

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Thursday, 20th February, 2020

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

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

PRAYER

PETITION

COMPENSATION FOR VICTIMS OF HUMAN-WILDLIFE CONFLICT IN LAMU COUNTY

The Speaker (Hon. Lusaka): We have a request from the Petitioner to defer the Petition to next week. That was the request of the Senator. So, it is deferred to next week.

(Petition deferred)

Next Order.

NOTICE OF MOTION

The Speaker (Hon. Lusaka): Proceed, Sen. Halake. Seemingly, she is not here.

(Sen. Halake walked into the Chamber)

Proceed, Sen. Halake.

NOTING OF REPORT ON THE 50TH CPA AFRICA REGION CONFERENCE

Sen. Halake: Mr. Speaker, Sir, I beg to give notice of the following Motion-
THAT the Senate notes the Report of the Parliament of Kenya Delegation to the 50th Commonwealth Parliamentary Association (CPA) Africa Region Conference held in Zanzibar, Tanzania, from 30th August to 5th September, 2019, laid on the Table on 27th November, 2019.

The Speaker (Hon. Lusaka): Next Order.

STATEMENTS

The Speaker (Hon. Lusaka): Chairperson of the Standing Committee on Agriculture, Livestock and Fisheries, give a report on the Statement on locust invasion.

LOCUST INVASION IN VARIOUS PARTS
OF THE COUNTRY

Sen. Ndwiga: Thank you, Mr. Speaker, Sir. Of late, there has been an outcry in this country because we have a disaster in the name of desert locusts.

Noting that the locust invasion is a matter of national importance threatening food security in the country, the Speaker directed that the Cabinet Secretary for Agriculture, Livestock and Fisheries be invited to a meeting of the Standing Committee on Agriculture, Livestock and Fisheries, to which all Senators were invited, to address the matter on Thursday, February, 2020 at 9.00 a.m.

This morning, the Committee received correspondence from the Ministry requesting for postponement of the meeting with the Committee. The Committee is rather disappointed because the locusts continue to spread to more counties, leaving a wake destruction of great proportions in the fields.

Mr. Speaker, Sir, it is important for this House to note that this is not the first time this Committee is handling the issue of locusts. In the Third Session, the Committee handled a Statement that was sought by Sen. (Prof.) Imana Ekal on locust invasion in Turkana County.

The Ministry of Agriculture, Livestock and Fisheries attended a meeting of the Committee held on 13th June, 2019, where it emerged that the Government was ill-prepared for locusts' invasions in the country. At the meeting, it emerged that there existed no early warning mechanisms to warn locals and mitigate against the effects of such invasions.

Mr. Speaker, Sir, the Desert Locust Control Organization for Eastern Africa has six aircrafts, three of which were operational. During the time of the invasion in Turkana, the planes were in Ethiopia and Tanzania on locusts' control. Hence, the response in Kenya was slow. The amount of pesticides assigned to Turkana County to fight the locusts' invasion was too little to have any meaningful effects on the swarms. Noting that the Ministry was ill-prepared to handle locust invasions, the Committee resolved and directing the Ministry to develop a plan going forward to prevent the locust invasions in future.

The Committee invited the Ministry on 6th August, 2019 and 15th October, 2019. On both occasions, the Ministry failed to appear before it.

We wish to record the Committee's disappointment at what we consider as flagrant disregard of public duty by the Cabinet Secretary (CS). We also wish to remind the CS of the oath or solemn affirmation that he took, which in part states:

"I will work and truly serve the people of the Republic of Kenya in the office of a Cabinet Secretary. That I undertake to hold my office as a CS with honour and dignity, and that I will be a true and faithful counselor to the President for the good management of the public affairs of the Republic".

The Committee now urges the CS to remain true to the oath and directs that he appears before it on Monday 26th February, 2020.

Mr. Speaker, Sir, the Committee has been frustrated by the Ministry on issues to do with locusts, which emerged last year before the current invasion. We have been following with the Ministry since last year. It is apparent that the Ministry has nothing, by way of preparedness, to mitigate the invasion that Kenyans are witnessing at the moment.

At a time when food security is part of the Big Four Agenda, it is sad that this country, after going through devastating floods, has been invaded by locusts. This portrays a blink future in food security for this country. It is extremely sad that this House afforded the CS for Agriculture, Livestock and Fisheries an opportunity to tell Kenyans what is happening or give us hope that something is being done or what will happen after this invasion, but he did not show up. This Committee and the House will not take this kind of behaviour lightly.

Mr. Speaker, Sir, agriculture is a devolved function. So, it is squarely a matter of this House. When we ask the CS for Agriculture, Livestock and Fisheries to appear before the House, he must do that. That is the situation.

Sen. Khaniri: Mr. Speaker, Sir, clearly, the CS for Agriculture, Livestock and Fisheries, and by extension this Government, is not taking this matter of locusts seriously.

The Deputy Speaker, while in the Chair, gave orders that the CS appears before this House today morning. I hear that the reason the PS gave for the CS not to have appeared is that he was attending a Sub-cabinet Committee preparing for the Summit. I wonder whether we have our priorities upside down. This is a serious matter that started with three counties and has now escalated. I am also told that Vihiga and the entire Western Province is not safe because the locusts have come closer home.

It is clear that the level of preparedness of this Government is wanting. The CS is buying time on this matter, and yet, we have no time to lose. This is a situation that has a potential of causing famine to the entire Republic. Therefore, I request you to invoke the provisions of Article 125 of the Constitution to summon the CS to appear before the Committee on Agriculture, Livestock and Fisheries on Monday as requested by the Chairperson of the Committee, so that all Senators can be invited to that session.

Sen. Dullo: Thank you, Mr. Speaker, Sir. I wish to join my colleagues in commenting on this Statement. It is serious for a Chairperson of a Committee to stand before us and appear helpless.

It looks like your orders are nothing to some people in the Government. The issue of locusts is a disaster in this country. However, it looks like people are not bothered. It started with a few of our counties, but as of yesterday, 20 counties are affected. We are always complaining about drought, disasters and all that, but this is also another disaster and two months down the line, we will have famine in the country.

For some of us who come from pastoralists communities, right now, our animals do not have anywhere to graze. Members of the public are using crude methods to chase away these locusts, when we have Government machineries in place and funds that can assist communities. This is serious.

I urge you not to wait for Monday. Can the CS appear before this Committee tomorrow? This is a serious matter.

(Applause)

The Senate Minority Leader (Sen. Orengo): Mr. Speaker, Sir, locusts or no locusts, there is a constitutional duty on CSs to appear before Parliament or its Committees. It is about time we demonstrated whether the Constitution is supreme or CSs are supreme to the Constitution. Senators and Members of the National Assembly are the elected representative of the people of Kenya who are sovereign. So, when a CS defies a requirement of the House to appear, that is a gross constitutional violation.

In fact, if there was any reason upon which a CS can be sanctioned, the most serious sanctions would emanate from a violation of the Constitution of the Republic of Kenya. This provision in the Constitution does not give the CS any discretion or alternative. It says that a CS shall attend when required, not just by the Senate but also its Committees, and not when he or she wishes.

I have not seen any provision under the Constitution where the CS can elect to tell the Senate that he or she is going for another meeting. There cannot be a more important meeting than a meeting of the Senate or its Committees requiring the CS to attend.

This issue of locust is an emergency. It means that if Kenya is at war and we require a CS to come and appear, because we have powers of sanctioning whether we can go to war or not, our CS can elect to come or not. So, this is an exceptional case because the locusts are not waiting. They are already in Muhoroni and when they come to hit Siaya County, they will pass through Vihiga County. I know their flight path.

(Laughter)

Mr. Speaker, Sir, without fear or favour, that CS must be summoned to appear before the Committee tomorrow. If it goes beyond that, it means that we are also trying to maneuver to accommodate him in circumstances where there is an emergency. So, I call upon you to direct that the CS appears.

The other day when impeachment proceedings were going on in the Senate, the Serjeant-at-Arms was saying, 'oye! oye! the Senate is called into the sitting,' and all Members are required to be quiet under sanction of imprisonment. So, if the CS does not come, then consequences must follow.

One of the things that they have learnt is that the Senate will not do anything whatever the violation, however serious it is. So, let this one not go because that Cabinet Secretary must appear before the Committee, so that the people of Kenya can hear from the floor of the Committee what is going on and what the Government is doing about it.

Thank you, Mr. Speaker, Sir.

The Senate Majority Leader (Sen. Murkomen): Mr. Speaker, Sir, the authority of this House is being put to the test. It is not just this House, but your position as the Speaker as well. The Speaker issued orders, which under Article 125 of the Constitution, should lead to summons being issued. I know that the Senate Minority Leader has said that you should require the Cabinet Secretary to come here. Your orders have been defied using a letter that is not even signed by the Cabinet Secretary, but by a Principal Secretary.

There is no more urgent issue at the moment in the Ministry of Agriculture, Livestock and Fisheries than the invasion of locusts. In fact, when you talk about the national interest, even as a country, this is the most urgent business that must concern all of us. The locusts are feasting on mangoes in Kerio Valley in Elgeyo-Marakwet, where I come from. They are clearing vegetation that is meant for livestock. They are clearing forests. We cannot just sit here and say that the Cabinet Secretary can choose when to come to the Senate and when not to.

Another Communication from the Chair should assure this House that you will not send another invitation to the Cabinet Secretary. Instead, you will issue summons. Those summons should be served on him. He is a lawyer and knows what is supposed to be done. On Monday, at 8.00 a.m., we want the Cabinet Secretary to be here to answer questions regarding locusts.

I looked at that video again and again, and I know he might think that it is a joke and that the locusts will die. There are yellow locusts in Elgeyo-Marakwet and they are finishing our vegetation; they are not dying. So, we cannot waste time and wait for the Cabinet Secretary; and hope that the locusts might eventually die. We have been mistreated as Parliament and I want to say it in Kiswahili that there is a lot of *madharau!* We are being despised as a House and the people of Kenya are being despised. Show your teeth and bite! You need to bite!

(Laughter)

We cannot just sit here and talk about this all the time. Do something today.

Thank you, Mr. Speaker, Sir.

The Speaker (Hon. Lusaka): I can assure you that I am a servant of this House and I will do what the House wants.

Sen. Wambua: Thank you, Mr. Speaker, Sir. When I was preparing to come for the morning session with the Cabinet Secretary (CS), I had received information that he had dispatched two Principal Secretaries to represent him.

By the time I was getting into the Chamber, I saw a letter saying that he was not going to attend and the Principal Secretaries would also not attend the session. The reason given was that the CS was attending a committee meeting of the Cabinet to prepare for a summit. What a shame that as the country suffers a serious invasion of locusts, a matter that is actually a threat to the existence of our people, the person who is supposed to give direction and guidance is seated in a meeting to discuss a summit.

When I made that Statement last week - that is when I prepared it - very few counties were suffering this menace. As we speak today, I am told that the latest invasion is happening in Kericho County, and nobody knows where these locusts are heading to. When the Senator of Samburu stands on the Floor of the House and says that in Samburu County there are 34 swarms of locusts and the Food and Agriculture Organization (FAO) has confirmed that one swarm in one day consumes food that would be consumed by 35,000 people. This is a disaster! I would dare say that as a leader and a citizen of this country, I feel so bad that the President of the Republic of Kenya has not issued a Statement on this matter.

(Applause)

It is a terrible thing. I want to ask you, as I join my colleagues, that the Cabinet Secretary, Hon. Munya, can buy time if he wants to do so. However, whatever he does, he must know that this is not about him, but this country. This is not about the Ministry of Agriculture, Livestock and Fisheries; it is about our people, it is about all of us.

The least that I would have expected the Cabinet Secretary and the Government to do is to facilitate local manufacturers of pesticides to manufacture pesticides to deal with and combat the spread of locusts. Instead, they are telling us that they are negotiating with Japan to import pesticides. This is a shame for this Government. It is a shame for the leadership.

I join my colleagues in asking you to provide leadership and direction to this country and this Senate on this matter.

Thank you, Mr. Speaker, Sir.

(Applause)

The Speaker (Hon. Lusaka): I see a lot of interest in the matter and so, to those that I will give opportunity to contribute, I limit you to five minutes.

Sen. (Rev.) Waqo: Thank you, Mr. Speaker, Sir, for allowing me to add my voice to this very important Statement.

I am a Member of the Committee on Agriculture, Livestock and Fisheries, and we were fully prepared for this meeting where the entire Senate was to attend. It is unfortunate that the Ministry of Agriculture, Livestock and Fisheries has mistreated and mishandled our invitation to this House.

The issue of locusts is a serious one. Marsabit County has suffered this scourge for about three times now. This is because immediately after North Eastern, the locusts invaded Marsabit County and we were hit very hard. Marsabit is surrounded by a desert and Marsabit town is the only area that feeds the entire region. Unfortunately, we have lost a lot of food. Our animals have nothing to feed on. Our people have no hope anymore, and the Government has neglected them. This is not only the case in Marsabit, but the entire nation is now suffering.

What the Cabinet Secretary and the entire Ministry did is unheard of. We cannot tolerate it because we are here to serve our people. If they have no respect for the Senate, what then happens to the common *mwananchi* on the ground? Our people on the ground have cried. They have tried to send messages to them and get their attention, but the Ministry is not responding.

Yesterday, we talked about the Corona Virus, and the other day, we were talking about other things. Today we are also crying. It is like we are becoming a House of lamentation and the entire nation is lamenting. Our economy is bad and we are crying over everything. It is high time that the Senate together with the Government stood up and said enough is enough; we cannot cry anymore. We need to act.

I support this Statement and let us make sure that the Cabinet Secretary appears before this House as soon as tomorrow, because Monday is a bit far. I understand that these locusts could be here today, and in a few hours, they could be somewhere else.

Even after one lot goes, others will still come. We cannot continue watching our people suffering on the ground.

Let us summon the Cabinet Secretary (CS) to appear before this House as soon as tomorrow morning.

Thank you. Mr. Speaker, Sir.

Sen. Pareno: Thank you, Mr. Speaker, Sir. I will not want to believe that the CS, hon. Munya, who was my classmate at the university, is a person who would defy the Senate. I would want to believe that he would not want to defy what we---

(An hon. Senator spoke off record)

Yes, that is what I am saying. I would be really surprised to see my classmate, the CS, hon. Peter Munya, defying the directions of the Senate, knowing how serious the issue of locusts is.

Mr. Speaker, Sir, I have just read on 411 that the National Treasury Principal Secretary (PS) says that the Ministry of Health has requested for Kshs 1.8 billion to set up a Corona Virus quarantine facility in the country. That says a lot about our country. You wait for several months and years while there is such a threat as the Corona Virus and locusts, and then act too little too late in the day.

Mr. Speaker, Sir, they must take this threat seriously. It speaks a lot about our country; not talking about the locusts or the Corona Virus until the disaster strikes, and then we wake up. This is so serious that the Cabinet Secretary has to be summoned to appear before this House. We hope that he will not take this House for granted.

Sen. Zawadi: Asante sana, Bw. Spika. Naungana na wenzangu katika mjadala ulioko mbele yetu, kwamba Waziri aje hapa ili tuzungumze naye ama tumuulize maswali kuhusu nini anachokipanga kuhusu watu wetu.

Bw. Spika, kuna matamshi mengine ambayo mtu akiyatamka, anavunja watu mioyo. Mfano ni kusema kwamba hao nziye wamegeuka rangi ya dhahabu ama samawati na kwa hivyo watakufa. Kwa mfano, kuna Maseneta wanawake na wanaume. Watoto wenu wadogo wanawaona kama ‘mungu’ wao. Hata wakipigwa na mtu au hata wakitukanwa, wanasema: “Baba akija---” Anajua baba yake hawezi kufanya kitu, lakini baba yake kwake ni ‘mungu’ wake; anaamini kuwa anaweza kila kitu.

Sasa sisi na wananchi tunamtegemea Waziri wetu kama baba anayeweza kila kitu. Lakini sasa akijitokezea na kuzungumza maneno aliyozungumza, ni kumaanisha kwamba huyu baba hawezi kutegemewa na inavunja mioyo vibaya sana. Hata kama naweza kufa kesho, ukinitia moyo na kuniambia, “mimi naona hufi, hata mimi nilikuwa hivi na nikapona,” unanipa maneno ya faraja. Lakini huyu anavunja moyo na kutuonyesha kwamba hana la kufanya kuhusu hawa nziye.

Bw. Spika, una jambo la kufanya. Mahali ilipofika sasa, sio jambo la mchezo tena. Hii ni kwa sababu mwaka uliopita, Mwenyezi Mungu alitujalia mvua na tukapata vyakula vingi sana. Lakini sasa, tumerudi pale pale kwa kulia. Vijana wetu hawana kazi, kuna athari ya *Corona Virus* na kuna ukosefu wa chakula. Sasa tutatua shida ipi na kuacha ipi? Huu ni mchanganyiko moja kwa moja. Biblia inasema, “watu wangu wanaangamia kwa kukosa maarifa.”

Waziri anafaa aja ili tuzungumze naye na atuambie ni nini anapanga kuhusu watu wetu ambao mashamba yao yamevamiwa. Ni vipi watapata chakula na hao nzige ambao anasema wakiwa rangi ya manjano wanakufa--- Ninavyojua mimi, hao nzige wake ambao wamekuwa rangi ya manjano wanazaana ile ‘mbaya mbovu.’

(Laughter)

Wanabebana mgongoni. Nzige wa kike ndiye anayebeba wa kiume. Kwa hivyo, wako hapa na shughuli ni moja tu ya kuzaa. Yeye akisema kuwa watakufa, anajua aje? Basi anafaa aje hapa atuambia hao nzige wake wamefika wapi, na anawaza nini.

Asante, Bw. Spika.

(Laughter)

Sen. (Dr.) Kabaka: Thank you, Mr. Speaker, Sir, for giving me this opportunity; and also thank you, Sen. Zawadi.

Mr. Speaker, Sir, this House has the same powers as the High Court, and we know that. Anytime you issue legal proceedings like the summons to the CS or anybody in this Republic to attend, it is mandatory; there are no two ways about it. Therefore, like you have been told before, you should not even re-issue the summons. You should make all the necessary arrangements for the arrest of that CS to be brought here with a lot of speed, to come and answer.

Mr. Speaker, Sir, it is a trend in this country that anytime a CS is summoned before the High Court or other courts of competent jurisdiction, they are known not to attend, and they always give some flimsy reasons. You need to assert your authority here, even if it is not showing your teeth, like it has been said by the Senate Majority Leader. You have got the power, support from the Senators, the law and the Constitution, all other enabling Acts of Parliament and Standing Orders to make sure that any person, especially the CS, attends. What does it say to the country when the CS – especially the docket he holds – does not attend? It shows that he is incompetent and does not know what he is doing. It is no wonder the CS gave a very interesting reason he thinks the locusts are not a threat, whereas they are a threat.

I read the other day in a newspaper that the President of Uganda, Yoweri Kaguta Museveni, is readying his full arsenal, including the airforce, to deal vertically and horizontally with these locusts. Therefore, this country’s food security is at risk. Like it has been said elsewhere, we have a problem, and the leadership of this country, in terms of disaster preparedness for--- I do not know why this country should not have contingency funds for any unforeseen contingencies of this nature. It is very sad, therefore, for the CS to now initiate a process where he is seeking some funds from the National Treasury, in liaison or some assistance from other foreign states like Japan or other countries. It is very sad that we have this kind of leadership. It is high time that we put our priorities properly; we should not have our priorities lopsided.

Mr. Speaker, Sir, I beg to support that the CS be brought here immediately. Monday is even very far; he should be brought here by tomorrow.

Sen. (Dr.) Langat: Thank you, Mr. Speaker, Sir, for giving me this opportunity to join hands with my fellow Senators, first, in condemning the fact that the CS is taking this particular matter lightly. The effect of the locust invasion is so serious. It has a short-term effect like destroying vegetation and every green matter, which will eventually bring food insecurity. However, scientists have pronounced that they have a long time effect, through climate change, which will in the long-term, also affect the ecosystem of the environment.

When we see a Cabinet Secretary (CS) taking this matter lightly, it becomes annoying to this House. If we allow particular CSs to continue with the same trend, sooner or later, the powers of this House, which we were given by the people who elected us and enshrined in the Constitution, will be challenged.

I would like to support my colleagues who said that hon. Munya should appear here immediately. He should be summoned to come here even tomorrow, so that he answers the questions. He was to come so that we reason together.

We have got very good brains here. We have experienced former Ministers like Sen. Ndwiga who was Minister for Agriculture, Livestock, Fisheries and Cooperative Societies for a long time. He could have come so that we reason together. We could have given him better ideas that could have assisted him in managing this particular challenge.

Mr. Speaker, Sir, let us exercise our authority and make sure that hon. Peter Munya appears before the Senate tomorrow to answer the concerns that are facing our people.

I thank you.

Sen. Shiyonga: Thank you, Mr. Speaker, Sir, for giving me this opportunity to support the Statement requiring the CS to be summoned to come here and react on the same.

The CS is a representative of the Government. Therefore, when he is summoned by this House, he will be coming not to enjoy himself, but to answer questions and represent Kenyans in the capacity that he has been appointed to. The failure of “hon. Kimunya” who is the CS for Agriculture, Livestock and Fisheries to appear before the Committee on Agriculture, Livestock and Fisheries where I am a Member---

The Speaker (Hon. Lusaka): It is hon. Munya and not Kimunya.

(Laughter)

Sen. Shiyonga: Thank you, Mr. Speaker, Sir, for that correction. That is breaking the law and the Senate will not support it.

Mr. Speaker, Sir, Members of the Standing Committee on Agriculture, Livestock and Fisheries were disappointed. We were here at 8.00 a.m. to listen to what hon. Munya was going to tell Kenyans through the Committee that had summoned him because we have the power to summon or invite him. We will not invite him again but we request you to summon him so that he appears before the Committee.

Mr. Speaker, Sir, I am worried because one of the pillars of the Big Four agenda is food security. If he does not come to assure Kenyans how the Government will ensure food security, then he is disobeying the President who appointed and gave him the mandate and the responsibility of the taking care of the agriculture docket. I, therefore,

support my colleagues that the CS should be summoned to appear before the Committee tomorrow to answer the questions.

I am worried that the locusts will spread to Kakamega County. This is because I depend on food, mostly *ugali* to be specific. If there is no *ugali*, I am done. Therefore, the CS should come here tomorrow very early in the morning to give us the answers. I will be waiting for him here.

Sen. Cherargei: Thank you, Mr. Speaker, Sir, for giving me this opportunity. As some of my colleagues have said, Article 125 of the Constitution gives this House power to summon the CS in charge of Agriculture. Hon. Munya should be made aware that he is not serving his own interests because that office is held on trust.

Yesterday, I heard some people say that locusts were seen in Muhoroni Sub-County, which is in my neighbouring Kisumu County. I am their neighbour at Chemase. We are worried that the locusts menace might spread across the country and that is a threat to food security.

Finally, Mr. Speaker, Sir, as a Senate, we must pronounce ourselves in a crystal-clear manner. The issue of Government officials, moreso the Executive, taking the Senate or Parliament for granted should end. Therefore, I suggest that the CS for Agriculture, Livestock and Fisheries, hon. Munya---

The Speaker (Hon. Lusaka): Sen. Sakaja, what is your intervention?

Sen. Sakaja: Mr. Speaker, Sir, I am sorry to interrupt my good friend and the Chairperson of the Committee on Justice, Legal Affairs and Human Rights. His voice is important but we have had many Senators speak on this matter. Standing Order No.115 is clear. We are saying the same thing and repeating ourselves. I urge that you give direction on this because everyone is saying the same thing.

The Speaker (Hon. Lusaka): Sen. Cherargei will be last one on this matter.

Sen. Cherargei: Thank you, Mr. Speaker, Sir. As a Senate, we must pronounce ourselves and stop the Executive for taking this House for granted.

Even as the Building Bridges Initiative (BBI) hearings are going on, we must strengthen the Senate and pronounce ourselves. Your pronouncement must send chills down the spine of some people who think that they are serving their own interests, yet they are serving the interest of Kenyans. Therefore, if hon. Munya does not come tomorrow on his volition by 9.00 a.m., he should be frog marched to this House to speak to this issue.

The issue of food security is important to the President and his legacy. We cannot allow anybody to play with the President's legacy in this country. We must deal with people who want to put obstacles in the success of the Big Four agenda of the President because one of the pillars is food security.

The Speaker (Hon. Lusaka): Hon. Senators, time is never a strategy. Monday will come unless we all die. Of great concern is that despite the gravity of the matter at hand, which is the locust invasion in our country, the CS responsible for agriculture does not appear to be taking the matter with the seriousness it deserves.

Hon. Senators, having captured the urgency of the matter, the expressed great concern is that the number of affected counties continues to rise by the day, and that the impact of the invasion is not just short-term but long-term and that agriculture is the breadbasket of our country and one of the critical function that was devolved to the

counties under the Constitution. The Senate is, therefore, greatly concerned on this matter.

Further to the statement by the Chairman of the Standing Committee on Agriculture, Livestock and Fisheries, I direct that the CS for Agriculture, Livestock, Fisheries and Cooperatives appear before the Standing Committee on Agriculture, Livestock, and Fisheries on Monday, 24th February, 2020, failure to which the provision of Article 125 of the Constitution shall be applied to enforce the attendance of the CS. It is so ordered

Let us go to the next Statement.

ALLEGED EXTRA-JUDICIAL KILLINGS OF YOUNG
KENYANS IN NAIROBI CITY COUNTY

Sen. Sakaja: Thank you, Mr. Speaker, Sir, for that very clear ruling on the earlier matter.

Pursuant to Standing Order No.47(1), I rise to make a Statement on the recent spate of arbitrary extrajudicial killings of innocent young Kenyans by police officers across the City County of Nairobi. It is sad and totally unacceptable for us to continue condoning the level of impunity that is being displayed by our police officers in broad daylight.

The mission of our National Police Service (NPS) is very clear; to provide professional and people-centred service through community partnership and upholding the rule of law for a safe and secure society. However, what we have been witnessing in the recent past, especially here in Nairobi City County, is far from this.

Mr. Speaker, Sir, there are rogue elements within the National Police Service that have no regard for the sanctity of life or the rule of law itself. In the last 15 months, 107 men and women have been killed by police officers. Out of this, 50 per cent took place in Nairobi City County. Sixty-nine per cent of the dead were between 18 and 35 years. Less than 10 per cent of these cases have led to arrest or prosecution of officers.

Mr. Speaker, Sir, this morning, we discussed on *NTV Sasa* that those we have lost include a two-year-old, Duncan Githinji, of Soweto in Kasarani. He was killed by three bullets. Another victim was a 22-year-old Carlton Maina of Kibera. He was unarmed, but he was killed and no charges yet have been preferred against the officers 14 months after his death. This was a young man who was the hope of his society. He was studying Electronics Engineering at Leeds University. When he came on holiday, he was shot dead by police.

(Loud consultations)

I hope Senators listen because this is important. As I speak today, there is a planned demonstration in Korogocho because a young man called Daniel Mburu was shot dead two days ago.

The Speaker (Hon. Lusaka): Hon. Senators, let us consult in low tones.

Sen. Sakaja: Mr. Speaker, Sir, he was shot while on his *boda boda* because of parking at Mama Lucy Hospital. He was unarmed and did not pose any threat to the officer. In fact, that young man had just rescued a young girl who was reportedly

drowning in Korogocho River and was rushing her to hospital to save her life only for him to lose his.

Two weeks ago, we witnessed another unfortunate incident in Majengo, Kamukunji Constituency. Another young man who is known in society - I know him very well - Hemedi Majid, was shot and killed in broad daylight. He used to teach other young people how to skate. He just questioned why the police were arresting other young people. He was unarmed and did not pose any threat. In the demonstrations that followed when they were going to bury him next to the DCC's office, the police lobbed teargas and shot another two.

In Mwiki, Kasarani Constituency, the same week during a peaceful demonstration by residents who were demanding that their road be fixed, another young man, Stephen Nandwa Macharusi, was walking home. He was shot and killed. He was unarmed and did not pose any threat.

Mr. Speaker, Sir, as much as we are glad that the Government later swung in and the road is now in the process of being done; it will be done, but that young man is dead. He cannot be returned to life.

The number of young people being brutalized and executed by rogue officers is alarming. As a House, we must demand that all those responsible be reprimanded, dismissed from the National Police Service (NPS) and prosecuted in accordance with the law and not transferred to other stations. The Inspector General (IG) should be personally held liable and should be summoned – I am glad the Chairperson of the Committee on National Security, Defence and Foreign Relations is here – to shed more light on the steps taken to bring this to an end and the status of all the prosecutions on the 107 cases of extrajudicial killings that have taken place in the last 15 months.

The IG must present to us the strategy and new regulations that ensure humane, professional and responsible policing, even during demonstrations and picketing as allowed for under Article 37 of the Constitution. He must also update us on the state of investigations and prosecutions of the police officers who are alleged to have shot these people. These police officers are known in the community. We know them. It is just because of parliamentary privilege that I cannot name them on the Floor of the House.

(Loud consultations)

In the words of Desmond Tutu – I hope my colleagues can hear this – if you are neutral in situations of injustice, then you have chosen the side of the oppressor. I urge my colleagues to stand with the youth of Kenya, the young people of Nairobi City County---

(Sen. Sakaja's microphone went off)

Sorry, Mr. Speaker, Sir, the microphone went off.

As I conclude, I urge my colleagues to stand with the young people of Nairobi City County, the youth and people of Kenya and on the side of justice.

We must demand the implementation of the National Coroner's Service Act and the Prevention of Torture Act, the establishment of a national inquiry into violations by security agents, reparations to victims and families of extrajudicial killings and enforced

disappearances and for Kenya to ratify the International Convention for the Protection of all persons from enforced disappearances.

Mr. Speaker, Sir, in as much as this is under Standing Order 47(1) and I am a Member of Sen. Haji's Committee, I request that you support us in making sure that this is dealt with as a matter of urgency. This is because we are losing young people every two weeks in Nairobi City County.

Thank you.

The Speaker (Hon. Lusaka): Sen. Cheruiyot, proceed.

Sen. Cheruiyot: Thank you, Mr. Speaker, Sir. This is a very important issue that has been brought to this House by Sen. Sakaja. For those of us who grew up in this city, this is a very common occurrence. Unfortunately, we have come to accept it as the reality of life for those that live in many of Nairobi City County's informal settlements. It will be really unfortunate that God has given us – people like Sen. Sakaja and many others – an opportunity to sit in positions of authority and allow the same to continue.

Mr. Speaker, Sir, I listened to Sen. Sakaja prosecute this point and then list the many young people whose lives and dreams have been cut short. This is all because of trigger-happy policemen who do not care about the lives of young people and the games that the NPS continue to play. What normally happens after they execute these young people is to transfer them within this city.

This culture has become part and parcel of our Police Service that there are those who even who are now taking pride in being know to kill young people. They even go ahead as far as creating social media pages. They refer to themselves as Hessa Wa Dandora and Hessa Wa Kayole. Their responsibility is just to kill young people and ensure that the judicial system is shortchanged and young people are killed.

Sen. Sakaja has requested for a Statement. However, this is one of those instances that a Cabinet Secretary (CS) coming to give us an answer is not enough. You would have set up a select Committee of Senators to go round this city and collect all the data, document the young people that have been killed, profile the police officers responsible and demand for justice. That is a proposal I want you to consider and take seriously.

Mr. Speaker, Sir, if a young man can leave the United Kingdom (UK) just to visit home and simply because they live in Kibera, they are not assured of a return to their university; they are killed in this slum. What message are we sending to the world? Even worse, 18 months down the line, the IG of Police has never issued even a summon to the Officer Commanding Division (OCPD) that division. That tells you that this is a systemic problem that a simple answer to this House cannot treat. We must be able to sit, do a report and indict those that will be found responsible.

The Speaker (Hon. Lusaka): Sen. Orengo, proceed.

The Senate Minority Leader (Sen. Orengo): Mr. Speaker, Sir, the issue of extrajudicial killings is not new to this House. I think the Senator for Mombasa County, my learned friend, Sen. Faki, has time and again brought matters before the Senate on extrajudicial killings. I am happy that the Senator for Nairobi City County has again come with this issue although affecting more particularly Nairobi City County.

If you look at the records of the United Nations Human Rights Council (UNHRC) based in Geneva, Kenya does not feature very well in that organisation. In fact, at one time, we went as a Kenya Government delegation to Geneva UNHRC which was

discussing a report on Kenya on extrajudicial killings. We were there with the then Minister for Interior and Coordination of National Government, the late Prof. Saitoti and the late Mutula Kilonzo as the Minister for Justice and Legal Affairs.

Mr. Speaker, Sir, this Council at that international level had very accurate reports of extrajudicial killings in Kenya. The majority of the cases were in the Coast, Nairobi City and North Eastern. There is nothing as bad as appearing before an international organisation, a UN organisation and evidence is laid before you showing who was killed where. There was also the case of enforced disappearances.

Mr. Speaker, Sir, the Constitution of Kenya does not just support the right to life of those who are already born. Even the rights of an unborn child are protected under our Constitution. In some very progressive countries where the reproductive rights of women are recognized, certain abortions can be carried out. However, when we were discussing the issue on the right to life, we were so particular on the right to life such that even the right of the unborn child was protected under the Constitution. It is not just the right of those who are living, but those who are to be born.

Mr. Speaker, Sir, the Committee, should do thorough work on this. For the first time, they should try to get the Government of Kenya to react to this in a substantial way. The Chairman of the Committee is probably busy with another assignment, but I think that we need a very exhaustive report. In fact, that assignment will not take us very far if people are dying anyhow. If you cannot protect lives, then who are you building bridges for? This matter should not be taken lightly.

I honour and respect Sen. Faki for the constant reminder that it is not safe to live or stand up for certain rights in some areas in this country. In the coast region, some of those who come from the Islamic Community are being killed just because they are preaching the religion of Islam.

I know many who have been killed in Mombasa because they have stood up to ask for the whereabouts of those who have disappeared or have been killed. In the North Eastern Region--- If we keep on talking about extra-judicial killings in such a casual way, then we might have another Wagalla Massacre. The Wagalla massacre happened, there was no resolution to it, and now our young men and woman are being killed without any good justification.

Finally, I think that the right to bear arms should carry some responsibilities. In fact, I am beginning to feel that too many people are carrying guns. I have been a Member of Parliament (MP) but I have never tried to get a gun. I think that I am safer that way.

We have guns in the hands of so many people, but they did not save the Chairman of the Committee on Justice, Legal Affairs and Human Rights. Even with his gun, he was arrested and taken to Kisumu. He should thank God that he is alive.

(Laughter)

Police officers should be tutored that carrying a gun has some responsibilities and the last thing that they should do is to kill. The United States of America (USA) is not any better, but now they walk around with cameras. If they shoot anybody, there is likely to be a record of how it happened, but in Kenya, there is no record.

I thank Sen. Sakaja again, and I hope that the Committee will take up this issue. They should call up the highest people in the land, not just minions who are coming from the police department or the Ministry of Interior and Coordination of National Government.

Mr. Matiang'i, as the Cabinet Secretary of the Ministry of Interior and Coordination of National Government, should be called upon, because this is a critical issue. It should not just be the Inspector-General of the NPS, but the whole security sector. Article 238 of the Constitution says that even the security sector has to protect life.

The Speaker (Hon. Lusaka): Let us have the Senate Majority Leader and then Sen. Haji.

The Senate Majority Leader (Sen. Murkomen): Mr. Speaker, Sir. I would like to congratulate Sen. Sakaja for coming up with this Statement. Sen. Faki, led by the Chairman of the Committee of Justice, Legal Affairs and Human Rights, Sen. Cherargei – did a very good job when they went to the coast region with their team. They did a fantastic job on the matter of extra-judicial killings, which was reported live.

I also noted that the Director of Public Prosecution (DPP) and the Director of Criminal Investigations (DCI) have been taking greater concern on this matter. We must say the truth. Some of the extra-judicial killings that are happening in Kenya are planned and organized as a way of avoiding the legal process of arresting people and charging them under the presumption of innocence.

The extra-judicial killings in Nairobi are even worse, because people take advantage of the persons who live in slum areas. Seeing that they go through many different problems, it has been assumed that if someone is killed in a slum, that is it. We forget about it.

Mr. Speaker, Sir, I brought a Statement on the Floor of this House about the killing of my own Personal Assistant (PA), who was abducted by security agencies, killed and dropped somewhere in Kapenguria. Up to now, nothing has been done for the former Member of County Assembly (MCA), Hon. Benson Kiptire, who was killed by security officers. The same happened to the Pokots who were arrested in Kapenguria, then killed and dumped in a place called Kaptagat in Keiyo.

We must face this thing. I am glad that the DPP, who is a Muslim, appreciates the challenge that we are facing in that area. I think that if we want to get somewhere, we have to support the DPP. Sometimes I do criticize the DCI and the DPP, but they have shown public concern on extra-judicial killings, something that has never happened in many years.

To supplement the work they are doing, I suggest that Sen. Sakaja comes up with an *ad hoc* committee that can be chaired by him or whoever he would choose. The Committee would specifically investigate the issue of extra-judicial killings. We should give them 60 days to come up with a comprehensive report so that when we speak as a Senate, we also have an opportunity to present these things. That will give us room to support the work that is being done by the DCI and the DPP in checking rough officers.

We want the DCI to come here and assure us that it was not a camouflage, but a clear disbandment of rogue agencies that were carrying out extra-judicial killings. This is because he is the one who disbanded the previous Flying Squad and the likes. The police

department should cooperate fully with the Police Oversight Authority on the investigation and prosecution of anyone who is carrying out extra-judicial killings.

My suggestion is that we come up with an *ad hoc* committee. The Senate Business Committee will support it on the Floor of this House. They should spend about 60 days, come up with a serious report and that report should be presented for implementation. That is how we will leave a good legacy.

Mr. Speaker Sir, I say this knowing that the *ad hoc* Committee on maize and the *ad hoc* Committee on the Medical Equipment Supplies (MES) have done a good job. There is no doubt that if we form an *ad hoc* committee on extra-judicial killings, we will come up with a serious report. I can see Sen. Faki, among others, being a Member of that Committee.

The Speaker (Hon. Lusaka): Before I give the next Senator a chance to speak, most of us are not observing Standing Order No. 133, hence creating unnecessary noise in the House.

It says:

“Except when passing to and from his/her seat or when speaking, every Senator when in the Chamber shall be seated, and shall not at any time stand in any of the passages or gangways”.

Please, observe that, especially the Chairman of the Committee on Justice, Legal Affairs and Human Rights. You have become very nomadic in your operations.

Sen. Kwamboka: Mr. Speaker, Sir, I take this opportunity to congratulate my ‘Super’ Senator, Sen. Sakaja, for bringing this Statement. The women of Nairobi City County are tired of mourning the youths. I was born and raised in Dandora, so I know that the extra-judicial killings in Nairobi target the youths in slums. A majority of my former classmates are victims of the extra-judicial killings. The police have delayed in arresting the suspects who killed the *boda boda* rider at Mama Lucy Hospital. People have been demonstrating for the last two days over the killing of the *boda boda* rider which has forced the Government to take action.

The issue of extra-judicial killings should be addressed urgently. A majority of the youths in Nairobi are jobless and when such youths sit in jobless corners, they become easy targets for extra-judicial killings or arrest by the police officers. I condemn the trigger-happy police officers who are killing our youths.

The Speaker (Hon. Lusaka): Kindly proceed, Sen. Halake.

Sen. Halake: Mr. Speaker, Sir, I rise to support the Statement by Sen. Sakaja. I am aware that Sen. Faki raised the issue of extra-judicial killings in the last Session. Nairobi City County is lucky because it has documented the cases of extra-judicial killings. Northern Kenya has had so many cases of extra-judicial killings yet nobody has bothered to document.

Article 26 of our Constitution gives everyone the right to life. There are real people with names beyond the statistics on extra-judicial killings. Sen. Sakaja has named some of the victims. The mothers of youths in the informal settings are counting bodies of their children who have fallen victim.

A couple of weeks ago, I read the Human Rights Watch Report. I do not remember much of what was in the report but I recall the story of a lady who said that her child came home at 8.00 p.m. and told her, “*Mum unakaa tu hapa and my brother has*

been killed.” When that lady went to the morgue, she was shocked to see that the son had been shot seven times and the bullets were lodged in the body of her little boy.

The extra-judicial killings are unacceptable. Our law requires that there should be an inquest if anybody is killed under such circumstances. However, not a single inquest has been carried out by the National Police Service. Who is going to help the youths in Kenyan if the police will not make any inquiries into such extra-judicial killings? This House should take this issue seriously because what is happening is unacceptable. It is against the sanctity of life before God and our Constitution.

Mr. Speaker, Sir, Sen. Sakaja has stated that 107 people in Nairobi City County have fallen victim to extra-judicial killings. However, I can assure you that the number is understated---

(Sen. Murkomen consulted loudly)

Mr. Speaker, Sir, kindly protect me from the loud consultations. I cannot hear myself.

The Speaker (Hon. Lusaka): The Senate Majority Leader, Order! I just gave instructions a while ago.

Sen. Halake: Mr. Speaker, Sir, I thank you. I wonder why not a single inquest has been formed as a result of the extra-judicial killings. The stated number of 107 victims is a gross understatement because those are just the people that have come forward. There is a support centre in Mathare that records cases of extra-judicial killings. There are other support centres in Northern Kenya and the Coast where people report cases of extra-judicial killings every day.

The tourism industry has been affected by the cases of extra-judicial killings. There was a story in one of the TV stations yesterday where a tour-guide took people to the Athi-River to see a beautiful waterfall but all they could see were bodies of young men who have been murdered falling from the waterfall.

I cry for the mothers in Mathare, Kibera, Isiolo, Mombasa, Kilifi, Malindi and Garissa who have to count the dead bodies of their sons. Like my colleagues have urged you, I also urge you to bite by demanding that an inquest be made into each and every death that has occurred under the questionable circumstances of police brutality.

I beg to support this Statement.

The Speaker (Hon. Lusaka): Kindly proceed, Sen. Faki.

Sen. Faki: Bw. Spika, asante sana kwa kunipa fursa hii kuchangia Taarifa iliyoletwa na Seneta wa Kaunti Nairobi.

Swala la mauaji ya raia sio swala geni katika Bunge hili la Seneti. Ni swala nilioangazia mwaka jana na mwaka uliyotangulia kwa sababu kila mwaka, vijana wanaendelea kuwaawa na kupotea bila sababu za kisheria.

Ni majuzi tu miili nane iliokotwa katika Mbuga ya Wanyama Pori ya Tsavo. Miili hiyo ilipelekwa katika chumba cha kuhifadhi maiti cha Makindu. Kati ya watu wanane waliowaawa, wanne walikuwa vijana kutoka Kwale waliokuwa wamewaawa kinyama. Miili yao ilikuwa na alama kubwa kuthibitisha kwamba walifanyiwa ukatili kabla ya kuwaawa. Miili mingine minne ilibakia katika chumba hicho cha kuhifadhi maiti na mpaka sana, haijulikani ni miili ya akina nani.

Bw. Spika, eneo la Mombasa na Pwani kwa jumla kuna visa zaidi ya 100 ambavyo vimerekodiwa vya waliopetea---

(Sen. Cheruiyot consulted loudly)

Sen. Cheruiyot, amri ya Spika ni amri!

The Speaker (Hon. Lusaka): Sen. Cheruiyot, kindly, observe what I said.

Sen. Faki: Bw. Spika, zaidi ya watu 100 wameuwawa kinyama katika mikono ya maafisa wa polisi au wahusika wa usalama wa nchi. Hakujakuwa na mwelekeo wowote wa kisheria kuhusiana na swala hili.

Mkurugenzi Mkuu wa Mashtaka ya Umma, Bw. Haji, Afisa Mkuu was HAKI Africa na mimi tulizungumzia jambo hili wakati mmoja huko Pwani. Ijapokuwa Mkurugenzi Mkuu wa Mashtaka ya Umma alihuzunishwa na jambo la mauwaji ya kiholela, hajaweza kufanya jambo lolote kuhakikisha haki za Wakenya zinalindwa. Jambo la kuudhi kabisa ni kwamba vyumba vya kuhifadhi maiti ambako wahusika wa mauwaji hupelekwa, hulipisha familia za waliowaawa hela mingi ilhali familia hizo hazijui waliotekeleza mauwaji hayo.

Bw. Spika, naunga mkono tuwe na tume maalum kuchunguza swala hili ili tupate mwelekeo wa kudumu kwamba swala kama hili halifai kuwa katika nchi yetu. Tulipata Katiba mpya mwaka wa 2010 ambayo ina mwongozo kamili wa haki za kibinadamu katika nchi yetu. Katiba yetu ninasemekana kuwa namba moja Afrika mbali na ile ya Afrika Kusini. Lakini mauwaji yamekuwa mengi sana baada ya katiba kupitishwa mwaka wa 2010 hata kuliko walivyowaawa kabla ya katiba tuliyo nayo sasa.

Katiba yetu ni maneno matupu. Hakuna taasisi ya Serikali ambayo inaheshimu haki ya uhai ya wananchi bila ya kupoteza maisha yao kiholela.

Naunga mkono kwamba kuwe na tume maalum ya kuchunguza swala hili kama vile tunachunguza swala ya vifaa vya matibabu, tulivyochunguza swala la ukulima wa mahindi na mambo mengineo. Lazima tutilie maanani swala la haki za binadamu kwani ni jambo linalopotezea vijana wetu maisha kiholela. Wale wanaohusika na swala hili la mauwaji hawafai kuendelea kupokea mishahara ya Serikali.

Bw. Spika, asante kwa kunipa fursa hii.

The Speaker (Hon. Lusaka): Kindly proceed, Sen. Cherargei.

Sen. Cherargei: Mr. Speaker, Sir, I support the Statement by the Senator for Nairobi County, Sen. Sakaja. I agree that there is a big problem with extra-judicial killings in Nairobi and other major towns where it is an offence to be a young person who is jobless and hustling. Youths are easily losing life though the bullets of trigger-happy police officers.

The Committee on Justice, Legal Affairs and Human Rights was lucky to be hosted by the Senator for Mombasa County, Sen. Faki, in the last Session where we did a public hearing on the extra-judicial killings. Next month, we will visit Dandora in Nairobi City County to listen to the cases of extra-judicial killings. We will also visit Kisumu, Garissa and other counties in the northern part of Kenya to listen to the cases on extra-judicial killings. As the Chairperson of the Committee, I undertake to bring an interim report on the status of extrajudicial killings in this country in the next 14 days so that we can try to address this issue once and for all.

Mr. Speaker, Sir, it is so sad that the rider who was shot dead by the police yesterday was rushing a patient to the hospital. It looks as if the mantra and *modus operandi* of the police nowadays is not shoot to immobilise, but shoot to kill. I think the Inspector-General (IG) of Police and the Cabinet Secretary (CS) for Interior and Coordination of National Government must be held personally liable for such incidences, so that we prevent them from recurring.

I have taken note and cognizance of the fact that the Directorate of Criminal Investigations (DCI) and the Directorate of Public Prosecutions (DPP) have tried to address some of these cases of extrajudicial killings. In the end of our investigations, as a Committee, we will endeavour and undertake to talk to the DCI and the DPP. Partly, we also want to challenge the Independent Policing Oversight Authority (IPOA); what are they doing? We know that police officers are supposed to maintain law and order, and there are good police officers who are doing their jobs, as provided for by the law and the Constitution. However nowadays, there are allegations of some police officers being hired to perpetuate crime. Therefore, we expect the IPOA to do its mandate, as provided by the law, so that we do not have many cases where police have killed innocent Kenyans, more so young people.

Mr. Speaker, Sir, when we were in Mombasa, we heard harrowing and horrible stories of how the law enforcers have killed people. Many women do not have husbands and sons. They are crying to God for protection, because the Government has failed to protect them from the trigger-happy police officers. It is so sad that when you are a young person who is working hard to make ends meet in this country; when you go to the slums – and Sen. Sakaja can confirm this – even as early as 8.00 p.m., the police will stop you. I was listening to *Ghetto Radio* when I was coming here, and I heard the case of a young man who was stopped at 8.00 p.m., and the police made him a ‘*kichungi*.’ Nowadays there is a street slogan saying “*wamemfanya kichungi*.” They sprayed seven bullets on him.

This issue must come to a stop, and I support the Senator of Nairobi. As the Committee on Justice, Legal Affairs and Human Rights, we will stand together to address this travesty of justice in this country and ensure that those police officers are held responsible. I undertake before the House that in the next 14 days, as a Committee, we will bring an interim report on extrajudicial killings.

Thank you, Mr. Speaker, Sir.

The Speaker (Hon. Lusaka): Hon. Senators, we have taken a lot of time on that. Although it is not supposed to be referred anywhere, but Sen. Sakaja you have heard the comments and strong feelings of your colleagues. I want to assure you that my office is open. Come and we will look at how we can address this matter, because it is a serious national issue. My office and the Committee on Justice, Legal Affairs and Human Rights will support you, and address the issue.

Proceed, Sen. Khaniri, for the second Statement.

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

[The Temporary Chairperson (Sen. (Dr.) Lelegwe) in the Chair]

STRIKES BY COUNTY GOVERNMENTS WORKERS DUE TO
DELAYED RELEASE OF FUNDS TO COUNTIES

Sen. Khaniri: Mr. Temporary Speaker, Sir, I rise pursuant to Standing Order 47 (1), to make a Statement on a matter of both national and countywide concern, namely the delayed release of funds to counties leading to industrial action by county workers, in particular, nurses in Vihiga County.

One of the fundamental functions of the Senate, according to Article 96(1) of the Constitution of Kenya, 2010, is to represent counties and serve to protect the interests of the counties and their governments. Thus, the Senate participates in the legislation of the Division of Revenue Act and the County Allocation of Revenue Act, which ensures that counties are allocated sufficient funds to perform their functions, as provided in Part II of the Fourth Schedule of the Constitution, 2010.

It is in the public domain that counties have had challenges in terms of settling pending bills spanning from as far back as the 2013/2014 Financial Year (FY). This matter, in itself, has caused great suffering to Kenyans, specifically those that have done business with counties. The national Government directed counties to ensure that they settle pending bills as a fast charge in the first and second quarters of the current financial year, failure to which the concerned counties would be denied funding from the national Government. But since this has not happened in most counties, the counties are currently facing a cash crunch.

First and foremost, it is both constitutionally and morally wrong for the national Treasury to delay or deny counties their fair share of revenue for whatsoever reason. Daily, I receive numerous calls from Vihiga County staff asking me to assist them to have their salaries paid. This is absurd, to say the least! According to Section 4(1) the Employment Act and the individual employment contracts, salary for work done should be automatic and paid promptly. As I stand here today, the last payment to staff from my county was in December, 2019. This is evil and against the spirit of devolution. Indeed, it would seem like devolution has turned to be a curse for county staff. Why should the Government decide to punish a whole workforce and their families for mistakes of the county executive?

Secondly, the County Government of Vihiga is currently in the middle of the worst labour relations circus in the country, specifically in the Department of Health. The department and the County Assembly Service Board engaged in a recruitment exercise for health workers in 2019. It was a shambolic exercise that was riddled with allegations of over-employment beyond the advertised positions, issuance of employment letters to people who neither applied for nor participated in interviews, as well as sale of appointment letters.

The effect of this exercise meant that newly recruited staff in the health department across the county worked for almost eight months without pay. The newly appointed County Assembly Public Service Board cancelled and reinstated the recruited staff in a span of one week. To date, the concerned staff are in the dark concerning their status of employment, and the matter is active in court.

Surely, Mr. Temporary Speaker, Sir, the recruited individuals have lives, bills, families and responsibilities. Throughout the county, there are reports of the concerned

staff suffering from mental disturbance and stress, especially those that resigned from their previous work stations to take up the county jobs.

While appreciating that there exist challenges in counties, particularly in the management of human resources, what is happening in Vihiga County is unacceptable. In the midst of all this, the county executive has only acted by suspending the concerned Chief Officers, while sparing the County Executive Committee Member of Health and the Acting County Secretary.

Currently, nurses in Vihiga County are on strike, a common occurrence in the counties. The Vihiga County Referral Hospital has no nurses; the sub-county hospitals and even clinics and health centers managed by the county government also have no nurses as we speak. The situation in the health facilities in Vihiga is dire.

It pains my heart to imagine the suffering of the sick residents in my county. The pain of any type of sickness coupled with the reality that one cannot access medical services in government hospitals is too heavy for me to bear.

Mr. Speaker, Sir, the journey of devolution in Kenya has faced challenges since 2013. However, it is time for counties to outgrow these challenges. The national Government should appreciate the spirit of devolution and separation of powers. While the national Treasury may advise counties on financial matters, it is wrong for it to deny counties funds. This repeated denial and delay in disbursement of funds is the foundation of the destruction of the dream of devolution.

Mr. Temporary Speaker, Sir, the national Treasury should find a different way of punishing county governments that have not honored the payment of bills rather than withholding funds because, at the end of the day, it is the *wananchi* who are suffering.

Mr. Speaker, Sir, the proposal for the establishment of a Health Service Commission in the Building Bridges Initiative (BBI) is valid and timely. The incessant strikes by healthcare providers in counties should be solved once and for all. A majority of Kenyans depend on public services, especially for healthcare, and any disturbance in the health sector affects a large portion of the population.

While the residents of Vihiga County are denied services, the healthcare providers will be paid even for the days that they are on strike. County governments should be concerned by the proposals to revert the healthcare functions in totality to the national Government.

As I have said earlier on, I would propose that the national Treasury must find another way of dealing with pending bills, rather than withholding funds that are supposed to go towards payment of salaries and other recurrent expenditure in the counties. This is because at the end of the day, the sufferer is that *mwananchi*, who is supposed to be served by these nurses; and those nurses who are not paid their salaries in time. I have stated earlier that staff in Vihiga got their last salaries in December. How did we expect these people to take their children back to school in January and settle their bills?

Mr. Temporary Speaker, Sir, this matter must be addressed and dealt with urgently.

Sen. (Dr.) Musuruve: Thank you, Mr. Temporary Speaker, Sir, for giving me an opportunity to support this Statement. What Sen. Khaniri has come up with is an issue of great concern, especially for this country. We are talking of Universal Healthcare as

well as the Big Four Agenda nationally. We cannot achieve that without ensuring that healthcare services are provided to Kenyans. There is no way, as a nation, that we can serve a dying people. There is need for every measure to be put in place to ensure that the nurses are paid on time. This is because these people have not worked for eight months, yet they are the ones with the necessary experience to handle the patients. Considering that the nurses have a mega role in the lives of patients, it is in good taste that they be paid and do not go on strike. If they go on strike, it means that mothers and children will be affected. There will also be no advice on nutrition for mothers.

We cannot water down the role that nurses play in saving lives. Even as they do so, they are psychologically tortured because they see the patients even when they are terminally ill up to the time when they are dying. Sometimes the patients die in their hands, and they go home psychologically disturbed. That mental torture alone can take forever to get out of their minds.

Mr. Temporary Speaker, Sir, there is need for nurses and other officers in the medical field to be paid. Healthcare even needs to be a national Government issue. If the county governments are not able to manage the healthcare services, then the services should not be devolved. They should be managed by the national Government, just the way the Teachers Service Commission (TSC) is managing teachers' issues. Teachers are paid in time every month. This is so that we do not have nurses and doctors going on strike, and Kenyans lacking service delivery. It is painful that people, including children, can die in hospitals because the nurses are not there. It should not happen in a country that is concerned about universal health care.

Mr. Speaker, Sir, this Statement by Sen. Khaniri shows that he has great concern for the people of Vihiga. It is also a concern for all counties, not just Vihiga, that healthcare should not be ignored. Healthcare should be a priority for all governors. When we have pending bills, they should not affect the healthcare. If county governments find ways to raise money, the first priority should be given to hospitals, so that the health department is catered for because of the salient role they play in this country.

I suggest that the Committee that is involved in this matter should ensure they move with speed so that the pending bills in Vihiga County are cleared so that the nurses go back to work.

The Senate Minority Leader (Sen. Orenge): Mr. Speaker, Sir, the only reason I want to comment and support the Statement by the distinguished Senator of Vihiga is that every time you walk into a hospital and look at the work that nurses do, you would be out of your mind to try to create a situation where nurses do not get their salaries.

I know of families who sometimes even abandon their sick relatives, but nurses are always there, taking care of patients, some of them on a death bed or in the Intensive Care Unit (ICU). What is happening countrywide and now more particularly in Vihiga County cannot be supported under any circumstances.

The national Treasury does not have absolute authority to withhold funds that have been allocated to the counties. Once funds have been appropriated by Parliament, which is the National Assembly and the Senate, those funds have to be paid promptly to the counties.

In fact, I am being reminded – and probably Sen. Olekina will talk about this more articulately – about the suspension or withdrawal or otherwise stoppage of funds

which are allocated to counties can only be done by the approval of the Senate. Therefore, this is a matter that calls for prompt action. For whatever reason, the national Treasury may withhold funds if they are justified.

It should not be used as a tool of punishing innocent Kenyans who toil day and night looking after the lives of other Kenyans who may be in distress. Although this is a matter which we are making a Statement under the appropriate Standing Order, I think the new CS for the Ministry of Health probably should be called to this House to account and give us his consideration of this matter. He should also give assurances that he will not interfere with funds particularly going to the health sector.

Mr. Temporary Speaker, Sir, you may try to set up commissions. I support having a Health Service Commission, just like we supported the issue of having the Teachers Service Commission (TSC). However, if they do not comply with the law or if what they are doing is causing further suffering of the people, then the Senate will be in order, within its powers and authority, to call for sanctions or actions to be taken against those responsible.

Mr. Speaker, Sir, Sen. Khaniri has come up with a Statement which does not just relate to Vihiga County. That problem is being experienced countrywide. Since health and agriculture are the two very important sectors that are devolved to the county governments, it may be a way of interfering with the creation and establishment of the counties, as a level of governance.

Mr. Temporary Speaker, Sir, this is a matter that, if it is not addressed, then the people may, for the wrong reasons, try to ascribe this matter to the governors and the county governments, saying that they are the ones responsible when it is indeed the national Treasury that is holding funds. The national Treasury should also look at themselves in the mirror. If they cannot collect sufficient revenue, which means that the economy is not expanding, they should tell us why the economy is not expanding. That is something within their docket.

They are saying we are so much in debt that we are probably living beyond our means. An explanation should similarly be given. However, under no circumstances should innocent people be made to suffer, particularly when they are taxpayers and they are vulnerable.

Thank you, Mr. Temporary Speaker, Sir.

The Temporary Speaker (Sen. (Dr.) Lelegwe): Proceed, Sen. Murkomen.

The Senate Majority Leader (Sen. Murkomen): First of all, Mr. Temporary Speaker, Sir, this is not the first time that Sen. Khaniri is bringing a Statement of this nature. He has been a faithful servant of the people of Kenya, especially when it comes to transfer of resources from the national to the county governments. Sen. Khaniri has brought a very important Statement. But I want to remind him that we live in very interesting times, not like we were in the last term. You know that. We live at a time when counties are being told, "Take it or leave it." Everything just happens to counties.

Mr. Temporary Speaker, Sir, in the last term, it was easy for this House to push for certain things that affect counties and it would work. We would even have to sit here and negotiate resources going to the counties. We would negotiate, add few billions and then it goes. This season is a bit difficult. I saw the CS, Finance and Planning, standing somewhere and lecturing the counties on how they must pay pending bills and they must

do so. Then I met governors and asked them, what is going on about this pending bills business? Most of the governors told me-

“We do not like what is going on. We are being told that we must pay pending bills. Some of the pending bills have questions but we must pay them anyway, because if we do not, money will be withheld by the national Treasury.” What is happening in the counties currently is that money is being withheld, and then you get impeached on the basis of money being withheld.

Let me give you a very good example. The County Executive Committee (CEC) member of Nandi County – and the Senator is here – was impeached yesterday and removed from office. The reason for this was because he had presided over the treasury of Nandi County in a manner that has denied money being released by national Government to Nandi County. I am not surprised if, one day, a governor will be impeached. The Governor of Vihiga County might be in danger of being impeached, because money from the national Treasury has not been released to him; this might cause impeachment of a governor.

Mr. Temporary Speaker, Sir, Sen. Khaniri has raised a very important question. I am seeing a lot of red herrings in the financial sector in the way the national Government is dealing with counties. For now, the process of investigation by Ethics and Anti-Corruption Commission (EACC) and the DCI and charging of governors is already one mechanism that has made sure that governors toe the line on whatever the national Government wants. The next line will be the release and withholding of finances.

If this behaviour continues, as was not expected in the 2010 Constitution, county governments will be run again like District Focus for Rural Development. You give them money when you want; you deny them money when you want. If a governor makes noise, you send the EACC to his office. If he makes noise, you block the money from here.

Mr. Temporary Speaker, Sir, I saw the CS for the National Treasury and there was a former Senator – the CS for the Ministry of Petroleum and Mining, hon. Munyes. There was also CS Charles Keter. All of us were here with them. The CS for the Ministry of Finance and Planning was a governor, but he is now presiding over a process that is undermining his former colleagues and forcing payment of pending bills, including the ones he incurred in his county. We are operating in a season that everybody has been dictated that they must not talk.

Some people, including some Members in this House, have told me that, “You are the Senate Majority Leader; you should not talk. You should not criticize what is happening.” History will judge this House if we do not do what Sen. Khaniri has said. If we do not stand in this House to defend devolution even when governors are not ready to defend it, history will judge us very harshly.

Mr. Temporary Speaker, Sir, I want to challenge Members of this House to go to the HANSARD or ask people like Sen. Khaniri; even in the last term, for as long as something related to county governments was mentioned, I stood my position. I stood my ground even when I was a Deputy Majority Leader or the Chairperson of the Committee on Devolution. We must be consistent on something. I want people to say:-

“Sen. Murkomen was a defender of Jubilee Government, but when it came to devolution, he stood his ground, he told them the truth in board rooms and told them the truth on the Floor of the Senate.”

This is what we need to do, as Senators; we must delve into the issue of pending bills and withholding of finances that goes to counties, and which causes nonpayment of salaries in the counties.

Now, the national Treasury has the audacity to tell counties, “We will give you money when we want.” Why do we have the County Allocation of Revenue Bill here? Why did we say that county governments must get priority resources after paying off debts, and before the national Government is allocated money? It is because the drafters of the Constitution knew where the danger is. From 1963, 1967 up to 1969, when regional governments were dissolved, the same method was used, of frustrating finances, arresting and charging regional government officials.

Mr. Temporary Speaker, Sir, if we are not careful, slowly by slowly, we will preside over the strangling of county governments. I want to beg this House, and particularly my brothers and sisters on the minority side like Sen. Khaniri; you have been the loudest and the most serious group talking about devolution, governance and good things; let us not use the Handshake and the Building Bridges Initiative (BBI) as an excuse for us to stop our responsibility of oversighting the national Government.

You are hearing this from the Senate Majority Leader, who is from the Majority Side; who has not left his responsibility as the Senator of Elgeyo Marakwet County first and as a Senator. We must not compromise anything, as a House, to meet the immediate political expectations.

(Sen. Pareno stood up in her place)

Relax, Sen. Pareno; there is no one on both sides of the House who feels more of the ownership of BBI than the other. We are all in this process. We just have to become relaxed and focus on ensuring that devolution works.

The Temporary Speaker (Sen. (Dr.) Lelegwe): What is it, Sen. Pareno?

Sen. Pareno: Mr. Temporary Speaker, Sir, is the Majority Leader in order – it is no wonder he saw that I was not relaxed – to say that we are now using the BBI as an excuse not to do our duties as we are supposed to? I think the BBI is a countrywide program that we all know what it talks about.

In fact, the BBI is making us to work harder, because we are in a harmonious society than we were before. Is he, therefore, in order to mislead this House on the BBI?

The Senate Majority Leader (Sen. Murkomen): Mr. Temporary Speaker, Sir, I have warned Sen. Pareno that she must not think that she is more BBI than myself. I speak from a point of information. I know for sure that the responsibility of the Opposition party has been undermined by the handshake and the BBI; it is not in doubt. Unless you live in Jerusalem, nowadays the Opposition tries to undo themselves to defend the Government. It is a fact. However, as you do so, you must not forget that the first responsibility of this House is to oversight the counties.

Sen. Pareno: Mr. Temporary Speaker, Sir, is he in order to purport to have powers on this Floor to warn a Senator, who is in equal measure as him? Is he in order to warn me in this House?

The Senate Majority Leader (Sen. Murkomen): Mr. Temporary Speaker, Sir, in this House, we admonish, encourage and praise each other, just like I have praised Sen. George Khaniri. In the same way, I can alert him that there is a danger that is bedeviling the country. I warn all Kenyans not to abdicate their responsibility to meet the political expedients of the time. I also want to be held to account. Have I been consistent since 2013 in pushing resources that go to counties? Have I been consistent when it comes to overseeing national Government on matters devolution? I have remained consistent from the day I was elected to this House to ensure that we fight for devolution.

Sen. Khaniri, we must go a step further to make sure that we become a voice of this country in holding the national Treasury to account. We did it when the CS was from my county, and we must do it when the CS does not come from my county. We must make sure that devolution works. We are not doing it because we will be governors tomorrow. We want to do it because we are Senators, and that is our primary responsibility. We should not be reduced to become rubberstamps.

Let us fight corruption in counties and in the national Government. Let us also deal with the issue of withholding money by the national Treasury. That is the only power we have, as a House, to ensure that we protect devolution and that history becomes kind to all of us.

Sen. Hargura: Thank you, Mr. Temporary Speaker, Sir. I thank Sen. Khaniri for bringing up this issue. For the better part of last year, counties have suffered because of this populist agenda which is being pursued by the national Treasury.

Mr. Temporary Speaker, Sir, Article 6(2) of the Constitution states that-

“The Governments at the national and county levels are distinct and inter-dependent and shall conduct their mutual relations on basis of consultations and cooperation.”

It is the responsibility of the national Government to collect taxes. However, once they are collected, it is the responsibility of Parliament to budget between the two levels of Government. The national Treasury is supposed to share out the resources, as budgeted for by Parliament, and not become the owners of the resources.

Mr. Temporary Speaker, Sir, to the best of my knowledge, as it has been clearly said, the national Treasury cannot withhold funds from county governments unless with the authority from the Senate. I know that in the last Senate, we tried to stop funds to two counties, but we did not succeed because of the requirements. However, all of a sudden, a CS can just wake up and decide not to give funds to particular counties because of pending bills.

We need to look at this issue of pending bills properly. This is because the kind of funding that is given to county governments should not, in any case, result to pending bills which accumulates, as we are seeing now. Once the funds are budgeted for in regards to what is allocated to them, if they follow their budget to the end of the financial year, there should be no pending bills. What happens is delayed funding. If funds are delayed and by the closure of the financial year, they have not been remitted to counties, they are supposed to re-budget for that.

For example, if a county got Kshs7 billion in the last financial year and did not use Kshs1 billion, if they get Kshs7 billion in the next year, their next budget will be Kshs8 billion because they have to re-budget based on what they have already included in the previous budget. So, there should be no accumulation of pending bills. What is there is a case of un-budgeted expenditure, which is not pending bills. There should be no accumulation of pending bills in the counties. Where they occur, somebody somewhere is not doing his or her job. Therefore, that person should be held individually accountable. That way, we can do away with the menace of pending bills in the counties.

The other aspect of blanket withholding of funds from the counties is not the right way to go. This is because that is not punishing the offender, but everybody in the county, including the staff that are performing their duties and did not contribute to those pending bills. So, the national Treasury, while trying to assist the counties in making sure that they meet their obligations, should not use a punitive measure which affects the wrong person; in this case, denying residents of that county services and salaries to employees. The same thing happened to my county, but they might have been paid this week. The whole of January they did not get their salaries. We also do not have drugs in hospitals, and it becomes an issue. This is because people are blaming the county governments for not supplying drugs, when they were not funded by the national Treasury.

There are cases where you will find that most of these pending bills could also have accumulated in 2017, when we had elections. This is because some governors anticipated that they will win elections and gave out jobs to their cronies to entice them to vote for them. However, they were not lucky to be elected, and so they did not include those works in the budget. Those are some of the sources of pending bills. So, the incoming governor could not honour those kinds of expenditures, because they were not expended against any budgetary provisions. When those kinds of things occur, blame should be placed where it is due, and whoever authorized that kind of expenditure should be held accountable.

Mr. Temporary Speaker, Sir, if pending bills are validated, there must be some way to stagger them. For example, a county can be given a particular financial year to clear the bills or pay some amount every quarter. However, if funds are not sent to counties, what will they use to service the pending bills? It is self-defeating, because if I have pending bills to pay and you tell me that you will not give me money until I pay, do you expect me to pay using my money? How are the governors supposed to pay those pending bills?

Therefore, the national Treasury is over-stepping its mandate. It should not oversight or boss over the counties. County governments are different. If there are issues, the Senate should deal with them. Let the national Treasury stick to its mandate and provide funds to the counties. If there are pending bills, let them be investigated.

The other time, the Auditor-General did some investigations and there are counties that have paid part of the pending bills. So, why tell them that they cannot be given money until they pay the rest? What will they pay with, yet the funds which should be used to pay have been withheld?

My county had about Kshs7 million in pending bills. They paid about Kshs200 million and are remaining with about Kshs400 million. However, they were told that they

cannot be given money because they have pending bills. So, what they are supposed to do? Does the national Treasury expect the residents of Marsabit County to raise funds to pay the pending bills?

The net effect is that people are suffering because they are not getting services. This is because of these kind of measures which are not properly thought out. Let the national Treasury stick to its limit and release all the funds to the counties. Let us develop modalities of making sure that the pending bills are cleared by coming up with ways, through this Senate, instead of populist policies which affects the common citizens of this country while trying to address individuals who generated those pending bills.

The Temporary Speaker (Sen. (Dr.) Lelegwe): Order, hon. Senators! We are already out of the Statement Hour. Therefore, I request all Senators who will have the opportunity to contribute to this Statement to limit their contributions to only two minutes.

Sen. (Prof.) Ongeri: Thank you, Mr. Temporary Speaker, Sir---

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

The Temporary Speaker (Sen. (Dr.) Lelegwe): Order, Sen. Olekina! We are already out of the Statement Hour.

Sen. Olekina: Mr. Temporary Speaker, Sir, it is not fair at all that the Senate Majority Leader will spend hours discussing an issue of pending bills and then he says the Statement Hour is over. We also need to speak about our counties.

The Temporary Speaker (Sen. (Dr.) Lelegwe): Order, Sen. Olekina! We are already out of the Statement Hour.

Sen. Olekina: This is a very important issue. I want to request---

The Temporary Speaker (Sen. (Dr.) Lelegwe): Order! We are already out of the Statement Hour.

(Sen. Olekina's microphone went off)

(Sen. Olekina continued speaking off record)

Order! We are already out of the Statement Hour. As I directed earlier, that the hon. Members who will get the chance to contribute should limit their contributions to only two minutes so that we proceed.

(Loud consultations)

Order, Senators.

Sen. Madzayo: On a point of order, Mr. Temporary Speaker, Sir. My intervention is very friendly on that point of order. Instead of two minutes, can you grant us three minutes? I will donate my time to my brother, Sen. Olekina, so that he can get five minutes.

Thank you, Mr. Temporary Speaker, Sir.

The Temporary Speaker (Sen. (Dr.) Lelegwe): Proceed, Sen. (Prof.) Ongeri.

Sen. (Prof.) Ongeri: Thank you, Mr. Temporary Speaker, Sir. I stand to support these Statements on one front; that we do have pending bills at the national Government and that they have not withheld the salaries of the people who have been employed by the national Government.

Hon. Senators: Yes!

Sen. (Prof.) Onger: It would be wrong for them to withhold the salaries to the county government staff.

Having said so, I must put a caveat that the county governments must also take the responsibility of ensuring that the resources available at their command are appropriately utilized, particularly in the area of expenditure on development and the pending bills. There are those eligible pending bills that must be paid. However, those that are ineligible, that can be another story. Those that are eligible include workers and partners in the counties who have spent their money, and who must be paid.

Mr. Temporary Speaker, Sir, one of the things that I want to comment on is that it is immoral to withhold any salary for work done. It is not acceptable at any level. Therefore, I propose that the National Treasury, through the Intergovernmental Budget and Economic Council (IBEC) – where they have been sitting and prefixing the amount of money to be sent to the county governments – should also agree at that level. They should agree on how they can advance the county governments money to clear the pending bills and, at the same time, meet their obligations of paying the salaries promptly.

One of the things that I have noticed while sitting as a Member of the County Public Accounts and Investment Committee (CPAIC) is that Exchequer releases have been very erratic. It is, therefore, very difficult for county governments to rearrange their expenditure lines in accordance with resources available at their command. This is one of the things that we, as the Senate, must do now.

In my own area of Kisii County, people approach me as their Senator that I help them with some little money to survive for one or two weeks before they get their salaries. Obviously, my meager salary cannot afford to support them. I think that they have a case that must be listened to. They also have an opportunity that they must exploit, of paying their pending bills on time so that these resources are not withheld at any time.

Thank you, Mr. Temporary Speaker, Sir.

Sen. Were: Thank you, Mr. Temporary Speaker, Sir. I also rise to add my voice to the Statement by Sen. Khaniri on the delay or withholding of funds to counties by the national Treasury.

The two main functions and, unfortunately, these are part of the Big Four Agenda – health and agriculture – are devolved functions. Listening to my colleagues here saying what we have always said here, that devolution is systematically under attack, because healthcare is the nerve centre of devolution. If the sector is affected by withholding of funds then, in essence, we are fighting devolution. It has been said severally that devolution is a revolution. It, therefore, does not matter what they do; devolution is going nowhere. Therefore, people had better just step up and do the right thing.

Mr. Temporary Speaker, Sir, the funds being withheld are as a result of pending bills. Therefore, my question is, why do they not withhold development funds and release recurrent expenditure funds to counties so that they can pay salaries? That way, counties should not do development because they have not paid pending bills; but are still able to pay salaries.

Mr. Temporary Speaker, Sir, the Universal Health Care (UHC) pilot programme was done in at least four counties. That piloting stage is over, a report has come out, and

it has been declared or recommended that the UHC will be implemented in the model of Primary Healthcare System. Primary Healthcare is basically devolution. We are talking about community health centres, dispensaries and community health workers, which are all devolved functions. A big percentage of health funds is going to be allocated to the Primary Healthcare model.

Therefore, Mr. Temporary Speaker, Sir, when I say that devolution is under attack, it is basically that. The Government is eating itself by attacking the healthcare system. If we are saying that the President's legacy is going to be based on the Big Four Agenda, health being a big deal of the Agenda, then what kind of legacy are we leaving behind?

With those few remarks, I beg to support this Statement.

The Temporary Speaker (Sen. (Dr.) Lelegwe): Proceed, Sen. Sakaja.

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

Sen. Sakaja: Thank you, Mr. Temporary Speaker, Sir, for being kind enough---

Sen. Madzayo: *Ngoja kidogo!*

Sen. Sakaja: The Speaker has to give you the Floor; it is not me to give you.

Mr. Temporary Speaker, Sir, thank you very much for being magnanimous enough to allow us to speak a bit more, after the extension of the Statement Hour. I wish Statements could be repeated, because---

The Temporary Speaker (Sen. (Dr.) Lelegwe): What is your point of order, Sen. Madzayo?

Sen. Madzayo: Mr. Temporary Speaker, Sir, I am noticing something very interesting. It is very interesting in the sense in that, of course, you have the last say as to who should take to the Floor. However, there have been exchanges of conversations here as a point of information between the Senate Majority Leader and Sen. Olekina here. In these exchanges – I do not know whatever they were exchanging – the only thing is that it was not a good exchange. Now the House has been drawn into it.

When the Senate Majority Leader was speaking, I realized that he took so much time to address the issue. Thereafter, he moved straight to where the Chair is with tremendous respect and requested that each Senator be given only two minutes to talk to the issues but he took over 45 minutes to address this House. He talked about us in the Opposition abdicating our responsibility and not criticizing the Government, but the Statement came from the Opposition.

Mr. Temporary Speaker, Sir, it is a sad day that you have decided that you have the ultimate say, that Sen. Olekina will not address this House today. He pressed his card immediately after you introduced this topic when he was still on the Floor. Up to now, he has not been accorded that opportunity. Mine was a point of information to you.

The Temporary Speaker (Sen. (Dr.) Lelegwe): Order, Senator! You are misinforming the House. The Chair was not directed by any Senator to issue any time limit to hon. Members. As you already know, it is provided in our Standing Orders and the Statements hour is already over. We are only limiting contributions of Members and not particularly the contribution of Sen. Olekina.

Proceed, Sen. Sakaja.

Sen. Sakaja: Mr. Temporary Speaker, Sir, I sincerely hope that my time was paused.

This Statement is important but I do not think it is being treated with the importance it deserves. It is an entire frame of mind and disposition within the Government that needs to be addressed. I hope Sen. Khaniri brings it in a more substantive nature.

First, devolution is not a favour. When we have the discussion about division of revenue, we tend to disabuse mandarins who have always believed that the money that goes to the counties is money from national Government. If you look at Chapter 12 of the Constitution on Public Finance, the division of revenue divides money and gives national and county governments their money. That money is given by the Constitution of Kenya and not by the national Government. That needs to be clear.

In fact, in the BBI, we probably need to be clear about the role of the National Treasury. There needs to be an independent institution that gives the national Government its money and gives the county governments money. These are not the days of District Focus for Rural Development (DFRD) because we have devolution, which is a main feature of our Constitution.

Secondly, what is good for the goose must be good for the gander. You cannot tell me that pending bills are in the counties only. In fact, the higher amounts of pending bills are in the national Government. How you treat the counties is the same treatment that needs to be meted on the national Government in all fairness.

Thirdly, when you stop salaries, it is not the governors who suffer, but the ordinary workers in the counties. Countless are huge numbers of people coming to ask us to give them something small to survive because they were not paid. When they ask you as a leader to give them something and you tell them that you do not have, they cannot believe it. When someone from Samburu asks you for Kshs10,000, they do so because they believe that you are a billionaire. If you cannot fulfill that request, it makes you look terrible.

This matter needs to come again. However, I do not know how we can bring it back to the House and discuss about treatment of county governments because pending bills must be paid. There have been issues, but you do not make the people to suffer because there have been irregularities with the administration of finances at the county and national levels. The other day, we saw people in the Prisons Department demonstrating because of pending bills but people are getting their salaries.

Mr. Temporary Speaker, Sir, let us not cut off our nose to spite our face. This is the time the Senate must take up its role in defending devolution. Before I came to this House, I used to wonder who devolution was for when I was in the National Assembly who is the attacker. Now, it is as clear as day and night. I know devolution needs defence and that is why we must strengthen this House.

I thank you, Mr. Temporary Speaker, Sir, and Sen. Khaniri.

The Temporary Speaker (Sen. (Dr.) Lelegwe): Sen. Farhiya, you have the Floor.

Sen. Farhiya: Thank you, Mr. Temporary Speaker, Sir, for giving me this opportunity. I also thank Sen. Khaniri for bringing this matter to the House.

One of the issues being put forward as the cause of delaying disbursements to county governments is pending bills. Governors are refusing to pay pending bills that were there before they came to power. We all know that any office exists in perpetuity.

The fact that you took over does not nullify the expenses of the former governor. As long as pending bills are legitimate, they should be paid because people provided services.

The other issue that brings about pending bills is governors exaggerating their budgets and own source revenues. I was analyzing the budget for counties in northern Kenya. I realised that by the end of the first quarter, the best had only collected 30 per cent. You can imagine what the rest had collected.

Mr. Temporary Speaker, Sir, this is a suggestion we have been giving them from 2017 as the Committee on Finance and Budget. The Commission on Revenue Allocation (CRA) was supposed to come up with reports on the ability of the different counties to collect revenue, because all counties are not at the same level. Once the capacity of each county is established, when they are putting their estimates in terms of revenue collection, a governor and Members of County Assembly (MCAs) should take note of that.

Nevertheless, people's salaries should be paid first. This is because the person withholding salary or money for a county receives their salary for that month. Every person should do what is right and this House must deal with rogue governors because they are there in plenty.

The Temporary Speaker (Sen. (Dr.) Lelegwe): Let us listen to Sen. Cheruiyot.

Sen. Cheruiyot: Thank you, Mr. Temporary Speaker, Sir. This is an important Statement that has been brought by our colleague Sen. Khaniri about what is increasingly becoming a wrong attitude by the National Treasury towards our county governments.

We will recall that a few months ago, when the issue of pending bills cropped up, many of us questioned the wisdom and the judgement of our colleagues who were quick to jump onto the train and support that we have to ensure that counties pay and that pending bills are reduced.

It is our joy and pleasure for counties to pay pending bills. The biggest question that the critics of that process kept on asking is; who between county and national governments can lecture the other on pending bills? However, because of the season we are living, it is becoming increasingly difficult to speak about devolution.

I see a struggle in many of our colleagues who are here for their first time and do not distinguish between dislike for their governors and dislike for devolution. You cannot equate your governor with devolution. He maybe a thief and you may not like them, but please defend devolution with all that you have got because this is a gift that Kenyans bequeathed to themselves after a long and tedious bloody struggle. We cannot afford to go back.

Going by what Sen. Khaniri has said, it tells you that our counties continue to suffer. This is the season of the Budget Policy Statement. As a House, we are not able to explain why, despite agriculture and health being over 90 per cent devolved, billions of shillings still remain with the national Government, yet we know that if that money was sent to our counties, they would ensure that primary health care is offered to our citizens and agricultural extension officers would be given the necessary tools, facilities and funding to ensure that we have got thriving agricultural sector in this country.

Mr. Temporary Speaker, Sir, I support this Statement. However, I would like to tell Sen. Khaniri that this is not enough. There are myriad of issues in many of our county governments. Governors are being forced to sign the Universal Health Coverage (UHC).

The big stick is being dangled and they are told either to sign and follow the path of the national Government or face off with the Director of Criminal Investigation (DCI). It is quite unfortunate. Sen. Khaniri, think of something else that we can do.

The Temporary Speaker (Sen. (Dr.) Lelegwe): Sen. Omogeni, you have the Floor.

Sen. Omogeni: Thank you, Mr. Temporary Speaker, Sir. I would like to congratulate Sen. Khaniri for raising this very important matter.

We all know that the national Government has not paid pending bills. Courts of law have issued decrees for the Government to pay some of the pending bills that it has failed to pay. A very good example is the of the family of the late second political liberation hero, Hon. Matiba, who had a decree from a court, but he went to the grave before the national Government could settle it. That is a pending bill. Nobody has wielded a big stick to the Government saying if you do not settle these bills before then we will not allow you to collect taxes.

I think we are going the wrong way. I am a Senior Counsel. I have never seen any statute or any section of the Constitution that gives powers to the Cabinet Secretary (CS) for the National Treasury and Planning to withhold money to counties on the basis of pending bills. If we were to enforce this Constitution, we need to summon him here to tell us who has given him these powers of becoming a prefect over the Government. Article 6 is very clear that we have two levels of governments. We have the national Government and county governments. We must respect that constitutional architecture in our Constitution.

Mr. Temporary Speaker, Sir, there is no way one level of Government can micromanaging another level of Government. We should conduct our businesses in a decent manner. We all come from these counties. If you have pleasure from the people who have elected to provide medicine to hospitals, pay salaries to doctors or nurses, which one would you give priority? You will definitely ensure hospitals have medicine, pay salaries and then you deal with pending bills. You can even have arrangement with the people who have provided services in counties to be paid in installments.

The idea of saying that no money will be released to counties unless or until pending bills have been cleared, is not right. The other day, I heard the Controller of Budget (COB) saying that unless counties provide list of all casual workers then she will give a directive that they do not receive their allocation. That is not right. We are here to protect devolution. On this one---

(Sen. Omogeni's microphone went off)

The Temporary Speaker (Sen. (Dr.) Lelegwe): Next Statement Sen. Cherargei.

DELAYED PAYMENT TO CASUAL WORKERS ENGAGED
TO WORK DURING THE 2019 CENSUS

Sen. Cherargei: Thank you, Mr. Temporary Speaker, Sir, pursuant to Standing Order 48 (1), I rise to seek a Statement from the Standing Committee on Finance and

Budget regarding the pending payment of casual staff who were engaged in to work during the 2019 Kenya population census exercise.

In the statement the Committee should -

- (1) State the reason for the delay in payment of the casual staff, particularly in Nandi County who worked during the enumeration exercise that was held in August 2019, almost six months after the conclusion of the exercise despite several reminders to the Ministry of Finance.
- (2) Explain the criteria used by Kenya National Bureau of Statistics (KNEBS) in making payment of the dues to these officials since some regions have been paid while other regions, including most of the youth who worked in Nandi, have not yet paid.
- (3) Provide a comprehensive report from the Ministry detailing the status of payments across the country with payment status of all staff stating when those who are yet to be paid should expect payment.

Mr. Temporary Speaker, Sir, it is so sad that whenever young people of this country work for the Government; be it census, Huduma Namba, elections or any time they are engaged on casual basis, they have to make a lot of noise to be paid. There are so many Statements that have been sought by my colleagues on payments of young people who have worked on contractual basis.

Mr. Temporary Speaker, Sir, many young people in this country are unemployed. I am aware of a young person from Aldai Sub-County in Kapkenduywa who was waiting for this money to be able to pay his school fees in Laikipia University.

Mr. Temporary Speaker, Sir, the Government needs to get serious on this matter. It has enough resources to pay them. We do not have to raise complaints whenever the Government engages the youth of this country in either contractual basis; either Huduma Namba, census or any other form of exercise that it intends to carry out. For instance, collecting data on the swarms of locusts across the country--- I am told Samburu County has been invaded by locusts. The Government should be serious---

(Sen. Cherargei's microphone went off)

BUSINESS FOR THE WEEK COMMENCING
TUESDAY, 25TH FEBRUARY, 2020

The Senate Majority Leader (Sen. Murkomen): Thank you, Mr. Temporary Speaker, Sir, interestingly, today, it has taken us two and half hours to deal with Statements.

Mr. Temporary Speaker, Sir, pursuant to Standing Order 52(1), I hereby present to the Senate, the business of the House for the week commencing Tuesday, 25th February, 2020.

Hon. Senators, on Tuesday, 25th February, 2020, the Senate Business Committee (SBC) will meet to schedule the business of the Senate for the week. Subject to further directions by the SBC, the Senate will on Tuesday, 25th February, 2020, consider Bills scheduled for Second Reading and those at the Committee of the Whole. The Senate will

also continue with consideration of business that will not be concluded in today's Order Paper.

On Wednesday, 26th February, and Thursday, 27th February, 2020, the Senate will consider business that will not be concluded on Tuesday and any other business scheduled by the SBC.

Hon. Senators, we have a full in-tray, as we have a total of 11 Bills due for Second Reading as follows -

- (1) The Election Laws (Amendment) Bill (Senate Bills No. 3 of 2017).
- (2) The Constitution of Kenya (Amendment) Bill (Senate Bills No. 40 of 2018).
- (3) The Constitution of Kenya (Amendment) Bill (Senate Bills No. 2 of 2019).
- (4) The Statute Law (Miscellaneous Amendments) (No. 2) Bill (National Assembly Bills No. 13 of 2018).
- (5) The Constitution of Kenya (Amendment) Bill (Senate Bills No. 16 of 2019).
- (6) The Public Finance Management (Amendment) Bill (National Assembly Bills No. 63 of 2019).
- (7) The Independent Electoral and Boundaries Commission (Amendment) (No. 3) Bill (National Assembly Bills No. 35 of 2019).
- (8) The Sacco Societies (Amendment) Bill (National Assembly Bills No. 1 of 2018).
- (9) The Sectional Properties Bill (National Assembly Bills No. 23 of 2019).
- (10) The Lifestyle Audit (No. 2) Bill (Senate Bills No. 21 of 2019).
- (11) The Fisheries Management and Development (Amendment) Bill (Senate Bills No. 22 of 2019).

I, therefore, continue to urge the Standing Committees to expedite consideration of the Bills referred to them and table reports in the House. This will facilitate the House to effectively navigate the Committee of the Whole stage and enrich debate at the Second Reading stage.

Hon. Senators, you will notice that in today's Order Paper, we have 3 Bills listed for Division at Second Reading. I want to urge all Senators to avail themselves this afternoon for the voting process so that we expedite their consideration. Practically speaking, this afternoon we are not going to raise the numbers to vote. It could have been our wish that vote on these Bills. However, I hope on Tuesday or Wednesday, next week, we must be able to put it on Division.

Hon. Senators, in addition, there are 13 Bills at the Committee of the Whole Stage. These are -

- (1) The Retirement Benefits (Deputy President and Designated State Officers) (Amendment) Bill (Senate Bills No. 2 of 2018).
- (2) The Kenya Medical Supplies Authority (Amendment) Bill (Senate Bills No. 38 of 2018).
- (3) The Cancer Prevention and Control (Amendment) Bill (Senate Bills No. 9 of 2019).
- (4) The County Tourism Bill (Senate Bills No. 5 of 2019).
- (5) The County Hall of Fame Bill (Senate Bills No. 39 of 2018).
- (6) The Street Vendors (Protection of Livelihood) Bill (Senate Bills No.10 of 2019).
- (7) The Establishment of Children's Homes Bill (Senate Bills No. 12 of 2019).
- (8) The Care and Protection of Child Parents Bill (Senate Bills No. 11 of 2019).

- (9) The Registration of Persons (Amendment) Bill (Senate Bills No. 14 of 2019).
- (10) The Kenya Sign Language Bill (Senate Bills No. 15 of 2019).
- (11) The County Licensing (Uniform Procedures) Bill (Senate Bills No. 17 of 2019).
- (12) The Elections (Amendment) Bill (Senate Bills No. 18 of 2019).
- (13) The Alternative Dispute Resolution Bill (Senate Bills No. 19 of 2019).

Hon. Senators, may I also take this opportunity to remind the Chairpersons to the various Standing Committees to which petitions have been committed to hasten consideration of the same and file reports to this House.

I thank you and hereby lay the statement on the Table of the House.

(Sen. Murkomen laid the document on the Table)

The Temporary Speaker (Sen. Lelegwe): Hon. Senators, we do not have the required numbers for Division. Therefore, I defer Order Nos.8, 9 and 10.

BILLS

Second Reading

THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) (No.2)
BILL (NATIONAL ASSEMBLY BILLS NO.13 OF 2018)

(Bill deferred)

Second Reading

THE SACCO SOCIETIES (AMENDMENT) BILL
(NATIONAL ASSEMBLY BILLS NO.1 OF 2018)

(Bill deferred)

Second Reading

THE FISHERIES MANAGEMENT AND DEVELOPMENT
BILL (SENATE BILLS NO.22 OF 2019)

(Bill deferred)

Second Reading

THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION (AMENDMENT)
(No.3) BILL (NATIONAL ASSEMBLY BILLS NO.35 OF 2019)

Sen. Omogeni: Mr. Temporary Speaker, Sir, I thought you would first give me a chance to comment on the Statement sought by Sen. Cherargei. Is that in order?

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The Temporary Speaker (Sen. Lelegwe): We have already made progress. If you have any comments on Order No.11, you can proceed.

Sen. Omogeni: Mr. Temporary Speaker, Sir, I request for more time I acquaint myself with that amendment, unless there is somebody else.

The Temporary Speaker (Sen. Lelegwe): Sen. (Dr.) Musuruve, proceed.

Sen. (Dr.) Musuruve: No, Mr. Temporary Speaker, Sir. I had a comment on the Statement made by Sen. Cherargei. I do not know whether you will allow me.

The Temporary Speaker (Sen. Lelegwe): Senator, we are already on Order No.11. If you have any contributions on that Order, the Independent Electoral and Boundaries Commission (Amendment) (No.3) Bill (National Assembly Bills No.35 of 2019), you can proceed.

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

The Temporary Speaker (Sen. Lelegwe): Sen. Omogeni, proceed.

Sen. Omogeni: Mr. Temporary Speaker, Sir, I rise to support and contribute to this Bill that seeks to provide mechanisms for picking our commissioners to serve in the Independent Electoral and Boundaries Commission (IEBC).

The IEBC conducts a very critical role in this country of ensuring that the people of Kenya are given an opportunity to pick their Presidents in a free and fair manner. Even us, the people's representatives, Senators or Members of the National Assembly are elected in a process that is credible, free and builds confidence among the people of Kenya.

Mr. Temporary Speaker, Sir, if you go down memory lane, we had a big struggle on the people who are supposed to steer our electoral body. In 1997, the Inter-Parties Parliamentary Group (IPPG) came up with formula where political parties were given slots based on their strength in Parliament. The last people who served office were invited to apply and interviewed by a panel.

The good thing about this process is that now Parliament is being given a very integral role in this process in that we have four slots to be picked by the Parliamentary Service Commission (PSC). This is a good thing because we are trying to ensure that the people who are given this task of picking the people who should steer IEBC are men and women of integrity.

I am impressed that some of the bodies we have brought on board included the Ethics and Anti-Corruption Commission (EACC), the Law Society of Kenya (LSK), a pioneer body that I am privileged to have served as President for a term of three years. There is also the church where the Inter-Religious Council of Kenya (IRCK) is to pick two people and then the Kenya National Human Rights Commission (KNHRC).

Mr. Temporary Speaker, Sir, I think if we want to build confidence in our electoral process to ensure that this idea of people resorting to demonstrations after elections stops, we need to put in place a framework that can conduct an interview that will build confidence in the people of Kenya. I do not think there is a better way of doing it than bringing on board the kind of stakeholders being captured in this Bill.

In most of the elections that we have had, since we enacted this Constitution, remember in 2013, the Presidential elections were subjected to a petition in the Supreme

Court. In 2017, the election of H.E. President Uhuru Muigai Kenyatta was nullified. The comment from that judgment was that the IEBC Commissioners who were tasked with running that election did not conduct a credible election. We spent a lot of money and resources in trying to solve this dispute in the Supreme Court.

If I am not wrong, I think the only time the United States of America had a petition in the Supreme Court was in 2002. In all other instances, the moment you have elections, Americans are able to accept that the person who has been elected represents the wishes of the people.

Mr. Temporary Speaker, Sir, we crave for a time when we will conduct our elections and the person who will be declared president will reflect the wish and the will of Kenyans. That way, we will bring to an end this idea of every time we have an election, we have to go to the Supreme Court to settle and electoral dispute. That is not how it should be.

In 2007, this country was almost being subjected into a civil war because there was a perception that the people who run the electoral body at that time did not give the people of Kenya an opportunity to elect their leaders. Therefore, the elections were not free and fair. I hope that once we fix the problem in IEBC, we will bring to an end this idea that every time we get an opportunity to do constitutional reforms, we make demands that the commissioners in IEBC must resign or be replaced.

At times it is very costly when you bring the term of these commissioners to an end prematurely, we pay a price because Kenyans are forced to compensate them. If they leave before their tenure in office has run a full course, then Kenyans have to compensate them for the remainder of their term.

Mr. Temporary Speaker, Sir, I hope that the people who will get the honour once this Bill is enacted to serve in this panel will be men and women of integrity. The only precaution I have is that at times some of the bodies we are giving this task can themselves abuse the discretion that is given to them. For example, when I served as the President of LSK, we had a big debate on how LSK would pick their representatives to the Judicial Service Commission (JSC). We could not agree. Sometimes you could have a Chairperson who chooses to pick his or her friend.

We can have a Chairperson who is influenced by the state or an opposition party to pick someone who will lean in favour of either the Executive or the opposition. We settled on one position. We said that the people to represent the Law Society of Kenya (LSK) and the Judicial Service Commission (JSC) should be elected by the members of the LSK.

Mr. Temporary Speaker, Sir, we need to ponder, as the Senate, whether we can entrust the task of picking a person to represent the LSK or the sitting president of the LSK should be the one to automatically represent the LSK.

There is also the issue of the Inter-Religious Council of Kenya, who are supposed to pick two people. How do we ensure that when they are given this mandate they will have public participation and give a free chance to everybody? Should there be another panel that sits to invite applicants, and should there be a competitive process of picking representatives from these bodies?

I also hope that when we talk about the Inter-Religious Council of Kenya we will take into account the various religious denominations. We have Muslims, Hindus,

Christians, Evangelicals and Anglicans. I hope they will all be covered by these two slots that have been given to the Inter-Religious Council of Kenya.

It is important that even as we endorse the idea of having people picked by various interest groups, we should also ensure that the process of picking these people will be credible and fair. It should involve public participation and give equal opportunities to people from various sectors to participate in the selection panel.

With those many remarks, I support.

The Temporary Speaker (Sen. (Dr.) Lelegwe): Sen. Farhiya.

Sen. Farhiya: Thank you, Mr. Temporary Speaker, Sir. Apart from contributing to this Bill, I just want to make a general observation. When Bills from the National Assembly come to our House, we expedite the process, but the same is not accorded to us. Some of the Bills that we passed when we first came to this House are still nowhere to be found. No one gives feedback on what happened to the Bills.

People work hard to prepare Bills. It takes a lot of time to prepare Bills and make sure that they are sensible. However, when they go to the other House, we do not know what happens to them. I think something needs to be done by the leadership of this House with regard to this.

Being a democratic country, the process of elections in Kenya should be very transparent and credible. I can see that there are different bodies picking different people to ensure that--- For example, Parliament is supposed to pick four. The other ones are the Public Service Commission (PSC), the Ethics and Anti-Corruption Commission (EACC), the Law Society of Kenya (LSK) and the National Gender and Equality Commission (GNEC).

However, what benchmark are we putting in place to ensure the credibility of the people who are picked by each of those institutions? We cannot have people who did not go through the right process in the first place. One of the things we should propose is a clear criterion of selecting even the person selected by each of these interest groups. This is to ensure that the correct people are picked.

Mr. Temporary Speaker, Sir, this country has suffered a lot in terms of post-election violence, people's rights being infringed, people's choices not being correctly determined, and a lot of other ills that surround elections. Now that we have an opportunity, if we do not correct these anomalies, we are setting ourselves up for another failure. There is nothing more painful than queuing to vote, and then one's verdict does not count.

Economies grow due to stability of the country. Any economy that has grown is as a result of either a dictatorship where people did not have any choice or there is a very clear democratic process where votes count. Right now we have a problem in terms of the election of new commissioners, because some of them resigned. This law does not provide for the replacement of those commissioners. If there are other laws that exist, why are we not using them to ensure that we replace the gaps that exist?

This House needs to bring some amendments to correct some of those anomalies, so that we have a fair election process. In any leadership, the top determines what kind of governance we have, how we conduct ourselves, and how well the government of that country is being run. The taxpayers spend a lot of money paying these people. Are these people transparent and doing what they ought to do?

Mr. Temporary Speaker, Sir, all that will not be possible if we get the process of nominating these people wrong. As you are aware, elections cost billions of shillings of the taxpayers' money. Kenyans queue to ensure that they get their choice. If we do not get people who do the right thing, then we are getting it wrong. This House needs to bring a lot of amendments to ensure that this law is fit. If the process of filling gaps within the IEBC does not exist, let us put it here.

I support this Bill, but let us have very clear amendments that will enrich it. This is so that we have all the nitty-gritties that we need to ensure that the right thing happens during process of selecting the people who will represent us in this very important independent Commission.

Thank you, Mr. Temporary Speaker, Sir.

The Temporary Speaker (Sen. (Dr.) Lelegwe): Hon. Senators, there is no more interest to contribute. I, therefore, call upon the Mover to reply.

The Senate Majority Leader (Sen. Murkomen): Thank you, Mr. Temporary Speaker, Sir. This is a very important Bill. As I discussed yesterday, we need Commissioners to be in place in good time.

Since yesterday, most of the contributors talked about the standards required. We all remember that the Kriegler Commission recommended that we must have a fully constituted commission two years before elections. This is so that we do not rush around at the last minute to get people to work in the Commission.

We now have three Commissioners out of seven. We need to fill in the four Commissioners and ensure that the Commission is in place, in case of anything, including a referendum. At the moment, we are discussing constitutional amendments. We quickly need to have a fully constituted Commission to think through whether we should amend our Constitution.

I know that many people have talked about elections being stolen. The IEBC has always been an excuse for every person who loses elections. Other than just putting the Commission in place, we must respect and have faith in the people we put there. Sometimes, most of the accusations that leveled against them cannot be proven.

The Supreme Court made a determination that the election was not conducted properly. They went ahead and said that the same Commission should go ahead and do it and they did a good job.

Therefore, building institutions is the greatest challenge. As I said yesterday, if this country can agree to do parliamentary system of government, we would forget about presidential elections because nobody disputes much questions of elections of Senators and Members of National Assembly. People usually accept results and even when they do not accept, they believe in going to court and a determination being made and you do not hear people saying IEBC is this and that.

If we agree to go the parliamentary system, we will no longer go to Bomas of Kenya to wait for streaming of presidential results. We will also not need the Supreme Court. Life will be very easy. We will come here and sit with our prime minister. As we grow our democracy, people will be bought here and there, they vote this way, and that way and things will be changing over time. We will deal with the reality at the moment and things are changing as we progress.

Ultimately, I know for sure that if we adapt the parliamentary system, there will be no fight about elections; it will die. This is because people can register a small party and put together all minorities and negotiate. Such minorities can negotiate their vote on the position of the prime minister.

Mr. Temporary Speaker, Sir, maybe you will agree to support me to be the deputy prime minister. This place will become a very beautiful place. I think we are in very exciting times because there are many reforms that are being thought through. Whichever direction we go, we will need IEBC so that we can carry out very good elections.

I am happy because in the 2005 and 2010 referendum, there is no one who disputed the results. Usually, the disputes are as a result of the amount of faith people have on the presidency, the resources they dispense and opportunities people get by virtue of having the president of their choice. Referendum elections are usually less contentious. Therefore, let us have this Commission in place so that we sort the other issues if we must in the constitutional review process.

Mr. Temporary Speaker, Sir, I beg to support this Bill and request under Standing Order No. 61(3) that you put off the putting of the Question to Tuesday or Wednesday next week as already determined by the Speaker so that we vote on this matter.

Thank you.

The Temporary Speaker (Sen. (Dr.) Lelegwe): Hon. Senators, I direct that the putting of the Question be pushed to Wednesday.

(Putting of the Question on the Bill deferred)

Hon Senators, Order No. 12 is generally stood over pending consultations.

Second Reading

THE CONSTITUTION OF KENYA (AMENDMENT) BILL
(SENATE BILLS NO. 2 OF 2019)

(Bill Deferred)

The Temporary Speaker (Sen. (Dr.) Lelegwe): Hon. Senators, Order No. 13 is deferred.

Second Reading

THE CONSTITUTION OF KENYA (AMENDMENT) BILL
(SENATE BILLS NO. 16 F 2019)

(Bill Deferred)

The Temporary Speaker (Sen. (Dr.) Lelegwe): Hon. Senators, Order No. 14 is deferred.

*Second Reading*THE SECTIONAL PROPERTIES BILL
(NATIONAL ASSEMBLY BILLS NO. 23 OF 2019)*(Bill Deferred)***The Temporary Speaker** (Sen. (Dr.) Lelegwe): Next Order.

The Chairperson of the Committee on Roads and Transportation is not in. Therefore, I defer Order Nos. 15 and 16

MOTIONSADOPTION OF REPORT ON PROJECTS UNDERTAKEN BY KENYA MARITIME AUTHORITY,
KENYA FERRY SERVICES AND NATIONAL SOCIAL SECURITY FUND

THAT, the Senate adopts the Report of the Standing Committee on Roads and Transportation on its inquiry into projects undertaken by the Kenya Maritime Authority, Kenya Ferry Services and the National Social Security Fund, laid on the Table of the Senate on Thursday, 21st November, 2019.

*(Motion deferred)*ADOPTION OF REPORT ON INSPECTION VISITS TO
MALABA BORDER POINT/KITUI ROAD PROJECT

THAT, The Senate Adopts The Reports of The Standing Committee on Roads and Transportation on The Visit to The Malaba International Border Point (OSBP) and The Inspection Visit and Familiarization of The Kibwezi-Athi-Mutomo-Kitui Road Project In Kitui County Laid on The Table of The Senate on Wednesday, 4th December, 2019.

(Motion deferred)

The Temporary Speaker (Sen. (Dr.) Lelegwe): Sen. (Dr.) Mwaura is not in the Chamber. Therefore, Order No. 17 is deferred.

NOTING OF THE REPORT ON 7TH SYMPOSIUM OF THE
INDEPENDENT COMMISSION AGAINST CORRUPTION

THAT, the Senate notes the Report of the Parliament of Kenya Delegation to the 7th Symposium of the Independent Commission against Corruption (ICAC) held in Hong Kong from 22nd to 24th, May 2019 and

laid on the Table on Wednesday, 19th February, 2020.

(Motion deferred)

ADJOURNMENT

The Temporary Speaker (Sen. (Dr.) Lelegwe): Hon. Senators, there being no other business, it is now time to adjourn the House. The House, therefore, stands adjourned until, Tuesday, 25th February, 2020 at 2.30 p.m.

The Senate rose at 5.25 p.m.