counties. If we do not vote on the constitutional amendment Bill on the Equalization Fund, we will have abdicated our responsibilities in protecting counties; one of those responsibilities.

Sen. Sijeny: Mr. Deputy Speaker, Sir, I wish to inform the Senate Majority Leader that since this is teamwork, he could delegate one person from his office to ensure that they call each and every person. Even as we are seated here, I can see Sen. Muthama is trying to whip people to come. He should delegate a person in his office to make sure that they inform all the Members.

First and foremost, it may not be possible next week or within the next two weeks if most people are already out of the country. The first this is to find out if everybody is around and then we can take drastic measures. Some of us had to forfeit or come back early to prosecute our Bills. Therefore, other people should also sacrifice.

The Deputy Speaker (Sen. Kembi-Gitura): Fine, before the Senate Leader Majority Leader responds, I will give Sen. Musila two minutes to acknowledge the students.

Sen. Musila: Thank you, Mr. Deputy Speaker, Sir for the opportunity. I came a little bit late and I apologize. I join my colleagues here in acknowledging the presence of the 25 students from the South Eastern Kenya University which is based in Kitui and also those from the Kenyatta University, Kitui Campus. These students are doing a great job in ensuring that the environment in that area is protected. I was there only two days ago and I found that they are putting a lot of effort to work in harmony with the community where the campuses are situated.

Therefore, I congratulate them for coming to see what we do here. They have already been to the National Assembly. I urge them to continue with the good work in keeping good relations with the communities around where they are based.

I thank you.

The Deputy Speaker (Sen. Kembi-Gitura): Senate Majority Leader do you have a response to make to the several issues raised?

The Senate Majority Leader (Sen. (Prof.) Kindiki): Thank you, Mr. Deputy Speaker, Sir. I would like to thank all the colleagues for the suggestions which have come through. Given the gravity of this matter and the shortage of time that we have and considering that part of the Bills that are pending include the Physical Planning Bill which should have been passed by 27th August this year, I think there was an oversight because we cleared all that backlog and somehow that Bill was left inadvertently.

Mr. Deputy Speaker, Sir, for those reasons, I am amenable to the suggestion by colleagues that we meet on Wednesday at 3.00 p.m. Secondly, I want to undertake my personal commitment and effort to remind colleagues to come to the House. I do not think it is important for any of us to blame any other person except ourselves. We should come here and vote because we vote as Senators but not as leaders, whips or whatever.

As the Senate Majority Leader, I take the responsibility to discuss with my brother, the Senate Minority Leader, about the decision of this House that we should make Wednesday next week the day for voting for these Bills. I will start whipping personally from today until Wednesday at 3.00 p.m.

Mr. Deputy Speaker, Sir, thank you.

The Deputy Speaker (Sen. Kembi-Gitura): Thank you, Senate Majority Leader. It is so ordered. So, the whipping will be for voting on Wednesday at 3.00 p.m.

Hon. Senators, this has a bearing on what you have just been debating. We do not have numbers to vote yet we have several divisions. So, I will invoke the Standing Orders to stand down Order Nos. 8, 9, 10, 11, 12, 13, 14, 15, 16, and 17 on the Order Paper. These are Bills that we have debated and some are in the Committee of the Whole but we do not have numbers to go to division. So, I will stand down all the Orders that I have mentioned.

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 CONSTITUTION OF KENYA (AMENDMENT) (NO.2)
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 PRESERVATION OF HUMAN DIGNITY AND
ENFORCEMENT OF ECONOMIC AND SOCIAL RIGHTS BILL
(SENATE BILL NO.8 OF 2015)

(Bills deferred)

COMMITTEE OF THE WHOLE

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)

(Committee of the Whole deferred)

The Deputy Speaker (Sen. Kembi-Gitura): Shall we now go to the next Order?

Second Reading

THE CYBER SECURITY AND PROTECTION BILL
(SENATE BILL NO.12 OF 2016)

The Deputy Speaker (Sen. Kembi-Gitura): I notice that Sen. Kagwe is not here. Therefore, we shall also defer Order No.18.

(Bill deferred)

Next Order

Second Reading

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

Sen. (Eng.) Muriuki: Mr. Deputy Speaker, Sir, thank you for giving me the opportunity to move the Bill.

I beg to move that The Impeachment Procedure Bill (Senate Bill No.8 of 2016) be now read Senate a Second Time.

Mr. Deputy Speaker, Sir, in our general elections, we have six elective positions; that is the President, Senator, Member of the National Assembly representing a constituency, women representative, governor, and Member of the County Assembly (MCA). We actually have eight elective positions and not six because in the Constitution, deputy governor is elected at the same time as the governor and the deputy president is also elected at the same time as the president. The Constitution provides that these persons are elected to hold office in those positions for five years. Four out of those positions can be removed from office half way their term. A president is elected to serve for five years but his or her term can be stopped half way through impeachment. Among the reasons that can lead to impeachment is poor health.

Mr. Deputy Speaker, Sir, the President also appoints Cabinet Secretaries and Principal Secretaries. They are not appointed for five years but they can also be removed half way their tenure through impeachment by the National Assembly. In the counties, the governor appoints County Executive Committee (CEC) members and also county officers in charge of various departments who can also be removed from office by the county assembly.

Mr. Deputy Speaker, Sir, the Bill before the House is about the procedure for impeachment of persons who are elected. So far, this House has conducted seven impeachment processes; five for governors and two for deputy governors. Out of the seven, the Senate found grounds for impeachment on one. The one for Makueni never found its way here for debate. The only one who was impeached was the Governor for Embu but his impeachment never got to conclusion because of judicial processes. Therefore, out of all the seven impeachment processes that have been undertaken by the Senate, none of them has succeeded in removing those officers from office. The reasons why the processes were not concluded in one way or the other is because county assemblies did not have enough grounds for impeachment.

Mr. Deputy Speaker, Sir, I have studied all the six impeachment proceedings which have been done by the Senate to conclusion and I have looked at all the issues raised. I have looked at the reasons for impeachment raised by county assemblies and those given for and against during the Senate proceedings. I have also looked at the pros and cons on which way to go, why this happened and merits and demerits. I have tried my level best to put together a Bill which will guide the procedure of removing any of these officials by impeachment.

Mr. Deputy Speaker, Sir, the processes at county assemblies are quite lengthy and there is ambiguity because they are all based on the Standing Orders of individual county assemblies. Therefore, there is no harmony in them. If you pick a few examples, you will find that there is no proper procedure where charges against a governor or any official are clearly spelt out. Sometimes they are but sometimes they are not.

We have had cases where a governor appears before us and start complaining that they were not given a charge sheet to know what the accusations are all about. There have also been cases where some governors say that they were not given adequate notice. We do not have a law which is clear-cut on what and what not is adequate notice because at the moment, they rely on Standing Orders which quite often are not quite clear. I have taken my time to go through a good number. I have done a good sampling of them and they are at variance by and large.

Mr. Deputy Speaker, Sir, there is also the issue as to whether or not the accused person is given an opportunity to answer, address or respond to issues at the county assembly level. All the focus is on the governor and the deputy governor because these are the ones we have dealt with so far. The Bill is with regard to all the six positions where somebody can be removed from office by impeachment.

Mr. Deputy Speaker, Sir, there was one governor who appeared before the Senate for an impeachment process and claimed that he was not given an opportunity to be represented before the assembly by an advocate. The Constitution accords every Kenyan either a governor or any other person an opportunity to be represented by an advocate. It generally provides that one should not be denied such an opportunity. However, it is not specific with regard to the impeachment. I thought it is only fair to address that issue.

Another aspect is with regard to flimsy charges. When those charges come before the Senate, though substantiated, sometimes Senators think they are not enough ground to remove the governor from office. So, there is the issue of addressing the cause for impeachment, not because the governor, president or officer is not popular or has not

done his work properly, but because he or she has violated the Constitution or some law. For example, in the case of a removal of a governor, Article 181(1)(a) of the Constitution says:-

“A county governor may be removed from office on any of the following grounds-

(a) gross violation of the Constitution or any other law”

The word “gross” has been the subject of debate, especially in one particular case out of the five impeachment proceedings that the Senate has gone through. One of them even brought bad language before the House. The Committee thought some of the charges though substantiated, were not serious enough grounds to impeach the governor. In my Bill, I have attempted to address that issue. What happens when the Committee thinks one way and, probably, the House would have thought it in another way?

Mr. Deputy Speaker, Sir, when the process of an impeachment Motion is going on here, in the public domain, social media and so on, there are normally issues discussed as to whether the governor should be removed from office or not. In most cases, those issues are not among the charges before the House. So, I have also attempted to address how to tell the public what charges are before the House for impeachment of a governor or any other leader.

With regard to impeachment, it is anchored in the Constitution and the law, especially in the case of governors and the County Governments Act. There is also an issue that we need a certain number of Senators, in one case, it is one-third. However, there is an issue of who actually signed. Could the signatures be deleted when you are half way through? The Bill also attempts to answer that question more particularly as to what we mean by the number. They have even attempted to provide a schedule where you quote which section of the law – be it the principal law, Constitution or any other law where you define the number.

In one incident, the speaker concerned, unduly delayed to present the Motion before the House for debate by a Member. Again, my Bill addresses this issue where a speaker may deliberately want to be difficult and not want to bring that Motion before the House. So, we give some timelines. There could be many incidents, but I remember one where there was an attempt to impeach or present a Motion for the impeachment of a governor, MCAs became violent. They deliberately caused chaos in the House such that it could not proceed with its business. I have also attempted to address that issue.

In the past, there has been a case where the Senate actually found credible grounds and impeached a governor. That governor went to court. If I recall, he went to the High Court which then agreed with the Senate. He went to the Court of Appeal which also agreed with the Senate. The governor then brought up the issue that there was no public participation during the impeachment process in the county or the Senate. Personally, I had very different view as to whether public participation should be part of it or not, nonetheless, he is in office because the court ruled that there should have been public participation. I do not know precisely what sort of form of public participation it should be because impeachment is not something that you ask members of the public. It is an issue of an individual having violated the Constitution or some law. Nonetheless, I have attempted to address that issue through a provision in the Bill where some aspects of public participation are included.

Mr. Deputy Speaker, Sir, the judicial process also seems to be the problem not just in impeachment, but generally, there are many aspects of devolution where the Judiciary, at least on the face of it, appears to be a hindrance. For example, when a governor is impeached, he goes to court and the case takes a long time before it is concluded. The governor then remains in office for one or two years because of that judicial process. I have also attempted to address that. In doing so, I have relied on Article 140 of the Constitution which gives some kind of limit as to how long the Judiciary can deal with a matter concerning the election of a President.

I have argued that a matter concerning a governor, for example, and the people in a county remaining in abeyance not knowing who their rightful governor is for long is not in order. I have also given some timelines for discussion by the House the same way the President has some timeliness. I have also attempted to give some timeliness such that cumulatively, residents in a county should not go beyond say, six months without knowing who their rightful governor is.

Since this Bill was published quite some time back now, there have been informal comments from the committees concerned and we also held a public participation. I have attempted to include some of them in the Bill. Others just came late and I will attempt to move amendments during the Committee Stage.

Having said that, the Chairman of the Council of Governors (CoG) issued a Statement and I believe he was speaking on behalf of the Council. He commented quite a bit with regard to this Bill. His comments were to the effect that this Bill should look on how governors operate and so on. I would like to take this opportunity – I believe Kenyans follow proceedings in this House – to tell governors that this is the opportune time. There has been public participation and they submitted a memorandum. However, the issues being raised by the Chairman of the Council of Governors (CoG) were not included.

Over the years, I have seen Parliament pass laws which go through public participation and are even on the website and the public domain. However, people will wait until the law is passed and then they will say that it should have been included this or that. Kenyans should take the cue. When a law like this is brought forward, the CoGs and people in the Executive should look keenly into that document and give their views. This is because the Senate will hopefully pass this law although it still has to go to the National Assembly as well. Anybody who has issues with it and wants it varied this or that way, this is the correct time for them to comment and bring their issues. Commenting in podiums out there does not really help.

Mr. Deputy Speaker, Sir, over and above, I noticed that part of the problem is that the Constitution itself seems to have many gaps. It provides for one thing in one area and a different one in another area. Although we have the courts to interpret, in the case of impeachments, I have attempted to identify the gaps for consideration by the House.

The Bill is arranged into six parts. Part One is preliminaries, where it deals with the title. Part Two is about the impeachment of the President and the Deputy President by the Senate, although the process starts in the National assembly. Part Three deals with impeachment of the Cabinet Secretary, which is purely by the National Assembly. However, I have attempted to introduce some procedure. Part Four deals with impeachment for the governor and the deputy governor, which is by the Senate although

the process starts in the county assembly. Part Five deals with the county executive committee, which is done purely by the county assembly. We do not take part. Part Six is on miscellaneous provisions, which give various provisions and what to do with those to be removed from office.

Overall, I am also addressing what happens when the Act provides for one thing and the standing orders of the county assemblies or for that matter, the Senate or the National assembly, provide for another. Generally, the Act is above the standing orders, just like the Constitution is above an Act of Parliament. Nonetheless, we want to be specific so that whoever will be dealing with this, will be clear that the principal Act is superior to the Standing Orders.

Mr. Deputy Speaker, Sir, as I conclude my remarks, I also give notice that I will be moving two amendments in my own Bill. One of them is to address the procedure where the impeachment process in the Senate is not conducted by a Committee but through the House. We have done one procedure like that and I borrowed heavily from the process. It was a unique process that I analysed and borrowed from to develop a procedure, which I will be proposing for adoption by the House.

The other amendment that I will bring is where the Members of the County Assembly, the National Assembly and the Senate create an unprocedural disturbance of the process in the House, like it happened in the County Assembly of Nairobi where chaos erupted in the House and the proceedings were stopped. The Bill will compel the speaker to bring the impeachment agenda for debate. If the Members of the County Assembly cause chaos, they will be treated in the same category as any other person who tries to prevent proceedings of the assembly. There will be some penalties if one tries to do so.

Mr. Deputy Speaker, Sir, overall, in this Bill, I have done my best to put together a procedure for impeachment. Some are at variance with the Constitution and various laws. The Bill proposes to repeal one section in the County Governments Act that deals with the impeachment of a governor. Although it is provided for, it has many gaps. It is easier to remove it and provide for in one law.

With those few words, I beg to move and request Sen. Karaba to second the Bill.

Sen. Karaba: Mr. Deputy Speaker, Sir, this Bill should have come earlier. If it had come in the first week or month of our Senate meetings, we would have developed some procedures which would have been applied, the way Sen. (Eng.) Muriuki is suggesting.

As I Second this Bill, it is important to note that this is an ugly procedure, especially to the Senate. Any time we have the impeachment proceedings in this Senate, we have always lost the battle. It is not because we are unable to prosecute, but because some other forces appear more forceful than the Senate. We, therefore, appear not to be doing much as far as impeachment is concerned. At least, we would have succeeded in one case of impeachment.

Mr. Deputy Speaker, Sir, I am not sure whether we will do much in terms of impeachment before the term of this Senate ends. Maybe the next Senate could amend some laws or legislations to streamline the impeachment process. It is important that we provide oversight. That oversight can only be seen when there is a culprit. That is how you test whether or not the rules are adhered to. Since there are a number of rules that

governors and their deputies should follow, it is important that we revisit the processes and see whether they are of any help to the Senate, so that we can go by them.

Mr. Deputy Speaker, Sir, much as we support this Bill, it is important to find out the relationship with the same people who are supposed to be impeached by this House. Sen. (Eng.) Muriuki talked about the impeachment of Cabinet Secretaries and yet, we are not the Members who approved them into office. We need to come up with an amendment so that we are included in the vetting process. Before they come for impeachment, they will have passed through our vetting process.

It is important to reinforce the Office of the Speaker. The Senators are supposed to be reinforced either by legislation or Parliament, so that they can visit some of these areas that have issues. For example, if a governor is cited to have misused funds, the Senator of the county should get to know whether or not that is true before the case is taken before the county assembly. The Senator is supposed to visit projects in the county a number of times. There should be an office equipped with computers and skilled manpower. This will enable the Senator to detect some of the issues before they come to this august House.

Mr. Deputy Speaker, Sir, as much as I support what Sen. (Eng.) Muriuki is proposing, he should also support the Senate. What is the Senate supposed to do before the impeachment process starts? We expect the Senator of the affected county to find out the true position. That can only be done if the Senator is empowered by law and financially. That will get the Senator closer to the process of impeachment. If we do not do that, some of the governors will escape the dragnet. The power to impeach governors should emanate from this House and the National Assembly.

In order to impeach a governor, there should be hard facts. We cannot get those facts in three or four days; it should be a long process. The Senator of the affected county should also be empowered and consulted, so that he or she can find out the truth. Since oversight is one of the most important functions of the Senate, it is important that we understand the processes, as articulated in this Bill, so that we are in a position to judge the governor, the deputy governor or anyone else who is brought to the Senate for impeachment.

Mr. Deputy Speaker, Sir, it is important that we are empowered, so that we can understand what happens in the counties. The Members of County Assemblies (MCAs) should also understand the impeachment process. In some counties, the governors sponsor goons to disrupt meetings that intend to impeach them. To the detriment of the county assembly, the Senate will not get the right information. The Senate should provide a good atmosphere to the county assemblies.

They should be told right from the beginning that any party which flouts the rules of the game will be blamed. That way, sanity will prevail in the county assemblies. We will get clear facts as opposed to cases where MCAs concoct information. Some impeachments are intended to complicate the politics of a county. They are also intended to punish the governors and the deputy governors for being out of favour with one another. We must understand these things because they might be brought here through impunity.

The process in this Bill is good. We need to come up with more processes and findings, so that we can be guided how to proceed with impeachments. This House

should not impeach people for the sake of it. We should not impeach people because of influence from anybody. Impeachment process should be a final court in the parliamentary process where the Senate sits and decides. It should be clear that when the Senate impeaches somebody, no other force should dispute the findings. This is because we have three tiers; the Judiciary, Legislature and the Executive. The ruling of the Senate is *quasi* judicial. We should, therefore, not be taken into a circus, where an impeached person will move from the Senate to the High Court, the Court of Appeal and then escape the dragnet.

Mr. Deputy Speaker, Sir, there should be a clause in this Bill which states that whatever is discussed in the Senate is final. Therefore, people should understand that the Senate is the final destiny in matters of impeachment. Some of them think that nothing will happen to them when they are brought before the Senate, because nothing has happened before. Whenever the Senate impeaches a governor, that decision should be final and no other body should interfere with it. That way, people will start to take the Senate seriously.

We should also be given facilitation to do oversight. This will ensure that we have vehicles to visit projects and equipped offices in the counties. This Bill should address this so that when the impeachment process starts, the Senator will be the first person to appear because they have the mandate to oversight the county. The Senator should provide enough evidence in the impeachment process.

Mr. Deputy Speaker, Sir, with those few remarks, I beg to second and thank Sen. (Eng.) Muriuki for moving this Bill.

(Question proposed)

Sen. (Dr.) Zani: Thank you, Mr. Deputy Speaker, Sir. Let me start by congratulating Sen. (Eng.) Muriuki for coming up with this Bill. I also want to observe the systematic and logistical way in which he handles many of his matters and mindset, which is a big contribution to this Senate. We have been grappling with matters of impeachment. This Bill is, therefore, welcome because it addresses specific issues that have given us a bit of thinking as we have been going on. The first is one is the issue of threshold and how to gauge it. In most of the impeachment committees and even when the whole House considered the impeachment, we were faced with the issue of how to attain the threshold, so that it goes hand in hand with whether issues have been substantiated.

Sen. (Eng.) Muriuki puts it in this Bill that this should be done as is contemplated by the Constitution, which should give us an impetus that it should be a very high threshold. This Bill addresses complications that arise in terms of how we address the charges for some of the impeachments that have come to this House at the Committee level.

Secondly, it addresses the issue of conflicts in the various laws, be it in the Constitution or the County Governments Act. In this Bill, an amendment is proposed to enhance the impeachment of the governor and is entrenched in that Act which I think is very important. In the Standing Orders from any of the Houses, it tries to streamline and create a specific coherence at various levels.

When I heard about this Bill coming up, I thought it was going to be about impeachment of governors only. However, as I read it, I realized that it includes the impeachment of the President and the Deputy President, Cabinet Secretary (CS), governor, deputy governor and the county executive committee. It gives all the various levels and the various procedures that should be used at these levels.

It also gives the provision of how the information should be circulated right from the time when a Member, whether of the National Assembly or County Assembly decides the threshold that an impeachment has to have; whether in this case it is a third of the membership. Immediately, this is followed through by a form that is on page 9 of this Bill, which gives a particular schedule. This is important so that we know who these members are, because most of the time, we have not had something that has been streamlined. That is very important and key.

Mr. Deputy Speaker, Sir, in any country where there is a democracy and people are elected to various positions, there is an understanding about how they are going to be removed from office either through constitutional means by breach, gross misconduct and others that have been stipulated within the Constitution. So, at no one time can an impeachment take place. It is a statement that one has been given a position but has not served as was expected.

It is not something completely out of the world but has been practiced for a long time. It was first used in the British political system to impeach Baron Latimer who was impeached in the late 14th Century against various things that he was accused of such as oppression, selling off the castle, taking bribes from various people and failing to keep to the constitutional dispensation that was expected. In association with Richard Lyonshe had obtained money from The Crown for the payment of fictitious loans. This was only a precedent which is likely to happen in various institutions and jurisdictions. Impeachment is going to be with us for a very long time. The sooner we put out our impeachment procedures very clearly, the better.

This Bill would, therefore, have not come at a better time. It lays the ground for such impeachments and proposes the need for public participation within these impeachments so that people can come forward and stipulate specific reasons for those impeachments.

Mr. Deputy Speaker, Sir, on the specificity of this Bill, particularly on the procedure for removal of the President and the Deputy President, this Bill anchors its argument on Article 145 of the Constitution and looks at the grounds which are well stipulated in the clause, for example, violation of the Constitution or any other law where there are serious reasons for believing that the president has committed a crime under national or international law, among others.

In Clause 4, it clearly suggests how the Motion should come up that it shall be submitted, for example, to the speaker. It goes on to give the timing for the procedure from the time that the Motion is taken up to its conclusion in a very timely manner.

It also gives provision for the right to appear which is very key and we have been told this in our various committees especially in the special committees so that they can be given a chance and a specific right to be heard.

In Part 3, the procedure for the removal of the CS is very well stipulated. In Clause 9, again, the specific grounds have been clearly outlined and the number of people

needed to support such a Motion. A quarter of all the Members of the National Assembly may propose a Motion requiring the President to dismiss a CS. I was in a conversation about two or three days ago and people were just hypothetically talking about the performance of the Cabinet Secretaries and in this regard, one person in that argument was talking about CS Matiang'i and the efforts he has been making in the education sector. Other people were asking: "How about all the other Cabinet Secretaries? How many can we name as having been very successful and what are their outputs?"

These discussions are very healthy and there is absolutely nothing to make anybody feel that they should not be discussed and criticize them. You are there in public office for exactly that. It is about performance. When you are in an office, we expect a certain level of performance and if we do not see it, it is possible for somebody to put a Motion that you need to be impeached. This is because there are around 45 million Kenyans in this country and somebody else can take up that position and do their job very well.

The provision is given with that nature of understanding that somebody has been given a job to perform and if they cannot, then the opportunity for impeachment comes in handy especially this section that gives the procedure for the removal of a CS is very innovative and to help us quickly acquire our outputs.

Maybe over time, when you look at such a Bill where such stringency has been put in place, it will help us to move away especially from the issues of impeachment from county assembly members because they feel disenfranchised or that there is a particular issue that has not been addressed, and that the best way to do it is through an impeachment Motion. It is very important even for county assembly members, to state what is exactly wrong before an impeachment process or procedure might be engaged in needs to be stipulated and people must be educated over and over again, so that charges are not what others might call frivolous, personalized or a person not being arbitrarily happy with another person.

This Bill anchors this and I think it was when Sen. (Eng.) Muriuki was moving this Bill from the level of public participation. Some of these issues are going to be canvassed more and more so that we end up with a clear provision.

I am also going to approach this as an issue especially for matters that have come to the Senate as we have. It is very interesting that we have always had a special committee, but at the last one, we had a Committee of the Whole going through the impeachment process, so that we can continue to raise the levels of impeachment in this Senate.

This is because I remember at the beginning there was an argument which I think was further perpetrated by the Judiciary who felt they were saving the counties by discouraging impeachments, while not having understood the role of the Senate especially when it came to impeachment. This is because of the role of the Senate as the protector of counties. We should find out whether there has been fraudulent use of resources. Impeaching a governor suggests a process that will give a warning and good precedence to governors. If they continue that way, they will find themselves out of office.

I think if this Senate had been successful in impeaching one governor, maybe the level of corruption, discourse and sometimes disorganization that we see within county

governments might not have been there. That was the dream of the writers of this Constitution when they put a powerful Senate to execute this mandate. Unfortunately, through the interaction with the Judiciary, it has not gone the way we had planned it. Once this is entrenched within this format, it will help us in future to resolve those issues and move to the next level.

As a right path, the Bill continues to give various positions including the one on page No.86 on the procedure for removal of the county executive committee indicating issues like incompetence, abuse of office, gross violation of the Constitution and others. These are key, well stipulated and very important.

Mr. Deputy Speaker, Sir, if you give reference to page No. 93, it gives provisions for the removal of the member of the executive committee. This is a typo but it gives a misleading impression. When you look at (a), (b), (c), (d) (e), (f) and (g) is part of (e). Somebody has put (e) (f) and (g) at a place where there is a sentence. If you look at (g) where we start with physical and mental incapacity, in the next line, member incapable of performing is still part of that sentence. That needs to be corrected as this Bill continues to be processed. This is just a question of typo. Once that is done, that should make it flow better.

Mr. Deputy Speaker, Sir, I support this Bill because it will bring clarity and organization that we need in matters of impeachment. I hope the second Senate will successfully impeach governors who have to be impeached. I pray that the power of the Senate to do that will be exercised. I pray that through that, county governments will take the issue of accountability of recourses seriously and something that another institution has the power to remove and make it possible for them to perform their roles. If they do not, there will be consequences that will be put in place.

With those few remarks, I beg support.

The Deputy Speaker (Sen. Kembi-Gitura): Thank you. Sen. Mutula Kilonzo Jnr.!

Sen. Mutula Kilonzo Jnr.: Thank you, Mr. Deputy Speaker, Sir. I rise to support the Bill. As I do so, allow me to mention and thank Sen. (Eng.) Muriuki for coming up with the Bill. Of the few impeachments that have come to the Senate, the results have been unsatisfactory both to us and the public. The reason is that each person – whether it is the Senate, county assemblies or the court – has come up with their own way of what they think it is the way impeachment should be done. In the case of Governor Chepkwony of Kericho County, we prescribed a standard and said this is a threshold below which you cannot impeach above which you go home. The contradiction of that and the one of Governor Wambora is that Wambora has been impeached twice, reinstated by the Court of Appeal and we now await for the Supreme Court to make a determination and it will make that determination next year when it is just about election time.

Mr. Deputy Speaker, Sir, in the case of Deputy Governor Kiala, is there a procedure for impeachment of a deputy governor? In the case of Chepkwony and Kiala, we have to device our own rules and say that the impeachment of a deputy governor will follow *Mutatis Mutandis* with the one of the governor. In this Bill, it makes it clear. Governor Kibwana of Makueni was impeached two years ago and the matter has never been completed and it has never come to the Senate. We do not know what we will do if it comes to the Senate in March, 2017. The only thing he was complaining about is the

procedure. He said the procedure was wrong. We have added another arm into impeachment process called the court. In all cases of Governor Wambora, Governor Wa Iria, Deputy Governor Kiala and Governor Kibwana, the court has been involved yet it is not part of the impeachment process. That is the same problem that Sen. (Eng.) Muriuki is trying to solve through this Bill. We had a similar problem that we attempted to amend in the Select Committee of this House on the question of time. You cannot have a Wambora situation in an impeachment. It is a travesty; it is an injustice to the people of that county because the court has given a prolonged injunction.

Mr. Deputy Speaker, Sir, in the Elections Law, there is a time limit on an election petition. There should be a time limit for an impeachment process. So, Governor Kibwana and Governor Wambora are court governors because they have been impeached by the county assemblies. So, this law makes a lot of sense so that we can have a process.

Mr. Deputy Speaker, Sir, in Kakamega, the court passed something that has led to a lot of pain to the counties that there is no process for impeachment of an executive. The contradiction is that you can vet that executive but the court says when he does not perform his duties, you cannot impeach him. This is a contradiction. This law fortunately tries to solve this problem so that we do not have that mischief in the next Senate. I am happy to say that there are several Senators who are here and want to be governors. It is good they participate in this. They should know the sort of blade that is coming at them the minute they become governors.

An hon. Senator: Is that a threat?

Sen. Mutula Kilonzo Jnr.: It is not a threat but I am giving you polite and free advice that this is going to come to you. Look at it from the perspective that you will be the one who will be the first to be impeached the day you are going to reject corruption, the day you are going to change the way people do things, the day you are going to pay listening allowance for people to clap for you; you will come to the Senate on an impeachment of something that does not make sense. Just for the sake of it, somebody will make mileage out of it. Therefore, it is important that as Senators leave this House to go and join county politics, they should know which side the blade is going to come at them. When they employ county executive members who are not qualified or who they allow to steal, they will know that this is going to cut.

Mr. Deputy Speaker, Sir, the Court of Appeal made a very strange finding which came to us during the time we were impeaching Governor Nderitu Gachagua.

The Deputy Speaker (Sen. Kembi-Gitura): What is your point of order, Sen. Sang?

Sen. Sang: On a point of order, Mr. Deputy Speaker, Sir. Is Sen. Mutula Kilonzo Jnr. in order to give a veiled threat though appearing to be advising Sen. (Prof.) Anyang'-Nyong'o, the incoming Governor of Kisumu County, but in a subtle way give a veiled threat and give ideas that the many potential incoming Members of County Assemblies (MCAs) out there that when they are not given listening allowances, the right thing to do, would be to prove this blade and visit Sen. (Prof.) Anyang'-Nyong'o with this kind of impeachment? Do you not think that it is a bit misleading and trying to raise the anticipation of some of those MCAs to do this?

The Deputy Speaker (Sen. Kembi-Gitura): Which MCAs?

Sen. Sang: The potential MCAs who are listening to Sen. Mutula Kilonzo Jnr.. You know Sen. Mutula Kilonzo Jnr. is a senior legal mind and a respected Senator.

The Deputy Speaker (Sen. Kembi-Gitura): I think Sen. Mutula Kilonzo Jnr. is perfectly in order. He is raising a position as he sees it. It is a matter of argument. I know you are going to seek the Floor, and you can correct that position if you do not think it is correct. It is a matter of debate.

Proceed, Senator.

Sen. Mutula Kilonzo Jnr: Mr. Temporary Speaker, Sir, I want to emphasize that most of our colleagues who want to become governors are doing so because they think that the existing governors have not performed their duties. Therefore, these threats are real. Trust me, there are a lot of things that these governors have introduced in the counties. You will need a miracle to overturn them. When you do, the threat of impeachment is alive.

I was talking about collective responsibility. The Court of Appeal comes up with this very interesting innovation that when a county executive misappropriate funds then he should be answerable himself. Therefore, in an impeachment, you must create a nexus of misappropriation of funds between the county executive and the governor. Something akin to making the governor look like his work is just to fly around the county and he is not responsible at all because he does not sit as an executive. However, the Public Finance Management PFM Act says that in matters of procurement, the County Executive Committee (CEC) shall have collective responsibility. That is the sort of mischief that Sen. (Eng.) Muriuki is saving this country from by coming up with this Bill.

In the case of Murang'a, people are asking why the governor has spent a lot of money to put up billboards. What does the Senate do? A slap on the wrist and say go and pull down those billboards. Then they ask: What is threshold? If somebody can put up billboards and put his name using county funds and cannot be impeached, what is this animal called a threshold? A sum of Kshs70 million disappeared in Nyeri County which was not banked and then we say that is not a violation and it is not gross. People are left wondering, what then is gross violation? Do we need to do what Kabura did? Carry the money in sacks and this becomes gross! Exactly, what is the definition of the word "gross"? So, the word substantiation of claim is in the miscellaneous Part 6. However, I am not sure about this and Sen. (Eng.) Muriuki maybe you need to look at it whether it is absolutely clear. You say that:-

"An allegation is substantiated if it is established and rises to the threshold under the Constitution or the Act."

Mr. Temporary, Speaker, Sir, this is an opaque and ambiguous way of doing things. The threshold must be set out very clearly.

On the issue of conflict of the Standing Orders and the Act; we have seen this before like in the case of Nyeri. The question is: if Gov. Gachagua sent his lawyer Peter Wanyama to go to the Assembly, does that amount to attendance? Did he attend or did he not attend? When the documents are served to the advocate did you serve on the governor or not? Those are some of the questions that this Bill tries to address and I am happy that Sen. (Eng.) Muriuki has factored it in terms of the document being served. Perhaps, you may include in your amendment that: "a governor will have liberty to ask

for representation.” That way, maybe, I will get a job when, for example, Gov. (Prof.) Anyang’-Nyong’o is impeached.

Nonetheless, that opening like in the Fair Administrative Action Act which gives a provision for administration action and the appearance of an advocate, should be made clear so that it is not left to the discretion of the speakers to determine whether you need representation or not. The Fair Administrative Action Act under Article 47 means you are supposed to be afforded every reasonable access and facility whether it is an advocate, a solicitor or Queen’s Counsel for those who please. That is what is called fair process. So, maybe then, we should be a little clear on it.

On court proceedings and timelines, I am happy that you have found it fit. I am happy that we are repealing the County Governments Act. Sen. Murkomen should have been here because he participated in the drafting of the County Governments Act. It left a lot of things hanging and a lot of assumptions. However, in Section 33 of the County Governments Act, we have found many loopholes, what in law we call *casus omissus*. It is that *casus omissus* that is this Bill is trying to fill. Then repeal the law and remove the impeachment of the governor and his deputy and the county executive from the County Governments Act and set up a separate Bill.

Mr. Temporary Speaker, Sir, lastly, I am not persuaded and neither is the Committee of Legal Affairs, why we should have the impeachment of the President and the Deputy President in this Bill. We are of the view - we could be are wrong - but we thought we might advise that we separate the executive part of it so that we concentrate on matters concerning counties in the first instance. We should deal with the question of the Governor, Deputy governor and the County Executive. We should leave the President and the Deputy President at a separate level and set up different methods of doing it.

First, you cannot just lump the President and the Deputy President with the County Executive Members. That is a little untidy. Maybe we would be persuaded otherwise, in future, but for now we thought we are right to have the Bill in its current format on the impeachment of the government officials. However, strictly speaking in terms of our mandate, we leave the Deputy President and the President separately. We could handle it maybe in terms of the threshold separately. We do not want the threshold mixed up because an impeachment of a President and the Deputy President is actually a very serious issue.

What is the importance of this Bill and what are we dealing with? I forgot I should have come with the notes on the impeachment of President Bill Clinton, the husband of Hillary Clinton, where they said, “Impeachment is both political and legal.” So, you are trying to balance both. At some point, Sen. (Prof.) Anyang’-Nyong’o, we have sometimes legal issues. However, in most cases, the impeachment of governors and deputy governors here has been very political. That is the reason why we have been criticized heavily because we have attempted to lean politically - think politically correct - but at the same time, appear legal and in both cases it has ended up looking like oil and water. We cannot mix the two, although they have said that both are necessary.

If we are to tame corruption – Sen. (Dr.) Zani is right – we should have impeached one governor to go home. That could have been a lesson to others. I hope that we are not strengthening this so that the Senators who are here are then impeached in a strong process that we have ourselves done. It is like the famous words in Kiswahili of

sharpening a razor blade or putting water on your head, so that you prepare yourself for quick shaving.

With those few remarks, I support.

Sen. Elachi: Thank you, Mr. Speaker, Sir. I thank Sen. (Eng.) Muriuki for bringing this Bill. This Bill comes at a time when we are just about to go out to campaign for political seats in 2017. This is a House that has seen five impeachments that were very interesting and controversial.

Having said that, the most important thing we need to ask ourselves as we go on the final leg of the Senate, indeed, the first Senate under the new dispensation is whether in those impeachments there were things that we were able to learn in terms of political dynamics. The proposal of bringing in the impeachment of the CEC is very critical. In the impeachment of the governor for Nyeri County, the threshold was not met. However, we saw some members of the CEC being dragged to court and jailed.

When a county assembly brings an Impeachment Motion, they always forget the reason why they are impeaching their governor while they are part of those who are supposed to be building that process. That is the challenge that the national Government is facing when we say that the President is corrupt yet it is the officers who are involved in corrupt practices. The Senator for Nyandarua is trying to help us that when a governor is corrupt and then blames his officers, he should take responsibility.

You will find that many of his officers have been charged yet he is still around blaming them. When you follow up on the matter, you get to realize that everything goes back to his office. The Judge who was hearing the case of Mr. Kiamba said that nobody has a right to ask Mr. Kiamba where he got Kshs1billion yet he knows very well that Kiamba earns a salary of Kshs85,000. Those are some of the things the Senate can heal. When this Bill becomes an Act of Parliament, we do not have to run to the court to remove someone like Mr. Kiamba. That will save the county governments from an officer who is full of arrogance, pride and more importantly, the impunity of knowing that nobody can touch him.

Mr. Temporary Speaker, Sir, there have been impeachments of President Andrew Johnson in 1868 and that of President Bill Clinton of the United States of America (USA). If you look at the procedures of those impeachments, you will realize that they were purely based on issues of governance. I hope that we shall one day get there as a country. In our country, most of our impeachments are so politicized yet we know that there are issues of governance that must be dealt with. The governors know that they can divide the Members of the County Assembly (MCA's). The sad thing is that if you find a united county assembly, it means that the governor has difficulty working with the MCA's.

I heard today that the Machakos County MCA's want to impeach the Governor but I know very well he will divide them into two and he will not be impeached. It is important for us to ensure that a Senator can influence an impeachment of a governor or the Chief Executive Officer when you feel that he or she is not doing the right thing for the county and you are able to substantiate. That provision should be provided in our law.

We can also use the same law to help the President when it comes to dealing with corrupt Cabinet Secretaries and the Permanent Secretaries. This will help us remove them from office when we know that money is being embezzled instead of having them play

on us and give us some stories in the media. That is the best that we can do for our country. I want to believe that Kenyans will agree with me when I say that the previous Ministers were more responsible.

They were politicians and had to be very careful of what they did because they had a name to protect. Secondly, they were voted into office hence they knew that they could be removed from office if they failed to perform. The challenge that we are having right now is due to the fact that the current Cabinet Secretaries feel that they have no obligation to anyone. That is why one feels so frustrated when you hear them answer some questions to a point where you do not even know how to support them. Therefore, an Impeachment Procedural Bill to remove them from office is one of the best.

I support Sen. Mutula Kilonzo Jnr's sentiments that we need to rethink of the impeachment of the President and that of the Deputy President. This is because there is a more elaborate law that is provided for in the Constitution regarding the same. The law can be applied when we get to serious issues like those that we saw in Brazil and other places.

I want to thank Sen. (Eng.) Muriuki for this Bill and I hope that the National Assembly will support it. I hope that we can finalize it before we go on recess which starts on the 1st December, 2016. This is one of those Bills that I would want us to pass before we go in for the next election because it can guide the courts.

The management of the governance process has been one of the challenges that we have faced in our country. There has been a problem in this area. There is even a case on the same thing in today's newspaper. We need to have laws that will ensure that we do not have such headlines. This is because failure in governance shows that Parliament has failed the people because we are the ones who created these institutions.

As Senators, we should process all the things that we do in all the Committees so as to make sure that we do not jeopardize the whole process of getting justice to Kenyans. When we are serious in our job, we should present a good report to the Ethics and Anti-Corruption Commission (EACC) that should then be forwarded to the Director of Public Prosecutions (DPP). That report should be so good to a point that the judge does not need to stay with a case for more than three months without judgment. Let us not bring in an Impeachment Procedural Bill that does not bring in the fruits that we thought it will bring or does not change the scenario.

I wish those who are vying for the governor's position well. I believe they have learnt the lessons and will be better governors. I also hope that they will not find dry coffers. Can you imagine what would happen if they are brought here for impeachment on the issues that the last governor did? That is why it is the duty of this Senate to ensure that we come up with a law that will assist the next governors so as to make sure that they do not carry the baggage of the last governors. The outgoing governor must carry his cross. When anyone leaves office in this country, he believes that the next person is the one to come and carry their burden. It is time for us to have a law that will expect one to handover office transparently. He should also be accountable to his people. He should clearly state the debts, the challenges and the achievements.

With those few remarks, I beg to support.

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

Sen. (Prof.) Anyang'-Nyong'o: Mr. Temporary Speaker, Sir, I congratulate my colleague, Sen. (Eng.) Muriuki, for always coming up with timeous Bills in Parliament. This is much needed. I hope that the proposals being made for its amendment will be taken in good faith by the Engineer and will incorporate them in that spirit of cooperation.

Mr. Temporary Speaker, just to allay the fears of Sen. Elachi; Article 226(5) of the Constitution says very clearly that if the holder of a public office, including a political office, directs or approves the use of public funds contrary to the law or instructions, the person is liable for any loss arising from that use and shall make good the loss, whether the person remains the holder of the office or not: Which means that all county executives, governors, speakers and so on who think that if they lose elections or somehow do not vie and come back to the office and they have committed travesties in county governments, they will get away with it. This Article of the Constitution holds them responsible for their actions while in office until God us part. That is until they depart from this mother earth.

Mr. Temporary Speaker, Sir, having said that, first, I commend Sen. (Eng.) Muriuki for putting together a process for impeaching officials at the county level but I would like to remind my friend that he left one important office; the impeachment of the assembly speaker. The assembly speaker, unless under the Bill, is a very important official. We have seen cases, particularly in my county, where Members of the County Assembly (MCAs) initiated an impeachment of the speaker. I think the speaker should also be in line to have a proper procedure for his or her impeachment in the county assemblies.

Secondly, I totally agree with Sen. Mutula Kilonzo Jnr. that the impeachment of the President and the Deputy President should not be part of this Bill. Let us be filial to our responsibility as stipulated in Article 96 of the Constitution. This House is given the mandate of protecting, defending and promoting the interest of the counties. When it comes to impeachment of the President and the Deputy President, it may easily be challenged by the National Assembly, that, maybe that is not our province.

I am not quite sure but on the other hand, this Senate is allowed to initiate any Bill provided it is not a money Bill. So, we are treading a thin line here. For the sake of neatness, it would be appropriate to leave the President and the Deputy President out of this Bill. You can take it out and bring it as a separate Bill as Sen. Mutula Kilonzo Jnr. said. I would prefer this. Even for the procedure of impeaching the President and the Deputy President, there should be a proper procedure grounded in the Constitution along the lines of Sen. (Eng.) Muriuki. If you take them out, you may even amplify the procedure for impeaching the President and the Deputy President much more given the weight of those two offices.

Thirdly, in the impeachment of the county executive members, there should be an opportunity to appeal to the Senate. Why do I say so? Given our experience with the county governments, if a governor finds a very tough finance county executive member who does not want to go along with a governor's profligate ways, the governor may easily collude with the assembly men, and given the threshold of getting signatures from the assembly, get his county executive impeached by the assembly and that is the end of the process. It is very unfair to the county executive member.

Sen. (Eng.) Muriuki could think of having a window of opportunity; once the impeachment process is through in the county assembly, the county executive member has the opportunity to bring his case to the Senate within a certain period of time so that it can be reviewed. I say this because justice must not only be done in an impeachment process but must be seen to be done. A process that does not have an appellate opportunity or an opportunity to appeal may undercut the process of dispensing justice rather prematurely.

That is one amendment that Sen. (Eng.) Muriuki could think of, and therefore, introduce that window of opportunity for county executive members who may face this unfortunate process of being impeached; sometimes for good reasons and sometimes it could be for contrived reasons because of conflicts within the county executive.

Mr. Temporary Speaker, Sir, I would like to reassure the House that I will run for the governorship of Kisumu County, not to put my hand in the public till because at my age, I have already acquired all the material where withal in this mother earth. Acquiring more may perhaps be overloading myself with unnecessary sins that may visit me rather unfairly in the world to come.

So, let me assure the House and my friend, Sen. (Eng.) Muriuki, that you may not see me being impeached for those reasons, but perhaps for trying to stop those who are reaping the counties of the resources that are needed to serve the people.

Mr. Temporary Speaker, Sir, with those remarks, I beg to support.

The Temporary Speaker (Sen. Sang): Very well. Since we have no other interest---

(Sen. G.G. Kariuki stood up in his place)

Sen. (Dr.) G.G. Kariuki, your request is not appearing on my screen but proceed.

Sen. (Dr.) G.G. Kariuki: Mr. Temporary Speaker, Sir, thank you for giving me this opportunity to say something about this Bill. Its intention is very clear, whether it is well drafted or not. There are many issues in the impeachment Article of the Constitution which have been translated by our Standing Orders. We must all agree that we have been running a very difficult institution called the Senate which was neither here nor there. For it to establish its power and feel very strongly that now, we can push the issues to a certain level, that situation does not count. We are trying to exert ourselves through Senators like Sen. (Eng.) Muriuki who had the opportunity to read the impeachment law. He found many loopholes but there are areas such as impeaching the Cabinet Secretary which is not quite appropriate for us as far as I am concerned. They are employed with approval of the President. We need to give him the opportunity to hire and fire but with the recommendation of the National Assembly.

On impeachment, is there any time since this Bill was published – I was not around – when any other people thought about it to determine whether it will be a solution to the impeachment proceedings which have not been successful? They were not even successful in the minds of the Senators. Some of the Senators decided, let us impeach. It cannot work that way. There must be a law to govern impeachment as my colleague has suggested.

Mr. Temporary Speaker, Sir, we must also understand that there are many loopholes in our Constitution. It is mixed up with political interests. So, it is very hard to see where political interests are and where the law is; even as it is, nothing will stop those in the impeachment process to survive. They have survived. This Constitution was done, not in hurry, but two Members were concerned about it. They sat down and talked about it. Their position was very strong. Those who were in power were not comfortable with it.

Mr. Temporary Speaker, Sir, the Opposition was very strong. Those who were in the system or the people in Government did not feel comfortable with the new Constitution because, to them, it came to take away power from them. We have had that problem for the last 20 years. If you remember even the way it was agreed, it was commanded to the Members of the National Assembly that if they did not pass it between such and such a date, Parliament would be dissolved. The whole thing was rushed. Therefore, there was no time for anybody to think about correcting the mistakes, if any, or a misunderstanding within the Constitution.

For the years that we have served in the Kibaki Government and the current one, the idea of amending the Constitution to suit the people as their right has never been thought of by anybody. However, the idea to amend it to give more powers to Parliament is there. I wonder why you require all this power. You are capable enough to understand that the power belongs to the people that you are trying to deny it. They just give us this power for some time until they take it back. We have the facilities to make sure that whatever we do is the right thing and whatever the demand of the people is wrong.

I am divulging a little about the impeachment. It has been written very clearly although not 100 per cent because nothing is 100 per cent. It has to go through another process in order to reach there. Those who are drafting like the clerks will not have known the concern or points of Members unless something like this has been drafted.

Mr. Temporary Speaker, Sir, Sen. (Eng.) Muriuki has given this House an opportunity to tell them that it can still be done even before the next general elections. It is very important to give people support and push that it can be done. In fact, it can all be done only if we are keen to do it. However, if you look at Senators who want to be governors, sometimes people misunderstand them. It is not them who want to be governors. It is the people at home who are fed up with the current governors. There is no county which will tell you that their governor is doing very well. This is very unfortunate.

However, you also have to understand the role of the governor with the people where he comes from. If you are surrounded by Members of the County Assembly (MCAs) – let me warn those who want to be governors – make sure you go with very good MCAs. These people have a problem. They connive and go for money from the governor and if he does not have, he is in problems. That procedure is also being done even in the National Assembly. How many times have they intimidated Government to give them something? It is only the Senate which has never had power to intimidate the system to give them what they want. We just rely on the National Assembly. When we came to the Senate for the first time and sat at the KICC, I gave a warning that we would lose everything.

Some people came into office thinking imagining that since they are Senators or governors, they can do anything without reading the Constitution. We could have

achieved more if the judiciary was not a problem to us. If somebody is accused he is arrested and locked in without regard to the freedom for expression or defence.

Mr. Temporary Speaker, Sir, the Senate, the Judiciary and the Executive should consult each other on these problems. Unfortunately, the Judiciary claims that they are working hand in hand with everybody. If Sen. (Eng.) Muriuki is arrested, for example, I should go there with a lawyer to get him out if I am able to do so. However, the law has been used to subjugate other people and condemn them for nothing, only to regret later.

Mr. Temporary Speaker, Sir, I thank you again. I decided to raise my hand because my console is not working. God bless you.

The Temporary Speaker (Sen. Sang): Thank you, Sen. (Dr.) G.G. Kariuki.

The Mover can proceed to reply.

Sen. (Eng.) Muriuki: Mr. Temporary Speaker, Sir, let me start by thanking all the Senators who have contributed in support of this Bill.

Quite a number of issues have been raised and I would wish to speak to each one of them. However, I notice that quite a number of Members who raised the issues are not in the House. I hope that a good number of them are in the lounge watching the proceedings.

Mr. Temporary Speaker, Sir, the gist of this Bill as pertains to the governors, who are the main concern of the Senate, is to let the governors do their work when there are no issues. At the same time, it is to make sure that they vacate office when they should.

There are some crucial issues that were raised by Members. For instance, one Member raised the issue that some of the impeachment charges that we get from the county assembly are flimsy. When you compare that to the issues raised against the governor, when they appear before the County Public Accounts and Investments Committee, there is a big variance. Some of the charges do not meet the threshold to warrant the removal of the governor. Of course, there is the famous issue of governors who put their names in billboards over a project. But that cannot meet the threshold required to send the governor home. Maybe, we should have a law that criminalises that action. This is the opportunity for the Senate, the National Assembly and all Kenyans to consider these things.

The other suggestion is that the elected or nominated Senators who come from a particular county should take part in the process. Even if they are not Members of the impeachment Committee, they should be encouraged to be present because they know most of the issues pertaining to their counties that have been raised against the governor.

This Bill has also dealt with the issue of the Judiciary prolonging the term of a governor who has been impeached by the Senate. I have proposed some timelines that, one, the decision of the Senate should be final. The governor can only go to court on matters of procedure. The findings of the Senate should be final. The High Court should determine, within 30 days, whether or not the procedure was correct. The same individual may appeal to the Court of Appeal or the Supreme Court and a decision made within 45 days. In a maximum of six months the residents of a particular county should know who their governor is.

The issue of public participation disturbs my conscience. Although the court found that there should be public participation, the nature of it needs to be looked at carefully. Impeachment is not a popularity thing; it is violation of the law. If someone has

violated the law, we should not consult 'Wanjiku' and others whether or not the law was violated. However, I have done my best to ensure that there is the element of public participation.

If we had one or two successful impeachments or serious convictions over embezzlement of public funds, the level of corruption would be low. Sen. (Dr.) Zani raised an issue on page 93 of this Bill where I have quoted the portions that we need to repeal. This is not what is substantially in the Bill. Her observations were correct, but they are the portions that need to be repealed.

Article 181 of the Constitution does not include the impeachment of the deputy governors. Nonetheless, the Judiciary has found that they are also impeachable. We should provide the process for impeaching them. There was an issue in Kakamega County where the High Court found out that the County Executive Committee (CEC) Member is not impeachable. The reason was not that it is not provided for in law, but it was because of lack of procedure. We have now provided the procedure.

The issue of threshold is something dicey and deep. I suggest that if a Committee were to find that the threshold is not reached, the whole House should consider the matter.

On the specific threshold, this is something that I will need to relook at between now and the Committee Stage. The Committee on Legal Affairs and Human Rights gave me a copy of quite a big document where they had given the Bill a reasonably clean bill of health. As to why they did not make any amendments, Members of that Committee starting off with Sen. Mutula Kilonzo Jnr. were of the view that the President and Deputy President should not have been in this Bill.

Whereas I agree that the impeachment of the President and the Deputy President is a very weighty matter, my Bill will deal with procedure and not the impeachment *per se*. Some of the things I have proposed are not anywhere else. For example, I have proposed that there should be timelines in the procedure on the National Assembly before that matter comes to the Senate. If you do not have those timelines, there can be a lot of frustrations both on the person being impeached and the people doing that process.

To that extent, I would like to persuade the Members of the Senate that until that time, when we shall have specific procedure on the President and Deputy President, it be left within the same law. I think we should then pick it and make a more lengthy and detailed procedure. This is because, for example, when it comes to public participation it is easier when we are discussing a county. However, if we are going to do public participation in case of a President, which I have not dealt with here, it is a very weighty matter.

As I said, a Member can even table that Motion in the National Assembly and the Speaker refuses, becomes difficult or delays endlessly, which are some of the things I am addressing. We must give everyone some way within which to operate so that you do not frustrate the process or the people. Bringing the Motion does not mean that one is going to be impeached depending on the political divide you are.

On the timing of the Bill, one Member mentioned that perhaps we shall have done this one before. I am of the view that maybe if we tried this too early we needed that experience of several of these so that we can learn from the kind of issues raised and so on and the eventual decision to be able to come up with some semblance of a reasonable

procedure. There was also cited - I do not know whether it was directly related to the Bill - whether or not persons are to be impeached through a process in the Assembly, whether this Senate or County assembly should have their bank accounts examined.

Mr. Temporary Speaker, Sir, on a wider note, when it comes to the process, for example, in the CPAIC and so on, all people accused within the law by the Ethics and Anti-Corruption Commission (EACC) and so on, I think we need to have a clear law where bank accounts and assets should be examined. There is no way, as one Member said, where a person's official salary is Kshs85,000 but they have Kshs800million in their bank account. We must have a law which allows the legalized authorities to be able to look at these things.

If the person is impeached because of, for example, embezzlement of funds, the law does not stop the impeachment. You will be impeached and may be removed from office, but the law to recover the funds and so on still stands. I have not dealt with that in the Bill on the basis that it is covered elsewhere.

On the issue of the impeachment of the Assembly Speaker, I thought about at the beginning and left it out after reasoning that the Speaker is not really impeached as such because the Speaker is actually elected by the Members, either the National Assembly or the Senate or the county assembly. If the members of that house are dissatisfied with the Speaker, there is a simple process of voting him out. That is why I thought it is an impeachment passé although we use the word impeachment when we are removing a person from office, but in the case of a Speaker, I do not think it fits here.

Mr. Temporary Speaker, Sir, there is the issue of whether a County Executive Committee Member (CEC) impeached by a county assembly; that person should have room to appeal to the Senate. That is something between now and the time of the Committee Stage that we think about and see whether it is something to be included on the basis that people will run to courts. If somebody is impeached by the county assembly, he will run to the High Court. At the same time, we will be doing an appeal here. This is something we need to ponder between now and the Committee Stage so that we see whether it is something worth including in this Bill or not.

Mr. Temporary Speaker, Sir, I wish to thank all the Members who have contributed to this Bill. I personally believe it is a good beginning. It may not be an end in itself but it is a challenge being the legislatures to ponder and delve into these matters to the depth we can at this time. I have no doubt amendments will come in later. Let us have a law which attempts to spell out the process of impeachment. It is not an easy thing but it is a matter of life and death for politicians to be removed from office through this process. The Constitution provides that if you are impeached, you cannot run for office for 10 years. Therefore, this is something to be taken seriously. This procedure should be followed clearly. Where there are gaps, we fill them as much as we can.

Mr. Temporary Speaker, Sir, I beg to move and I request that putting of the question be deferred until another day pursuant to Standing Order No. 54 (3).

The Temporary Speaker (Sen. Sang): Very well. It is so ordered.

(Putting of the question on the Bill deferred)

Next order!

BILL*Second Reading*THE LOCAL CONTENT BILL
(SENATE BILL NO.13 OF 2016)*(Bill deferred)***MOTIONS**COUNTRYWIDE AUDIT ON 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.

*(Motion deferred)*CREATION OF AN OFFICE TO AUDIT THE
BASIC EDUCATION INSTITUTIONS' FUNDS

THAT, whereas Article 53 (1) (b) of the Constitution provides that every child in Kenya has the right to free and compulsory basic education;

RECOGNIZING the importance of education in the alleviation of the main challenges facing Kenya's sovereignty identified at independence, namely; poverty, illiteracy and disease;

APPRECIATING the gains made following the implementation of the free primary education program in 2003 and cognizant of the principles set out in the Basic Education Act of 2013 whose objectives include promotion and regulation of free and compulsory basic education besides providing for accreditation, registration and management of basic education institutions;

NOTING the substantial resources invested by the national and county governments, parents, sponsors and development partners in the provision of basic education;

FURTHER NOTING that pursuant to the Basic Education Act, the County Director of Education is vested with numerous responsibilities including facilitation of auditing of all basic educational institutions in the respective county thereby leaving fundamental gaps of governance especially in the management of the available resources;

NOW THEREFORE, the House recommends to the Cabinet Secretary for Education to facilitate the creation of the office of an auditor to specifically audit the basic education institutions' funds to enhance transparency and accountability and improve governance in the management of these institutions.

(Motion deferred)

INSTALLATION OF CCTV CAMERAS IN ALL
POLICE STATIONS AND POLICE POSTS

Sen. (Eng.) Muriuki: Mr. Temporary Speaker, Sir, I beg to move the following Motion:-

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
- c) ensure the CCTV system is connected to a central depository in order to minimize chances of subsequent tampering.

Mr. Temporary Speaker, Sir, in moving this Motion, I have in mind the wanting behavior of some police officers. There are instances, more than I have quoted in this Motion, where police officers arrest individuals on flimsy or no grounds. Sometimes they go to villages picking young men, frog matching them to police stations with the threat that if they do not part with a certain amount of money, they will be locked up. Sure enough, they usually lock them up. Sometimes they arrest members of the public for unknown reasons. Ordinary Kenyans are not in a position to question police officers. Subsequently, these individuals are locked up and are never seen again after the arrests. There are many cases of young men disappearing after arrest by police officers.

What is worse is that there are people who come in the name of police officers yet they are not in police uniform. One is never sure if they are police officers or not. I wish to ensure that as far as possible, we are able to force the police to record their activities in the police stations and posts. I am proposing that the Closed-Circuit Television (CCTV) systems that we have in Nairobi are installed in every police station. We have heard about the case of the Syokimau arrests and subsequent deaths. This is a case in point where the CCTVs were able to capture the movement of a subject vehicle which carried these unfortunate victims. If we have CCTVs in police stations, we will record activities there. I am proposing that there should be a central depository that is inter-connected. Should the need arise for the courts of law to know who went to a particular police station, how long they took there, who was with them and generally what was happening, we should have that record within the law enforcement system. Furthermore, we have in our country the internet system where these records can be connected in a central depository. This will allow us to review them as and when we want to. Police officers should not access them unless they are part of the evidence taking process later on should need arise.

Mr. Temporary Speaker, Sir, it is perhaps easy to do this in the police stations or in the house if one decides. However, police posts have a challenge because they lack electricity. So, I am proposing that if solar systems are installed, the police posts need to be computerized so that we also get the police officers there to account. We have had cases where junior police officers are covered by senior ones and so on. Eventually, you find that when a court of law orders the Inspector General to produce a person who was arrested in a police station in some corner of the republic, he is not able to do so. They are unable to know whether, in fact, a certain individual was taken to the police station or not. Therefore, as a nation, we should make a serious attempt at ensuring that these things are recorded.

Mr. Temporary Speaker, Sir, the system should be organised in such a way that the Occurrence Book is computerized. After every 12 hours, this system should be able to send to a base all activities of the people who came in and left the station. I am not suggesting that this system should record what a person said. What I am proposing is that the records of people who physically visit police stations or who are arrested have their records kept somewhere. In fact, we should go further and make it a criminal offence if it is established that a person was arrested, booked in a particular police station and there was no record of this anywhere. This is a criminal offence by the person in charge of that police station or post. If we do this, I believe it will go a long way in making the police officers to be in-charge of the police system and every officer will be accountable.

We have had cases where the numbers of police officers who go to curb cattle rustling are not known like in the case of Baragoi where many police officers were killed. This Motion is not just for criminals, it is also for the police officers. It will help to know the policemen who are in the station. It will also help to record the activities going in and out. In Baragoi, it was difficult to tell the number of officers who died. We were first told that they were three officers just to be told seven after three days. We were later told that they were 20 then 30 and it eventually ended up to be 40. That means that the system has no record of who is in a particular station and who has left because this is not recorded anywhere.

The system that I am proposing is not just an Occurrence Book for criminals. It is also an Occurrence Book of all the activities. It will help avoid guess work when something happens. In Baragoi, it took two weeks to know how many officers had died. If we go by the information in the media, there is a poor woman and her children who do not know whether the officer was in that station or if he was in the contingent that went to the field because there was no record.

I am suggesting that there should be a proper recording system with the central control system where they report to. The Officer Commanding Station (OCS) will, therefore, not just boss people around, but he will also be reporting to a system where the whole police system remains accountable to the citizens. I hope that this will be implemented for us to go a step further in making better governance of police system.

With those few remarks, I beg to move.

The Temporary Speaker (Sen. Sang): Very well. Could we hear from the seconder?

Sen. (Dr.) Zani: Mr. Temporary Speaker, Sir, I beg to second this very important Motion. The systems in criminology are very clear. There are three components in that system. Arrest is the first one, going through the court procedure is second and punishment is the last one. In places where there is justice, you do not expect to find people put in remand before they have been accused in court because they have to get to know the duration of their stay in prison. Currently we see people going in and being punished before they go through the court. When such a person dies, it means that they have been sentenced. This extrajudicial measure that has been put in place creates a complication.

It is unfortunate when two or three young men lose their lives. This is because their parents and families have dreams for them. It is different when one dies in an accident or fire but it is worse when it happens because the security system that people

need to believe in has failed. Nowadays, when you see a policeman coming towards you, you get worried because you do not know if that might be the cause of your death. What happened to the three people has happened to other people.

The Occurrence Book is a very important document at the police station. It has been abused yet it is meant for recording. There are cases where you look for somebody just to find that they have not been booked in the Occurrence Book. The police later give you a justification and tell you that they were actually at the police station. I know in some sensitive cases, the police take people to different police stations. This is because they think that people will agitate for them to be released. By hiding the person, it means that he or she has not been recorded yet somebody somewhere must know where he or she is. This has been flouted and this Motion is requesting for an innovative way of recording those who are taken at the station by using technology.

I am afraid that the problem in Kenya is not technology or the use of technology. When you look at the murder of Hon. Muchai, the CCTV's were suddenly discovered not to have been working. Always, somewhere along the line, when they are needed; CCTVs do not function. The problem is our values, lack of security due to failure by the system and bossy attitude. Leaders and those in charge of security should be in the forefront to ensure that people are protected and well-guarded. Somehow this has failed. It is important that people are accounted for. This Motion raises three very innovative ways of going about it.

First, is to install the CCTV cameras in all police stations and police posts in order to record each person going in. As the Mover of this Motion, Sen. (Eng.) Muriuki said, what is important is not to find what people are discussing or capture particular conversations but to keep the record. The CCTV can be stationed in such a way that it captures a specific recording at a specific angle. This should be designed in a way that it captures the Occurrence Book every 12 hours in a manner that any information that goes into the OB is captured immediately and properly, and therefore, transferred.

When such an innovative system has been put place - this is always the problem - we need to find out whether it is working, have proper supervisory measures to ensure that every time it is checked and that it is working appropriately as it is meant to be. At the end of the day, somebody will be responsible where it has not worked. I have heard Sen. (Eng.) Muriuki say that instead of looking for blame games, for instance, lack of electricity, we should find innovative ways even if it means using solar systems.

Secondly, people should be educated on this as their right. If they go to the police station, they should demand to know where people are. They should be accounted for at any one time. That should not be a favour. It is their right to know exactly where people are at a particular time. We should ensure that this CCTV system is connected to a central depository to minimize the chances of subsequent tampering.

Thirdly, there should be specific passwords that are used by specific people at specific times to ensure that it is very clear who is in charge of the system. At any one time, it will not be tampered with. It is unfortunate that you might find a situation where you cannot be accounted for because of tampering; show of power or that one person is above the other and can do anything. We are passing a worrying message to the youth; that, people are not safe in their country. We are going through hard times. We must find innovative ways to deal with them at any specific time.

Mr. Temporary Speaker, Sir, with those remarks, I beg to second.

(Question proposed)

ADJOURNMENT

The Temporary Speaker (Sen. Sang): Hon. Senators, it is now 6.30 p.m., time to interrupt the business of the Senate. The Senate stands adjourned until Tuesday, 22nd November, 2016, at 2.30 p.m.

The Senate rose at 6.30 p.m.