

# PARLIAMENT OF KENYA

## THE SENATE

## THE HANSARD

Thursday, 24<sup>th</sup> March, 2016

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

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

### PRAYERS

### CONSIDERED RULING

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

**The Speaker** (Hon. Ethuro): Hon. Senators, I have a Communication to make on the processing of the Physical Planning Bill, National Assembly Bill No.46 of 2015.

Hon. Senators, as you will recall, at the sitting of the Senate held on 16<sup>th</sup> February, 2016, I issued a Communication delivering a Message from the National Assembly regarding the passage of the Physical Planning Bill, National Assembly Bill No. 46 of 2015, by the National Assembly. In the Communication, I informed hon. Senators that the Speaker of the National Assembly did not seek the concurrence of the Senate as contemplated under Article 110(3) of the Constitution on whether the Physical Planning Bill concerns counties and if it does, whether it is a special or ordinary Bill.

Hon. Senators, Article 110(3) of the Constitution provides as follows, and I quote:-

“Before either House considers a Bill, the Speakers of the National Assembly and the Senate shall jointly resolve any question as to whether it is a Bill concerning counties and, if it is, whether it is a special or an ordinary Bill”.

Upon delivering the Communication, the Senate Minority Leader, Sen. Moses Wetangula, rose on a point of order and sought the guidance of the Chair on the effect of Article 110(3) of the Constitution and, in particular, whether this provision could apply retrospectively where a Bill, for which concurrence was not sought, is processed in one House and submitted to the other House for processing. Sen. Wetangula argued that if this was allowed, and in particular, if the Physical Planning Bill was allowed to proceed despite the violation of Article 110(3) of the Constitution, the Senate would undermine its

own authority and that of the Speaker of the Senate. The Senator, therefore, took the view that the provision could not apply retrospectively.

A number of hon. Senators rose on points of order to speak to this matter including Sen. Ong'era, Sen. (Prof.) Lonyangapuo, Sen. Njoroge, Sen. (Dr.) Machage, Sen. Okong'o, Sen. Khaniri, Sen. (Dr.) Zani, Sen. Mutula Kilonzo Jr., Sen. Ongoro, Sen. Abdirahman, Sen. Orengo and Sen. Elachi. In their submissions, all the Senators took the view that Article 110(3) of the Constitution ought to be adhered to and concluded before a Bill is proceeded with in either House. Consequently, in respect of the Physical Planning Bill, some Senators urged the Speaker to find that the Bill could not be proceeded with until corrective measures were taken.

Having heard the submissions of the hon. Senators, on account of the gravity of the issues raised, I undertook to deliver a ruling on the matter before the Bill is scheduled for Second Reading.

Hon. Senators, the issues arising, requiring the direction of the Chair are as follows –

(a) Whether or not Article 110(3) of the Constitution can be applied retrospectively; and

(b) The manner in which a House should proceed with a Bill in respect of which Article 110(3) of the Constitution was not complied with.

I will sit to allow hon. Senators to enter the Chamber.

*(Several hon. Senators entered the Chamber)*

Hon. Senators, when the Chair allows you to enter, you must do it with speed; otherwise, you will remain waiting there forever.

Hon. Senators, these issues have continued to recur in respect of the processing of legislation as between the two Houses in our bicameral Parliament. These questions have, however, not been restricted to the Legislature. It is important that I state that the compliance or otherwise by Parliament, and in particular the National Assembly, with Article 110(3) of the Constitution has arisen in various cases before the Courts.

It has, therefore, become necessary that the Speaker of the Senate gives guidance on these matters for the general guidance of the Senate of the Eleventh Parliament and for posterity. Posterity will judge the Office of the Speaker of the Senate and the Senate as a whole harshly if these matters are not put on record at this early stage in the life of the Senate.

Hon. Senators, the first issue relates to “whether or not Article 110(3) of the Constitution can be applied retrospectively. This, hon. Senators, is a straight forward matter. Article 110(3) of the Constitution is required to precede the introduction of a Bill in either House of Parliament. It must therefore, for all Bills, be complied with before a Bill is read a First Time in either House. It is not an optional or discretionary provision. The Supreme Court in Supreme Court Advisory Opinion No. 2 of 2013 had opportunity to pronounce itself on this matter as follows, and I quote –

“The requirement for a joint resolution of the question whether a Bill is one concerning counties, is a mandatory one; and the legislative

path is well laid out: it starts with a determination of the question by either Speaker – depending on the origin of the Bill; such a determination is communicated to the other Speaker, with a view to obtaining concurrence; failing a concurrence, the two Speakers are to jointly resolve the question. The legislative path thus laid out should apply to each and every Bill coming up before either Chamber of Parliament; and it is the constitutional task of the two Speakers to jointly determine the route to be followed by legislative proposals.”

I will sit to allow the other two Senators to get into the Chamber.

*(Hon. Senators entered the Chamber)*

Hon. Senators, despite the express provisions of Article 110(3) of the Constitution and the pronouncement of the Supreme Court, the National Assembly has, on almost every occasion, failed to observe Article 110(3) of the Constitution. The upshot of all this, hon. Senators, is that Article 110(3) of the Constitution cannot be applied retrospectively; it must be conclusively observed before a Bill is introduced in either House of Parliament

Hon. Senators, the second issue requiring my direction is the manner in which a House should proceed with a Bill in respect of which Article 110(3) of the Constitution was not complied with. In order to comprehensively address this issue, it is important that I set out various scenarios that have confronted the Senate with respect to the processing of Bills and the manner in which the Senate has and should proceed in each of the scenarios.

The first scenario is where, in respect of a Bill originating in the Senate, the Speaker of the Senate, in terms of Article 110(3) of the Constitution seeks the concurrence of the Speaker of the National Assembly on the nature of the Bill and the Speaker of the National Assembly concurs with the Speaker of the Senate. In this case, the legislative process would proceed as anticipated in Part Four of Chapter Eight of the Constitution.

The second scenario, which has also presented itself is where, in respect of a Bill originating in the Senate, the Speaker of the Senate, in terms of Article 110(3) of the Constitution, seeks the concurrence of the Speaker of the National Assembly on the nature of the Bill and the Speaker of the National Assembly fails to respond within a period of seven days as contemplated under Standing Order 118(4) of the Senate Standing Orders.

Standing order 118(4) of the Senate Standing Orders provides that:-

“Where, upon the expiry of seven days from the day of the communication under paragraph (1) or such further time as the Speaker of the Senate may in any particular case determine, no communication has been received from the Speaker of the National Assembly as to either concur or differ that the Bill is a Bill concerning counties and, if it is, whether it is a special or an ordinary Bill, the Speaker of the Senate shall

direct that the Bill may be read a first time in accordance with these Standing Orders”.

Consequently, in accordance with this Standing Order, the Senate would proceed to process the Bill in accordance with Part 4 of Chapter Eight of the Constitution, and the Speakers of the Houses and the Houses themselves would be estopped from subsequently raising any question regarding the nature of the Bill in terms of Article 110(3) of the Constitution.

The third scenario is where, in respect of a Bill originating in the Senate, the Speaker of the Senate, in terms of Article 110(3) of the Constitution seeks the concurrence of the Speaker of the National Assembly on the nature of the Bill and the Speaker of the National Assembly does not concur with the Speaker of the Senate on the nature of the Bill.

Although Article 110(3) of the Constitution requires the Speakers of the Houses of Parliament to jointly resolve any question on the nature of a Bill, Standing Order No.126(1) of the Senate Standing Orders provides an additional mechanism by which “for the purpose of making a determination whether or not a Bill concerns county governments, the Speakers may appoint a joint committee to advise them in resolving any question on such a Bill”.

The Supreme Court also further stated as follows, with respect to the formation of a joint committee –

“It is clear to us, from a broad purposive view of the Constitution, that the intent of the drafters, as regards the exercise of legislative powers, was that any disagreement as to the nature of a Bill should be harmoniously settled through mediation. An obligation is thus placed on the two Speakers, where they cannot agree between themselves, to engage the mediation mechanism. They would each be required to appoint an equal number of members, who would deliberate upon the question, and file their report within a specified period of time. It is also possible for the two Chambers to establish a standing mediation committee, to deliberate upon and to resolve any disputes regarding the path of legislation to be adopted for different subject matter. Had such an approach to the dispute been adopted, it is our opinion this court would, probably, not have been asked to give such an advisory opinion as a fitting solution would most likely have been found.”

Where, as has been the case, all efforts are made by the Senate towards the establishment of the joint committee with no action or response from the National Assembly, Standing Order No.118(4) of the Senate Standing Orders would then apply. The Senate would be entitled to proceed with the processing of the Bill in accordance with part two of Chapter Eight of the Constitution. Thereafter, neither the Houses nor the Speakers can raise an issue regarding the nature of the Bill.

Hon. Senators, the fourth scenario is where in respect of a Bill originating in the National Assembly, the Speaker of the National Assembly in terms of Article 110(3) of the Constitution seeks the concurrence of the Speaker of the Senate on the nature of the Bill and the Speaker of the Senate concurs with the Speaker of the National Assembly on

the nature of the Bill. In this case, no further issue arises as to concurrence and the legislative process would proceed as anticipated in Part four of Chapter Eight of the Constitution.

The fifth scenario is where in respect of a Bill originating in the National Assembly, the Speaker of the National Assembly in terms of Article 110(3) of the Constitution seeks the concurrence of the Speaker of the Senate on the nature of the Bill. The speaker of the Senate does not concur with the Speaker of the National Assembly on the nature of the Bill. But the National Assembly, nonetheless, without further reference to the Senate, proceeds to consider the Bill only in the National Assembly and to presented it for assent.

There is no doubt, Senators, that such process contravenes Article 110(3) of the Constitution. You will recall that the Senate was in November 2014 confronted with this issue with respect to 46 Acts of Parliament that had been processed and assented to, in contravention of Article 110(3) of the Constitution.

The Senators by a resolution adopted by this House on 11<sup>th</sup> November, 2014 resolved to seek an advisory opinion from the Supreme Court on, among others, the constitutional status of Acts of Parliament which had been passed by one House of Parliament and assented to in contravention of Article 110(3) of the Constitution.

In accordance with that resolution, for every Bill processed by the National Assembly in violation of Article 110(3) of the Constitution, the Senate reserves the right to challenge the legislation on account of such violation.

The sixth scenario is where in respect of a Bill originating in the National Assembly, the Speaker of the National Assembly does not seek the concurrence of the Speaker of the Senate in terms of Article 110(3) of the Constitution and the National Assembly proceeds to consider the Bill only in the National Assembly and subsequently processes it for assent. This clearly violates Article 110(3) of the Constitution. As is the case in the fifth scenario, it will be open to the Senate to challenge the legislation on account of such violation.

The seventh scenario is where, in respect of a Bill originating in the National Assembly, the Speaker of the National Assembly in terms of Article 110(3) of the Constitution seeks the concurrence of the Speaker of the Senate on the nature of the Bill. The Speaker of the Senate does not concur with the Speaker of the National Assembly the nature of the Bill. However, despite this, the National Assembly proceeds to consider the Bill and subsequently refers it to the Senate for consideration.

This has happened in a number of instances and has presented challenges in the manner in which the Senate is to proceed. The first and, perhaps, more natural option would be to do nothing on the legislation. That is; to take no action whatsoever, on account of the legislation having been processed in violation of Article 110(3) of the Constitution, thus leading to a deadlock.

In the process, key legislation, including legislation required for the implementation and strengthening of devolution and for the implementation of the Constitution, which is time barred, would stall. Taking into account the Senate's role under Article 96 of the Constitution, relating to the protection of the counties and their interests, this would not augur well for our country.

The Senate has, therefore, in the light of the fact that the legislation forwarded by the National Assembly nonetheless concern counties and is required to be processed through the Senate, has chosen the route always of mitigating the harm that would otherwise be caused if the legislative process were to stall on such crucial legislation.

As your Speaker, however, in all circumstances, I put on record for posterity our reservations concerning the lack of compliance with Article 110(3) of the Constitution. While noting that despite the mitigating actions taken by the Speaker, the legislation may still be challenged on account of its constitutionality.

The eighth scenario is where in respect of a Bill originating in the National Assembly, the Speaker of the National Assembly does not seek the concurrence of the Speaker of the Senate in terms of Article 110(3) of the Constitution and the National Assembly proceeds to consider the Bill and, subsequently, despite the lack of observance of Article 110(3) of the Constitution, proceeds to refer the Bill to the Senate for consideration. The action to be taken by the Senate would be the same as that in the previous scenario. That is exactly where we are.

Hon. Senators, having set out the different scenarios, it is important that I give directions on the manner in which we shall proceed with the Physical Planning Bill (National Assembly Bill No. 46 2015). As indicated in the last communication on this matter, the National Assembly did not observe the concurrence process under Article 110(3) of the Constitution before the introduction of the Bill to the National Assembly. The National Assembly has, however, found it fit to forward the Bill to the Senate.

In light of the matters that I have set out in this Communication, I direct that the Senate shall proceed with consideration of the Physical Planning Bill (National Assembly Bill No. 46 of 2015) at the Second Reading of the Bill at the appropriate time.

I thank you.

What is it, Sen. Okong'o?

**Sen. Okong'o:** On a point of Order, Mr. Speaker, Sir. I have listened to the several scenarios. I, however, got lost on the last scenario. Despite the fact that there was no concurrence, you have directed that we proceed to debate the Bill. Could you give a clarification on the last bit?

**Sen. Khaniri:** Mr. Speaker, Sir, I wanted to ask exactly what Sen. Okong'o has asked. After the very lengthy ruling or Communication that you made, you have ruled that the Senate will consider the Physical Planning Bill (2015) at an appropriate date. This Bill was processed through the National Assembly without observing the provisions of Article 110(3) of the Constitution. You have ruled that Article 110(3) of the Constitution cannot be applied retrospectively. We seek your clarification. In our opinion, the Senate should not consider this Bill at all.

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

**Sen. (Dr.) Khalwale:** On a point of order, Mr. Speaker, Sir. I have heard you very well. You are the eyes and the head of this House. I request you to go and explore the best way forward with your counterpart in the National Assembly. We, as Senate, find it very difficult to agree that after Article 110(3) of the Constitution has been overlooked, side-stepped and violated, we then go ahead as if those three things have not happened.

We do not mind going ahead with the Bill at an appropriate time. However, let it be on condition that, at that time you will eventually make a Communication that you have since made consultations and created the proper way forward.

**Sen. Wamatangi:** Mr. Speaker, Sir, I also keenly listened to your ruling. I congratulate you for being consistent on the position and the manner in which this continuously recurring stalemate should be addressed by this House. However, I have one standing concern which we need to look at quite seriously. In a court of law or Parliaments world over, the law is used as reference so many times, even centuries backwards. When a matter is being prosecuted in court, it is almost common and recurring practice that lawyers are required to submit authorities based on previous arguments of law.

Parliament is a House of norms, rules, precedence and traditions. My concern is, yes, some of these things, in our time now, we can afford to look at them and decide to bypass them or act in a certain way for current convenience. However, for posterity, how will we justify our existence, especially as the first Senate? This Senate is the pacesetter or a norm setter for all other Senate to come after this.

There might have been previous misguided thoughts with some people that this Senate will not last. However, with the enthusiasm that Kenyans have embraced devolution, we can see it is here to stay. The Senate is definitely going to be here. How will the generations to come judge the Speaker of the Senate as he sits today? The records of this House will bear witness that this House thought that, albeit the provisions of the law, it is okay to overlook it, or allow a misapplication of the law. Against the Constitution of this country, this Bill was allowed to pass unchallenged.

**The Speaker** (Hon. Ethuro): Conclude, Senator!

**Sen. Wamatangi:** Mr. Speaker, Sir, with due respect, it will fall directly on your desk. At one point, you will have to draw the line. This House will also have to draw the line. As they say in law, even if heavens come crumbling down, then you will have to apply the law as it is. That must be a point at which we will arrive. We have to do so very soon if we have to justify our true value and worth as legislators in this House.

**The Speaker** (Hon. Ethuro): Finally, Sen. Haji!

**Sen. Haji:** Mr. Speaker, Sir, there is persistence by the other House in flouting all rules and regulations, including the Constitution which is supposed to be the most respected document.

I will follow your ruling on condition that we will debate the whole process of the Bill so that, perhaps, it does not see the light of day. If it is against the Constitution and we know it requires assent by His Excellency the President, you should not put everything on your desk. It should be the responsibility of the whole Senate to petition the President if there is something like that, so that we are allowed to perform our responsibility as provided for by the Constitution without anybody looking down at the Senate.

**The Speaker** (Hon. Ethuro): Lastly, Sen. Ndiema.

**Sen. Ndiema:** Mr. Speaker, Sir, I am also not clear on the ruling you have made. This is because you had indicated that the Constitution requires that consultations be done before any Bill is brought to either of the Houses. In view of your final ruling that

this Senate will proceed with the Bill at the appropriate time, I do not know whether the Bill will lapse and be restarted afresh or whether we shall proceed with it as it is at the stage which the National Assembly has reached. It is important that this is made clear.

**The Speaker** (Hon. Ethuro): Hon. Members, thank you for those interventions. I sympathise with those observations. Sen. Okong'o, Sen. Khaniri and Sen. Ndiema wanted to reconcile my final direction from the scenarios I gave. Sen. (Dr.) Khalwale wanted a confirmation that when the appropriate time comes for the Bill to be considered for Second Reading, there must be a commitment that it will not be business as usual. Sen. Haji and Sen. Wamatangi took a diametrically opposed dimension to my proposal.

Let me explain. I gave all the scenarios that are possible; that one could contemplate on how to proceed under Article 110(3). This Article requires that before a Bill is introduced to either House, the two Speakers shall jointly resolve any question as to whether it is a Bill concerning counties and, if it is, whether it is a special or an ordinary Bill. The words "shall" and "jointly" are powerful. Please note the words "before introduction." Therefore, Article 110(3) cannot be applied retrospectively.

We should take into account our other roles in representing counties under Article 96 and constitutional duties in terms of Bills with timelines. That is the position we have taken all along. Should we just sit and do nothing and allow the legislation which is perfectly in order to collapse? I think that is what Sen. Haji and Sen. Wamatangi would suggest. On the other hand, do we take the higher moral ground where there is need for the two Speakers and two Houses to agree on the basis that the legislation can actually be processed in both Houses? Now that it has come and we had made a demand, should we assume that because this is the first instance, it should not come at all?

We will proceed without prejudice. We will proceed having put everything on record. We are not the only institution of governance in the Republic because there are multiple institutions of governance and we have left it open. It is up to them, including the ordinary citizens, to assume certain responsibility. We are put in a very awkward position. We have passed a resolution to revisit this matter in the Motion of the 46 Bills that never came here in the first place. We are having another scenario where Bills come after the event.

Under those circumstances, I direct that we do our bit as the Senate although it may not be the best under the circumstances. However, we are not saying that we approve of the violation of the Constitution. What we are saying is that we are not party to that violation and so it is open.

As Sen. (Dr.) Khalwale advised, we had made presentations. The fact that we have nothing to report means that they were inconclusive. I direct that we will proceed with the Bill because we had proceeded with other Bills before in that particular manner. Let us discharge our responsibility. Just because somebody does not do their part, that should not be a reason for us not to do ours. It is messy but that is the only thing before us.

Thank you.

**Hon. Senators:** Point of order, Mr. Speaker, Sir.

**The Speaker** (Hon. Ethuro): Order! Let us conclude and proceed.

Let us have the last one from Sen. Wamatangi.



**Sen. Wamatangi:** Mr. Speaker, Sir, I really have a lot of respect for what you have said. Now that you have given that ruling, we will abide by it. You have also exonerated the House to an extent whereby you said we will do so to follow the procedure. Maybe, you would have gone a bit further and exonerated the House from my concerns of the future. It is a reality that one day somebody will move to a court of law and annul all the 46 laws plus others that may come. Somebody could challenge them in a court of law even if it is not in our lifetime. Therefore, those laws could very easily be null and void and, therefore, a waste of time.

In my thinking, it is good that you should also exonerate us from the blame that may come one time because we have passed some serious laws, including some that affect county governments. It is not only the ones concerning physical planning which would have huge reverberations if they are annulled in future when actions that were inspired by those laws are already in force. If there would be any blame that could fall, it is good that it falls knowing and being clear in our records that, indeed, we had already sounded the alarm very clearly as you exonerate us now.

Thank you.

**The Speaker** (Hon. Ethuro): Sen. Wamatangi, I think we are in total agreement. Not only are we sounding the alarm, we have pronounced ourselves through that resolution on the 46 Bills. We keep pronouncing ourselves through these communications. This is a House of records, they are binding and they may be used in the future to good effect.

Next Order!

*(Sen. Haji consulted with the Clerks-at-the-Table)*

## NOTICE OF MOTION

### RESOLUTION TO ALTER THE SENATE CALENDAR

**The Speaker** (Hon. Ethuro): There is one notice of Motion by the Senate Majority Leader.

Sen. Elachi, are you standing in for the Senate Majority Leader?

**Sen. Elachi:** Mr. Speaker, Sir, yes.

I beg to give Notice of the following Motion:-

THAT, pursuant to the provisions of Standing Order No. 28(4), the Senate resolves to alter its calendar in respect of the first part of the Fourth Session for the recess to commence on Friday, 1<sup>st</sup> April, 2016 and sittings to resume on Tuesday 12<sup>th</sup> April, 2016.

## STATEMENTS

**The Speaker** (Hon. Ethuro): Where are the Chairpersons? I am not seeing any interest. Do we go by the order?

## STATUS OF PUBLIC-PRIVATE PARTNERSHIP PROJECTS

Where is the Chairperson of the Committee on Finance, Commerce and Budget?

## STATUS OF CASH TRANSFER PROGRAMME

Statement “b”. Where is the Chairperson of the Committee on Labour and Social Welfare?

CREDIBILITY OF WEATHER FORECASTS ISSUED  
BY KENYA METEOROLOGICAL DEPARTMENT

On Statement “c”, where is the Chairperson of the Committee on Land and Natural Resources?

**The Speaker** (Hon. Ethuro): If they are not here, we will come back to them later.

Let us proceed.

## STATUS OF CASH TRANSFER PROGRAMME

**Sen. Musila:** Mr. Speaker, Sir, let me draw the attention of the Chair that this matter came up yesterday and the Chair ruled ---

**The Speaker** (Hon. Ethuro): Sorry, Sen. Musila. Which matter?

**Sen. Musila:** Mr. Speaker, Sir, the matter on labour and social welfare.

**The Speaker** (Hon. Ethuro): Is that Statement 3(b) regarding cash transfers to the elderly?

**Sen Musila:** Mr. Speaker, Sir, yes. Yesterday the Chair ruled that this matter comes today. I was given a copy of what is purported to be the Statement. However, this is just a letter to inform the Clerk that the Cabinet Secretary (CS) for Labour and Social Welfare is in Geneva, Switzerland, attending the 326<sup>th</sup> Session of the governing body of the International Labour Organisation (ILO) from 19<sup>th</sup> to 25<sup>th</sup> March, 2016. This is the Statement that the Chair ruled yesterday that I be given today.

Let me further draw your attention that this request for this Statement was made on 19<sup>th</sup> February, 2015.

**The Speaker** (Hon. Ethuro): What were you supposed to be given?

**Sen. Musila:** Mr. Speaker, Sir, I was to be given a Statement. Further, I draw your attention to the fact that this request was made on 19<sup>th</sup> February, 2015. That is over a year ago. I really need your guidance. Is this the way to go? It is over a year since I asked a genuine Statement and now the Cabinet Secretary (CS) is in Geneva. A year after I asked my Statement, I think it is better to be informed whether there is any need or point in asking these Statements when Cabinet Secretaries (CSs) are not paying attention to them. I think we need your guidance.

**The Speaker** (Hon. Ethuro): I fully appreciate the frustrations of Sen. Musila. Before Sen. Musila even thinks of the Cabinet Secretary (CS), let us get the indication

from our own Chairperson. In these days of electronic business, whether he is in Geneva or wherever, it does not really matter. Business should be processed.

Do we have the Vice Chairperson or any Member of the Committee on Labour and Social Welfare?

Under the circumstances, I direct that the Senate Majority Leader be seized of this matter and we get a response on Tuesday without delay. Failure to do so will attract sanctions to the Office of the Senate Majority Leader.

*(Sen. Elachi spoke off record)*

**Sen. Kembi-Gitura:** Mr. Speaker, Sir, I had sought a Statement which is listed as 3(e) on the status of Murang'a County. I know that the County Public Accounts and Investments Committee---

**The Speaker** (Hon. Ethuro): Order, Senator! We are not there yet.

#### COLLECTION OF LEVIES FROM BUSINESSES FOR PLAYING MUSIC

Let us move to Statement "d". Where is the Chairperson of the Committee on Labour and Social Welfare?

#### CREDIBILITY OF WEATHER FORECASTS ISSUED BY KENYA METEOROLOGICAL DEPARTMENT

**An. Hon. Member:** Mr. Speaker, Sir, we are on Statement "c".

**The Speaker** (Hon. Ethuro): Yes. Statement "c". Where is the Chairperson of the Committee on Land and Natural Resources?

**Sen. Obure:** Mr. Speaker, Sir, on behalf of the Committee on Land and Natural Resources, I wish to respond to the request for a Statement from the Senator for Nyamira. I hope he is in here.

**An. Hon. Member:** He is not here.

**The Speaker** (Hon. Ethuro): I thought I saw him in the House. Maybe he has taken a break. Let us allow him, deal with the rest and then come back to it.

Sen. Kembi-Gitura, it is your turn now.

#### REPORT OF SPECIAL COMMITTEE ON PROPOSED REMOVAL FROM OFFICE BY IMPEACHMENT OF HON. MWANGI WA IRIA, GOVERNOR OF MURANG'A COUNTY

**Sen. Kembi-Gitura:** Mr. Speaker, Sir, I am seeking the status of 3(e) from the Committee.

**The Speaker** (Hon. Ethuro): Where is the Chairperson of the County Public Accounts and Investments Committee? Is the Vice Chairperson here?

**Sen. (Prof.) Lonyangapuo:** Mr. Speaker, Sir, I did not get the Statement.

**The Speaker** (Hon. Ethuro): Why?

*(Sen. Elachi sat next to Sen. (Prof.) Lonyangapuo)*

**Sen. (Prof.) Lonyangapuo:** I have a neighbour here who says she will not disturb me again.

**The Speaker** (Hon. Ethuro): Order, Senator! The responsibility is yours and not your neighbor's, especially when you carry certain responsibilities. Look at Statement "e" on the last page of the Order Paper. Your Committee is supposed to respond to it.

**Sen. Musila:** On a point of order, Mr. Speaker, Sir. I need clarification on this matter, having chaired the Special Committee on the Proposed Removal from Office of the Governor of Murang'a County. I say this with tremendous respect for the Deputy Speaker. The Statement is supposed to be from the Committee on County Public Accounts and Investments issuing a Statement on a report. I need clarification because this is a Committee of the House.

**The Speaker** (Hon. Ethuro): You do.

**Sen. Musila:** Mr. Speaker, Sir, is it in order for a Committee of the House to probe another Committee of the House? I need this clarification --

**The Speaker** (Hon. Ethuro): Order, Senator! I hear you loud and clear. So that you do not make things worse, this is a summary. What Sen. Kembi-Gitura sought was not a statement on the report of the Committee. It was on how to take forward the recommendations that the Committee made.

Let us have Sen. (Dr.) Khalwale first and then Sen. Kembi-Gitura.

**Sen. (Dr.) Khalwale:** Mr. Speaker, Sir, I just want to help the House by confirming that since this matter was brought before you, nothing has been done. On the same day that the matter came up, Sen. Khaniri and I sought further clarification from the Chair, to confirm to us that the issues canvassed had been brought by a Committee of this House and the whole House had then made its decision. We sought whether there was still room for us to do further pursuit.

Mr. Speaker, Sir, I think that clarification has not come and that is why we did not move to take any action as of now. Probably, Sen. (Prof) Lonyangapuo was not in the House on that day.

**Sen. Kembi-Gitura:** Thank you Mr. Speaker, Sir. First of all, I would like to assuage Sen. Musila. The Statement that I sought has nothing to do with probing the report of the Committee. Maybe what has come out in the Order Paper is not clear, but the Committee - if Sen. Musila will recall - made certain recommendations going forward in that report. They said that they wanted certain other things investigated further, one of them being the purchase of 34 acres of land for Kshs10 million per acre, which would not have fetched more than Kshs2 million per acre. I, therefore, want to know what happened to the difference of Kshs8 million.

Mr. Speaker, Sir, the Committee having finished its work is *fanctus officio*. They have finished their work and there is nothing more they can do about the report. For the report to be effectuated, another body, be it the Ethics and Anti Corruption Commission (EACC) or the Director of Criminal Investigation (DCI) or any arm of the Government, needs to look at the recommendations and tell the people of Murang'a that when you

recommended that *Shilingi kwa Shilingi* spent Kshs28.9 million illegally, whether that matter will rest or another arm of Government will say how the money was spent illegally and who is going to be surcharged. When we say that land was bought and not properly procured - 34 acres for Kshs340 million - do we leave it at that or will another arm of Government tell us how the people of Murang'a will recover the difference?

The reason we did not go back to the committee is because the matter is *fanctus officio*, but there must be another Committee of this House that should re-open the issue and tell us how those good recommendations that were made by the committee will be effected. How will the people of Murang'a recover their money and who will be surcharged for what? That is all we are asking for because the Committee recommended that the EACC and the procurement authority should investigate whether certain things were done rightly. I am not trying to probe the Committee and it cannot be my place to do so. It did its work and finished. Whether it was right or wrong, that is water under the bridge, but there are certain good recommendations they made, which we need to follow up. That is what I am trying to do.

As pertains to the issue raised by Sen. (Dr.) Khalwale, he raised that issue in the last Session. The Statement lapsed in the last Session and I have raised it anew, differently. Nobody else has raised the issue of the validity or otherwise of the Statement, because that died with the end of the last session.

**Sen. Musila:** Mr. Speaker, Sir, I think the Deputy Speaker has clarified. I, therefore, request that the wording in the Statement be corrected. I understood it the way he has explained. This is a case on the recommendations of the Committee and we have no issue.

Thank you.

**The Speaker** (Hon. Ethuro): I thought I made the same clarification, Sen. Musila.

(Laughter)

Order, Senators! Sen. (Prof.) Lonyangapuo, are you not the Vice Chairperson of the Committee?

**Sen. (Prof.) Lonyangapuo:** I am, Mr. Speaker, Sir.

**The Speaker** (Hon. Ethuro): Then respond to this one first.

**Sen. (Prof.) Lonyangapuo:** Thank you Mr. Speaker, Sir. Sen. Kembi-Gitura is right. There were some---

**The Speaker** (Hon. Ethuro): Order, Sen. (Prof.) Lonyangapuo! Do you have a response or not? We have a lot of business, including some from you.

**Sen. (Prof.) Lonyangapuo:** Mr. Speaker, Sir, I am saying that he is right. We should have already handled it, but there was an issue in the Committee which was sorted out today. The first sitting will be next week. Therefore, we are requesting for two weeks from now in order to exhaustively deal with this.

Thank you.

**The Speaker** (Hon. Ethuro): That is what I expected to hear from you. We should have a response in two weeks time.

Let us move to Statement (f) by the Committee on Agriculture, Livestock and Fisheries. What is it Sen. Kanainza?

#### COLLECTION OF LEVIES FROM BUSINESSES FOR PLAYING MUSIC

**Sen. Kanainza:** Mr. Speaker, Sir, I had sought Statement (d) from the Committee on Labour and Social Welfare regarding the collection of levies by the Music Copyright Society of Kenya (MCSK) and KAMP-PRISK from business premises and public transport vehicles. The Statement was to be issued on 15<sup>th</sup> March, but it was not.

**The Speaker** (Hon. Ethuro): Sen. Kanainza, you will appreciate that the fate of Statement (d) is the same as that of Statement (b). We will look for the Chairman.

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

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

**The Deputy Speaker** (Sen. Kembi-Gitura): Next Statement!

#### ACUTE FOOD SHORTAGE IN WEST POKOT COUNTY

**Sen. Ndiema:** Mr. Deputy Speaker, Sir, I wish to issue a Statement that was sought by the Senator for West Pokot in respect to food situation in West Pokot.

The Senator wanted to know whether the Government is aware that there is food shortage and looming hunger and starvation in West Pokot County. He also wanted to know whether the Government is aware that school going children are already adversely affected and many are unable to regularly attend classes. He also wanted to know when the Government will supply relief food to the affected people.

Mr. Deputy Speaker, Sir, according to the Kenya Food Security Steering Group Assessment carried out in February, 2016, the county was largely classified as being in the “minimal” phase, but the pastoral livelihood zone in the county is in the “stressed” phase, with some areas expected to deteriorate further. The food security situation in the mixed farming and agro-pastoral livelihood zones is fairly stable and expected likely to remain in the minimal phase. The assessment is that certain people require food assistance in West Pokot as a result of a combination of several factors such as poverty, high malnutrition in children due to poor care practices and insecurity in some areas, among others.

The team made the following general observations for the county to be classified under minimal phase:-

(1) Currently, the total maize stocks held in the county are about 94.6 per cent of the normal. The current meal frequency for children under five years and adults is at an average of two to three meals a day across all livelihood zones, which is normal. The available stocks are estimated to last for six months in the mixed farming livelihood zone and two months in the agro-pastoral livelihood zone. Post-harvest losses emanating from

heavy rains during the harvesting period were noted, but did not significantly reduce the expected household stocks.

Household livestock and milk production in pastoral livelihood zones slightly increased to an average of 1.6 litres per day. In the mixed livelihood and agro-pastoral livelihood zones, milk availability was two to three litres compared to the previous season of 1.5 litres. Water consumption is normal compared to the long-term average. Malnutrition in children under the age of five declined in January, 2016. The terms of trade are favourable to the households at 86 compared to the average of 73 indicative, attributed to forces of market supply and demand.

(2) Regarding awareness that school-going children are already adversely affected and many are unable to regularly attend class, the Ministry is not aware of the acute food shortage already adversely affecting class attendance.

(3) The Senator wanted to know when the Government will supply relief food to the affected. The emergency fund which addresses the food relief provision was devolved to the county governments. The county government is in the first line of action into relief provision in cases of food insecurity, but the Ministry has strategically prepositioned the strategic food reserve of 272,320 90-kilogram bags of maize in the nearest National Cereals and Produce Board (NCPB) depots for relief distribution to agencies and relief provision to Government departments to access and purchase for distribution to the affected population. The nearest depots are strategically supplied with strategic food reserve to cater for the counties are as follows: Kapenguria, Kitale and Sigor with the total stock of 272,320 90-kilogram bags.

Thank you, Mr. Deputy Speaker, Sir.

**Sen. (Prof.) Lonyangapuo:** Mr. Deputy Speaker, Sir, I want to thank the Vice Chairman of the Committee on Agriculture, Livestock and Fisheries. I also want to thank you for giving a directive yesterday afternoon that this Statement be issued today, having failed to be delivered in the last three weeks.

I asked three questions. The first one was with regard to the food shortage in West Pokot County, but the Vice Chairman has gone into interesting details about the levels of food consumption and malnutrition. That is not what I asked. I asked whether the Chairman is aware that there is an acute shortage of food, noting that last year there was no rain in almost three-quarters of the county and as a result, no maize was harvested. There are 10 out of 20 wards that are in dire need. The Vice Chair has confirmed in his response that 20,000 people are in dire need, but he has gone further to talk about things that are not relevant. I wanted him to confirm that indeed, there is a shortage of food and people are hungry. He needs to come out clearly. Let him leave the issue of the levels of malnutrition.

There are children that have not gone to school as a result of shortage of food. The Vice Chair has said that the Ministry is not aware of this, yet he has also told us that 20,000 people are affected. That means that some children are also included in the 20,000 people. Children are affected and not going to school. Does the Ministry not liaise with the Ministry of Education, so as to know the number of pupils missing in schools? Most schools in the boundary of West Pokot and Turkana are affected.

Lastly, the Vice Chair has confirmed that there are 272,320 bags of maize lying idle in Kapenguria, Kitale and Sigor depots. I expected the Vice Chairman to give a decree as to when the maize will be distributed to the affected people, since they have no money to buy it. We would also like to know whether the emergency funds meant to address the food shortage have been transferred to the counties. I have just come from my county and there is no such money.

I want to hear that starting tomorrow---

**The Deputy Speaker** (Sen. Kembi-Gitura): Order, Senator. I have allowed you a lot of time because you sought the Statement and it is important to you, your people and to all of us. However, you are now repeating yourself because you have already talked about that issue of the urgency. Is there anything different from what you have said that you want to talk about?

**Sen. (Prof.) Lonyangapuo:** Mr. Deputy Speaker, Sir, it is interesting to know we have food in my county, which is not accessible to the people. I want him to tell us when the maize will be moved from the depots.

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. (Prof.) Lonyangapuo, you have already said that. You are now repeating yourself.

**Sen. Munyes:** Mr. Deputy Speaker, Sir, West Pokot County and nearby counties like Turkana suffer from acute food shortage, which is mainly a factor of lack of production or access to food. It is shameful that Uganda is now feeding the Turkanas and Pokots. Uganda has efficient food distribution programmes.

Livestock in Uganda get enough water but we do not have enough water in our counties. We cannot cope because of the small portions we get from relief agencies with poor logistics. Since the Government cannot even hire vehicles to distribute the food, it means there is a poor food distribution programme in our counties. My question is; what is the Government doing, considering that the county governments have failed, that is, Turkana and West Pokot, to enable the people cope with the current food crisis? How many people are on the verge of starvation in those areas? Meteorologists have informed us that Turkana is now 43 degrees Celsius and people are running to Uganda and other places. How much is the Government going to spend to ensure there is enough food in Turkana and West Pokot? Currently, for the case of West Pokot, how much food has so far reached the people?

**Sen. Boy Juma Boy:** Asante Bw. Naibu Spika. Hapa ninavyoona ni kwamba swali lililoulizwa ni linguine, mbali na lile linalojibiwa. Ameulizwa juu ya “acute food shortage” na anatuambia kwamba kuna chakula kimepatikana “kuna nini, lele mama, hehe, hoho wala hasemi ukweli. Je, kuna upungufu wa chakula au la?

Jambo la pili ambalo ameulizwa kama wanafunzi hawaendi shuleni kwa sababu ya ukosefu wa chakula. Jibu ambalo amesema ni kwamba hana habari hiyo. Sen. (Prof.) Lonyangapuo na Sen. Munyes wamesema hayo mambo. Je, nani muongo?

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. Boy Juma Boy, I take issue with your last part. The chairman *hawezi kuwa mtu muongo*. However poor my Kiswahili maybe, *mwenyekiti hawezi kuwa muongo*.



**Sen. Boy Juma Boy:** Kama haifai basi, ningesema kwamba mwenyekiti hasemi ukweli lakini sijui tofauti.

**The Deputy Speaker** (Sen. Kembi-Gitura): Senator, as long as you understand that some words are unparliamentary. You cannot say that your colleague is telling lies. It is not allowed by the Standing Orders but since he has not raised the issue, I will leave it at that.

Sen. Wamatangi, is it a point of order or a clarification?

*(Sen. Wamatangi spoke while seated)*

Order! You cannot talk to me when you are sitting down. You either say something or tell me that you have nothing to say.

**Sen. Wamatangi:** I apologize, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. Kembi-Gitura): You notice, I allowed Sen. (Prof.) Lonyangapuo and Sen. Munyes ample time for a good reason but I will allow you two minutes maximum.

**Sen. Wamatangi:** Thank you, Mr. Deputy Speaker, Sir. I will be brief. I want to join my colleagues in saying out loudly that the question of Kenyans today being left to starve and to be left without food is a serious issue. This cannot be gainsaid more than it has been said. It is imperative for the chairperson of the relevant committee to ensure that he does not only seek that clarification but goes further to ensure that the statement is not only satisfactory but also goes to detail on the questions raised.

While seeking that clarification, it is important for us to say that the Government not only needs to be encouraged but asked to go ahead and come up with long lasting solutions to alleviate and deal with the question of hunger in those areas. You remember recently, we had the Galana-Kulalu Irrigation Project. This project which was intended to be of great help to these areas was largely politicized. Some politicians went out to bash the Government that this is a misplaced project. This is evidence that if there are areas where such projects are useful, it is in such areas. Therefore, I want to join my colleagues in urging that we should have more of such investments in these areas that are hit by drought.

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. Ndiema, I have many requests but I want you to deal with the ones that have been raised in the first round.

**Sen. Ndiema:** Mr. Deputy Speaker, Sir, the details that I have given were availed by the Ministry and it shows that there is food shortage in some areas but some areas received near normal rainfall and were not affected. An estimated 20,000 people are facing food shortage. The Ministry has also said that there is adequate food in stock. The first line of defence in terms of addressing food shortage is the county government. This applies to all counties including West Pokot and Turkana. Turkana County is the second largest recipient of resources from devolved funds. Therefore, it should give priority to food provision to the people. They should know that disaster management and relief is now a devolved function. They asked for these functions to be devolved and they should be providing food to the people. If there is any shortage, the county government should

liaise with the national Government to get assistance. It may appear therefore, that the county governments in those areas are not doing enough to assist the people.

Regarding schools, the Ministry of Agriculture says that it is not aware. The Senator for Kwale is the one saying it. It is not me who is saying but the Ministry concerned.

**The Deputy Speaker** (Sen. Kembi-Gitura): It is you Senator. You are the Chairman of the Committee.

**Sen. Ndiema:** I am the Chairman of the Committee but this is a report that I have received and if indeed there is need for further investigation to find out more, I am ready to go back. You will recall that this was an interim report and we are ready to go back and find out more. This is not something that we cannot just brush aside. The Senator has said that there are children who have dropped out of school due to the shortage of food. We need to go back and find out more so that those children can go back to school.

I have responded to the issues needed to be addressed.

**Sen. Obure:** Mr. Deputy Speaker, Sir, we have been told that citizens of this country, particularly in the northern counties of Turkana and West Pokot, are starving. We have been told that children are in distress and some of them are dropping out of school. We have been told that Kenyan citizens are crossing to Uganda in search of food. This is serious and humiliating. We are also told that there is plenty of food elsewhere and yet these people have no access to that food. I want the chairman to explain what measures will be put in place to respond quickly and ensure that the food is available to the citizens of those two counties. I do not know whether it is pleasing or good news to be told that this is a county function. Maybe that county does not have the capacity to undertake these works. Let us be told what concrete measures are being taken to ensure that food is accessible to the people in distress in those counties.

**Sen. (Dr.) Khalwale:** Mr. Deputy Speaker, Sir, the House will recall that in the first financial year, we allocated West Pokot County Kshs3.5 billion. The following year, they received Kshs.47 billion. For purposes of the people of West Pokot in particular and Kenyans in general, who cannot accept a child dropping out of school because of hunger or dying due to lack of food, it would help if the Vice Chairman, in his statement, could tell us how much money this county government voted for food. How much of the emergency fund that is in that budget has been committed to this particular incident so that we do not have a situation where governors are flying around in choppers while their people are dying from hunger? It is for that reason that we would have to impeach that governor. We cannot have a governor running a fleet of four wheel-drive fuel guzzlers when children are dying from hunger.

**Sen. Hargura:** Mr. Deputy Speaker, Sir, the Vice Chairman says food is available. However, the experience we have is that sometimes food is taken to a depot and the government officers complain of lack of transport to ferry it to the needy people. Sometimes it is diverted and it then ends up not reaching the beneficiaries. In the statement, I would like him to clarify in this case if the Government has ensured that the food will be transported to where it is required.

**Sen. Sijeny:** Mr. Deputy Speaker, Sir, I would also like the Vice Chairman to give us specific ways or modes which the Government will use to ensure that there will

be no corruption this time because he has told us that there is food in stock. Many at times, we have witnessed food branded Government of Kenya “(GOK), Not for sale” finding ways in the kiosks and on streets for sale. Could they ensure that the food has been safeguarded and that it will be distributed to the vulnerable groups such as expectant women or those who have just given birth, whose health, naturally, requires proper care and attention as well as the old people, persons living with disabilities and children.

We do not want to see the kind of photographs that we saw of a starving child who was rescued by the Gertrudes Children Hospital. This led to a massive contribution of funds and other resources by Kenyans. We have a devolved system now. Could they ensure that the money and food reaches the vulnerable groups and that they are protected?

**Sen. Ndiema:** Mr. Deputy Speaker, Sir, I thank the Senators who have sought further clarification as to what the county governments are doing to ensure that food is availed. We, as a Committee, will need more time to interrogate this matter further. We will even summon the Cabinet Secretary together with the governors whose counties are affected by hunger to tell us what is happening. Perhaps, each level of Government is passing the buck while Kenyans are suffering and dying. We know that there is adequate maize in our silos in Kitale. In fact, there is no space to store additional harvest yet people are suffering. That will give opportunity for all the Senators to interrogate this matter further.

**The Deputy Speaker** (Sen. Kembi-Gitura): How much time do you need?

**Sen. Ndiema:** Mr. Deputy Speaker, Sir, I do not know how our calendar will be, but I will need about two weeks.

**Sen. Obure:** Order, Mr. Deputy Speaker, Sir,

**The Deputy Speaker** (Sen. Kembi-Gitura): Order, Sen. Obure! Do you have a point of order or you are calling me to order?

*(Laughter)*

Sen. Ndiema, it is okay for us to give you two weeks to avail the information required by the hon. Senators because you have done the best under the circumstance. However, if what I heard from Sen. (Prof.) Lonyangapuo and Sen. Munyes is correct; that children and women are suffering from lack of food yet you are telling us that there is more food than you can store in Kitale, then you must admit that something is very wrong and that is not acceptable. Therefore, you as the Vice Chairman must give us a solution because you cannot tell us on one hand that children are dying of hunger in West Pokot County and yet there is enough food in other places. You must tell us what the position of the Government is in that situation and how you are going to alleviate it because we cannot sit here for two weeks waiting for an answer when the same problem is persisting.

If we come back here in two weeks’ time, we will be engaging in an exercise in futility because the situation might have worsened because there is no distribution of food although it is plenty in the country. Those are issues that I would like you to deal with urgently. Even as we await an answer or clarification from you, I would like to charge

you as the Vice Chairperson of the Committee to sit with the relevant officers of Government and explain the gravity of the situation on the ground and see how that food can be transported to the needy people. By the time we come back, you tell us that pursuant to the issues we discussed, the problem has been resolved and we will deal with the situation in one way or the other. That is what I would like to hear when we come back here and not to be told that nothing has happened.

Sen. Obure, what was your point of order?

**Sen. Obure:** Mr. Deputy Speaker, Sir, I wanted to make precisely the same comments that you have addressed. A situation where people are dying is an emergency. We are told that we need another two weeks before the Cabinet Secretary can come before this House to explain the situation. This House could do better and seek for immediate intervention by seeking information from the national Government on how it can ensure that the food available in Kitale and other areas is transported very quickly so that the people there can receive relief rather than wait until the Cabinet Secretary comes here while people are dying.

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. Ndiema, we look upon you as the Vice Chairman of a Committee of the Senate. I understand where you are coming from, but I want to give you a higher responsibility which you must accept. Even as we go on recess and wait for two weeks, you take it upon yourself to sit with the Cabinet Secretary and pass on to him the feeling of the Senate. We find this situation unacceptable.

**Sen. Ndiema:** Mr. Deputy Speaker, Sir, the fact that I said two weeks does not mean that we will wait for two weeks. The two weeks is how to handle this matter as a long term issue. However, my Committee is already dealing with the urgent issue and has impressed upon the Ministry to ensure that these shortages are addressed. I just wanted to clarify that my Committee is already on this. So, we will not wait for two weeks.

**The Deputy Speaker** (Sen. Kembi-Gitura): Thank you very much, Senator.

*(Sen. Karaba stood up in his place)*

Sen. Karaba, I cannot see your request but proceed.

**Sen. Karaba:** Mr. Deputy Speaker, Sir, I pressed the button.

**The Deputy Speaker** (Sen. Kembi-Gitura): It is not showing on my screen.

**Sen. Karaba:** Mr. Deputy Speaker, Sir, it is there.

**The Deputy Speaker** (Sen. Kembi-Gitura): Sorry?

**Sen. Karaba:** Mr. Deputy Speaker, Sir, I have been pressing this thing for a long time. I thought you saw it on your screen.

I am rising on a point of order.

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

**Sen. Karaba:** Yes, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. Kembi-Gitura): You have heard me calling other Senators and what their points of order are? Have you not?

It is because I could see their names on the screen. If your name was on the screen I would have read it out. Now your name has shown on the screen; it was not on the screen. What is your point of order?

**Sen. Karaba:** Mr. Deputy Speaker, Sir, thank you for allowing me to say something. The problem with these machines is that sometimes you---

**The Deputy Speaker** (Sen. Kembi-Gitura): Let us forget about the machines. I told you that your name was not there but now I can see it. What is your point of order?

**Sen. Karaba:** On a point of order, Mr. Deputy Speaker, Sir. The Chairperson of the Committee on Agriculture, Livestock and Fisheries should liaise with the Chairperson of the Committee on Education, that is me, so that we can see what can be done particularly to students who might leave school earlier because of food shortage. It is a very serious problem and we should not allow any county to close schools early because of shortage of food which should be given freely by the Government. That is what the Government should do.

I, therefore, request him that to make sure that he impresses this on the Ministry of Education to provide emergency food supplies in West Pokot so that the students are not sent home early because they have to cover the syllabus just like other students in Kenya. He should heed that instruction.

**The Deputy Speaker** (Sen. Kembi-Gitura): Thank you, Sen. Karaba. In fact, in the intervening period, between now and when we come back, if we will go on recess – I am sure that Sen. Ndiema will be quite happy to work with Sen. Karaba, Sen. (Prof.) Lonyangapuo, Sen. Munyes and any other Senator who would like to weigh in on this issue so that we come up with a solution because we are looking for solutions to these problems that we are facing. So, Sen. Ndiema, we shall leave that to you. I am sure you will find a solution.

Which other Chairperson has a statement to issue? The next one is (g).

Proceed, Sen. Khaniri. I cannot see the Chairperson of the relevant Committee.

**Sen. Khaniri:** Mr. Deputy Speaker, Sir, I register my complaint to the Chairperson that Statements (g) and (i) which I sought from the Chairperson of the Standing Committee on Finance, Commerce and Budget, have been on the Order Paper for the last four weeks.

Mr. Deputy Speaker, Sir, I remember that last week you gave an order that the Chairperson of the Committee on Finance, Commerce and Budget comes to respond to this Statement and before he responds he should apologise because he had been in the House but when we got to statements he deliberately walked away---

*(A Mobile phone rang)*

**The Deputy Speaker** (Sen. Kembi-Gitura): Can someone put off his phone please?

**Sen. Khaniri:** Mr. Deputy Speaker, Sir, the Chairman of the Committee on Finance, Commerce and Budget deliberately walked away. He has done the same thing today. He was here a little while ago and when we got to the order of statements, he walked out. He is not treating this House seriously; some sanctions must be given to him.

**The Deputy Speaker** (Sen. Kembi-Gitura): Do you have a copy of the Statement?

**Sen. Khaniri:** Yes, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. Kembi-Gitura): So, you are lacking somebody to issue the Statement.

Is the Vice Chairperson of the Committee here?

**An hon. Senator:** He has just walked out.

**The Deputy Speaker** (Sen. Kembi-Gitura): Okay, I will look into it. That is very unfortunate if that is what has happened. I have a copy of the Statement.

Therefore, I order that those two statements, at least (i) because I can see that it is ready, be issued on Tuesday whether by the Chairperson or any Member of the Committee who shall be present on Tuesday next week, 29<sup>th</sup> March, 2016.

#### REGISTRATION OF PERSONS WITH DISABILITIES

#### EXPENDITURE OF KSHS15 BILLION SET ASIDE FOR *EL NINO*

*(Statements deferred)*

That then leaves us with Statement (h).

Proceed, Chairperson of the Committee on Agriculture, Livestock and Fisheries.

#### SUPPLY OF FERTILIZER AND OTHER FARM INPUTS BY THE NCPB

**Sen. Ndiema:** Mr. Deputy Speaker, Sir, first, the Senator for West Pokot, Sen. (Prof.) Lonyangapuo, had sought an explanation why the National Cereals and Produce Board (NCPB) had not supplied fertilizer and other farm inputs to farmers ahead of the planting season this year yet the long rains are about to start.

Secondly, he sought to be informed when the fertilizer will be availed in all the NCPB depots across the country.

Thirdly, he wanted to be informed of the measures the Government will put in place to avert such serious scenarios in future.

Mr. Deputy Speaker, Sir, I start by declaring my interest on this subject; being the Senator for Trans-Nzoia, I know that the farmers have had a problem accessing fertilizer which has been delayed this year.

However, the response which I have got from the Ministry regarding the matter, generally, is as follows:-

In the Financial Year 2015/2016, the Ministry of Agriculture, Livestock and Fisheries was allocated Kshs2.5 billion for fertilizer procurement. This allocation together with the Kshs800 million from fertilizer sale proceeds and another Kshs1.2 billion reallocation from the Strategic Food Reserve (SFR) set the funds available for fertilizer procurement to be Ksh4.5 billion. However, from these funds, Kshs3.4 billion

was used to clear NCPB pending bills leaving Kshs1.1 billion for fertilizer procurement during the 2015/2016 planting season.

The explanation why the NCPB has not supplied fertilizer and other farm inputs to farmers ahead of the planting season this year is as follows:-

Despite having only Kshs1.5 billion available for fertilizer procurement in the 2015/2016 Financial Year, the Ministry in collaboration with the NCPB made arrangements to avail 137,926 metric tonnes of various types of fertilizer. From this quantity, 17,316 metric tonnes were procured for the 2015 short rains. The distribution of this fertilizer was hampered by delays in exchequer fund release; although its contract was signed in October, 2015, its distribution was delayed to January, 2016 when the funds were released. Other farm inputs such as seeds are already available with the stockiest.

Concerning when the fertilizer will be availed to all the NCPB depots across the country; for the 2016 long rains, 124,151 metric tonnes comprising of various fertilizer types was ordered. The first consignment of 39,880 metric tonnes was received at the port of Mombasa on 14<sup>th</sup> March, 2016.

Mr. Deputy Speaker, Sir, this consignment comprised of Nitrogen, Phosphorus and Potassium (NPK) 23:23, NPK 17:17 and Sulphate of Ammonia. As at 23<sup>rd</sup> March, 2016, 23,000 metric tonnes of these fertilizers had been discharged from the vessel and its distribution to various National Cereals and Produce Board (NCPB) depots countrywide is ongoing. Attached is a list of how the distribution has been done. There is a remaining balance of 16,880 metric tonnes to be discharged and distributed from the vessel. The discharge rate is 300 metric tonnes per day on a 24-hour shift.

Another vessel carrying 33,000 of Diammonium Phosphate (DAP) docked at the port of Mombasa on 23<sup>rd</sup> March, 2016 at night while the vessel carrying 37,440 metric tonnes of Calcium Ammonium Nitrate (CAN) fertilizer is expected at the port of Mombasa on 7<sup>th</sup> April, 2016.

The NCPB has sourced for enough transportation trucks to uplift the fertilizers to the respective depots countrywide. Annexure four is attached showing how the 137,926 metric tonnes of fertilizers for 2015/2016 season is being distributed to counties. The distribution is based on the county's request and the quantities available.

Mr. Deputy Speaker, Sir, thirdly, is about the measures the Government is putting in place to avert such scenarios in future. The delay in the fertilizer purchase has been occasioned by the late release of funds by the Exchequer. To avert this, the Ministry is in the process of establishing fertilizer and seed development fund. Draft regulations for the same have been submitted to the Office of the Attorney General for legal drafting.

**Sen. (Prof.) Lonyangapuo:** Mr. Deputy Speaker, Sir, the way the Vice Chairman has responded shows a sorry state of affairs regarding how we handle agriculture in Kenya. His opening statements are interesting and so sad. He stated that a cumulative of Kshs4.5billion was set aside this year for purchase of fertilizers for all the farmers in Kenya. He went further to say out of this amount, Kshs3.4 billion was used to settle pending bills leaving a paltry of Kshs1.1billion. This is 24 per cent of the amount of money that is supposed to be used to purchase fertilizers for all farmers in Kenya.

Approximately 76 per cent of this amount was spent on other things different from what the Cabinet had approved.

This is a sad story. As at now, farmers are at standstill. They cannot plant because they do not have fertilizer. Yesterday, we watched on television farmers from north rift, Nakuru, Eldoret, Kapsabet, Kitale and Kapenguria demonstrating. They were fighting over one bag of fertilizer. The answer here is not giving any hope at all. When I see the data, it exposes the weakness in the Ministry. I now know why the Question took three weeks to get a response.

Mr. Deputy Speaker, Sir, the Vice Chairman is telling us that the first dispatch arrived on 14<sup>th</sup> March, 2016. That is 10 days ago. It means no supply has reached the farmers because it has to be transported from Mombasa.

**The Deputy Speaker (Sen. Kembi-Gitura):** Kindly seek your clarification.

**Sen. (Prof.) Lonyangapuo:** Mr. Deputy Speaker, Sir, today is 24<sup>th</sup> March, 2016. It means this answer was written this morning because from the statement, it is confirmed that some fertilizers were received yesterday. May I know why NPK was procured yet we need DAP? We have not been informed when the DAP will be available. Since some fertilizer was received yesterday, what miraculous means will the Ministry use to transport it overnight to reach the stores?

The Vice Chairman talked about a distribution table which I have read through. If you look on page 8, there is only one depot at Kapenguria in West Pokot County. However, it shows they have not received any fertilizer.

On pages 13 and 14, I see a proposal of how the awaited fertilizers will be distributed. In Nakuru County, there are 12 depots which will be supplied. In Nandi, Narok, and Trans Nzoia counties, there are nine stores. Seven and four NCPD stores will be supplied, respectively. Over 10 areas with stores have been left yet there is nothing in stock. In Halale, Konyau, Keringet and Murkuchit stores we are not shown the quantity of fertilizer they will get. May I know when these stores will be supplied with fertilizer? Is there any discrimination in terms of distribution of fertilizer in this country?

**Sen. Obure:** Mr. Deputy Speaker, Sir, the delivery of fertilizers after the planting season has severe consequences to the farming community. We also know that this has a serious implication on food security. We have heard that the delay was caused by individuals who took long to release Exchequer. In a way, this is self inflicted. May I know what disciplinary measures have been taken against officers who caused this kind of mess to our country? What disciplinary measures should be taken against such people?

**Sen. Karaba:** Mr. Deputy Speaker, Sir, the Ministry of Agriculture, Livestock and Fisheries is taking this business for granted. It is sad that they are forgetting that agriculture is the backbone of Kenya's economy. When they talk about fertilizer distribution, they always talk about central and the north rift, forgetting Central and Eastern Kenya. In future, they should refer to the latter areas because in their stores, there is no stock of fertilizer. I am talking about the central Kenya and Sagana.

The packaging should also be assessed to confirm if it is 50 or 45 kilogrammes. This is because in most cases, a bag weighs 45 kilogrammes. The lost five kilogrammes may be subtracted and supplied elsewhere. This is unacceptable.



Lastly, there is poor planning or lack of it in Ministry. Their timing when to import fertilizer leaves a lot to be desired. We have been told fertilizer will be received today at the Port of Mombasa and yet the rains may set in from tomorrow. I do not know how they will coordinate the distribution, the weather forecast and the planting. That is a serious matter. Anybody who is involved in poor planning should be sacked so that we move on.

**Sen. M. Kajwang:** Mr. Deputy Speaker, Sir, I thank the Chair for the Statement. However, I would like a clarification on one or two things. The Chair stated that the last consignment should be delivered on 7<sup>th</sup> April. Since the planting season is on in most areas, of what value will it be to deliver this fertilizer on 7<sup>th</sup> April and thereafter there will be a long duration in offloading and distribution? Does it make sense or will this fertilizer be used for subsequent planting seasons?

Secondly, sometime last year, the nation commissioned a fertilizer plant in the North Rift. I would like the Chair to update the House on the status of this fertilizer plant, because it was expected that besides reducing the cost of fertilizer, it would improve efficiency in the supply chain. We will not have to wait for fertilizer to be imported into the country.

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. Kajwang, you are supposed to seek clarification on issues that have been raised in the Statement. If you ambush the Chairman to tell you about the status of a proposed fertilizer plant, you know that he will not be able to give it to you today. However, since it is a very important issue, I would advise that you seek a specific statement on the status of the fertilizer plant.

**Sen. M. Kajwang:** Mr. Deputy Speaker, Sir, I am well guided. In the event that the Chair has got information, he could update the House.

**The Deputy Speaker** (Sen. Kembi-Gitura): He does not have it. You are seeking a clarification on what is in the Statement that he gave.

**Sen. M. Kajwang:** Mr. Deputy Speaker, Sir, I will then leave that and probably raise a substantive request for a statement. In as much as the Chair has also raised a lot of issues on what the Government is doing, agriculture is devolved. I would wish to encourage him to update this House on what is it that counties are doing as far as availability of fertilizer is concerned.

**Sen. Sang:** Mr. Deputy Speaker, Sir, I wish to thank the Chairman for the answer that he has given. However, I have a few clarifications to seek. First, could the Chairman tell this House why the Ministry allowed the National Cereals and Produce Board (NCPB) to spend Kshs3.4 billion to clear pending bills, knowing very well that this allocation was meant to acquire fertilizer for this planting season?

The second clarification is with regard to the subsidized fertilizer across the country. In my county the NCPB officials are colluding with unscrupulous businessmen who have acquired subsidized fertilizer in huge quantities and are now selling it to farmers. What measures is the Government taking to ensure that subsidized fertilizer is only released to farmers and not unscrupulous businessmen and brokers, who end up exploiting farmers?

The point that was raised by Sen. M. Kajwang is valid; that one of ways that will help us deal with this scenario is establishing our own factory. It will enable us to

produce and supply to farmers at the right time. How far has the Government gone in terms of allocating resources and setting up a fertilizer plant in Eldoret?

**Sen. Murkomen:** Mr. Deputy Speaker, Sir, the response that there was poor or delayed distribution of resources by the Treasury is very serious and we should not take it lightly. It should not just be one of the excuses that we will receive next year. What measures are being put in place by the Ministry in conjunction with the Treasury to ensure that fertilizer is received by the right people during the planting seasons in different parts of this country?

Secondly, I have realized that in this schedule there are some counties that have two distribution points while others have six. This disparity is not acceptable. What measures are being put in place by the Ministry to ensure that distribution is achieved at the lowest unit possible, that is, the ward or constituency, where the right type of fertilizer is required?

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. Ndiema, you may respond.

**Sen. Ndiema:** Thank you, Mr. Deputy Speaker, Sir. Some of the requests do not relate to the Statement that was sought. Therefore, I may not be able to respond to them because I do not have the answers.

Before I respond, I would like to clarify the position of my Committee on this matter. My Committee has discussed this matter and has gone to a conference in Naivasha, where we met all stakeholders and identified the timely distribution of fertilizer as being very important. The Ministry undertook to put a lot of effort to ensure that fertilizer is availed in time. Reading through this response from the Ministry, you can see some element of lamentation and frustration. They are lamenting that they are not getting adequate funds from the Exchequer. At times there is delay in Exchequer release, meaning that there is something that is not connecting well.

Sen. (Prof.) Lonyangapuo has asked why the money that was to be used in the provision of fertilizer was instead used to clear debts. The debts specified here also relate to fertilizer that was procured in the last financial year. This means that the Ministry had to use this year's finances to clear those debts. It also means that the allocation for the procurement of fertilizer over the years has not been adequate. During the consultations that we had recently on the budget, my Committee recommended that the budget for the purchase of fertilizer be increased. We hope that the National Assembly will take this matter seriously. The exclusion of Senate by the National Assembly in allocating funds puts us in an awkward situation. We represent counties where farmers are and yet, we are not able to take action to rectify situations such as this. The National Assembly should ensure adequate funds to procure fertilizer. Therefore, the Kshs3.7 billion spent on pending bills was also in respect to fertilizer.

On the issue of the allocation to Kapenguria, I believe that is with regard to the allocation for the short season. Perhaps, they were omitted in the short season. Kapenguria is catered for in the main season. As to whether or not the fertilizer is adequate, that is another matter that we can easily take. Some fertilizer has already arrived in the depots, although I must admit that it is late. There is a scramble for it and it is very uncomfortable. The Government should ensure procurement is done in good time.

The fertilizer that is said to be coming in April is the CAN fertilizer. The CAN fertilizer is the fertilizer one applies when the crop is knee-high. That explains why it is coming a bit late. However, it should be coming now because it is in time.

On the issue of the fertilizer plant, we can take that up as a separate issue. Sen. M. Kajwang is a Member of my committee.

About fertilizer going to the wrong people and not to the farmers is an area that needs to be really looked at. My committee has stressed that farmers should be identified. Once we have identified them with their pieces of land, we do not need to be going for letters. We already know who they are and how much acreage each owns. Fertilizer should go directly to them.

There are, of course, businessmen who want to take advantage of this. It is criminal. It should not be entertained.

The distribution of fertilizer---

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

**Sen. Sang:** On a point of order, Mr. Deputy Speaker, Sir. Did you hear the committee Vice Chairman casually responding by saying that some things should not happen though there are situations you cannot avoid? I asked a specific question. What is the Ministry doing?

**The Deputy Speaker** (Sen. Kembi-Gitura): I heard you, Sen. Sang. Sen. Ndiema, you cannot say that some businessmen will take advantage and that it is alright. No! It should not be allowed. There, you are clearly talking about corruption.

I heard you saying it is obvious that some businessmen will take advantage. You used those words. The HANSARD will bear me out. That fertilizer is not meant for some businessmen to take advantage. It is meant to help farmers subsidize their farming. You need to either rephrase or answer that question properly. I will not accept that,

**Sen. Ndiema:** Mr. Deputy Speaker, Sir, at no time have I said that it is all right for businessmen to take advantage of that situation. All that I said was where there are weaknesses which some unscrupulous fellows might be tempted to take advantage. Of course, that is wrong. I have qualified that. It is in the HANSARD. It is wrong for them to do so. Where that has happened, it is criminal and stern action should be taken against such people according to the law.

That fertilizer is not meant for trade. That is the clear position. I would not want it to be seen like I favour any businessmen or crooks who would want to divert fertilizer meant for farmers.

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

**Sen. Sang:** On a Point of Order, Mr. Deputy Speaker, Sir. You appreciate that this is a major problem. We are discussing shortage of fertilizer and some unscrupulous businessmen are acquiring the same fertilizer meant for farmers. Initially the Ministry had implemented a procedure where all the farmers were being registered through chiefs and assistant chiefs. They have not implemented that programme.

Right now, unscrupulous businessmen are just going to the depot and acquiring fertilizer. We expect the Ministry and the National Cereals and Produce Board (NCPB) to

give us concrete steps to ensure this does not happen. However, for the Committee Vice Chairman to say it is not good, that is inadequate. All of us know it is not good. What are the concrete steps being taken by NCPB and the Ministry to ensure that the subsidized fertilizer finds its way to the rightful owners, the farmers?

**Sen. Ndiema:** Mr. Deputy Speaker, Sir, this was not in the initial request. I encourage that if there are such situations, we could call the Cabinet Secretary (CS) for Ministry of Agriculture, Livestock and Fisheries to explain to us the procedures in place. As I speak now, even to get fertilizer, one must go through the same systems; that is the locational and divisional agricultural officers. The County Director of Agriculture must authorize before one goes to NCPB.

That is the system we are using. I have also gone through the same. Therefore, the system is still being followed. However, it is surprising that there are some businessmen who still get fertilizer and sell it. This is an area of serious concern. It must be handled effectively by those concerned.

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. Obure, what is your point of order?

**Sen. Obure:** On a Point of Order, Mr. Deputy Speaker, Sir. What Sen. Sang has raised regarding middle men is a very serious phenomenon. It is happening not just in Nandi County, but in other counties. We do not need the CS to come here to deal with that particular situation. We request the Standing Committee on Agriculture, Livestock and Fisheries to take that up. They should express concerns with the Ministry so that appropriate action can be taken, particularly now when the distribution of fertilizer is ongoing.

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. Ndiema, you have heard that concern.

**Sen. Ndiema:** Mr. Deputy Speaker, Sir, any method will do. When I say he can come here, he can come to our committee or the House. Members are also invited to come and contribute on how we can curb this practice. This practice has been occurring. It is a concern to all Senators in the grain-growing areas. On the issue of whether fertilizers are going to counties like Mwea and so forth, this fertilizer is not just going to maize-growing areas, but also to other counties.

**The Deputy Speaker** (Sen. Kembi-Gitura): I am surprised that Sen. Karaba has not risen on a point of order. There is no county called Mwea. It is called Kirinyaga County.

**Sen. Ndiema:** Sorry, Mr. Deputy Speaker, Sir. Kirinyaga is in Mwea.

**The Deputy Speaker** (Sen. Kembi-Gitura): No! Kirinyaga is not in Mwea; it is Mwea that is in Kirinyaga.

*(Laughter)*

**Sen. Ndiema:** I know, Mr. Deputy Speaker, Sir. I have been to Mwea. My committee went with the Senator. My committee ensured that Mwea rice farmers got fertilizer for the first time.

**Sen. Karaba:** Mr. Deputy Speaker, Sir, the bags containing fertilizer should be 50 kilogrammes. However, in actual weighing, they are 45 kilogrammes. What happens to the difference of five kilogrammes? That is sabotage. It is corruption and stealing. Could the Committee Vice Chairman kindly address that issue so that he can be captured nationally?

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. (Prof.) Lonyangapuo, I will give you one minute only so that Sen. Ndiema can respond.

**Sen. (Prof.) Lonyangapuo:** Mr. Deputy Speaker, Sir, you are right. In future, the Ministry needs to separate funds for pending bills and money strictly meant for fertilizer for a particular financial year. I just read a few minutes ago that the fertilizer plant launched by the Deputy President ten months ago was put on hold yesterday by the National Environment Management Authority (NEMA), a Government Department. What is wrong with this other arm of Government coming to disable projects---

**The Deputy Speaker** (Sen. Kembi-Gitura): Order, Sen. (Prof.) Lonyangapuo! You have been sitting here throughout this afternoon. You heard me. I do not want you to ambush the Vice Chairman. Be fair to him because he has done very well. We are all interested in the fertilizer plant. It will help the whole country. If you want to ask about the fertilizer plant, raise a specific issue. That way, the Committee Vice Chairman can give you a substantive answer. Do not ambush him. I will not allow it.

The only issue you are dealing with is about the 45 kilogrammes instead of 50 kilogrammes.

**Sen. Ndiema:** Mr. Deputy Speaker, Sir, fertilizer is supposed to be packed in 50 kilogramme bags. If that has not been done, the law should take its course because it is illegal and farmers should not accept that. In fact, whoever is aggrieved should take complaints to the relevant authorities; the Weights and Measures Department, the police or even file the matter in a court of law.

**The Deputy Speaker** (Sen. Kembi-Gitura): Thank you very much, Senator. That brings us to the end of statements except the weekly statement to be issued by the Senate Deputy Majority Leader.

BUSINESS FOR THE WEEK COMMENCING  
TUESDAY, 29TH MARCH, 2016

**Sen. Murkomen:** Mr. Deputy Speaker, Sir, I wish to present the statement on the business of the Senate for the week commencing Tuesday, 29<sup>th</sup> March, 2016, pursuant to the provisions of Standing Order No.45.

Hon. Senators, pursuant to the provisions of Standing Order No.45, this is to present the Senate business for the coming week. On Tuesday, 29<sup>th</sup> March, 2016, the Rules and Business Committee (RBC) will meet at 12.30 p.m. to schedule business of the Senate for the week. Subject to further directions by the RBC, the Senate will continue with business that will not be concluded in today's Order Paper, focusing on Bills of the Committee of the Whole.

On Wednesday, 30<sup>th</sup> March, 2016, the Senate will continue with business not concluded during Tuesday's sitting in addition to the following Bills which will be scheduled for the Committee of the Whole. These are the Universities Bill---

**Sen. Obure:** On a point of order, Mr. Deputy Speaker, Sir.

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

**Sen. Obure:** Mr. Deputy Speaker, Sir, You heard the Deputy Senate Majority Leader issue a statement on business for next week. My understanding is that we will be on recess next week. I do not know whether he is in order to do that.

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. Obure, I think you are pre-empting the situation. Let him finish his statement because I am sure you were here when a Notice of Motion was given and I am sure you have looked at your Supplementary Order Paper. So, let us not pre-empt it but see how things work out.

**Sen. Murkomen:** Mr. Deputy Speaker, Sir, you have spoken for me.

These Bills are as follows:-

1. The Universities (Amendment) Bill (Senate Bill No. 31 of 2014)
2. The County Assemblies Service Bill (Senate Bill No.27 of 2014).
3. The County Hall of Fame Bill (Senate Bill No.33 of 2014).
4. The County Governments Disaster Management Bill (Senate Bill No.40 of 2014); and,
5. The Petition to County Assemblies (Procedure) Bill (Senate Bill No.35 of 2015).

The Senate will also consider any other business scheduled by the RBC.

On Thursday, 31<sup>st</sup> March, 2016, as hon. Senators may be aware, His Excellency the President is scheduled to address a Special Sitting of Parliament, pursuant to the Constitution. This is the reason I have given a Notice of Motion to alter the calendar of the Senate, so that the Senate postpones its recess until next week, to accommodate the address of His Excellency the President. Resumption from recess will be adjusted accordingly.

I, therefore, appeal to Senators to approve the Motion listed in the Supplementary Order Paper, so that we proceed on the recess immediately after the Special Sitting.

I thank you and hereby, lay the Statement on the Table.

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

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

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

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

FAILURE BY COUNTY GOVERNMENTS TO PAY  
FOR GOODS SUPPLIED AND SERVICES RENDERED TO  
THEM BY SUPPLIERS AND CONTRACTORS

**Sen. (Prof.) Lonyangapuo:** Mr. Temporary 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 Finance, Commerce and Budget regarding the failure by county governments to pay for goods supplied and services rendered to them by suppliers and contractors. In the statement, the Chairperson should explain whether he is aware that:-

(a) Since 2013, many Kenyans who tendered and won tenders to supply goods and services to county governments took loans from commercial banks at high interest rates in order to deliver the goods and services while hoping to repay the loans within the agreed time.

(b) Most of them have not been paid to date hence they are not able to repay the loans.

(c) Arising from non-payment of the said loans, respective commercial banks have started selling the suppliers' assets, thereby subjecting the suppliers to untold suffering with some suffering severe depression and others have died.

(d) Explain what action is being taken by the respective county governments to remedy the situation in order to protect Kenyans from further suffering.

**The Temporary Speaker** (Sen. Sang): Is the Chairperson of the Committee on Finance, Commerce and Budget around? Any Member of the Committee?

Sen. (Prof.) Lonyangapuo, you are a Member of the Committee on Finance, Commerce and Budget.

**Sen. (Prof.) Lonyangapuo:** Mr. Temporary Speaker, Sir, I am talking as a Member of the Committee. However, my boss has come and he should be the one to answer.

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

**Sen. Murkomen:** Mr. Temporary Speaker, Sir, the answer will be given in the first week after recess. I will pass the message to the Chairperson of the Committee on Finance, Commerce and Budget in relation to the statement sought by Sen. (Prof.) Lonyangapuo, so that we have the answer the first week after recess if the calendar will be approved by the House.

**Sen. Karaba:** On a point of order, Mr. Temporary Speaker, Sir. It might have escaped you that there is a group of students behind you and it is good to recognise that they are here.

**The Temporary Speaker** (Sen. Sang): You will be of help to the Chair if you could tell me which school that is.

**Sen. Karaba:** I am sure the orderlies can inform us which school that is.

**The Temporary Speaker** (Sen. Sang): Okay, I will recognise them.

**Sen. Murkomen:** Mr. Temporary Speaker, Sir, while coming to the House, I met a group of students at the gate and they told me they are from Mogotio Girls High School. You should recognise them accordingly.

**The Temporary Speaker** (Sen. Sang): We will recognise them officially once we confirm that, indeed, they come from Mogotio Girls High School.

Sen. Ndiema.

PARTICIPATION OF CID OFFICERS IN VETTING  
COMMITTEE SITTINGS FOR ID CARD APPLICATIONS  
IN TRANS NZOIA COUNTY

**Sen. Ndiema:** Mr. Temporary Speaker, Sir, pursuant to the provisions of Standing Order No.45(2)(b), I beg to seek a statement from the Chairperson of the Standing Committee on National Security and Foreign Relations. In the statement, the chairperson should answer the following:-

(1) Whether he is aware that Criminal Investigation Department (CID) officers participate in vetting committee sittings for identity card applications in Trans Nzoia County.

(2) Why do the officers interrogate and intimidate innocent applicants as if they have committed crime?

(3) Since issuance of ID cards is a civil and not a criminal matter, what action will the Ministry take to withdraw the CID officers from the vetting committees?

**The Temporary Speaker** (Sen. Sang): Is the Chairperson of the Committee on National Security and Foreign Relations around? If not, is there any Member of the Committee? Deputy Senate Majority Leader.

**Sen. Murkomen:** Mr. Temporary Speaker, Sir, the same applies to what I had said earlier. The answer will be brought the first week after recess. I will pass the message to the Chairperson of the Committee on National Security and Foreign Relations.

**The Temporary Speaker** (Sen. Sang): Sen. Ndiema, is that okay?

**Sen. Ndiema:** Mr. Temporary Speaker, Sir, obliged.

**The Temporary Speaker** (Sen. Sang): It is so directed. That marks the end of statements.

Next Order!

**MOTION**

RESOLUTION TO ALTER THE SENATE CALENDAR

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

THAT, pursuant to the provisions of Standing Order No.28(4), the Senate resolves to alter its Calendar in respect of the First Part of the Fourth Session for the recess to commence on Friday, 1<sup>st</sup> April and sittings to resume on Tuesday, 12<sup>th</sup> April, 2016.

The Constitution provides that the President should address the nation once in a year. The President, in consultation with the Speakers of both Houses, has already scheduled Thursday next week for the Presidential Address.



Recess is a very important period for Members to attend to Committee functions, visit their constituents, do consultations and oversight, among others. Telling them to go on recess next week and come back on Thursday will interfere with the planning of that recess in the first place. The Standing Orders give us the power to alter our calendar accordingly. I request hon. Members that we pass this Motion in the shortest time possible because we have other businesses to attend to. Let us accept to alter this calendar so that we go for our recess as soon as we end the Presidential Address on Thursday and commence it on Friday next week until we come back on 12<sup>th</sup> April, 2016.

I do not want to debate this one for long. I think we have been piling up a lot of very important business. I request Sen. (Dr.) Khalwale to second and if Members accept, we just put it to the vote so that we continue with the next business which is critical for the House.

**Sen. (Dr.) Khalwale:** Mr. Temporary Speaker, Sir, I rise to second this Motion. I do so in very good faith because of procedure. Whereas the Standing Orders give us the power to alter our calendar, we want to do so with good reason. I am glad that the Senate Deputy Majority Leader has given us a very good reason; that, what is the point of wasting money, confusion of going and gazetting the sitting for that day and what not and then you come back to receive the Presidential Address. It is a valid reason so, I support.

However, as I support---

*(Sen. Cheruiyot spoke off record)*

*(Laughter)*

Mr. Temporary Speaker, Sir, could you protect me from young Cheruiyot?

**The Temporary Speaker** (Sen. Sang): There is no "young Cheruiyot" in this House.

**Sen. (Dr.) Khalwale:** Mr. Temporary Speaker, Sir, sorry. The newly elected distinguished Senator for Kericho.

**The Temporary Speaker** (Sen. Sang): Yes.

**Sen. (Dr.) Khalwale:** Thank you, Mr. Temporary Speaker, Sir. I hope that the good reason that the Senate Deputy Majority Leader has given will give us an opportunity to listen to the President who will realise that the role that he will be discharging on Thursday is in Article 132 of the Constitution. It is expected that once every year the President addresses these Houses.

However, it is wrong for the President to respect one part of the Constitution – addressing us once every year – and forget that the very reason why he is addressing us is because he wants to report to the nation how his Government is upholding the provisions of Article 10 on National Principles and Values. All the institutions of Government have been killed. The Ethics and Anti-Corruption Commission (EACC) is doing nothing; we do not know what is going on with the rulings of the Judiciary and the Office of the Director of Criminal Investigations is being accused left, right and centre of being involved in corrupt deals. What is the President doing about ---

**Sen. Murungi:** On a point of order, Mr. Temporary Speaker, Sir. This was a procedural Motion. Is the Hon. Senator, the bull fighter, in order to even anticipate what the President is coming to address us about on Thursday next week? Is he also in order to use this occasion to propagate Opposition politics when we have just a simple procedural Motion?

**Sen. (Dr.) Khalwale:** Mr. Temporary Speaker, Sir, I hope that you will protect me from being gagged by Sen. Murungi, who knows that I respect him most abundantly. In fact, in our other lives, we share very many things. Let him not intimidate me. I must be allowed to enjoy freedom of expression especially while on the Floor of the Senate.

However, let me persuade my senior to bear with me. I was simply addressing the very reason why we are changing the calendar of Parliament. He said that the reason is that we want to come and listen to the President. By the way, for the purposes of Sen. Cheruiyot, the people who fought very hard so that Parliament could have its own calendar in the history of this Parliament are only two Members of Parliament (MPs), the Hon. Peter Oloo Aringo and the Hon. Charles Keter, his predecessor. So, when we are changing it, let it not look like it is a very simple thing.

I was just simply saying that I also hope that as we listen to the President, the things that he will utter in his Address will be converted from promises to performance. We were told about some funny list of shame where they said that governors were supposed to step aside. We only saw Cabinet Secretaries (CSs) stepping aside. How can the President allow a country whereby people who are supposed to step aside in the name of governors just to remain in office? Where was Government? We want to fight corruption both in word and deed; with practice.

I support most abundantly.

*(Question proposed)*

**Sen. Murungi:** Mr. Temporary Speaker, Sir, I rise to support this Motion. Hon. Sen. (Dr.) Khalwale forgot some historical facts. The person who fought really hard for Parliament to have a calendar was the late Mr. Martin Shikuku and yours truly, Sen. Murungi.

**An. Hon. Member:** Really?

**Sen. Murungi:** Yes, in 1992. In those days, it was the President who had power to call Parliament, dissolve and prorogue it. Parliament was worse than a nursery school because we did not know when Parliament would open, close or go on recess. All these were matters in the hands of the Executive. It took a long struggle for this Parliament to capture this initiative and empower itself to the extent that now, it is Parliament itself which determines its calendar. Indeed, under the new Constitution, Parliament cannot be dissolved by any person. It has to run the entire five-year term because of the efforts of MPs.

This is not a simple matter. Indeed, the exercise we are involved in as a House through this Motion is in assertion of that right; that it is this House which determines its own calendar. If the Members vote that this House goes on recess even before the Presidential Address, indeed, this House can go on recess. However, because we have

been persuaded by the reasons, that it is necessary for us to postpone our recess so that we can hear the State of the Nation Address by His Excellency the President, I think we can exercise our powers as a House to postpone the recess for that good reason.

Mr. Temporary Speaker, Sir, Kenya is pregnant with expectations. There are expectations that the President will make a major Address regarding the rampant corruption which my brother, Sen. (Dr.) Khalwale, talked about. This Government is now in its mid-year. We will have a review of the various policies that the Government promised Kenyans that they will translate into prosperity for this country.

We expect the President to come up with the progress made in implementing various programmes like in the power, water and road sectors and such things. Those are the things we will tell our constituents when we go for recess. It is appropriate that we listen to the President before we go on recess so that we can have an agenda which we can address to our constituents.

I support, Mr. Temporary Speaker, Sir.

**The Temporary Speaker** (Sen. Sang): Before I invite a few more requests, I have a brief communication to make.

*(Interruption of debate on Motion)*

### COMMUNICATION FROM THE CHAIR

#### VISITING DELEGATION OF STUDENTS AND TEACHERS FROM MOGOTIO GIRLS HIGH SCHOOL

Hon. Members, I wish to recognize the presence of visiting students and teachers from Mogotio Girls High School in Baringo County who are seated in the Public Gallery. In our usual tradition of receiving and welcoming visitors to Parliament, I extend a warm welcome to them.

On behalf of the Senate, and on my own behalf, I wish them a fruitful visit.

I thank you.

*(Applause)*

**Sen. (Prof.) Lonyangapuo:** Thank you, Mr. Temporary Speaker, Sir. I want to join in welcoming the school for coming here. I am sure they will learn how Bills are discussed in the Senate. They will also know how the Senate contributes in the running of this great country. Mogotio Girls High School is in Baringo County. Their Senator is Sen. Gideon Moi who is the Chairman of Kenya African National Union (KANU). The Member of Parliament is Hon. (Prof.) Sambili who is also from my party KANU which is in the Jubilee Coalition.

Mr. Temporary Speaker, Sir, I want to wish the girls well. They performed well last year. I urge them to do much better this year than their colleagues in schools like Kabarak, Sacho and Emining.

**Sen. Murkomen:** Thank you, Mr. Temporary Speaker, Sir. I am glad that Sen. (Prof.) Lonyangapuo has done what I wanted to do. However, I want to add by saying that Sen. Moi is not here, but is ably represented by me, as his friend, colleague and neighbor. I, therefore, want to welcome the students from Mogotio and tell them they will learn a lot of things. One of which is the debate on whether KANU is part of Jubilee Coalition or not, like Sen. (Prof.) Lonyangapuo has raised here and what that means to students like you and others.

Mr. Temporary Speaker, Sir, I want to tell them that we were in schools like them just a few years ago. In fact, Sen. Cheruiyot might have been there less than 10 years ago. In less than 10 years, they should imagine themselves sitting where we are seated now and driving the leadership of this country. So, whatever they do in school, they must remain focused, disciplined and open minded. They should not only concentrate on books alone, but they must engage in debates, symposia and sports so that it can open the ability of leadership.

As our students from Mogotio, you have a bright future, one day you will meet me or Sen. (Dr.) Khalwale and tell them I am the Senator who visited last time as a student when you were in the House.

**Sen. (Dr.) Khalwale:** Thank you, Mr. Temporary Speaker, Sir. I am glad that you have given us the opportunity to appreciate the visit by the young people from Mogotio Girls High School. I was going to be disappointed if we would not have been given the same latitude we were given when Alliance High School was here. I congratulate them.

As I welcome them, I want to remind colleagues that these children have come here to learn. Is it too late for us, as leaders of this country, to learn from other practices elsewhere?

Mr. Temporary Speaker, Sir, we have been having cases of terrorism in this country. When Belgium was struck for the first time, two Ministers; the Minister for Interior Security and the Minister for Justice, resigned. In Kenya, we have refused to learn from it. The thieves, however much we shout, do not want to resign. I hope that we shall learn from other people so that we resign when we fall short of the glory. Welcome my dear children.

**Sen. Cheruiyot:** Thank you, Mr. Temporary Speaker, Sir, for this chance. Before making my contribution to the Motion, let me---

**The Temporary Speaker** (Sen. Sang): No, you are just appreciating the students. We will get back to that discussion.

**Sen. Cheruiyot:** Sorry, Mr. Temporary Speaker, Sir. Let me take this chance to appreciate the students from Mogotio for visiting the Senate. It is a good House. I hope as the youngest Senator in the House, my presence serves as a motivation to you as you pursue your studies to know that your dreams are valid, no matter where you come from. Kenya is a great country. Be inspired, work hard, and one day, I hope to meet some of you here if we will be here that time.

**Sen. Karaba:** Thank you, Chairman. I drew your attention---

**The Temporary Speaker** (Sen. Sang): I am the Temporary Speaker and not the Chairman.

**Sen. Karaba:** Mr. Temporary Speaker, Sir, I am the one who drew your attention to the presence of students in the gallery, and I am happy that you got it right. When students come here and leave without being recognized, it is not good for them. This is because they will go and tell the others that they were in Parliament and they never saw anything. So, I appreciate their coming. I also appreciate the recognition given by various Senators towards Mogotio Girls High School.

Mr. Temporary Speaker, Sir, Mogotio Girls High School is known all over the country. It is known for its sterling performance. I hope that they will continue doing well. We are appreciating the good results registered by the candidates last year. This year, continue doing the same. When you do so, this will be felt not only in Baringo County, but you will be the pride of Kenya. I wish you the best of luck.

**Sen. Abdirahman:** Thank you, Mr. Temporary Speaker, Sir. I want to join my colleagues in welcoming students from Mogotio Girls High School.

I have listened to Sen. (Dr.) Khalwale saying leaders in this country do not resign. It is a question of morality, ethics and values. So, we need to build value in the minds of our young men and women. I believe, in the future, they will become people who will respect laws and institutions. When called upon to stand aside, they will be able to do so without feeling embarrassed.

Mr. Temporary Speaker, Sir, I want to tell the young team here they are welcome to the Senate and they should learn from what happens in this August House.

Thank you.

**The Temporary Speaker** (Sen. Sang): We do not seem to have any requests to appreciate students of Mogotio Girls High School. Let us go back to the Motion.

*(Resumption of debate on the Motion)*

**Sen. Cheruiyot:** Thank you, Mr. Temporary Speaker, Sir for giving me the chance to contribute. I rise to support this Motion for two main reasons. While I may not have the benefits of parliamentary history that my senior colleagues have, and it was evident in the contribution. As I speak and address some sense to this Motion, I want to support in full cognizant of the fact that a President elected to lead a nation such as Kenya serves a great responsibility. When such a request comes to the House that he wants to address Parliamentarians, I want to believe that he looked keenly into all then laws and knows that for sure, there is no better time than the day that he has proposed. I appreciate the fact that the President has a busy schedule, and therefore, we should give him a chance.

More importantly, many things have happened as a result of the President's previous addresses to Parliament. Last year his address was on the fight against corruption and for the first time in the history of this nation, senior public officials were forced out of office, to answer to several charges. I, therefore, support this Motion because I know that good things will happen to this country.

I beg to support.

**Sen. Abdirahman:** Mr. Temporary Speaker, Sir, I support this Motion to alter the Calendar of the Senate. This is the beauty of Parliament managing its calendar. We are

able to alter it as long as there are real issues that we need to discuss. The address to Parliament by the President is a constitutional duty. This time round my expectation is that we will not only see a list being read, but also see action being taken. I also expect to hear how devolution has worked and how the gaps are like. The President should take stock of major flagship projects that appear on paper and may not have actually materialized into action. For example, I want to hear about the Lamu Port Southern Sudan Ethiopia Transport (LAPSSET) project and the route it will take. I hope it will pass through Wajir and Marsabit towards Ethiopia.

Mr. Temporary Speaker, Sir, I support the fact that we will alter the calendar and look forward to what the Jubilee Government will tell us.

**The Temporary Speaker** (Sen. Sang): Hon. Members, since this is a Procedural Motion, let us spend less time.

Sen. (Prof.) Lonyangapuo.

**Sen. (Prof.) Lonyangapuo:** Mr. Temporary Speaker, Sir, as you have put it, this is a Procedural Motion. The Senate Calendar for the Fourth Session was passed at the beginning of this Session. According to the Calendar, we were supposed to break for a week or so, starting today. We are proposing to postpone the recess by a week so that the Head of State can do his constitutional duty of addressing the nation. It will be important for all of us to attend because there are many issues that we hope the President will address. All of us have to stand with him.

We have had several challenges including scandals of corruption since the Head of State last spoke to us. We have had the NYS scandal, Eurobond and many things that people are talking about. It is important that these vices that are affecting us in Kenya are dealt with henceforth.

A few minutes ago, we were told about the shortage of fertilizer in the country. Farmers are staring at a gloomy year ahead and we face a food shortage. We hope that the Head of State will address the same. We have challenges of insecurity and attacks from terrorists groups, just like it happened the other day in Belgium. As Sen. (Dr.) Khalwale said, Ministers in Belgium resigned although they had nothing to do with what happened. Last year, 148 students were killed in Garissa, but the Cabinet Secretary for the Ministry of Interior and Coordination of National Government and the Inspector-General of Police did not resign; nobody took responsibility. Belgium mourned with us after the Garissa attack, but we have not done the same for them. As a nation we need to stand with our brethren in Belgium because they have lost a significant number of people. We need to be united as a nation and stand with the Head of State when it comes to such issues. Also, whenever such incidents happen, we should take responsibility.

I support.

**Sen. (Prof.) Anyang-Nyong'o:** Mr. Temporary Speaker, Sir, I stand to support the Motion to extend our sittings, so that we can attend the Joint Sitting of Parliament when the President makes his State of the Nation Address next week. While appreciating the importance of the State of the Nation Address in our Constitution, the speech, without presuming that I am in any way in a position to advise the President, should be the State of the Nation Address and not the state of the Government or the Government policies address. There is a distinct difference between the State of the Nation and the state of the

Government. Unfortunately, we do not have a pure parliamentary democracy. We have a parliamentary democracy married to a presidential system, which then removes the Government from Parliament, a practice which I hope in looking into our Constitution anew, we should correct.

In this day and age, most democracies which have done well in terms of economic development and good governance are parliamentary. For example, Singapore, Canada and Costa Rica are parliamentary democracies. It is because accountability is better in parliamentary democracies than otherwise. Given the direction in which the United States of America (USA) is going now, they could easily be presented with a Government that could steer back governance several decades behind.

The other practice in parliamentary democracy is that there should be consultations between the Government-in-sitting and the government-in-waiting before the State of the Nation Address is given. This is because the government-in-waiting is a major component of the politics of the nation. The African situation where democracy is seen mainly in adversarial terms is one of the major reasons we are stagnating in economic development. Precisely, since democracy is seen too much in adversarial terms, when one Government goes out of the office and another one comes in, there tends to be discontinuity and therefore, inefficiency in the running of Government projects and policy making.

Therefore, as we move from one State of the Nation address to the other, I hope that one day we will bring a Bill to this House – because this House should think for the nation - to discuss in details what it means to have a State of the Nation Address and what its contents should be. Although the Constitution specifies what the State of the Nation Address should contain, I do not think that is enough.

Further, I hope that in future governments, there will be more extensive consultations between the Executive and the civil society before the State of the Nation Address. This is because the civil society is the bedrock of the nation. When I talk about civil society, I do not mean the Non-Governmental Organisations (NGOs) and busybodies that usually interact with Government. I mean that part of the nation which is not actively involved in politics. These are farmers in the countryside, businessmen and professionals. That is the component of the nation that we should talk about.

Mr. Temporary Speaker, Sir, the State of the Nation Address is not just about Government policies and how they have succeeded or failed.

It is about the health and situation of the nation and where the nation is going. If the recent opinion polls are anything to go by, they tell us that Kenya is headed in the wrong direction. I hope the President will address himself to what extent he knows and understand that Kenya is heading in the wrong direction and to what extent the Government has interrogated that finding by opinion polls. Such findings are not only to be found in opinion polls, but in the mode of the nation. Every Kenyan I have come across over the last couple of months is suffering. This is because the cost of living has gone up, some commodities cannot be found, it is expensive to get credit, and prices of certain commodities keep going up and down *panda, shuka and kwasa kwasa* all the time. We need to---

**The Temporary Speaker** (Sen. Sang): Order, Sen. (Prof.) Anyang'- Nyong'o! You know that the Standing Orders stipulate that one should use the same language all through your contribution. Are you sure that what you have just said in the last one minute was in English language or the same language in which you started making your contribution?

**Sen. (Prof.) Anyang'- Nyong'o:** I apologise, Mr. Temporary Speaker, Sir. I was carried away. I do not know how to translate the movement of up and down. I cannot translate the other word I used, but I hope that it will be translated in *Google* one of these days as appropriate parliamentary language.

The State of the Nation Address must focus itself on real estate industry because it has always been an indicator of the good health of the nation. When houses or offices are built and the investors get tenants and there is competition to get into those facilities, then you know that the economy is healthy. Today, offices and houses are being built all over the place, but finding tenants is becoming a major problem. Even if you build, to find tenants to pay the kind of rent that will help you pay the mortgage with the money you borrowed from the bank is hell on earth. I am speaking from concrete experience. If the real estate industry is itself suffering, then you know that the economy is suffering.

Mr. Temporary Speaker, Sir, the other industry that is suffering is the major corporations. It is not just Kenya Airways which is suffering. The other day, we saw Uchumi Supermarket shutting down some of its stores. When I was in London the other day, I was told that Barclays Bank is planning to pull out of Africa. The Chief Executive Officer (CEO) of the Barclays Bank here denied it yet London, which is the headquarters of Barclays Bank, says that will happen. For a long time, Barclays Bank has always said that they make their best profits in Africa. However, if Barclays Bank is contemplating pulling out of Africa and not just out of Kenya, then we are in a lot of problems. Those kinds of statements should not be taken lightly.

The banking industry itself, in terms of managing credit, is also suffering because of the high interest rates that do not invite investors or people to take up loans from banks. When you go into a bank as a politician, the managers will always ask you how we are doing and what to expect next.

Kenya should not just hold elections routinely. Elections that are held routinely without thinking of their consequences will always put this nation in a lot of problems and will continue to put this nation in a lot of problems. I have always said that to determine how democratic an election is, when the results are out, the victors should celebrate their victory and the losers should accept the results as legitimate. In a situation where the victors are celebrating their victory and the losers are not accepting their results as legitimate, it cannot be expected to be a democratic election. However, that can only come with a long tradition of managing elections properly.

We have only had two democratic elections in this country since Independence; the one that took place in 1963 which was the so called “the Kenyatta Elections” and which ushered in Independence and introduced the first Independent African Government in this country. The second democratic election was held in 2002, the NARC revolution. In 2002, Kenyans were voted the happiest people on earth because an election was conducted in this country where the victors celebrated victory and the losers accepted the



results of the elections as legitimate. Since then, we have had an election in 2007 which was a disaster. The results of that election were commissions and more commissions which proposed that we should have a new Constitution with proper electoral laws and management of elections so that we can have elections like we had in 1963 and 2002.

Mr. Temporary Speaker, Sir, in 2013, the very institutions that we had established under the new Constitution let this nation down. There is no need of burying our heads in the sand thinking that the institution that let the nation down in 2013 will give good service to the nation in 2017. We may have another election where although the victors may celebrate victory, the losers will not accept the results as legitimate.

In East Africa, we even have consequences of competitive elections; the Ugandan election. In Uganda, the sitting Government decided to disorganize the election so that whatever they held had no resemblance to democratic elections. The outcome was that even the victors could not celebrate victory. The losers are, of course, in court and are challenging the outcome. We have had other African countries under military regime, but that is the first time where the victors have been afraid to celebrate victory.

I ask that when the President comes to address the nation on Thursday, let it not be a white wash Address of the Nation, but one which goes to the core of the health of the nation and not a public relations exercise.

I beg to support.

**Sen. Elachi:** Mr. Temporary Speaker, Sir, I rise to support this Motion which seeks to adjust our calendar. We have just had a meeting with the Intergovernmental Committee and what we discussed there was sad. If this Senate does not live up to Kenyans' expectations, it will be judged harshly by the future generations. The Council of Governors (CoG) wants to weaken the Committee which replaced the Transition Authority (TA). We are in a dilemma trying to decide whether they should take over the functions of the TA or not. The Senate must make sure that county governments operate within the ambit of the Constitution. We, as a Senate, must address ourselves to the plight of officers who were serving in the TA. What will happen to them?

Some of our colleagues who are eying gubernatorial positions in the coming general election might find hell on earth because most of our counties have been mismanaged. As much as we are anticipating the President's speech to address many issues bedeviling Kenyans, some Kenyans would wish to see him fire some people involved in the graft. Some bodies tasked with fighting corruption are not doing much. The office of the Director of Public Prosecution is not very effective in its mandate. Kenyans have lost faith in some institutions that are taking us round in circles.

As Kenyans, we must reject these institutions which are taking us round in circles. If the Director of Public Prosecutions (DPP) cannot realise that the Chairman of the Youth Fund should be jailed, then, who else will do it? They have not taken note of glaring offences. Apart from the Youth Fund, we do not know what will become of the Integrated Financial Management Information System (IFMIS) or Huduma Centres. All of these will come out as a surprise.

Mr. Temporary Speaker, Sir, as a country, we need to ascertain if we created institutions that are barriers to progress. This is important for us to get justice. I do not want to talk about the Independent Electoral and Boundaries Commission (IEBC)

because Parliament has the mandate to disband a Commission. When both sides of the political divide go out there and lament about the IEBC yet we have the power to do what should be done, I wonder what our role is.

Why should we lament out there yet we have the power to lay down mechanisms to disband the IEBC? This is provided for in the Constitution. It is only Parliament that can initiate the process. Therefore, let us stop playing around with Kenyans; telling them how IEBC is inefficient yet we have decided to let IEBC continue existing. It is a mockery. The commissioners will not leave office unless steps are taken to remove them from office. They will not leave office willingly; not in this country. Therefore, if they cannot leave office willingly, it is upon Parliament to institute the process of disbanding the IEBC.

Regarding corruption, I plead with Kenyans – we have talked a lot about it-- - The other day, a man was jailed for stealing lotion for his bride. Does he deserve to be jailed because of the lotion meant for his bride that he was about to marry? Or is it the Youth Fund Chairman and the rest who roam this country with big cars who are supposed to be in jail? If we have to deal with this issue because it is about national character and attitude, we must be serious. When we speak here, we forget that the character is also in the devolved system. We have not dealt with that as an institution; we are looking up to the national Government to do so. We have left the governors; they have become mini presidents. How will we deal with them?

We had even asked for a fund. We must show the governors that we are serious in matters of oversight. We must also assist the county assemblies. A few weeks ago, a governor went to a meeting and said that he will make sure that the county assembly will only receive Kshs180 million and if they do not want that, they can decide to have a referendum. I did not see any Senator rise and say, “it is alarming when you threaten the county assembly in any meeting regardless of which county.” We are creating the problem yet we go out there and claim that we are here to do that work.

Mr. Temporary Speaker, Sir, we need to look at the Bills that we want to pass and do so. As we wait for the President’s Address, I believe that he now understands the mood of the country. There is no way he can say he does not. He has liberty to fire; deal with the issues in court but fire people. Fire them and then deal with the courts. Let Kenyans know that he fired but it is the courts that issued orders stopping it. Nowadays, it is common knowledge that everyone knows how the judge determines his or her case. It is unfortunate that we have gone back to the days when you could determine your case. It is sad.

As Parliament, we are not even discussing this. For example, there is breach of contract between the Judiciary and the Judicial Service Commission (JSC). How can the Commission go to court against the same judge it has employed? The case in point concerns the Governor for Nairobi. You cannot believe when the same person who is sitting at the JSC---

**The Temporary Speaker** (Sen. Sang): Order, Senator. Are we still on the Procedural Motion or we are completely digressing?

**Sen. Elachi:** Yes, we are, Mr. Temporary Speaker.

I am replying to my friend, the Senator for Kisumu County. He brought up this. So, I am just bringing it back through the same route that he used.

**The Temporary Speaker** (Sen. Sang): As much as possible, let us constrain ourselves to this.

**Sen. Elachi:** Mr. Temporary Speaker, Sir, let me finalise. As we point fingers; let us remember that the four fingers are pointing at us. For example, you have a lawyer who is in court and is supposed to ensure that monies to the tune of billions of a county are taken to the county, but the same lawyer is active as a commissioner of the JSC. How will that judgement be? First of all, when he goes to court, he is the employee of the JSC. So, the judge looks at him as a lawyer and wonders what he or she will do. So, he or she will rule in his favour because he knows you are his or her employer.

Another case is that you have a tribunal looking at another judge in the same set up; an active lawyer who is the lawyer of the other one who is supposed to give evidence – there are some glaring loopholes. The lawyers have taken advantage of the many loopholes in the Constitution. They take us for granted. They say that is the way they have interpreted the law.

As Parliament, we need to ascertain how to audit some of these commissions and ensure that they are streamlined. As we wait for the President's Address, some of these issues will be raised. We shall see some clarifications. Also Parliament can try and bring in some sanity.

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

I hope that when we come back, we will finalise some of the crucial Bills that are on our Order Paper.

**The Temporary Speaker** (Sen. Sang): Thank you, Sen. Elachi.

Proceed, Sen. Karaba.

**Sen. Karaba:** Mr. Temporary Speaker, I thank you for allowing me to support the Motion. It is important that we continue with the business of the Senate next week as we wait to change the calendar of events.

We should, as Senators, Members of the National Assembly and Kenyans recognise the Presidential Address. It is a rare occasion. It comes once in a year. Therefore, we enjoy the 364 days; it is only one and a quarter day that we commit to the Presidential Address.

We will be selfish not to give him even more than one day. So, when there is a day that he wishes to speak to us, let him come. He is at liberty to do so. He can even come here and sit at the Speaker's Gallery and follow our proceedings. He should even come at a time like now and see how many Senators are here so that as he discusses about the role of the Senate, he should be aware of what happens in this House.

Mr. Temporary Speaker, Sir, as we welcome the Presidential Address, it is also important to send our condolences as a Senate to Belgium. What happened there has happened to us. Since most of the European countries have sent their condolences and sympathies to us, it would be prudent to send our condolences to Belgium and its embassy. They were caught unawares. Belgium has been a neutral country all through; they have never had any attack.

Mr. Temporary Speaker, Sir, Belgium started the First World War in 1914. In 1911, Germany attacked Austria because it was being supported by Russia. This is historical. After that, their minister had to resign because it was the first time they had ever seen such a thing in the history of Belgium.

Back to Kenya, we should also take ourselves from the time we got our independence in 1963. We had the first president who was the founding father in 1963. Other presidents took over and currently, we have the fourth president. Going by what they have been doing, it is important to recognise their efforts. My Committee has had a chance to travel to the counties and we have seen a lot of development. Such development was not there when we were in Parliament in 2002. Comparing then and now when we are in the Senate, we can see that there are improvements in the country.

That is the report that we should have because there are people who have not been to some areas. For the first time, some of the counties are having tarmac roads and great infrastructure. That is what the President is likely to talk about on Thursday. It is important for us to welcome the President and heed his instructions because who else do we go by. Since he is the only elected President in this country, we need to respect him and his office.

Mr. Temporary Speaker, Sir, I support the, Motion.

**Sen. Ndiema:** Mr. Temporary Speaker, Sir, I support this Motion. It is timely that the President has chosen that day to address the nation on various issues. Kenyans look forward and are eager to the pronouncements that the President will make because it will hopefully address their fears, expectations and plans, amongst other issues.

The Address is coming at the right time in view of the many challenges that the country continues to face in terms of security, economy and general well-being of our people. I believe as he comes to address the nation, he will also address the undertakings that the government has previously given in the various sectors. This afternoon we talked about agriculture and the shortcomings which have continued to bedevil the sector year after another. The issues of delayed fertilizers and inadequate funding of the agricultural sector are issues which Kenyans have always been promised that they will be addressed.

Mr. Temporary Speaker, Sir, last year during the international Agricultural Show of Kenya, the President indicated that the government would comply with the requirements of the Maputo Declaration and that agriculture would henceforth be allocated 10 per cent of the budget. When we looked at the budget proposals from the National Treasury, there were indications that agriculture would get less than two per cent. Pronouncements should be followed by actions by those who have been put by the President in positions of responsibility; that whatever the President has said, as the Chief Executive of this country, should be implemented as a given.

I have mentioned that there is only Kshs. 1.1billion set aside this year for purchase of fertilizers yet agriculture is the backbone of our economy. We need to reemphasise that and relook at it to see whether the public officers the President has put in trust, are doing what is supposed to be done in areas of agriculture.

Mr. Temporary Speaker, Sir, the issue of cereals is also important. Farmers are not earning anything from growing wheat. They are not earning any profit from cultivating maize even when the rains are good. The House recalls that during the

President Kibaki's era, farmers knew what to expect as it approached planting season. They knew they were going to get Kshs. 3,000 per bag. Despite the rise in the cost of production, the price this year fell to Kshs.2,300. As we start a new planting season, we do not know what price a bag of maize will be yet maize is our basic food, without which we cannot be self-sufficient or independent.

I believe that other areas of wastage will be addressed. There is a lot of wastage in Government. Despite devolution, ministries continue to hold the staff complement that they had. What happened to the issue of staff rationalisation? We have a lot of idle human resource and, unfortunately, most of our staff in the ministries are qualified. They can be consultants anywhere but if you look at what is happening in counties and mother ministries, the amount of wastage in terms of duplication of roles is enormous.

Mr. Temporary Speaker, Sir, there is no reason why we should be employing consultants when we already have in-house consultants. There is a lot of wastage in counties. That is why they are on a spending spree hiring consultants when they are readily available in the ministries.

The other issue is about debt. The rate at which we are incurring debt, we may be putting our future generation in jeopardy. We might reach a situation where we may not service these debts adequately. Any debt incurred should be one that goes towards growing the economy and not the one that puts up white elephants which do not earn us anything.

The area of procurement has been proved time and again as one area where public funds are siphoned illegally. I hope that the President will address this issue to ensure that procurements are need-driven and that there is a need analysis done by those who are in responsibility in the Government.

Unfortunately, some of the procurements are driven by suppliers in the private sector. Procurements are initiated, driven and concluded at the whims of suppliers. This should stop because it ends up increasing the cost of the services and our debt levels. I believe that His Excellency the President, whom I have no doubt has every good intentions for this country, being the chief executive, wants to ensure that there is development during his term in office. However, those charged with responsibility must deliver.

Mr. Temporary Speaker, Sir, I support.

**The Temporary Speaker** (Sen. Sang): There being no other requests, I now wish to put the question. This is not a matter concerning counties. Therefore, it will be a voice vote.

*(Question put and agreed to)*

Next Order!

**BILLS***Second Reading***THE FISHERIES MANAGEMENT AND DEVELOPMENT BILL  
(NATIONAL ASSEMBLY BILL NO. 18 OF 2014)**

*(Sen. Murkomen on 16.3.2016)*

*(Resumption of Debate interrupted on 23.3.2016)*

**The Temporary Speaker** (Sen. Sang): This Bill requires Division. Therefore, it is deferred.

*(Bill deferred)*

*Second Reading***THE COUNTY GOVERNMENTS (AMENDMENT) (NO. 4)  
BILL (SENATE BILL NO. 18 OF 2014)**

*(Sen. Murkomen on 23.3.2016)*

*(Resumption of Debate interrupted on 23.3.2016)*

**The Temporary Speaker** (Sen. Sang): I also defer this Bill.

*(Bill deferred)*

**MOTIONS****APPOINTMENT OF SENATORS AS MEMBERS OF THE SELECT  
COMMITTEE TO SPEARHEAD THE PROCESSING OF THE  
GENERAL SUGGESTION FOR THE DRAFT CONSTITUTION  
OF KENYA (AMENDMENT) BILL, 2015**

AWARE that pursuant to Article 124(1) of the Constitution and the Standing Orders of the Senate, at a Special Sitting of the Senate held on Monday, 15<sup>th</sup> June, 2015, the Senate resolved, to establish a Select Committee on Constitutional and Legal Review to inquire into legal issues arising following the re-allocation by the National Assembly of monies

intended for key constitutional organs and institutions, including, the Judiciary, the Salaries and Remuneration Commission and the Senate;

FURTHER AWARE that on 23<sup>rd</sup> June, 2015, the Senate approved the names of Senators to serve in the said Select Committee whose terms of reference were as follows-

(a) inquire into the design of the Legislature and in particular, the institutions set out in the Constitution with a view to protecting the interests of the counties and their governments and securing and safeguarding the system of devolved government established in the Constitution;

(b) inquire into the role of the Senate as set out under the Constitution and make recommendations on the appropriate role to be played by the Senate in-

(i) the budget making process and revenue allocation;

(ii) the legislative process;

(iii) oversight over the National Government; and

(iv) oversight over the County Governments;

(c) examine and make recommendations on the appropriate role to be played by the Senate in the approval of nominees for appointment to State office;

(d) examine and make recommendations on the appropriate inter linkage and interplay between-

(i) the Senate and the National Government;

(ii) the Senate and the National Assembly;

(iii) the Senate and the County Governments; and

(iv) the Senate and other constitutional offices and Commissions.

(e) recommend to the Senate such constitutional and legislative interventions as may be necessary to secure and safeguard the system of devolved government in the Constitution, including measures necessary to ensure the effective discharge by the Senate, of its legislative and oversight role under the Constitution; and

(f) examine and make recommendations on any other matter connected with or incidental to the foregoing;

COGNIZANT OF THE FACT that the Committee tabled its report on 23<sup>rd</sup> September, 2015 which report was adopted by the Senate on 21<sup>st</sup> October, 2015;

NOTING that one of the recommendations in the report was that- The Senate approves the appointment of a Select Committee to spearhead the processing of the General Suggestion for the Draft Constitution of Kenya (Amendment) Bill, 2015 through popular initiative in terms of Article 257 of the Constitution;

NOW THEREFORE, pursuant to the resolution of the Senate during the Sitting held on 21<sup>st</sup> October, 2015, the Senate approves the

appointment of the following Senators to the Select Committee to spearhead the processing of the General Suggestion for the Draft Constitution of Kenya (Amendment) Bill, 2015 through popular initiative in terms of Article 257 of the Constitution-

1. Sen. Murkomen Kipchumba
2. Sen. (Prof.) Lonyangapuo John
3. Sen. Chiaba Abu Mohamed
4. Sen. Wangari Martha
5. Sen. Kiraitu Murungi
6. Sen. James Orengo
7. Sen. (Dr.) Boni Khalwale
8. Sen. Hassan Omar
9. Sen. Halima Abdille

And that the committee reports back to the Senate within six months.

**The Temporary Speaker** (Sen. Sang): The Senate Majority Leader is not in the House. Therefore, we will also defer that.

*(Motion deferred)*

#### ADOPTION OF REPORT ON THE SECURITY SITUATION IN MANDERA, LAIKIPIA AND KAPEDO

THAT, this House adopts the Report of the Standing Committee on National Security and Foreign Relations on the assessment of the security situation in Mandera County, Laikipia county and Kapedo (Border town of Turkana and Baringo counties) conducted between 19<sup>th</sup> January and 5<sup>th</sup> February, 2015 and laid on the Table of the House on Wednesday, 29<sup>th</sup> July, 2015.

**The Temporary Speaker** (Sen. Sang): This Motion is deferred.

*(Motion deferred)*

#### NOTING OF REPORTS OF THE ACP-EU JOINT PARLIAMENTARY ASSEMBLY MEETINGS

THAT, the Senate notes the Report of the ACP Parliamentary Assembly and the 29<sup>th</sup> Session of the ACP-EU Joint Parliamentary Assembly held at the Grand Pacific Hotel, Suva, Fiji from 10<sup>th</sup> to 17<sup>th</sup> June, 2015, laid on the Table of the House on Wednesday, 25<sup>th</sup> November, 2015.

**The Temporary Speaker** (Sen. Sang): This Motion is also deferred.



*(Motion deferred)*

INQUIRY INTO THE IMPLEMENTATION OF THE NATIONAL  
SPECIAL NEEDS EDUCATION POLICY FRAMEWORK

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

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

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

CONCERNED that while significant gains have been made under the Free

Education Programme introduced in the year 2003, access and participation of children with special needs is generally low across the country and their needs have not been specifically addressed;

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

**The Temporary Speaker** (Sen. Sang): This Motion is deferred.

*(Motion deferred)*

**Sen. (Dr.) Khalwale:** On a point of order, Mr. Temporary Speaker, Sir. Have you noticed or rather has it occurred to you that we have postponed Motion No.11 that was supposed to be moved by the Leadership of this House, Motion No.12 that was supposed to be moved by the Chairperson from the Jubilee Government and Motion No.13 which was supposed to be moved by the Deputy Speaker, Sen. Kembi-Gitura? If it is the Leadership of the House that frustrates---

**The Temporary Speaker** (Sen. Sang): Order, Sen. (Dr.) Khalwale! The Chair has sufficient reasons from the Movers of those Motions that we have deferred.

Let us proceed.

ADOPTION OF REPORT OF THE NATIONAL SECURITY  
COMMITTEE ON STUDY VISIT TO RUSSIA

THAT, this House adopts the Report of the Standing Committee on National Security and Foreign Relations on the study visit to Russia laid on the Table of the House on Tuesday, 15<sup>th</sup> March, 2016.

**The Temporary Speaker** (Sen. Sang): This Motion is also deferred.

*(Motion deferred)*

CREATION OF AN OFFICE TO AUDIT THE  
BASIC EDUCATION INSTITUTION 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;

Also 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.

**The Temporary Speaker** (Sen. Sang): This Motion is deferred.

*(Motion deferred)*

NOTING OF REPORT OF THE COMMONWEALTH  
WOMEN PARLIAMENTARIANS' REGIONAL  
CAPACITY BUILDING WORKSHOP

THAT, the Senate notes the Report of the Commonwealth Women Parliamentarians Regional Capacity Building Workshop held in Dar es Salaam, Tanzania on 20<sup>th</sup> – 23<sup>rd</sup> January, 2016 laid on the Table of the House on Thursday, March 17, 2016.

**The Temporary Speaker** (Sen. Sang): This Motion is also deferred.

*(Motion deferred)*

**ADJOURNMENT**

**The Temporary Speaker** (Sen. Sang): Hon. Senators, there being no other business, the Senate stands adjourned until Tuesday, 29<sup>th</sup> March, 2016, at 2.30 p.m.

The Senate rose at 5.55 p.m.