

# PARLIAMENT OF KENYA

## THE SENATE

## THE HANSARD

Thursday, 30<sup>th</sup> November, 2017

*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

#### CONSULTATIVE MEETING BETWEEN THE SENATE AND CRA

**The Speaker** (Hon. Lusaka): Hon. Senators, as you are aware, Article 215 of the Constitution establishes the Commission on Revenue Allocation (CRA) with the mandate to, among others;

- a) make recommendations concerning the basis of the equitable sharing of revenue raised by the national Government between the national and county governments and among the county governments;
- b) make recommendations on other matters concerning the financing of and financial management by the county governments as required by the Constitution and national legislation;
- c) determine, publish and regularly review a policy in which it sets out the criteria by which to identify the marginalized areas for purposes of allocation of the Equalisation Fund under Article 204 (2) of the Constitution.

The activities of the CRA are vital to the implementation of the constitutional mandate of the Senate as set out in Article 96 of the Constitution and there is, therefore, need for the two institutions to continuously engage in the discharge of our respective mandates and functions.

Senators may also recall that during the induction workshop for Senators held at Naivasha in September, 2017, it was resolved that regular consultative meetings between the Senate and the CRA are necessary for the effective and efficient implementation of devolution.

Hon. Senators, in this regard, a consultative meeting between the CRA and the Senate has been organised and is now scheduled to be held on Tuesday, 5<sup>th</sup> December 2017, at the Intercontinental Hotel, Nairobi, from 7.30 a.m. I urge all Senators to plan and attend this important meeting.

I thank you.

#### NASA LEADERSHIP IN THE SENATE

**The Speaker** (Hon. Lusaka): Hon. Senators, on 29<sup>th</sup> November, 2017, I also received a letter from the NASA Coalition on the leadership in the Senate. I therefore wish to table the names as received;

1. Deputy Minority Leader – Sen. James Aggrey Bob Orengo
2. Minority Chief Whip – Sen. Mutula Kilonzo Jnr.
3. Deputy Minority Chief Whip – Sen. Petronila Were

The Senate will with time implement and constitute other committees as I gave directions yesterday.

I thank you.

**The Senate Majority Leader** (Sen. Murkomen): Mr. Speaker, Sir, with your permission, I would like to thank you for the two communications. First of all, on the CRA issue, we play a very critical role as the Senate in ensuring that equity is achieved in our country and many Senators here are particularly concerned on the issue of marginalized areas vis-à-vis marginalized communities and the question of allocation of resources on the basis of marginalization and the Equalisation Fund. That is an issue that we debated in the last Parliament for the five years and, therefore, Senators must take the meeting that has been convened seriously.

On the second communication, I would like to congratulate the hon. Senators who have finally been appointed by the NASA Coalition to serve in the leadership of this House. There was a very heated debate when you were away; the Deputy Speaker was on the Chair when the question of leadership was debated. Now that we have leadership on both sides of the House, I would like to start by congratulating Sen. Orengo. I am on record having stated that he is one of the persons who inspired me to study law. I would like to congratulate him on his ultimate and final rise into the leadership of the House as a Deputy Minority Leader.

Mr. Speaker, Sir, I also congratulate my colleague, Sen. Mutula Kilonzo Jnr. who is very astute, committed and hardworking. Our sister, Sen. Were, will prove herself with time because I never had the opportunity to work with her. I congratulate the Minority Side for finally providing a list; unlike the other House, we have representation of women to their leadership. The Majority Side of this House must be lauded for having two women in the leadership of the House and not in small positions but in the positions of Deputy Majority Leader and the Majority Whip of the Senate. This shows our commitment to gender equity. I believe that as the Senate, we can work as a team.

Mr. Speaker, Sir, the one thing that I request our leaders in the Minority Side is; now that the election is over and we have the President in office, and leadership in the Senate, we need to engage the Executive and the leadership of the National Assembly on

the question of strengthening the role of the Senate and enabling the Senators to perform their constitutional roles. The question of the Oversight Fund is very critical. I am inviting my colleagues on the Minority Side to sit together and approach all the institutions that we require to approach to ensure that the Senators are facilitated to perform their responsibilities for the counties.

Mr. Speaker, Sir, with those many remarks, I congratulate my colleagues and look forward to having more less bipartisan working relationship between the Minority and Majority side. I thank you.

### PAPERS LAID

**The Senate Majority Leader** (Sen. Murkomen): Mr. Speaker, Sir, I beg to lay the following Papers on the Table of the Senate today, Thursday, 30<sup>th</sup> November, 2017.

#### REPORTS OF THE AUDITOR-GENERAL ON THE FINANCIAL STATEMENTS OF VARIOUS COUNTY GOVERNMENTS

Report of the Auditor-General on the financial statement of Vihiga County Executive and Assembly

Report of the Auditor-General on the financial statement of Kakamega and Murang'a County Executive for the year ended 30th June, 2016

Report of the Auditor-General on the Taita-Taveta County Assembly Revolving Car Loan Scheme for the year ended 30th June, 2016

Report of the Auditor-General on the financial statements on the Lamu Water and Sewerage Company Limited for the year ended 30<sup>th</sup> June 2016

Report of the Auditor-General on the financial statements of Kajiado County Emergency Fund for the period ended 30<sup>th</sup> June 2015

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

Mr. Speaker, Sir, I will come back to the business of the Senate for the coming week later.

### STATEMENTS

**The Speaker** (Hon. Lusaka): The answers to the Statements listed in the appendix are there but since the Senators who sought the Statements are not there, we will defer them to next week.

Senate Majority Leader, you have a Statement to issue on the status of Karebe Gold Mine Company.

STATUS OF KAREBE GOLD MINE COMPANY LTD  
IN NANDI COUNTY

**The Senate Majority Leader** (Sen. Murkomen): Mr. Speaker, Sir, we have agreed with Sen. Cherargei that further consultations need to take place before this Statement is issued to satisfy the standards that he wanted and he is in total agreement.

**The Speaker** (Hon. Lusaka): Senate Majority Leader, you have a Statement to issue on alleged murder of Micah Kiplimo and Stanly Kipchirchir at Chesuwe Trading Centre, Kilibwoni.

BRUTAL MURDERS OF MICAH KIPLIMO AND STANLEY KIPCHIRCHIR  
AT KILIBWONI WARD IN NANDI COUNTY

**The Senate Majority Leader** (Sen. Murkomen): Thank you, Mr. Speaker, Sir. At a sitting of the Senate held on 10<sup>th</sup> October, 2017, Sen. Samson Cherargei requested for a Statement regarding the alleged murder of Micah Kiplimo and Stanly Kipchirchir at Chesuwe Trading Centre Kilibweni Ward, Nandi County.

The hon. Senator particularly sought to be informed on;

(1) The state of security in Nandi County Town including the number and the nature of crimes reported since the beginning of this year;

(2) The Steps that the police have undertaken to investigate the murders and track down the perpetrators of the aforementioned murders and similar crimes in Nandi County;

(3) Whether there is police and national administration laxity on these murder cases, and,

(4) The measures that the national Government and in particular the Inspector General of Police is taking to curb such crimes and compensate the families of the two victims as well as other families who have lost their loved ones under similar circumstances.

I wish to state as follows:

Mr. Speaker, Sir, generally, Nandi County has been calm throughout the year 2017. Appended here below is a list of crimes that have been reported in Nandi Central Police Division since the beginning of the year.

Murder: eight cases pending before court, pending arrests of known persons, one, finalised, nil, which totals to eight.

Rape: Three cases pending before court, pending arrests of known person, nil, finalised cases, nil, total three.

Defilement: 41 cases pending before court, pending arrests of known persons, nil, finalised cases three, total 44.

Assault: 124 cases pending before court, pending arrests of known persons, nil, finalised cases 3, total cases 155.

Creating Disturbance: 31 cases pending before court, pending arrests of known persons, nil, finalised cases, 12, total, 43.

Robbery: Two cases pending before court, pending arrests of known persons, nil, finalised cases, nil, total, two cases.

House Breakings: 16 cases pending before court, pending arrests of known persons, nil, finalised cases, three, total, 19.

General Stealing: 35 cases pending before court, pending arrests of known persons, nil, finalised cases, two, total, 37.

Mr. Speaker, Sir, it can be said from this report that assault is the worst crime in Nandi County followed by defilement and then general stealing and creating disturbance.

Mr. Micah Kiplimo and Mr. Stanly Kipchirchir Limo were suspected of stealing a television set at Chesuwe Trading Centre in the year 2015 and were subsequently lynched by a mob at the same trading centre on 24<sup>th</sup> September, 2017. Police rushed to the scene and took the victims to Kapsabet County Referral Hospital where they were admitted and later referred to Moi Teaching and Referral Hospital, Eldoret where they later died while undergoing treatment.

Police immediately commenced investigations on the murder and the following persons were arrested and arraigned before court, *vide* Kapsabet Police Station CR771/572/2017.

- (1) Eli Kiptum Barnua alias Nekei
- (2) Donald Kepkemoi Cheruyiot arap Mwalimu
- (3) Joshua Kimeli Tum

Three other suspects are still at large and efforts to bring them to book are underway.

Mr. Speaker, Sir, the national Government administration officers and police are collaborating seamlessly in the maintenance of law and order and no laxity has been reported among the officers.

The Government has enhanced its security in the town through intensive day and night patrols, community policing initiative and sensitization of members of the public on the need to allow the law to take its course.

The statement is signed by Dr. Fred Matiang'i, the acting Cabinet Secretary.

**Sen. Cherargei:** Thank you, Mr. Speaker, Sir. As a matter of clarification, the Statement has not stated that some of the alleged young men that were killed had mental problems. It is inconsistent with what happened and on what time because we had not given the time that the police are alleging that they stole the television. Another clarification is that the suspects who are still at large are known within the community and they live around.

**Sen. Haji:** Mr. Speaker, Sir, defilement and rape are serious offences. I am wondering why so many of them are appearing on that area. Could it be that people are drinking and smoking bhang a lot? What is contributing to this thing? The Ministry should find out. These are many cases. Next time it can rise to 200 cases. We would like to know what the Government is doing about this serious matter.

**The Senate Majority Leader** (Sen. Murkomen): Mr. Speaker, Sir, I am not aware that the suspects had mental problems. If they did, first of all, committing a crime

is a mental problem in my opinion but it may not be medical. It is a status of mind of that person which is a mental problem. If one thinks of solving a problem by killing people, he or she has a mental problem. I am speaking as a lay man and not as a doctor.

The question of whether or not these people have mental problems will be pleaded in court. It will be their defense to raise the issue of whether or not these people need to undergo a medical examination before they can stand trial. If there is any allegation - I taught hon. Cherargei very well and he knows that as long as the people will be arraigned in court, those issues will be pleaded there.

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

**The Speaker** (Hon. Lusaka): What is your point of order, Sen. Madzayo?

**Sen. Madzayo:** Mr. Speaker, Sir, is my colleague in order, as a lawyer, to say that those people who commit crimes have a mental problem? A mental problem is totally different from a criminal act. Is it in order for him to impute what is totally misleading? If someone is sick in the mind, it does not mean that they will commit a crime. Some of these criminal acts are conducted by people who are not sick in the mind. Is he in order?

**Sen. Haji:** Mr. Speaker, Sir, the Senate Majority Leader has misunderstood my concerns. I did not say that these people are mad. I am asking why all these things are happening.

**The Speaker** (Hon. Lusaka): Senators, Sen. Madzayo was responding to the Senate Majority Leader.

**The Senate Majority Leader** (Sen. Murkomen): Mr. Speaker, Sir, mental problem is not equivalent to insanity which the judge was alluding to. Anybody who commits a crime has a mental problem. That mental problem may not be in the McNaughton rules an issue of insanity; it is a question that the person has a problem on how to solve issues. This is when a person thinks that crime or stealing people's things is the only way to enrich one self.

Having said that, the proper answer to the question asked by Sen. Cherargei is that, if insanity will be pleaded as a ground of committing any crime, the court will order for a mental examination before the person stands trial. Sen. Cherargei can help his constituents if he thinks that they are not in the right state of mind by, one, as a Senator, insisting that they must be given a lawyer or a state counsel. If they are standing trial for murder they cannot represent themselves. He must insist that they must be given a State Counsel to represent them. In the alternative, because Sen. Cherargei is generally a man of means, he can hire a lawyer for his constituents so that those issues can be pleaded in court.

**The Speaker** (Hon. Lusaka): Senators, do you want to seek more clarification?

**Sen. Cherargei:** Mr. Speaker, Sir, I want to seek further clarification. I appreciate that Sen. Murkomen was my lecturer in law class and he did a lot of due diligence.

My observation is that the people who were killed – that is Mr. Stanley Kipchirchir and Mr. Micah Kiplimo – were mentally unstable or ill. Therefore, the assertion that the Statement is trying to put across – that they were stealing – is not captured very well. So, I think Sen. Murkomen should get that point clear.

Finally, I do not think he said anything about compensation.

Thank you, Mr. Speaker, Sir.

**The Senate Majority Leader** (Sen. Murkomen): Mr. Speaker, Sir, then, the answer is also in the reverse. I think the people are standing trial; the good thing is that people have been arrested. Now, the issue to be raised in court is whether it is a defence to kill someone because of stealing and say “I killed him because he is a thief.” Remember, the answer we have given is that the purported crime happened in 2015, and then the mob justice occurred in 2017. Can one really plead in court and say that it was a defence first of all to use mob justice as a means of settling concerns related to stealing of a television set; and whether the person who has killed had mental problems or not? So, all those issues will still be dealt with in court---

**The Speaker** (Hon. Lusaka): Order, Senate Majority Leader! I think what he was saying is that the Statement looks inaccurate because it said that the people who were killed had a mental problem. What he is disputing is that they were not stealing anything. I think that is what the Senator is saying; that the people who were killed had a mental problem and, therefore, the issue of having been killed because they were stealing televisions does not arise.

**The Senate Majority Leader** (Sen. Murkomen): That is why, Mr. Speaker, Sir, I said that all those issues will be pleaded in court. The good thing with this answer is that suspects have been arrested and they are facing charges in court for committing a crime of murder. All those issues will be tried in court. If I am a judge sitting in judgement, it will not be a defence to say that they were stealing a television. Whether they were of good mental status or not, it can never be a defence or a basis for someone to say in court that “we killed them because they were stealing a television.” In fact, even if they were stealing a television, the crime would have remained a crime because that is not a defence. I am just trying to say that those people who were standing trial are already facing trial because they committed an offence and that they are suspected to be the ones who committed that offence.

Sen. Haji, I totally agree. You will remember that I paused when I saw the number of defilement and rape cases in that area. It is very serious particularly when you talk about 41 defilement cases reported in one year; and, maybe, others go unreported. We are talking about our children who are below 18 years; some may be 10, 11 or 12 and vulnerable. I agree with Sen. Haji that the Ministry must go further to ask themselves what are the other issues that are creating a conducive environment in Nandi County and, indeed, in the rest of the country. This is because if this report was to be given in many counties, it will be very shocking to see how vulnerable our children are in the society and then see what can be done. Maybe that will be a question and an area that we can interrogate further holistically so that the issues raised by the Senator can be addressed.

**The Speaker** (Hon. Lusaka): Okay.

Next is the Senate Majority Leader to issue a Statement on the Thwake Multi-purpose dam.

COMPENSATION FOR PERSONS AFFECTED BY  
THWAKE MULTI-PURPOSE DAM PROJECT

Sen. Mutula Kilonzo Jnr. is not here.

*(Statement deferred)*

Next is the Senate Majority Leader to issue a Statement on access to procurement opportunities in Government by People with Disabilities (PWDs), women and youth, asked by Sen. (Dr.) Musuruve.

ACCESS TO PROCUREMENT OPPORTUNITIES IN  
GOVERNMENT BY PWDs, WOMEN AND YOUTH

**The Senate Majority Leader** (Sen. Murkomen): Mr. Speaker, Sir, the National Treasury is responsible for the implementation of preference and reservations in public procurement. Among the Preferences and Reservation Schemes monitored by the National Treasury is the Access to Government Procurement Opportunities (AGPO) programme for the youth, women and PWDs.

1. The Statement sought to know how many PWDs, women and youth have been awarded tenders during the 2016/2017 and 2017/2018 Financial Years.

The response is as follows:-

- i. The National Treasury receives reports on the level of implementation of AGPO programmes by ministries, departments, agencies and county governments. During the 2016/2017 Financial Year, 42 State Departments/Ministries, 17 Commissions, 94 State Corporations and four counties submitted their reports. From the report, 25,736 tenders worth Kshs24,147,370,808 were awarded to youth, women and PWDs owned enterprises. Youth entrepreneurs received 10,890 tenders worth Kshs11,533,677,619 representing 47.76 per cent of the total tenders awarded during the year; while women entrepreneurs received 13,000 tenders worth Kshs11,825,211,369 representing 48.97 per cent; and PWDs entrepreneurs received 1,231 tenders worth Kshs788,481,820 representing 3.27 per cent of the total volume of tenders awarded to this category group this year.
- ii. This distribution of tender awards is consistent with the National Treasury Circular 1/2015 of 15<sup>th</sup> January, 2015, which requires that PWDs be awarded not less than 2 per cent of the 30 per cent reserved tenders and of the three target groups – youth, women and PWDs – none shall be awarded more than 50 per cent of the 30 per cent reserved tenders.
- iii. Current monitoring tools do not use the number of beneficiaries as an indicator, but number and volume of tenders awarded. However, the National Treasury is re-engineering the Access to Government

- Procurement Opportunities Portal to provide real time data on the number of beneficiaries, tenders awarded and their volumes.
- iv. For the year 2017/2018, First Quarter Reports are being submitted to the National Treasury and analysis of the same is ongoing. Thus, we are unable to report for this period
2. For statement number two, which had requested that we explain the measures put in place by the Government to encourage PWDs, women and youth to participate in the Government tenders the following measures have been put in place to facilitate participation of PWDs, women and youth in Government tenders:
- i. The national Treasury has enhanced the registration, prequalification, certification of youth, women and PWDs entrepreneurs into the AGPO programme. To date, a total of 74,040 AGPO certificates have been issued to this category group since inception. Youth entrepreneurs have been issued with 42,565 certificates, representing 57.49 per cent; while women entrepreneurs have been issued with 28,230 certificates, representing 38.13 per cent; and PWDs entrepreneurs have been issued with 3,245 certificates representing 4.38 per cent.
  - ii. The national Treasury has posted AGPO registration officers to 46 Huduma Centres across the country and plans are underway to ensure AGPO services are available at all Huduma Centres.
  - iii. The National Treasury is in the process of re-engineering the AGPO Portal to efficiently offer AGPO online services. Once complete, the website will be able to internally generate AGPO certificates, provide linkage with the Integrated Financial Management Information System (IFMIS), Kenya Revenue Authority (KRA), Registrar of Companies, National Council for Persons with Disabilities (NCPWD) and the Public Procurement Regulatory Authority (PPRA) as the key AGPO related service providers. Procuring entities will also be able to send their AGPO reports and procurement plans online.
  - iv. AGPO online registration has been activated and youth, women and PWDs entrepreneurs can register at the comfort of their homes without having to visit Government offices.
  - v. Online business registration has also been put in place through E-Citizen in collaboration with the Registrar of Businesses and Companies, and these categories of groups do not need to travel to Nairobi to register their businesses.
  - vi. Continuous training and capacity building of the special interest groups has been ongoing across the country. During the 2016/2017 Financial Year, 5,792 youth, women and PWDs entrepreneurs were trained on Government procurement processes in partnership with other stakeholders, such as the UN Women, county governments and State agencies.
  - vii. The National Treasury strictly monitors the implementation of 30 per cent public procurement preference and reservation for youth, women and PWDs entrepreneurs by the procuring entities to ensure compliance.

- viii. Establishment of the Preference and Reservations Secretariat to oversee implementation of preference and reservations schemes as provided for in Section 157(17) of the Public Procurement and Asset Disposal Act, 2015 is in the final stages. The National Treasury is waiting for the formalization of structures by the Public Service Commission (PSC).
- ix. The National Treasury has periodically issued circulars and guidelines to procuring entities on the implementation of preference and reservation schemes.

Signed by Mr. Kamau Thugge, CBS; Principal Secretary, National Treasury on 2<sup>nd</sup> November, 2017.

Mr. Speaker, Sir, I must say that this is one of the most comprehensive answers given to a question I have asked.

Thank you.

**Sen. Mwaura:** Mr. Speaker, Sir, based on the response by the Senate Majority Leader, it is quite clear that even when we have preferential procurement, there are challenges around the percentages. It is quite telling. If you look at even the numbers, the youth have 10,000 and women have 13,000 businesses; while PWDs only have a paltry 1,200 businesses. This really underscores issues to do with the bi-directional co-variance between poverty and disability. Clearly, there are issues there because if you look at the model that we copied from, it is actually from the South African broad based economic empowerment for previously disadvantaged groups. These programmes sought to empower black people so that they could take over the economic sector of the country.

When you look at our country, Kshs24 billion is a lot of money going into the pockets of groups that are, hereto, unable to stand on their own economically. However, I think it is very skewed to the point that we even have some regulation that PWDs should get a minimum of 2 per cent to protect them. This Senate and the Executive have a responsibility to ensure the fundamental rights and freedom of PWDs. In this regard, we really need to empower this group of people so that, ideally, they should be able to hit 10 per cent so that we have 10 per cent each for women, youth and PWDs.

Mr. Speaker, Sir, there is a lot of work to be done and I am very happy that there is now that comprehensive data. We need to interrogate this further so that even within the 1,200, the 13,000 and the 10,000 we do not have a situation where empowered business men are hiding behind maybe their sons and daughters or their PWDs so that they are then hired. That is what happened in South Africa, where you find somebody – sorry to say, a white person – going with the name of a black person and just use the credentials of the company to access the preferential procurement. Those are some of the things that we need to be alive to because, ideally, we are transferring or distributing wealth so that, then, it actually targets the right people.

Going forward, I believe that there needs to be serious monitoring and evaluation tools to ensure that Government is able to properly track these companies so that their ownership is very clear. I think it is also important that we try to relook at the procurement laws in this Parliament because they are quite inhibitive.

We have very stringent legal codes that sometimes do not end up empowering the very people that we would want to. There needs to be some fast-track around the issuance

of the Access to Government Procurement Opportunities (AGPO) certificates and also the advertisement of tenders; so that we use the facilities of e-government for transparency and accountability. Otherwise, this report clearly shows a very sorry state of the plight of PWDs in this regard. In fact, that is why we have petitioned the Government – and I would want to be on record – to allocate Kshs1 billion under the National Council for Persons with Disabilities (NCPD) for Local Purchase Order (LPO) financing for businesses owned by PWDs. We intend to pursue that.

I would indulge that we get the support from the hon. Members of the Senate so that these 1,200 can increase because the issue about collateral and capital is giving us this dismal performance of these otherwise disadvantaged groups of people. This is in the spirit of Sustainable Development Goals (SDGs) where you start with the furthest and leave no one behind. We should start with the farthest which happens to be PWDs.

**The Senate Majority Leader** (Sen. Murkomen): Mr. Speaker, Sir, that is a very fantastic speech by Sen. Mwaura. He was not seeking clarification. When it went on and on I tried to get your attention but the gadgets were not working. So, it was just a speech. It better not be noted.

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

**Sen. Sakaja:** Mr. Speaker, Sir, I have heard the question and the response. I heard my Leader of Majority saying that this is one of the most comprehensive responses he has. I beg to disagree with him completely.

First, it might be comprehensive because it is long but it is not the right answer. I know the reason. I do not think it is by any fault of his but if you look at the Public Procurement and Disposal Act – I am the one who brought these amendments in the last Parliament on 30 per cent to make sure that young people, women and PWDs get 30 per cent of the total value of procurement. In the answer that has been brought, first of all, we have not got those percentages; unless I did not hear.

Secondly, this issue should not come by way of statement. We have a provision to seek statements but if you look at the Act, Section 157 says that every six months each and every procuring entity in the Republic of Kenya at the national level and at the county level is supposed to give a report to the Public Procurement Regulatory Authority (PPRA), what used to be called the PPOA, detailing in table form what contracts it has given to young people, women and PWDs and the value. It is not 30 per cent of the total number of contracts. It is 30 per cent of the value of procurement; and then, every six months, the PPRA is supposed to come to Parliament to the Committee responsible for equalization of opportunities of young people, women and PWDs to present the said report.

Over the past so many months these reports have not been forthcoming. This is something I was really battling with the National Treasury and PPRA. These reports are to be brought to this House. There is a Committee in charge of equalization. I hope we will fill them soon so that we can move forward because many of these entities are taking this law as a mere suggestion and not as the law. Many governors are taking these provisions as mere suggestions, not as the law. So, Kshs24 billion sounds big but it is nowhere close to 30 per cent of the value of procurement that is required. In fact, the report should show us who own those entities. You will find that many of them are

owned by relatives or serious businessmen who have just put or taken young people, women or PWDs to head them.

Mr. Speaker, Sir, I urge the Leader of Majority to first of all, ask the PPRA where is the report that it is supposed to bring to Parliament every six months so that we can have a more comprehensive debate around the report as provided for in the laws that we have.

**The Senate Majority Leader** (Sen. Murkomen): Mr. Speaker, Sir, I said that the Statement is very comprehensive. I did not say it is very factual. Those are two different issues. The reason why we have Committees is for that very purpose that Sen. Sakaja said; for interrogation. However, there is also an admission by the National Treasury that they received those reports and that the six months reports were not ready. This means that there must be a report lying somewhere. So, it is important because we have not functioned as we should because we do not have Committees.

Therefore, it is important that once the Committee is put in place, it can demand the report, summon the PPRA and the National Treasury to present these reports and maybe relook at the law whether every six months is possible in receiving those reports although, the National Treasury has now said that they will use an online system. In their comprehensive answer that we have been given, they have said that they are re-engineering the AGPO portal system so that reports are real time. Once a tender is awarded, it is directly reported to the National Treasury so that the report may be easily accessible online.

The rest of the issues raised by Sen. Sakaja are very weighty. He has been following them individually. He worked on the issue of the Bill. We are ready as the leadership of this House. He must accept to sit in that Committee as a Member so that historical experience and institutional memory on this issue can be carried forward; together with Sen. Mwaura and other Senators who are interested.

**Sen. (Dr.) Musuruve:** Mr. Speaker, Sir, thank you for the opportunity to also add my voice on this statement. First, I thank the Senate Majority Leader for the effort he has made to issue a statement. From the statement, there are begging issues that come out. There is need to interrogate them further. First of all, from the statement, only four counties submitted their reports. There is need to investigate why only four out of the 47 counties did so. What is it that is making them lag behind when it comes to issues of disability? So, governors also need to be accountable just to find out; what position do they have for PWDs with regard to procurement.

There are also some begging issues that come out strikingly, for example, the issue of percentage. The Constitution talks about 30 per cent procurement to be given to youth, PWDs and women but why should a negligible percentage be issued to PWDs? Why 3.2 per cent? It is supposed to be 30 per cent. This means that if it is 30 per cent, and we want to help the disadvantaged groups or minorities, then it should be equal so that the youth get 10 per cent, PWDs get 10 per cent and women get 10 per cent.

I am wondering what the rationale behind this; giving that negligible percentage to PWDs, especially if we really want parity. We are seeing that even in that group, the PWDs are marginalised further. So, there is need to interrogate this statement and see what exactly is being done to help PWDs.

Also when we talk about issues of volume, they do not really bring out the number of beneficiaries, especially PWDs. There is need to interrogate this statement farther and bring to the Floor of the House what we are actually doing about PWDs so that if there is need to engage even with the Constitution and do some amendments so that PWDs are helped, this House should consider.

Mr. Speaker, Sir, thank you very much for this opportunity.

**The Speaker** (Hon. Lusaka): Leader of Majority, I think you have noted that.

**The Senate Majority Leader** (Sen. Murkomen): Mr. Speaker, Sir, all the issues raised by the hon. Senator are noted. It is in the HANSARD to be transmitted to the relevant Committee once established.

**Sen. Cherargei**: Mr. Speaker, Sir, there is something I want to find out from the Leader of Majority. One of the issues is to create more opportunities for youth but in this Kshs24 billion, as a clarification, we need to get from the counties how much is being allocated to PWDs, the youth and other vulnerable groups *vis-a-vis* what we are having – allocation of tenders at the national Government.

So, I would like the Senate Majority Leader to clarify on that and then give us the criteria or the allocations that has been given in totality of all 47 counties *vis-a-vis* the national Government.

**The Senate Majority Leader** (Sen. Murkomen): Mr. Speaker, Sir, what the Senator requires is segregation between what the counties have done and what the national Government has done. Only four counties have reported in the statement. It would have been important also to know which counties are those. That is an important follow up. The key question because we are here to represent counties is; what are the other 43 counties doing? Is it that they are following the law? Sen. Sakaja made it clear that many of them think that it is beautiful aspirations and not mandatory requirements of the law.

Therefore, what can we do to ensure that it is mandatory requirements of the law? Together with the questions that were raised, that should be follow up through the Committee for a comprehensive answer. In fact, counties must be made to provide the reports in the same way they provide the other reports on auditing but through the relevant institutions as the Constitution require. The law requires that the Public Procurement Review Board should give us the report we require.

I agree that the question be transmitted to the Committee for follow up.

**The Speaker** (Hon. Lusaka): Thank you. Next is the Senate Majority Leader to issue a statement on alleged use of excessive force and police brutality at the University of Nairobi (UoN). This is Sen. Ledama Olekina's statement.

#### USE OF EXCESSIVE FORCE/ POLICE BRUTALITY DURING PEACEFUL DEMONSTRATIONS BY UoN STUDENTS

**The Senate Majority Leader** (Sen. Murkomen): Mr. Speaker, Sir, at a sitting of the Senate held on 10<sup>th</sup> October, 2017, Sen. Ledama Olekina requested for a statement regarding the alleged use of excessive force and police brutality at the UoN, on 28<sup>th</sup> September, 2017.

The Hon. Senator particularly sought to be informed on:-

i) Why the police raided the lecture halls and halls of residence at the University during the demonstration by members of the public in Central Business District (CBD), Nairobi on Thursday, 28<sup>th</sup> September, 2017.

ii) Who authorised the police to enter the university premises.

iii) The number of students who died.

iv) Whether the Bill of Rights in the Constitution, in particular, freedom from torture, cruelty, inhuman or degrading treatment was violated by the police officers who undertook the raid at the university.

v) The actions that will be taken against police officers who will be found to have committed those heinous crimes.

vi) Table the results of the investigation that the Government undertook to carry out in similar incidents in Kisumu and Mathare during the protests following the General Election of 8<sup>th</sup> August, 2017, where lives and property were lost; and

vii) The circumstances that led to the subsequent indefinite closure of the university on 3<sup>rd</sup> October, 2017.

Mr. Speaker, Sir, I wish to state as follows:-

The Government is not aware that the police raided the lecture halls and halls of residence of the University of Nairobi (UON) during the demonstration by members of the public in the Central Business District (CBD) of Nairobi on Thursday, 28<sup>th</sup> September, 2017.

The Government is, however, aware that the University administration called the police commander and informed him to move in and assist in containing the marauding students who were protesting the arrest of Embakasi East Member of Parliament (MP), Hon. Paul Ong'ili alias Babu Owino. I did not know he is called Paul Ong'ili.

The students engaged the police officers in running battles for the better part of the day. No complaint has been made to any of the police stations regarding use of excessive force, death or violation of human rights on university students by the police.

Mr. Speaker, Sir, I wish to table the results of the investigations that the Government has undertaken on incidents relating to protests in Kisumu and Mathare following the general election of 8<sup>th</sup> August, 2017.

The report indicates the persons who died as follows:-

(1) Michael Okoth Okello

On 16<sup>th</sup> October, 2017 at around 9.00 a.m., about 5,000 residents and youths assembled at Kondele in Kisumu and marched towards the IEBC offices, demanding that Chiloba had to resign. Thereafter, the mob returned to Kondele where the Governor of Kisumu County asked them to disperse, but at about 1.30p.m, about 1,500 criminals/hooligans regrouped and ran towards Kondele police station throwing stones.

Subsequently, several window glasses of the police station and line were broken. A motor vehicle, Reg. No KBJ 746L, a Toyota station wagon, held at the station as an

exhibit had its windows and windscreen damaged. Police officers managed to repulse the demonstrators who ran towards Kondole Market.

During the ensuing melee, Michael Okoth Okello, aged 17 years, was shot and body moved to the mortuary. Later, a post-mortem was carried and the doctor certified that the deceased succumbed to multiple injuries to the neck following gunshot wounds.

(2) Samantha Pendo

On 16<sup>th</sup> August, 2017, the parents to Samantha Pendo reported at Nyalenda Police Post that while sleeping in their house at midnight of 11<sup>th</sup> /12<sup>th</sup> August, 2017, in Nyalenda Estate, a police officer assaulted baby Pendo on the head. The parents rushed her to Aga Khan Hospital and the child was admitted in the Intensive Care Unit (ICU), but on 15<sup>th</sup> August, 2017, she succumbed to the injuries. A post-mortem was conducted on the body of the deceased and pathologist indicated that she succumbed to trauma caused by a blunt object. The matter is still under investigation and the duplicate file has been forwarded to the Director of Public Prosecution.

(3) George Odhiambo Odhia

Ms. Josephine Ouga Odhiambo of telephone number 0716074305 reported vide OB/20/27/10/2017 that her son, George Odhiambo Odhia, aged 19 years, left their house at Mamboleo on 26<sup>th</sup> October, 2017 to seek for casual employment when he met a group of anti-riot police and he was shot on the right thigh. He was rushed to Jaramogi Oginga Odinga Teaching and Referral Hospital before succumbing to injuries while undergoing treatment. Scene of Crime personnel photographed the body while at mortuary.

(4) Vincent Ochieng' Omondi

On 11<sup>th</sup> August, 2017, after the announcement of the Presidential election results, about 200 youth who were armed with crude weapons from Dago Market in Kapuonja Sub-location started demonstrating along Daraja Mbili-Kiboswa Road chanting anti-Jubilee slogans.

They marched up to Dago Police Post and started throwing stones at the said police post, saying that the police had been paid to rig the elections. They were threatening to burn the said police station. They blocked and lit bonfire on various sections of the road, thus prompting officers to disperse them. The officers were later informed that there was a young man who had been injured and was lying on the road. Scene of Crime personnel documented the scene and the body moved to Masaba Hospital Mortuary.

Investigations commenced immediately vide Inquest No.6/2017. The file was forwarded to CCIO's office for perusal and advice on 31<sup>st</sup> August, 2017. However, the file was returned on 13<sup>th</sup> September, 2017 for inclusion of a ballistic report.

(5) Titus Okwulu Okwakwa

On 26<sup>th</sup> October, 2017, demonstrators who were armed with crude weapons, including petrol bombs and stones, tried to force their way into Kit-Mikayi (Kombewa) Polling Centre. They hauled the petrol bombs at the officers who had cordoned the hall, but none of them exploded, thus prompting the officers to repulse them.

The officers were later informed that there was a person lying by the roadside. The Officer Commanding Police Division (OCPD) and other officers went to the scene and found the deceased, Titus Okwulu Okwakwa, a male adult aged 25 years, lying in a pool of blood. The body was moved to Jaramogi Oginga Odinga Teaching and Referral Hospital Mortuary. Investigations are still going on.

(6) Death of two unknown youths

On 9<sup>th</sup> October, 2017 rowdy youths who were armed with *pangas* and shouting “no Raila, no peace” blocked Juja Road in Nairobi with stones and lit bonfires. They proceeded to throw stones at motorists and the police officers who were clearing the road. During the fracas, two of the youths were fatally injured and a machete recovered.

The bodies were moved to the City Mortuary for preservation and post-mortem. Inquest file No.2/2017 has been opened and the case taken to court for public inquest.

(7) Moraa Wycliffe

On 12<sup>th</sup> August, 2017, one Nelson Gichana of mobile No. 0728046173 reported at Muthaiga Police Station that his daughter by the name Moraa Wycliffe, aged 9 years, was shot and fatally injured in their house at Mathare by unknown persons who were suspected to have been firing at police from a storey building during demonstrations by members of the public after the announcement of the presidential results.

The body was moved to Chiromo mortuary where a post-mortem was done in the presence of relatives. Inquest file No. 5/2017 has been opened and the case taken to court for public hearing.

Mr. Speaker, Sir, these are terrible things to read in the Senate. That is the report.

**Sen. Olekina:** Mr. Speaker, Sir, I would like to thank the Senate Majority Leader for coming up with this answer. Unfortunately, it is not satisfactory.

I would like to request him to go back and get a more satisfactory answer because not all of my questions were answered. Part 7 of my request has not been answered. Likewise, the question on who authorised the police to enter the university premises has not been answered. He has not also answered the question on the number of students who died or were injured during the said raid.

This issue has been changed from the university students to focus mostly on the other issues that I had raised on the matter. I would request the Senate Majority Leader to go back and get a more satisfactory answer that responds to all these questions.

**The Senate Majority Leader** (Sen. Murkomen): Mr. Speaker, Sir, first, I want to dwell on Part one, which concerns the university. Once the Cabinet Secretary has said that no complaint has been made to any of the police stations regarding use of excessive

force, death or injuries on university students by the police, where can we get another comprehensive answer?

**The Senate Minority Leader** (Sen. Wetangula): Mr. Speaker, Sir, it is very sad to hear what the Senate Majority Leader has read to the House. Every Kenyan who cares to listen and see what happens in this country saw the police raiding university halls of residence and lobbing teargas canisters in the students' rooms. The students ran helter-skelter and many of them were injured.

When an event like that happens, the custodian of public security and good is the Government. You do not have to wait for anybody to complain. In fact, in criminal acts of that nature, the complainant is the state and not single individuals. My distinguished colleague is a lawyer and knows this very well. When you go to court and somebody is charged with murder, the complainant is the state; the rest are witnesses. Cases of Kondele and many other places including what happened in Nairobi yesterday but one are cases of clear abuse of authority, use of excessive force, brutalization of citizens and a demonstration of total lack of appreciation of the constitutional sanctity of life that Kenyans are entitled to.

Mr. Speaker sir, I want to urge as a follow up to what the distinguished Senator of Narok has said; that the issues raised are so pertinent that in keeping with the traditions of this House, you refer this matter to the Committee that we are going to form responsible for security, to thoroughly investigate this matter talk to but not limited to the police Commission, the police Oversight Authority that is supposed to superintend over the police, the Management and the Administration of the University of Nairobi to tell us who called in the police to brutalise the students, the management of the affairs of Kisumu County and all persons that can tell us exactly what happened.

We are degenerating to a level where we have brutality on citizens, and I want to discourage my distinguished colleague Murkomen, even if he has written elsewhere, not to call Kenyans criminals and hooligans. There is nobody who is a criminal until they are taken to court, prosecuted and convicted. This extravagant language of calling Kenyans criminals and hooligans, I know it is not your language because you are more decent than that, but do not just read what is given to you. It is not right. We must respect Kenyans.

I want to finish by encouraging that we investigate this matter fully and it should not be limited to the issues raised by the distinguished Senator for Narok but all cases of police brutality and extrajudicial killings including the little young boy, Mutinda, who was shot on the balcony of His parent's house on Tuesday.

Thank you, Mr. Speaker Sir.

**The Speaker** (Hon. Lusaka): Let us have the Senate Majority Leader.

**The Senate Majority Leader** (Sen. Murkomen): Mr. Speaker, I agree with the Senate Minority Leader on two accounts. One, that I was reading a statement as written and as lawyers - and I totally agree with my learned senior - a criminal is only a person so declared by a court of law. A more sanitised language is suspected persons who are suspected to have performed certain acts of hooliganism or crime. Two, you cannot do justice to the question of killing of many Kenyans as you have seen by only a statement that is requested and written and brought here.

A better way is to invite as many departments as possible including families and persons who can be good witnesses to appear before the Committee and we do a comprehensive investigation on this matter. That way we are able to --- I do not like to read statements about people dying on account of protests and all those kinds of things. Nobody will be very happy to do that because if you think about Mutinda who was seven years old, Pendo who was eight years old and so forth, it is the age of our children, those of us who are at this age. Nobody will be happy if you imagine that, that could be your child.

The best way is to have the Committee of this House or jointly with the Committee of the National Assembly have a proper and comprehensive investigation to the issue including the circumstances around why people do what they do. It bothers me because when I was watching the news and reading statements in the social Media, there are now allegations and in the same statement of the Minister it is saying: “baby Pendo would have been shot by other criminal gangs who are trying to attack police.” The same is now being alleged in the case of Mutinda.

Mr. Speaker Sir, this investigation will bring to rest the use of excessive force by the police or the use of criminal gangs and hooligans and murderers by political operatives and we do not want the *Jeshi of Taliban* and *Angola Musumbiji* to come back to our politics. We want clean politics. Losing life is not one of those issues that any of us will joke around in this house or elsewhere.

Thank you, Mr. speaker, Sir.

**The Speaker** (Hon. Lusaka): Hon. Senators, as it has been said, this is a grave matter. Therefore, I direct that it be referred to the committee of ---

**Sen Madzayo:** On a point of order Mr. speaker Sir.

**The Speaker** (Hon. Lusaka): What is your point of order, Hon. Senator?

**Sen Madzayo:** Thank you, Mr. Speaker Sir. I wanted to add my comments on this reply more so, in particular, in support to what my senior colleague, Moses wetangula has said. This response basically amounts to belittling the Senate for reasons known to the Minister in charge of Interior and Coordination of National Government services. You will see that right from the outset; he says that the Government is not aware that the police raided the lecture halls and halls of residence of the University of Nairobi. But in the same vein, it says that the Government is aware that when Nairobi University Administration realised there was a riot, they are the ones who called in the police commander. It is in the same response that the cabinet Secretary in charge has stated clearly that the police commander was called in.

Therefore, he cannot open up and say that the Government is not aware and go ahead to say the police commander moved in, after he had been told to do so. Therefore, that means then that it is the police commander who basically commandeered his police officers to raid the halls and that is why the students resisted and it led to all this mammoth violence. But that said or done, there is a perpetual denial by the police every time a Kenyan dies. Two days ago, we witnessed a small child playing on the stairs of 6<sup>th</sup> or 7<sup>th</sup> floor. It is embarrassing. Particularly if I was Fred Matiangi, I would throw in the towel and say: “Yes we have committed that and we will compensate.” But to simply say

all the time death occurs, we are not aware; we are investigating. That has to come to a stop.

In this House, I will urge my brother Murkomen who is seriously overwhelmed by responding to some of these questions which, of course, they should have been done by the Committee Chairperson. But this is something that is so serious. When a Kenyan Loses life, it is important that the Government gets to the root of it and if it is responsible for them, it says yes we are. If at all there is a criminal, then that criminal can only be pronounced to be a criminal by a court of law.

If you look at this response again at - I cannot recollect the page - it states clearly that they are 1500 Kenyans. I do not know where this number was picked from but it is stated clearly as 1500 Kenyans. They were rounded up. If they were rounded up, how do you call them when you have rounded them up? I think there is a better language as my colleague has put it well that, they are suspects. Call them suspects but do not abuse your power by calling other Kenyans hooligans and criminals. We do not require this kind of language to be addressed in this Senate in terms of a response to a question that an Honourable Senator has asked. We demand a response to this.

Thank you Mr. Speaker, Sir.

**The Speaker** (Hon. Lusaka): Yes, Sen. Sakaja; I was about to make a ruling but you can proceed.

**Sen. Sakaja:** Mr. Speaker, Sir, allow me to add my two cents worth to this because as I read out in the question and the response greatly affects my county as well as Sen. Outa's and that is the point of order he is trying to raise.

Any country where even one death becomes normalized is on the brink of destruction. From wherever you sit on the political divide the fact that people have lost their lives should be of grave concern to all of us, no matter by what circumstances those deaths have been caused. This is a grave matter and I concur with the Senate Majority Leader that these acts must be deeply investigated by a specific Committee.

Mr. Speaker, Sir, I hate to think that we have lost ourselves to the extent that we politicize these deaths or that those whom we entrust with the mandate to protect us would actually go past a crowd of protestors, go into a house and shoot a child. I would hate to imagine that. I would also hate to imagine that anyone within this country would then think that it can be used politically or for whatever reason. We want to understand and go through the motions and hear witness statements.

I am sure you have seen from social media; the very different accounts. There are people who are saying that these acts are done by the police while others say that these were simply criminal gangs who came in. This matter must be taken with the weight it deserves. We will not use the same words the very distinguished lawyers have corrected us not to since we have not studied law. Even those people you see obviously acting in a manner to suggest that they are engaging in acts of hooliganism cannot be called Kenyans.

Mr. Speaker, Sir, even as this Committee sits down, we must address the issue of demonstrations. Our Constitution is clear that people's rights cannot be taken away; that every Kenyan can peacefully and unarmed demonstrate. But every right must be given parameters within which it is exercised. When you see people with stones, walking with

knives--- For example, I saw someone with a blood-stained knife carrying bananas. Does that still qualify to be termed as peaceful demonstration as protected within the law? Have we lost ourselves as politicians that then we get excited when our supporters do that from whichever side of the divide? I would like to request that the mandate of this Committee is expanded to look at all those things.

In many countries, demonstrations are actually guided by the law but there is an area where you do a demonstration; where you make your point known and then go back home peacefully. Even outside the White House there is a square for demonstrations. Outside the Congress, there is a square for demonstrations.

This Committee should then be the Departmental Committee on security and should actually go through all of that and even propose legislation on how no individual who will ever sit as Minister denies that right to any Kenyan, but also that no Kenyan can then think that their right to demonstrate then prevents any other Kenyan from the right to own their property or even their own life. This matter has affected business in Nairobi and Kiambu.

We have lost lives and I would like to pass my condolences to all those who have lost loved ones through this period of madness that has taken place in this country and that I believe is behind us now. But let us look at it objectively without political lenses because the sanctity of life is the most important and must be protected by this House and by our country.

**Sen. Outa:** Mr. Speaker, Sir, my heart is really heavy on this matter. I want to tell the Senate Leader of Majority that I do not want to take this Statement casually because we have lost lives especially in Kisumu County where your report only mentioned a few guys who were killed including baby Pendo. There are more people who were brutally killed by the police and baby Pendo was not even shot but she was clobbered. The police climbed up the stairs and found a small innocent baby and clobbered her to death. We are all Kenyans, however, today I might be on the wrong side of politics where I do not have protection and yet the Constitution requires that all Kenyans must be protected by the police. They should protect our lives and properties.

I agree with Hon. Senators who have spoken. We need this country to heal. The life that has been lost now is more than enough. We do not want to henceforth get to hear that the police continue using excessive force to kill Kenyans. We should go deeper and have a thorough investigation and bring to book people who have committed crimes in the name of police officers. In Kisumu, somehow, they were caught. I do not know what to call them, but they were not police officers. Some of them were alleged to have been recruited by the Government to act in a manner that they will kill, maim and even rape women.

Mr. Speaker, Sir, I do not want to dwell on this matter, but I would want to encourage that we should not take this lightly but come up with thorough investigations. If all the police who will be considered to have committed these atrocities and have killed innocent Kenyans are identified, they must be convicted and charged according to our laws. That would be my plea because this country needs to move forward. If we do not check that, then the police will continue to use excessive force and continue to kill Kenyans. We therefore, must deal with it.

**The Speaker** (Hon. Lusaka): Sen. Shiyonga Masitsa.

**Sen. Shiyonga:** Mr. Speaker, Sir, in Kenya today when we talk about deaths by police officers, it looks like we are going back to history because currently in our Constitution the Kenya Police Force name was changed to Kenya Police Service and we expect the police service to do a service to Kenyans, instead of applying force on our Kenyan citizens. In our Constitution, we have various commissions that are mandated to look at such incidences where a crime is committed by police officers.

**The Speaker** (Hon. Lusaka): What is your point of order, Sen. Dullo?

**Sen. Dullo:** Mr. Speaker, Sir, our Standing Orders are very clear in terms of seeking clarification but it looks like some people are introducing debate and also discussing things that are out of the subject matter. We should refrain from that.

**The Speaker** (Hon. Lusaka): Sen. Shiyonga, remain within what you asked for.

**Sen. Shiyonga:** Mr. Speaker, Sir, I urge our Senate Leader of Majority to get a more comprehensive answer for these questions because what happened in Kenya during that period is not just mere graphics or crowds but it is what we are seeking to get to understand in order to get to the bottom of this matter.

Mr. Speaker, Sir, when life is lost, you do not need to wait for your brother, sister, mother or child to be killed for you to stand here to protect or defend them. But we are looking at a mere life or lives that have been lost in Kenya. These are the lives that we are defending here and which our police officers need to protect.

In that case, I want to propose that the Committee that is going to be formed should look into this matter comprehensively. It should involve all the arms that are mandated to look at this issue so that we can get justice for the loved ones we lost during this period.

**The Speaker** (Hon. Lusaka): Finally, let us hear from Sen. Cherargei.

**Sen. Cherargei:** Thank you, Mr. Speaker, Sir. I agree that there are issues of allegations of police brutality. We should not be losing lives like that of the young boy, Master Mutinda. Now that we have agreed that this issue should move to the Committee, I seek to get clarification from the Senate Majority Leader. Is there possibility that in the scope of allegations of police brutality, they should also look into the illegal criminal gangs who are camouflaging and are being used to perpetuate some of these heinous crimes for, of course, the obvious reason of gaining political mileage?

Thank you, Mr. Speaker, Sir.

**The Senate Majority Leader** (Sen. Murkomen): Mr. Speaker, Sir, I have noted the issues raised and I am sure that they are in the Hansard. When the Committee is finally constituted, it is important to, first of all, find out who committed these offences.

Secondly, we should ask ourselves what is the right way of protesting in this country? Is it not time that we operationalize the Constitutional provisions by providing the way to implement all the other rights, including the right to life, food, water and everything under Article 43? This can be done by creating a legal framework for implementation.

It is time to provide a clear roadmap of how to go about picketing and the right to protest in this country so that when the police are asked to provide security, there should also be a certain level of responsibility on the protestors. Even if it means that those who

are protesting can be asked to assemble in a place like Uhuru Park and a search be done by the police the way it is done when people are going for a meeting. The protestors are then released into Uhuru Highway to protest for two hours. The roads used by protestors will be blocked, the way they did it with the Standard Chartered Marathon and any other sports.

The people will be given chance to protest for, say, about two hours. The public will be informed that in the next two hours, there will be protestors who will be moving from the airport to Uhuru Highway headed to the Anniversary Towers. Everybody will be told to avoid that route for it will be blocked. These laws will be very necessary.

We must also deal with the issue that many people are talking about; the use of a criminal gang that invades protestors or are used by other protestors to invade innocent civilians. These are things that are in public domain. There was a young man who was shown on television burning a police car; another one was shown carrying a blood-stained knife, having stabbed an innocent old lady who was selling bananas. What has that got to do with protesting? So, all this can only be achieved – and I insist – only if we have a comprehensive process of investigating all these issues through a combined Committee of the National Assembly and the Senate. That will show the seriousness for this issue, even if it will be Joint Committee on Security in both Houses co-chaired by the two Chairpersons.

Let us call and investigate this issue, have a report and provide a way forward. That seems to be the consensus across the board. But that does not stop the investigations going on at the moment dealing with individual cases of criminal responsibility by the Independent Policing Oversight Authority (IPOA). The IPOA is dealing with rogue policemen who might have committed actions of murder. This does not also stop the investigations by the Directorate of Criminal Investigations Department which is dealing with civilians who committed acts of violence.

I do not know where we went wrong in this country such that protests are synonymous with violence and teargas. Citizens are even demanding that it is their right to be teargassed because the teargas has been bought using the tax payers' money. I think all these things about chaos and so forth should just come to an end. I hope that the swearing in of the President marks the beginning of relooking at all the issues that happened on or just before 8<sup>th</sup> August, 2017 to just after 26<sup>th</sup> October, 2017. No other life will be lost. When we talk about life, it is a concern of both sides of the political divide.

Thank you, Mr. Speaker, Sir.

**The Senate Minority Leader** (Sen. Wetangula): Thank you Mr. Speaker, Sir, for giving me a second bite to this issue because of the very important nature of what we are talking about. For the Hansard, I want the Senate Majority Leader to note that whatever is to be placed before the Committee should not be exclusively limited to the Statement sought by the Senator for Narok County. It should also investigate how men in dreadlocks have been wearing police uniform and appear to be discharging police duties. This is because in my whole life, I have never seen a police officer in dreadlocks. I also want to urge that the investigating Committee should look at the spiraling violence that has been taking place, not just in Nairobi and Kisumu, but also in Migori, Bungoma and

many other places where people lost lives simply because they came out to express their political dissent against the status quo.

Mr. Speaker, Sir, I agree that we need organized demonstrations. But I hope that we do not use this opportunity to bring here a lopsided law that says that if you want to demonstrate, you should go and walk up and down in Karura Forest for the whole day and come back.

*(Laughter)*

Demonstrations must have a purpose. All we need is security and protection of those who are picketing in processions and demonstrations.

Lastly, Mr. Speaker, Sir, this is a matter for this House and I want to urge you that there is absolutely no necessity of joint sittings on a matter like this with the 'Lower' House. I think we have competent men and women in this House who can sit on the Committee on National Security and Foreign Relations and bring us a reasoned, well researched and well deliberated outcome. This outcome will help this country not only just to blame people, but to also advise on the lacuna in the law and any other necessary steps that need to be taken to protect lives.

It does not matter whether the person firing the gun is a suspected criminal or a police officer. In fact, we have seen in the media an Officer Commanding Police Division (OCPD) hurling rocks at people's cars. Even the police force has been infiltrated by people who have criminal minds and this investigation must clean up this system.

Thank you, Mr. Speaker, Sir.

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

**The Speaker** (Hon. Lusaka): Thank you very much. What is your point of order, Sen. Sen. Sakaja?

**Sen. Sakaja:** Mr. Speaker, Sir, on this specific question, I am glad that we have all agreed that there is no Jubilee life or NASA life. The sanctity of it must be looked at by the Committee. But on this specific Statement and the previous one, we have said that the Committee charged with these matters should look at them. We have the leadership from both sides present in the House; the Senate Majority Leader and the Senate Minority Leader. When will we constitute these Committees and get this work done expeditiously? Can they give us an indication?

**The Speaker** (Hon. Lusaka): Thank you, Sen. Sakaja. Before I make a ruling on that, let us hear from the Senate Majority Leader.

**The Senate Majority Leader** (Sen. Murkomen): Mr. Speaker, Sir, I agree with the Senate Minority Leader that we may not need the joint responsibility of both Houses; this House can do so. Once the Committees are in place, hopefully by Tuesday next week, we should be able to do that.

He has also mentioned that some people in police uniform have dreadlocks. I have seen Members of Parliament, wearing clothes that exactly resemble those of the police or the army saying 'resist.' Infact, when we were playing football in Machakos somebody tried to give me a *kofia* written 'resist'. It might be that, that Committee---

*(A hon. Senator spoke off record)*

I was excited because of the excitement of the Members of the County Assembly (MCAs) from those areas, and I do not want to expose them. They just came to me and told me that we are one and asked me to wear their *kofia*, which I agreed to do. I did not see anything wrong since I am also resisting. I am resisting the politics of violence and hate. The *kofia* was only written 'resist,' and I am also resisting. I think all of us are in a resisting mood. The question is only what you are resisting.

*(Laughter)*

I want to go to the main issue that Sen. Wetangula talked about; whether it is time we say the police and military uniforms be removed from political conversation. I am saying with an admission that also Jubilee women were wearing similar things when they were campaigning before the 26<sup>th</sup> October, 2017 election. We might need to sit down and agree that the police uniform be left to the police and politicians can wear, for example, white clothes to signify peace.

Thank you, Mr. Speaker, Sir.

**The Speaker** (Hon. Lusaka): Thank you, hon. Members. We have discussed the matter exhaustively and agreed that it should be forwarded to the Departmental Committee on National Security and Foreign Relations. Going by what I ruled yesterday that we get the names by the close of tomorrow, it is my believe that by Tuesday we should have all Committees in place, so that we can prosecute most of these matters that are of very serious nature and affect the lives of Kenyans.

Let us get a Statement from Sen. Olekina under Standing Order 46 (2) and, therefore, drop a statement that was to be issued by Sen. Khaniri which is also similar in content.

## SENATOR'S GENERAL STATEMENT

### ALLEGED POLICE BRUTALITY DURING THE ELECTIONEERING PERIOD

**Sen. Olekina:** Thank you, Mr. Speaker, Sir, for giving me this opportunity. I do not wish to belabour this matter, but I rise to pursuant to Standing Order 46 (2) (a) to make a Statement on the issue of Police brutality perpetrated by the Police Service.

Mr. Speaker, Sir, the damage that the police brutality has caused during this electioneering period alone is unacceptable. It only validates the agency's long image as a service packed with rogue officers and in dire need of reforms. This House should take judicial notice of the facts before the public, both through the print and electronic media; photographs, videos and personal accounts of police officers maiming or even killing protestors or clobbering helpless citizens.

The police argue that they are out to maintain law and order and to protect property. Can they use measures that are less injurious to the public? Scores of the public

remain in hospitals across the country, nursing wounds inflicted by the police, while many families are mourning their loved ones felled by the bullets fired by the very officers who ought to protect them from harm. This includes children who had nothing to do with the political duels or protests in the country.

The Constitution of Kenya is explicit on the standards of managing protests and the behaviour portrayed so far by the Police Service is actually contrary to the Constitution. For instance, it baffles any reasonable man's thought why the police would resort to firing live bullets at peaceful protestors. The Constitution guarantees the citizens their fundamental rights and freedoms and clearly states that such rights may not be limited. To that extent, Article 25 (a) of the Constitution provides that despite any other provision therein, rights such as freedom from torture and cruel, inhuman or degrading treatment or punishment shall not be limited.

Article 26 of the Constitution further provides that every person has a right to life and such a right shall not be deprived intentionally. In line with this provision is the right to human dignity to be upheld, contrary to Article 28 of the Constitution. When the Police clobber women, who do not even seem to be involved in the demonstrations and shoot children who have not played a role in the political duel in this country, it leaves one wondering what has really become of our beloved nation and its organs.

In their actions over the last four months, the Police have degraded and contravened the provisions of Article 29 of this Constitution. Article 29 of the Constitution guarantees every person the freedom and security, including the right not to be subjected to any form of violence from either public or private sources, torture in any manner, whether physical or psychological; corporal punishment, treated or punished in a cruel, inhuman or degrading manner.

Unfortunately, whenever the police perpetrate these injustices, they do it with open bias to the current Government, hence denying the demonstrators their rights as manifested in the Constitution. Article 32 (3) of the Constitution provides the public with the right not to be denied access to any institution, employment or facility, or the enjoyment of any right, because of the person's belief or religion.

When the police blocked Kenyans from accessing Uhuru Park and refused NASA supporters from entering Jacaranda Grounds, was this not in utter violation of this Constitution? The freedom of expression is also guaranteed by the said Constitution. This House ought to revisit certain provisions of the Public Order Act that contradict the Constitution.

Mr. Speaker, Sir, Thomas Odhiambo Okul, 26 years old, died after he was shot by the Police in an alley right outside the gate of his house. Bernard Okoth Odongo Odoyo, a carpenter aged 25 years old and Victor Okoth Obondo, 24 years old, close friends who lived near each other, were both shot in the back in Mathare on 13<sup>th</sup> August, 2017, while trying to flee from the police and died instantly.

Raphael Ayieko, aged 17 years old and his close friends and neighbours, Previul Ochieng' Ameso, 18 years old, and Shaddy Omondi Juma, 18 years old, were shot dead by police in Baba Dogo on 11<sup>th</sup> August, 2017. Michael Okoth Okello was also shot by the police in Kondele, Kisumu, on 16<sup>th</sup> October, 2017. Worst of all, baby Samantha Pendo was killed by the Police on 11<sup>th</sup> August, 2017. George Odhiambo Odha left his house to

seek casual employment and was killed by the anti-riot Police on his way. This is very sad. Three days ago, a seven year-old boy was shot and killed while doing what kids do best, that is, playing.

Article 37 of the Constitution provides every Kenyan the right, peaceably and unarmed, to assemble, to demonstrate, to picket, and to present petitions to the public authorities, but the Police in a partisan way have been denying NASA supporters from exercising this right.

The Constitution, pursuant to Article 1, guarantees the sovereign power to the public and states that:-

“All sovereign power belongs to the people of Kenya and shall be exercised only in accordance with this Constitution.”

Mr. Speaker, Sir, because I can see the time running out, I want to remind the police force that under this Constitution, the police service which has since been changed into a police force is subordinate to the civilian authority. I want to remind the police that in the course of their duty and in performing their functions and exercising their powers, they should not to act in a partisan manner; neither to further any interest of any political party.

Finally, the National Police Service ought to be reminded of the provisions of Article 244 of the Constitution which state that:-

“The National Police Service shall—

- (a) strive for the highest standards of professionalism and discipline among its members;
- (b) prevent corruption and promote and practice transparency and accountability;
- (c) comply with constitutional standards of human rights and fundamental freedoms;
- (d) train staff to the highest possible standards of competence and integrity and to respect human rights and fundamental freedoms and dignity; and
- (e) foster and promote relationships with the broader society.”

The Government should also publicly acknowledge these violations by the police, conduct speedy, impartial, thorough, and transparent investigations, and take the necessary steps under the law to hold those responsible to account as a key step towards justice for the victims.

Finally, in Swahili they would say that the police ought to request somebody to be arrested as per this Constitution. “Teargassing” Maasai women carrying milk in their gourds at Uhuru Park is evil. This House should be very firm in talking about this police brutality because it is a double-edged sword that will soon destroy you.

Mr. Speaker, Sir, I thank you.

**The Speaker** (Hon. Lusaka): Honourable Senators, he was raising that under Standing Order No.46 2(a) which does not require any formal response but I will allow comments.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Speaker, Sir, I want to thank the distinguished Senator for Narok county for bringing this matter to the fore. The late Prof. George Saitoti was a man of high integrity. When he was the Minister for Internal Security then, he brought to the Cabinet and proscribed organised criminal gangs including Mombasa Republican Council (MRC) from the coast, *Mungiki*, *Jeshi la Mzee*, *Chinkororo*, *Angola-Msumbiji*, and may others. These criminal gangs have from time to time mutated into very dangerous operatives. You will remember that *Angola-Msumbiji* at one time made it impossible for people to sleep in parts of Kakamega and western Kenya.

Today, we have an acting Minister for Interior and Coordination of National Government who is in charge of internal security who stands in public in front of cameras and declares himself a member of *Chinkororo*, a proscribed criminal gang and that is where part of the problem starts. Brutalizing citizens in the name of policing is very dangerous.

Children have been killed and women have been raped but what you get is an inspector general who is completely at sea. You have a commander in Nairobi who has become a law unto himself and is extremely arrogant. When little Mutinda is shot at the balcony of his parents' house, he appears on television and makes two contradictory statements. He starts by saying, "we are investigating" then concludes by saying "he was not killed by the police." Why do you investigate yet everything points at the police?

The Independent Policing Oversight Authority (IPOA) is also fast asleep. There is a gentleman called Mr. Macharia who once in a while makes half-hearted noises about police misconduct. However, he does not seem to know what his commission is supposed to do. Once in a while when people from "wrong" communities feel and suffer the brutality of the police, you will see him on television making statements to the gallery to appear to be working. We need to change our psyche.

Sen. Olekina, the Senator for Narok County has made it very clear and I agree with him. The 2010 Constitution changed the police force to a police service. In the old Constitution, it was a force. In some neighbouring countries they used to be called *Fanya Fujo Uone* (FFU) and so on but we need a police service. If you get lost in the streets of United Kingdom, the best person to go to for assistance is a policeman. In this country, if you are in trouble and you meet a policeman, your troubles multiply. This is what we must reform. This is a House that came with a reformed Constitution and we must speak out.

Once in a while, the distinguished Senate Majority Leader makes very positive noises about the rule of law. I encourage him to continue being consistent in resisting abuses by forces that are supposed to be civil in nature. Policemen and policewomen are paid salaries from our taxes. Their duty is to conform to the social contract which the two distinguished lawyers sitting in front of me know; that a citizen surrenders his power and authority to the state for protection and not to be brutalized, killed, shot, beaten, raped, harassed and done all manner of things.

I urge my colleagues across the Floor to speak out on this because you never know when the shoe will be on the other foot. It can happen to anybody and anywhere. Silence is a language of the defeated. We must speak against these things because a life

in Mandera, Moyale or Samburu is not any greater or lesser than a life in Nairobi, Kondele, Malaba or Mombasa. Every Kenyan is entitled to enjoy their lives protected by the law and the Constitution and the police must do their duty. If something went wrong, the Romans used to say you do the honourable thing which was to fall on the sword. If you are given the authority and privilege to guard the King and criminals come and harm the King, you do not wait to be dealt with. Instead, you deal with yourself by falling on your sword. I urge the Inspector General of Police, Nairobi Police Commander and Fred Matiang'i to fall on the sword.

I thank you.

**Sen. Wambua:** Thank you, Mr. Speaker, Sir, for this opportunity to associate myself with the statement by my colleague, the Senator for Narok County. I want to go on record on this matter. The brutality witnessed in this country over the last few weeks is not just wrong. It is immoral. My colleagues have spoken about the change of name from a police force to a police service. However, for me, that does not even begin to scratch the surface.

Changing the name from a force to a service without changing the curriculum that is used to train the officers does not help anyone. I would highly recommend that it is time to look at the curriculum that our officers are taken through at training and ensure that there are constant, regular and consistent refresher courses. Make sure that the police begin to appreciate themselves as our brothers and sisters and children and parents; as members of this society.

To conclude, it is high time that the police officers in this country begin to live their motto; service to all and not just service to a select few.

**The Senate Majority Leader** (Sen. Murkomen): Mr. Speaker, Sir, I commend Sen. Ledama Olekina for making his statement. I only wish, for future, when making statements under Standing Order No.46, that it should not be this and that. It must be either the asking for a statement from the House or making a personal statement. The issues the Senator has canvassed are the ones that took us one-hour canvassing through the statement I responded to. So that it becomes easy, we would have spent all that hour speaking to his personal statement instead of dealing with the answers as provided by the Cabinet Secretary.

Secondly, I let the Senate Minority Leader escape on some of the things. You know when you make a statement that the Cabinet Secretary calls himself *Chinkororo*---. I was in that meeting in Kisii, and he spoke in the Kisii language. I am very sure that the Senate Minority Leader is not a Kisii speaker and he cannot pretend to be a certified interpreter of the Kisii Language to either Kiswahili or English. May be, the Senator for Kisii County can be the right person and any other Kisii speaking Kenyan. However, you know even in interpreting a statement, you must come with a certified certificate that shows that you speak the same language. When I asked what the Cabinet Secretary said in that rally, I was just told that he said, "I belong to the clan of warriors among the Kisii." I also belong to a clan of warriors in Elgeyo-Marakwet, but it does not mean that I go fight any other time of the day.

More importantly---

*(An honorable Senator spoke off record)*

**The Speaker** (Hon. Lusaka): Let the Senate Majority Leader proceed.

**The Senate Majority Leader** (Sen. Murkomen): Mr. Speaker, Sir, at that point I allowed the Senate Minority Leader to let go. I did not say he must clarify his statement. However, if need be, then that can be done later.

We all agree that the police must be responsible. They must be a service as they ought to be. However, as a country, we must also appreciate that so many policemen have suffered injuries as a result of the last protests that happened before the last elections up to now. Who will speak for the police? So many policemen died. In fact, two policemen just died the other day in the midst of these protests. Who will speak for them? We are leaders of both the police and the civilians. The brutality against the police is as bad as the brutality against the civilians. Those policemen live in very miserable conditions, whether it is the housing or the working conditions, and the meager salary. The point we must be able to say is that---

**The Speaker** (Hon. Lusaka): What is the point of order, Sen. Olekina?

**The Senate Majority Leader** (Sen. Murkomen): I never interrupted for good reasons, Mr. Speaker, Sir. I think the Senate Minority Leader was a bit sober today.

*(Sen. Wetangula spoke off record)*

**The Speaker** (Hon. Lusaka): Order, Sen. Wetangula! I had allowed Sen. Olekina.

**Sen. Olekina**: On a point of order, Mr. Speaker, Sir. I am shocked by the words of the Senate Majority Leader. I want to promise this House that I will have that video transcribed, translated, and brought into this House. Secondly, it is important for us to realise that when the police force which is supposed to be protecting individuals are denying all these things, it really leaves us wondering where we are heading in this country. So, this is something which is very important. This House should really remain as a House of union that unites the country and fights for the rights of Kenyans. I reminded this House that under Article 239 (5) of the Constitution, the police service is subordinate to the civilian authority. I want to finish my point of order. I think it is important for---

*(The Senate Majority Leader spoke off record)*

**The Speaker** (Hon. Lusaka): Order, the Senate Majority Leader!

**Sen. Olekina**: Thank you, Mr. Speaker, Sir. The Senate Majority Leader, I know you like to be heard talking, but it is important for you to allow other Senators to finalise. Facts are very stubborn. We can substantiate.

**The Senate Majority Leader** (Sen. Murkomen): First, Mr. Speaker, Sir, I let go Sen. Ledama Olekina because he is still learning. There was no point of order he raised.

*(Laughter)*

Absolutely, no point of order!

*(Sen. Olekina spoke off record)*

**The Speaker** (Hon. Lusaka): Order, Sen. Olekina! Let him proceed so that we make progress.

**The Senate Majority Leader** (Sen. Murkomen): Mr. Speaker, Sir, we need to make progress on this issue. I have just said that even as we speak for civilians, we must also speak for the police. They are human beings like us. They have families. None of them would want to work in the conditions that we put them. No one wants to be managing protests in groups that have machetes, knives and so forth. We must look at the issues that are raised holistically and protect every citizen whether they are from the minority or majority side of political affiliations or whether they are policemen. I had raised all those issues when we were dealing with the questions. I wish to rest there. As you have directed, all the issues raised by Sen. Olekina are going to be investigated by the relevant committee.

**The Speaker** (Hon. Lusaka): May I call upon Sen. (Dr.) Kabaka to make a statement.

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

*[The Temporary Speaker (Sen. Kang'ata) in the Chair]*

## STATEMENTS

### DELAYED RELEASE OF FUNDS TO COUNTY ASSEMBLIES

**Sen. (Dr.) Kabaka:** Thank you, Mr. Speaker, Sir for giving me this opportunity to seek a statement on the delay in the release of the funds to county assemblies, but in particular, Machakos County Assembly.

I am moving pursuant to Standing Orders No. 46 (2) (b). I rise to seek a statement from the Senate Majority Leader regarding the delay by the county treasuries in releasing funds to the county assemblies and in particular to Machakos County Assembly, thereby, affecting its operations and compromising its primary role of oversight, representation and legislation.

In the statement, the Senate Majority Leader should do the following:

- 1) Explain in details, the process followed in having approved funds released to county assemblies to meet their respective budgetary obligations.
- 2) Explain the respective roles played by the clerks of county assemblies, the county treasury and the Controller of Budget in withdrawing money from the Country Revenue Fund as required by Article 207 of the Constitution of the republic and Section 109 of the Public Finance Management Act.

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- 3) State the conditions that must be met, if any, before a County Treasury can order the release of funds from the County Revenue Fund to the County Assembly account after the approval and authorization of the Controller of Budget.
- 4) Table schedules indicating the amount and dates of cash disbursement to Machakos County Assembly as approved and authorized by the Controller of Budget and as paid by Machakos County Treasury to the County Assembly account.
- 5) Explain why the Machakos County Treasury has declined to release Kshs165,183,979 to Machakos County Assembly after the approval and authorization by the Controller of Budget.
- 6) State when the Machakos County Treasury will release funds to the Machakos County Assembly as per its approved annual cash flow projections and as authorized by the Controller of Budget and, failure to which it will necessitate summoning of the Governor, to appear before the Senate to explain why Machakos County Assembly is being subjected to such injustice.

**Sen. Dullo:** Thank you, Mr. Temporary Speaker, Sir. Since this is a detailed Statement that requires a bit of time, I would request to be given two weeks. However, I will try and see by Thursday next week before we go on recess whether we can have a preliminary Statement to that. Failure to get that, we would request the Senator to give us more time to get a comprehensive answer for the issues he has raised.

**Sen. (Dr.) Kabaka:** Mr. Temporary Speaker, Sir, I know I have raised a lengthy question, but I need to remind the Senate Deputy Majority Leader that what Machakos County is asking is already in the Governor's kitty. The money has already been put in Machakos Treasury; only that the Governor has been adamant in releasing the money to the County Assembly. So, the question of one or two weeks does not arise. We need a response as soon as possible, possibly by Tuesday.

**Sen. Dullo:** Thank you, Mr. Speaker Sir. In as much as this matter is urgent, if possible we would want to give the answer on Tuesday. However, going by practice, if I say Tuesday that would be a lie. I can try on Thursday.

**The Temporary Speaker (Sen. Kang'ata):** It is so ordered; on Thursday next week.

The Senate Majority Leader will issue a Statement on the business of the Senate for the coming week.

BUSINESS FOR THE WEEK COMMENCING  
TUESDAY, 5<sup>TH</sup> DECEMBER, 2017

**Sen. Dullo:** Thank you, Mr. Temporary Speaker Sir.  
Pursuant to Standing Order 46, I hereby present to the Senate, the business for the coming week.

- (1) Tuesday, 5<sup>th</sup> December 2017

The Senate Business Committee will meet on Tuesday, 5<sup>th</sup> December 2017 to schedule the business of the Senate subject to the direction of the Committee. The Senate will continue with the consideration of the business that will not have been concluded in today's Order Paper and focus on any other scheduled business including the following:

- i) Consideration of the Controller of Budget Annual County Governments Budget Implementation Review Report for Financial Year 2016/2017.
  - ii) Consideration of the Sessional Paper No.6 of 2016 on the National Urban Development Policy.
  - iii) Consideration of the National Irrigation Policy 2017.
  - iv) Consideration of the Slum Upgrading and Prevention Policy.
  - v) Motion on the need to audit distribution of teachers in Kenya.
  - vi) Motion on the need for registration of persons with disability.
- (2) Wednesday, 6<sup>th</sup> December 2017  
The Senate will consider business that will not have been concluded on Tuesday and any other business scheduled by the Senate Business Committee.
- (3) Thursday, 7<sup>th</sup> December 2017  
The Senate will consider business that will not have been concluded on Wednesday and any other business scheduled by the Senate Business Committee.

Finally Hon. Senators, I note with appreciation that you availed yourself in big numbers yesterday to execute the business of the Senate. I take this opportunity to urge all of us to continue in the same spirit today and for the remaining part of this First Session of the Twelfth Parliament.

I thank you and hereby lay the Statement on the table of the House.

**The Temporary Speaker** (Sen. Kang'ata): Next Order!

## BILLS

### *First Readings*

THE COUNTY BOUNDARIES BILL  
(SENATE BILLS NO. 6 OF 2017)

THE WAREHOUSE RECEIPT SYSTEM BILL  
(SENATE BILLS NO.10 OF 2017)

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

**The Temporary Speaker** (Sen. Kang'ata): Next Order.

**MOTIONS****IMPLEMENTATION OF THE NATIONAL DROUGHT  
MANAGEMENT AUTHORITY ACT, 2016**

THAT, AWARE that the right to adequate food is affirmed under Article 25 of the 1948 Universal Declaration of Human Rights, and Article 11 of the 1966 International Covenant on Economic, Social and Cultural Rights as part of the right to an adequate standard of living;

FURTHER AWARE THAT Article 43 (1) (c) and (d) of the Constitution of Kenya provides for economic and social rights for every person and in particular the right to be free from hunger, to have adequate food of acceptable quality, and to have clean and safe water in adequate quantities;

CONCERNED that this fundamental right is under threat as various Counties battle severe drought occasioned by successive failure in rainfall;

CONCERNED that over 3.4 million people including over 370,000 children are acutely malnourished and in urgent need of emergency assistance while millions of livestock have perished and the remaining are in extremely poor body condition as a result of the drought;

FURTHER CONCERNED that the situation in drought ravaged parts of the country poses a serious threat to human dignity, peace, security and stability following loss of livelihoods leading to scramble for scarce resources by the affected communities;

NOTING that Parliament enacted the National Drought Management Bill which was assented to on 1st April, 2016 and which seeks to comprehensively address the matter of persistent droughts in the country;

NOW THEREFORE, the Senate calls upon the Ministry of Interior and Coordination of National Government and relevant state agencies responsible including the National Drought Management Authority to-

1. Expediently implement the National Drought Management Authority Act, 2016 and set up the necessary infrastructure to mitigate against persistent droughts; and
2. Come up with efficient drought response strategies aimed at saving lives of both people and livestock.

*(Sen. Dullo on 29.11.2017)*

*(Resumption of debate interrupted on 29.11.2017)*

**The Temporary Speaker** (Sen. Kang'ata): This Motion was debated yesterday and Sen. Halake who was on the Floor had about 10 minutes remaining.

Please proceed unless you want to forfeit your chance.

**Sen. Halake:** Thank you, Mr. Temporary Speaker, Sir. One gap that we may want to look at is about recovery once drought has hit communities. So, without belabouring the point since yesterday a lot of discussion was made on this, for us to enhance this Motion we should include a recovery of animals and rangelands.

Also, as we operationalize this Act, let us make it more holistic so that the vicious cycle is broken based on the recovery strategies both in terms of not just leaving it at response but ensuring that the communities recover. I know whenever there are issues around disasters of that nature, communities are usually helped to recover from any crisis that affects their livelihoods.

In different sectors including the coffee sector, the farmers are helped to recover and the Government has compensated farmers in many instances. However, for the livestock sector, once people are given some relief food during the response period, compensation is forgotten. That is why the vicious cycle continues because nobody is looking at after the recovery but just during.

Therefore, the gap that we have seen coming from that sector is that the mitigation strategies are wanting. The response strategies are also very wasteful because not the right strategies are employed while others are missing all together. So, as we compel the relevant Ministry and authorities to look at recovery of livestock for people that have been affected by drought, we can try and break the vicious cycle. By the time drought comes, the communities have not recovered from the devastating effects of the drought of the other cycle and that is the missing gap.

This is something that we are going to be looking at very closely in this House in terms of before, during and after drought related and other climate change induced crisis in our country. How the resources that are allocated for the response are used is also a big question. So, for me, it is important to include the recovery of livestock and some sort of compensation in this Motion.

Mr. Temporary Speaker, Sir, in terms of mitigation, we need to look at innovative ways of dealing with this. We have done the same things over and over again and I am worried that we will never achieve good results if we keep doing the same things. What are some of the innovative ways in which these authorities are looking at the question of drought related mitigation being raised in our country including livestock insurances? That perhaps would help communities to safeguard their livelihoods and mitigate against losses pretty much as what is going on in other sectors.

I would, therefore, urge us not to ask the same things but to have innovative strategies both in terms of mitigative measures, responses and terms of recovery measures as well. Therefore, let us see new ways of helping pastoralists, perhaps livestock insurance, compensation and livestock markets that can off-take animals just before they are all swept away by either drought or floods. I do not want to belabor the point too much, but we need to compel and call upon the Authority to do something and operationalise the Act. As we call upon the authorities to do something and operationalize

the Act, let us also look at innovative ways in which we can mitigate, respond and recover from the effects of drought.

One of the things that I have observed is that we also need to look at the quality of the things we are asking these Ministries to do. Today, as I sat here and listened to some of the responses, they are very descriptive in nature; they are just describing things that were done. I do not think those descriptive things or those activities are necessarily fulfilling the objectives for which those activities been set out to do.

So, as a House, we need to be looking at measurement. How do we measure success of the things which we ask our Government and authorities to do? Is it enough for them to just tick off a few activities they have done in response, for example, to drought; or is it that we should be measuring the achievement of objectives for which those activities were done? So, these are some of the things that I think we, as Legislators, need to look at – the quality and achievement of results – not just a description of the things that were done that are perhaps still putting us even in worse situations.

A case in point, Mr. Speaker, Sir, is during the response of the last drought. Communities were given meat, for instance, as a form of offtake of animals. But instead of the animals coming from the communities that were being affected by the drought, meat was being transported to these communities from somewhere in some trucks. Now, these communities, especially in Isiolo and upper Eastern – Marsabit, Moyale – and North Eastern would never eat meat that has been brought in trucks without knowing how it was slaughtered.

So, we should also look into some of the sensitivities of the communities that are being responded to. What was the whole point of the animal off-take? It was to save the livelihoods. But when you bring in meat that has been slaughtered somewhere and perhaps some very rich business person somewhere else in the country is the one who has benefited, then it beats the purpose for which animal off-take or any other of the strategies that were conceived in the response really would achieve.

Mr. Temporary Speaker, Sir, I know that my time is lapsing, but as this House, I am alerting us to the fact that, coming from that sector, I know that some of the response, mitigation and recovery mechanisms are either wanting or totally absent. These are some of the things we should be demanding here. They will tell us they have “operationalized” or that “we have trucked water;” but are these the sustainable solutions we are seeking? Absolutely not! So, I think, as this House, we should be looking out for sustainability and innovative ways that will break the cycle and not doing the same thing.

I think drought and drought related responses are becoming a cash cow and an avenue for corruption, if I am not mistaken. We will go ahead, as we operationalize this, to drill down on some of the specifics of some of these responses, mitigation and recovery actions which I said are totally missing. We need to see communities that have been affected by drought in Northern Kenya and other parts of the country, especially in the Arid and Semi-Arid (ASAL) regions to be compensated or recovery mechanisms to be very specifically addressed.

Thank you, Mr. Temporary Speaker, Sir.

**The Temporary Speaker** (Sen. Kang’ata): Proceed, Sen. (Dr.) Ali.

*(Sen. (Dr.) Ali's microphone went off)*

Please put on the microphone.

**Sen. (Dr.) Ali:** Thank you, Mr. Temporary Speaker, Sir. I know that this issue has been discussed since yesterday, but I need to say just one or two words. What happens usually when it comes to drought is that people talk of food security. In Kenya, we are usually very good at writing papers, but implementation of the same is usually a problem.

In most ASAL areas, there is something called relief food, which is on and off throughout the year. That is usually a source of corruption for the provincial administration, who just sell those food rations and the local people mostly do not benefit. What surprises me is that for the last fifty or more years, we have been doing the same thing and the locals do not really benefit. So, what is the use of getting food rations which is thirty years old or so from the World Food Program, then you take it to the locals when it has already degenerated?

This food is, by the way, causing a lot of diseases because of its nature. The food has been in stores for many years; you add a lot of preservatives causing aflatoxins. Northern Kenya nowadays has experienced many cases of cancer of the throat and liver diseases. These diseases are becoming very prominent of late because of these foods which have overstayed. What is the use of giving people food and you are literally killing them? Instead of doing that, would it not have been better if the money was put into other activities, helping women and youth groups to try and do businesses, whether it is livestock farming or any other business?

That reminds me of the Chinese proverb “You give a poor man a fish and you feed him for a day. You teach him to fish and you give him an occupation that will feed him for a lifetime.” The relief food is like giving fish; the people get used to it and they do not want to do anything. It discourages them from doing anything.

The other issue is about water. As the Senator just said earlier, water trucking in these arid areas is becoming a source of corruption. When it rains, the water runoff is so much; the floods go killing animals and that water is wasted. We are told of mega dams but I cannot call them mega dams because they become small dams. People just want to go, make small dams there, which they use to get the money and there are no follow-ups.

These dams are not constructed where the animals will get pasture. So, these issues have been on and off, and you will hear of a mega dam of Kshs1 billion in Marsabit. Eventually, the cost goes up to Kshs2 billion or Kshs3 billion and you find no water there. So what is the use of these mega dams? Where does this money go? So, these issues, which have been recurring on and off for the last several years mean that something needs to be done.

In the last Coalition Government – or was it called the Grand Coalition Government – in 2007/2008, there was a Ministry of Northern Kenya and Other Arid Lands Development that was formed which was more or less somehow toothless. I want to urge the Government that it is now the right time to have the Ministry of Pastoralism so that the word “pastoralist” is in the mind of other Kenyans also. It should not be seen as if pastoralists are enemies or people who are of no use to this country.

When you hear of the Ministry of Agriculture and livestock, most people think about dairy farmers, fish keeping and poultry farming. The pastoralists do not benefit from the livestock industry. The Kenya Meat Commission (KMC) was created to help the livestock industry and pastoralists, but the only time we hear about it is during the livestock uptake programme that my sister has just talked about. That uptake is done when the animals are in such a bad shape that they cannot fetch good prices in the market. You could sell a cow for Kshs2,000. How does that help the local communities or the pastoralists who have looked after these animals for long?

So, these issues should be looked into and Ministries created to help the pastoralists. Also, positions should be given to people who understand what pastoralism is about. They need to know how these people have been suffering and what needs to be done.

The National Drought Management Authority (NDMA) tried before but right now, it is more of a shell. It just gets little funds from some donors; the Government does not inject money into it. I would urge the Ministry concerned, I do not know if it is the Ministry of Interior and Coordination of National Government--- Sometimes we are told that everything goes under that Ministry because the Government is there, but they are not responsive. The Ministry is so broad that they do not know what is happening.

The NDMA should be taken to the relevant Ministries where it will be useful and things can be done. It can even be under the Ministry of Agriculture and Livestock or Ministry of Water and Irrigation. Why have the regulations not been implemented yet the Act is in place? Once the Committees are constituted, the Committee concerned with the NDMA should follow up the money that was mentioned and make sure that the Act that passed in the last Parliament is functional and things are done to the best interest of the communities concerned.

Thank you, Mr. Speaker Sir.

**The Temporary Speaker** (Sen. Kang'ata): Sen. Masika of Bungoma County.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Speaker Sir, that name is hardly ever used, but it is mine. Thank you for the opportunity to contribute to this Motion.

It is true that we passed the National Drought Management Authority Bill in the last Parliament in both Houses. The Bill had far-reaching proposals and provisions for drought management in the country. What is delaying the operationalisation of this law is something that we cannot understand. But I will pick it up from where the distinguished Nominated Senator, whose name I do not know, spoke as I walked in to the Chamber.

**An Hon. Senator:** Sen. Halake.

**The Senate Minority Leader** (Sen. Wetangula): Part of the problem of managing drought in this country is because it has turned into a lucrative business everywhere. We have had experiments with programmes called Arid Lands, Special Programmes and all manner of descriptions, but the bottom line is that food and water for people in disadvantaged parts of the country is big business for public servants. That is why even as they talk of northern Kenya being a difficult terrain, District Commissioners and District Officers fight to be posted to those areas, not to go and serve the people, but make money. They steal the food, water and equipment.

I would encourage the distinguished Senator for Isiolo, and allow me to congratulate you for being one of the few distinguished ladies who were elected in a competitive arena--- I came to Isiolo and I saw how you are liked by your people. Keep it up. My supporters appeared to like you too.

I would encourage the distinguished Senator to put some little time in research and bring to this House how much money we have sunk in drought mitigation, management and all those drought related activities. This must be billions if not trillions of shillings, yet the people are still where they were. They still walk for 2,000 kilometers looking for pasture. I have met Somali herders from Bula Hawa, Habaswein and Garissa in Turkana, just walking on and on hoping that the horizon will bring pasture and water. We should not allow this. Budgets are passed, money is allocated and appropriated and when it gets there, you find people building *gorofas* in Nairobi's Eastleigh and Westlands at the expense of the ordinary people.

Mr. Speaker, Sir, it has come a time when we need a paradigm shift. You remember somebody came up with an idea of fish ponds, and people reaped big money. You would find somebody going to Mandera to construct a fish pond when they know that the evaporation rate there is 90 per cent. Which fish would survive where the evaporation rate is 90 per cent? But money was pocketed and people left. The Government books would indicate that 100 fish ponds were constructed in Mandera and Wajir, all in the name of mitigating drought.

Now, they have come up with a new Idea "mega dams." The easiest engineering construction you can do – and you know it - is to create a dam. All you need is to go where there is a water passage or a river, put an embankment and create a reservoir. Tell me where you can do that for Kshs16 billion or Kshs17 billion on a river with gorge. All you need is to get cement, sand and strengthened wires and put there to block a river, and you will have a dam behind you. Where on earth, except in Kenya, can you do that for Kshs20?

When you ask about all this, you are told we are mitigating drought and helping pastoralist. At the end of the day, the Kshs20 billion is sunk, the dam becomes a white elephant, there is never any water and nobody is held to account. This is our country. In areas with rain deficit like Kajiado, Narok, Garissa, Kitui, Isiolo, Marsabit and Turkana, whenever it rains for just one week the place is greener than the Mau. This tells you the level of concentration of humus and fertility in the soils in those areas, but we have neglected them.

Those of us who look for leadership just engage the people in those areas because of votes. We go there and tell them all the nice things, for example, that we will create a Ministry responsible for those areas and make one of them a Minister. When we make one of them a Minister--- As Dr. Ali said, there was a distinguished gentleman called hon. Elmi who was decent, fairly honest and straightforward. He was given a Ministry with no money, structures and nothing to do. He was just roaming around Nairobi, with a tarboosh on his head, moving from office to office seeking what to do as a Minister. Those are gimmicks of using people who are disadvantaged for political gain. We must change this.

Mr. Temporary Speaker, Sir I remember when I was responsible for the foreign docket of this country, we went to Saudi Arabia and they were dying for Kenyan sheep. They tell you 'we are looking for sheep from Kenya, those with a black head and a white body'. They are all over Northern Kenya. What did they want? 'Just declare your area through quarantines, treatment, and disease free sheep then bring it'. Somebody sits and says if this is done we lose our gravy train. So, farmers in those areas are at the mercy of others.

There used to be cattle rustling where communities steal one or two or ten cattle from each other, now cattle's rustling is big business. It is no longer one community going to steal 50-100 cows. It is the administration using their might to steal cattle in those areas from disadvantaged people and bringing them to Nairobi where there is a big meat market. You will just hear 'we are tracking animals that were stolen'. So in one stroke a whole family loses all that they have been living on and have to start afresh.

We have enough capacity in this country to grow hay and take to farmers in the North so that you save them from the ravages of Al-Shabaab and other criminal gangs that roam around with guns, shooting anybody in sight to take away their possession, we do not do that. In fact if you go to Narok and Kajiado, in one rainy season of two months you can harvest enough hay to feed all the animals of this country for the remainder of the year. We do not do that. Instead this country has lost the vocabulary of 'earning money', everybody 'makes money' and nobody earns money in Kenya. I am sure my distinguished colleague from Kericho sometimes sits in the office and a young police officer comes and says 'excuse me sir, I joined the police four years ago and I have been at the report office help me go to traffic so that I can make money'. This is what we have reduced our country to.

Mr. Temporary Speaker, Sir, Unless we change the psyche; we are busy shouting at each other lobbing tear gas at one another, shooting at each other. The other day when we were welcoming Hon. Raila Odinga from the United States of America, a policeman, I was looking at him. He aimed at my car and fired a bullet and it went through my car, from left to right. The entire boot windows were shattered and he followed it by lobbing a tear gas canister into my car and I was in there. Hon, Richard Onyonka was sitting next to me; after they smashed the window I saw the OCPD of central throwing a rock at my car and it hit Hon. Onyonka and tore his ear and he bled profusely in my car.

Mr. Temporary Speaker, Sir, is this the country we want to live in? As we are doing this the *Alshabab* are walking in and out of Kenya killing policemen, civilians, looting property. We must change our psyche. I want to urge that until and unless every Kenyan is at some reasonable degree of comfort and satisfaction, no Kenyan will have any peace, because those hungry people will become angry and nobody will be safe. You can build fortresses or do whatever.

I remember one time somebody said, it was my friend the late Ojode, that the head of *Alshabab* is in Eastleigh and the tail is in Kismayu. Why is the head in Eastleigh? Because people have lost hope. When people can dig a tunnel for months to access a bank to steal, that is not an adventure, it is an act of hopelessness and we need to address this. In a country where only 21% of our country is rain secure, the rest isn't. A county like Marsabit is larger than Western, Nyanza, Central provinces put together. North Horr

constituency in that county is larger than Western, Nyanza and Central provinces put together, one constituency. These are not constituencies without potential.

Now everybody is rushing there because there is wind power, oil and nobody is remembering how to give the people in the area a sustainable livelihood. It is not enough to parade people in Nairobi and say we also have representatives from Northern Kenya. Those are individuals; the real people are out there. They cannot sleep. There is a place called My Corner in Marsabit, you go there, take a plastic seat and put on the ground and the wind will come and pick it and go with it and you will never see it again. People walk watching the direction of the wind; it is blowing women naked and everybody naked. Those are Kenyans 50 years after independence. It is unacceptable and we must mitigate this.

In many countries if you go to a place like Marsabit you see expansive farms but farmers are just sitting on edge waiting when God will smile to bring some rain. *Ikinyesha tu siku moja pap! Kila mtu anapanda*, without knowing whether it will rain again for them to germinate yet Ewaso Nyiro River is just passing next door. Yet Tana River is emptying water collected from Mt. Kenya region, from everywhere with all the nutrients into the Indian Ocean.

Mr. Temporary Speaker, Sir, a country like Israel, the shame of Africa, you go to a hotel and you see imported oranges, tomatoes from Israel. A country with the Niger River, Nigeria, is 80% arable and rain secure. They are importing tomatoes from Israel. In this country, every year--- and you will see even in this Senate and I have said this must change. You will see Senators here queuing to go to Israel to bench mark on farming, you will see it not once, and not twice they will keep going.

I went once as foreign minister and a head of an institution asked me, what is wrong with your country? When I was an intern in this institution a delegation came to bench mark on farming. I have gone through the ranks I am now the managing director of the institution they are still coming to bench mark on farming. What is happening to your country? That is our problem; we let things move by nature. Initiatives are dead. In fact in government you find some 'big man' on top; if there are any innovative young men and women coming up they are transferred since they are considered threats to the big man.

Sen. Dullo, this is a wonderful Motion. But this Motion probably would not have come if the implementation Committees of parliament work. This Senate and the National Assembly have committees on implementation. What is the role of the Committee on Implementation? It is to make sure that every resolution of Parliament, including legislation, is actualized by implementation and execution. Instead of doing that, you see the Committee in Malaysia and Philippines; benchmarking. We must change. This country will not be built by endless benchmarking everywhere. It will be built by people sitting down to study their problem, understand, appreciate and solve it.

We can feed ourselves. Why is the country always in a crisis when we have failure of one rainy season? When this is happening, farmers in Trans Nzoia have maize in their stores rotting and the Government is bringing maize from Mexico. Women in Western Kenya sit with bananas on the roadside from morning to evening and Mr. Temporary Speaker, Sir, I have also seen this in your County.

We have created a psyche for people to believe that food means maize. Potatoes, bananas, millet, sorghum and arrow roots are also food. People do grow them. They are traditional foods that make people to live healthier. I have never seen the Government go to western Kenya to buy all those bananas and potatoes and introduce them to communities that do not have food. It is a gravy train as the distinguished lady has said. It is business. I believe that some even go to kneel down in churches and mosques until their knees ache to pray for drought for them to make money. It is very unfortunate.

I beg to support.

**The Temporary Speaker** (Sen. Kang'ata): There being no other requests, I now call upon the Mover to reply.

**Sen. Dullo:** Thank you Mr. Temporary Speaker, Sir. I wish to take this opportunity to thank all those who have contributed. This matter has been canvassed since yesterday. It is a pertinent issue in our country. We need to take action on the issues that have been raised by Members. I need to get a copy of the HANSARD and make sure that all those concerns raised by Members are taken care of.

I will point out a few things that have been said, one of them being the empowerment of the National Drought Management Authority (NDMA). Without empowerment, NDMA will not deliver on its mandate. It is high time that the Government empowered NDMA. It should also harmonize the programs of drought and disaster management in this country and hand it over to NDMA as an institution.

The other point that I thought we should bring on board is the issue of the amendment of the Act before implementation or even in the process of implementation. It is to take care of certain issues raised by Members specifically, the issue of a Fund Manager, which needs to be taken care of. Without the Fund Manager, we might lose on the objective of this particular Act. I believe that we might amend the Act at some stage.

The other concern raised by so many Members is the need for coming up with better strategies. This is because we cannot be having drought and emergencies year in, year out. We must have a solution to this problem. Drought should not be business as usual in this country.

In as much as we are only focusing on pastoralism, agriculture in most of those areas is also affected. In Isiolo, there are some communities who are growing crops but do not produce anything when there is drought. We also need to focus on the crop aspect in those areas. What should we do when there is drought? We need to have an effective program, especially the off-take program that was introduced by the Ministry of Agriculture Livestock and Fisheries to take care of the animals that are almost dying. This strategy is not working. In Isiolo, there were a lot of promises and this has not been implemented up to now. As one of the Senators has said, we are buying these animals when they are almost dying thus they do not even have flesh. What is the use of buying these animals when they are about to die. Clearly, the pastoralists who are selling these animals are not getting value for their products.

There are proposals to come up with a Ministry and I think that this is a matter that we need to consider. It should be a Ministry that can deal with the issues of drought and disaster management. Corruption is also a matter that we need to deal with. Implementation of the decisions of this House is another issue. This is a matter that was

even discussed in the last Parliament. We make decisions, pass Motions and Bills, unfortunately, the implementation aspect is left out. This House needs to be very serious in ensuring that the Motions and the Bills that are passed by this House are implemented and taken seriously.

A lot has been said. I thank all the Members who have made contribution to this particular Motion. We need to take this matter seriously as a Government and as an institution of Parliament.

I thank you.

**The Temporary Speaker** (Sen. Kang'ata): For the benefit of Members, I will read Standing Order No. 73 (1) which provides that:

“Voting on a matter other than a Bill: When the Senate is to vote on any matter other than a Bill, the Speaker shall rule on whether the matter affects or does not affect counties”

I hereby make a determination that the matter does not affect counties. Therefore, I will call upon the Senators to take a voice vote.

*(Question put and agreed to)*

**The Temporary Speaker** (Sen. Kang'ata): Order, hon. Senators! The next Order is Order No. 11, that is, the Motion – Controller of Budget Annual County Governments' Budget Implementation Review Report for Financial Year 2016/2017 by the Senate Majority Leader. It is a very important matter because it affects counties and I would imagine each and every Senator may have a vested reason to contribute to this Motion.

Noting that we do not have many Senators with us today, I hereby make a determination that the matter be deferred to next week Tuesday so that Senators can be afforded the opportunity to come and discuss the same.

NOTING OF COB ANNUAL COUNTY GOVERNMENTS BUDGET  
IMPLEMENTATION REVIEW REPORT FOR FY 2016/2017

THAT, the Senate notes the Controller of Budget Annual County Governments Budget Implementation Review Report for Financial Year 2016/2017, laid on the Table of the House on Wednesday, 8th November, 2017.

*(Motion deferred)*

Hon. Senators, there is another Business listed in Order No.12, that is, the Motion on Sessional Paper No. 6 of 2016, on the National Urban Development Policy. Again on this one, I have received a request from the Senate Majority Leader to have the matter deferred. I have, therefore, acceded to that request and the same is also deferred up to next week.

ADOPTION OF SESSIONAL PAPER NO.6 OF 2016 ON  
NATIONAL URBAN DEVELOPMENT POLICY

THAT, this House adopts Sessional Paper No.6 of 2016 on the National Urban Development Policy, laid on the Table of the House on Tuesday, October, 10, 2017.

*(Motion deferred)*

The same also applies to the Business appearing as No.13 and No.14 on the Order Paper; the one on Sessional Paper No.2 of 2016 on the National Slum Upgrading and Prevention Policy.

ADOPTION OF THE NATIONAL IRRIGATION POLICY

THAT, this House adopts the National Irrigation Policy, laid on the Table of the House on Tuesday, October, 10, 2017.

*(Motion deferred)*

ADOPTION OF SESSIONAL PAPER NO.2 OF 2016 ON THE  
NATIONAL SLUM UPGRADING AND PREVENTION POLICY

THAT, this House adopts Sessional Paper No.2 of 2016 on the National Slum Upgrading and Prevention Policy, laid on the Table of the House on Tuesday, October, 10, 2017.

*(Motion Deferred)*

We do have other Motions which appear on our Order Paper; that is Business No.15, the Motion on the Audit on Distribution of Teachers by Sen. Khaniri. The Senator is not with us today. I will not drop this Business but, again, I will give him another opportunity to come and canvass his motion next week.

AUDIT ON DISTRIBUTION OF TEACHERS IN ALL  
PUBLIC SCHOOLS IN THE COUNTRY

THAT WHEREAS Article 43 (1)(f) of the Constitution of Kenya explicitly provides for the right to education for all;

AND WHEREAS it is the responsibility of the State to ensure that the right to education is enjoyed by all; OBSERVING THAT that the Teachers Service Commission (TSC) is the constitutionally mandated body to handle matters of employment, deployment, remuneration and discipline of teachers in all public schools;

APPRECIATING efforts made by the national government through the Teachers Service Commission (TSC) to improve the teacher pupil ratio to international standards in all public schools through yearly employment of teachers;

CONCERNED THAT currently there exists great disparities in the distribution of teachers in schools across the country, with major teacher shortage being experienced in rural and marginalized areas;

FURTHER CONCERNED that there is major inequality in the distribution and allocation of teachers among schools across the country leading to either oversupply or undersupply of teachers in some public schools;

NOW THEREFORE, there the Senate calls upon the Ministry of Education, Science and Technology in conjunction with TSC to conduct a countrywide audit on the distribution of teachers in all public schools across the Country and report to the Senate within three months.

*(Motion Deferred)*

We also have Business appearing as Order No. 16; that is the Motion on Registration of Persons with Disability by Sen. Khaniri. He is not with us today. If he was with us today, we would be canvassing or debating this Motion. Therefore, once again, I make a determination that I will not drop this Business *per se*, but I will defer it to next week so that he gets that opportunity to come before the House and canvass and debate his Motions.

#### NATIONWIDE REGISTRATION OF ALL PLWDS

AWARE THAT the National Council for Persons with Disabilities was established through the Persons with Disabilities Act, 2003;

FURTHER AWARE THAT registration of persons living with disabilities is a function of the National Council for Persons with Disabilities;

ALSO AWARE THAT persons living with disabilities are estimated to be about 10% of any given population;

COGNISANT THAT for purposes of registration of persons living with disability, it is a mandatory requirement for one to undergo medical examination by a registered medical officer in a registered and certified health facility;

AWARE THAT medical services are now a devolved function;

CONCERNED THAT of the nearly 4 million Kenyans living with disabilities who reside in Kenya, there is a very small fraction of the number which is duly registered;

FURTHER CONCERNED THAT without proper registration, many persons living with disabilities are denied services because they lack the necessary proof of disability;

ALSO CONCERNED THAT owing to lack of accurate data on persons living with disabilities, the government at both levels cannot plan properly for his category of people;

NOW THEREFORE, there the Senate calls upon the National Council for Persons with Disabilities in collaboration with Ministry of East African Community, Labour and Social Protection and county governments, to carry out a nationwide registration of all persons living with disabilities in order to determine their exact population to facilitate effective service for this marginalized group of our society.

*(Motion Deferred)*

### ADJOURNMENT

**The Temporary Speaker** (Sen. Kang'ata): Hon. Senators, there being no other Business, it is now time to adjourn the House. We are adjourning at about 5.33 p.m. The Senate, therefore, stands adjourned until Tuesday, 5<sup>th</sup> December, 2017 at 2.30 p.m.

The Senate rose at 5.35 p.m.