

# PARLIAMENT OF KENYA

## THE SENATE

## THE HANSARD

Wednesday, 30<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

### PETITION

#### EMBEZZLEMENT OF FUNDS, FINANCIAL IMPROPRIETY AND SKEWED EMPLOYMENT IN TURKANA COUNTY

**Sen. Munyes:** Mr. Speaker, Sir, I wish to present the Petition concerning the embezzlement of funds, financial impropriety and skewed employment in Turkana County. We, the undersigned citizens of the Republic of Kenya, duly registered voters and residents of Turkana County are concerned over the embezzlement of funds, financial impropriety and skewed employment in Turkana County, draw the attention of the Senate to the following:-

- (1) That, the County Government of Turkana and the County Executive Committee (CEC) have and continue to award tenders and contracts for the supply of goods and services to the county government to close relatives and proxy companies owned by themselves in violation of the Public Procurement and Disposal Act, the Public Finance Management (PFM) Act, the Public Offices Ethics and Integrity Act, the County Government Act and Article 201 of the Constitution.
- (2) That, the County Government of Turkana and the CEC have and continued to engage in fraudulent financial transactions contrary to the provisions of the provisions of the PFM Act and other laws.
- (3) That, The public funds approved by the Turkana County Assembly during the Financial Year 2013/2014 cannot be accounted for and neither have the projects for which they have earmarked been implemented. This includes the allocation of Khs220 million meant for women and youth enterprises, Kshs20 million meant for persons with disabilities and Kshs188 million meant for emergency and disaster management.
- (4) That, the Governor of the County Government of Turkana is overseeing the improper expenditure of public funds on non-prioritized development

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projects, or projects that do not fall within the mandate of the county government such as the construction of eco-lodges in Kainuk and Lokito-Angaberuarabel in Turkana North and Turkana South sub counties, respectively. Over Kshs300 million has been spent on these projects with no sign of completion.

- (5) That, the County Government of Turkana and its CEC have, contrary to the law, undertaken recruitment of officers to serve in the county government on the basis of favoritism and nepotism. The requirements set out in the law as regards qualifications, recruitment, vetting and approval procedures have not been followed in making these appointments.
- (6) That, despite these matters being brought to the attention of the governor, he has failed to take any action against corrupt officers in his government. The Turkana County Assembly has also failed in its role to exercise oversight over the actions of the county executive.
- (7) That, we have made the best efforts to have these matters resolved, but our efforts have not yielded any positive outcome.
- (8) That, none of the issues raised in this petition is pending in a court of law, constitutional or any other legal body.

Before I present my humble prayers, allow me to give a small preamble of Turkana County.

Turkana County receives the second largest allocation of funds in the nation's budget after Nairobi County. Over Kshs40 billion has been sank in Turkana County. We decry the wasteful nature of over Kshs40 billion with Turkana County still enjoying the poverty index of 94 per cent, with water and infrastructure problems and Kenya's negative image on famine being the people of Turkana County who are starving. According to some sources, Turkana County is a bribery free zone, but I cannot believe that with the kind of lifestyle of the executives that we see there. They live posh lives with lavish vehicles, houses and skyscrapers are coming up in Turkana. Therefore, we cannot talk of Turkana County as being a bribery free zone.

I would like to highlight a few cases on how Turkana County Government seems to be spending this money "correctly" according to them. The County Government of Turkana is building the governor's office at a cost of Kshs600 million with a helicopter landing pad. That is an office that is being built in an area where people are starving. The governor expects to be flying from the top of his office. Executive offices for the 10 CEC members will cost over Kshs500 million. This is not part of the Kshs600 million for a five story building.

A sum of Kshs300 million is being spent to build a state lodge. The money has already been paid, but the construction is not even quarter way. They have just put up the fence. The governor spent Kshs19 million to acquire less than one acre to expand his office. A sum of Kshs19 million to acquire less than one acre of land in Lodwar is unheard of. One acre of land in Lodwar should sell at less than Kshs500,000 or Kshs1 million.

**The Speaker** (Hon. Ethuro): Order, Senator! You are stepping out of the written script.

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**Sen. Munyes:** Mr. Speaker, Sir, I am just summarizing part of the bigger script so that we capture everything.

The United Nations (UN) gave us the office in Lokichogio after the United Nations/Operation Lifeline Sudan (UN/OLS) closed down. It is a nice big office. However, the county government is spending Kshs38 million and will allocate another Kshs20 million this financial year for the renovations of those office. They are doing the same renovations that were done by United Nations Development Programme (UNDP). That is another corruption scandal that we know of.

We need the County Government of Turkana investigated on emergency operations. They have not yet established the fund, but they have gone ahead to spent Kshs800 million.

There is a maize scandal in Turkana County where the price of maize per bag according to the county is Kshs2,800 yet the market price in Lodwar Town is Kshs1,200. The county government bought 2,000 displacement kits at cost of Kshs89 million. If you work that out, one kit of *sufurias*, *vijikos* and other things could be Kshs4,000 or Kshs5,000.

Mr. Speaker, Sir, we need to investigate non-existent projects. For example, Kibish Dispensary, Nadome Road where people were massacred the other day and we witnessed Kshs30 million to Kshs50 million spent “just like that”.

There are also scandals on the water provision where few boreholes have been sunk. What they did was that they put billions of shillings in drilling of boreholes yet when you count them, they are less than 100. What the county government does is sink boreholes and use money from the next financial year to equip it. Why do they start the project anyway instead of having someone to sink it and another person to equip it? They are dividing the tenders.

That is why Turkana County has not succeeded in getting enough water. That is the reason Turkanas and our friends, the Pokot are all over in Uganda begging for water and pasture. It is because we cannot provide for them. The county governor has built his hotel close to the only aquifer we discovered along the Turkwel River. The hotel has a big water system. We are not getting water yet the governor has the guts to access the aquifer before the people of Turkana have accessed it. His hotel is called the Cradle Hotel.

Construction of eco-lodges is not a priority in Turkana. However, Turkana County has spent Kshs300 million just to do walls before they have commenced construction. Today, Turkana County will be shown on national television as a bribery-free zone. The governor has gone ahead to talk to Nation Media Group and is already engaging with the Ethics and Anti-Corruption Commission (EACC) auditors. However, the people of Turkana cannot see the value of Kshs40 billion. They are starving because of all the scandals we see all over.

I want to address myself to matters of employment. On this, I will get the support of the House because already the matter was investigated by the County Public Accounts Committee (PAC). The PAC discovered that the way they employed some people, especially the key executives, was mainly on nepotism. The officers employed in the finance department did not fit the job description. They did not have the necessary

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qualifications. However, they still ended up getting employed for being closer to the governor. That can be proved by the committee of the House.

Award of all tenders is done by the governor himself. Some notorious contractors are members of his Cabinet. These are Juliet Communications Limited, Loima Energy Ltd., Loppi Construction, Push contractors and Aluru Enterprises contractors. These people are all inside that Government. They are siphoning all the money from that Government.

The last cultural event cost Turkana County Kshs150 million. It was done by Juliet Communications Limited. The Personal Assistant of the Governor is also a communications expert in the governor's office. We need a lifestyle audit for Turkana. A young man comes in with a bicycle or even without one, the next day he is seen driving a VX Land Cruiser. I cannot imagine that. I have not bought a Land Cruiser of that kind. It costs Kshs18 million. I have been in Government for the last 20 years.

A billion shillings is a lot of money. Some of us were Ministers in the last regime and I could manage a whole Ministry with Kshs2 billion. This is Kshs40 billion that Turkana is sinking. This money should be building roads and universities in this country. This Senate decided to paint a negative image of the Turkana people. This money should have gone to Kiambu, Nakuru or Coast. We, however, saw the sense of saying that Turkana's image is the worst; an image of starving children and mothers who walk for 20 kilometres because they cannot get water and yet the governor has the guts to access a water aquifer in Turkana to build his lodge. They have the guts to steal from the Turkana relief food.

**The Speaker** (Hon. Ethuro): Conclude, Sen. Munyes. You are now being repetitive.

**Sen. Munyes:** Mr. Speaker, Sir, I am presenting matters that are very close to your heart.

*(Laughter)*

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

**Sen. Munyes:** Mr. Speaker, Sir, I am repetitive to you. However, to the Members it is information they need. It is very important that we address the matter in Turkana. Nevertheless, I will end there.

The petitioners pray that:-

1. The Senate urgently investigates the issues raised in this petition and comes up with appropriate recommendations to address the issues raised in it.
- (2) We have 50 cases that the EACC has not addressed. The petitioners request the EACC to carry out a special audit into the accounts of Turkana County Government for the period of March 2013 to date. The audit should include undertaking a lifestyle audit of officers serving in that Government.
- (3) The Senate should also take measures aimed at protecting devolution and tax payers' money. They should also direct recovery of public funds of those found to have irregularly benefited from the same.

There are six petitioners listed here and they have all signed. Thank you.

**Sen. (Prof.) Lonyangapuo:** Mr. Speaker, Sir, the petition submitted by my neighbour, Sen. Munyes, is heavily loaded. When we compare and look back to what Turkana County was, it raises a lot of queries. What does this money we keep on sending to the counties annually do? We are immediate neighbours with Turkanas. The road from Kapenguria, all the way through Marich Pass, Kainuk to Lowdar to Lokichogio to Nadapal is completely impassable.

I wish one out of ten of the Kshs40 billion was used to make that road. It is no longer tarmac. It stopped being a tarmac road over 15 years ago. The vehicles that go to Lowdar are very powerful. They are four-wheel vehicles. Maybe that is where your money has gone to. Ordinary vehicles cannot use that road because it is impassable.

The situation is the same in my county. Last week, I sought a statement here to know what the national and the county governments will do to remedy the people dying of hunger in West Pokot.

Talking of luxurious hotels, they have built a peculiar hotel in West Pokot called the Tourists Hotel. It is about 40 kilometres away from the town. The immediate customers are baboons. Nobody can access it. There is no tourist who has visited West Pokot ever since the earth was created.

**The Speaker** (Hon. Ethuro): Order, Sen. (Prof.) Lonyangapuo! This is a Petition on Turkana County Government.

**Sen. (Prof.) Lonyangapuo:** Mr. Speaker, Sir, I mean we should pay attention to what Sen. Munyes said because of the neighbouring problems as well. They have used over Kshs430 million yet there are no projects on the ground. It is like there is a scheme to defraud money through starting of projects that are never completed. Even projects that will be built 50 years from today have been started now. They want them to become stalled projects as long as they make a killing and disappear.

Lastly, last week in a report that was brought here, the pending bills in Turkana County for services unpaid total up to a staggering Kshs2.5 billion. We do not know what is happening. I support this petition. The relevant committee should look at it meticulously. Roads projects in Trans-Nzoia County have been given up to the year 2022 for completion of work. Money has been committed to that time to some contractors that have been awarded these jobs. These things look like fairy tales. However, they are true. We must do something.

**The Speaker** (Hon. Ethuro): Order, Members! I cannot make a distinction between those wishing to contribute to the petition and those who have their own petitions or other issues. Therefore, I guide that, if you wish to contribute, remain under requests.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Speaker, Sir, first, I congratulate the distinguished Senator for Turkana who is the national Chairman of my party. He presented that petition very eloquently. Turkana and Mandera, apart from Nairobi, receive the highest allocation of money from this Senate. Listening to the narrative in the petition and the details eloquently given by the distinguished Senator, it is obvious that the money of the people of Turkana is being taken astray. It is simply being stolen.

This Senate collectively is the custodian of devolution and the protector of counties and their governments. We must act decisively to ensure that offending governors are brought to book. The way some governors behave is like they are in some conspiracy to undermine efficacy and success of devolution. A governor just embarks on reckless theft, misappropriation of funds, looting and enriching themselves unjustifiably. A governor who did not have a second car, all of a sudden, has property everywhere.

I was privileged to be invited by the counties of Turkana and Pokot in Kitale to sit with them in a quest for peace. I have never seen so many brand new four-wheel drives like I saw on that day when I stepped out of the hotel. The bulk of them were from Turkana County. It is an abuse.

I urge the committee that will be assigned the duty to look at this petition to do it very meticulously and efficiently, so that anybody found culpable is brought to book. We do not want to go the way of the national Government where thieves are called whistle-blowers. We, as a Senate, want to deal with offenders within the context of the law and make them feel the full weight of the law.

I support the petition.

I urge the committee that you will assign to get down to work and arrest the plight of the people of Turkana. There is absolutely no justification for Turkana County to continue being labeled as a sea of poverty given the amount of money and the human and natural resources they have.

I support and I deserve a pat on the back from you because you are an interested party.

**The Speaker** (Hon. Ethuro): Order! I can confirm to you that I am a disinterested party. If I were, I would not be sitting here, but where you are sitting.

**Sen. (Dr.) Machage:** Asante sana, Bw. Spika. Waswahili husema: “Mbiu ya mgambo ikilia kuna jambo.” “Lisemwalo lipo na kama halipo laja.” Tunafaa kuzingatia kilio cha Waturkana kwa Seneti hii. Kwa miaka mingi Kaunti ya Turkana imejulikana kwa watu wengi wenye ufukara na watoto wanaotembea uchi. Mpaka sasa tunaonyeshwa kwenye runinga shule ambazo hazijajengwa vizuri; wanafunzi wanasomea chini ya miti. Hata hivyo dua lilikubali kuwaangazia watu wa Turkana. Kwanza, tulipata siasa za ugatuzi na pia mafuta yalipatikana katika kaunti hiyo. Tatu, maji mengi yalipatikana kule yanayoweza kutumika kila siku na Wakenya wote 45 milioni kwa miaka 70. Kwa hivyo, Seneti hii haitakubali uzembe, ufidhuli na uporaji wa mali ya umma kutoka kwa viongozi waliochaguliwa na watu wa Turkana kama tulivyoambiwa na Seneta wa Turkana.

Mambo aliyoyasema hapa kuhusu utumizi mbaya wa pesa za umma ni ya aibu kubwa. Lakini ajabu ni kwamba mambo haya hayafanyiki katika Kaunti ya Turkana tu bali pia kule Kaunti ya Migori na kwingineko. Ripoti ya matumizi ya pesa za mwaka 2013/2014 inaonyesha kuwa Ksh21 billioni zilitumika na ofisi ya gavana kwa njia isiyofaa. Pesa kiasi cha Kshs1.2 milioni zilitumika kununua kitanda cha gavana. Barabara ya lami ilijengwa kutumia mamilioni ya pesa na ikaharibika baada ya miezi mitatu. Viongozi wote wa kaunti hiyo sasa wana nyumba kubwa na mashamba makubwa, si tu katika Mji wa Migori bali katika miji mingine nchini. Je, hizo pesa zimetoka wapi? Wengi wao walikuwa fukara na hata waliniomba gari wakati wa kutafuta kura.

Naunga mkona kilio hiki ambacho kimependekezwa na Seneta wa Turkana. Naomba Kamati itakayoteuliwa kushughulikia jambo hili ifanye kazi kwa kindani na kutupa ripoti kamili, ili hii iwe mfano kwa kaunti zingine.

**Sen. (Dr.) Khalwale:** Mr. Speaker, Sir, you will recall that this petition is coming shortly after the one from Vihiga County. Kenyans are saying the constitutional oversight institutions are taking too long to catch new thieves.

I had the opportunity to go to Lodwar and I saw the governor's personal residence being constructed at a cost of Ksh300 million. The governor's office is being constructed at the cost of Kshs600 million, in a county where their primary challenge is food and water.

I want to ask the people of Turkana to refuse and remove that "poster child"; that a Turkana child is the one walking hungry with a bowl or standing under a goat suckling. We even saw photographs of a child suckling a dead mother. Given the photographs from Turkana, which are duplicated elsewhere, are the African leaders ready to lead African countries and institutions? If the billions that we are wasting on devolution were available, we would not have stopped the expansion of Jomo Kenyatta International Airport (JKIA) at only Ksh56 billion. This would have completely opened up our economy in the air travel industry. We must be strong and refuse to accept phone calls from governors when they are called to account.

I listened to villagers in Lodwar and they were pointing fingers at members of the County Executive Committee (CEC). Some of the people who have been employed are not qualified to serve their respective dockets. For example, somebody who once served as a prison warden is the one in charge of finance. I do not know whether you notice some of these things. I urge you not to go to Lodwar as the Speaker of the Senate. *Tembea kama raia huko* so that you can address those things and punch some of those people in their faces, because it is not right.

I am not just talking about the Governor of Turkana, but we have been shown some of the hotels that some governors have put up in Nairobi. If I meet one of them and he challenges me when we are taking a beer, I will name them, so that when he asks me about it the next day, I will tell him to leave it at that because we were drinking. This is wrong and it is not limited to Turkana County. The institution to answer and stop this is the Senate. I urge the Committee on Finance, Commerce and Budget - of which I am a Member- to work seriously, so that we unlock this corruption.

Mr. Speaker, Sir, this morning we have been haggling with the problem in Narok which has existed for a long time. I know you do not know these things, but the matter is still in court. I cannot give the statement that was requested a long time ago because the matter went to the High Court and the Court of Appeal. It has fallen short of reaching the Supreme Court. They are hiding there.

I support.

**The Speaker** (Hon. Ethuro): Order, Members! Pursuant to Standing Order No.227(1), the petition stands committed to the relevant Standing Committee. In this case, it is the Standing Committee on Finance, Commerce and Budget. Of course, in accordance with Standing Order No.227(2), you need to report to the petitioner by way of a report, addressed to the petitioner in not more than 60 days.

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*(The Speaker sat down to allow Senators to enter the Chamber)*

Order, Members! I was sitting down to allow one particular Member to enter, but he has decided to cross the Floor. I suppose choices have consequences.

Hon. Senators, I have Messages to give on the Division of Revenue Bill  
(National Assembly Bill No.4 of 2016).

### MESSAGES FROM THE NATIONAL ASSEMBLY

#### PASSAGE OF THE DIVISION OF REVENUE BILL (NATIONAL ASSEMBLY BILL NO.4 OF 2016)

Hon. Senators, I wish to report to the Senate that pursuant to Standing Order No.40(3) and (4), I have received the following Message from the Speaker of the National Assembly, regarding the passage by the Assembly of the Division of Revenue Bill (National Assembly Bill No.4 of 2016).

Pursuant to the provisions of Standing Orders No.41(1) and No.142 of the National Assembly Standing Orders, I hereby convey the following Message from the National Assembly:-

“Whereas the Division of Revenue Bill (National Assembly Bill No. 4 of 2016) was published by the Kenya Gazette Supplement No.27 of 9<sup>th</sup> March, 2016; pursuant to Article 218(1b) of the Constitution to provide equitable division of revenue raised by the national Government among the national and county government levels of Government;

Whereas, the National Assembly considered and passed the said Bill on Wednesday 30<sup>th</sup> March, 2016 without amendments in the form attached hereto;

Now therefore, in accordance to the provisions of Article 110(4) of the Constitution and Standing Orders No.142 of the National Assembly Standing Orders, I hereby refer the said Bill to the Senate for consideration.”

Hon. Senators, Standing Order No.148 requires that a Bill which originates in the National Assembly be proceeded with by the Senate in the same manner as a Bill introduced in the Senate by way of first reading in accordance with Standing Order No.129. I, therefore, direct that the Division of Revenue Bill (National Assembly Bill No. 4 of 2016) be read a First Time today, Wednesday 30<sup>th</sup> March, 2016.

I thank you.

#### PASSAGE OF THE POLITICAL PARTIES (AMENDMENTS) BILL (NATIONAL ASSEMBLY BILL NO.5 OF 2015)

Hon. Senators, I wish to report to the Senate that pursuant to Standing Order No.40(3) and (4), I have received the following Message from the Speaker of the National Assembly regarding the passage by the Assembly of the Political Parties (Amendments) Bill (National Assembly Bill No.5 of 2015).



Pursuant to the provisions of Standing Orders No.41(1) and 142 of the National Assembly Standing Orders, I hereby convey the following Message from the National Assembly:-

“Whereas, the Political Parties (Amendments) Bill (National Assembly Bill No.5 of 2015) was published by the Kenya Gazette Supplement No.16 of 12<sup>th</sup> February, 2015 as a Bill concerning county governments; it is proposing to amend Section 25(2) of the Political Parties Act 2011 regarding the threshold required for political parties to receive funding from the Political Parties Fund;

Whereas, the National Assembly considered and passed the said Bill on Tuesday, 10<sup>th</sup> March, 2016, with amendments in the form attached hereto;

Now, therefore, in accordance with the provisions of Article 110(4) of the Constitution and Standing Orders No.142 of the National Assembly Standing Orders, I hereby refer the said Bill to the Senate for consideration.”

Article 110(3) of the Constitution provides as follows;

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

Hon. Senators, I, however, wish to report to you that the concurrence of the Senate as contemplated in Article 110(3) of the Constitution was not sought by the Speaker of the National Assembly in respect to the Political Parties (Amendments) Bill (National Assembly Bill No.5 of 2015). However, in his Message, the Speaker of the National Assembly has indicated that the Political Parties (Amendments) Bill (National Assembly Bill No.5 of 2015) as passed by the National Assembly was published as a Bill concerning county Governments.

The lack of concurrence notwithstanding and pursuant to Standing Order No.148 which requires that a Bill which originates from the National Assembly be proceeded with by the Senate in the same manner as a Bill introduced in the Senate by way of first reading in accordance with Standing Order No.129; I, therefore, direct that the Bill be listed for First Reading on the Order Paper for Tuesday 12<sup>th</sup> April, 2016.

I thank you.

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

**The Speaker** (Hon. Ethuro): Order, Sen. Njoroge! I will allow the points of order later. Let me conclude my business.

#### VISITING DELEGATION FROM BARINGO COUNTY ASSEMBLY

Hon. Senators, I would like to acknowledge the presence in the Speaker’s Gallery this afternoon of visiting Members and Staff from Baringo County Assembly Powers and Privileges Committee. The County Assembly Members and staff are here on a two-day visit at the Senate. I request each member of the delegation to stand when called out so that they may be acknowledged in the great usual Senate tradition.

#### 1. Hon. Elijah Toroitich

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2. Hon. Lina Sote
3. Hon. Risper Kimaiyo
4. Hon. James Cheptoo
5. Hon. Richard Kitilit
6. Hon. Wesley Lekakimon
7. Hon. Solomon Makal
8. Hon. Kibiwot Munge
9. Ms. Betty Toroitich
10. Mr. David Ngeno

On behalf of the Senate and on my own behalf, I welcome you to the Senate and wish you well for the remainder of your stay.

I thank you.

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

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

**The Senate Minority Leader** (Sen. Wetangula): If you allow me I could have a two-some, so to speak. First, I congratulate the delegation from Baringo County for visiting the Senate. I have met many of them personally and I know them. I encourage them to learn as much as they can.

Their governor was my classmate in High School. I hope he is not doing the things we hear about Turkana and other places. We encourage them to develop Baringo to a level we expect it to be. I welcome and ask them to feel comfortable in the Senate. I will soon be visiting Baringo to market my bid for the leadership of this country. I hope they will receive me well.

Secondly, I will comment on the second Message, about the political Parties Amendment Bill. We have a ruling pending from the Chair following a recent communication where a Bill again originated from the National Assembly without compliance with Article 110(3) of the Constitution. We would wish this House not to acquiesce to the illegalities and unconstitutional conduct by the National Assembly.

To quote a great lawyer called Pheroze Nowrojee, to mitigate an injustice is to participate in it. A Bill that has not complied with Article 110(3) is a nullity from our point of view as Senate, even before you direct that it be deemed to have been read the First Time, for the House to receive the reasoned and considered ruling that is still pending on a matter of that nature. Given the recent very eloquent presentations that Members brought to the House and to the Chair in the same regard, if we do not do this, the continuation of treating the Senate as a “by the way” or a House that is not part of the Houses of Parliament will go on.

Mr. Speaker, Sir, there is no Parliament without the Senate or the National Assembly. We are like Siamese twins and that is why Article 110(3) is there. It does not matter the direction that the Bill will go, but it must start with Article 110 (3). I, therefore, urge you to recall the direction that it be read the First Time and give us the ruling that we are waiting for before we move on to that direction.

**The Speaker** (Hon. Ethuro): Sen. Wetangula, maybe you were not in the House when we dealt with that matter quite extensively when it came to the issue of the Physical Planning Bill where a similar situation confronted us. We gave quite a number of scenarios. The Chair was quite sympathetic to your assertions, but life must go on. I will not withdraw the directive of the First Reading. However, I am willing to revisit that particular matter in terms of its lack of concurrence to Article 110(3) and which way to go. In the meantime, I hope that will comfort you.

**Sen. Kittony:** Mr. Speaker, Sir, I join you in welcoming the delegation from my home to the Senate. I advise them to refrain from listening from any other callings, but to enjoy the proceedings of the Senate. I wish them a great stay in Nairobi and, when they go back, to convey our greetings.

**The Speaker** (Hon. Ethuro): Sen. Kittony, I am not sure your advice on refraining from listening applies when the job they have come to do here is listen to Senators.

*(Laughter)*

Please, proceed, Sen. Haji.

**Sen. Haji:** Mr. Speaker, Sir, I wish to join you, my “sister” - Sen. Kittony - and the Senate Minority Leader in welcoming the delegation from Baringo County. I wish them well in their stay in Nairobi. From what we have been reading in the newspapers, the County Government of Baringo is doing fairly well. We are told that they have set up a slaughterhouse for donkeys. My appeal to them is to make sure that their donkey meat is exported to China. It should not find its way into our local market, particularly to us the Muslims who recommend that even other animals must be slaughtered in the Islamic way.

Kindly send our regards to His Excellency the Governor. We have very high respect for the people of Baringo County because they are very hardworking. They coexist very well with their neighbours even though they are occasionally harassed from time to time.

**Sen. Sijeny:** Mr. Speaker, Sir, I also wish to join you in welcoming the people from Baringo County. They are gender sensitive and that is why they have given women opportunity. They have made a good decision in choosing to come to the Senate. I am sure that they will learn from the wealth of experience from the people here at the Senate.

**Sen. (Prof.) Anyang'-Nyong'o:** Mr. Speaker, Sir, as I join you in welcoming our colleagues from Baringo County and wishing them the best in their county in implementing devolution, I thank you for expeditiously moving to ensure that the oversight initiative that we have and that our managers are expeditiously trained.

However, I have one concern in the note dated 29<sup>th</sup> March 2016, to all the Senators. It reads as follows:- “Please, note that persons nominated for training shall cater for their own transport and accommodation.” I do not know about other Senators, but I do not know where they are going to get resources to cater for their own transport and accommodation because our own treasuries in the Senate---

**The Speaker** (Hon. Ethuro): Order, Sen. (Prof.) Anyang'- Nyong'o!

**Sen. (Prof.) Anyang'-Nyong'o:** Mr. Speaker, Sir, I seek your guidance.

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**The Speaker** (Hon. Ethuro): I thought that you were on the issue of the visiting delegation. However, you are allowed to seek guidance on that particular matter. As Members have indicated unofficially, we have agreed in this House that some issues are better served in another forum. Since we have a *Kamukunji* tomorrow, that could be one of the issues that we will deal with.

**Sen. (Prof.) Anyang'- Nyong'o**: Mr. Speaker, Sir, I am obliged. I was not aware that there is a *Kamukunji* tomorrow. If that is so, I stand guided.

I have an attachment to Baringo County because when I wedded, my best man was from Baringo. When I was the Minister for Medical Services, I visited Baringo several times and did something at Kabartonjo Hospital which I hope is still memorable. I look forward to visiting Baringo, not just in memory of my dear friend who was my best man, the late Mr. Elijah Arap Chesaina Bultut, but my other friends in Baringo County.

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

### PAPERS LAID

#### REPORT ON THE COUNTY ASSEMBLIES SERVICES BILL (SENATE BILL NO. 27 OF 2014)

**Sen. Mutula Kilonzo Jnr.**: Mr. Speaker, Sir, I beg to lay the following paper on the Table of the Senate today, Wednesday, 30<sup>th</sup> March 2016:-

Report of the Standing Committee on Legal Affairs and Human Rights on the County Assemblies Services Bill (Senate Bill No. 27 of 2014)

#### REPORT ON THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) (NO. 2) BILL (NATIONAL ASSEMBLY BILL NO.33 OF 2014)

On behalf of the Committee on Legal Affairs and Human Rights, I also beg to lay the following paper on the Table of the Senate today, Wednesday, 30<sup>th</sup> March 2016:-

Report of the Mediation Committee on the Statute Law (Miscellaneous Amendments) (No.2) Bill (National Assembly Bill No.33 of 2014.)

Before I lay the next Paper on the Table of the Senate from the Committee on Finance, Commerce and Budget, I beg your leave. Arising out of your sanctions yesterday, I would like you to waive the said sanctions so that I can proceed on behalf of my Committee.

**The Speaker** (Hon. Ethuro): On what basis?

**Sen. Mutula Kilonzo Jnr.**: Mr. Speaker, Sir, on the basis that, the statements you requested to be produced are now with me and I can proceed when it is the opportune time to do so.

**The Speaker** (Hon. Ethuro): your prayers are acceptable to me.

REPORT ON THE SECOND BASIS FOR EQUITABLE SHARING  
OF REVENUE AMONG COUNTY GOVERNMENTS

**Sen. Mutula Kilonzo Jnr.:** Mr. Speaker, Sir, I beg to lay the following paper on the Table of the Senate today, Wednesday, 30<sup>th</sup> March 2016:-

Report of the Standing the Committee on Finance, Commerce and Budget on the Second Basis for Equitable Sharing of Revenue Among County Governments.

**The Speaker** (Hon. Ethuro): Next order.

**NOTICES OF MOTIONS**

ADOPTION OF REPORT ON THE SECOND BASIS FOR EQUITABLE  
SHARING OF REVENUE AMONG COUNTY GOVERNMENTS

**Sen. Mutula Kilonzo Jnr.:** Mr. Speaker, Sir, I beg to give Notice of the following Motion:-

THAT, the Senate adopts the report of the Standing Committee on Finance, Commerce and Budget on the Second Basis for Equitable Sharing of Revenue Among County Governments laid on the Table of the Senate today, Wednesday, 30<sup>th</sup> March 2016.

ADOPTION OF MEDIATION COMMITTEE REPORT ON THE STATUTE LAW (MISCELLANEOUS  
AMENDMENTS) BILL (No.2)  
(NATIONAL ASSEMBLY BILL No.33 OF 2014)

I also beg to give Notice of the following Motion:-

THAT, the Senate adopts the report of the Mediation Committee on the Statute Law (Miscellaneous Amendments) Bill (No.2) (National Assembly Bill No.33 of 2014.) laid on the Table of the Senate today, Wednesday, 30<sup>th</sup> March 2016.

APPROVAL OF NOMINATION OF SENATORS TO SERVE IN  
VARIOUS SENATE COMMITTEES

**Sen. (Prof.) Lonyangapuo:** Mr. Speaker, Sir, I rise on behalf of the Senate Majority Leader to give notice of the following Motion:-

THAT, pursuant to Standing Order Nos.177(3) and 179(1), the Senate approves the following Senators nominated by the Rules and Business Committee to be members of the following committees:-

i) Standing Committee on Land and Natural Resources-

Sen. George Khaniri.

ii) Standing Committee on Roads and Transportation-

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Sen. Aaron Kipkirui Cheruiyot to replace former Sen. Charles Keter

iii) Standing Committee on Information and Technology-

Sen. Aaron Kipkirui Cheruiyot to replace Sen. (Prof.) Wilfred Lesan.

iv) Standing Committee on Finance, Commerce and Budget-

Sen. Aaron Kipkirui Cheruiyot to replace Sen. James Mungai.

v) Joint Committee on Parliamentary Broadcasting and Library-

Sen. George Khaniri.

vi) Joint Committee on National Cohesion and Equal Opportunity-

Sen. James Mungai Kiarie to replace Sen. Stephen Sang.

**The Speaker** (Hon. Ethuro): Next order.

## STATEMENTS

### MISAPPROPRIATION OF PUBLIC FUNDS BY THE NATIONAL BANK OF KENYA

**The Senate Minority Leader** (Sen. Wetangula): Mr. Speaker, Sir, I rise pursuant to Standing Order No.45(2)(b) to seek a Statement from the Chairperson of the Standing Committee on Finance, Commerce and Budget on the misappropriation of public funds by the National Bank of Kenya (NBK).

In the Statement the Chairperson should state:-

(a) Whether the Cabinet Secretary in charge of the National Treasury is aware that the NBK is in a financial crisis and has reported a loss of Kshs120 billion.

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

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

(b) If the Cabinet Secretary is aware that the said unaccounted for funds were secured by the bank's top managers.

(c) The steps, if any, taken by the National Treasury to secure public funds lost that belong to *inter alia* the National Social Security Fund (NSSF).

Mr. Temporary Speaker, Sir, you may be aware that the NSSF has a 48 per cent stake in the NBK. Those are public funds. The National Hospital Insurance Fund (NHIF) and the Retirement Benefits Authority (RBA) and other public institutions also have a stake, not to mention that the bank is wholly Government and *quasi*-Government owned.

(d) Actions taken to investigate and establish individuals responsible for the loss and punish those found culpable.

(e) The role of the Central Bank of Kenya (CBK) as a regulator and banker of the Government through the banks inspection department to ensure that the public funds deposited in the NBK are not misused or misappropriated.

(f) The role the National Treasury plays as a custodian of public funds to ensure that the funds are not misused or misappropriated.

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(g) The reasons why the NBK did not alert the National Treasury to avert this astronomical loss.

Thank you, Mr. Temporary Speaker, Sir.

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

*(Sen. Muthama consulted with Sen. Sijeny)*

Sen. Muthama, you are a seasoned legislator. Standing between the Chair and a debating hon. Member is not acceptable. So, do not repeat it again.

*(Sen. Muthama spoke off record)*

That squeezing is not accepted either.

Proceed, Sen. (Dr.) Khalwale.

**Sen. (Dr.) Khalwale:** Mr. Temporary Speaker, Sir, allow me to ride on the request by the Senate Minority Leader in noting that a commission of that calibre does not occur overnight. It is not done by one individual or an institution. Obviously, there is the case of connivance, especially with the leadership of the CBK.

The Statement should, include the following: Over the last three years, what kind of decisions has the leadership of the CBK been making on the NBK? I am afraid that Kenya being what it is, a few people connive just the same way they did at the National Youth Service (NYS) and Eurobond to sink billions of shillings, then they start pointing at only one individual. Until they start swearing affidavits; that is when you start even seeing names of hon. Senators coming up.

*(Laughter)*

**The Temporary Speaker** (Sen. (Dr.) Machage): Order.

Proceed, Sen. Mutula Kilonzo Jnr.

**Sen. Mutula Kilonzo Jnr.:** Mr. Temporary Speaker, Sir, allow me to also request for an additional statement. Under the Banking Act, the CBK has a role under Section 32 to inspect any institution if so directed by the Cabinet Secretary. Since the CBK is an advisor of the national Government where the NBK is a public institution to the extent that we hold public funds in it; I request that in the Statement, the Chairperson should inform the Senate whether the CBK at any time requested the Cabinet Secretary to cause to be inspected the books of accounts of the NBK in the last 12 months. If the inspection was done, state when it was done. If reports were produced, he should state whether the said reports pointed to the anomalies and loss of more than Kshs120 billion as stated by Sen. Wetangula.

**The Temporary Speaker** (Sen. (Dr.) Machage): Very well. Where is the Chairperson of the Committee on Finance, Commerce and Budget?

**Sen. (Prof.) Anyang'-Nyong'o:** Mr. Temporary Speaker, Sir, since the Chairperson and Vice Chairperson are not in, we take the responsibility---

**The Temporary Speaker** (Sen. (Dr.) Machage): Order, Sen. (Prof.) Lonyangapuo! Can you do it the right way? Let me have your point of order.

**An hon. Senator:** It is not Sen. (Prof.) Lonyangapuo, it is Sen. (Prof.) Anyang'-Nyong'o.

**The Temporary Speaker** (Sen. (Dr.) Machage): Yes, Sen. (Prof.) Anyang'-Nyong'o. Can we follow procedure? I have not seen your request.

**Sen. (Prof.) Anyang'-Nyong'o:** Mr. Temporary Speaker, Sir, I do not have a request. I was just responding to the fact that the Statement is required from the Chairperson of the Committee on Finance, Commerce and Budget.

**The Temporary Speaker** (Sen. (Dr.) Machage): Are you representing the Chairperson of the Committee on Finance, Commerce and Budget?

**Sen. (Prof.) Anyang'-Nyong'o:** Mr. Temporary Speaker, Sir, since my Chairperson is not here, I am trying to help. Both the Chairperson and the Vice Chairperson are not here. Since, a very lengthy statement is required; it would be good if the Chairperson were here to handle it. It is reasonable to request that the statement be issued in two weeks' time noting that we will go on recess tomorrow.

**The Temporary Speaker** (Sen. (Dr.) Machage): Very well. It is so ordered.

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

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

**Sen. Muthama:** Mr. Temporary Speaker, Sir, as a rider to that, we trade with banks and in his response---

**The Temporary Speaker** (Sen. (Dr.) Machage): Order, Sen. Muthama. You cannot ride on an issue that I have already ruled on. However, I will give you an exemption for today only so that you make your point.

**Sen. Muthama:** Mr. Temporary Speaker, Sir, when the response is being given on that Statement, the Chair should try to come out clear on what has happened with the Central Bank of Kenya. It does the inspection of all the account holders in every bank in every month. If there is an account that is overdrawn by Kshs10, the bank is demanding such an account to be regularised so that the bank does not end up with bad debts. How come it is now after several years that the issue of National Bank of Kenya is being brought up? About Kshs120 billion have been lost. Can the Chair confirm that following the statement that was issued by President Kenyatta in Israel, that Kenyans are experts of stealing?

**The Temporary Speaker** (Sen. (Dr.) Machage): Order! I order that the last phrase or sentence be expunged. If you need to discuss the character of the Head of State, you know the procedure.

*(Loud consultations)*

Order, I have made a ruling on that.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Temporary Speaker, Sir, we seek your direction. Does quoting what the President said amount to discussing his character? It cannot be! In fact, the President said in Israel, that the largest burden that Kenyans are carrying is corruption.

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President Mugabe of Zimbabwe said that Kenya has such great thieves that the only thing they cannot steal is the sun because they cannot hide it.

*(Laughter)*

Mr. Temporary Speaker, Sir, that cannot amount to discussing the character of the person and conduct of the President. It is just quoting what he said.

**Sen. Elachi:** Mr. Temporary Speaker, Sir, are we in order, especially those who have worked in Government for the last 50 years - to judge each other? When we start to do so, we will discover we have many skeletons and we will open up so much.

The President said the truth. We are all thieves.

*(Loud consultations)*

*(Sen. Cheruiyot spoke off record)*

**The Temporary Speaker** (Sen. (Dr.) Machage): Order, Sen. Cheruiyot! In this House, you address the House through the Chair.

**Sen. (Dr.) Khalwale:** On a point of order, Mr. Temporary Speaker, Sir. I plead with the Chair that he reconsiders what he is about to rule on whether the statement by Sen. Muthama regarding what the president said in Israel should be expunged. It should stay there because there is one thing I admire about President Uhuru. I have learnt that sometimes when he speaks about corruption he means it. It is only that the people who helped him to become the President seem to have the final say.

The country remembers that President Uhuru said that there is heavy corruption in the Office of the President and many thought he was joking. What we now know about the former Cabinet Secretary Waiguru, the National Assembly Leader of Majority Hon. Adan Duale and the Senate Deputy Majority Leader, Sen. Murkomen have come to pass. There are sworn affidavits in court---

**The Temporary Speaker** (Sen. (Dr.) Machage): You do not have to over discuss that because we have heard.

**Sen. (Dr.) Khalwale:** Mr. Temporary Speaker, Sir, it should remain on HANSARD so that when our grandchildren come, they will know that when Sen. Elachi said that we are thieves, she meant that she is a thief with the others and not with those who are fighting corruption.

*(Laughter)*

**Sen. Khaniri:** On a point of order. Mr. Temporary Speaker, Sir, may I pick up from where Sen. (Dr.) Khalwale left. The Chair heard Sen. Elachi saying that we are all thieves. That is imputing improper motive on some of us who are not thieves. She confessed that she is a thief and she knows who else is a thief. Therefore, she should not include us in a list of thieves. Is she in order to imply that we are all thieves?

**The Temporary Speaker** (Sen. (Dr.) Machage): Sen. Elachi, is out of order. Please withdraw and apologise.

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**Sen. Elachi:** Mr. Temporary Speaker, Sir, I will not withdraw.

**The Temporary Speaker** (Sen. (Dr.) Machage): Then I will kick you out of the House.

**Sen. Elachi:** Mr. Temporary Speaker, Sir, I am willing. We are thieves and when Sen. (Dr.) Khalwale named Sen. Murkomen and Hon. Duale as thieves, yet when it was reported that he stole sugar money, was he referred to as a thief?

**The Temporary Speaker** (Sen. (Dr.) Machage): Order! I have given a directive. Do you comply or not?

**Sen. Elachi:** Mr. Temporary Speaker, Sir, I withdraw knowing well that we are all thieves.

**The Temporary Speaker** (Sen. (Dr.) Machage): Apologise.

**Sen. Elachi:** Mr. Temporary Speaker, Sir, as I withdraw and apologise each of us must reflect as we speak. I withdraw and apologise.

**The Temporary Speaker** (Sen. (Dr.) Machage): That is good. I have to give a ruling on the prayer of Sen. (Dr.) Khalwale.

**Sen. (Dr.) Khalwale:** Mr. Temporary Speaker, Sir, I would like the Chair to confirm that Sen. Elachi's withdrawal includes what she attempted to say about me. May I challenge Sen. Elachi who is also my younger sister to substantiate that I was bribed with money for sugar.

**The Temporary Speaker** (Sen. (Dr.) Machage): Order Sen. (Dr.) Khalwale. It is overtaken by events. You should have raised a point of order then.

*(Sen. (Dr.) Khalwale stood up in his place)*

Kindly have a seat.

I have to rule on an issue that is important on whether I should accept press statements as relates to this House. Unfortunately, I am tied by your own rules. On matters of press reports, you should be careful to accept such kind of information unless you have a statement signed by the Head of State himself.

**Sen. Muthama:** Mr. Temporary Speaker, Sir, on a point of order. I quoted the words of His Excellency the President of the Republic of Kenya.

**The Temporary Speaker** (Sen. (Dr.) Machage): Yes, I heard you clearly.

**Sen. Muthama:** Mr. Temporary Speaker, Sir, the President issued the statement in Israel and he found it was important---

**The Temporary Speaker** (Sen. (Dr.) Machage): Order, Sen. Muthama! You quoted as presented to us by the press. I have some rules to keep in this House. Let me hear another Member because it might build your case in a better way.

**Sen. Orengo:** Mr. Temporary Speaker, Sir, may I remind the Chair about Standing Orders. It is not about words, but the conduct. Neither the person of the President nor the Speaker's conduct can be commented upon in the House without a substantive Motion. So, the Speaker's is the conduct, but the President, is the personal conduct.

Therefore, what the President said in Israel is not a matter of personal conduct. In any case, it will be cannibalising the Constitution if the highest legislative body in the

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land cannot comment on or cite what the President says. The President speaks always. If you look at the hierarchy of institutions and their authority, the legislature is superior to the President.

Mr. Temporary Speaker, Sir, I beg that the Chair do not take us to the old days. When retired President Moi used to sit in the House, we used to talk about him and what he said. Now, when we are in a new Republic, the Chair is telling us we cannot talk about the President and what he said. That will be taking us back to old times. President Moi will wonder about what we are doing.

**Sen. (Prof.) Anyang'-Nyong'o:** On a point of order, Mr. Temporary Speaker, Sir. In proper parliamentary practice certain words should not be taken to have little meaning. There is something called hyperbole, where you make an extreme exaggeration to make a point. Then, there is something called histrionic hyperbole; when you become more extreme in making a very important point. The President in Israel was involved in what we call a histrionic hyperbole.

Thank you, Mr. Temporary Speaker, Sir.

*(Laughter)*

**The Temporary Speaker** (Sen. (Dr.) Machage): Allow me to have Sen. (Prof.) Anyang'-Nyong'o's words sink. Sen. (Prof.) Anyang'-Nyong'o, can you define the histrionics of the speech?

**Sen. (Prof.) Anyang'-Nyong'o:** Mr. Temporary Speaker, Sir, one would expect a President to visit a foreign land in the interest of his country. At the very least, he would not represent his country in bad light. I think the President is so frustrated about this issue of corruption that he had to go to a foreign land to make a very important point to Kenyans, in the form of a hyperbole. He went even further to say: "Not only are all my people corrupt, but the whole Republic is corrupt." If you watched the President speak, he was more or less, near hysterical about this point. It kind of pricked him so much that it went to the point of urging him to say it in a foreign land. I do not think we should take the President literally; he was trying to convey a message. Churchill was the best at this kind of thing; that if you want to make an important point, you do it in hyperbole. However, histrionic hyperbole is even further than that.

**The Temporary Speaker** (Sen. (Dr.) Machage): I share your view, Professor.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Temporary Speaker, Sir, I heard the Chair say or direct that the President's Statement must be in writing. For avoidance of doubt, Article 135 of the Constitution reads:-

"A decision of the President in the performance of any function of the President under this Constitution shall be in writing and shall bear the seal and signature of the President."

A statement made in the holy land of Israel is not a decision of the President. It is a statement from the President, which he can make anywhere, and we laud him for it. He is a frustrated man. You will remember how emotional he was in the last State of the Nation Address to the House. He presented a list of people he said were corrupt. He had to go all the way to Israel – the land of Jesus – and make a statement that his country is

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incurably corrupt. I hope that the Holy Spirit descended upon him while in Israel; that they should start purging the corrupt, starting with those standing next to him.

**The Temporary Speaker** (Sen. (Dr.) Machage): I want this to come to a close because we have a lot of other things to do.

Listen carefully; wisdom is sometimes rare. When we have wise people in the likes of Sen. (Prof.) Anyang'-Nyong'o trying to guide your thinking on what could have been in the President's mind, we should take it with pride and accept it as a gift. The term "decision" has a subjective definition.

**An hon. Member:** No! No!

**The Temporary Speaker** (Sen. (Dr.) Machage): Order! Whether it was a press statement, it was his decision. The issue that Sen. (Dr.) Khalwale raised is: Do we accept the press announcement on the President's speech in Israel as facts in this House? That is what is in my mind. Do we accept that as an authentic report to this House? Your conscience is as clear---

*(Loud consultations)*

I also saw him make the statement. Let me pick Sen. (Prof.) Anyang'-Nyong'o's assessment and give him the benefit of doubt; histrionic hyperbole. I will close this discussion now.

What is it, Sen. Muthama?

**Sen. Muthama:** On a point of order, Mr. Temporary Speaker, Sir. I do not want to challenge the ruling of the Chair, but the President's statements are taken seriously by Kenyans. I want to give an illustration. Not long ago when the President of the Republic of Kenya issued a statement authorizing payment of Kshs1.4 billion to Anglo Leasing without a written notice, that money was paid. Therefore, when we quote the President's statements, we are quoting the authority. Words that come from the President cannot be taken lightly. For the President to find it fit to go to Israel and say that Kenyans are thieves, it may mean that he had no courage to say it in Kenya.

**Sen. Orendo:** On a point of order, Mr. Temporary Speaker, Sir. I just wanted to add that a decision made by the President exercising his powers under the Constitution---

*(Sen. Muthama consulted loudly)*

Sen. Muthama, I was listening when you were talking. You should now listen to "Siaya."

The President, when truly exercising his powers under the Constitution or any law cannot be a subjective matter. This is because the powers of the President and the authority of the President are not things to be imagined; they are defined. That is why somebody can go to court and say that the President exceeded his powers, whether or not, it is written.

I am worried by your statement that a decision is something that is subjective. That would mean that it will be impossible to question anything that the President does. If you go to court now you will find that the powers of the President are being questioned

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everyday by Kenyans, on the basis of the powers granted to him by the Constitution. I hope that we will not go back to the old days where imagining the death of the President or imagining that one would be president was treason. That was a wrong application of the law. Now if we get back to saying that we cannot talk about anything that the President says, and he is the one who exercises most of the power under the Constitution, it will be cannibalizing the Constitution, which talks about limited power.

**The Temporary Speaker** (Sen. (Dr.) Machage): Very well; you have clearly put it.

What is it, Sen. Njoroge?

**Sen. Njoroge:** On a point of order, Mr. Temporary Speaker, Sir. I am trying to imagine the timing of the President in issuing that statement while in Israel. I remember very well that it was immediately after the affidavit on Ms. Ann Waiguru was released. I think he felt frustrated in the fight against corruption when that affidavit mentioning Ms. Ann Waiguru was released. He, therefore, made that very strong statement while in Israel. Nothing else had happened to warrant the statement at that particular time. I, therefore, concur with what Sen. Muthama said; that the statement meant something.

Thank you, Mr. Temporary Speaker, Sir.

**Sen. (Dr.) Khalwale:** On a point of order, Mr. Temporary Speaker, Sir. This is a House of record. The Senator, who has just spoken, Sen. Njoroge, is on record in this House alleging that Ms. Anne Waiguru is clean. In fact, he said that she is a whistleblower. Now that he has changed that position to saying that she is not a whistleblower but one of the perpetrators of theft, could the Chair compel him to withdraw one of the statements because they are contradictory? Is she a perpetrator of corruption or not?

**The Temporary Speaker** (Sen. (Dr.) Machage): Order, this Chair is not privy to daily statements made by Sen. Njoroge. I cannot compel him to make any comments on whatever statements he makes on daily basis. You are out of order.

If I were you, Sen. Njoroge, I would leave this matter to lie there and keep quiet.

Let us move to the next statement by Sen. Wetangula.

BUSINESS FOR THE WEEK COMMENCING  
TUESDAY, 12TH APRIL, 2016

**The Senate Minority Leader** (Sen. Wetangula): Mr. Temporary Speaker, Sir, this Statement is about the business of the Senate for the coming week, pursuant to the provisions of Standing Order No.45.

Hon. Senators, pursuant to provisions of Standing Order No.45, this is to present the Senate business for the coming week. As you may recall, the Senate adopted a resolution to vary the Senate Calendar last week to facilitate sitting this week, climaxing in the Address of the President during the Special Sitting of Parliament scheduled for tomorrow, Thursday, 31<sup>st</sup> March, 2016.

Pursuant to the resolution of the Senate, we are scheduled to proceed on a short recess beginning Friday, 1<sup>st</sup> April, 2016, in accordance with the varied calendar. We shall resume sittings on Tuesday, 12<sup>th</sup> April, 2016. Hon. Senators may wish to note that

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pursuant to Standing Order No.28(3), I will be moving a Motion for Adjournment at the appropriate time as listed in the Order Paper.

Hon. Senators may also wish to note that as indicated in the Supplementary Order Paper, the extension of sittings to this week has enabled the introduction of the all-important Division of Revenue Bill, 2016, which is listed for First Reading at Order No.8, upon which---

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

**The Temporary Speaker** (Sen. (Dr.) Machage): What is out of order, Sen. (Dr.) Khalwale?

**Sen. (Dr.) Khalwale:** Mr. Temporary Speaker, Sir, I do not know whether in the meaning of Standing Order No.45(2)(c), under which the Senate Minority Leader is now proceeding, he should be allowed to read that statement. This is because this Standing Order is very clear. It only contemplates the reading of this Statement every Thursday. It does not move any further than that to provide that in the event that there is a Special Sitting of the House on the following day where the President or anybody else is addressing the House, then the statement will be brought forward.

**The Temporary Speaker** (Sen. (Dr.) Machage): Order, Sen. (Dr.) Khalwale. You know the Standing Orders because, I think you must have participated in the drafting of the Standing Orders of this House. However, there is Standing Order No.1 which gives me that power to rule in situations which are not provided for by the Standing Orders.

Sen. Wetangula, continue.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Temporary Speaker, Sir, in fact, you do not even have to go to Standing Order No.1. Standing Order No.45(2)(c) talks of either on Thursday or the last sitting day of the week.

**The Temporary Speaker** (Sen. (Dr.) Machage): Yes, tomorrow is not a sitting day. Today is the last sitting day.

*(Applause)*

**The Senate Minority Leader** (Sen. Wetangula): Thank you, Mr. Temporary Speaker, Sir.

Hon. Senators, allow me to thank and commend you all for the good work done so far since the commencement of the Fourth Session on 9<sup>th</sup> February, 2016 which has culminated in, among others, the passage of the following Bills:-

- (1) The Public Appointments (County Assemblies Approval) Bill (Senate Bill No.20 of 2014).
- (2) The HIV/AIDS Prevention and Control (Amendment) Bill (Senate Bill No.4 of 2015).
- (3) The County Industrial Development Bill (Senate Bill No.7 of 2014).
- (4) The Kenya National Examinations Council (Amendment) Bill (Senate Bill No.7 of 2016).
- (5) The Office of the County Printer Bill (Senate Bill No.42 of 2014).
- (6) The Office of the County Attorney Bill (Senate Bill No. 37 of 2014) and;

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(7) The Water Bill (National Assembly Bill No.7 of 2014).

I am certain that we shall continue with the same spirit when we resume as we shall be entering a critical juncture of the first Senate under the current constitutional dispensation.

Lastly, hon. Senators, I am aware that the Speaker issued a communication inviting you to the Special Sitting of Parliament where the President will deliver the State of the Nation Address to the legislature and the people of Kenya. Allow me to take this opportunity to join the Speaker in urging Senators to attend the Special Sitting which is an important event in our calendar and an essential function of the presidency under the Constitution. Let me also take this opportunity to wish you a fruitful and happy break. I thank you and hereby lay the Statement on the Table.

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

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

### POINT OF ORDER

#### THE PRESIDENT'S STATE OF NATION ADDRESS TO BE SHARED WITH THE OPPOSITION IN ADVANCE

**Sen. Hassan:** Mr. Temporary Speaker, Sir, in democracies that have a similar model or structures of government like ours such as the United States of America (USA) which envisages the State of the Nation Address once every year, effort is made to share that State of the Nation Address way in advance with the Minority. For example, when President Obama had given his final State of the Nation Address, a Republican Governor read the Republicans response.

Effort is made to share with the other side the Statement in good time so that the Opposition, out of the rhetoric, prepares a response which is issued soon after the President makes his Address. Therefore, is it possible that your Office, in practice and in tandem with this democratic practice that we are also borrowing from other countries, causes the President to issue the State of the Nation Address in advance to this Side of the House so that it acquaints itself with the facts or contents therein and give a response immediately after the President has given his State of the Nation Address?

**The Temporary Speaker** (Sen. (Dr.) Machage): You talked about other democracies with a similar practice as ours in this country. My response will solely lie on the Constitution. If you can give me a clause or law that orders the President do likewise, I would similarly give the order. As it is, it may be a vacuum or lacuna that needs to be filled by you as a legislator. Bring an amendment using the right channels, referendum or whatever, so that the Constitution can be amended as so.

**Sen. (Dr.) Khalwale:** On a point of order, Mr. Temporary Speaker, Sir. Indeed, I was going to do exactly that. The reason why the drafters of this Constitution put Article 132 was so that it is not left in doubt for the President to make it an opportunity for full

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disclosure. Our position as the Opposition is that since the President will be speaking on matters of security, we want to know in advance if he will tell Kenyans the exit strategy of Kenya out of Somalia, where our youth are dying for no cause that is ours. Even if there has never been a president, the point of order raised by Sen. Hassan is important so that you convey to the Executive that we need to be briefed in good time so that then, we can meaningful sit in the Joint Sitting. We do not want to be there like listeners---

**The Temporary Speaker** (Sen. (Dr.) Machage): Order, Sen. (Dr.) Khalwale! I have very much read Article 132(c)(iii) of the Constitution. It says:-

“The President shall once every year, submit a report for debate to the National Assembly on the progress made in fulfilling the intentional obligations of the Republic.”

It does not say: “He shall submit to us before his Address.” If there is that clause, please, guide us because you are a lawyer ---

**Sen. Hassan:** Mr. Temporary Speaker, Sir, I stand guided by the lacuna that you have talked about which cannot only be remedied through --- I think for now we can also rely on Article 35(a) on access to information. It says:-

“Every citizen has the right of access to information held by the State.”

So, because that information is an important matter of national concern that we might want to respond to, it could be a provision of the Constitution that we can rely upon.

Secondly, on the issue about a referendum, our side will be a bit reluctant with the current Independent Electoral and Boundaries Commission (IEBC) in place.

**The Temporary Speaker** (Sen. (Dr.) Machage): I really sympathise with the situation. The question is whether whatever is in the President’s mind before the speech – whether that information should be released to you. That is the question that you should ask yourself. I really sympathise. Unfortunately, that is not possible now. The lawyers in the House, could you look at this section? Let us see how we can make this practical. There is a problem. I will not give that order on the Chairperson.

**Sen. Muthama:** On a point of order, Mr. Temporary Speaker, Sir. Looking at Article 132(c)(i) of the Constitution, the President, in his Address, must tell Kenyans the progress that has been made by his Government in several areas. As representatives of the people, we are trying to voice out through this House, the issues that probably Kenyans could be expecting the President of the Republic of Kenya to address in his Speech. One of them is the issue that was raised by Sen. (Dr.) Khalwale of our officers being in Somalia, which is a thorny issue to Kenyans. In advance, we are saying that that is what is expected.

In addition to that, we also want to know what the President and his Government is doing through his Address, to recover the billions of shillings that have been lost in this country.

**The Temporary Speaker** (Sen. (Dr.) Machage): Let the HANSARD of today’s deliberations, maybe, be a guideline to what the President may want to say.

**Sen. Muthama:** Thank you.

**The Temporary Speaker** (Sen. (Dr.) Machage): However, Article 132(c) says:-



“Once every year, the President will give a report in an address to the nation ---”

Not before the address to the nation. That is exactly what you want the President to do; to give you the report before the address to the nation. That is not what the Constitution says. Maybe we should add this later by having some clauses that may allow us to dictate that he tells us before he gives his speech. We are tied on this. As the Chair, I am tied on this.

**Sen. (Prof.) Lonyangapuo:** On a point of order, Mr. Temporary Speaker, Sir. In the current dispensation, the presidency is composed of the President and the Deputy President. Yesterday evening for over one hour ---

**The Senate Minority Leader (Sen. Wetangula):** Three hours.

**Sen. (Prof.) Lonyangapuo:** Very good, you watched. I did not manage but I heard ---

**The Senate Minority Leader (Sen. Wetangula):** I heard some gentleman during news on radio.

*(Sen. Elachi spoke off record)*

**Sen. (Prof.) Lonyangapuo:** Yes, and that was good news. Yesterday, every item that was touching on the State of the Nation was given live and in an interaction with Kenyans. As the Chair said, this report – you should have watched it yourself yesterday – will be given by the President tomorrow. It makes sense for the Opposition. Sen. (Dr.) Khalwale, I do not know when you ran to the Opposition. You are supposed to be on this side.

**The Senate Minority Leader (Sen. Wetangula):** Which side were you?

**Sen. (Prof.) Lonyangapuo:** We were here together with you.

**The Temporary Speaker (Sen. (Dr.) Machage):** Order!

**Sen. (Prof.) Lonyangapuo:** Mr. Temporary Speaker, Sir, finally, it is good for you to wait and then make mince meat of whatever you want to talk about after the Speech. Even we, are waiting, remember we were elected although we are sitting on this side of Government, we want to critic everything that is touching on the people who elected us. It does not add value to you, Sen. Muthama. Wait until tomorrow afternoon.

**The Temporary Speaker (Sen. (Dr.) Machage):** Very well. I am aware that the Deputy President made some presentations but he did that on his own accord. He was not obligated by the Constitution to do that. Whether what he gave will be the content of the President’s Speech tomorrow is neither here nor there. He may not even know what the President will say tomorrow.

Sen. Mutula Kilonzo Jnr., do you have something to say?

**Sen. Mutula Kilonzo Jnr.:** Mr. Temporary Speaker, Sir, Sen. Hassan has a point. Maybe at some point when we are looking at the Standing Orders, we ought to look at Article ---. The point in contention is actually in Article 132(1)(ii)(c) because the report is supposed to be published in the *Kenya Gazette*. The question that should be addressed is whether the publication comes after the Address---

**The Temporary Speaker (Sen. (Dr.) Machage):** Correct; or before.

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**Sen. Mutula Kilonzo Jnr.:** Or it is published by the time he makes the Address. Those are the points in contention but there is a point in what Sen. Hassan is raising.

**The Temporary Speaker** (Sen. (Dr.) Machage): Very well. I think I will bring the debate to a closure.

MANAGEMENT OF MASINDE MULIRO UNIVERSITY  
OF SCIENCE AND TECHNOLOGY.

**Sen. Elachi:** Mr. Temporary Speaker, Sir, pursuant to Standing Order No.45(2)(b), I rise to seek a Statement from the Chairperson of the Committee on Education regarding the management of Masinde Muliro University of Science and Technology.

In the Statement, the Chairperson should address the following:-

1. What informed the decision of the University to employ Prof. Fredrick. A. Otieno as the Vice Chancellor, considering that he resides in South Africa.
2. Why has the student population been dropping since the appointment of the new Vice Chancellor?
3. The number and nature of court cases involving the university that are pending in court.

**Sen. Karaba:** Mr. Temporary Speaker, Sir, I have ---

**The Senate Minority Leader** (Sen. Wetangula): On a point of order, Mr. Temporary Speaker, Sir. Accuracy and veracity of what we say is the cardinal foundation of debate in the House, including the Statements that we make. Did I hear the distinguished Senator say that the Vice Chancellor of MMUST resides in South Africa? Far from the truth because we know ---

**The Temporary Speaker** (Sen. (Dr.) Machage): Order, Sen. Wetangula!

**The Senate Minority Leader** (Sen. Wetangula): The Professor was my year mate at the university and I know his home.

**The Temporary Speaker** (Sen. (Dr.) Machage): Order, Sen. Wetangula! I will not let you ---

**The Senate Minority Leader** (Sen. Wetangula): Mr. Temporary Speaker, Sir, this is a fraudulent request.

**The Temporary Speaker** (Sen. (Dr.) Machage): Order! A Statement has been sought by a Member ---

**The Senate Minority Leader** (Sen. Wetangula): She must be factual.

**The Temporary Speaker** (Sen. (Dr.) Machage): No debate has been called for. I expect answers.

*(Loud consultations)*

I expect the Chairperson to respond to every question and statement put forward by Sen. Elachi.

**Sen. (Dr.) Khalwale:** On a point of order, Mr. Temporary Speaker, Sir. It is already a precedent in this House that a Senator attempted to interrogate the employment and management of Eldoret University. It resulted in student unrest on the ground.

Through you, Mr. Temporary Speaker, Sir, could I request that Sen. Elachi withdraws her statement and consults with leaders of that region who know that, that professor was recruited competitively, stakeholders participated, I included, and that upon being recruited, he has steered the university well? In fact, Prof. Otieno was a professor of Engineering at the University of Durban and thereafter, he landed the job in Masinde Muliro University. He went and lived with his ancestral family in Musanda in Mumias West, Kakamega County. Can she declare her interest or she wants our university to be---?

**The Temporary Speaker** (Sen. (Dr.) Machage): Order, Sen. (Dr.) Khalwale. The only issue you may raise is for Sen. Elachi to declare her interest. Everything else you have said is out of order. Can you declare your interest on this issue, Sen. Elachi?

**Sen. Elachi:** Mr. Temporary Speaker, Sir, I have no interest. I think my Senator has an interest because the wife works there. So, it will be fair if we table the documents in this House. I have asked for the statement so that we deal with the issue, which is also in court. It will be wrong for my Senator to tell me to declare my interest when he knows very well that I have no interest. This is a matter that is about to burn Masinde Muliro University. We need to deal with it as the Senate.

**The Temporary Speaker** (Sen. (Dr.) Machage): Very well, I will give this ruling.

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

**The Temporary Speaker** (Sen. (Dr.) Machage): This is an issue of intense interests to both sides of the House. Can the answer to the statement be delivered to this House in the first sitting after recess? We will interrogate it at that time. For now, it is ordered that the statement be issued on the first day of the sitting after the recess.

Any other interest? Since there is none, there were Statements that were supposed to be issued. There is a list and we start with Statement (a) on the Order Paper. The Chairperson Standing Committee on Education, are you ready?

**Sen. Karaba:** Yes, I am ready Mr. Temporary Speaker, Sir. This is a Statement which was---

**The Temporary Speaker** (Sen. (Dr.) Machage): Order! I find it good practice to give the Statement at the Dispatch Box. It is always better that way.

*(Loud Consultations)*

Order Sen. Wetangula. I can see the Chair is pausing to get some space. Can you consult silently?

REVIEW OF CURRICULAR AND CURRICULUM SUPPORT MATERIALS  
FOR EARLY CHILDHOOD, PRIMARY AND SECONDARY EDUCATION

**Sen. Karaba:** Mr. Temporary Speaker, Sir, this is a Statement which was sought pursuant to Standing Order No. 45 (2) (b) on Wednesday 17<sup>th</sup> February, 2016 by Sen. (Dr.) Zani from me as the Chairman of the Standing Committee on Education, regarding the development and review of curricular and curriculum support materials for Early Childhood, Primary and Secondary Education.

Mr. Temporary Speaker, Sir, the Senator requested me to explain:-

1. The measures the Government has undertaken to bring the Early Childhood, Primary and Secondary Education Curriculum up to date with current realities.
2. State whether modes of assessment have been conducted by the Kenya Institute of Curriculum Development (KICD), and if so, what the assessment established to be in the curriculum as well as desired skills suitable to competencies, modes of testing, preferred topics, pedagogical approaches and learning experiences.
3. Explain the success indicators and challenges encountered in revamping the curriculum.
4. State the specific phases in which the new curriculum will be implemented.

Mr. Temporary Speaker, Sir, I wish to respond to the issues raised as follows:-

In 2015, the Ministry of Education, Science and Technology held extensive and detailed consultations with multiple stakeholders in order to develop consensus on the direction that curriculum reform in Kenya should take. The Ministry in conjunction with KICD spearheaded the process of curriculum reform informed by:-

- a) The need to align the education and training sector to the Constitution of Kenya 2010 and other international conventions.
- b) The need to make education and training relevant to Kenya Vision 2030.
- c) The demands of the East African protocol and other global trends in education and training.

Mr. Temporary Speaker, Sir, the following progress has been made in the process:-

- a) A report on the status of curriculum process in the country was developed.
- b) A Cabinet memorandum on the curriculum reform has been prepared and submitted to Cabinet for action.
- c) A comprehensive policy framework on curriculum reforms has been prepared which proposes a road map to the curriculum reform including timelines and resource requirements. The implementation of a new curriculum for ECDE; Standards one, two and three is expected to commence in 2017.

- d) Stakeholders' engagements and consultations at different levels including the Presidential Delivery Unit have been met.
- e) An all inclusive more sectoral steering committee to provide oversight to the curriculum reform process has been constituted.
- f) A national needs assessment to inform curriculum reforms has been conducted jointly by the Ministry of Education, Science and Technology and KICD. The findings are being analyzed. As we talk now, this conference is going on at Kenyatta International Conference Centre (KICC). It was opened today.
- g) Further consultations at the county level have been planned.
- h) A national conference on the curriculum reform has been planned. We have already called a meeting of the County Executive Committee Members (CECs) of education countrywide in the third week in April.
- i) The development of curriculum support materials will follow the conclusion of the review.
- j) In addition, the Ministry of Education, Science and Technology with support from the United Nations Children's Funds (UNICEF) has developed the Kenya school readiness assessment tool which includes academic interviews for children joining Class One. This is aimed at ensuring a seamless transition to Class One.

Mr. Temporary Speaker, Sir, the process of implementation of the tool is currently as follows:-

- a) A launch was done by the Cabinet Secretary.
- b) Printing of the tool has been contracted.
- c) Dissemination of the tool is scheduled for the period March to July 2016.

Thank you.

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

**Sen. (Dr.) Zani:** Thank you, Mr. Temporary Speaker, Sir. I want to appreciate the Chair for that comprehensive answer. We have also discussed it further within the Committee and we have gone through the report. So, I am satisfied with that response.

Thank you.

**Sen. (Prof.) Lonyangapuo:** On a point of order Mr. Temporary Speaker, Sir. If you heard it very well, there is an attempt to change the curriculum from the 8-4-4 system to a new one we do not know yet. It looks like Sen. (Dr.) Zani and the Chairman are now quickly coming to an agreement before we get to know what all this is about.

**The Temporary Speaker** (Sen. (Dr.) Machage): Order Sen. (Prof.) Lonyangapuo! What do you want to be told? What is it, Sen. (Dr.) Zani? The Senator is on a point of order. Can you come up with your point of order, properly executed?

**Sen. (Prof.) Lonyangapuo:** Mr. Temporary Speaker, as an educationist, and I am now speaking as, one; as a former principal of a university and a former headmaster of a high school - nowadays they call themselves principals. It is a pity for the Senate and the National Assembly and by extension, county assemblies who are supposed to have the privilege to discuss this issue if that is the direction we are taking. This is because the

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Chairman is talking about extensive consultations, my office is in KICC and I have never seen those people you are talking about today and the comprehensive Cabinet Memo. That Cabinet Memo should have come here. All of us should have discussed it to know what direction of our Ministry is taking. After that, then it can move.

**The Temporary Speaker** (Sen. (Dr.) Machage): I am sure, professor, you must have learnt precision and summary. I imagine you wanted to know whether really it is true there was a meeting going on. Just because you have not seen it, it does not mean it is not ongoing. You want confirmation that actually the conference is ongoing. Could you confirm it is going on? The other confirmation you wanted is why you have not been privy to any information.

**Sen. (Dr.) Zani:** On a point of order, Mr. Temporary Speaker, Sir. A clear clarification needs to be done here. What Sen. (Prof.) Lonyangapuo asked is important. However, it is not what I asked for. He needs to come up with his own Statement about the change from 8-4-4 to another system. It is a discussion that started long after this statement was sought.

This statement was about what counties are doing about ensuring that their curriculum reflects devolution. I have been answered the question as I asked. Secondly, the conference is taking place. To me, there was a confirmation yesterday and an invitation for the same.

**The Temporary Speaker** (Sen. (Dr.) Machage): I would be very happy if you executed your point of order properly.

**Sen. (Dr.) Zani:** On a point of order, Mr. Temporary Speaker, Sir. Is Sen. (Prof.) Lonyangapuo in order to distort my question and the answer by presenting his statement in a different form?

**The Temporary Speaker** (Sen. (Dr.) Machage): He is completely out of order!

**Sen. (Dr.) Zani:** Mr. Temporary Speaker, Sir, can he be in order and seek his own statement and then comment about the feedback?

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

**Sen. (Prof.) Lonyangapuo:** Mr. Temporary Speaker, Sir, if my colleague terminated her statement at the level of early childhood and pre-primary education, I would have no problem. However, she has trespassed to go to primary and secondary education which is a national matter. Counties have no business with it.

**The Temporary Speaker** (Sen. (Dr.) Machage): Order, Sen. (Prof.) Lonyangapuo! To be an educationist, you have to have study some psychology. Maybe you did not study education as a discipline in the university. Therefore, you never had the opportunity to study psychology. I wonder how you dissected Sen. (Dr.) Zani's mind and decided that she is not satisfied with the answer when she has so declared.

**Sen. Karaba:** Mr. Temporary Speaker, Sir, I am also surprised that Sen. (Prof.) Lonyangapuo is not even aware that the Deputy President was at the Kenyatta International Convention Centre (KICC) this morning to open the conference. I have the materials with me because I attended. He is misleading the whole nation that the conference did not take place. Could he rightly withdraw? That shows a lot ignorance for this House.

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**The Temporary Speaker** (Sen. (Dr.) Machage): Let me digest that. It is not an issue to be protracted. Professor, you may not have been informed that there was such a meeting going on this morning. It is acceptable. Keep your cool and hold your horses. There is nothing wrong by not being informed. Now you are informed. Everything is okay. Let us proceed with something more useful to the House.

What is it, Sen. (Prof.) Lonyangapuo?

**Sen. (Prof.) Lonyangapuo:** On a point of order, Mr. Temporary Speaker, Sir. I did education. I trained as a teacher. When one trains as a teacher, they lead their learners. One shows them what is supposed to be done. When you tell me that there was a conference going on in the same building I have been sitting since morning, it is strange. They are supposed to display at the entrance, that there is a conference of a certain nature going on.

**The Temporary Speaker** (Sen. (Dr.) Machage): Order, Sen. (Prof.) Lonyangapuo! Neither the Chairperson of the Standing Committee on Education nor the questioner has the mandate on the administration of activities and display of the same at KICC. You are demanding for too much. These are Senators representing certain counties of this country. It stays like so.

Statement (B), where is the Chairperson, Standing Committee on Finance, Commerce and Budget? Sen. Mutula Kilonzo Jnr., are you representing the Chairperson?

EXPENDITURE OF MONEY SET ASIDE TO MITIGATE THE  
EFFECTS OF EL NIÑO

**Sen. Mutula Kilonzo Jnr.:** Yes, Mr. Temporary Speaker, Sir. I am a Member of the Committee. We have received a response from the National Treasury. However, the Committee has found the response inadequate in terms of the figures presented as the funds allocated to El Niño *vis-à-vis* the reports that are in the public domain.

Secondly, the statement was forwarded by the National Treasury Principal Secretary, Dr. Kamau Thugge, attaching the response that is not on any letterhead or signed, in contravention of the Constitution. Therefore, the committee has decided to return the statement for a proper document to be done. That way, some of the issues that were supposed to be addressed can be addressed.

**The Temporary Speaker** (Sen. (Dr.) Machage): I would have expected you to throw some light on the Speaker's order on this issue in a previous sitting.

**Sen. Mutula Kilonzo Jnr.:** Mr. Temporary Speaker, Sir, I requested the Speaker before I tabled this report this afternoon to pardon the Committee. The sanction was that the Committee would not conduct any sittings before this statement or any other statement from the Committee on Finance, Commerce and Budget is produced. The statement is here. However, it would be a tragedy and a travesty for me to read such a statement to this House.

**The Temporary Speaker** (Sen. (Dr.) Machage): Very well. I now pardon the Committee. Therefore, everything you said before my pardon is struck out of the records. Therefore, you start.

**Sen. Mutula Kilonzo Jnr.:** I will start again.

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Mr. Temporary Speaker, Sir, the Committee received a letter dated 2<sup>nd</sup> March, 2016 signed by Dr. Kamau Thugge. In the forwarding note, Dr. Kamau attached a two-page document which was not on a letterhead and not signed by the Cabinet Secretary.

On studying the document itself, the committee is not satisfied that the question that was asked by Sen. Khaniri has been addressed, particularly statements made by the national Government on allocation of funds to the El Niño disaster. Therefore, this statement does not comply with the Constitution. We will not read it. We will return it to the Ministry so that it can be compliant with Article 134 of the Constitution.

**The Temporary Speaker** (Sen. (Dr.) Machage): This was Sen. Khaniri's question. He is not here.

**Sen. Mutula Kilonzo Jnr.:** Mr. Temporary Speaker, Sir, I had communicated with him before he left. He told me that he had left the brief with Sen. (Dr.) Khalwale. I am sure he has no objection.

**The Temporary Speaker** (Sen. (Dr.) Machage): Sen. (Dr.) Khalwale, any objection?

**Sen. (Dr.) Khalwale:** Mr. Temporary Speaker, Sir, we have no problem. However, let it be noted that there was a Communication from the Chair that the Standing Committee on Finance, Commerce and Budget would not be allowed to transact any other Business until---

**The Temporary Speaker** (Sen. (Dr.) Machage): Order, Sen. (Dr.) Khalwale! Your absence from the Floor of the House should not draw us back. I have already forgiven the Committee and lifted the sanctions. You should have listened to that.

**Sen. (Dr.) Khalwale:** Mr. Temporary Speaker, Sir, when you did, I heard. I was citing to emphasize it. You should direct that on the first day when we come from the recess, we should hear this answer. The quality of answer that they gave us is unacceptable. They want to mislead the country that they spent only Kshs2 billion when we know that it is much in excess of that. This is another National Youth Service (NYS) scandal.

**The Temporary Speaker** (Sen. (Dr.) Machage): Very well. It is so directed. The answer will be given on the first day after recess.

*(Statement deferred)*

Let us move on to Statement (c).

#### ALLOCATION OF UWEZO YOUTH FUND TO MARSABIT

**Sen. Mutula Kilonzo Jnr.:** Mr. Temporary Speaker, Sir, we have a response, but upon looking at it, there was a specific request made by Sen. Hargura about a list of applicants---

**The Temporary Speaker** (Sen. (Dr.) Machage): You can save us a lot of words. Are you are not ready?



**Sen. Mutula Kilonzo Jnr.:** Mr. Temporary Speaker, Sir, the list of applicants is not attached to this Statement. Sen. Hargura has agreed to my request that we get it attached.

**The Temporary Speaker** (Sen. (Dr.) Machage): The answer should be available at an appropriate time in the first week after recess.

*(Statement deferred)*

Statement (d) is for the Committee on Land and Natural Resources. I do not see the Chairman of the Committee and the questioner.

Sen. Mutula Kilonzo Jnr., do you have an answer to Statement (e)?

DELAY BY THE NATIONAL TREASURY IN DISBURSEMENT  
OF FUNDS TO COUNTY GOVERNMENTS

**Sen. Mutula Kilonzo Jnr.:** Mr. Temporary Speaker, Sir, I have the response.

**The Temporary Speaker** (Sen. (Dr.) Machage): Very well, continue. It is always healthy and good practice to use the Dispatch Box when you have a response.

*(Sen. Mutula Kilonzo Jnr. moved to the Dispatch Box)*

**Sen. Mutula Kilonzo Jnr.:** Mr. Temporary Speaker, Sir, will you allow me to read it? It is about three pages.

**The Temporary Speaker** (Sen. (Dr.) Machage): It all depends with your speed. If you are like President Kennedy, you will take a shorter time.

**Sen. Mutula Kilonzo Jnr.:** Mr. Temporary Speaker, Sir, a statement was sought by Sen. Obure on the status of disbursement to counties as at 31<sup>st</sup> of January 2016. The Statement is as follows:-

(1) As you are aware, the disbursements to counties are based on the County Allocation of Revenue Act, 2015 and the County Disbursement Schedule for the Financial Year 2015/2016 approved by the Senate and gazetted by the Cabinet Secretary/The National Treasury vide gazette notice number 6053, dated 19<sup>th</sup> August, 2015. The total allocation as per the schedule was Kshs273,225,935,204. The actual amounts disbursed to the counties as at 31<sup>st</sup> January, 2016 amounted to Kshs117,856,621,798, as shown in the table attached. The details of allocation per category of allocation and per county are shown in attachments A to E, which is also attached to the Statement.

(2) Regarding the complaints on delays in disbursement to counties, we are aware that some counties have complained on the delays in the disbursement of the funds. In fact, this has been a subject of discussion at various meetings of the Intergovernmental Budget and Economic Council (IBEC). The National Treasury has been prioritizing disbursement to counties with least fund balances at the Central Bank of Kenya (CBK). This is supported by Article 201 (d) of the Constitution which requires that public funds are managed prudently and responsibly. Where there has been a delay, it has been

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informed by the cash balances held in a particular county government's bank account at the CBK. The county governments closing monthly balances for the period June 2015 to February 2016 are shown in Schedule "F", which is attached to the Statement.

The overdue amounts for each county with respect to allocation for equitable share Level 5 and Danish International Development Agency (Danida) health funds as at 31<sup>st</sup> of January, amounted to Kshs47,664,881,584 as shown in Schedule "G," which is attached. Disbursement in respect to conditional grants, that is, fuel levy, maternal healthcare and user fees are dependent on each county meeting the set conditions. It is, therefore, not correct to allege that any delay in disbursement of funds to county governments has led to default in statutory obligations, disruptions of planned activities, programmes and accumulation of bills by county governments.

(3) Regarding reasons for delays in disbursement of funds to counties, the Government funds the budget primarily from ordinary domestic revenues (tax revenues) and domestic borrowing. Some of the taxes have statutory deadlines when they fall due and, therefore, the Government cannot collect them before the due date. Accordingly, when there is a shortfall in revenue performance, the Government will bridge the gap through short-term borrowing for each cash management purposes, as authorized by Parliament under Section 15 (3) of the Public Finance Management (PFM) Act. This short-term borrowing is capped at 5 per cent of the most recent audited Government revenues. If the short-term borrowing is unable to bridge any deficit based on the cash flows, then there are delays in disbursement of funds to county governments as well as Ministries, Departments and Agencies (MDAs).

On a daily basis, the National Treasury accounts for the revenues credited in the national exchequer accounts and determines through the cash and liquidity management the amounts available for funding of consolidated funds services, in which case, is public debt, pensions, salaries and allowances to constitutional office holders, counties in accordance with the County Allocation of Revenue Act and payment from national Government and MDAs. However, it should be appreciated that the Government has endeavored that for any county government with a balance of below Kshs3 million, the next monthly disbursement is released immediately.

(4) Regarding measures taken by the national Government in addressing the issue, the National Treasury has taken the following measures to ensure prompt disbursement of funds to county governments:-

(i) Development of a national legislation and policy framework to enhance county governments' own-source revenue to cushion them against delays in disbursement of the equitable share raised nationally.

(ii) Consolidation of annual monthly cash flow based on projected revenue collections by receivers and collectors of revenue and expenditure patterns for MDAs and county governments.

(iii) Automation of the Exchequer release process and implementation of the National Treasury Single Account for the national Government and thereafter, roll it out to county governments to minimize idle cash balances.

(iv) Fast track reforms in public finance management, including tax administration , to ensure Government revenues are received when due in a timely manner.

(v) Fast-track the process of accessing Central Bank of Kenya (CBK) overdraft facilities to county governments in line with the provisions of the PMF Act.

(vi) Establishment of cash and liquidity management (Exchequer) Committee to meet daily to rationalize county governments' cash requirements and prioritize disbursement to both MDAs and county governments.

Mr. Temporary Speaker, Sir, the National Treasury remains committed to comply with the provision of the PFM Act on disbursement of funds to county governments based on the disbursement schedule approved by the Senate and gazetted by the Cabinet Secretary. Due to the importance of this matter, we remain open to discussing the matter further with the Standing Committee on Finance, Commerce and Budget.

Mr. Temporary Speaker, Sir, in the Statement, there is Schedule A, Schedule A12 Schedule B, Schedule C, Schedule D, that I have referred to on the disbursements; Schedule E on the disbursement of World Bank health funds for the Financial Year 2015/2016; Schedule F on county governments monthly closing balances at CBK, which is called the County Revenue Fund Recurrent and Development Accounts for the 47 counties, showing the ones with the least and the most and Schedule G on overdue amounts as at 29<sup>th</sup> February 2016; showing the ones with the least and the ones with the most.

Thank you, Mr. Temporary Speaker, Sir.

**Sen. Obure:** Mr. Temporary Speaker, Sir, I thank the Vice Chairman of the Committee for the statement. However, you will notice that many counties are already complaining about delays in disbursement of funds due to the counties. From the answer given and specifically the table attached to this answer, you notice that out of the amount of Kshs273 billion due to have been disbursed to the counties, only Kshs117 billion is the actual amount disbursed as at 31<sup>st</sup> January, 2016. That means that less than 50 per cent money due to counties had actually been disbursed by 31<sup>st</sup> January. Will the Chairperson agree that the low level of disbursement would affect service delivery in the counties? In fact, this low level of delivery would not permit the implementation of programmes by county governments. It will give rise to accumulation of Bills in the counties.

Secondly, the disbursement of funds to the counties is based on the County Allocation of Revenue Act and the County Government Disbursement Schedule which are approved by the Senate. In both the Act and the Schedule, no conditions have been attached for the disbursement of funds to counties. The Senate has not given any conditions. Therefore, is the National Treasury justified to set up its own conditions for the disbursement of funds outside the provisions of the relevant law? Could the Chairperson explain which law gives the National Treasury authority to hold onto funds due to the counties? Could the Chairperson confirm that henceforth, the National Treasury will not hold onto funds due to counties?

**The Temporary Speaker** (Sen. (Dr.) Machage): I allowed great latitude for the lengthy three questions. However, the practice of the House is to have one question.

Other Senators wishing to seek clarification should limit themselves or consolidate your question to one. I will not allow more than one question.

**Sen. (Prof.) Lonyangapuo:** Mr. Temporary Speaker, Sir, I would like to seek further clarification on the reply that has been given by the Chairman. I have looked at the printout dated 29<sup>th</sup> February 2016 on status report. February is eight months after the start of the financial year. In my county and most of the counties as has been stated by Sen. Obure, the funds disbursed are 50 per cent, plus or minus one. Ideally, as passed by the Senate, as at February, 67 per cent of the funds should have been disbursed. My worry is that counties like mine and a number of others that have no capacity to collect local revenue will suffer more when they are denied their rightful share to run their processes. It is true that the debt problems could be arising from this situation. I would like to know how they will deal with this matter, especially concerning the counties that rely on the funds that come from the national Government. How will they safeguard such counties to help them meet their day today needs?

**Sen. M. Kajwang:** Mr. Temporary Speaker, Sir, I followed this statement with interest because in the last two months, in my county of Homa Bay, suppliers have been rioting because they have not been paid. When I tried to intervene to find out where the money that we have allocated to the county has gone, the response that I received from the county government is that there has been a delay in the disbursement of funds.

I would like the Chairperson of the Committee to provide some clarity because there are three variables that he has introduced. There is a disbursement Schedule as per the County Allocation of Revenue Act. He has talked about idle bank balances as well as shortfalls in revenue performance. To the best of my knowledge, it is the Constitution and the County Allocation of Revenue Act that has been passed by this House that should be used as the basis of disbursement.

Under what authority is the National Treasury bringing in another variable called ideal bank balances?

From that statement, it appears that from where the National Treasury sits, as far as they are concerned, there is no problem yet on the ground, there are service providers who are going on strike because they have not been paid. Is it that someone disappears with that money once it has been received or who is fooling who?

Finally---

**The Temporary Speaker** (Sen. (Dr.) Machage): Order! I hope that you do not repeat your next question because the question that you have just raised had been asked in the exact same way by Sen. Obure. If so, I will hit you with the law of irrelevance as it is in the Standing Orders.

**Sen. M. Kajwang:** Mr. Temporary Speaker, Sir, I will not give you that benefit because the next point is different.

The other variable that has been introduced is shortfall in revenue performance. Under what basis does the National Treasury use the shortfall in revenue performance to delay disbursement of funds to the counties?

**Sen. Murkomen:** Mr. Temporary Speaker, Sir, I would like to get clear clarification from the Chairperson. There seems to be a narrative that says it is true that there was delay of disbursement of funds and reasons have been given in the statement.

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Does that mean that although there were delays, most of the counties still had money in their accounts thus no service was delayed? My concern is that even after the end of a financial year, most of the counties still have money in their accounts or they are unable to exhaust or use the money in their accounts yet there are complaints of situations like Sen. Moses Kajwang talked about, where contractors are told that the National Treasury has not released money and the counties are unable to pay them.

How do we reconcile the two situations where we are told that there was a delay, but there was money in the account while on the other hand, the other person is saying that because there is no disbursement of money, they are unable to meet their responsibilities. Is there an explanation in between? I thought that this statement is up to 31<sup>st</sup> of January 2016 and not 29<sup>th</sup> February 2016 as Sen. (Prof.) Lonyangapuo has said.

**Sen. Mutula Kilonzo Jnr.:** Mr. Temporary Speaker, Sir, I am happy to report that the Committee on Finance, Commerce and Budget does not agree with the information that has been put in this statement in terms of delay in disbursement of funds. We have been very clear to the Cabinet Secretary in charge of the National Treasury that Article 219 is very clear. It reads:-

“A county’s share of revenue raised by the national government shall be transferred to the county without undue delay and without deduction, except when the transfer has been stopped under Article 225.”

Although I have read this statement as it is, I would like to assure the Senators that the Committee on Finance, Commerce and Budget has made it clear to them. According to the National Treasury, when they attended a meeting called by the Committee on Finance, Commerce and Budget, they introduced criteria which affected even my own county because we had a high balance without asking the respective counties why they have a large balance. They started the practice of delay of disbursement of funds to counties and introduced discretion. Will I be in order to suggest that by the time we come back from recess, we will have another statement that clarifies the fact that the conditions set out and the discretionary principles that are set out here by the Cabinet Secretary are not in the Public Finance Management (PFM) Act, neither are they in the Constitution. They are discretionary principles which are unconstitutional to that extent.

**Sen. Wamatangi:** Mr. Temporary Speaker, Sir, I wish to ride on that answer on the question to, probably, seek your advice on how you would want us to express ourselves on this matter as the Senate. We are already aware that the disbursement of these funds to the counties happens in tranches. So, if for example, we have allocated to the Kiambu County, Kshs5.4 billion, it will not be disbursed in one go as Kshs5.4 billion. It has been accepted maybe silently even by the Senate. When this money has been released in batches, it is also conditional that once this batch has gone, for the next one to go, there has to be reconciliations which have been done by the receiving county as to how that amount has been spent.

Mr. Temporary Speaker, Sir, there are two sides of the coin to the same argument. As a Senate, we have also been very clear that we want our county governments to adapt efficient, professional and sound systems of administering these funds. Sometimes this question – because we may trash the criteria set by the Treasury, especially that argument

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of idle bank balances but it is not financial prudence to do that. That is why I sought your guidance on how we would address this as the Senate. If for example, the is Kshs50 billion or Kshs100 billion which is supposed to go to the counties in one tranche and by the time the next one is going, there would be half of that amount hanging around in those deposits of the county revenue funds because these amounts have neither been spent nor returned to the National Treasury.

We had an example of Turkana County. At the end of the financial year last year, the amount of money that was being argued about by the county assembly was being returned to the National Treasury, having been accounted for as unutilized at the end of that financial year – how do we express ourselves on this as Senate? If we do not call for financial prudence, we may make an argument that would not hold water in sound financial thinking.

**The Temporary Speaker** (Sen. (Dr.) Machage): Very well. I will give the Chairperson the first opportunity to answer you.

**Sen. Mutula Kilonzo Jnr.:** Mr. Temporary Speaker, Sir, I want Sen. Wamatangi to acquaint himself---

*(Sen. Murkomen and Sen. Cheruiyot consulted loudly)*

**The Temporary Speaker** (Sen. (Dr.) Machage): Order, just hold on.

This is for the new hon. Senator; do not learn bad practice from Sen. Murkomen. This Chair is keen to listen to answers.

*(Laughter)*

**Sen. Mutula Kilonzo Jnr.:** Mr. Temporary Speaker, Sir, Sen. Wamatangi needs to acquaint himself with how funds are released to counties. No funds can be released to counties unless they are approved by the Controller of Budget. Therefore, there is nothing about idle funds. The money that is in the County Revenue Fund has been approved and allocated already upon approval by the Controller of Budget. So, it is possible that your county has given out a contract but the contract or certificates have not been issued but the payment is due. Therefore, the Controller of Budget has approved the amount to go to the County Revenue Fund but it cannot be paid until a certificate is issued.

Therefore, we must be clear that the National Treasury does not release money into any account unless it is approved by the Controller of Budget. So, it is not true to say that you must reconcile an account. That is not idle money. It has been properly allocated and approved. Therefore, that cannot be an excuse because the National Treasury knows that if there is Kshs300 million in any county account which has been approved for disbursement by the Controller of Budget, the county government cannot appropriate that amount to another cause which is not the one that is voted for by that county. Therefore, we must be clear that the delay that the counties are talking about is where a county has requisitioned for payment either on recurrent expense for salaries or on development budget for contractors. That is the delay we are talking about. There is no reason in law,

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or in heaven or on earth to delay the disbursement of funds that have been requisitioned by a county through the Controller of Budget.

**The Temporary Speaker** (Sen. (Dr.) Machage): Very well. The Chairperson has tried. However, I will give you two perspectives regarding your question of expressing displeasure on the way things are being handled by the National Treasury. One, we may call the Cabinet Secretary to throw light on many of the questions you may be having. Two, study the Public Finance Management (PFM) Act and make the necessary amendments. Those are my answers. However, the Chairperson has elucidated quite ably.

Proceed, Sen. Obure.

**Sen. Obure:** Mr. Temporary Speaker, Sir, I thank you for that interpretation and guidance. I also thank the Chairperson who has clearly stated that the Committee on Finance, Commerce and Budget does not agree with the explanation given by the National Treasury. I am delighted about that because there is absolutely no basis for the National Treasury to set conditions for disbursement which are not contained in the County Allocation of Revenue Act or the Disbursement Schedule. Therefore, I am satisfied but I want the Committee to pursue this matter to ensure that no funds are delayed on account of the fact that there are balances in the counties' accounts at the Central Bank of Kenya (CBK). As he has explained, these balances could have been allocated to people who are owed money by the county.

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

**Sen. Wamatangi:** Mr. Temporary Speaker, Sir, I appreciate your guidance on that particular issue. With your permission, I would like to seek further clarity from the Chairperson of that Committee because the question I directed for your guidance is based on my personal experience as a Member of the County Public Accounts and Investments Committee (CPAIC). In the course of dispensing business for this House, we visited Nakuru County and I was glad when Sen. (Dr.) Khalwale walked in; I thought he would stay on. We had a very big issue whereby the governor complained to us that they had had three tranches of this money come consecutively and were unable to absorb that money. So, by the time they were being told to pay this or that bill; to be able to abide with the regulations within the time available, they were unable to absorb the money. That is the question.

Mr. Temporary Speaker, Sir, you may remember---

**The Temporary Speaker** (Sen. (Dr.) Machage): Very well. I may not allow you to continue with the debate but you are trying to expand what has been dealt with and there are lots of other matters to pay attention to. I share your concern and I have given two suggestions on the way forward. I would have expected you to pray that the Chair orders the Cabinet Secretary to appear before the Committee of the Whole House to throw light on some of those things. However, since you have not done that, it stays.

**Sen. Wamatangi:** Mr. Temporary Speaker, Sir, then can I take the chance to ask the Chair to do so? It is very important. I laud your thoughts and decisions. It will be important to ask the Chair of the Committee to invite the Cabinet Secretary to shed light and expound on this matter so that it is well understood and never to recur. This is because of the fact that our mandate is clear according to Article 96 on what we ought to do on funds disbursement to counties.

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**The Temporary Speaker** (Sen. (Dr.) Machage): It is so ordered.

## **BILLS**

### *First Readings*

THE DIVISION OF REVENUE BILL  
(NATIONAL ASSEMBLY BILL NO. 4 OF 2016)

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

THE AGRICULTURE, FISHERIES AND FOOD AUTHORITY  
(AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 17 OF 2015)

*(Orders for First Readings read – Read the First Time and ordered  
to be referred to the relevant Departmental Committees)*

## **MOTION**

**THAT**, the Senate adopts the Report of the Mediation Committee on the Mining Bill (National Assembly Bill No. 9 of 2014) laid on the Table of the House on Tuesday, 15th March, 2016.

*(Motion deferred)*

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ADOPTION OF MEDIATION COMMITTEE REPORT ON THE MINING BILL  
(NATIONAL ASSEMBLY BILL NO.9 OF 2014)

*(Bill deferred)*

## **BILL**

### *Second Reading*

THE FISHERIES MANAGEMENT AND DEVELOPMENT BILL  
(NATIONAL ASSEMBLY BILL NO. 18 OF 2014)

*(Bill deferred)*



**MOTION****APPROVAL OF NOMINATION OF SENATORS TO SERVE IN  
VARIOUS SENATE COMMITTEES**

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

THAT, pursuant to Standing Order No. 177 (3) and 179 (1), the Senate approves the following Senators nominated by the Rules and Business Committee to be Members of the following Committees:-

(i) Standing Committee on Lands and Natural Resources:

Sen. George Khaniri

(ii) Standing Committee on Roads and Transportation:

Sen. Aaron Kipkirui Cheruiyot to replace the former Sen. Keter.

(iii) Standing Committee on Information and Technology:

Sen. Aaron Kipkirui Cheruiyot to replace Sen. (Prof.) Wilfred Lesan.

(iv) Standing Committee on Finance, Commerce and Budget:

Sen. Aaron Kipkirui Cheruiyot to replace Sen. James Mungai Kiarie

(v) Joint Committee on Parliamentary Broadcasting and Library:

Sen. George Khaniri

(vi) Joint Committee on National Cohesion and Equal Opportunity:

Sen. James Mungai Kiarie to replace Sen. Stephen Sang.

Mr. Temporary Speaker, Sir, this is a straightforward Motion. It is about creating an opportunity for the new Senator of Kericho County to serve in the various committees provided for above.

I take this opportunity to congratulate him for being elected Senator of Kericho County. I welcome him to this House. In the period that he has been a Member of this House, he has not had the opportunity to serve in any Committee. This is the reason why it is important to expeditiously conclude this Motion and give him an opportunity to serve by bringing fresh energy and excitement. While sitting close to me, he was happy with the way the Chair was conducting the House Business. He asked a lot of questions on how the Chair enjoys his duties. He has already admired the Chair. Therefore, we should give him some work in committees so that he delivers to his people and the nation.

Mr. Temporary Speaker, Sir, the Senator will be sitting in the Committee on Roads and Transportation. I was one of the Members that campaigned for him in Kericho County. I remember he promised his people that he will advocate for the tarmacking and/or murrumping of various roads.

As he thinks about Kericho County, he will have an opportunity to work for the country through the committees and carry on with the duties of the former Senator of Kericho. He will also be sitting in the Standing Committee on Information and Technology to replace Sen. (Prof.) Wilfred Lesan who is the incumbent Chair of the Committee on Devolution.

Mr. Temporary Speaker, Sir, Sen. Cheruiyot is a professional in Information and Technology having studied it at the university. It is important that he brings along the

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energy and vibrancy of youth to this Committee. This is one of the Committees that do a good job. It is led by Sen. Kagwe. I have seen the Committee visit various counties and ask them to accommodate information technology in their undertakings.

He will also be a Member of the Committee on Finance, Commerce and Budget. This is one of the busiest Committees and he will need to create time to assist the other Members in their work. He needs to insert a lot of energy especially on what we have just heard on the First Reading about the Division of Revenue Bill. There are a lot of questions like what Sen. Mutula Kilonzo Jnr. answered on behalf of the Committee.

Mr. Temporary Speaker, Sir, one of the critical issues that we should follow on behalf of our counties is to ensure that the necessary resources are received.

*(Sen. Mutula Kilonzo Jnr. stood up in his place)*

**The Temporary Speaker** (Sen. (Dr.) Machage): Sen. Mutula Kilonzo Jnr. I will have to keep reminding you of the Standing Orders. Two Members cannot be on their feet at the same time.

**Sen. Murkomen:** Thank you, Mr. Temporary Speaker, Sir, for protecting me from Sen. Mutula Kilonzo Jnr. *aka* the Duke of Makueni County.

Sen. Khaniri had been removed from the Committee on Lands and Natural Resources but after wide consultations, he will be back to the Committee. He will also serve in the Joint Committee on Parliamentary Broadcasting and Library. Finally, Sen. Mungai will replace Sen. Sang in the Joint Committee on National Cohesion and Equal Opportunity. The Committee is important in pursuing cohesion and equity in this country. This is a House of equity and it is where we apportion resources to ensure that we assist marginalised areas.

Mr. Temporary Speaker, Sir, I do not want to bore Senators with a lot of things because this is a straightforward Motion. I request the Members to pass it and give room for the Senators to go serve this country in the various Committees and make contributions to the House.

Having followed the debate that went on in the House, it is important to maintain a certain level of maturity and civility in the areas we serve. Peddling lies about each other on issues that are unsubstantiated---

**The Temporary Speaker** (Sen. (Dr.) Machage): Order! Senators do not peddle lies. They may say some untruths but not lies. Kindly use the right words.

**Sen. Murkomen:** Mr. Temporary Speaker, Sir, I did not say the Senators peddle lies but I emphasised that the Constitution upholds us from uttering falsehood or defamatory statements. Taking advantage of the immunity of Parliament to insult Members left, right and centre is not good. There is a level of civility we must maintain. We took this position intentionally as a House and we said we are a mature institution. People used to say it in an insulting manner but being a House of elders, it is important. It is honourable because elders in the African culture represent maturity and wisdom.

Mr. Temporary Speaker, Sir, your grey hair is a representation of wisdom. That is why you said you did not want to dye your hair because it is a representation of wisdom.

Such maturity should permeate our contributions. I heard Sen. (Dr.) Khalwale making unsubstantiated statements about other Senators.

**The Temporary Speaker** (Sen. (Dr.) Machage): Please, do not take that route.

**Sen. Murkomen:** Mr. Temporary Speaker, Sir, I do not want to go there but as House, as we conduct our affairs, maturity is important. I came here when I was only 33 years but I am now getting older. I have tremendously enjoyed being in the midst of elders and gaining a lot of wisdom to the extent that I feel comfortable and honoured if I walk out of this House and people address me as “Elder Murkomen”. Those are some of the things you learn when you sit in committees. Committees give you the opportunity when you travel out of Nairobi to bond. For example, we went with you to Turkana and Elgeyo-Marakwet to look into matters of natural resources and many others. In the process, you get to learn many things that you naturally do not learn in the debate of the House.

Mr. Temporary Speaker, Sir, I beg to move and ask Sen. M. Kajwang' to second this Motion.

**The Temporary Speaker** (Sen. (Dr.) Machage): Very well, as you stand to second, I will say this. The old saying goes that when you are allowed to wash hands in the same basin with elders, you eat with them.

*(Laughter)*

**Sen. M. Kajwang':** Mr. Temporary Speaker, Sir, I rise to second this Motion. As the Mover has stated, it is a straightforward Motion which seems to reorganize the committees so that we accommodate the new Member representing Kericho County.

I am glad I also sit in some of the committees where Sen. Cheruiyot has been appointed to sit. I want to point out particularly the Standing Committee on Roads and Transportation of which I am a Member. I am glad that we will get some youth and vigour joining the Committee. This is because the vast majority of roads in this country, following the latest classification of roads have been handed over to county governments. The national Government remains with just about 40,000 kilometres of roads whereas county governments have been given more than 120,000 kilometres of roads.

We still have issues with counties not accepting the classification that has been done by the national Government. We still have issues because the Roads Bill, which will provide greater clarity on who takes ownership of what roads in this country has not been concluded. I urge Sen. Cheruiyot that being the freshest member and the one who has been least contaminated by politics because he is only a few months old in politics---

There is a way politics sometimes contaminates you and leaves you in a bubble where you are surrounded by sycophants and fresh paint. Everywhere you go to, there will be fresh paint, a fresh road and everything will be freshly prepared so that *Mheshimiwa* can appreciate the hospitality of the people in that area. I believe that Sen. Cheruiyot has not seen too much fresh paint and too much fresh tarmac and he will add a lot of value to the Committee on Roads and Transportation.

Mr. Temporary Speaker, Sir, the inclusion of Sen. Cheruiyot in the Committee on Information and Technology is extremely relevant. There is usually a feeling that young

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people are much more at home when it comes to information technology than the elderly. Perhaps that might not be a very accurate assumption but we know that younger people at the age of Sen. Cheruiyot were born just around the time when the World Wide Web (www) had been invented.

For the information of Members of this House, the www was invented in 1989 by Sir Tim Berners-Lee. So, it might not be much older than Sen. Cheruiyot. I believe that being a Member of the Committee on Information and Technology, he will add a lot of value and this House will benefit out of it.

Mr. Temporary Speaker, Sir, one of the things that I would urge the Senator to undertake is to attempt and define enterprise architecture for the counties, so that you can have one blueprint or template that defines the basic minimum technology investment and architecture that counties should deploy. We are currently seeing a situation where each county is going to the market to get things like revenue management systems or automated solutions. They even want to implement their own enterprise resource planning solutions. It will be important for this Senate to provide guidelines in conjunction with the ICT Authority of Kenya and other relevant bodies, including the Communications Authority of Kenya (CAK) so that we come up with an enterprise information architecture that counties can deploy and that can reduce some of these costs that we are seeing.

Mr. Temporary Speaker, Sir, you have seen Government entities - like what happened to the Youth Enterprise Development Fund - spending hundreds of millions of shillings in defining an information technology strategy or coming up with a design for an enterprise resource planning system. I used to do that in my past life but I never made Kshs100 million out of it. I hope that this Senate Committee will provide guidelines that will be used by counties and state corporations so that we reduce or close the window of corruption that information technology has become. Information technology has now become the quantum channel through which a lot of money is being stolen.

I also support Sen. Cheruiyot's inclusion in the Committee on Finance, Commerce and Budget. You have been present as we have been discussing issues of late disbursement of funds to counties and this is a critical issue. As I mentioned before, suppliers are striking and some workers are not being paid. The question is; is Treasury remitting this money or is this money being remitted to the counties and only favoured contractors are the ones who are being paid?

In as much as sometimes we bash the Treasury for not remitting funds on time, there is also evidence that when funds reach counties, it is the politically correct contractors who are paid off. The "big" contractors are paid at the expense of the small-time contractors, the youth, women and persons with disabilities who have taken loans of Kshs2 million or Kshs500,000. You will find it is the "big" contractors who are owed Kshs100 million who are paid. This is because there is that perception that once the Kshs100 million has been paid, some 10 per cent goes back to county functionaries. I hope that this Committee will get to the bottom of this matter, so that our people do not suffer.

Mr. Temporary Speaker, Sir, I have also noted that Sen. Mungai will be replacing Sen. Sang in the Committee on National Cohesion and Equal Opportunity. This is a Joint

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Committee of which I am a Member and it has an important role. I hope that Sen. Mungai, even though he is not with us today, will bring in some fresh thinking and some new blood. This is the Committee that should be interrogating today whether Kenya is ready for the next elections and whether the necessary ingredients are in place for a peaceful election and transition because there could a transition. We should not all assume that it will be a continuation.

The Committee should interrogate whether we are ready for a peaceful transition, whether we are ready to accept the outcome of the next Elections, whether societies have healed, whether communities are willing to work together and whether ethnicity and issues of negative ethnicity have been dealt with properly in this country.

Mr. Temporary Speaker, Sir, this is the Committee that oversights the National Cohesion and Integration Commission (NCIC), a commission which receives a lot of money. Just last week, it is reported that in budgetary allocations, the commissioners of the NCIC were given a salary increment and they will be earning Kshs1.25 million per month. This Committee must demand results and outcome out of the money that goes into it. I hope that Sen. Mungai will live up to that billing and allow those of us who have been there for too long to learn from him. Maybe our ideas have been stale. I hope that he will come in and kick that place you wanted to kick earlier so that this Committee can ready this nation for the next elections because the next elections could have two outcomes. It could be continuation or a transition.

In conclusion, I support the inclusion of Sen. Khaniri in the Committee on Land and Natural Resources and the Committee on Parliamentary Broadcasting and Library. Sen. Khaniri has previously been claimed by the other side of the House and more so, by Sen. (Prof.) Lonyangapuo, that he belongs to the other side. We might need to conduct an audit one day to find out whether the Minority is now the Majority or whether the Majority is now the Minority.

As it stands, I am not very sure whether the party that sponsored Sen. Cheruiyot to this House is formerly a member of the Jubilee Coalition in which case he should be sitting somewhere in the middle and the Senate Minority Leader would become the Senate Majority Leader. However, I think Sen. Khaniri's inclusion in these committees is quite welcome and I wish them well.

I thank you.

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

*(Question proposed)*

I see interest. Sen. Obure, I hope you will be brief.

**Sen. Obure:** Thank you very much, Mr. Temporary Speaker, Sir. Yes, I will. First of all, I thank the Mover and the Seconder of this Motion. This is a fairly straightforward Motion intended to accommodate the wishes of the parties represented in this House, who have sought re-organisation of the Membership of the various Committees.

You will recall that recently, there was some confusion in this House which was as a result of inadequate consultation between the parties leading to a situation where Sen. Khaniri resigned from the Committee on Land and Natural Resources. I am very

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happy to see that Sen. Khaniri is back to that Committee. I also serve in that Committee and I know that Sen. Khaniri who was the Vice Chairperson of that Committee was a very useful Member; he made very useful contributions and I am very happy to see him back.

I also take this opportunity to appreciate the contribution made by the then Senator, hon. Charles Keter, who served with me in the Committee on Roads and Transportation. He made extremely useful contributions and he was a vibrant Member of that Committee. He applied his knowledge and experience in bringing issues of roads to the fore. I am also equally delighted to see that he is being replaced by a very young, dynamic, energetic and eager, Sen. Cheruiyot. I take this opportunity to appreciate and congratulate him on his victory in the recently concluded elections in Kericho County.

I am very delighted to see that he is coming to a Committee that I serve in. I assure you that this is a very useful Committee headed by our own Chairperson on your right, Sen. Chiaba of Lamu County. This Committee travels widely around the country sometimes in very difficult conditions. I have no doubt that you have the energy and the interest to work in those conditions.

I wish Sen. Cheruiyot every success as a Member of the various Committees to which he has been appointed and look forward to ensuring success in the deliberations of those Committees.

**Sen. Mositet:** Mr. Temporary Speaker, Sir, thank you for allowing me to contribute to this Motion where the new Senator, a very energetic young man who was elected by the people of Kericho County is in this House. Let me start by thanking the Rules and Business Committee for doing its job which is to make sure that we have enough Members in all committees. This time, they must have consulted widely and that is why we can see that there is no acrimony. I salute them for that.

When I start with the Committee on Land and Natural Resources, Sen. Khaniri had served in the same Committee as the Vice Chairperson and he did well. In fact, quite a number of times, we know him to have been the man in charge of answering all statements or queries directed to that Committee and he did it very well. I salute the Committee that it found wisdom to make sure that he is back there, although we are not told from which side he has come, whether from Jubilee side or the Coalition for Reforms and Democracy (CORD) side. Maybe we needed to have been told so that we know whether he is very much “CORDed” or he is still with us.

**An hon. Member:** *Wacha hiyo!*

**Sen. Mositet:** Mr. Temporary Speaker, Sir, for Sen. Cheruiyot to be in the Committee on Roads and Transportation, I believe he will learn a lot and be equal to the challenge. This is one of the committees which are supposed to be very active and vibrant, since all the rural roads and those classified under Class D and below and those which are unclassified, belong to counties as per the Fourth Schedule.

I believe this Senate has a lot to do to make sure that we have the laws and regulations to make sure that those roads are improved in terms of standards of building, how they should be funded and the percentage of the amount of money which goes to the counties which should be directed to roads.

For this country to move forward and for the economy to improve and to ensure that our young people get a lot of jobs in their counties, all the county governors need to make sure that a big percentage of the amount of money which is meant for development goes to roads. When I look at the urban and peri-urban areas of Ngong', Kitengela, Kajiado North and even the rural areas, if only we could direct and make sure that we have opened up the roads - we do not necessarily need to maintain them to tarmac standards but make sure that they are motorable - I believe counties will generally improve.

I believe Aaron Kandie, being young and energetic---

**Sen. Murkomen:** Sen. Aaron Cheruiyot. Not Kandie.

**Sen. Mositet:** Mr. Temporary Speaker, Sir, Sen. Aaron Kipkirui Cheruiyot. I am told that any time the Chinese or Japanese are here and look at us, they do not know who is Otieno or Sen. Murkomen. They can only differentiate the one with a white beard

**The Temporary Speaker** (Sen. (Dr.) Machage): Just say that you are sorry for the slip of the tongue instead of justifying your mistake.

(Laughter)

**Sen. Mositet:** Mr. Temporary Speaker, Sir, I believe that he will do a lot of good in this Committee and he will take fresh energy and all the expertise into it.

When it comes to the Joint Committee on National Cohesion and Equal Opportunity for Sen. Mungai, I believe that my whip and the leadership must have even consulted him to make sure that he will now serve in one of the most important committees. It is because, just as Sen. M. Kajwang has said, this is one of the committees which are supposed to bring this country together. It has to make sure that this country cannot be divided on tribal lines or favour one region more than the other.

Mr. Temporary Speaker, Sir, this is a committee that is supposed to make sure that this nation stands as one. When I look at the new Constitution, its unifying factor is the presidency but I am a bit worried because the powers of the presidency were diluted or devolved such that the unifying factor is not as strong as before.

I know Sen. Murkomen has been moving a very important Motion to ensure that we have a committee which is going to look into the Constitution of this country, I believe that is one area that the committee needs to look at and ensure that Kenyans can make sure the presidency is empowered. I believe if we have that, we will not talk the way other politicians talk because at any one time, we will know that it is the institution that is supposed to hold this country together.

Mr. Temporary Speaker, Sir, this is a committee I believe in and I know the qualities and the capabilities of Sen. Mungai. He is the Senator for Nakuru which is the most cosmopolitan county we know in this country where even those who will want to divide this nation by saying that they will want a particular tribe to go for the governorship or for the senatorship--- I know this committee will not be for that but will look at the country as one and see a face called Kenya.

I know he is equal to the task and again, let me congratulate the RBC for these appointments and also congratulate all those who have been given the task of serving in

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those committees and tell them *hongera sana*. I know they are equal to the task and God bless them. May the Senate continue becoming strong.

Thank you.

**Sen. (Prof.) Lonyangapuo:** Thank you Mr. Temporary Speaker, Sir. I also rise to support this Motion. Like my previous colleagues, this routine Motion is, indeed, necessary for our committees to be complete. When I look at the proposals as given by the RBC, citing Sen. Khaniri to go to the previous committee where he was, reveals a lot on the capacity he has. I want to wish him well. Although he was the Vice Chairman that time, I do not know whether he is still going to be the Vice Chairman but we wish him well and continue to have people who are very thorough.

Mr. Temporary Speaker, Sir, we have a new entrant as we already received him recently. The replacement of former Sen. Keter by Sen. Cheruiyot who I heard during the campaigns in Kericho, eloquently convincing his people that he should be elected the Senator for Kericho to come and represent them here. I want to tell the Senator that these committees that he has been given by RBC are the right place for him to press those buttons and the promises he gave can be easily fulfilled. We do not have money here to give but this is where he can refill and ensure that all the aspirations he had for his people are easily captured.

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

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

Mr. Temporary Speaker, Sir, I know that he is stepping into the shoes of people who have been in those committees. He is replacing former Sen. Keter in Roads and Transportation Committee which was an issue in Kericho County where the Kenya African National Union (KANU) nearly took the seat because of roads but I am told things are happening now. You are again also replacing Sen. (Prof) Lesan who is a strong person in Information and Technology Committee. Since you are stepping in his shoes, I wish you well and tell you that this is what we expected of ourselves. You are also going to replace Sen. Mungai. So, you have three committees. Lastly, we have Sen. Mungai moving to replace Sen. Sang

As I conclude, I look at this joint committee on National Cohesion and Equal Opportunity. This week, my governor started issuing funny threats calling upon this committee to arrest anybody who pinpoints at the work that is not done well in the county. This tells you that some county governors have suddenly become owners of counties. They have not read the Constitution since they were elected. The Constitution states that the Senate does oversight of national funds that have been sent to the counties.

Mr. Temporary Speaker, Sir, when you see a Senator seeking to know how the funds have been utilized, governors using their caucus headed by Governor Munya, called the Council of Governors, are now imputing improper motives on the work of people who are doing oversight. To say that Sen. (Prof.) Lonyangapuo is inciting people when he tells them to make sure that roads have been done properly is not true. That is not incitement; it is my duty. The same applies to Sen. Murkomen who has enough

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problems in his county. We were surprised that when we went to sort out some small conflicts, some of the governors took off. They did not want to come.

**Temporary Speaker** (Sen. Mositet): Senator, you also need to advise your governor that the Constitution allows *wananchi* themselves to oversight.

**Sen. (Prof.) Lonyangapuo:** Mr. Temporary Speaker, Sir, maybe we need a letter with your signature going to the tables of these fellows, that this is what is written so that they do not misunderstand.

I want to wish them well and tell Sen. Cheruiyot that this is where he belongs and he is equal to the task. When he entered Moi University, I was leaving. I was your boss that time and now I am very competent and I am proud that there is a young man who has come and he is going to deliver the duty to the people of Kericho County.

Thank you.

**Sen. Elachi:** Mr. Temporary Speaker, Sir, I will be very brief. First, I want to thank the RBC for ensuring that the new Senator, Sen. Cheruiyot is now able to discharge his duties in terms of legislation. I want to make it clear that it is important that as we put them in the committees, they are able to attend and be part and parcel of the decisions being made.

I hope Sen. Mungai will be able to attend sittings of the Joint Committee on National Cohesion and Equal Opportunities. This is a critical committee that he needs to be attending for the sake of his own county and the issues that have always been raised.

Mr. Temporary Speaker, Sir, therefore, I hope that he will avail himself and have time to be part of this committee which is fantastic. With all the challenges that we are facing in the counties, I think this committee can be able to give recommendations.

**Temporary Speaker** (Sen. Mositet): Senator, do you doubt that Sen. Mungai will be attending because you are saying “you hope”?

**Sen. Elachi:** He is a Member of the Committee on Finance, Commerce and Budget and for a while we have not seen him.

Going forward, I hope we will deal with the issue of billboards. The Bill that Sen. Mutula Kilonzo Jnr. brought to the House is a critical amendment to bring sanity in the counties. Every project in the counties is accompanied by a billboard bearing the photos of the governor. Since these are public resources being spent, we should stop this practice. Even projects initiated by the President do not bear the pictures of the President. Governors should know that when they misuse public resources they will be penalized.

I beg to support.

**Sen. (Prof.) Lesan:** Mr. Temporary Speaker, Sir, I wish to join my colleagues who have spoken before me in thanking the Rules and Business Committee (RBC) for the wise choice of re-organizing the Members of the Committees. I also thank the people of Kericho County for electing their new Senator, Sen. Cheruiyot, to the right side of the House where the former Senator, who is now the Cabinet Secretary, used to sit. They made a wise choice considering that this is an energetic young man who will definitely work hard and assist them. I also thank the former Senator for Kericho who was eloquent and useful to this House. I wish him the best as he continues to carry out the functions of a Cabinet Secretary in the Ministry.

I am glad that the RBC has nominated Sen. Cheruiyot to the Committee on Information and Technology. I was a Member of the Committee and know that it has a huge impact on how our country is being run. There are important projects that are going on in the country at the moment, including the Last Mile Fibre Optic Cable Installation Project. The Senate Committee on Information and Technology has played a significant role in guiding this process. There is also the Last Mile Project which has to do with connection of electricity to all parts of the country, which this Committee has a role to play. We are now roping in the Kenya Power Company to play a part in the Last Mile Fiber Optic Cable Installation Project. I am sure that the young Senator from Kericho will make a significant contribution in this Committee as he continues to play his role.

Lastly, I thank the RBC for nominating me to be the Chair of the Sessional Committee on Devolved Government. It is a responsibility that I have taken with gusto, as the Senator for West Pokot said. I have brought several statements to this House. With all due respect to the previous Chairman, the Senator for Elgeyo - Marakwet, we have held a significant number of meetings in the last few weeks, which is almost equivalent to the meetings that were held some several months before. We will try hard to get quorum. We also have the former Chairman in the Committee and I am sure he will give us some guidance.

Mr. Temporary Speaker, Sir, I want to thank and commend all the Members of the Senate who have been given responsibilities in the various Committees. I know that they are all able to perform all the activities that the Committee requires them to do, including attending the various sessions of the Committee. Most of the Senators here are intelligent, experienced and will make significant contributions.

I support this Motion and wish every Senator who has been given a responsibility to make a contribution to the country the best as they continue to do so.

*(Question put and agreed to)*

## **COMMITTEE OF THE WHOLE**

THE UNIVERSITIES (AMENDMENT) BILL  
(SENATE BILL NO. 31 OF 2014)

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

THE COUNTY HALL OF FAME BILL  
(SENATE BILL NO. 33 OF 2014)

THE COUNTY GOVERNMENTS DISASTER MANAGEMENT  
BILL (SENATE BILL NO. 40 OF 2014)

THE PETITION TO COUNTY ASSEMBLIES (PROCEDURE)  
BILL (SENATE BILL NO. 35 OF 2014)

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

*(Committee of the Whole deferred)*

*Second reading*

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

*(Bill deferred)*

**MOTION**

APPOINTMENT OF SENATORS TO 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, 15th 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 23rd 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-

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- (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 23rd September, 2015 which report was adopted by the Senate on 21st 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 21st 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.

*(Motion deferred)*

*Second Readings*

THE ORDER OF PRECEDENCE AND TITLES BILL  
(NATIONAL ASSEMBLY BILL NO. 11 OF 2014)

THE MICRO AND SMALL ENTERPRISES (AMENDMENT)  
BILL (SENATE BILL NO. 12 OF 2015)

THE NATIONAL HOSPITAL INSURANCE FUND

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(AMENDMENT) BILL (SENATE BILL NO. 9 OF 2015)

THE PERSONS WITH DISABILITIES (AMENDMENT) BILL  
(NATIONAL ASSEMBLY BILL NO.43 OF 2013)

*(Bills deferred)*

### MOTION

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

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

THAT, pursuant to Standing Order No. 28 (3), the Senate do adjourn until Tuesday, 12<sup>th</sup> April 2016.

If you remember, last week we altered the calendar. We should have adjourned last week, but we altered the calendar to enable us to attend the State of the Nation Address by the President tomorrow. Instead of going on recess and come back mid week, we decided to postpone the recess. Recess is an important part of our calendar because it gives us the opportunity to concentrate on Committee work, visit and consult our constituents. We now have a chance to go back to our constituents and consult and finish pending Committee work which could not have been done during the week because of plenary sessions.

I ask Members to approve this Motion to enable us to do this important responsibility. I look forward to the President's address tomorrow, as a way of updating us on what the Executive has done in the last one year and their plans for the next one year on matters of values and principles, security and all other matters that are important for the running of the affairs of this State. Therefore, tomorrow is an important day.

Our colleagues who have been romoured to have a partisan affair on State of the Nation Address, should change because it is not a party affair. People forget the Presidency is a symbol of unity of the State. The President is everybody's responsibility, whether you voted for him or not. He serves every part of the country whether you believe or agree with him or not. The State of the Nation Address emanates from the United States of America (USA) tradition and philosophy from what leaders like Abraham Lincoln established on updating the country on the State of the Union. Remember that USA was federated; they were 50 different countries, but they agreed to come together to form a federation and federal state. Therefore, every year, the President updates the country on how that State is doing. It is called State of the Union Address. He updates the country on how the Union is doing and what they have done to perfect it.

Mr. Temporary Speaker, Sir, we have devolved ourselves to various 47 counties. It is only the President of the Republic of Kenya who updates us on the state of the nation. We may not agree with him on his address, but he has to update us. Probably that is why we come back here to debate once we have the State of the Nation Address. It

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enables us to debate on the things we agree with the President and those that we do not agree with him. That then forms policy positions for us to go forward. It is a very important parliamentary session for both Houses of Parliament. I hope that each and every one of us will behave tomorrow in a manner that presents the dignity of this House and of Parliament in a way that communicates that we are mature leaders. We have played ping pong for the last three years with the politics of “us versus them.” However, we need to go back to our senses as leaders and ask ourselves whether this is what we want our people to look at us as being.

It is a matter of fact that not all of us will be elected next year, either by choice or some of us will decide not to run for any seat. Some of us will try, but will lose, not because they are incompetent, but because sometimes we cannot understand voters. Some of us will even lose by virtue of the political party that we will vie on. For instance, I do not expect Sen. M. Kajwang to vie in Homa Bay County on a Jubilee coalition ticket and succeed. That is a fact. He is my friend, but I would never even advise him to run on a Jubilee ticket because I know that the constituents of Homa Bay County would definitely want to elect someone who is in the CORD coalition.

Therefore, there are certain practical decisions that if he attempted to vie on a Jubilee coalition ticket, he may not come back here. However, that does not mean that he is not qualified. We have seen his quality of debate and his intelligentsia. He is a man of moderate temperament who is capable of engaging with other people. However, should he take a moderation to try and prove a point with the voters, who may not like the direction that he takes, he may lose.

Mr. Temporary Speaker, Sir, the point that I am trying to make is that let us change course and say that in this one year, we would like to project our image as leaders so that people know we have the capacity to sit and discuss things that are beneficial for our country.

I know that the Senate Minority Leader is planning to launch his presidential ambitions this weekend and I support him on that. I may not be in his political party, but I wish him well. Our children dream of being Presidents of this country one day. I suppose that when Sen. Wetangula was a young boy, he used to dream that he would be the President of Kenya. I do not know the reality, but it is always good to attempt even if you will not succeed. It is good to aim at the stars and even land on the moon.

I would like to ask Sen. M. Kajwang and Members of the ODM party to give the Senate Minority Leader space to do his political launching this weekend. He has invited all of us in this House. He wrote a letter to each and every one of us which I thought was a measure of civility. Therefore, if I will have time this weekend, I will be in Kakamega County. I hope that the Senator for Kakamega County will not use that opportunity to disrupt the function of the Senate Minority Leader by carrying out any other gymnastics related to pursuit of political office.

**The Temporary Speaker** (Sen. Mositet): Order, Senator.

**Sen. Murkomen:** Mr. Temporary Speaker, Sir, I am just talking about things which will happen over this recess. It is a very important function.

**The Temporary Speaker** (Sen. Mositet): They have not happened so you cannot--

**Sen. Murkomen:** Mr. Temporary Speaker, Sir, the Senate Minority Leader is a senior person.

**The Temporary Speaker** (Sen. Mositet): You cannot anticipate chaos. Order, Senator!

**Sen. Murkomen:** Mr. Temporary Speaker, Sir, I have not talked about chaos. I just talked about his usual gymnastics of bull fighting, twisting and turning of legs. He should allow that session---

**The Temporary Speaker** (Sen. Mositet): Senator, you cannot continue to talk about another Senator who is not here. So, you are completely out of order!

**Sen. Murkomen:** Mr. Temporary Speaker, Sir, when I was not here earlier--

**The Temporary Speaker** (Sen. Mositet): Stick to the Motion, Sen. Murkomen!

**Sen. Murkomen:** Mr. Temporary Speaker, Sir, he spoke about me when I was not here and I did not take offence.

**The Temporary Speaker** (Sen. Mositet): Senator, I will not allow this to happen. Stick to the Motion!

**Sen. Murkomen:** Mr. Temporary Speaker, Sir, how I wish you were the Speaker then.

In conclusion, that function, the presidential launch being one of the watershed moments of this recess, I have extended my invitation to the Senate Minority Leader, that should it become impossible for him to hold his function in Kakamega, Iten is available. For purpose of national unity, he can launch his presidential ambitions in Iten. He can even join Jubilee. We welcome him to be part and parcel of those who will pursue their ambitions in Jubilee as a team member because we respect leaders.

Therefore, I thank you and wish everyone a wonderful recess. I hope that it will re-energize us when we come back to continue with the business of the House.

With those remarks, I beg to move. This is a Motion not to be seconded but let me give the chance to Sen. M. Kajwang to second.

**Sen. M. Kajwang:** Mr. Temporary Speaker, Sir, I will be very brief considering the time and that my colleagues might also want to say something. I second this Motion that we do adjourn until Tuesday, 12<sup>th</sup> April, 2016.

As I second this Motion, I wish to inform the Mover, that the CORD Coalition is full of star players just like the team called FC Barcelona. Whereas you will have Messi as your main striker, you still have other players like Neymar and that gentleman who bites others - sometimes I forget his name.

**An hon. Senator:** Suarez.

**Sen. M. Kajwang:** Yes, like Suarez. So, there is no shortage of talent in the CORD Coalition. We support our co-principal, Sen. Wetangula, in his bid to become the President of this nation.

If you want to marry a young lady, she will not get married to you if you do not declare your interest. You cannot continue winking in the dark expecting that she will see you and be interested in you. That is the same thing with our co-principal and the Senate Minority Leader. It is his right to declare his interest; that he wants this young lady called Kenya. He wants to run this nation called Kenya. If he measures up against the Messi,

Neymar and the Suarez within “FC CORD” then, we, members of CORD, even members of Jubilee and the nation as a whole will judge him well and give him that opportunity.

Therefore, the meeting on 2<sup>nd</sup> April, 2016 is open to all. I will be there extolling the virtues of the key strikers that we have in the CORD Coalition.

Mr. Temporary Speaker, Sir, on the issue of adjournment, as Senators, we have a lot of business to do. We will be focusing on coming up with rules and work-plans for the monitoring and evaluation fund. Even though it had been raised earlier, we have seen that even our employees are expected to be trained during this short recess. We hope that by the time we come back to the Senate, the funds that have been earmarked to facilitate our monitoring and evaluation shall be ready.

There are those of us who have not settled down in their offices. When we went back to the Kenyatta International Convention Centre (KICC), we were kicked out. About 20 Senators have been affected. We will use this recess to settle down and find adequate offices that befit the status of a Senator of the Republic of Kenya.

Mr. Temporary Speaker, Sir, we will get feedback from the Parliamentary Service Commission on some of the issues that Senators had raised to ensure their comfort in their new domain.

Finally, with regard to the State of The Nation Address expected tomorrow, the President is expected to deliver it as the Head of State. He is a symbol of national unity and he unifies all of us. As a Head of State, we owe him respect and we also owe the electorate an opportunity to be heard through the representatives so that we can objectively analyse and take back the message to the people. However, the role of the Head of State sometimes has a thin line between the Head of State and Head of Government. I hope the President while talking about the state of the nation will not address the state of the Jubilee Coalition but about the state of the nation and the project called Kenya.

Mr. Temporary Speaker, Sir, if you look at the debate that was there on Saturday, when one economist David Ndii mentioned that Project Kenya is dead, and that we should seek a divorce so that the different communities and tribes can go their way--- There are those people who feel that the union is extremely bad and that we should divorce. There are those who believe that it is good, while some of us feel it is bad though it can be salvaged.

I hope that when we listen to the Address tomorrow - personally I will be respectful because the President is the Head of State - it will be confined to the national values as enshrined in Article 10 of the Constitution. I pray that it will not be another public relations exercise to sanitise or to launder the fortunes of a political movement which seems to be destined for failure in the 2017 elections.

With those many remarks, I second the Motion.

*(Question proposed)*

**Sen. Elachi:** Thank you Mr. Temporary Speaker, Sir. I support this Motion and I thank the Senators because we have worked together and finalized some critical Bills. However, we still have a lot pending that we have to work on.

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As we await the Address by the President tomorrow, we should look at things differently. We should not forget that at the end of the day, when we fall sick, a doctor does not question whether our blood is from a particular tribe. When I enter a hospital, I expect any Kenyan to save my life. I have never heard a *boda boda* rider ask my tribe.

Unless we go back and avoid tribalism, we will burn our country. Our country is going down not because of the elite class that continues to safeguard its own but the political class that tampers with the system. If we do not change, we will burn our country. The political class must critically look at this country.

Mr. Temporary Speaker, Sir, I looked at the article by David Ndi and it is unfortunate that he talked that way. He is forgetting that Kakamega County, for example, cannot employ six million children by 2022. They will need something from the national cake. There are counties that are still struggling.

If Turkana County is in debt yet they draw the highest from the devolved funds and the Constituencies Development Fund (CDF), then what is happening? How can such a county have challenges like the ones being experienced now?

Mr. Temporary Speaker, Sir, as we move on, we must remember that we have one Head of State. We always go to church and I hope we do not go attend church services for granted. I request the Members from Coalition for Reforms and Democracy (CORD) party to take God seriously. This is because He answers prayers and He will answer their prayers. Their wish is to be in Government but if they do it the right way and pray to God who gives and anoints, they would not have sunk on the platform in Malindi. Instead, God would have raised them. Therefore, they need to learn. If you are a leader, you should reflect on some of these things and ask yourself what happened or what you said that was very wrong that you had to go down at that moment when you were just talking about God.

God lifts you at the time when you need Him most. For me, that is one statement they should reflect on. If they are leaders who believe that a country is run by God---. Even my President himself knows very well he is on the throne because of God but not because of his wish or will. He has to continue humbling himself that people in this country must live and stand together under his leadership. Therefore, even if he goes back to Israel, he should go back to the “Wailing Wall” or wherever he chooses to go to pray to God for the sake of this country. It is more precious than any of us; it belongs to the generations we want to bring up.

With those few remarks, I beg to support.

**The Temporary Speaker** (Sen. Mositet): Very well, Sen. Elachi. However, on the other hand since I am a civil or structural engineer, I would say that maybe they should have been consulted to know whether the forces were more than the platform itself.

**Sen. (Prof.) Lonyangapuo:** Mr. Temporary Speaker, Sir, I also rise to support this Motion for Adjournment. Although the recess is short, it is worth taking so that we can visit our counties. You will hear very many things in the counties like I have already read in the digital version of newspapers. County governors are now saying that there is no need for them to go to nomination for political parties tickets. Instead, they want a direct ticket. I do not know whether Sen. Elachi is hearing this.

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We are telling Members on this side that we want parties that formed the Jubilee Coalition to remain as they were. These are the National Alliance Party (TNA), the United Republican Party (URP), the Kenya African National Union (KANU) and all the others making a total of 12. I hope Sen. Cheruiyot has entered into agreement with the Jubilee Coalition to join a new one called the Jubilee Alliance Party (JAP) but I am not sure of that. If he has, then he is one of us. We want to go and find out what governors mean when they say they want to be given direct nomination. Could there be something we do not know and they want to buy their way out?

Mr. Temporary Speaker, Sir, we will have a very important function tomorrow.

**The Temporary Speaker** (Sen. Mositet): Sen. (Prof.) Lonyangapuo, I just want to remind you that governors are also on record talking of *Mashinani* Party. Maybe it is their party.

**Sen. (Prof.) Lonyangapuo:** You are right. If it is the one, that is good riddance. They can move to that one and we remain in ours.

Mr. Temporary Speaker, Sir, the Head of State will tomorrow give the State of the Nation Address. We know there have been challenges. One key challenge from the region I come from, the North Rift and Rift Valley in general is the provision of fertilizer for farmers. It is a big challenge and I hope he will also talk about it. I hope that the relevant Ministries and officers handling this matter will fast-track the distribution of fertilizers to farmers. The rains have deliberately delayed - maybe, because of the mercy of God - to ensure that farmers have fertilizer in time.

Lastly, during the recess, we will have time to do our oversight work. I am hoping that our colleagues in the National Assembly have raised the issue of the little facilitation that will be required as oversight funds, so that it will be easy for Senators to traverse their counties. Some people like Sen. Munyes might need a helicopter. I do not know where he will get money from because the county is so vast that you may not even move around.

I support.

**Sen. Chelule:** Thank you, Mr. Temporary Speaker, Sir, for giving me this opportunity to contribute on the same. My earlier request to contribute was about the appointment by the Rules and Business Committee of our new Senator, Sen. Cheruiyot. Nonetheless, I support the Motion on Adjournment.

**The Temporary Speaker** (Sen. Mositet): Senator, by that time, I had not noticed that you are on Temporary One. It is not that there was an oversight.

**Sen. Chelule:** Mr. Temporary Speaker, Sir, it is okay. I also support the Motion of Adjournment and this is because the 10 or 12 days that we will be out of this House will give us time to also meet with the people at the county level. I know it will be best for Sen. Cheruiyot to even go back to his county of Kericho to maybe appreciate the people for electing him in the by-elections. I also take this opportunity to thank the people of Kericho County for giving opportunity to this young Senator. I know you are aware of his powerful slogan. It is so powerful and I believe that he has been appointed to powerful Committees. I know he has the capacity to render services to the people of Kericho County.

For the 10 days that we will be away, it will also be our time, as Senators, to look into the regulations of the Oversight Fund on how we will use the funds that we were allocated for oversight matters to our various counties. We will also have time with those who are going to be trained so that we shall do our oversight role successfully at the counties. It will also be our time to energize so that when we come back, we shall be full of energy to contribute actively in this House.

With those few remarks, I support.

**Sen. (Prof.) Lesan:** Mr. Temporary Speaker, Sir, I also rise to support this adjournment Motion. As I support, last night, I had great experience listening to the Deputy President addressing and answering questions from the public with regard to the state of the performance of the Government so far. As we traverse the country, at the moment, there are many questions which the public needs answered.

I commend the Deputy President for having a town hall meeting where questions were fired directly to him and he answered them and perhaps allayed some of the fears that the public had by directly hearing from the horse's mouth.

I hope that, as Senators, let us go out and avail ourselves to the public and answer questions directly from them. This is because these questions are very important and timely and require timely answers.

I also wish that the leaders on the other side of the House and other parties could also sit somewhere and expect to be asked questions. I thought the Town Hall kind of answers which I saw yesterday were not fraught with any risks. You do not stand on a shabbily made dais that is likely to go down. You sit nicely on a chair in front of a microphone and answer questions. Of course, daises go down. As you said, we need to look at the engineering that was used in constructing these daises. However, some things are of divine intervention and there might be other reasons why they go down other than engineering construction.

Mr. Temporary Speaker, Sir, as we wait for the---

**Temporary Speaker** (Sen. Mositet): Senator, maybe you could qualify it by saying that that is why they were never injured.

**Sen. (Prof.) Lesan:** Thank you Mr. Temporary Speaker, Sir, for assisting me. I said divine intervention because with divine intervention, very good things do happen. The good thing that happened was that there were no injuries among the people who fell from the dais.

As we wait for the President's Speech tomorrow, I hope that he is going to talk about food security. I am sure he is also going to touch on areas of commercial enterprises by the farming communities in this country. In the last few days, there have been a lot of subsidized fertilizers which have been distributed to farmers but I do hope the President will also say that some of these fertilizers go to tea growing areas where farmers expect that their efforts will be subsidized by provision of subsidized fertilizer. I look forward to this and I am sure it is an important activity if these farmers get some assistance because this is a dollar earning activity as tea is a major export for this country.

Mr. Temporary Speaker, Sir, as we go back to our counties, we know of the concerns that every Senator in this House has. This is wastage, misuse of privilege and abuse of resources that we send to the counties. As you are aware, this is of big concern

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and we do hope that as we continue to oversight what goes on in the counties, this should not be looked at as interference. This is our responsibility and it is provided for in the Constitution. I am sure every Senator here is brave, willing and strong enough to know that it is our responsibility and we are going to do it.

Mr. Temporary Speaker, Sir, the resources we send to the counties are not free gifts. They are resources that are sent to the counties to assist and alleviate the difficult situation that most of the citizens are having in the country. I know some counties have difficulties one of them being my county; Bomet County. Currently as it is, it is hazardous for people to work in Bomet.

This morning, quite a number of CECs and those working for Bomet County were summarily sacked for frivolous reasons. These reasons are not adequate to sack a very hard working civil servant just because you differ in terms of ideas and opinions that they present.

We do hope that civil servants in counties will be given space to work using their energy and their---

**Temporary Speaker** (Sen. Mositet): Sen. (Prof.) Lesan, I want to step you down so that we can allow Sen. Cheruiyot to also contribute.

**Sen. (Prof.) Lesan:** With that Mr. Temporary Speaker, Sir, I want to say that we look forward to a very useful period.

**Sen. Cheruiyot:** Thank you Mr. Temporary Speaker, Sir, for this chance. I rise to support this Motion of Adjournment. In the interest of time, I do not think I will be able to give out all my thoughts but I just want to laud the efforts of my colleague, Sen. M. Kajwang, who despite playing from a separate team from mine, has said that he looks forward to walking to the Chamber tomorrow to listen to the President as the Head of State.

Mr. Temporary Speaker, Sir, it is a great statement and it speaks more of the kind of leadership that we want for this country where the politics of us versus them does not take centre stage especially when we have national issues as the one that will be addressed tomorrow. Due to the interest of time, let me leave at that.

Thank you.

**Temporary Speaker** (Sen. Mositet): Hon. Senators, note that there will be a joint sitting tomorrow, Thursday 31<sup>st</sup> March, 2016 at 2.30 p.m., in the National Assembly Chamber where the Head of State will address the two joint Houses together. Let us inform our colleagues who are not aware so that all of us can attend. It is a moment where the whole nation is supposed to reflect and listen to the unifying factor of this country.

## ADJOURNMENT

Hon. Senators, it is time to adjourn the Senate. Therefore, the Senate stands adjourned until Tuesday 12<sup>th</sup> April, 2016, at 2.30 p.m.

The Senate rose at 6.30 p.m.

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