

# PARLIAMENT OF KENYA

## THE SENATE

### THE HANSARD

Tuesday, 9<sup>th</sup> November, 2021

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

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

#### PRAYER

#### COMMUNICATIONS FROM THE CHAIR

##### VISITING DELEGATION FROM PAN AFRICAN PARLIAMENT SECRETARIAT

**The Speaker** (Hon. Lusaka): Hon. Senators, I would like to acknowledge the presence, in the Speaker's Gallery this afternoon, a visiting delegation from the Pan African Parliament Secretariat. The delegation is here on a mission aimed at strengthening collaboration between the Pan African Parliament and Parliament of Kenya in providing administrative support for domestication and implementation of African Union Treaties, decisions, policies, programmes and for continued participation of the Parliament in the activities of the Pan African Parliament.

The delegation comprises-

Mr. Vipia Harawa	-	Clerk of the Pan African Parliament
Mr. Ann Chingwalu	-	Senior Human Resource Officer
Mr. Kenneth Akibate	-	Serjeant-at-Arms
Ms. Hellen Sabwa	-	Committee Clerk

##### VISITING DELEGATION FROM KISUMU COUNTY ASSEMBLY

Hon. Senators, I would also like to acknowledge the presence, in the Speakers Gallery this afternoon, of Members of the Committee on Public Accounts and Investment from the County Assembly of Kisumu. The delegation is at the Senate for a two-day benchmarking visit with its counterpart Committee at the Senate; the Sessional Committee on County Public Accounts and Investment.

I request each Member of the delegation to stand when called out, so that we may acknowledge them in the Senate tradition.

Hon. Oiko Pete	-	Vice Chairperson, Committee on Public Accounts and Investments
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Hon. Roy Samo	-	Member
Hon. Nancy Owiti	-	Member
Hon. Seth Okumu	-	Member
Hon. Julius Genga	-	Member
They are accompanied by:		
Mr. Austine Ochieng	-	Committee Clerk
Mr. Edward Odanga	-	Hansard Officer
Mr. Geoffrey Omollo	-	Accountant
Mr. Dominic Muinde	-	Legal Counsel
Mr. Charles Ageng'o	-	Auditor
Mr. Abraham Odegi	-	Serjeant-at-Arms

In our usual tradition of receiving and welcoming visitors to Parliament, I extend a warm welcome to them. On behalf of the Senate and my own behalf, I wish them a fruitful visit.

Thank you.

**Sen. (Dr.) Musuruve:** Thank you, Mr. Speaker Sir, for giving me this opportunity to join you in welcoming the visitors in the House. We are happy when people come and to see how we conduct our business. This is good because they can borrow a leaf from us and strengthen their relationship with the Senate.

Allow me to thank the Pan African Parliamentary Secretariat for coming this far to see how we transact our business. I heard you mention Hellen Sabwa as a member of the delegation. Hellen Sabwa is known to me. We grew up together and played childhood games such as crocheting and climbing mango trees. I know that Ms. Sabwa has the potential of strengthening ties between Kenya and Pan African Parliament. We can later interact with them away from this House, so as to see the best practices that they can take back to the Pan African Parliament.

I am happy that Ms. Sabwa has taken her expertise to South Africa. We should encourage our experts to work on a global stage for us to have meaningful engagements.

**Sen. Wetangula:** Thank you, Mr. Speaker, Sir. I join you in welcoming the team from Pan African Parliament Secretariat, which I believe is based in Cape Town, South Africa, and the delegation from Kisumu County Assembly.

The Pan African Parliament was set up at the time when I was the Minister for Foreign Affairs. The intention of setting it up was to fast-track and harmonize the processes of legislation on matters that concern the people of Africa. We intended to have a model like the European Parliament that is based in Strasbourg, France.

In the European Parliament, all Members are elected directly by the electorate in designed constituencies. If we are to do that in Africa, we will bring a sense of participation, belonging and ownership of the Parliament. I want to encourage the Secretariat, because they are the administrators of the Parliament, to embark on a reform process that will lead to direct elections of members of the Pan African Parliament. That is the only way to have the ordinary people in the villages of Africa feel that there is a Pan African Parliament.

As it is today, Members of the Pan African Parliament are picked; in fact, hand-picked, from various continental parliaments and when they go to Cape Town for sessions; it is like they are on holiday.

We hardly have ever seen any legislation or opinion on legislation from the Pan-African Parliament, particularly on matters that concern our continent, namely, environment, resource exploitation on foreigners and above all, the growth of Democracy on our continent to remove the vestiges of *coup de'tats* like what we saw the other day in Mali.

As we welcome you from the Pan-African Parliament, we encourage you to be reformist and dynamic in the change that Africa needs, so that the Pan-African Parliament becomes a truly Pan African Parliament with the capacity to legislate and whose legislation will be respected by member countries.

I encourage the Kisumu Delegation to be the primary oversight team in their county. As a primary oversight team, as has happened in many counties, many of the Members County Assemblies (MCAs) in this critical committees quite often get hijacked and domesticated by Governors to the level where they are unable to properly oversight. If you are sitting with your counterpart team in the Senate, you will see that we act firmly without fear, favour or prejudice in looking at what counties do.

Lastly, I encourage counties, when they are recruiting members of such staff, particularly in cosmopolitan areas, to ensure and remember that 30 per cent of employees of every county should not be from the county itself, but from other parts of Kenya in order to build a united, unitary and strong Republic of Kenya with two levels of Government.

Mr. Speaker, Sir, I thank you.

**The Speaker** (Hon. Lusaka): Proceed, Sen. Halake Abshiro.

**Sen. Halake:** Thank you, Mr. Speaker, Sir. I join you in welcoming the members of the Pan-African Parliament as well as MCAs of the County Assembly of Kisumu.

I am very happy that we have been visited by members of the Pan-African Legislative body. Africa's issues across the continent are the same. Africa's problems, oversight, representation and legislation should all be aligned. We see a situation where, while there is so much that unites us, countries are so different and aligned to either former colonial masters or both ethnic – linguistically and culturally to the point where we have so much division in Africa, especially when it comes to language, legislation, resource exploitation and trade with each other.

Trade within Africa is so low that we are so dependent and on our knees whenever there are issues, even during this Covid-19 times when it borders across international - especially with the developed world - was closed. It is about time that Africa started looking at it own solutions, alignment, trade and investment and economic partnerships, where then we can call ourselves proudly African because we are the same people.

There is so much that is wrong with Africa. Even in the just concluded United Nation Framework Convention on Climate Change Conference (CFCCC) Conference of Parties COP 26, perhaps which you may have attended, Africa's voice is so diverse and aligned with other places, but not to itself.

I am happy that the Pan-African Parliament is visiting African parliaments and making sure there is alignment between the continental parliament and our national parliaments. I hope to see in the near future both in the African Union and in our African

continental parliament that there is something that we can be proud of; a way of doing business, alignment of both oversight and representation and just general alignment, where we find African parliaments have the same voice and are pulling in the same direction.

With those few remarks, I welcome them.

Mr. Speaker, Sir, to our County Assembly Members from Kisumu, I encourage them. As the party leader of Ford-Kenya has said, as the primary “oversighters”, we need to see a lot of work that could have been done on the local level not coming to the Senate. For instance, in our County Assemblies, there is so much that could be done, but everybody is now coming with petitions to the Senate when all these matters could have been attended to at the local level, instead of coming all the way to the County Public Accounts and Investment Committee (CPAIC).

I hope that we will not have a situation where the only checks and balance is the Senate, to the point where it becomes the enemy of the people or the Governors.

I welcome them and look forward to this house working with both Intercontinental House and the local Assembly, of which we are partners.

Mr. Speaker, Sir, I thank you.

**The Speaker** (Hon. Lusaka): Proceed, Sen. Rose Nyamunga.

**Sen. Nyamunga:** Thank you, Mr. Speaker, Sir. First of all, I join you in welcoming the two sets of visitors we have. I am so glad that Kisumu County Assembly is here today in the form of Public Accounts Committee (PAC). In as much as we do a lot of work in this House, it is very clear that the county assemblies have an oversight role.

We also recognize the importance of PAC in any assembly. As much as most of the work is done by different committees in overseeing county governments, it is really critical for the PAC to do a major role in oversight, in making sure that the resources that are allocated to the counties are properly utilized for the benefit of the people.

I urge the PAC of Kisumu that collaboration with the Senate is very important because a lot of learning can be done. I urge all the county governments to work together with the Senate in terms of learning - they will learn a lot of things. We can also do a lot of training for the county assemblies on their oversight role.

I take this opportunity to welcome and ask you to feel at home. I am so sorry that I did not know that you are around. Now that I know, I will make sure that we have a conversation before you leave.

Mr. Speaker, Sir, I thank you.

**The Speaker** (Hon. Lusaka): Proceed, Sen. Ochillo-Ayacko.

**Sen (Dr.) Ochillo-Ayacko:** Mr. Speaker, Sir, I thank you for giving me an opportunity to join you in welcoming our two distinguished delegations.

In my previous life, I had the distinguished honour of being Chairman of African Commission on Nuclear Energy (AFCONE). We were based both in Addis Ababa in Ethiopia and South Africa. We had the rare privilege of having our secretariat assisted by the Pan-African Parliament. The Parliament is very important to this continent. It is also important to other institutions that have been established to serve us in the continent.

During my tenure as the Chairman of AFCONE, the Pan African Parliament was of invaluable use and assistance to my team. I am happy and feel privileged that they

have chosen to visit Kenya. The challenge that is on us, as a nation, and other African nations, is to ensure that we sufficiently fund our continental Parliament.

As it is, the funding that we give them, we pledge it on paper, but are always late in releasing funds to that Parliament. It would be blamed on us if there is failure on the part of that Parliament to discharge its obligation. We need to re-look at our support to that Parliament and ensure that we equip and fund it to deliver on its mandate.

The Members of the County Assembly of Kisumu who are our guests today, I thank you. I had the privilege of hosting them this morning in the CPAIC of the Senate. They are a promising delegation. I believe that they should take two things home. One, they should safeguard their county autonomy and sovereignty jealously. If they cede that to the Executive, they will become powerless and impotent.

Two, they should make sure that they engage with us, as a Senate, regularly. I hear loud whispers from various county assemblies that they are not in receipt of their allocation of funds in good time.

Mr. Speaker, Sir, again, this is a challenge to us, as a Senate, who regulate how they get their funding. We should work very hard and ensure that the autonomy of county assemblies is safeguarded by ensuring that the National Treasury releases the funds directly to them. They have been made to depend on their county executives and their executives have become cannibals when it comes to matters their autonomy.

Mr. Speaker, Sir, with those very many remarks, I want to thank you and ask the visitors who are with us today to make the best of this engagement.

**The Speaker** (Hon. Lusaka): Lastly, Sen. Madzayo.

**Sen. Madzayo:** Mr. Speaker, Sir, I thank you. First, I would like to also join you in welcoming the members of the Pan-African Parliament Secretariat and our Members of County Assembly (MCAs) from Kisumu.

Being one of the Members of the Pan African Parliament, I would like to say that this is a very important delegation from the Pan-African Parliament because it does its daily activities at Parliament. We note that the Pan-African Parliament is a very important organ of the African Union (AU), and that it has a lot of functions that help other African governments in giving directions as to how they can conduct their business.

Mr. Speaker, Sir, as it is, Pan-African Parliament also has its own teething problems. My observations to Pan-African Parliament is that when it comes to elections time, like coincidentally, some of us have been in Pan African Parliament, and there was an election that was supposed to take place much earlier in March.

However, that election never took place simply because, I think in Africa we are governed by our colonial masters, some being French and some British. Therefore, we come from the Anglophone and Francophone speaking countries. Coincidentally, I did not know, but did when I went to the Pan-African Parliament, that Francophone speaking countries are more than Anglophone countries in Africa.

When it comes to elections, we note that the Francophone people normally take a position. Members of Pan-African Parliament take a position and the principle of rotation, as enshrined in the African Union Charter, is not followed. I believe that my brother, Senior Counsel Sen. Wetangula here, knows this and I am glad that he has acknowledged, but incidentally, some of the rules they formed when he was Minister for

Foreign Affairs are not being followed. The principle of rotation is not being followed or applied.

Therefore, where we say that the President stays for three years only and hands over to another region, either the Southern region, the East African region or the Northern region, it is not applied. That is why when we were there last time in March, it was such a commotion that we had to adjourn Parliament because we could not move on with the elections.

As it is stated, I am glad that today I met one of the delegations, which came from Zimbabwe. They had been to the African Union in Addis Ababa and it has been agreed, according to records, that the principle of rotation must be applied. It is in that regard that the President, currently who is from the Francophone speaking countries, will have to handover though, as much as he did not want to do so.

Secondly, another issue that is important to note with Pan-African Parliament is the fact that the Malabo Protocol is very important. It would allow, just like the way it is in Europe, to move from Switzerland to France or Austria. It should apply in Africa. I find it very interesting that when I am going to a place like Rwanda or wherever, I need a visa or we need visas as Africans.

Mr. Speaker, Sir, we should try as much as we can to allow Africans from all over - if you are from Nigeria, Morocco, Egypt, Kenya, Uganda, Tanzania, Zimbabwe, Malawi or South-Africa, you should be able to move to any of the African countries without having the fear that you will be returned back because you did not go through the procedure of getting a visa from that particular country.

Kenya is not a signatory. Therefore, I would urge our Government to sign the Malabo Protocol as soon as practically possible to enable it be functional in Kenya and all other countries in Africa.

I thank you, Mr. Speaker Sir.

**The Speaker** (Hon. Lusaka): Next Order.

## PETITION

### LIFTING OF *NOTE VERBALE* ON PROGRAMMES RELATED TO THE 2022 GENERAL ELECTIONS

**Sen. Halake:** Thank you, Mr. Speaker Sir. I rise to read a Petition to Parliament concerning a note verbale to all diplomatic missions and international organizations issued by the Ministry of Foreign Affairs of the Republic of Kenya dated 12<sup>th</sup> July, 2021, and I read.

“We the undersigned citizens of the Republic of Kenya, members of various civil society organizations and official representatives of various political parties affiliated to the Centre for Multiparty Democracy (CMD-Kenya) listed below-

1. The Center for Multiparty Democracy
2. Transparency International
3. Law Society of Kenya
4. Green Initiative for Better Society
5. Kenya National Congress

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6. United Democratic Alliance
7. Economic Freedom Party
8. Forum for Restoration of Democracy Kenya (Ford-Kenya)
9. Democratic Party of Kenya
10. Amani National Congress
11. Wiper Democratic Movement Kenya
12. The National Rainbow Coalition Kenya (NARC-Kenya)
13. Kenya African National Union (KANU)
14. Frontier Alliance Party (FAP)
15. Labour Party of Kenya (LPK)
16. Jubilee Party
17. Chama Cha Mashinani (CCM)
18. Party of National Unity (PNU)
19. Orange Democratic Movement (ODM)
20. Radio Light and Life
21. Party of Democratic Unity (PDU)
22. Peoples Party of Kenya (PPK)

Draw the attention of the Senate to the following-

THAT, on the 12<sup>th</sup> of July, 2021, the Ministry of Foreign Affairs of the Republic of Kenya issued a note verbale to all Diplomatic Missions, International Organizations and other Foreign entities interested in supporting Kenya's preparations towards the 2022 General Elections, to await expression of such need from the Government of Kenya through the Ministry of Foreign Affairs.

THAT, a directive was issued to all Embassies, Missions, International Organizations and Foreign entities currently engaged in any programmes or activities related to the 2022 general elections through Government Institutions, Community Based Organizations, Faith Based Organizations and the Media to inform the Ministry through diplomatic channels at the earliest opportunity in order to formalize such arrangements.

THAT, we consider this directive dangerous and may stifle the preparations towards the 2022 elections as it affects even the Independent Electoral and Boundaries Commission itself and other strategic organizations that are working towards ensuring free and fair elections.

THAT, issuance of the *note verbale* also affects the political participation, especially of the marginalized, whose preparations for political participation has been conducted by non-state conductors.

THAT, the *note verbale* has greatly paralyzed functioning of organizations that depend on donors to do these functions.

THAT, the Ministry of Foreign Affairs was unresponsive to our request to withdraw of the note verbale.

THAT, the issue in respect of which the petition is made is not pending before any court of law or constitutional or legal body.

THEREFORE, your humble petitioners pray that The Senate -

- (i) summons the Cabinet Secretary from the Ministry of Foreign Affairs to shed light on the rationale behind the note verbale issued on 12<sup>th</sup> July 2021;

- (ii) advises the Ministry to lift the note verbale so as to level the playing field in order to allow each actor to play its role in strengthening our democratic settings;

And your petitioners will ever pray.”

Mr. Speaker, Sir, attached is one of the biggest and most voluminous petitions signed by individuals, civil society, political parties and all Kenyans of good will, and I will submit that so presented to the Senate through myself.

I thank you, Mr. Speaker, Sir.

**The Speaker** (Hon. Lusaka): Hon. Senators, pursuant to Standing Order No.231, I shall now allow comments, observations or clarifications in relations to the Petition for not more than 30 minutes.

Proceed, Sen. Moses Wetangula.

**Sen. Wetangula:** Thank you, Mr. Speaker, Sir. I thank the distinguished, Sen. Halake, for this Petition that she has presented on behalf of literary all political parties in Kenya, including the one led by myself.

Mr Speaker, Sir, I encourage that we do not ask the Principal Secretary to come and shed light because there is no light to shed. We want him to rescind and vacate that note verbale.

Mr. Speaker, Sir, in the history of this country, even during the time of Mzee Moi, when we did Inter-Parties Parliamentary Group (IPPG) in this Parliament to bring reforms and cool the temperatures of politics in the country, development partners have been part of our movement. They have been available to reduce the financial weight on the Government in doing some of the things that enhance the space for democracy and accountability in our electoral system.

Mr. Speaker, Sir, donor countries have always supported many programmes, including empowerment of women to stand as candidates without discrimination from their male counterparts. They have always funded civic education to enable rural populations to understand their civic duty to register as voters and actually vote. Above all, the Government never allocates sufficient resources to IEBC to carry out credible elections. The short fall is always met by donors.

Mr. Speaker, Sir, in fact, many embassies accredited to Kenya have shared this note verbale with me. I have seen and read it. I find it an assault on the freedom of association, and above all, on the capacity of IEBC and all concerned parties in conducting free, fair, verifiable and credible elections.

Mr Speaker, Sir, donor countries have been supporting issues that do not undermine the freedom of choice of Kenyans. For example, when they support women, youthful or Persons with Disabilities candidates, they also support civic education. You have never heard any embassy going to any radio or TV station to tell any Kenyan who to vote for. All they do is to urge Kenyans that if they want a good government; they should participate in creating that good government.

Mr. Speaker, Sir, this *Note Verbale* should be vacated. Due to the constraints of time, I urge the Committee on Defence and Foreign Relations, led by Sen. Outa, and to which the distinguished Deputy Majority Leader is a Member, to move quickly and get the PS to explain the source of this misadventure. We have not heard any complaint from any quarters about foreigners interfering in our democratic activities, unlike the good old



days when we had ambassadors like Smith Hemstone, Musselburgh and Edward Clay, who were visibly meddlesome in the politics of this country. Even with that, Mzee Moi, as the President, never stopped them from engaging Kenyans in bringing up issues that enhance democracy.

We will support this Petition fully. I thank Sen. Halake, as the Chairperson of Centre for Multiparty Democracy (CMD), for bringing this Petition. I urge that in the shortest time possible, the PS in the Ministry of Foreign Affairs must appear before the Committee and vacate this *Note Verbale* because apart from being an achronistic, it is grounded on most unreasonable grounds that cannot be let to go.

If you see what is going on in the 'lower House,' the Chairman of the Committee on Budget and Appropriations is saying that they cannot sufficiently fund IEBC. Outsiders and partners who want to fill the gap are being stopped from doing so. This cannot help the cause of democracy in our country.

Thank you, Mr. Speaker, Sir.

**The Speaker** (Hon. Lusaka): Proceed, Sen. Cheruiyot.

**Sen. Cheruiyot:** Mr Speaker, Sir, can you protect me from my neighbour.

**The Speaker** (Hon. Lusaka): I can see your neighbour is wondering what you want to say, but I am sure you have something good to say.

**Sen. Cheryuiot:** Mr. Speaker, Sir, yes, I do, unlike him.

**The Speaker** (Hon. Lusaka): Proceed, Sen. Cheruiyot.

**Sen. Cheruiyot:** Mr. Speaker, Sir, this is a very important Petition. I have read through this *Note Verbale* and it paints a very worrisome picture.

Mr. Speaker, Sir, generally, there has been an outcry in the country about respect to the rule of law in the country. Before we speak about foreign interests in the country, there is a big problem locally. As per the dictates of our Constitution, Cabinet Secretaries in the first place, are supposed to be apolitical. Many of them have since vacated that constitutional edict and are now openly campaigning for different candidates.

One day, you get a Cabinet Secretary saying that he or she endorses Sen. Moses Wetangula for President and then tomorrow, they want to come and sit in a Committee that is coordinating General Elections. First of all, that is strange because, constitutionally, it is purely the domain of IEBC.

I must thank the Chairman of the Independent Electoral and Boundaries Commission (IEBC), Wafula Chebukati, for insisting on that particular position that there is nothing to coordinate in an election. This is not the first election. I do not know where people get the silly behaviour to imagine that there is anything for the Executive to coordinate in an election. There is nothing. It is purely the work of IEBC.

If it is security apparatus, I believe that the Inspector General (IG) of Police knows. It is out of that same attitude that you see now being transported to other foreign countries, where people want to believe that you can chaperon the country into a particular political direction. That cannot be accepted.

Mr. Speaker, Sir, we are a country founded on the rule of law. We must respect our Constitution even as people engage. I believe that all these foreign funded institutions that are here know to what extend to engage. On many occasions, they will never direct their funding or support towards a particular political party. On many occasions it is to a particular cause or sectoral groups, like people living with disabilities or women, which

unfortunately, even the woman caucus team has fallen victim to this particular shenanigans and terrible attitude by the current administration.

I saw last week that the United Nation (UN) women had an engagement with part of women caucus and you could see the invitation was sectional, that is, selective towards only people of a certain political inclination. This is despite the fact that from times of old, it was always known that when it comes, for example, to gender issues, people and those who are in positions of leadership always used to rise above petty partisan politics. However, this is not the case with the current administration, which is really unfortunate.

Mr. Speaker Sir, I wish to challenge them to know that there is nothing unique or special about this particular election. This siege mentality that we are experiencing and are being told that so and so must never win, is propelling the particular candidate that the over-rated system is working hard against. That is how you are propelling such people.

What I understand, having being a political player for the last few years, is that elections will come and go, but we will remain as a country. We must remain and respect ideals that, as a nation, we have worked so hard to achieve and continue to live together. Let us not carry the country towards a particular direction, such that if a particular candidate was to win, there would be no Kenya after all.

I believe all those who are running for President - because I have listened - at least those who are serious about their candidature, are people who if you place this country in their hands, they will be able to transform it in one way or the other.

They may be gifted differently. We hold different opinions, but must collectively speak out against this administration that has panicked for reasons I do not know and are now keen on directing our politics towards a particular direction and doing things that are increasingly becoming embarrassing. Even our foreign friends are increasingly becoming worried that when did Kenya slide back to these levels?

Mr Speaker, Sir, those are my few thoughts about it, but maybe the Committee on Justice, Legal Affairs and Human Rights or a few other concerned committees need to look into detail on this particular issue.

We should also call upon the Independent Electoral and Boundaries Commission (IEBC) to have a working workshop with us, Members of Parliament, because much as many of us are aspirants before them, just like those who are trying to run for office, it is important that the legislature is informed on election preparedness and how they intend to run this particular election.

Mr. Speaker, Sir, at your level and that of the Speaker of the National Assembly, you need to request that of them, so that we can raise certain issues because we are partners in this journey.

There are a few things that we learnt from 2017, which we want to share with them or they can allay certain fears that we are hearing for purposes of ensuring that, next year, we have elections on 9<sup>th</sup> August, and on 10<sup>th</sup>, people resume their duties and life goes on. Those who will have won, we congratulate them; those who will have lost, they live to fight another day.

Thank you Mr. Speaker, Sir.

**Sen. Sakaja:** Thank you Mr. Speaker, Sir. I acknowledge this Petition by Sen. Halake on behalf of all these organizations. Poverty is a very bad thing. I would hate to

imagine such a discussion taking place in another country; that the Kenyan Embassy is donating money to the democratic party and to institutions in the US or other countries for the election.

A country's sovereignty is something to be safeguarded and it should embarrass us--- I am saying this as someone who also led a party. We have depended on a lot of these foreign missions and organizations, such as National Democratic Institute (NDI), the International Republican Institute (IRI), State University of New York (SUNY) and many others.

While it is true that their needs to be - even if you go through the Geneva Convention - a manner through which you engage in another country's democracy or with another country on how they make their electoral choices, there is need for a balance.

It is true that the IEBC and even our political parties are not well-resourced. That is the core problem we need to address. If we had the resources we require, I do not think any party leader or organization would go out there looking for resources from foreign countries, even just as a matter of pride.

I am seeing in this note above the request that all these requests be channelled through the Government. You ask yourself, first, is the Government itself neutral in the election? That is the first question you must ask. What happens to those engagements that are already happening?

It would be an interesting discussion to have when they come. We would like to hear the reasoning behind what the Government is saying because they are pointing out specific Embassies, Missions and international organizations domiciled in Nairobi, with the intent to engage Government institutions.

From what I know regarding foreign policy and foreign affairs, countries perpetuate their interests in other countries. The Kenyan Mission in the United Kingdom (UK) is not perpetuating the UK's interest. It is there to perpetuate its own interests and these countries which are here are perpetuating their own interest.

Therefore, it is good for them to give clarity, but of course, without making a blanket statement that we do not want any resources from foreign countries and foreign missions.

**The Speaker** (Hon. Lusaka): There is a point of information by Sen. Wetangula. Sen. Sakaja, do you want to be informed?

**Sen. Sakaja:** Yes, Mr. Speaker, Sir.

**Sen. Wetangula:** Mr. Speaker Sir, I allow me to inform my distinguished nephew that probably his memory is failing him. When he was the Chairman of TNA, my distinguished nephew led a high-powered delegation from Kenya to China to go and solicit for support. Was China not a foreign country? We should speak from a point of fairness and not exhibit any unnecessary dementia on this matter.

**Sen. Sakaja:** Mr. Speaker Sir, the person closest with the threat of dementia really cannot be me. Even in terms of age, I am a bit far from that.

*(Laughter)*

I have never led a delegation to look for funds from any foreign country, but we have engaged. We have had party-to-party partnerships. I have signed a cooperation agreement with the Democratic Party. In fact, around that time, they invited the Rt. Hon. Raila Odinga, Hon. Musalia Mudavadi, Hon. Martha Karua, the late Hon. Laboso and I to Philadelphia for Hillary Clinton's Democratic Convention.

We have done party-to-party engagements with the National Council for the Defence of Democracy - Forces for the Defence of Democracy (CNDD-FDD) in Burundi, but as peers and not subjects or recipients of donor support.

What I am saying is that in as much as the support is welcome and it is needed--- I led a youth movement where we received a lot of support, but I agree that there must be a proper framework. There must be an agreement and clarity on what that support is for when it comes here.

It is something to debate and hear about when this Principal Secretary (PS) comes, so that we actually domicile these agreements in a way that benefits or perpetuates the interests of the Kenyan people and not any foreign interest in this land.

Thank you Mr. Speaker, Sir.

**Sen. Murkomen:** Mr. Speaker, Sir, while I really laud this Petition for the content and issues being raised in this house, and agree with Sen. Wetangula, he made a mistake to bring in Sen. Sakaja. However, it is true that the Jubilee Party, my former party, has a written agreement - a cooperation agreement - with the Government of China. A number of Members of this House and Members of the National Assembly have been part of the delegation to go to China to talk about technical support.

In fact, many people think that the confusion and madness that is going on in Jubilee is due to the fact that they borrowed the wrong lessons from the Chinese Communist Party.

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

*[The Deputy Speaker (Sen. (Prof.) Kamar in the Chair)]*

Madam Deputy Speaker, in the 2017 elections, all the political parties in this country received technical support from the American Government, European Union and the UK. Just because the President has already served 10 years and is not going for re-election, it is not a license for him to kick the ladder when other political parties and political leaders want to benefit from technical support from our partners.

It is a paradox that we have a country that is borrowing for everything, including water security. We are borrowing for roads and everything, and then, when we have matters related to democracy, we write letters. I wish the Ministry of Foreign Affairs could be writing letters to foreign countries telling them: "Do not lend any more money to the Kenyan Government," because the struggle that we have in the Republic is dealing with debts.

In fact, if there is a policy, programme or mechanism that is interfering with our democracy, it is debt, because we end up making decisions for the benefit of those we owe.

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When you talk about technical support, women's movement, the fight for democracy in this country from 1992 or even before that was able to succeed because we had the technical support of our foreign partners.

Madam Deputy Speaker, if you look at the women movement, including yourself, you have even invited me to train women in programmes you have been running that are supported by foreign agencies. However, somebody now feels threatened that since there is a new wave of democracy and people want to chart their way forward, they want to micromanage everything.

There is a very bad behavior that has crippled this country, where leaders are being monitored from House to House; people want to know who you are sitting with, who you are eating with and who is supporting you. I think Parliament should stand firm.

I want to tell our development partners, United States Agency for International Development (USAID), Department for International Development (DFID), Danish International Development Agency (DANIDA), all the corporations we work with, women in this country, youth, those who work on conflict issues---

Madam Deputy Speaker, I have a background in The Non-Governmental Organizations (NGO) world and, as a lecturer at the university, I was invited to do so much work; to train different kinds of people and give technical support to those running for office, especially before 2013 elections. We cannot just wake up now and write letters left, right and center because somebody feels like he has lost the political grip at the moment.

I want to ask the American Government and European nations that they are our partners when they support us financially for roads and projects. They are still our partners when the support democracy because they have a stake in this country, just the way we have a stake in their countries because we have a stake in the well being of the planet earth.

We have just come from the Glasgow Conference COP 26 that is discussing technical support on matters environment and many political parties in this country are working on issues of environment. Do you want to tell me that they should not be assisted when they are working on their manifestos to ensure that environmental support--

This issue is a shame. I want to tell those who remained in Jubilee and are still there for the remaining eight months, shame on you!

Thank you, Madam Deputy Speaker.

**The Deputy Speaker** (Sen. (Prof.) Kamar): Hon. Senators, I would like to remind Sen. Murkomen that he is not going anywhere for the next eight months and that he is very faithful in giving his donations.

Yes Sen. (Dr.) Musuruve.

**Sen. (Dr.) Musuruve:** Thank you, Madam Deputy Speaker for giving me this opportunity to support this Petition. I am a big beneficiary of NDI. I remember before I came to Parliament, I was taken through capacity building sessions and trainings by National Democratic Institute (NDI) because I was coming from a different world. Academia and politics are far apart.

Through the NDI courses I came to appreciate the fact that even scholars are supposed to be in politics, so that they can legislate on laws that affect academia. They

can also legislate on laws that affect women and Persons with Disabilities (PWDs). These organizations come in handy when it comes to building capacity.

This Petition is coming at a time when I am organizing PWDs in all the wards in Lugari, just to raise awareness through NGOs, so that they can come and train them for them to come to terms that if they are engaged in politics in governance, it will be possible for them to come up with decisions that will help their kind.

When it comes to capacity building, these NGOs come in handy and should be given a chance to support where the Government is not able to support. We are talking of even women aspirants and PWD aspirants. Most of them come from a background where they do not have the financial resources to go high in terms of politics, but these NGOs come in handy to support that. For example, they can do resource mobilization on behalf of the aspirants.

They even help in ensuring that the two-thirds gender rule will eventually be observed. When they drum up support for women wherever they go, chances are that women will rally behind their fellow women because when it comes to elections, women play a big role.

When it comes to voting, they are very genuine in voting, but sometimes, they do not vote for their own fellow women simply because they have not been trained. Therefore, these organizations come in handy to do this.

I would like to commend the Centre for Multiparty Democracy (CMD) Chairperson, Sen. Halake, for this Petition. I am looking forward to you coming with your team to Lugari and raise awareness on women and PWDs. I appreciate what you are doing at CMD.

I appreciate what NDI is doing because I am a product of NDI. Therefore, they should be given the space to ensure that they enlighten women, youth and PWDs in the political arena, so that they are involved in governance. When women and PWDs are engaged in politics and governance, that is when the curve of poverty will actually go down.

You will note that, globally, PWDs are the poorest of all mankind. When they are enlightened to also be decision makers and come up with decisions that will help their kind, the cyclic nature of PWDs being in poverty will come to an end.

I support this Petition.

**The Deputy Speaker** (Sen. (Prof.) Kamar): Sen. (Dr.) Langat, you have three minutes.

**Sen. (Dr.) Langat:** Madam Deputy Speaker, I just want to say that I support this Petition fully. The rate at which Cabinet Secretaries are engaging themselves in political matters in this country is alarming.

At a time like this when our country is facing a lot of financial challenges, the Ministry of Foreign Affairs should be encouraging foreign countries to get involved in many political and peaceful affairs of this county, especially funding some lobby groups that can create a lot of awareness on matters democracy and election peace in this country and the rest.

I would have expected them to even get engaged in involving churches and religious organizations to fund some groups and create awareness on areas such as enabling more women and youth to be engaged in political matters in this country

because they are the greatest beneficiaries on matters to do with peaceful elections and democracy.

I am really perturbed regarding the issue that the Ministry of Foreign Affairs is engaging itself in writing diplomatic communication to countries that are otherwise supposed to support our country.

Madam Deputy Speaker, remember very well that you and I, when we were still fresh in Jubilee Party, the Party used to encourage us to visit other countries, where their parties are so well developed.

We even visited China and benchmarked on how to support democratic rights of other parties and to get involved, in a healthy way, to support an election. However, this time round, I am shocked that the Ministry of Foreign Affairs is engaging itself in this particular muddy global image. This is a very good Petition that we should support, especially at this time when political parties do not have money to create awareness and promote democratic rights of our country.

We should put a caveat to Ministries and Cabinet Secretaries (CSs) from getting engaged in political matters in this country. They should also remain neutral as much as possible, so that most of the citizen sell their party manifestos easily and get funding from other countries to enable them to do that.

Madam Deputy Speaker, I support this Petition.

**The Deputy Speaker** (Sen. (Prof.) Kamar): Thank you, Senator. Senators, we have six minutes and three Members wishing to speak. Try as much as possible to go for two minutes, if possible.

Proceed, Sen. Shiyonga.

**Sen. Shiyonga:** Thank you, Madam Deputy Speaker, for giving me this opportunity to support the Petition by our able, Sen. Halake, who is also the Chairperson for Center for Multi-Party Democracy (CMB).

We are nearing the general elections, which are about eight months away. Most of us here, especially nominated women Senators do not have funds. We look forward to being funded by partners from other countries. However, it is disappointing to get such a note from the Ministry of Foreign Affairs, which is an able Ministry in Kenya. Most of the parties do not have money. We have discovered that even the Independent Electoral and Boundaries Commission (IEBC) does not have money.

It is just the other day when they were fumbling with the budget, that it was not enough to conduct voter registration. Likewise, even the other members of the public have not been reached. We have come to the House and been informed that there is a good reason for Kenya to stop people or parties from being funded by other partners.

Madam Deputy Speaker, democratic rights start when a country is in communication with another. It is simply defined by the *note verbale* that we are talking about. It is very unfortunate that such a note can come from a Ministry that needs to support and assist parties to grow through other partners that they engage with in other countries. It is an unfortunate and bad incident.

We pray that the Kenya Women Senators Association (KEWOSA) and the Kenya Women Parliamentary Association (KEWOPA)--- This is because most of the women do not have enough funds to support themselves to go to the ground to sensitive people

about elections, educate other Members, as well as manage their own election. Most of us are aspirants and we are looking for money all over.

We do not need to steal this money. We need to create a good rapport with other countries and partners that are engaged in Kenya, to assist us finance this election. However, when we get such a communication, it kills the morale of women leaders and those who are aspiring to become women leaders in Kenya.

Not all finances are here to support people who are aspiring. The rich will continue to be rich and the poor will continue to be poor. However, we have the poor who can lead very well if they have money or a budget to allow them do their programmes or budget for their campaigns. It is my good prayer that this Petition that has been supported by our able Chair is implemented. We should listen to it.

Madam Deputy Speaker, I know that you are also going for a seat and you are our patron. We need this money. Let them allow us to make friends, to partner and finance our campaign. We are able leaders and we are going for these seats. We want to come back to this House.

**Sen. Seneta:** Madam Deputy Speaker, first, I take this opportunity to thank the CMD Chairperson for bringing this Petition. You know very well that the Ministry of Foreign Affairs is denying many organizations and institutions a chance to help many people to practice their democratic space in this country during and before elections.

To channel money to Ministries from different organizations is to automatically deny institutions and individuals a chance to get it for empowerment and also for fighting for democratic space. Last week and the other week, the Ministry of Public Service, Youth and Gender picked women aspirants selectively for capacity building conferences and forums. If these monies are channeled by missions, embassies and other international organizations to specific Ministries, it is already a biased channel. Therefore, we condemn this as women leaders and aspirants of different elective seats in this country. Everyone has a right to see democracy grow in this country.

Madam Deputy Speaker, I also want to urge the committee that will handle this Petition to understand the bigger picture and the intention of the Ministry of Foreign Affairs in terms of wanting to get these monies to be channeled through the Ministry.

Last week and even right now as we are speaking, so many Cabinet Secretaries (CSs) have already gone to campaigns for specific candidates. There will be unfairness when these resources are channeled through Ministries.

**The Deputy Speaker** (Sen. (Prof.) Kamar): Thank you very much.

Finally, Sen. Faki.

**Sen. Faki:** Asante Bi. Spika kwa kunipa fursa hii ya kuunga mkono Ombi lililo letwa Bunge hili na Sen. Halake.

Bi. Naibu Spika, ni wazi kuwa kuna misaada mingi ya kujenga demokrasia katika Kenya. Nchi nyingi za kimagharabi ambazo zinasaidia kukuwa demokrasia wako mbele zaidi ya Kenya katika swala la demokrasia. Kwa hivyo barua ambayo iliandikwa na Katibu katika Wizara ya Mambo ya Nchi za Kigeni kuzuua balozi kusaidia au kutoa msaada kwa maswala ya demokrasia, haifai kabisa.

Tumeona kwa muda mrefu na kwa miaka mingi Serikali imeshindwa kufanya masomo ya uraia yaani *civic education* kwa sababu pesa ambazo wako nazo hazitoshi



kusimamia maswala ya elimu ya uraia. Baadhi ya pesa hizi ambazo zinatoka katika inchi za kigeni, zinatumika kuelimisha Wakenya kuhusiana na maswala la demokrasia.

Kwa hivyo, ni makosa kwa Katibu huyu kuandika barua kuzuia balozi kutoa misaada. Hii ni kwa sababu misaada sio pesa pekee. Kuna misaada ya masomo na ya watu kupewa nafasi kusafiri kuenda kuangalia demokrasia nyingine zinafanya vipi. Kwa hivyo, kuzuiliwa kwa misaada hii ni pigo kubwa kwa taifa kwa sababu hatutaweza kusonga mbele kidemokrasia.

Tumeona kwamba demokrasia yetu bado inayumba yumba. Hii ni kwa sababu, wakati wa kura ikifika, watu wanashikilia raho zao kwa hofu kwamba kunaweza kutokea machafuko na mambo mengineyo ambayo hayafai kufanyika.

Bi. Naibu Spika, ni wazi kwamba Katibu huyu amekosa. Kwa hivyo, ile kamati ambayo itapewa fursa ya kuchunguza, inafaa imuite hapa kinagaubaga. Hii ni kwa sababu hili ni swala ambalo liahusu vyama vyote. Halihusi chama kimoja peke yake.

Ninashukuru kwa sababu aliyeleta maombi haya ni Mwenye Kiti wa Wakfu was Demokrasia katika inchi ya Kenya. Kwa hivyo hili ni jambo ambalo linahusu vyama vyote kwa sababu sio chama cha Jubilee ama cha Orange Democratic Movement (ODM) ama chama cha Amani National Congress (ANC) ama Ford-Kenya ambacho kitaadhirika. Vyama vyote vimeadhirika.

Bi. Naibu Spika, kwa hivyo, swala hili linafaa lichunguzwe kwa haraka kwa sababu tunaenda kupiga kura mwaka ujao tuna chini ya mwaka mmoja. Kuna mambo mengi ambayo wananchi wanatakikana kusomeshwa ili waweze kupiga kura kwa njia ya haki na usawa mnamo tarehe nane mwezi wa nane mwakani.

**The Deputy Speaker** (Sen. Prof. Kamar) Hon. Senators, pursuant to Standing Order No. 232 (i) the Petition should be committed to the relevant Standing Committee for its consideration.

In this case, I direct that the Petition be committed to the Standing Committee on National Security, Defence and Foreign Relations.

In terms of Standing Order No. 232 (2), the Committee is required in not more than 60 calendar days from the time of reading the Prayer, to respond to the petitioner by way of a Report addressed to the petitioner and laid on the Table of the Senate.

I thank you.

*(The Petition was committed to the Standing Committee on National Security, Defence and Foreign Relations)*

## PAPER LAID

### CRA RECOMMENDATION ON EQUITABLE SHARING OF REVENUE FOR FY 2022/2023

**Sen Sakaja:** Madam Deputy Speaker, on behalf of the Senate Majority Leader, I beg to lay the following Paper on the Table of the Senate today the 9<sup>th</sup> November, 2021-

The Commission on Revenue Allocation (CRA) recommendation on the equitable sharing of nationally raised revenue between the National and County Governments for the FY 2022/2023.

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

### STATEMENTS

**The Deputy Speaker** (Sen. (Prof.) Kamar): Hon. Senators, we have Statements pursuant to Standing Order No.48(1).

The first two Statements are by Sen. Kwamboka who is not around We are aware that she is away on official duty.

#### STATE OF POLICE STATIONS IN THE COUNTRY

#### STATUS OF AN INQUEST INTO THE MURDER OF MS. AGNES WANJIRU

*(Statements deferred)*

I will give that chance to Sen. Iman.

#### STATE OF SECURITY IN NORTHERN AND NORTH-EASTERN COUNTIES

**Sen Iman:** Thank you, Madam Deputy Speaker. I rise pursuant to Standing Order No.48 (1) to seek a Statement from the Standing Committee on National Security, Defence and Foreign Relations regarding the state of security in Northern and North Eastern counties. In the Statement, the Committee should-

(1) Explain the circumstances leading to the killing of 14 people in a gunfight between herders and suspected bandits in Suiyan, Samburu County on 4<sup>th</sup> November, 2021

(2) State the circumstances surrounding the attack on the lorry armed gunmen at the Dubasari-Marsabit Road on 4<sup>th</sup> November, 2021 leading to the death of eight people and the injury of several survivors.

(3) Inform the Senate on whether the culprits behind the two attacks have been brought to book in order to face the law.

(4) Provide a report on the state of security preparedness in the said region to curb such attacks and further prevent recurrence of the same in the future.

**The Deputy Speaker** (Sen. Prof. Kamar): Thank you. The next Statement is by Sen. Samson Cherargei.

**Sen. Cheruiyot:** On a point of order, Madam Deputy Speaker.

**The Deputy Speaker** (Sen. (Prof.) Kamar): Hon. Senators, we had agreed previously that we will avoid riders because of the huge backlog that we have in the House.

So, please allow us to go through the Statements. I may allow at the end.

**Sen. Cheruiyot:** Okay.

#### MANAGEMENT OF ROAD PROJECTS BY KURA

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**Sen. Cherargei:** Thank you, Madam Deputy Speaker. I rise pursuant to Standing Order No.48 (1) to seek a Statement from the Standing Committee on Roads and Transportation on the management of road projects by the Kenya Urban Roads Authority (KURA).

Madam Deputy Speaker, in the Statement, the Committee should-

(1) Investigate the claims of skewed allocation of road projects to particular regions to the detriment of other regions, particularly counties in Rift Valley, which include Uasin Gishu, Nandi, Tans Nzioa, Elgeyo\Markwet, Bomet, Kericho and Nakuru, indicating the number of projects allocated to these counties during the financial years 2019/2020, 2020/2021, 2021/2022.

(2) Shed light on allocations of skewed award of tenders giving the names of the companies awarded and the value of each tender in the last 24 months or in the last two financial years.

(3) List the number of roads construction contracts indicating the amount for each contract awarded across the 47 counties.

(4) State whether there is any culpability on the part of the management, director general and staff of the Authority in alleged skewed allocation of road construction tenders; and,

(5) Finally, outline the achievements of the KURA particularly kilometers of roads completed countrywide in the 47 counties tabling the quality assessment reports of the works by the relevant agencies.

**The Deputy Speaker** (Sen. (Prof.) Kamar): Thank you, Senator. The next Statement is by Sen. Milicent Omanga.

I do not see her unless she is online.

IRREGULAR OWNERSHIP AND USE OF LAND NO. LR336/64  
ORIGINALLY LAND NO. LR336/12 IN BABADOGO

*(Statement Deferred)*

The next one is by the Senator for Taita/Taveta, Sen. Mwaruma.

STATUS OF DONOR AND GOVERNMENT FUNDED  
PROJECTS AND PROGRAMMES IN TAITA/TAVETA County

**Sen. Mwaruma:** Thank you, Madam Deputy Speaker.

I rise pursuant to Standing Order No.48 (1) to seek a Statement from the Standing Committee on Finance and Budget regarding the status of donor and Government funded projects and programmes in Taita Taveta County for the Financial Year 2017/2018 to the Financial Year 2020/2021.

In the statement the Committee should-

(1) Provide a list of all the projects and programmes that were budgeted for by the County Government of Taita/Taveta during the financial years in question indicating the amount of funds allocated to each and the implementation status.

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(2) State the actual physical location of each project as well as the actual type of programme location and target groups for each; and,

(3) State the total amount of money paid for each project and or programme and any pending payments.

**The Deputy Speaker** (Sen. (Prof.) Kamar): Thank you, Sen. Mwaruma.

The next Statement is by Sen. Kavindu Muthama. I do not see her and she is not online.

IMPLEMENTATION OF THE PROVISIONS OF  
THE KENYA DEPOSIT INSURANCE ACT, 2012

*(Statement deferred)*

The next one is by Sen. (Dr.) Lang'at.

SALE OF UNCERTIFIED MAIZE SEEDS TO FARMERS

**The Deputy Speaker** (Sen. (Prof.) Kamar): We will reschedule that also.

*(Statement deferred)*

STATUS OF PROVISION OF ELECTRICITY  
CONNECTION IN THE COUNTIES

**The Deputy Speaker** (Sen. (Prof.) Kamar): The next one is by Sen. (Dr.) Musuruve. Was it read last time? We will schedule it for tomorrow.

*(Statement deferred)*

FAILURE BY THE NATIONAL GOVERNMENT  
TO OPERATIONALIZE VARIOUS ACTS

**The Deputy Speaker** (Sen. (Prof.) Kamar): The last Statement was by Sen. Shiyonga and we will schedule it for tomorrow.

*(Statement deferred)*

Hon. Senators, I am left with five minutes. I can see the Commissioner is looking at his watch. We have 10 minutes to the end of Statement Hour. All the Statements under Standing Order No.48(1) stand committed to the relevant committees.

I will ask those of you who want to contribute to the Statements to take two minutes. If you do that, all the four Members who have expressed interest to say something about the Statements will have time to do that.

**Sen. Cheruiyot:** Madam Deputy Speaker, I am concerned about the Statement that has been sought by my colleague, Sen. Iman.

The conflict in Marsabit region is a recurring issue in this House. There are those of us who have not interacted with this issue beyond what we hear on the Floor of this House. Is it that the entire Executive and to a large extent us, the legislators who oversight the Executive, are completely unable to resolve this conflict? Are we unable to bring the perpetrators of this heinous act to book? Are we unable to either charge or bring to account people who sponsor violence against innocent citizens?

It bothers me that there is a part within the boundaries of Kenya where people have free reign over the lives of others to a point where they can wake up and shoot innocent civilians. The incident is then mentioned for a day or two and life goes on. That cannot be normalized. It is unfortunate that this is being allowed. We probably allow that because we consider the region to be prone to conflict. We should not classify any part of this country. I want to believe that if the same happened in certain regions, we would have a whole battalion, including the military, intervening.

In fact, this is the kind of work that our military should be doing instead of giving them work at Kenya Medical Supplies Agency (KEMSA) and keeping General Badi busy with laying cabros on empty spaces. If it is difficult for the police to solve the conflict, then we should lay special emphasis on this particular issue.

Lastly, I want to request the Committee on Roads and Transportation to expedite the Statement that was sought by Sen. Cherargei. If that Committee establishes that there is selective distribution of national resources where other regions are denied funds for building roads yet we all purchase fuel and pay for the Road Development Levy, then the people in charge should face this House. They should be named, shamed and even tried for denying the people of that part of the country what is rightfully theirs.

**The Deputy Speaker** (Sen. (Prof.) Kamar): Thank you, Senator. We will now hear from Sen. Halake. Sen. Halake, please use two minutes or we leave out the other Members.

**Sen. Halake:** Madam Deputy Speaker, I might even use one minute.

Thank you, for allowing us to contribute on the issue of insecurity in Northern Kenya. I thank Sen. Iman for bringing up this issue. We have spoken to it, but it does not seem to get the attention of the right people. The lives of people in Northern Kenya; Marsabit, Samburu and Isiolo, are worse than that of a housefly. People are killed every single day and we have become scoopers of bodies. It seems to be normal. In fact, death of people in Northern Kenya as a result of conflict does not even sound like death anymore. It seems like a natural occurrence.

The death of people from Northern Kenya; Isiolo, Marsabit, Samburu, Garissa, Mandera and Wajir has been normalized, even by us, and that is wrong. For a long time, the residents of those counties have considered themselves as second class citizens. We feel it even more now right now because we watch it on television. The Northern Kenya residents scoop bodies and our number one expenditure is burial of the dead. We also spend on security and the leaders have to spend money on scooping of bodies. That cannot go on.

Are the residents of Northern Kenya human beings or are we less human? Are we not Kenyans? What is going on? Why is it that there is death every single day, destruction and fight by bandits? What stops our security forces and agencies from dealing with this conflict once and for all? It is that those lives are worth nothing?

If this country is to be serious and if it is to apply the Constitution of Kenya where it safeguards the rights of the people of Northern Kenya, then these wanton killings must stop. We appeal to all our security agencies to take action and if they cannot do anything, our President should step in and do something about this situation because it is becoming untenable.

**Sen. Waqo:** Thank you, Madam Deputy Speaker, for allowing me to add my voice to this important Statement by Sen. Iman. I congratulate her for coming up with the Statement on our behalf.

The killings in Marasabit County are getting out of hand and we are losing many people. Last night an old man was killed in front of his house and others were injured, which means that our security agencies are not in control. This is not the first time that a Statement on insecurity in Marsabit County or insecurity in Northern Kenya has been brought to this House. Statements have brought in this House yet nothing happens. No action has ever been taken.

When I visited the injured in hospital, I was so touched. There was a woman who lying there with bullets in her body and her son, an eight year old, was next to her. There were several people in hospital and most of them were women who had left their young children at home. As if that was not enough, many women had actually been killed. Today, those children have no one to call their mother. We have been telling our Government that Marsabit County is bleeding. As we speak, no one knows who will die next. The war is no longer out of the town, but within the town and they are eliminating people, one by one.

Marsabit County is home to over 14 ethnic groups and every group has equal rights. Unfortunately, the Government seems to have abandoned that part of the country. People are dying every evening and morning and nobody bothers of what will happen next. We, therefore, plead with the Government; the Cabinet Secretary, Dr. Matiang'i, and the security agencies on the ground, to protect peoples' lives and their property.

I support the Statement.

**The Deputy Speaker** (Sen.(Prof.) Kamar): We will hear from Sen. Ngugi. Senators, I only have three minutes and I cannot go beyond that.

**Sen. Ngugi:** Thank you, Madam Deputy Speaker, for giving me the opportunity to contribute on the two Statements. I also want to thank my sister, Sen. Iman, for this Statement. It is worrying to hear that 22 lives were lost in a day. That cannot just be a number. It is sad to note that I am learning about these killings right now. If we were in other countries, this would have been treated as an emergency in the security sector. One of the things that is worrying me more is that these people are armed. The question we should ask ourselves is, who arms them? Who gives them the guns and the bullets? The people living in that region have no capacity. We all know the process that one goes through before they acquire a firearm. Who arms these people?

This is more worrying especially when we are going to the next general election next year and having bandits or illegal guns in the hands of the wrong people. I would not want a situation where we are having a worse situation than what we experienced in 2007/2008. Therefore, we should support the disarmament of those people because they have illegal guns.

**The Deputy Speaker** (Sen (Prof) Kamar): Thank you.

**Sen. Ngugi:** Madam Deputy Speaker just a second. On the issue of Sen. Charargei's Statement, I come from Nyandarua, which is known for bad roads. I will be very keen to know the status of these marginalized counties. I wish Sen. Charargei would have added Nyandarua County especially, Ndaragwa Constituency where I took refuge.

**The Deputy Speaker** (Sen (Prof) Kamar): Thank you very much. Sen. Wetangula can you take just two minutes. After that, I will switch you off.

**Sen Wetangula:** Madam Deputy Speaker, I support Sen. Iman's Statement. We have too many challenges on security in this country. Our committee on National Security Defence and Foreign Relations visited Laikipia County recently. What we saw and what we were told was harrowing.

*Wananchi* are pointing to a nearby thicket, that the bandits are right there. They come and raid in broad daylight, take away livestock, destroy property and kill people. Marsabit, Mandera, Garissa, Isiolo and Samburu counties are not any better, not to mention Turkana County.

We urge the Government that banditry should not be an issue that we debate, cry and do nothing about it. I am sure the Government has the capacity and the means to deploy all forces available, especially if they want to deploy the armed forces and the army. They can bring a Motion to the House as we have done before. A Motion came to the Senate, we approved the Government to carry out a hot pursuit of the *Al-Shabaab* into Somalia, and they did it and neutralized them.

When we had challenges in other parts of the country like Kapedo, again, the Government came to the House, we gave them authority, they pursued those bandits and eliminated them. We should not be crybabies about security. Sixty years after independence by now we can profile, map out and know the hot spots in this country.

**The Deputy Speaker** (Sen (Prof) Kamar): Thank you, Senator. Finally, the last two minutes to Sen. Haji Farhiya Ali. Please two minutes. The rest please understand.

**Sen. Farhiya:** Thank you Madam Deputy Speaker for giving this opportunity. I do not have enough time. I therefore just want to urge any leader who is involved in this conflict to stop henceforth.

The people who are dying are not the son or the daughter of the person you are targeting. Those are innocent people. To the pastoralists, please stop killing each other. While this country is a democratic nation, people boast around of having larger populations. However, every year, we keep arming ourselves to decrease our population.

Please our brothers and sisters in northern Kenya, and also the arid and semi-arid areas, because even in Samburu and other places there is still conflict, please stop fighting each other for the sake of the sons and daughters who come from those areas.

Finally, Madam Deputy Speaker, I wish to thank Sen. Iman for bringing this Statement.

**The Deputy Speaker** (Sen (Prof) Kamar): Thank you, Senator.

Hon. Senators, for the convenience of the House, we will defer Order No. 8 and 9 until the whips are ready.

## BILLS

*Second Reading*THE HERITAGE AND MUSEUM BILL  
(SENATE BILLS NO. 22 OF 2021)*(Bill Deferred)**Second Reading*THE COUNTY OVERSIGHT AND ACCOUNTABILITY  
BILL (SENATE BILLS NO. 17 OF 2021)*(Bill Deferred)*

Next Order.

*Second Reading*THE INTERGOVERNMENTAL RELATIONS (AMENDMENT)  
BILL, (SENATE BILLS NO. 37 OF 2021)*(Sen. M. Kajwang' on 4.11.2021)**(Resumption of debate interrupted on 4.11. 2021)*

**The Deputy Speaker** (Sen (Prof) Kamar): Hon. Senators, we had done the moving and seconding. In fact, the last speaker actually concluded. Who would like to come on? Two Members had spoken. Sen. Sakaja, your card is still on, but I know you had contributed.

Sen. (Prof.) Kindiki, you contributed. Senator for Nandi, are you on for this one or a previous one? Yes, are you on Order No 10?

Okay, there being no other Member wishing to debate. We need to conclude. Whip?

Hon. Members, we would have gone straight for the reply from the Mover, Sen. Kasanga, but she is not there. I therefore, defer Order No.11.

*(Bill deferred)*

Next Order.

*Second Reading*THE ALTERNATIVE DISPUTE RESOLUTION BILL  
(SENATE BILLS NO. 34 OF 2021)



*(Bill deferred)*

Sen. Murkomen was here for Order No. 12, but I do not see him. So, I defer Orders No.11, No.12 and No.13 by Sen. Moses Kajwang'. I do not see him either and he is not online.

*Second Reading*

THE COUNTY HALL OF FAME BILL  
(SENATE BILLS NO. 9 OF 2021)

*(Bill Deferred)*

*Second Reading*

THE COUNTY GOVERNMENTS (AMENDMENT)  
BILL, (SENATE BILLS NO. 38 OF 2021)

*(Bill Deferred)*

Hon. Senators, Order No. 14 is by Sen. Pareno. Is she online? She is not. I defer the Order.

*Second Reading*

THE NATIONAL COHESION AND PEACE BUILDING  
BILL (SENATE BILLS NO. 19 OF 2021)

*(Bill Deferred)*

Hon. Senators, again, for the convenience of the House, I will defer all the Committees of the Whole from Orders No.15 to No.18.

### **COMMITTEE OF THE WHOLE**

THE NATURAL RESOURCES (BENEFIT SHARING)  
BILL (SENATE BILLS NO. 25 OF 2020)

*(Committee of the Whole Deferred)*

### **COMMITTEE OF THE WHOLE**

THE CO-OPERATIVE SOCIETIES (AMENDMENT)  
BILL (SENATE BILLS NO. 11 OF 2020)

*(Committee of the Whole Deferred)*

**COMMITTEE OF THE WHOLE**

THE COUNTY VOCATIONAL EDUCATION AND  
TRAINING BILL (SENATE BILLS NO. 6 OF 2021)

*(Committee of the Whole Deferred)*

**COMMITTEE OF THE WHOLE**

THE PROMPT PAYMENT BILL  
(SENATE BILLS NO. 16 OF 2021)

*(Committee of the Whole Deferred)*

Yes, Sen. Sakaja. I can see you have a concern, please raise it.

**Sen Sakaja:** On a point of order, Madam Deputy Speaker. There was a very important Statement about Marsabit County that we wanted to contribute to, but you rushed over it. Now we do not have Members for this business.

I do not understand why you are deferring Committee of the Whole yet we are here. We have our Bills at Committee Stage unless we have a shortage of presiding officers for Committee.

This is something we have discussed in the Senate Business Committee (SBC). We have Bills to deal with. We can pass a resolution now, allowing somebody else to sit in at Committee if there is a shortage there.

We are in this House to transact business. Otherwise, we will have to adjourn at this point, which is bad news. The Prompt Payment Bill (Senate Bills No.16 of 2021) and the Start-Up Bill (Senate Bills No.1 of 2021) are in the Order Paper and we are here.

**COMMITTEE OF THE WHOLE**

THE NATURAL RESOURCES (BENEFIT SHARING)  
BILL (SENATE BILLS NO.25 OF 2020)

**The Deputy Speaker** (Sen. Prof. Kamar): Okay, we are looking for the Chairperson or any delegated Member of the Committee on Lands, Environment and Natural Resources, to move the amendments on Order No.15.

I note your concerns, Sen. Sakaja. Is he here? We will go through them one by one.

**COMMITTEE OF THE WHOLE**

THE CO-OPERATIVE SOCIETIES (AMENDMENT)  
BILL (SENATE BILLS NO. 11 OF 2020)

**The Deputy Speaker** (Sen. Prof. Kamar): The Standing Committee on Agriculture, Livestock and Fisheries to move the amendments again on the Co-operatives Societies Amendment Bill.

Do we have the Chairperson of the Committee on Agriculture, Livestock and Fisheries? I do not see him. Is he going to move the amendments online?

**Sen. Sakaja:** Madam Deputy Speaker, he is not.

**The Deputy Speaker** (Sen. (Prof.) Kamar): No, but is he going to move the amendments online? We are okay because we have the chairpersons of the committees.

### COMMITTEE OF THE WHOLE

#### THE COUNTY VOCATIONAL EDUCATION AND TRAINING BILL (SENATE BILLS NO.6 OF 2021)

**The Deputy Speaker** (Sen. Prof. Kamar): Order No.17 is by the Committee on Education. The Chairperson is not here.

### COMMITTEE OF THE WHOLE

#### THE PROMPT PAYMENT BILL (SENATE BILLS NO.16 OF 2021)

**The Deputy Speaker** (Sen. Prof. Kamar): Order No.18 is the Prompt Payment Bill (Senate Bills No.16 of 2021). We have the Mover.

*(The Deputy Speaker (Sen. (Prof.) Kamar)  
consulted the Clerk-at-the-Table)*

The amendments are from the Chairperson of the Committee on Finance and Budget. Sen. Sakaja, you cannot move because you are the Mover. Any other Member? Sen. Wetangula is around. You will move that.

**Sen. Wetangula:** Madam Deputy Speaker, which one?

**The Deputy Speaker** (Sen. Prof. Kamar): Committee of the Whole.

**Sen. Wetangula:** Madam Deputy Speaker, which Order?

**The Deputy Speaker** (Sen. Prof. Kamar): You cannot move your own amendments; it has to be the Chairperson.

**Sen. (Dr.) Zani:** Madam Deputy Speaker, Sen. Wetangula is a Member of the Committee.

*(Sen. Wetangula spoke off record)*

**The Deputy Speaker** (Sen. (Prof.) Kamar): He is not aware of what is supposed to be moved.

### COMMITTEE OF THE WHOLE

#### THE START-UP BILL (SENATE BILLS NO.1 OF 2021)

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**The Deputy Speaker** (Sen. Prof. Kamar): The next one is the Start-Up Bill (Senate Bills No.1 of 2021) by Sen. Sakaja. Where is the Chairperson of the Committee on Tourism, Trade and Industrialisation to move the amendments? He is not present.

Hon. Members, I will not shelve them. I will skip them for now and come back to them later, just in case we have some of the chairpersons around.

For now, let us move to the next Order.

### MOTION

#### ADOPTION OF REPORT ON INQUIRY INTO EXTRAJUDICIAL KILLINGS AND ENFORCED DISAPPEARANCES

**The Deputy Speaker** (Sen. Prof. Kamar): Let us have the Chairperson of the Committee on Justice, Legal Affairs and Human Rights.

**Sen. Omogeni:** Madam Deputy Speaker, I beg to move-

THAT, the Senate adopts the Report of the Standing Committee on Justice, Legal Affairs and Human Rights on the Inquiry into Extrajudicial Killings and Enforced Disappearances in Kenya laid on the Table of the Senate on Tuesday, 19th October, 2021.

Madam Deputy Speaker, first, I thank my predecessor, the former Chairperson of the Committee on Justice, Legal Affairs and Human Rights, Sen. Cherargei. He did the bulk of the work that is contained in the Report, which we seek that the House adopts this afternoon.

*(Applause)*

The Committee that was ably led by Sen. Cherargei did a lot of stakeholder hearings that culminated into the preparation of this report. All I did was to merely put the icing on the cake. So, if there is any credit in this report, it should go to my good friend, Sen. Cherargei, whom I thank profusely for the good work and effort that he put into this very worthy assignment.

*(Applause)*

Madam Deputy Speaker, extrajudicial killings and the enforced disappearances in Kenya is a matter of grave concern to the people of Kenya, prior to and even after passage of the Constitution, 2010.

When this Committee commenced this inquiry, we intended to establish the factors that led to this continued practice and persistence, despite the many reforms that this country has experienced in the police service and the justice sector generally.

In the course of our work, we conducted a number of key stakeholder hearings. We spoke to families of the victims of the extrajudicial killings and enforced disappearances. We conducted hearings with various human rights organisations both in Nairobi City, Kwale and Mombasa counties. We spoke and had presentations from key stakeholders, including the Independent Policing Oversight Authority (IPOA), the Kenya National Commission on Human Rights (KNCHR), the Director of Public Prosecutions

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(DPP) and the Office of the Attorney- General. We also spoke with a number of civil society organisations, human rights organisations and statutory bodies, including the Law Society of Kenya (LSK).

Madam Deputy Speaker, in the process of the hearings we had a number of first-hand chilling accounts of the terror-visited families arising from extrajudicial killings and enforced disappearances. Sadly, you will see footsteps of police involvement in a number of these killings. Having had all these sittings and public hearings, this Committee has come up with a number of policy and administrative legislative proposals, on how to address this problem.

Perhaps I should just give an account on some of the chilling accounts that this Committee received from State agencies that gave us an insight on how deep this problem is. On presentations before us by IPOA, this House will be shocked that between 1<sup>st</sup> October, 2018 and 28<sup>th</sup> February, 2020, the Authority received a total of 210 cases of death, as a result of police action. That is sad. Some of these deaths occurred in police custody while some were enforced disappearances.

Just to give an insight, deaths that happened due to police action in Nairobi City County alone during that period were 35. In other counties, they were a total of 111. That is death due to police action, where the police shoot and kill suspects without applying the law. The others include deaths that happened in police custody. These are cases where police arrest victims, subject them to inhuman treatment in police cells and the result is death. Nairobi City County recorded four deaths while other counties across the country had 35.

Madam Deputy Speaker, during this period, we had six enforced disappearances in Nairobi City County and 19 spread in other counties across the country. That is a total of 210 cases. In terms of complaints that were handled by the Authority for a period of just seven months only, that is, between 1<sup>st</sup> March and 30<sup>th</sup> September, 2020, the Authority received 124 cases of death as a result of police action.

In summary of the nature of cases, there were 16 deaths due to police action in Nairobi City County during that period and 79 in other counties. That gives a total of 95. There was one death that happened in police custody in Nairobi City County and 18 in other counties. There were two cases of enforced disappearances in Nairobi City County and eight cases in other counties for that period.

Madam Deputy Speaker, I will just pick two cases to give the House a picture of the kind of torture that families of these victims go through. There is an investigation into a police shooting of a member of the public, a three year old baby named Master Duncan Githinji, that happened on the 8<sup>th</sup> November, 2019 in Soweto slums in Kahawa West. As at the time of preparing of this report, the police were still investigating this matter and no file had been submitted to DPP for directions. You can imagine that the life of a three year old innocent child was taken away in the hands of the police officers.

There is another case of a Mr. Carlton Maina. This was another shooting by police officers on 22<sup>nd</sup> December, 2018 in Kibera, Nairobi City County. In this particular case, the police officer who was involved in this heinous crime was arrested. On 23<sup>rd</sup> April, 2020 he was charged with the offence of murder. On that account, I commend the Office of the DPP for stepping forward to take up prosecution of some of these cases.

Another case took place in broad daylight at 11.00 a.m. at Mama Lucy Hospital in Eastlands, Nairobi City County. A Mr. Daniel Mburu was shot by a police officer outside Mama Lucy Hospital. The good news is that particular police officer was charged on 12<sup>th</sup> March, 2020. These cases are pending in court for hearing. Again, we commend the DPP for the good action. We have mentioned a number of cases in our report. In all these, we also commend the Officer of the Independent Policing Oversight Authority (IPOA), which has done the bulk of the investigations that culminated to the charging of the police officers that were involved by the DPP.

However, as a Committee, we need to extend a lot of assistance to IPOA because they are facing a number of challenges. One of them is that the police, as a matter of practice, never notify IPOA on deaths or any serious injuries that are occasioned to members of public. This is in clear violation of Section 25 of IPOA Act, 2011. We need to consider some amendments that should make it mandatory for the police to inform IPOA.

Madam Deputy Speaker, another problem and challenge that IPOA is facing is the non-operationalisation of the National Coroners Service Act and the Prevention of Torture Act, 2017. These Acts were passed by Parliament, but they have never been operationalised. So, they are not of help to the victims.

Another challenge is that Kenya has not ratified the International Convention for Protection of All Persons from Enforced Disappearances. We have recommended that the Office of the Attorney-General should take action.

In terms of getting witnesses that can assist in convictions of the cases that are before court, we were told by IPOA that witnesses face intimidation and threats from police officers. Some of the police officers have friends in the police service, who threaten and intimidate the witnesses.

Another problem is that most of the recommendations to the police from IPOA are never acted upon. This is especially where there is recommendation that disciplinary action, including interdictions, be taken by the police service. Most of these recommendations are normally disregarded by the Inspector-General of Police.

There is a recurring problem of crowd control management by the police service across the country. The reports that we are getting from IPOA is that any time they are called upon to respond to a riot or a demonstration, the police readily resort to live ammunition. This is unlike what we see in other countries where, for example, rubber bullets or other means of crowd control are used. The reports that we have from IPOA is that the Kenya police readily resolve to live ammunition against Kenyans who are picketing as permitted by our Constitution.

Madam Deputy Speaker, a number of regulations are yet to be passed by the Cabinet Secretary (CS). This applies to those touching on the National Police Service Act, especially Part XII Section A. This blame is squarely on the CS for Interior and Coordination of National Government. We have recommended that these regulations should be enacted and approved by Parliament within a period that we have given in our report.

In total, IPOA recommends full adherence to the rule of law by the police. The hard edge is that you can never be a judge over your own course. Victims or suspects of

criminal acts should be arrested by the police and taken to court where the verdict will be passed.

We also got another representation from the Kenya National Commission on Human Rights (KNCHR). The Commission gave us a long report of the cases they have been investigating for the last seven years. That is the period from 2013 to 2020. Again, not very good news to this House because this Commission has documented a total of 1,040 cases of people who have disappeared in the hands of security agencies. Now, the sad part is that 80 per cent of these people are our young adults between 18 and 35 years. This means that we are losing a very productive sector of our population in the hands of the police.

Again, you will be surprised that most of these victims are subjected to torture. We were told very sad cases about some of them, where they were subjected to electric shock. We got accounts of people who were subjected to genital mutilation and cases where victims were exposed to extreme cold or heat. This brought to our mind what happened to our colleague, Sen. Malalah. You remember when he was arrested in Kakamega. He was kept in a police station up to 11.00 p.m. in the cold weather of Kakamega.

There are cases documented by the Kenya National Commission on Human Rights (KNCHR), where victims were hanged on trees. Some were subjected to mock executions. Others were exposed to stinging ants in the wild, while others in this era were denied sleep and food in the hands of the police officers. This is a sad account on what is happening to Kenyans under the hands of the police.

Madam Deputy Speaker, we were also told cases where the police had formed a notion that they will fight terror with terror. Suspects of terror related activities were met with terror in the hands of the police. We were given documented cases of 150 people who disappeared in the hands of the police. Some were killed and brutalized by the police in the name of being members of terrorist organisations.

While this House and my Committee does not support acts of terrorism, we still maintain that suspects engaged in any criminal activities, including terror, should be subjected to the rule of law by being arrested, tried in courts of law. If found guilty, be convicted and jailed by our courts. We do not support the idea of the police turning out into terror gangs.

We were also told of cases of the kind of extrajudicial killings and disappearances that took place on the pretext of wiping out members of *mungiki*. We were given a detailed report by the KNCHR on how the police dealt with members of *mungiki*. In some cases, they dealt by shooting them without subjecting them to any arrest. We were told of cases of alleged members of *mungiki* who were either killed or disappeared in the hands of the police. In total, under this heading, we considered a total of 200 cases.

We were told about “the mountain of terror”, which happened in Mt. Elgon in the year 2008, when the police were trying to deal with an illegal organisation that was called Sabaot Land Defence Forces (SLDF). There were a lot of human rights abuses. Some that targeted innocent civilians who were either spouses or members of families of the alleged perpetrators of that illegal organisation.

In total, the accounts that we received from this organisation point to a police force that has gone rogue, does not adhere to the rule law and has violated human rights of Kenyans.

As I have stated, a number of these victims are young persons who are in productive bracket in our country. This is the price we are paying as a country in the hands of the police. This Committee is making a strong case that the police going forward should be held personally reliable for the acts they commit that violate constitutional rights of Kenyans.

Looking at the footprints of impunity, a number of suits have been filed against the Government of Kenya arising from the acts committed in the hands of the Kenyan police. In total, there are about 126 suits that have been filed by torture victims, some going back to the Kenya African National Union (KANU) days. This is what should be of concern to the House.

In total, our courts of law have awarded a whopping Kshs372,524,686 as compensation for these victims. This is money that is going to be paid from the coffers of our taxes. This Committee recommends that going forward, the police officers should be held personally responsible for these violations. Any compensation awarded should be paid personally by the police officers.

Finally, on the engagement we had with the public bodies, we also had a hearing with the Director of Public Prosecutions (DPP). We were informed by the Office of the DPP that he has so far received a total of 175 files, most dealing with police excesses. Of which, 85 cases have been processed, filed in court and ongoing. The good news is that so far, he has secured six convictions against police officers who have been involved in police excesses.

In addition, there are 38 files that were forwarded to the DPP between 22<sup>nd</sup> of April, 2020 and 29<sup>th</sup> May, 2021. The DPP has given consent to prosecutions on 15 cases. These cases are pending to be presented before our courts of law for processing.

We also had an engagement with the Office of the Attorney General. The only thing I want to pick from this engagement is that he is proposing the establishment of a strong multiagency taskforce, so that there can be better synergy, collaboration and cooperation between the various agencies that hold law enforcement officers accountable. This will form part of the recommendations that are in this report.

Madam Deputy Speaker, if you permit me, I now want to give to the House an account of the recommendations that this Committee has made. We have divided this into three. The first recommendation will deal with legislative proposals, the second on policy and the third is administrative.

To ensure the work of this Committee is not in vain, we have identified the actors responsible for implementation of the recommendation that the Committee is making. We have also given timelines within which the particular actor should act. Finally, we have identified the body that should oversight the full implementation of the recommendations of the Senate.

On the legislative proposals, we have recommended that the Office of the Attorney General should initiate the process of ratifying the International Convention for the Protection of All Persons from Enforced Disappearances in accordance with Section 7



of the Treaty Making and Ratification Act. We identified this as a big gap. This is a responsibility that is at the doorsteps of the Attorney-General.

This Committee pleads with the House that this be done within a period of two months. To ensure that this recommendation is not in vain, this Committee recommends that the Attorney General files a status report to this House within a period of three months to confirm full compliance of this recommendation.

On legislative reform, my Committee recommends that this honourable House amends the National Police Service Act and the Independent Police Oversight Authority (IPOA) Act to grant IPOA the primary responsibility to investigate crimes alleged to have been committed by police officers. The wisdom behind this is that the police have friends within the NPS and it is like sending a thief to catch a thief.

Madam Deputy Speaker the actor to implement this is Parliament. We are proposing that this be done within a period of 12 months. The oversight body should be the Committee of Justice, Legal Affairs and Human Rights.

Thirdly, we are recommending to Parliament that the Independent Policing Oversight Authority Act, the Wildlife Conservation and Management Act, the Prisons Act, the Forest Conservation and Management Act and the Kenya Coast Guard Services Act be amended to expand the mandate of the IPOA to exercise civilian oversight and investigation mandates on crimes alleged by officers of the Kenya Wildlife Services (KWS), the Kenyan Police Service (KPS), the Kenya Forest Service (KFS) and the Kenya Coast Guard Service (KCGS).

The reason behind this is that as we stand today, IPOA does not have a mandate over the bodies that we have named here yet we have accounts of the abuse that has been committed by officers serving under those bodies. The body responsible for these amendments is Parliament. We have proposed that this be done within a period of 12 months.

Madam Deputy Speaker, on the Cabinet Secretary (CS) for Interior and Coordination of National Government, we have made a recommendation that he moves with speed to make regulations on the use of force and firearms to guide police officers as is required under the Sixth Schedule of the National Police Service Act.

This is a lacuna because this obligation is placed under the mandate of the CS for Interior and Coordination of National Government. However, these regulations have never been enacted. This has left the police to be a bit roguish on how to use reasonable force and firearms in enforcing the law. We are of the view that once these regulations are put in place, it will act as a check on the use and misuse of fire arms by police officers.

The actor who should implement this is the CS for Interior and Coordination of National Government acting together with the Inspector-General of Police. We recommend that this should be done within a period of six months, and that oversight should be done by the CS for Interior and Coordination of National Government. He should file a status report to the Senate within three months.

Madam Deputy Speaker, another legislative proposal is that the CS for the National Treasury and Planning, in collaboration with the Office of the Attorney-General, should make regulations to operationalize the Victim Protection Trust Fund established under the Victim Protection Act. We recommend that this regulation be in place because

there is no clear guideline on how victims who are supposed to receive compensation under the Victim Protection Act should get their compensation. We recommend that action should be taken by the Attorney-General in collaboration with the CS for National Treasury and Planning, and that this should be done within six months.

To ensure that our recommendation is not in vain, we recommend that the Office of the Attorney-General and the CS for National Treasury and Planning should file a status report on compliance with this recommendation within three months.

Madam Deputy Speaker, that marks the end of the Committee's proposals on legislative action. On policy, we have made a number of recommendations. The first one is that the National Security Council (NSC) should develop a national security policy. This is because in the course of our hearings with all these public bodies, it came to our attention that this country does not have a national security policy in place. This is a very big gap. Here, we have put this obligation under the offices of the CS for Interior and Coordination of National Government.

Madam Deputy Speaker, we propose that this should be done within a period of 12 months. To ensure that this recommendation is not lost, we recommend that the CS for Interior and Coordination of National Government file a status report to Parliament within three months.

Another policy proposal is that IPOA, in coordination with the Office of the Attorney-General, should develop a national policy on the policing oversight. This is because when you look at the challenges that have been identified by IPOA, which largely has been doing a good job, they do not have a very good policy in place on how they should undertake their oversight over the police force.

We have placed this obligation under the office of the Chairperson of IPOA. The period within which they should act is 12 months. They should also ensure that the House is kept updated on what is happening with these recommendations. The Chairperson of IPOA should file a status report to this House within three months.

Madam Deputy Speaker, finally, we have made a number of administrative recommendations. I am happy that the former Attorney General who is very experienced in human rights is in the House.

The first one is that the Office of the Attorney General should initiate the establishment of a multiagency task force comprising of representatives from the NPS, the office of the Director of Public Prosecution (DPP), IPOA, the office of the Kenya National Commission on Human Rights (KNCHR) and the National Council on Administration of Justice (NCAJ) to ensure that. This is to ensure that there is better coordination between the various agencies responsible for addressing extrajudicial killings and enforced disappearances.

Madam Deputy Speaker, the reasoning behind this is that we need synergy and cooperation amongst all these agencies. Cases dealing with extrajudicial killings, enforced disappearances and compensation for victims can be processed in a timeous manner. This action should be undertaken by the Office of the Attorney General. We gave him a timeline of two months. He is to file a status report to the Senate within three months.

The second administrative action recommended is that the Office of the Attorney General, in consultation with the CS for National Treasury and Planning, should

operationalize the National Coroners Service Act and the Prevention of Torture Act. These are very progressive pieces of legislation that were enacted by Parliament, but were never operationalized. This was left in the hands of the Attorney General and the CS for National Treasury and Planning. In the course of our hearings we did not get convincing reasons why these two pieces of legislations have not been operationalized.

This Committee, therefore, makes recommendations that the Attorney-General, acting with the CS for National Treasury and Planning, should operationalize those two pieces of legislations within a period of two months from the date of adoption of this report. To ensure that we keep track of this recommendation, this Committee recommends that the Office of the Attorney-General and the CS for National Treasury and Planning should file a status report to the Senate within a period of three months.

Madam Deputy Speaker, I saw action taken last week on the recommendation that we have made. The Committee recommends the operationalization of the National Coroners Service Act and to fast track the operationalization of an independent forensic analysis laboratory contemplated under the National Coroners Service Act.

I saw some news last week that there was a forensic analysis laboratory that was launched by the CS for Interior and Coordination of National Government. I presume that addresses this particular recommendation. We had given a period of six months and requested that the Attorney-General files a status report to the Senate within a period of seven months.

Madam Deputy Speaker, another administrative proposal is that the Attorney-General, in consultation with the Inspector-General of Police and witness protection agents, should initiate review of the Witness Protection Act and the Witness Protection Programme with a view to ensure protection of potential witnesses during the investigative stage of cases.

We are recommending that investigations be placed under the hands of IPOA and is totally detached from the police unit. This arises from the reports that we received from the IPOA that a number of witnesses get intimidated by the police and they end up not appearing in courts. This should be done by the Office of the Attorney-General within two months. The Attorney-General to file a status report to the Senate within a period of three months.

Madam Deputy Speaker, another administrative recommendation is that the Office of the Attorney General in consultation with the Labour, Social Security and Services Cabinet Secretary and the Health Cabinet Secretary and other relevant Government agencies should make available all necessary information and provide psycho-social support to families affected by extra-judicial killings and enforced disappearances.

Madam Deputy Speaker, if you read the report; I gave an account of the psychological suffering that families go through when their family members disappear without trace; without knowing whether they are alive or dead. This causes a lot of mental torture to families. We are recommending this should be done on a continuous basis by the Office of the Attorney -General and the Attorney-General files status report to Senate within a period of two months.

Madam Deputy Speaker, another recommendation is that the Attorney General in consultation with the Cabinet Secretary for the National Treasury and Planning should

fast track the payment of court awards and reparations for victims of unlawful police killings.

We were given accounts of court awards that have turned out to be paper awards because most of the victims who have received compensation have never been paid. There was a case of the late opposition doyen in our politics, the late Mr. Kenneth Matiba. The period he waited for his compensation was inordinately long.

Madam Deputy Speaker, we are making a recommendation that once court awards are given, payment should be immediate. However, we have cases where victims have been waiting for as long as 10 years without getting compensation from the Government.

Another recommendation is that the Inspector General should ensure compliance with Section 25 of IPOA which requires notification to IPOA of all suspicious deaths and serious injuries that happen to members of the public in the hands of the police officers.

Madam Deputy Speaker, we were told by IPOA that the NPS has never complied with this section of the law. They disregard it with impunity and it is just there to colour the Act. To them, it is like it does not exist at all. They feel like they have no obligation to make any report to IPOA.

We recommend that the Senate should continuously monitor compliance of this section by requesting the Inspector General and the IPOA Chairperson to file status reports every three months to ensure that the NPS comply with this this particular section.

Madam Deputy Speaker, another recommendation is that the Inspector General should ensure that the NPS makes available to IPOA and the KNCHR documents and reports in relation to crimes alleged to have been committed by police officers. This is a requirement of the law, particularly Section 7(1)(a)(i) of the IPOA Act.

The police behave as big brothers and never make any reports available to IPOA. We hope that this can be done on a continuous basis and status reports be filed to the Senate.

There are number of administrative recommendations and I may not go to all of them. Others include failure by the NPS to interdict and discipline police officers who are found to have breached professional standards of the police. The reasoning is that if disciplinary action is taken, then we are able to weed out bad elements from the NPS. However, IPOA told us that rarely do police take disciplinary action against police officers involved in these excesses.

We also recommend that the Inspector of General ensures all police records and registers are correctly, properly and timely, and accurately entered, updated and kept so that the idea of going digital; the e-occurrence is fully implemented. Occurrence Books (OB) should now be electronic and fully automated. We recommend that the Inspector General should ensure that this is complied with henceforth.

Finally, Madam Deputy Speaker, we recommend that the Cabinet Secretary for Interior and Coordination of National Government, in consultation with the National Treasury and Planning Cabinet Secretary and the IPOA, should increase budgetary allocation to IPOA. The accounts we got from IPOA is that they have continued to be underfunded to the extent that they are not able to respond and conduct investigations to the police excesses that are done across the 47 counties. We are strongly recommending that going forward, the National Treasury should increase budgetary allocation to IPOA.

Madam Deputy Speaker, in brief, we want to report to the House that having done this inquiry, we formed the conclusion that the Kenyan police should be professional, observe the rule of law, respect constitutional rights of Kenyans as enshrined in Article 26 of the Constitution and ensure that suspects are subjected to the rule of law by arresting them. They should take them to court, but not taking the law into their hands.

This sustained abuse and excessive use of force and extra-judicial killings is giving a very bad international image to this country. It is something that we condemn as a Committee.

Madam Deputy Speaker, I beg to move. With your permission, ask a member of my Committee, Attorney-General Emeritus Hon. Amos Wako, Senior Counsel, to second the report.

**The Deputy Speaker** (Sen. (Prof.) Kamar): Thank you, Senator. Sen. Wako.

**Sen. Wako:** Thank you, Madam Deputy Speaker. I rise to second this very important Motion by my Committee. I am a bit handicapped today because I forgot my reading glasses and I cannot see clearly.

This is a very important report. I do not know whether Members know and are aware that the right to life as enshrined under our Article 26 of the Constitution and under Article 6 of the International Covenant on Civil and Political Rights, is the most important right of them all. It can be said that all other rights, the human rights flow from the right to life.

Madam Deputy Speaker, without that right to life, one cannot talk of other rights. Therefore, when we are in a situation where we saying that this right to life is being arbitrarily and summarily taken; we are striking at the very root of human rights. The very root of our existence and hence the importance of this report.

Although I have this eyes handicap, I am glad that the Chairman of the Committee has very ably introduced the report and gone into the details on how the Committee undertook its work and whom they interviewed. The most important civil society organizations in this area made their submissions. I have in mind, Human Rights Agenda (HURIA) and Muslims for Human Rights MUHURI. The Human Rights Development Agenda made their submissions too.

The most important offices which are operating in this area made extensive submissions. These are the office of the AG, Dir DPP, KNHRC and IPOA.

We have been told that they even carried out *in situ* investigations, particularly in Kwale and Mombasa counties. They received firsthand information from the families of the victims. I do not want to go into all that because the Chairman has gone into it in a great detail and the recommendations that have made.

I want to put on record which is why this topic is very dear to me. I was privileged to have been appointed in 1980 as a first Thematic Special Rapporteur of the United National Commission on Human Rights on the issue of arbitrary executions.

For the next 11 years up to the time I was appointed as the Attorney General I carried that mantle. I used to go all over the world investigating arbitrary executions in various countries where it was extremely extensive. We have in mind particularly countries in South America, Argentina, Chile, Brazil, Venezuela, Colombia, Surinam, Ecuador and all the others. I had a privilege to visit to investigate these phenomena of arbitrary executions.

I am very glad that during that time it had not quite come to a level to attract my attention in Kenya as arbitrary execution it was happening here and there.

My sadness is that it is now something that has grown as the report has shown to a level where we have to be concerned. It is not that nothing was being done in Kenya. Things were being done which is why we had IPOA.

Madam Deputy Speaker, I recall I had gone to Jamaica where they had their equivalent of IPOA. I came back here and talked to the then Commissioner of Police. I will not say which year as to identify him. He said we should establish some mechanism to investigate the police officers who in execution of their duties exceed the force which is results in deprivation of life.

The then Commissioner said there was no need for that because we already had within the police mechanisms for investigating that and carrying out disciplinary measures. He had completely misunderstood the concept what I wanted. I also noticed there was something similar also in United Kingdom (UK).

Through the police reforms that were being undertaken IPOA came to be borne. I am glad that recommendations of this Committee are carrying IPOA's mandate forward, giving them even more teeth as has been outlined by the Chairman in his introduction.

Apart from just more teeth within the police force, they have also recommended that the mandate should be extended, for example, to the KWS, KFS and other organs who have workers who are entitled to use firearms in the course of execution of their duties. I support that.

It is not that nothing has been happening. We also ultimately brought about the Witness Protection Act which is very important in this fight. The Chairman has explained why it is very important in this fight. My surprise is that issues such as the operationalization of the fund have delayed up to now yet, I have been out of that office for 10 years. I do not know what has been delaying it.

When you look around you see that the National Treasury has been extremely slow in putting in place regulations which operationalize funds. This is not the only one. The other day, we had the Equalization Fund which has not been fully operationalized for all these years. It is only now that steps are being taken to draft, finalize and make the regulations operational.

Madam Deputy Speaker, we also know that, for example, the regulations to operationalize the Judiciary fund have not been done. That is why the Judiciary has been complaining that it is under the mercy of the Executive and that it undermines their independence. I hope that the operationalization of this fund will be done as quickly as possible.

**Sen. Madzayo:** On a point of order, Madam Deputy Speaker.

**The Deputy Speaker** (Sen. (Prof.) Kamar): I can see a point of order from Sen. Madzayo.

**Sen. Wako:** I know what he is going to say, Mr. Speaker. Sorry. He always says that, but since he is my Deputy Leader---

**The Deputy Speaker** (Sen.(Prof.) Kamar): Only that his Kiswahili is so tough sometimes we do not know how to respond.

**Sen. Madzayo:** Asante Bi. Naibu Spika. Kwanza, ninamheshimu sana Sen.Wako. Alikuwa Mwanasheria Mkuu wa Jamhuri ya Kenya kwa miaka kama ishirini hivi. Pia

nilipomaliza unanasheria yeye ndiye alikuwa tajiri wangu wa kwanza kuniajiri kama *state counsel*.

Ningekuwa mtu wa mwisho kabisa kusimama na kuuliza swali hili na kujaribu kumrekebisha. Ninajua anaelewa ni ulimi unateleza lakini mara anakupatia wewe majina mawili la kiume na la kike halafu la kazi unayofanya. Hatujui katika hayo matatu, madam na Spika ni sawa lakini kuna hilo lingine alilokuita si mara moja, mbili, tatu au nne. Pengine ingekuwa vizuri afafanue.

**The Deputy Speaker** (Sen.(Prof.) Kamar): *Asante Seneta*. Proceed, Attorney General emeritus.

**Sen. Wako:** Madam Deputy Speaker, he has not mentioned the “*hilo lingine*”. He might have forgotten, but I will not mention it.

*(Laughter)*

Madam Deputy Speaker, I have just talked about witness protection and the Independent Police Oversight Authority (IPOA).

I will now move on to the recommendations, where he has basically explained everything. The summary of the recommendations is that the NPS, which is responsible for this, should adhere to Article 244 of our Constitution.

*[The Deputy Speaker (Sen. (Prof.) Kamar) left the Chair]*

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

Madam Temporary Speaker, welcome to the Chair.

One of the underlying features in all these is that NPS should just adhere to the mandate as enshrined in Article 244 of the Constitution of Kenya. Let me read Article 244(a) for the purpose of emphasis. It says:

“The National Police Service shall—

(a) strive for the highest standards of professionalism and discipline among its members”

One of the cornerstones of any profession is to ensure that its members adhere to the highest code of professional conduct and behaviour. Any member who falls short is removed, disbarred or deregistered from the profession. If I heard the Chairman very clearly, he said that many of the police officers whom IPOA has found guilty of this abhorrent phenomenal of summarily and arbitrarily executing people, even if they have been found to have done so wrongly, they are not disciplined by the NPS.

**Sen. Omogeni:** Yes.

**Sen. Wako:** Madam Temporary Speaker, now we have the National Police Service Commission (NPSC), which should be doing that. That is why under the new Constitution, that Commission has been established even by name. In the old Constitution, those powers were delegated to a small Commission by the Public Service Commission (PSC). So, they were not as strong or powerful. However, now the NPSC is powerful under the Constitution. Therefore, it should be able to discharge its duties under the Constitution.

Since the NPS is now regarded as a profession, it must appropriately discipline all police officers who do not adhere to the highest standards of professionalism. One of the gravest misconduct is to deprive somebody's life arbitrarily and summarily. Therefore, I call upon NPS to now engage the gear and work towards professionalism.

Madam Temporary Speaker, I will not talk about the recommendation on extending the mandate of IPOA because the Chairperson has mentioned it. The one of establishing a multi-agency taskforce has also been mentioned in a sense.

However, I would add that most of those institutions that have been mentioned to be part of the multiagency taskforce are already a multiagency in one way or another. For example, if you had a multiagency taskforce on corruption, it will be the same institutions. We have a multiagency taskforce under the Committee on the Coordination of Justice and so on. In fact, they were having their annual meeting in Mombasa about a week or two ago. We want more life and focus on the issue of summary or arbitrary executions.

I notice when it came to corruption, there was a plea that they should work in harmony, liaising between the Office of the Directorate of Criminal Investigations (DCI), the Director of Public Prosecutions (DPP), the Judiciary and so on. It is the same code which they are calling on how to deal with corruption, that we are saying they should also deal with the issue of summary or arbitrary executions.

Madam Temporary Speaker, still on KPS, the fourth recommendation says that the Cabinet Secretary (CS) for Interior and Coordination of National Government and the Inspector-General of Police to make regulations on the use of force and firearms to guide police officers as required under the Sixth Schedule of the National Police Service Act.

This is very important. They should also have regard to the existing United Nations (UN) Code on the use of firearms by law enforcement agencies. They should also have regard to the detailed regulations made by the UN and accepted internationally on the use of force. In fact, if they can incorporate those regulations in whatever they do here and put it into practice, we would have gone a long way.

Madam Temporary Speaker, let me talk about the 17<sup>th</sup> recommendation which was not touched by the Chairperson. It says that Inspector General of Police should ensure that the KPS have tags with their names and service numbers distinctly displayed whenever they are carrying out police operations. To me, that is a very important recommendation. This is because these days, people just disappear. They just come to your house and pick you up. They then allege - they may not be the ones - that they are police officers. You are then left with that impression; that is why people then come up and say that they were taken away by police officers.

*(Sen. Wako's microphone went off)*

**The Temporary Speaker** (Sen. Pareno): Proceed, Sen. Wako. You have three minutes to finish.

**Sen. Wako:** Madam Temporary Speaker, the issue of police officers having their names and numbers tagged on them is very important. Recently, some people went to the house of an advocate called Mr. Nandwa and took him away. The people who took him



away claimed that they were police officers. However, we now doubt whether they were police officers because the NPS has denied claims that he was in their custody.

If everybody knew that any police officer carrying out any official function must have his number and name tagged on them as identification, people would have confidence with the police officers.

About two months ago, I visited Uganda and I was allocated police officers to my security detail. I was surprised that whenever I moved around with the police officers, people would salute. I asked them why everyone was saluting me, they replied that it was because I was accompanied by police officers.

I was also pleased to learn that people recognized the police officers because of the name and number tag on them as well as the shirts that they wore. I believe that is the way that we should operate in this country. That is something that we should adopt in this country immediately.

Madam Temporary Speaker, with those few remarks, I beg to second.

*(Question proposed)*

**The Temporary Speaker** (Sen. Pareno): Proceed, Sen. Cherargei.

**Sen. Cherargei:** Madam Temporary Speaker, I rise to support this Motion being the person who initiated it. I thank the Chairperson of the Committee on Justice, Legal Affairs and Human Rights, Sen. Omogeni, for safely delivering the baby home. When we started this process, we had a lot of challenges, but it has come to fruition. I have looked at the recommendations and they are heart shaking. Sen. Omogeni, one of the senior counsel in this House, have done a tremendous job.

I also want to thank the seconder of this Motion, the Attorney General emeritus, Sen. Wako, who was my first and steadfast committed Member then, and he is still steadfast Member of the Committee, for seconding the Motion. With his experience as the Attorney-General of the Republic of Kenya, we take his comments seriously and that of the agencies relevant.

Madam Temporary Speaker, I also thank the Senator from County 001, Sen. Mwinyihaji Mohammed Faki for being a wonderful host. When we visited Mombasa County in April of 2019, he was one of the most magnanimous hosts who ensured that our fact finding mission in not only Mombasa County, but across the coast was a success.

He was on the forefront of organizing the meetings with the organizations that we met in Mombasa and the then County Commissioner, Mr. Achoki. Sen. Faki ensured that we visited the Shanzu Prisons and other organizations.

I also thank the other Senators from the coast region; the Senate Deputy Minority Leader, Sen. Madzayo, who was with us throughout the visit and Sen. Issa Juma Boy, was also present during the visit. We learnt a lot from the visit.

From the onset, the place that bears the biggest brunt of extrajudicial killings and enforced disappearance is the coast region, North Eastern Kenya and in cities such as Nairobi, Kisumu, Eldoret among others.

During the fact finding mission, I met quite a number of widows who could not explain why their husbands disappeared nor why they were abducted. The widows could

vividly identify most of the security officers involved in the disappearances. It is after our fact finding missions that bodies were dumped in the Tsavo and rivers.

Madam Temporary Speaker, the issue of extrajudicial killings is a sad affair. In this city of Nairobi, there were so many testimonies by parents who alleged that when the trigger happy police officers kill your son or daughter, who are mostly young, you have to pay for the bullet and they had a price tag for that bullet.

It is sad to live as a young person in this city and other major cities in this Republic. You are more likely to die from the bullet of a rogue police officers than through an accident or disease. The more we allow extrajudicial killings as a county and enforced disappearances to go on, we are under mining the rule of law that we are talking about.

I thank the various agencies that came out to speak their minds. It takes courage to speak up. Others were fearful. We conducted some of those hearings in camera because it takes courage to speak about the issue of extra judicial killings. I celebrate the people who came out to speak to us, the many organizations that champion against extrajudicial killing such as HAKI Africa, the Mombasa Law Society, Human Rights Agenda, Muslims for Human Rights (MUHURI), Human Development Agenda, Maendeleo ya Wanawake, among others. I celebrate and encourage them.

Yesterday in the news, various organizations, came out to release a report on enforced disappearances and extrajudicial killings. A number of them were complaining that many agencies have reluctantly not prosecuted police officers who have participated in the heinous crimes. Article 26 of the Constitutions states that everybody has a right to life and that should not be deprived of anybody unless and until it is through judicial authority.

I am not saying that police officers are bad, but the police reforms should be fast-tracked so that the police officers are re-trained to understand the role of the promulgation of the Constitution of Kenya 2010 whereas captured vividly by Article 26; the right to life not to be deprived through judicial authority.

In the past, we used to think that extrajudicial killings and enforced disappearances is a preserve of the coastal region and North Eastern because of the fight against the Al Shabaab or terror related crime. The most feared arm of the NPS is the Anti-Terrorism Police Unit (ATPU). I do not know how the ATPU operates. Is there a law guiding the operations of the ATPU? The ATPU arrests suspects and interrogates them how they want yet Kenya is a signatory of the United Nations Conventions against Forced Disappearances. There is even an Act in place.

The ATPU operate as if there is no law that may be used against them. The law must be followed. Although all of us agree that the fight against terrorism is very important, it must be done within the rule of law. Very many Kenyans like Prof. Nandwa have disappeared. Some people disappear for a period of two or three weeks where they are intimidated and blackmailed, but they are eventually let to go while others disappear forever.

There is only one unit of the NPS that has been blamed in all occasions; the ATPU. It is a high time that the Directorate of Criminal Investigations (DCI), the IG of Police and the Cabinet Secretary in the Ministry of Interior and Coordination of National

Government did something about the ATPU. Otherwise, we will get to a point where Members of this House will be arrested and disappear and we will take it for granted.

The ATPU is fond of arresting people and detaining them illegally on allegations of terror related charges. That is so wrong. I appeal to the Anti-Terror Police Unit (ATPU), the Inspector General of Police and the Ministry of Interior and Coordination of National Government. The moment they allow the ATPU to be rogue, it will come for all of us. So, it must follow the law. This is because it has been blamed in many of these issues.

I hope the relevant agencies have listen to this. They either disband ATPU if they cannot control it. We agree that ATPU is important in the fight against terrorism. We want to be part of the global community that fights terror.

Kenya is at a position that is predisposed to terror attacks. However, this should not be an excuse to abuse and undermine the rule of law and Constitution of the Republic of Kenya. If the IG and CS cannot control the ATPU and the Homeland Security, it should be disbanded or reconstituted.

Madam Temporary Speaker, young people from the northern part of Kenya and the coastal region are allegedly abducted by security officers each and every day. The biggest threat to young people living in these regions is to be arrested or killed by the ATPU officers. They are then dumped in Tsavo or in rivers.

We used to think that issues of extra judicial killings and enforced disappearances were only in towns, in Northern Kenya and the Coast until it struck home in Nandi County.

For example, last year but one, the police allegedly killed Lazarus Tirop and Cornelius Kipkogei in Lessos because of not wearing a mask. If you remember, the police station was burnt down.

We have reduced the life of a person to a mask, which costs Kshs20. We have a problem as a country. We hope the Director of Public Prosecution (DPP) and IPOA will fast track prosecution of such cases.

In Tabolwa Village, Mosop, two young men, one by the name Kevin Kipchumba and another one called Boniface Kiprotich were allegedly killed by police. We have pushed the DPP and he is yet to approve the file and ensure that these people are prosecuted. We ask the DPP and Directorate of Criminal Investigation (DCI) to ensure that some of these cases are prosecuted.

The famous Willy Kimani case whose prosecution is ongoing. We also remember the Kianjokoma brothers who were allegedly killed by police. We want those cases to be fast-tracked so that any rogue police officer or security agencies appreciates the sanctity of life. Therefore, for the lives that have been lost, the prosecution must be done expeditiously so that people are brought to book.

Madam Temporary Speaker, it is in the public domain that allegedly the DPP and DCI do not see each other eye to eye. However, their differences are less of our concern as a Republic. We want them to deliver on their mandate.

The DCI and DPP should do their job and stick to the law. We do not want shadowboxing and unnecessary fights in the media. They are using the taxpayers' money. If the DCI has completed investigation and the file is forwarded to the DPP, he has an obligation to look at that matter and ensure that it is prosecuted before a court of law. The

infights between them is not helpful in the fight against organized crimes, extrajudicial killings and enforced disappearances and any other matter within the criminal justice system.

In as much we want police officers to display their identification, there is a proposal to curb extrajudicial killings. The National Police Service (NPS) has a budget that is approved by Parliament. So, why can it not ensure that every police officer wears a body camera? This will help to record and retrieve a footage incase an incident. We do not want to convict the police who might shoot in self-defense, although they are trained to use rubber bullets.

Madam Temporary Speaker, so that we do not condemn the police unheard, it is important that they wear body camera so that if they are arresting a person or when there is a shootout, we can retrieve the footage. It can be admissible in court so that it shows whether the police officer, at that point, committed the offense or it was an act of self-defense. The police officers should introduce video or body camera and ensure that they are worn at all times.

Madam Temporary Speaker, there is also the issue of International Convention for the Protection of All Persons from Enforced Disappearance.

Under Article 2(6), Kenya ratified the United Nations (UN) convention. So, Kenya is out rightly violating the UN convention on issues of enforced disappearances and extra judicial killings. So, Kenya must be called out. The Attorney-General should advise the Executive that the moment they violate that treaty, there are consequences.

I am passionate about this having been one of the pioneers of this process. We need to operationalize the National Coroners Service Act and The Prevention of Torture Act. When a person dies, it will become mandatory to do a postmortem and forensic analysis so that we do not say that the police have killed. We need to know whether the bullet had been serialized. We were told the other day that DCI headquarters had a modern laboratory that can do forensic analysis.

Madam Temporary Speaker, my final point, because I wanted to be short and sweet, is the issue of The Witness Protection Act. If witnesses who report a police officers who has participated in extrajudicial killings or enforced disappearances are not put on protection under the Witness Protection Act, it becomes hard. So, I ask the Attorney-General to move with speed and ensure that there is witness protection.

We want those who witnessed the murder of Kianjokoma brothers protected. We want those who saw Prof. Nadwa being abducted allegedly by security officers, protected.

Witness Protection Fund should be operationalized. We should have safe houses in instances where serious crimes have been committed. Therefore, as I support this report, it is important that we operationalize witness protection fund because Kenya has enough money.

Madam Temporary Speaker, when you meet the victims of enforced disappearances and extrajudicial killings, they do not have fathers, mothers, brothers or sisters yet they are Kenyans. What is hard in arresting these people and taking them through a judicial process and convicting them? If they have to be executed, it should be done with judicial authority.

I second that this is becoming a national disaster. In this city, if you do not die as a result of hunger, you are likely to die from a police bullet which is paid for by the taxpayer. We must call out the relevant agencies. It now time that any young person and hustler in Kibera, Mukuru kwa Njenga and Mukuru Kayaba slums feels safe.

Madam Temporary Speaker, it is good the general elections are approaching and you have been a director of the elections board in one of the biggest political parties in this Republic. When you go to these slums, the people there do not want food.

The young people will tell you: “*Mheshimiwa*, please ensure that our security is guaranteed.” They are either killed by thugs or the police. It is high time that wherever young people work within this city and many other cities, they should not be threatened that they will be killed, arrested or face enforced disappearance now that the containment measures have been reviewed. We must guarantee security for all Kenyans.

Madam Temporary Speaker, I hope all the presidential aspirants come up with a security work plan. Most of the families in the Coast and North Eastern are crying because their kin have disappeared and they have never seen them. Most of them are crying because their fathers, daughters and sons are not there because allegedly, somebody somewhere decided the courts are not important.

They abduct you and kill you like a chicken, which is sad. Sen. Faki can attest to this. Some of them were breadwinners, fathers, husbands and sons who work hard and their families depended on them. I celebrate many organisations that are doing well. I encourage the organisations that the moment the voices on the fight against injustice go silent, the issues of hatred and insecurity go up.

With those remarks, I thank you and support this Motion fully.

**The Temporary Speaker** (Sen. Pareno): Sen. (Dr.) Ochillo-Ayacko, proceed.

**Sen. (Dr.) Ochillo-Ayacko:** Thank you Madam Temporary Speaker for the opportunity to lend my support to this good report. Police misbehaviour, enforced disappearance and extrajudicial killing are the biggest threat to security. These are the biggest threat to law and order and everything that is orderly.

When people have no confidence, belief, respect and trust in the police force it is a tragedy. Effectiveness of the police force depends on the trust that the people bestow upon the police. When you do not trust the police, you do not report to them anything that might be important when it comes to unravelling crime.

You do not go to the police to tell them anything that might further or assist in the rule of law. If you do not do that, then there is every likelihood that the perpetrators of crime will be successful in their devious and evil activities and, therefore, gain confidence and continue reaping from their ill-gotten fruits of crime.

For instance, you are a person who has the misfortune having been a victim of crime or if you have lost a loved one pursuant to illegal activities of some functionalities, you may not find the courage or the excitement of reporting that to the police because you do not trust them. If you do not do that, what is likely to happen is that these criminals will think they are above the law. This makes crime and criminals the rulers and kings of the streets. This must be dealt with.

I see transformative recommendations in this report. I thank Sen. Omogeni who besides being a Senator is a committed and formidable litigant. He has used his good skills for the benefit of the Committee he serves as chairperson and for this House.

Sen. Omogeni, we are proud of you, we who are your colleagues in the legal profession. We pray that Kenyans and the people of Nyamira return you here unopposed. I do not think that when it comes to merit and commitment in terms of defending human rights, the law enjoins all of us to defend in however or whatever method and way we choose to. This report is a good testimony that you are discharging your constitutional and divine duties to do that. If the people of Nyamira wherever they are, are hearing me, they should consider returning you to this House because you are not just an asset to the people of Nyamira, but also to this nation.

This is a comprehensive report and hope it will see light of day. Those who are in authority and think they are permanent and pensionable, should know that they will be civilians for most their lives and perhaps victims of the same roguish police force we are discussing today.

Madam Temporary Speaker, the police without trust are just state sanctioned public paid thugs. I have always thought and considered that being a police officer should be a dignified job, in fact a calling. His Excellency God has not considered it urgent to come back to earth and offer us protection. Going by what the book of Romans chapter 13 says, all governments are created and blessed by God. He has decided to advise us to create a force called the police force to assume temporarily the duties of defending our lives.

Now that he advised us to do so and we have created such a force at the expense of the taxpayers, with their presumed authority granted to us as legislators, I believe they must consider the work they do for the public as divine responsibility that must be done honestly and for the welfare and wellbeing of all human beings, particularly the weak and the vulnerable.

These are the victims of crime and do not have the resources and what it takes to pursue justice in court against the police. They are the ones who are susceptible to intimidation when such crimes are visited against them. In protecting the weak and the vulnerable we call upon the police and those who oversee them to rise up to what God and what we all expect of them, to be protectors and defenders of innocent and weak people both in Kenya and internationally because police misdeeds do not reside within our boundaries. They go beyond our boundaries to other nations that we have rights to visit. If you go to Migingo, you will find some characters residing in that island thinking that other people who go there are not God's people.

If you go along the shores of Lake Victoria trying to fend for your life, you have a loved at home and are looking for fish, some characters from Tanzania in the name of police arrest you and detain you forever not knowing that first, you are a human being and secondly, you are under obligation to have a decent livelihood.

This is a good report that we should all work for, support and ensure that it sees the light of day. It is the responsibility of the institutions described within this report to telescope the police and bring them to book when they are excessive and violate the rights of those they are supposed to protect.

Madam Temporary Speaker, those institutions have very serious challenges. We know that attached to the identity of those institutions is the word "independent." However, that independence is only in the books, letters and pronunciations of those words. They are not actually independent.

If you are supposed to be independent and discharge your obligation independently for the benefit of those who have established that institution, that independence must be manifested in the resources that are deployed in your support to discharge such obligations.

Madam Temporary Speaker, the question that begs is do we have sufficient financial support for the independent Police Oversight Authority (IPOA)? The answer is no. They walk around with a begging bowl and beg the Executive institutions that do not give a damn about what ordinary Kenyans like *Wanjiku* go through.

Madam Temporary Speaker, we need to find innovative ways. We also need the institutions charged with financing and supporting the independent oversight institutions to give them adequate financing. We should go further and anchor such financing in law, so that it does not become discretionary and something to beg for. It will become a right that is anchored in law that automatically supports the independence of such institutions.

If they are unsupported, they become flowery language in the books. However, they are not institutions capable of independently overseeing anything, let alone themselves. That independence is not just financial. It must be both financial and human capital. The independent oversight institutions, including the internal affairs that are tucked in Section 87 of the National Police Service Act, are not accorded sufficient staffing of all the relevant qualifications.

If one is investigating the police who are also investigators, I believe that their power of concealment and their skill to do so is very high. Therefore, you will need to be staffed with better if not superior powers to look around and try to find out how these things are being concealed.

A look at IPOA will indicate to you that when it comes to staffing, I can assure you that they are not able to investigate. They do not have sufficient staff to carry out a thorough investigation of the day to day activities, both legal and illegal in a single county in a year. If you gave them a chance to check what the police are doing in Nairobi City County alone, they are unable to come up with a report or anything that is capable of being acted upon.

In my view, and in the view of many Kenyans, they are there only by name. They are not there by action or performance because they do not have adequate human capital to discharge their functions. They need to be adequately and properly staffed to be able to transverse this nation. They need this like yesterday. They should look at what is happening in the land of the Pokot, Samburu, Turkana and other hardship areas and where people do not have the courage to come report.

Madam Temporary Speaker, they should be present in all counties. In my own country, for example, I do not even know where they are. Somebody recently came to me and asked me how they should go about complaining about the police. I told them to make certain searches and they got some information about Migori Law Courts. However, when they got there, they hit a brick wall.

If you cannot physically, virtually or even through dreams identify where these institutions are in a place like Migori, then where are they? Are they just in Nairobi at Westlands, at the police headquarters, or in some imaginary place yet they are utilizing public funds? I do not want to blame them, but I blame those who pretend that such institutions exist.

Madam Temporary Speaker, those who pretend to do so are in the Executive; the politicians appointed or elected to serve in such capacities. If we, politicians, believe in setting up a national Government that is able to protect and defend the people in Kenya, such defense and protection must have financial and human capital. They should be included in the independent institutions that we rely on to carry out the mandate that we delegate to them. Such mandates are as important as is covered in this report.

Madam Temporary Speaker, let me talk about the killing and disappearance of people. A couple of months ago there was a young man called Rashid Ochieng' in my sub county who comes from my clan. Some characters in police uniform went to his home at about 8 p.m. His home was close to a bar that he ran. They got him into a Subaru and that was the last time that that young man was heard of.

According to the police, the signal disappeared next to a river called Kuja River. His body has never been seen. There is nothing that has been heard that would indicate where he is. As you know it, our community and other communities believe in life. You can see the torture and the suffering here. His mother is aged and he comes from a generally poor family. This is just an example of what is happening all over Kenya. These are unfortunate situations. If we are unable to solve them, then we do not do what we are supposed to do.

Madam Temporary Speaker, I conclude by saying that this House is mandated to give life to the good dreams and ideas that were embedded in our Constitution in 2010. You will agree with me that even the attempt to amend the Constitution that we baptized as the Building Bridges Initiative (BBI) did not touch on this area. This is because in as far as the Constitution is concerned, a thorough job was done on this area.

What we need to do is act on the recommendations that Senior Counsel Sen. Omogeni put in this report. We need to give life to such recommendations so that Kenya will be a place that is safe. It should be a place where our police and uniformed personnel are truly disciplined.

In reality, what we have in place is very undisciplined forces and a very hopeless attempt at overlooking such undisciplined forces. This cannot be countenanced in the modern world because doing so creates more insecurity and a more disorderly society. It is actually acquiescing to the threat of the devil. I do not have a better way of describing police who participate in such heinous crimes as agents of the Lord. They are actually agents of the devil.

I beg to support.

**The Temporary Speaker** (Sen. Pareno): Sen. Madzayo.

**Sen. Madzayo:** Ahsante, Bi. Spika wa Muda. Kwanza, ningependa kumshukuru ndugu yetu Okong'o Omogeni, wakili mashuhuri sana katika Jamhuri ya Kenya yeye akiwa mwenyekiti wa kamati yetu ya Sheria na Haki za Binadamu kwa kuleta ripoti hii.

Kila alivyo nakili katika hii ripoti, yamewahi kutokea katika Kenya, hususan katika mkoa wa Pwani. Tunajua kabisa katika sheria na Katiba inasema ya kwamba, kila mtu katika Jamhuri ya Kenya ana haki ya kuishi na kuweza kulindwa kimaisha na Serikali. Lakini yale yanayojiri tunayaona ni mambo ya kustaajabisha.

Bi. Spika wa Muda, tunavyoongea kuhusika na vifo hivi, nasikitika kwa sababu mimi mwenyewe katika familia, tumepatikana na kisa kama hiki. Pia vilevile, visa vya wavulana katika Pwani vimekithiri. Ukweli wa mambo ni kwamba, visa kama hivi



vinafanywa na polisi. Ningependelea kusema ya kwamba, ni vyema ikiwa polisi wataambiwa kwamba mambo ya kupiga watu risasi, kuua watu au kuangamiza wananchi yakome. Yasiweze kutokea tena katika maeneo yetu ya Pwani.

Ni jambo la kusikitisha hivi leo ikiwa tutaketi hapa na tutaongea jinsi vile watu wanapotea na wanauwawa na polisi. Jambo kubwa la kusikitisha ni ukisikia polisi wameenda mahali kuondoa wananchi na wako na *court order*, saa zingine hio *court order* inaeza kua ni bandia. Tena utapata ukisikia polisi wameenda mahali na wanaketi kwa muda mrefu kuondoa ni kwa sababu kuna bwenyeye, atawapa pesa na wataenda hapo kufurukisha watu ambao wapo katika mashamba yao. Watu wengine wameishi hapo kwa zaidi ya miaka sabini au themanini, maanake miti yetu inasema.

Mnazi ukikua mpaka ukifa, inakua ni zaidi ya miaka sabini. Utaona polisi wako na haraka ya kwenda kushugulika na mambo ya kutesa wananchi. Wanasema wao wanaangalia ile *court order* inasema watu waondoke hapo. Visa kama hivi si vipya katika mkoa wa Pwani ambao umeona visa hivi kuanzia jadi.

Tulikua na kiongozi katika Pwani aliyetitwa Ronald Gideon Ngala. Alikua mshupavu wa siasa na alikua wa kwanza katika Serikali yetu ya Kenya kuanzisha upande wa upinzani, yaani Kenya African Democratic Union (KADU). Hatimaye alivuma sana sababu alikua mpinzani mkubwa sana ndani ya Serikali, akipinga Hayati Jomo Kenyatta. Lakini siku moja alipatikana katika barabara ya Nairobi na Mombasa kama gari yake imependuka.

Uchunguzi ulipofanywa ikawa nyuki waliingia ndani ya gari na wakauma dereva ndio ikasababisha kupenduka kwa ile gari. Visa kama hivi ambavyo Serikali haiwezi kutuambia ama kufafanua ilikuaje, ama ni ukweli kama nyuki wanaweza kuingia. Hilo tunasema si sawa. Hata hivi sasa imebainika wazi ya kwamba Mheshimiwa Ronald Ngala aliuwawa na askari.

Tunajua ya kwamba kuna wanasisia washupavu, wengine kama Mheshimiwa Karisa Maitha ambaye kifo chake mpaka hivi sasa hakijabainika uhaki wake. Imekua watu wakisema namna hii au namna ile mpaka sasa. Hawa ni watu ambao walikua wakitetea watu wa Pwani katika mashamba yao, haki zao na rasilimali zao.

Bi. Spika wa Muda, jambo la kusikitisha ndani ya Serikali ilioko katika mamlaka sasa, ni kwamba wamezorotesha uchumi wa Pwani kwa sababu askari wenyewe wamekua mstari wa mbele kuzuia wale watu wanaosema hawataki ardhi yao ichukuliwe ama hawataki Standard Gauge Railway (SGR) ipitie makwao. Watu wetu wamefukuzwa katika hayo mashamba. Mashamba yamechukuliwa kwa njia si ya halali na watu wamefurushwa katika ardhi yao na hawajalipwa. Imekua sasa ni dhiki baada ya dhiki sababu polisi wanaangalia watu wasirudi tena kwa yale mashamba yao.

Ukosefu wa nidhamu kama huu uliotendewa watu wa Pwani na askari ambao wanatumiwa vibaya kufurusha watu hawa katika mashamba yao ukome. Kwa sababu ukiangalia hata sasa, uchumi wa Pwani unasikitisha ajabu. Hakuna kazi, vijana wanaketi kiholela ndio sasa wanaanza kusingiziwa wamejiunga na Al Shabaab au jihad na mambo ambayo hayafai

Bi. Spika wa Muda, cha muhimu ni kwamba wakati kijana ambaye anajulikana ya kwamba familia yake inamtegemea ameuwawa kinyume cha sheria au kupotezwa kinyume cha sheria, ni jambo la kusikitisha. Utaona ya kwamba wale wengi wanaopotea katika hizi sitofahamu, ni wavulana Waislamu. Si haki. Kwanini isiwe kama kuna

Stewart Madzayo. Ama iwe kuna George. Kwanini saa zote iwe Rashid, iwe Feisal, iwe Abdullahi au Salim? Tunajiuliza maswali. Ni kwa sababu, katika akili za polisi, mtu akiwa amekua barobaro na kuna makosa fulani yametendeka katika mtaa fulani, inajulikana wale wanaweza kuwa *rounded up* au kuzungukiwa wakashikwa, ni wale wavulana Waislamu.

Kubagua hakufai. Laziwa watu wote wawekwe katika sheria kisawasawa. Familia hizi zinatesekwa kiuchumi kwa sababu yule ambaye anapeleka mkate nyumbani, yule mtu anayeweza kupeleka mamake hospitali na yule mtu anayeweza kusomesha mtoto wake; anakua anapotezwa hali si sawa kupitia kitengo ambacho si cha kisheria.

Bi. Spika wa Muda, ile Kamati ya Sheria na Uridhiano yaani the *Truth and Justice Reconciliation Committee*, ilikua na ripoti nzuri sana. Iieleza chanzo cha polisi kutumia nguvu, chanzo cha watu wa Pwani kupoteza mashamba yao na chanzo cha vile mashamba yalinyakuliwa. Hili jopo liliandika ripoti.

Bi. Spika wa Muda, ni miaka mingi sana, zaidi ya miaka kumi sasa tokea hii ripoti ya *Truth and Justice Reconciliation Committee* ambayo ni Ukweli na Sheria na Uridhiano, na haijatolewa mpaka hivi leo. Ripoti hii ilikua hususan inaongea mambo ya Pwani. Watu ambao waliweza kupata uhuru tokea kitambo lakini watu wa Pwani hawakupata uhuru wao mpaka mwisho ikifikia mwaka wa elfu moja mia tisa sitini na tatu; Kenya ikipata uhuru, maeneo ya Pwani yalitengwa. Yalikua si mojawapo katika Pwani.

Mwaka wa 1964 Kenya ilipokuwa imepata uhuru sasa na kuwa Jamhuri, ndio Pwani ikakaribishwa. Ilipokaribishwa iliambiwa kwamba mtu wa Pwani yeyote akiwa na haja ya kupata ardhi ndani ya Pwani, ilikuwa ni sharti apate sahihi ya Rais wa Jamhuri ya Kenya. Sasa tunauliza maswali kwamba je, watu wangapi walikuwa wanaweza kumfikia Rais na kumwambia hapa tunapoishi tunafaa kupewa ardhi?

Bi Spika wa Muda, ripoti hiyo ya Kamati ya Haki, Maswala ya Kisheria na Haki za Binadamu iweze kuweka wazi ile Ripoti ya *Truth Justice and Reconciliation Commission (TJRC)*. Iweze kuwekwa wazi, Wakenya waisome na watu wa Pwani pia waisome. Wajue ni kitu gani kimeandikwa pale isije ikawa na msemu tu kila mwaka. Mwaka nenda mwaka rudi tunasema fungueni hii Ripoti na mpaka leo haijafunguliwa.

Naunga mkono sana haya mapendekezo yamefanywa kwamba hii Ripoti iweze kuangalia na lile jopo la *Independent Policing Oversight Authority (IPOA)* iwezekuchunguza polisi ambao wanawaua watu kiholela na kuangamiza watu kiholela. Naunga mkono pendekezo hilo liweze kupewa kipau mbele.

Bi Spika wa Muda, nikisema hivo, huko nyumbani kuna jambo la kusikitisha. Kuna kijana mmoja kwa jina Mohamed ambaye aliyekuwa na miaka 16. Ilikuwa tarehe 22 Septemba, 2017. Aliondoka nyumbani akiwa ametumwa na familia yake kwenda tu kununua maziwa dukani, na hakurudi tena nyumbani. Mpaka hivi leo, wazazi wanalia wanataka haki zao na kijana hajaonekana mpaka leo.

Kuna kijana mmoja pia kwa jina maarufu “Major.” Alikuwa na rafiki yake wa dhati. Baada ya kumpeleka uwanja wa ndege - alikuwa anaondoka akienda nje ya nchi - kijana huyu hajarudi nyumbani mpaka leo, na hajaonekana.

Bi Spika wa Muda, vile vile, kuna majirani kama mzee mmoja kwa jina Abdi Farah. Alikuwa na mtoto wake kwa jina Mohamed. Mtoto wake alikuwa anaenda shule ya upili. Mpaka leo huyo mtoto hajarudi nyumbani. Imefika mwaka wa tatu sasa. Pia

kuna mtu mzima mmoja kwa jina Mzee Abubakar. Alisingiziwa kuwa yeye ni jambazi. Hatimaye aliweza kuwekwa ndani. Badala ya kupelekwa polisi, sasa amepotea na hatujui aliko.

Vile vile, hatuwezi kusahau. Kuna watu ambao wamepitia mkono wa polisi ambao hawakupelekwa kortini. Ukiangalia kule nyumbani, kama Mombasa, kuna mwalimu wa dini kwa jina Makaburi. Aliambiwa kwamba anafundisha watoto jinsia mbaya. Lakini hakuna hata siku moja tuliona Makaburi amepolekwa kortini na akaambiwa hivi ndivyo alivyo fanya na kwamba sio haki na akafungwa.

Bi Spika wa Muda, bali tuliona Makaburi akipigwa risasi. Alikuwa ameshatabiri kwamba polisi wanamtafuta na watamua. Mpaka leo, baada ya kusema hivyo, hajukatokea jawabu lolote. Familia yake inalia mpaka leo wakisema wanadai haki yao.

Kuna mtu mkubwa sana aliyekuwa mshemiwa kwa mambo ya dini. Alikuwa anaitwa Muhamed Abdi Rogo. Rogo alikuwa mwalimu ambaye alikuwa anahusika sana na mambo ya kufundisha watoto na watu wazima. Alikuwa ni mkubwa wa misikiti ya kiislamu katika Pwani. Ni mtu alikuwa anaheshimika sana. Alipigwa risasi akiwa na bibi na mtoto wake ndani ya gari. Bibi na mtoto wakawachwa na hao polisi.

Bi Spika wa Muda, tunauliza: Ikiwa watu kama Makaburi na Abud Rogo wanaweza kuuawa na ni mwalimu wa dini ambaye alikuwa anajulikana sana, kwa nini wasishikwe wapelekwe kortini alafu washatakiwe na tuone haki ikitendeka wakati korti inatoa uamuzi?

Ni makosa sana kwa askari kushika watu na kuwapoteza. Mpaka hivi sasa, familia za Makaburi na Abud Rogo, ambaye alikuwa anaketi katika kaunti yangu ndani ya Kikambala--- Alikuwa anaishi kama jirani yangu pale Mtwapa. Alipigwa risasi na haki haijatendeka mpaka sasa.

Bi Spika wa Muda, naunga mkono Ripoti hii na kusema kwamba hatua ichukuliwe na hata hawa askari ambao wako na tabia kama hizo ambazo wanazifanya za kupoteza watu, kitengi cha sheria kichukue mkondo wake.

Asante.

**The Temporary Speaker** (Sen. Pareno): Asante.

Sen. Faki, endelea.

**Sen. Faki:** Asante Bi Spika wa Muda kwa kunipa fursa hii kuunga mkono Ripoti ya Kamati ya Haki, Maswala ya Kisheria na Haki za Binadamu ya Seneti kuhusiana na swala la mauaji ya kiholela ya polisi. Hiyo ni pamoja na kupotezwa kwa Wakenya wengi ambao wanaendelea kupotea kila siku kupitia kwa vitengo vya polisi.

Kutoka Seneti hii ianze kazi mnamo Mwezi wa Tisa, 2017 kumekuja Taarifa takriban 20 zinazungumzia maswala ya watu kuuliwa kiholela na polisi pamoja na wale ambao wanapotezwa na polisi hao.

Bi Spika wa Muda, hata hivi sasa tunavyo zungumza, watu wanaendelea kupotezwa na wengine wanachukuliwa. Kwa mfano, Abdul Hakim Sagar alichukuliwa Mombasa Tarehe 18 Agosti mwaka huu. Kwa bahati nzuri, akaachiliwa baada ya mwezi mmoja msituni karibu na mji wa Voi.

Mwingine aliyechukuliwa katika visa kama hivi ni Prof. Abduswamad ambaye alichukuliwa mwezi huo wa Agosti na akakaa ndani kwa muda wa wiki tatu. Baadaye akaachiliwa hapa Nairobi bila mashataka yeyote na akaonywa kwamba asizungumzie swala hilo la kutekwa kwake.

Bi Spika wa Muda, mwingine ambaye amechukuliwa ni kijana anayeitwa Muhamed Abubakar Said ambaye alitekwa nyara mnamo tarehe 14 Oktoba mwaka huu maeneo ya Mombasa karibu na Msikiti wa Musa. Mpaka leo, hajulikani yuko wapi. Mwingine aliyechukuliwa ni Prof. Hassan Nandwa ambaye alichukuliwa tarehe 18 mwezi huu na akachiliwa jana maeneo ya Makueni, mahali ambako alikuwa hajulikani.

Kwa hivyo, ni visa ambavyo vinaendelea kila siku. Juzi nilifurahi kwamba mahakama ilitoa amri mpaka zile kumbukumbu za simu zile za Safaricom waliombwa wazilete mahakamani kuonesha vipi mwelekeo wake kutoka alipochukuliwa mpaka pale alipokuwa amefikishwa. Mnamo mwezi wa Nne nafikiri mwaka wa 2019, nilileta Taarifa pia hapa Bungeni ya kijana anayeitwa Husni Mubarak ambaye pia alipotezwa. Kutoka wakati huo mpaka sasa bado hajulikani alipo.

Bi Spika wa Muda, hatupingi vita dhidi ya ugaidi, lakini tunasema kwamba kila kitu lazima kifwate sheria. Nchi yetu inalindwa na sheria na ina Katiba ambayo sote tuliipigia kura mnamo mwaka wa 2010. Nchi haina shida ya sheria. Mahakama zetu zinafanya kazi. Ijapo kuwa nitalizungumzia mbeleni kidogo, kwa sasa tunaweza kusema kwamba mahakama zinaweza kufanya kazi ya kuamua kesi yeyote ambayo inawezakuwa dhidi ya mtu yeyote katika nchi yetu ya Kenya.

Bi Spika wa Muda, ni jambo la kusikitisha kwamba bado mpaka sasa tunapata visa kama hivi ambavyo vinaendeshwa na polisi pamoja na vyombo vingine vya serikali. Hakuna mtu anaweza kuvamia mtu na bunduki mchana na wako karibu sita au saba, wote wako na bunduki na magari ambayo hayana nambari za usajili, wakamshika mtu na wasimpeleke mahakamani ispokuwa ni polisi. Niliwahi kuenda na chama cha Haki Africa mpaka kwa ofisi ya Director of Public Prosecutions (DPP) na tukalijadili swala hili kwa kirefu. Lakini DPP akawa hayuko tayari kutoa habari zozote kuhusiana na swala hili.

Bi Spika wa Muda, ripoti hii imekuja wakati mzuri sana kwa sababu nchi bado ina matatizo haya ya watu kuuliwa na kupotezwa kiholela. Swala hili limekuja wakati huu wa serikali ya Jubilee. Hii miaka tisa ya serikali ya Jubilee ndiyo imeleta matatizo haya ya *enforced disappearances*.

Ndugu Sen. Madzayo amezungumzia kuuliwa kwa Sheik Abud Rogo, Makaburi na wengi ambao wanauliwa na hatuwezi kuwataja hapa. Kuna vijana wengi ambao walichukuliwa kutoka Kwale wakaenda kuuliwa Tsavo na mili yao ikatupwa kule mpaka ikaharibika. Juzi watu wa Haki Africa walipata mili kadhaa sehemu za Tana River ambapo watu walikuwa wameuliwa kwa njia ambazo sio sawa. Mili yao ilionyesha kwamba waliteswa kabla ya kuawa.

Bi Spika wa Muda, haiwezekani kwamba serikali iwe ina wadhulumu raia wake kiasi kama hiki. Hivi visa vya watu kupotezwa katika Lamu ni vingi sana. Sehemu kama Kaunti ya Lamu, hakuna sheria ya utangamano kule. Kila siku jioni ikifika saa kumi na mbili unaambiwa sasa hii ni eneo la operesheni na magari ya raia hayaendi, lakini magari ya kubeba vitu kama miraa na bangi yanakwenda masaa 24 bila shida yeyote. Sehemu kama Lamu inafaa iangaziwe zaidi kwa sababu kule kuna visa vya kila siku vya watu kupotezwa na wengine kuuliwa bila kutumika kwa sheria yeyote.

Bi Spika wa Muda, mahakama yetu kwa sasa imelegeza kamba kuhusiana na maswala haya. Zamani ilikuwa ukiripoti kwamba mtu amepotea au ameshikwa na polisi kwa njia ambayo sio sawa na hajapelekwa Mahakamani, ukitoa ombi ile inaitwa kwa

Kiingereza *habeas corpus*, polisi walikuwa wanapewa masaa 24 kumleta mhusika kortini ama wamuachilie.

Lakini sasa mahakama inaweza kutoa amri kwamba aje baada ya siku saba. Kwanza ukipeleka kwa cheti cha dharura, watakuambia kwamba nenda ukapeleke makaratasi kwa Mwanasheria Mkuu ama kwa DPP. Yakipelekwa kwa DPP, akija kortini anasema: “Sijapata maelezo kutoka kwa Inspector General of Police (IG), nipe siku saba, kumi au 23.” Ni njia ya kuahirisha kesi wakati swala la haki za kibinadamu ni la dharura. Lazima hatua ichukuliwe pale pale. Sheria inawapa polisi masaa 24 kumshika mtu. Ikizidi zaidi ya hapo ni jambo la dharura. Kwa hivyo ni lazima watu waweze kuelezwa mtu yule anashikwa kwa sababu gani.

Bi Spika wa Muda, nataka kuwapatia mfano amboa uko hai kabisa. Wakili Willie Kimani aliuliwa mwaka 2017 kama sijakosea. Wakati ule bado nilikuwa nafanya kazi ya uwakili. Hata tukavaa zile *pink ribbons* kuomboleza dhulma aliyofanyiwa kijana huyo. Mwili wake ulipatikana ndani ya gunia. Unyama ulioje? Uuwe mtu alafu umtie ndani ya gunia na utie gunia kwenye mto ili asiweze kupatikana kabisa.

Kesi ya Willie Kimani mpaka sasa ipo mahakamani. Lakini George Floyd ambaye aliuliwa kule Amerika alipozuiliwa pumzi akafariki kule mwaka wa 2020 mwezi wa Mei. Kesi yake imeskizwa na ikamalizika na yule mtu ambaye alimuuwa akafungwa miaka 22 mwezi wa Septemba mwaka huu. Kesi ya Willie Kimani bado iko mahakamani. Ni jambo la aibu mahakama zetu zina shindwa kuamua mambo ya haki za kibinadamu wakati watu wana lalamika kuhusiana na haki hizo katika nchi yetu ya Kenya.

Bi Spika wa Muda, utapata kwamba kesi zote ambazo zinatokea za watu kupotezwa, walio na ushahidi ni polisi pekee yake. Kwa nini kama wana ushahidi kwamba huyu ni mhalifu hawawezi kumfikisha mahakamani wakasema kwamba sisi tuna ushahidi huu. Tunataka kumzuia huyu kwa siku kadhaa ambapo tufanye uchunguzi zaidi ili familia ijue kwamba mtu wetu yuko mahali gani na anazuiliwa kwa sababu gani.

Ukiangalia wazazi wengi ambao wamepatikana na swala kama hili kwa kupoteza watoto wao, wengi wanashindwa hata kula. Nita kupa mfano wa mzazi wa Muhamed Abubakar Saeed. Mamake mpaka sasa amesusia chakula kwa muda wa siku 14. Leo ni zaidi ya wiki tatu kijana huyo hajapatikana na tunajua ni polisi na vyombo vya dola ndizo vimeweza kumshika na kumpeleka mahali ambapo hapa julikani.

Bi Spika wa Muda, kabla ya mapendekezo ningependa kutoa shukrani zangu za dhati kwa kamati kwa kuzuru mji wa Mombasa ambapo visa vingi kama hivi vimeweza kutotea. Nachukua fursa hii pia kutoa shukrani za dhati kwa Mombasa Law Society kwa kujitokeza kuzungumzia swala hili, Haki Afrika, Shirika la Muhuri, Shirika la Huria na mashirika mengine yote ya pwani ambayo yaliweza kujitokeza siku ile Seneti ilienda Mombasa kwa vikao vya kuwaskiza wananchi.

Tukija kwenye mapendekezo, nakubaliana hususan na mapendekezo yote ambayo yametolewa katika swala hili. Tukiangalia mambo mengi yanato kana na uzembe wa serikali. Kwa mfano, kuratibiwa kwa sheria ya Coroners Act ambayo imepitishwa zaidi ya miaka miwili iliyopita, hilo ni swala ambalo Mwanasheria Mkuu inafa aje Bungeni aeleze ni kwa sababu gani haija tekelezwa sheria hii. Ingeweza kuwapa fursa madaktari kutoa ushahidi wa kina kuhusiana na lini kitu gani ambacho kime sababisha kupoteza kwa maisha ya mtu.

Bi Spika wa Muda, kuna ulinzi wa mashahidi. Kuna watu karibu watatu ambao walichukuliwa kama mashahidi wakati wa vita vya Al-Shabaab. Wote baada ya muda wakaondolewa ulinzi wao na wote wakauliwa. Mmoja alichinjwa katika sehemu ya Marafa kule Malindi. Ipo haja ya kuongeza ufadhili wa ulinzi wa mashahidi. Bila ya kuwalinda mashahidi, kesi nyingi hususan za polisi zitaweza kupotea bila kuwa na mwelekeo wowote.

Kitu kingine ambacho ningeweza kuipongeza kamati ni pendekezo lao la kuwa na msaada wa kisaikolojia kwa wale ambao wame athiriwa. Kuna wazazi ambao kwa Kiingereza tunawita “*single parents*” ambao labda mtoto wake mmoja pekee yake ndiye amepotea na hajulikani aliko. Mwaka jana kule sehemu za Diani, polisi walivamia mji wakampiga risasi baba na watoto wake wawili. Mama mmoja pia akapigwa risasi ikabidi aende akazae hospitalini. Maswala kama haya wanataka kufanyiwa ushauri ili waweze kuwa na imani kwamba yaliyotokea hayawezi kutokea tena kwa siku za usoni.

Bi Spika wa Muda, swala la Independent Policing Oversight Authority (IPOA) kuongezewa ufadhili ni muhimu sana. Hii ni kwa sababu IPOA mpaka sasa haina ofisi katika kila kaunti katika Jamhuri yetu ya Kenya. Ni shirika ambalo linafanya kazi kubwa kuhakikisha kwamba zile dhulma zinazo fanywa na polisi zina chunguzwa na wale wanao husika wanapewa adhabu. Ipo haja ya serikali kuongeza ufadhili kwa IPOA ili kuona kwamba zile kesi zina chunguzwa kwa haraka na wale wahusika wana shtakiwa mahakamani bila shida yeyote.

Tunasema pia Kenya National Human Rights Commission (KNHRC), makamishna kule pia wamezembea katika kazi zao. Wamelala wakati Wakenya wanalalamika juu ya visa kama hivi. Mwaka jana tuliweza kuhudhuria hafla ya Haki Africa ambapo walikuwa wanatoa ripoti yao kuhusiana na mauwaji ya kiholela wakati wa janga la virusi vya Korona. Ilikuwa ni ripoti ya kusikitisha.

Bi Spika wa Muda, wiki iliyokwisha nilihudhuria warsha ya Independent Medico-Legal Unit (IMLU). Walisema kwamba mpaka sasa kwa mwaka huu pekee yake zaidi ya watu 30 washauliwa katika njia za kiholela kutokana na vitendo vya polisi.

**The Temporary Speaker** (Sen. Pareno): Order, Sen. Faki! You will have a balance of seven minutes when we resume next.

## ADJOURNMENT

**The Temporary Speaker** (Sen. Pareno): Hon. Senators, it is now 6.30 p.m., time to adjourn the House. The Senate, therefore, stands adjourned until Wednesday, 10<sup>th</sup> November, 2021 at 2.30 p.m.

The Senate rose at 6.30 p.m.