

# PARLIAMENT OF KENYA

## THE SENATE

### THE HANSARD

Thursday, 8<sup>th</sup> March, 2018

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

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

#### PRAYER

#### SENATOR'S GENERAL STATEMENT

##### KENYA PASTORALIST WEEK, 2018

**Sen. Farhiya:** Mr Speaker, Sir, thank you for giving me the opportunity to issue this statement. However, before I give my statement, I take this early opportunity to congratulate all the women of this country, particularly those seated in this House, on the International Women's Day. I wish them all the best as they continue to play their part in the development of this country.

Mr Speaker, Sir, pursuant to Standing Order No.46(2)(a), I rise to make a Statement regarding the Kenya Pastoralist Week (KPW), 2018.

The Kenya Pastoralist Week is a multi-stakeholder partnership project held annually since 2003. The event provides a unique opportunity for stakeholders to interact with pastoralists on a wide range of issues and enable them to access markets which are often hard to reach. This year, Kajiado County will be hosting the KPW from 10<sup>th</sup> to 12 April, 2018 at the Maasai Technical Training Institute (MTTI). Hon. Senators, allow me to invite you all to this unique cultural event.

Mr Speaker, Sir, allow me to state that in the year 2012, pastoralism contributed 12 per cent to the national Gross Domestic Product (GDP). Further, arid and semi-arid lands (ASALs) reared and produced about 70 per cent of the national livestock worth Kshs70 billion. The theme of this year's Kenya Pastoralist Week is; "Supporting Climate Smart Pastoralism in Kenya." The event will afford an opportunity to the stakeholders to reflect on the vulnerability of pastoralists to climate change. This is an approach that will play a role in transforming and re-orienting pastoralism development under new realities of climate change.

The objectives of the event are:-

- (1) Achieve a more prominent involvement of the private sector,
- (2) Improve the working relationship between public-private sector, and;

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(3) Create an effective local and regional networking by fostering contacts between the Community Based Organizations (CBOs), Civil Society Organizations (CSOs) and Non-Governmental Organizations (NGOs) within Kenya and across the East Africa region. (Networking has resulted in Tanzania, Uganda, Rwanda and Ethiopia hosting their own annual pastoralist week.)

Mr Speaker, Sir, Kenya has seen more frequent cycles of drought, thus increasing the need for support to increase resilience level of pastoralists to anticipate, absorb, adopt and recover from climate change shocks. There has been a noticeable increase in the need for programmes; both policy and development actions including private sector investment that will increase the resilience levels of communities. For instance, efforts are being made to better the markets for livestock through the co-management of livestock, clean energy, support for traditional livestock and related value chain products.

There is also support to communities to invest in and/or benefit from other areas like tourism, sand and gravel harvesting, mining of soda ash and gemstones, harvesting of gums, resins and medicinal plants. To achieve the required resilience to climate change, the private sector must play a crucial role not only through promoting climate smart investments that will provide returns but also through supporting community initiatives that enable communities to cope with the negative impacts of climate change and induced weather variables like droughts and floods. Therefore, the Kenya Pastoralist Week, 2018 main objective is to provide a platform for continuing conversation around achieving climate change resilience to the pastoralist constituency.

Mr Speaker, Sir, this year's event is organized by the Centre for Minority Rights Development (CEMIRIDE) in collaboration with the Kajiado County Government, in partnership with the Netherlands Development Organization, the Pastoralist Parliamentary Group (PPG), the ASAL Stakeholders Forum, the Dry lands Learning and Capacity Building Initiative, the Pastoral Development Network of Kenya, the League of Pastoralists Women, the Food and Agriculture Organization (FAO), the National Drought Management Authority (NDMA), the Management University of Africa (MUA), the Agriculture Sector Development Support Programme (ASDSP), the Kenya Land Alliance (KLA), Dupoto E Maa, the Neighbourhood Initiative Association (NIA), the Kenya Market Trust (KMT), the Kenya Livestock Marketing Council (KLMC) and the Pan African Climate Justice Alliance (PACJA).

Mr Speaker, Sir, once again, I extend my invitation to you and fellow Senators. The pastoralist communities will be most honoured by your presence.

I thank you.

**The Speaker** (Hon. Lusaka): The Senate Minority Leader, kindly proceed.

## POINTS OF ORDER

### WITHDRAWAL OF ALLEGATIONS MADE IN THE HOUSE BY SEN. WETANGULA

**The Senate Minority Leader** (Sen. Wetangula): Mr. Speaker, Sir, yesterday, I made a statement on the Floor which, under Standing Order No.94, you required me to

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substantiate. I promised to substantiate that the two banks namely; Equity and Family Banks, are enjoying State patronage and are politically correct. I had promised to substantiate this afternoon at 2.30p.m which is now. Unfortunately, my economic advisor who is the custodian of my dossier on this matter is out of the country. Therefore, I am unable to bring the documents today. However, I will at an appropriate point bring the documents.

In view of the provisions of the Standing Orders that require that substantiation must be done the next sitting day which is today and in view of what I have said, as a responsible Legislator, Senator and Leader, I apologise to the two banks and withdraw the statement until the time when I will have such documents. In the meantime, my statement is withdrawn unconditionally.

**The Speaker** (Hon. Lusaka): Order, hon. Members. I had given the hon. Senator an opportunity this afternoon, under Standing Order No. 94, to substantiate what he said. However, since the hon. Senator has withdrawn what he said and apologized, that matter rests.

*(Sen. Sakaja stood up)*

The matter rests, unless it is on another matter because I have already made a ruling.

Please, proceed Sen. Sakaja.

**Sen. Sakaja:** On a point of order, Mr. Speaker, Sir. I appreciate the Senate Minority Leader's adherence to the Standing Orders. Standing Order No.90(4) states that;

“No Senator shall impute improper motive to any other Senator or to a Member of the National Assembly except upon a specific substantive Motion of which at least three days' notice has been given, calling in question the conduct of that Senator or Member of the Assembly”

While we appreciate all references to the two banks have been withdrawn from the record, I would like to ask that the references that were made yesterday by the Senate Minority Leader to a Member of the National Assembly, hon. Amos Kimunya, also be expunged because that would need a substantive Motion before discussing any matter to do with a Member of the National Assembly.

**The Speaker** (Hon. Lusaka): Hon. Members, I have also gone through yesterday's HANSARD on the House's discussion. It is true that hon. Wetangula mentioned a Member of the National Assembly, hon. Amos Kimunya. He made some reference to him. I therefore ask him in the same vein to withdraw and apologize.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Speaker Sir, indeed, I did mention the name of my very good friend, hon. Amos Kimunya, in reference to his discharge of duties as the Minister for Finance at the time he was. For the same reasons that I have indicated that my financial and economic advisor is unavailable to give me the dossier that he keeps custody of for me; I equally, and with a lot of respect to my friend hon. Kimunya with whom we have a lot of things in common, withdraw and apologize to him until such a time as I will be able to bring the dossier. The withdrawal now is unconditional to him.

**The Speaker** (Hon. Lusaka): Order, Members! That matter also ends there. Proceed, Sen. Wambua.

**The Senate Majority Leader** (Sen. Murkomen): On a point of order, Mr. Speaker, Sir. First of all, I congratulate the Senate Minority Leader because it is rare to find a situation where he is such humble and supportive of the Standing Orders as they are.

**The Speaker** (Hon. Lusaka): Senate Majority Leader, I hope you are not opening the debate because I have already made a ruling on that matter.

**The Senate Majority Leader** (Sen. Murkomen): Mr. Speaker, Sir, I am congratulating him. I just wanted to know for the sake of the record. The Senate Minority Leader has relied heavily on his financial and economic advisor. In what capacity does the Senate Minority Leader have a financial and economic advisor? Is it in his capacity as the Senate Minority Leader or a presidential candidate?

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

**The Senate Majority Leader** (Sen. Murkomen): Mr. Speaker, Sir, I have not concluded what I am raising.

**The Speaker** (Hon. Lusaka): The Senate Majority Leader, I am on my feet.

I have made a ruling on that matter and it is now dead in this House. If it comes up again, we will give him an opportunity to substantiate.

Proceed, Sen. Wambua.

WITHDRAWAL OF ALLEGATIONS MADE  
IN THE HOUSE BY SEN. WAMBUA

**Sen. Wambua:** Thank you, Mr. Speaker, Sir. I stand to comply with your directive yesterday that I substantiate the remarks I made on the Floor; that hon. Babu Owino was arrested on account of alleged insults directed at the President of the Republic of Kenya.

All material facts on the remarks made by hon. Babu Owino on 24<sup>th</sup> September, 2017; the subsequent mass protests and demands for his arrests in Githurai, Juja, Thika, Githunguri, Ruiru, Gatundu, and Kiambu towns, and the consequent arrest of the Member of Parliament on 25<sup>th</sup> September, 2017 are all matters in the public domain.

I sought a statement regarding the insults directed at the Kamba community and its leadership in good faith, to seek justice and restoration of dignity for the community. Dwelling on the circumstances under which hon. Babu Owino was arrested and charged would only dilute the import of the matter for which I sought the statement.

In regard to this, I wish to withdraw all references that I made on hon. Babu Owino and the President of the Republic of Kenya. If those statements created bad blood between me and hon. Senators who complained, I apologize.

**The Speaker** (Hon. Lusaka): Hon. Members, the hon. Senator meets the same fate. Yesterday, he made allegations which I ordered that he substantiates today, according to Standing Order 94. Since he has withdrawn and apologized, that matter also rests. I appeal to you, hon. Senators, that let us adhere to Standing Order No. 94 because

some statements that we make here are heard all over the world. We must adhere to what the Standing Orders demand of us.

### COMMUNICATIONS FROM THE CHAIR

#### VISITING DELEGATION OF TEACHERS AND PTA MEMBERS FROM ALLIANCE GIRLS HIGH SCHOOL

**The Speaker** (Hon. Lusaka): Hon. Members, before we proceed, I would like to acknowledge the presence in the Speaker's Gallery this afternoon of visiting teachers and members of the Parents Teachers Association (PTA) from Alliance Girls High School. I request each member of the delegation to stand when called out, so that they may be acknowledged in the Senate tradition.

They are:-

1. Florence Inyangala
2. Esther Wambua
3. Yvonne Ragira
4. Florence Otlo
5. Benjamin Kipchirchir
6. Laura Mulimi
7. Fridah Kariti
8. Daniel Mutisya
9. Ann Nderitu
10. John Thiong'o
11. Richard Bett
12. Mark Matuga
13. Dr. Jackeline Nyerere
14. Major (Rtd.) Joseph Kibara

On behalf of the Senate and my own behalf, I welcome them to the Senate. I wish them well for the remainder of their stay.

Thank you.

**The Speaker** (Hon. Lusaka): Sen. Moses Wetangula.

**The Senate Minority Leader** (Sen. Wetangula): Thank you, Mr. Speaker, Sir. In the tradition of the House, on behalf of the leadership of the alternative Government, I wish to join you in welcoming the teachers of Alliance Girls High School to the Senate of the Republic of Kenya. I salute the school for its continued outstanding performance in examinations, discipline and rolling out and producing excellent young female Kenyans who end up playing a critical role in the socio-economic fabric of this country.

I encourage that schools of the stature and status of Alliance Girls High School, as role models to other schools, should continue to benchmark with other schools, to pass on the good practices; to allow other emerging schools to visit them and pick the good practices that have made them an icon in our country. I encourage them not to be disheartened by the recent drastic drop in the number of Grade As that they always churn out because of the choreographed mismanagement of examinations in the country. I have

no doubt that they will re-climb the ladder to perch themselves at the top, where they belong.

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

**Sen. (Dr.) Zani:** Thank you, Mr. Speaker, Sir. I also take this opportunity to join you in welcoming the members of the PTA from Alliance Girls High School. Alliance Girls High School is one of the schools that are well known. I am happy that it is a girls' school that is representing here today on the International Day of Women. Please, teach these girls to be women of standards, virtue and pride; that they can step up and fly among and above all the eagles. The glass ceiling was long ago broken and it continues to be broken every other day. Let them know that they can make leaders that can stand and their words can be heard. They can contribute to policy development and stand to be counted as women of Kenya that made a difference.

We thank you for the work you do for them; in the way you nurture and help them in all that they do. As you go back, please, also inform them about the Senate. We oversight the counties to ensure that they are well run and make devolution work. They are part of that journey as well. I hope that very soon they will also come here as a delegation of girls to visit us to see the work that we do.

Thank you, Mr. Speaker, Sir.

**The Speaker** (Hon. Lusaka): Proceed, Sen. Mutula Kilonzo Jnr.

**Sen. Mutula Kilonzo Jnr.:** Thank you, Mr. Speaker, Sir. I would like to disclose that one of the best students in my scholarship programme, Victoria Mueni got a Grade of B+ from Alliance Girls High School, coming from a very poor background. Therefore, I thank these teachers for the good example they are showing.

Secondly, I recently noticed that they celebrated 70 years of existence. It is a very old school. Thirdly, one of their teachers got their name into the judgment of Miguna Miguna. I cannot remember the name of the teacher, but the famous quote is that the teacher told the daughter of Justice Kimaru every time they failed: "return, reboot," something like that.

Therefore, you are well placed in terms of the work that you do. What impressed me from the Judge, who says he is a member of the board, is that this is one school that does not send girls away. If all schools were to emulate that example, then the girls of this country--- On a day like this when we are celebrating the International Women's Day, we celebrate Alliance Girls' High School, Kikuyu.

Thank you, Mr. Speaker, Sir.

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

**Sen. Farhiya:** Thank you, Mr. Speaker, Sir, for giving me the opportunity to also welcome the teachers and Parents' Teacher Association (PTA) of Alliance Girls' High School, Kikuyu. I happen to be a proud product of the school. I, therefore, thank the school for giving me this opportunity to be a part of this Senate.

Mr. Speaker, Sir, I also want to correct what Sen. Wetangula has just said. By the way, Alliance Girls' High School Kikuyu was ranked number one in 2016. Then last year, they ranked among the top ten. What affected them was the bad system, but when the system was corrected, they came to their rightful position. That is what I wanted to clarify.

Therefore, Mr. Speaker, Sir, I thank the Board of Alliance Girls' High School, Kikuyu, for churning out women of substance in this country. I also thank them for inculcating both leadership and integrity in the girls they churn out. I thank you for all the good work you are doing.

**The Speaker** (Hon. Lusaka): Actually, these are teachers and a few members of the PTA of Alliance Girls' High School Kikuyu and not the board.

**Sen. Farhiya:** Thank you, Mr. Speaker, Sir, for the correction.

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

**Sen. (Prof.) Onger:** Thank you Mr. Speaker, Sir. Let me also add my voice to that of my colleagues in congratulating this very wonderful school. Sen. Faki has just reminded me that I was one of the Ministers who announced Sen. Farhiya's results, and she now finds herself in this House. It is a very pleasant surprise that you performed exceedingly well.

Let me also put it on record that my firstborn daughter is also an alumnus of Alliance Girls' High School, Kikuyu. She is one of our top performers and is currently a Chief Executive of an oil company. Therefore, the school has done a marvelous job for this Nation and continues doing so. We even plucked a leaf from you and took it to Kisii County, where we now have Nyabururu and Ichuni Girls' schools following you footsteps and, soon, they will topple you. So, watch your steps.

Thank you, Mr. Speaker, Sir.

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

**Sen. Orengo:** You can speak for both of us!

**Sen. Wako:** Thank you very much, Mr. Speaker, Sir. I, too, want to add my warm welcome to the PTA and teachers of Alliance Girls' High School, Kikuyu. You forgot the word 'Kikuyu.' It is 'Alliance Girls' High School, Kikuyu;' just like Alliance High School Kikuyu.

*(An Hon. Senator spoke off record)*

The postal address is P.O BOX, 7 for the Boys' School; I do not know the one for the girls school. Being an old boy of Alliance High School, Kikuyu, the Girls' School was a 'hunting' ground in the "valley," particularly on Saturday and Sundays. I am pleased to say that as I am always very successful. I succeeded in getting my better half, who was an old girl of Alliance Girls' High School, Kikuyu.

*(Laughter)*

I think my dear friend, Donald Wachieni Kaniaru, otherwise known as the 'son of man,' has been the Chairman of the PTA for quite some time. Through him, I have come to know what has been going on at Alliance Girls' High School, Kikuyu. I want to commend you for what you are doing. I am very pleased that the PTA and the staff are working together, as shown by the joint delegation to the House. Where the two are working together, they will, no doubt, produce good results; not only in examinations but, more importantly, also in the good nurturing of the girls in all aspects of life. Alliance

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Girls' High School, Kikuyu has produced pioneer ladies in this Republic. I am quite sure that if you look at the top fifty women whom I saw in the newspapers today, you will find that a majority of them came from the school.

So, mine is just to wish you well and encourage you to continue the good work and to maintain the high standards expected of the school. Therefore, be an example to other high and secondary schools in Kenya.

*(Sen. Orengo spoke off record)*

My neighbour here, Sen. Orengo, confirms all that I have said, because he is also an old boy of Alliance High School Kikuyu. But he did not quite succeed in the 'activities' in the valley.

*(Laughter)*

He thought he would get his best half from somewhere in Nairobi, but he missed out on something there. Therefore, continue your good work.

Thank you, Mr. Speaker, Sir.

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

Proceed, Sen. (Dr.) Langat.

**Sen. (Dr.) Langat:** Thank you, Mr. Speaker, Sir. I join other Senators in congratulating Alliance Girls' High School, Kikuyu, who have joined us this afternoon. I congratulate them for the continuous integrity in the conduct of their exams. The school has never been suspected or mentioned in any way concerning the integrity of exams in this country.

Secondly, I wish to congratulate them for holding a very important mentorship program this year. That program brought together around 6,000 students from various schools in this country, where I and Sen. Wamatangi were among the chief guests. It was very important to you because you showed other schools what you are doing and modelled them in that particular program. I urge you to continue with the same so that, next year, you will have even more students attending the program.

Mr. Speaker, Sir, I was a lecturer at Moi University for 12 years, teaching some subjects in the Schools of Medicine and law, particularly communication skills. No student from Alliance Girls' High School Kikuyu was suspended or referred in the courses they were doing there; congratulations for that.

Mr. Speaker, Sir, this year when you sent me to Fiji to represent this country in the Commonwealth Education Program, we were together with the former Alliance Girls' High School principal, Madam Dorothy. She is serving this country at a higher level as an education attaché. Therefore, we congratulate the school for everything they are doing in the production of high calibre ladies who are serving in various departments in this country.

Thank you, Mr. Speaker, Sir.

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

**Sen. Kasanga:** Thank you, Mr. Speaker, Sir. Let me, as well, congratulate the teachers and PTA of Alliance Girls' High School, Kikuyu. We interact a lot with the students who have come from there. Without even belabouring the point, my call for you is that we need more women leaders. We would challenge you to create a program that can help young women to interact with women leaders in a bid to train and mentor them to also join this level of leadership. Congratulations, once again.

Thank you, Mr. Speaker, Sir.

**Sen. Sakaja:** Mr. Speaker, Sir, I was actually on a point of order. Even as we appreciate the good teachers of Alliance Girls' High School who do a lot in moulding the morality of our children and creating leaders of the present and the future; there is a trend we have noticed; that students from schools who visit the Public Gallery of late are not being recognized. As we have been talking about the wonderful teachers of Alliance, there were other students seated in the Public Gallery and have been let go. I would ask that they are brought back so that we recognize them as well. It will not do well, even for their own esteem, if they are ignored.

All in all, we thank the teachers of Alliance for visiting and the amazing work that they do. We hope that from time to time, they will send their students to come and see how the Senate of Kenya operates.

**The Speaker** (Hon. Lusaka): We are finding out whether the students are still within the precincts of Parliament to be brought back.

Sen. Seneta.

**Sen. Seneta:** Thank you, Mr. Speaker, Sir, for giving me a chance to add my voice in welcoming the teachers and members of the Parent Teachers Association (PTA) of Alliance Girls' High School. I celebrate the International Women's Day with them and the women of the whole world.

We congratulate them for their continuous good performance. I understand that their Motto is 'Walk in the Light'. Therefore, we want them to 'walk in the light' as other schools try to emulate them.

Thank you, Mr. Speaker, Sir.

**The Speaker** (Hon. Lusaka): Yes, Sen. (Dr.) Musuruve.

**Sen. (Dr.) Musuruve:** Mr. Speaker, Sir, thank you for giving me this opportunity to also support you and fellow Senators in welcoming the PTA members and teachers of Alliance Girls High School.

They have come at an opportune time. This is a day when the whole world is celebrating the International Women's' Day. Women have gone through an evolution over time. There was a time when a woman was just confined to the kitchen and was not helping in economic development. However, we have seen the woman and the girl-child evolving in terms of education. Long time ago our girls were not being educated; they were groomed for marriage. We have seen an evolution in the girl-child, who is now being educated and getting economic empowerment.

I am happy that Alliance Girls' High School is here. It shows that they are keen to see to it that the girl-child is groomed into leadership. This is what we want for this country. We are talking about affirmative action so that the girl-child also pops out.

I commend the school for creating some time to come here and interact with leaders. I am sure that they will pick a leaf from this House. Even as they do their delegated mandate of teaching, I am sure they will mentor these girls, so that they eventually get into leadership.

Mr. Speaker, Sir, it is good for other schools to emulate what Alliance Girls' is doing. They should bring the girl-child to come and see what we are doing. This will eventually help and train them to get into leadership.

I also want to commend the boys' school that has come. We need to encourage our boys together with our girls, so that they can be partners in the development of this country.

Thank you, Mr. Speaker, Sir, for giving me this opportunity. Welcome, Alliance Girls' High School. .

**The Speaker** (Hon. Lusaka): Yes, Sen. Kinyua.

**Sen. Kinyua:** Asante sana, Bw. Spika. Najiunga na wenzangu kuwapongeza waalimu wa Starehe.

**An hon. Senator:** Alliance!

**Sen. Kinyua:** Nilitaka kujua kama mnanisikiza. Nimeamua kuongea kwa lugha ya Kiswahili kwa sababu mwalimu wa Kiswahili yuko pale.

**The Speaker** (Hon. Lusaka): Order! Address the Chair and not the visitors. *Usitupe macho kule sana; ongea na Spika.*

**Sen. Kinyua:** Asante sana, Bw. Spika. Najiunga na wenzangu kusema ya kwamba kazi ambayo waalimu hawa wamekuwa wakifanya katika shule ya Alliance Girls ya kuwafunza vijana wetu----

*(Loud consultations)*

**Sen. Kinyua:** Bw. Spika, wenzangu wanarikosoa lakini nikisema 'vijana' namaanisha wasichana na wavulana. Wote wanaitwa 'vijana.' Hawaelewi lugha.

Baada ya hawa vijana kutoka sekondari wanabobea katika fani ambazo wanaingia kuzifanya. Kwanza ni furaha kwa sababu wamekuja siku ambayo ni manufaa sana. Leo ni siku ya akina mama na ningeomba waendeleo na msimamo huo huo. Wakiendelea hivo najua Kenya yetu itafika katika kiwango ambacho tungetaka wanadada wetu wafike.

Asante sana, Bw. Spika.

**The Speaker** (Hon. Lusaka): Thank you Hon. Senators. Let us make progress.

Sen. Halake is to issue a Statement.

## SENATOR'S GENERAL STATEMENT

### THE INTERNATIONAL WOMEN'S DAY

**Sen. Halake:** Thank you, Mr. Speaker, Sir, for giving me the opportunity to make a Statement on the International Women's' Day.

Pursuant to Standing Order 46 (2) (a), I rise to issue a Statement on the International Women's' Day 2018, which is today. As the Senate, it is important that we

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recognize the women of this country and around the world on this auspicious day. This day is over 100 years old and is a major day of global celebration for the economic, political and social achievements of women. It makes women of the past proud, women of the current inspired and women of the future envisioned. It is a day women around the world unite in thought, prayers, struggle, hope, aspirations and dreams.

Women's contributions in the fields of Medicine, Law, Science, Public Service, Sports, among others, have made this world a better place. This is, indeed, an opportunity not only to reflect on the accomplishments of women, but also create a connection with all the women around the world. As this Senate, I stand to ensure that, that happens on this day.

Mr. Speaker, Sir, today we stand with our sisters, especially those who know no peace. Behind every wall and door, there are women who know no peace. We stand with those who struggle to make ends meet and those who are oppressed and victims of all sorts of violence, sexual and others. We stand with those who have no access to healthcare. We hold all those women in our hearts.

As part of our outreach on the International Women's Day, Sen. Chebeni, Sen. Omanga and I spent the morning at the Lang'ata Maximum Women's Prison, where we stayed with the women and their children. There are over 50 children whose mothers are serving time in Lang'ata Women's Prison. Some of the women are there because they could not raise a fine of Kshs1,000 or Kshs2000. It is a shame for us to have such petty offenders being held in our prisons for such kind of amounts. We should look at alternative ways of correcting some of these things. We learnt that some of the hawkers who cannot pay a Ksh1,000 are being held there.

We are here to make sure that some policies and legislation that will provide for alternative ways of dealing with women petty offenders are looked into on the Floor of this House. My heart, therefore, goes out to especially those women that are pregnant in prison. There are pregnant women who give birth while in prison. It is a fact that the pregnant women rarely receive adequate antenatal care under such conditions.

It is also widely acknowledged that children of these women grow up and experience multiple and complex problems, social and otherwise. They are often overlooked as a group in its own right of special needs. These children require political recognition and research attention. There is also need for criminal justice and wider health education, social care policies and practices to address the serious and wide-ranging implications of parenting in imprisonment. In every county we see these women with their children serving sentences for very petty offences.

Mr. Speaker, Sir, Article 53 of the 2010 Constitution recognises the need for all children to be protected from abuse, neglect, harmful cultural practices and all forms of violence, inhumane treatment and punishment. It affirms that children have basic rights, including the right to education, nutrition, shelter, healthcare and parental care. These provisions are aligned with those cited both in the Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child (ACRWC) to which Kenya is a signatory. We urge the Senate to legislate, domesticate and cascade these charters.

The theme of this year's International Women's Day is "*Press for Progress*". There is nowhere better to press for progress than within this House. I urge all the Senators to, please, make sure we press for the progress of women. Last night I was reading the World Economic Forum Report. It says that we need 217 years to catch up and for gender disparity to be eliminated. We have no time to waste; 217 years is way too long for women to wait to get equality and equal opportunities both in work and other areas. Therefore, I know as a country we have made some progress in making our prisons, especially women ones, to have some level of good playing field. I look forward to this House pressing for progress.

Thank you.

*(Applause)*

*(Interruption of Statements)*

### COMMUNICATION FROM THE CHAIR

VISITING DELEGATION OF TEACHERS AND STUDENTS  
FROM ACHEGO SECONDARY SCHOOL

**The Speaker** (Hon. Lusaka): Hon. Senators, before I give Sen. (Dr.) Zani the floor, I would like to acknowledge the presence in the Speakers Gallery this afternoon, of students and teachers of Achego Secondary School in Migori County.

On behalf of the Senate and on my own behalf, I welcome them and wish them well for the remainder of their stay.

*(Applause)*

I can see Sen. M. Kajwang' is very excited about the school. Sen. M. Kajwang', I will give you an opportunity to speak. Let us first hear Sen. (Dr.) Zani.

*(Resumption of Statements)*

**Sen (Dr.) Zani:** Thank you, Mr. Speaker Sir. I stand to support the Statement that has been given by Sen. Halake because it is an important one. But, in the meantime, the young men from Migori County have been introduced. Thank you for coming here this afternoon. You have already watched quite a bit for about 10 to 15 minutes of the work that we do here. When you go back, please tell your colleagues what you have seen and the work that we do in the Senate.

On Sen. Halake's Statement, through the Speaker, this is very important. I read through the post about Sen. Halake and the team that she led to the women's prison today. It is sad especially for the children who are there because their parents are there. This is an issue that came up probably two years ago but somehow, it always gets relegated backwards instead of it being addressed. I support that we must, at the level of

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the Senate specifically at the level of the Kenya Women Senators Association (KEWOSA), make this an issue that we must address.

We need to look at the legislation gaps that exist. I am sure these children can still have members of their own families take care of them. The problem is that there is a labelling theory to it. There is also a learning theory that over time they might end up learning some of the techniques of being criminals because they hear criminals speak from here to there. These children get labelled because their mothers were in prison and people say they were all in prison.

This Statement is very important. We thank you, Sen. Halake for that contribution. We support it and we should look at it further.

**The Speaker** (Hon. Lusaka): Sen. M. Kajwang', the floor is yours.

**Sen. M. Kajwang'**: Thank you, Mr. Speaker Sir. Allow me to take this opportunity to welcome the boys from this great school in Migori. You know that the Senator for Migori County has been away for a while with your permission. What, maybe, the nation does not know is that I am the acting Senator for Migori County

*(Laughter)*

When people come from Migori, it is my duty to welcome them. I hope we will catch up and with your permission, Mr. Speaker, Sir, I hope you will allow me to buy them tea at some point.

One lesson that I would like the boys and teachers from Migori to leave with from the Senate is that, even though you are in some corner of the country where you might think that Murang'a, Kiambu and Machakos counties are far, when you come to the Senate and see us sitting together, and talking to each other and not fighting each other, take that message back, that, Kenya is one. The tribe and the party do not mater. What is important is the ability for us to talk and solve the issues that face us as a nation.

*(Applause)*

The old men and women here, Sen. M.Kajwang' and Sen. Haji included, their future is shorter than their past, but for you, your future is longer than your past. I encourage you to take that message of unity back to Migori County.

Thank you.

**The Speaker** (Hon. Lusaka): Let us have, Sen. Kasanga Sylvia.

**Sen. Kasanga**: Mr. Speaker, Sir, I want to throw my weight on the Statement that has been made by Sen. Halake, if that is okay.

Today is International Women's Day and I appreciate that Statement that has been made because it is very close to my heart. As you know, the difference between Mother's Day and International Women's Day is that whereas the Mother's Day honours motherhood and sacrifices that mothers make for their families and their children, the International Women's Day recognises the achievements of women no matter their race or ethnicity and celebrates the strength and will of women.

I recognize the women in this country who have transcended all odds and gone on to pursue jobs in male dominated industries. One case in point was highlighted yesterday in the news where there was a lady who is a matatu driver and she explained the challenges she goes through as a woman given that, that particular industry is seen to be dominated by males.

Today, the fight for gender equality cannot be done without men. I urge the men in this House to help and support us when we put forward policies and laws that can help women. We hope that we can get that support.

Thank you.

**The Speaker** (Hon. Lusaka): Hon. Senators, those who will be welcoming our students I will give you one minute to do that.

Sen. Sakaja, you have the floor.

*(An hon. Senator spoke off the record)*

**Sen. Sakaja:** Mr. Speaker, Sir, I do not know why a Senator is protesting when others are talking.

First, I support the Statement on International Women's Day. The women of this country have made several strides over the past few years in achieving gender parity and actually having a quota in the Constitution in terms of representation. We are far ahead of many other countries, but more needs to be done. In the last Parliament, I was an honorary member of the Kenya Women Parliamentarians Association (KEWOPA) because of the support that I give to women. I hope that in this Parliament I can also be an honorary member of KEWOSA to keep supporting Kenyan women.

As the Chairperson of the Standing Committee on Labour and Social Welfare that addresses issues of gender parity, one of the issues that we will be bringing to this House-- This morning, I had a meeting with 2,000 young girls from Nairobi about access to Government procurement opportunities. We created 30 per cent opportunities for them in law in the last Parliament, but many counties are not giving contracts to young women, youth and Persons with Disabilities (PWDs). I hope that is something that the other Senators will support.

I urge my male colleagues that in supporting the agenda of women, we are not doing them a favour; we are doing our nation a great service. Let us be at the fore front even when the Bill on representation to support the two-thirds gender rule comes to this House. We should pass that Bill. Let it be sponsored by a man and all of us will be able to support it.

Finally, to welcome the boys from Migori, when you go home, please tell them; *wan kanyachiel*.

Thank you.

*(Applause)*

**The Speaker** (Hon. Lusaka): Sen. Samson Ongeru, you have the floor.

**Sen. (Prof.) Ongeri:** Thank you, Mr. Speaker Sir. I add my voice in welcoming the immediate neighbours of Kisii County. Migori County is not only an immediate neighbour of Kisii County but also of Homa Bay County. So, in welcome the young men - are there women there? I see none - you are the future leaders of this nation and, therefore, it is encouraging when you see these young people coming to watch what is happening in the top most law-making organ of this nation, the Senate.

Secondly, I want to add my voice to the International Women's Day. It is a powerful day because I realised when I woke up that if I do not say congratulations to women, I would suffer the event of not being given dinner. So, I quickly adjusted and said congratulations on the International Women's Day. In many societies, women keep homes going. Men run away from homes and women keep homes going and the children growing. We owe them a lot of congratulations for what they are doing for this nation. May God bless the women of Kenya.

**The Speaker (Hon. Lusaka):** Let us have, Sen. Waqo Naomi.

**Sen. (Rev.) Waqo:** I am Senator Waqo with a "q".

*(Laughter)*

Mr. Speaker, Sir, first of all, I welcome our young men from Migori and I encourage them to continue growing in wisdom. The future of our country depends on them. Many people talk about the boy-child because there is a feeling that we have neglected them and they are intimidated in a way. In Africa generally and in Kenya specifically, we value the boy-child. So, we have a lot of hope in them and we have no doubt that in future some of them will be sitting on the chairs that we are sitting on. I welcome them and they should pass our greetings to the people when they go back.

I also want to add my voice on the Women's Day. I appreciate Sen. Halake for her wisdom in bringing this to us. This morning I met *Amani Women*, a group of about 200 women advocating for peace. Women are doing great work in this country and we need to appreciate their efforts and acknowledge their presence and their great work.

I thank you.

**The Speaker (Hon. Lusaka):** Sen. Olekina, you will have one minute.

**Sen. Olekina:** Mr. Speaker, Sir, I also take this opportunity to welcome the youth from Migori County, which is my neighbour. I encourage them to look at these leaders here and identify a mentor. One of the big mistakes that we make nowadays is that as leaders, we think we will die with our knowledge. We need to encourage the youth and mentor them so that they can be the future leaders. If we do that, we will avoid the problems that we have today. So, I encourage them that when they go back home, they need to look for people to mentor them so that one day they will also sit here.

Finally, I wish all our mothers, sisters and women all the best during this day. May they enjoy it. We will support them because we are here because of them. God bless them.

**The Speaker (Hon. Lusaka):** Honourable Senators, we need to make progress. I will ask the Senator for Wajir, Dr. Abdullahi Ali to seek a statement.

## STATEMENTS

## EMPLOYMENT REQUIREMENTS FOR FRESH GRADUATES

**Sen. (Dr.) Ali:** Mr. Speaker, Sir, pursuant to Standing Order No.46(2)(b), I rise to seek a statement from the Chairperson of the Standing Committee on Labour and Social Welfare regarding employment requirements for fresh graduates. In the statement, the Chairperson should:-

(1) Explain the Government policy on recruitment and especially recruitment of fresh graduates, state the mandatory requirements for recruitment and whether availing of clearance certificates from the Higher Loans Education Board (HELB), the Kenya Revenue Authority (KRA), the Credit Reference Bureau (CRB) and a certificate of good conduct are part of Government policy, and where the Government expects the fresh graduates to get the money from.

(2) State whether the Government has conducted an analysis of skills and competencies required vis-à-vis the skills available in the job market.

(3) Explain the extent to which tertiary institutions get involved in the analysis and measures that they have put in place to address the skills gap in the job market, if any.

(4) State the measures that the Government has put in place to ensure that all job seekers are treated fairly during recruitment.

I thank you.

**Sen. Sakaja:** Mr. Speaker, Sir, I have the answer. It is similar to a statement that was requested a few weeks ago by Sen. Chebeni whose answer I was to give today. Do I give the answer or should I wait for---

Mr. Speaker, Sir, you need to give guidance. Why are similar statements approved from the Clerk's Office because the issue is the same?

**The Speaker (Hon. Lusaka):** Sen. Sakaja, that matter came up yesterday and we gave a ruling on how we should proceed. So, you can give the answer on Tuesday.

**Sen. Sakaja:** Mr. Speaker, Sir, the statement he is seeking relates to a statement that was requested three weeks ago by Senator Mercy Chebeni regarding the National Employment Authority because that is the body that deals with those issues.

With your guidance, instead of responding because I can see Sen. Chebeni is not here, unless I am not seeing right, could I consolidate them both and give the response on Tuesday?

**The Speaker (Hon. Lusaka):** I order that you consolidate them and give the answer on Tuesday. Sen. M. Kajwang', what is your point of intervention?

**Sen. M. Kajwang':** Mr. Speaker, Sir, I want to tread very carefully and please stop me if I veer off. There is a matter that was ruled on yesterday that I have agonized over. This is where a Member requests for a statement and the Chairman is ready with an answer on the spot. My understating of the role of a Chair is that he chairs a committee. A Chair does not exist if there is no committee. So, when a Member requests for certain answers and the Chair offers to respond on the Floor, it then becomes out of order because the committee that he chairs has not deliberated on the matter.

Secondly, I have also agonized on this. Execution lies outside this legislature because we do not execute but legislate. When a Member asks a question, he or she expects that the Executive wing will make certain responses. I have agonized over this and, in my view, it is not in order for a Chair or a committee to purport to have all the answers that would come from the Executive wing. The precedent could be that I can be a “mister know-it-all” and if questions come before the House I quickly give an answer and that closes the matter.

Mr. Speaker, Sir, I do not want to reopen your ruling but it is something that I beg that you consider for the sake of this House. We must avoid a situation where we use committees to shield the Executive or prevent the House from querying the actions of the Executive.

**The Speaker** (Hon. Lusaka): Honourable Members, ideally, a statement should go to the committee unless it relates to the same matter. Sen. Sakaja said that he will consolidate the two and give an answer. He said that the statement being sought is similar to what has been asked.

**Sen. Sakaja:** Mr. Speaker, Sir, just to follow on what Sen. M. Kajwang' has said, there could be a matter that is being dealt with by a committee and the Chair of the committee is the spokesperson of the Committee. There is a matter that the Committee has already dealt with and the Chair can give a response. I do not need to write to the Ministry of Labour and Social Protection to ask them about the unemployment rate when the Economic Survey and the Census Reports are publicly available documents. We might also be bogging them down, but we are not shielding them. For efficiency, we should proceed if something is available.

**Sen. (Dr.) Zani:** Mr. Speaker, Sir, the document might be available but it has not been validated. What we want is validation because if somebody speaks here on behalf of a Cabinet Secretary, it is the Cabinet Secretary speaking through them.

I have also agonized about statements not being read when persons who sought them are not there. The issue was raised in the Eleventh Parliament and I am just wondering. Is it not time we thought statements are owned by the House? Statements should be read to Members present. If the person who sought a statement is not there, they can bring the matter up again if they need clarity or specificity.

We will begin blaming Chairpersons in this Chamber for not giving statements because of waiting for persons who sought for them to be there. A statement belongs to the House and not the person who sought for it.

**The Speaker** (Hon. Lusaka): Hon. Members, the Statement belongs to the House. It is the responsibility of whoever seeks for a Statement to be in the House to receive the answer. However, in the event they are not here, then the Statement belongs to the House. It should be responded to and thereafter if the person who sought the Statement is not here, they can follow through the HANSARD or reintroduce the Statement.

The Chairperson, Standing Committee on Labour and Social Welfare is to issue a Statement on the state of the Kenya National Employment Authority (KNEA).

**Sen. Sakaja:** Thank you, Mr. Speaker, Sir, for your direction on the issue of responding to Statements. This is one of the Statements requested by a Senator who is not present but following your ruling, I will issue it.

**Sen. Mutula Kilonzo Jnr.:** On a point of order, Mr. Speaker, Sir. Before the Statement is responded to, I will refer to Standing Order No.1 where we had a practice. That practice and tradition was accepted in the Eleventh Parliament that a Statement should not be read when the Senator who has requested for it is not here unless the Speaker is satisfied that the Senator requesting for that Statement has been absent deliberately and on several occasions. That is what we did. The Table Office can confirm this. You could possibly have given somebody leave and they are not here and the Statement is read. Let us be clear about the practice. If it has changed, then we should know. However, that is the tradition that we were using.

Thank you.

**Sen. Khaniri:** Mr. Speaker, Sir, indeed, I want to support that position; that there is no provision in the Standing Orders on this matter. However, we established a tradition or practice, as has been stated by the Senator for Makueni County, that a Statement is only issued when the Senator who requested the Statement is present. That has been the practice, unless for the reasons that have been advanced by the Senator for Makueni County. Otherwise, we should not deviate from that practice.

**Sen. (Eng.) Hargura:** Mr. Speaker, Sir, whereas I agree with my colleagues, the tradition in the Tenth and Eleventh Parliaments has been when a question is asked from Ministries and the Senator who had asked is not there, the question is dropped at the discretion of the Speaker. So, can we look at the question of somebody who is deliberately not available? We can have that Statement dropped instead of waiting indefinitely for the Senator to be present so that the Statement is responded to.

**The Speaker (Hon. Lusaka):** Hon. Senators, that was the Eleventh Parliament. This is the Twelfth Parliament. I am the Speaker and I have given directions that Statements will be issued unless the Senator who is seeking the Statement is not there without my permission, I will inform the hon. Senators.

Sen. Sakaja, you may proceed.

**Sen. Sakaja:** Mr. Speaker, Sir, I seek your indulgence because I thought that Sen. Chebeni had actually requested to be absent from the House. She had mentioned that she may not be present. In that case, I am willing to do it later. However, please provide a standard procedure, if a Member wishes to absent themselves how can they notify you?

Secondly, please be tough on the Members who ask questions and are not in the House as the Chair has been on Chairpersons who are not readily available with the answers. I have many responses but many of the Senators who requested the Statements are not in the House.

**The Speaker (Hon. Lusaka):** Hon. Senators, that is why I have said that it is important that when we ask questions, we be in the House unless a Member is away with my permission. This is so that I will be able to explain to the hon. Senators. Otherwise, if you ask questions and you are not there we cannot wait indefinitely. I will take it that you

are asking a question just for the sake of it. If you are serious, you must be able to follow up on what you have sought and be able get that answer.

Sen. Sakaja, you may proceed.

STATUS OF THE KENYA NATIONAL  
EMPLOYMENT AUTHORITY

**Sen. Sakaja:** Mr. Speaker, Sir, the Statement sought was on the Status of the Kenya National Employment Authority. The response is as follows:-

The first question was to table in the Senate the register of job seekers kept by the Authority and of those who have gained employment through the Authority. It should be in the record of the House that the Kenya National Employment Authority (KNEA), which was set up in 2017 through an Act of Parliament, transformed from the former National Employment Bureau (NEB) that used to be housed in the then Ministry of Labour. The number of jobseekers who have been registered between 2008 and 2015 are 100,665.

**The Speaker** (Hon. Lusaka): Order, Sen. Sakaja. Is that the same Statement that you said will be enjoined with the Statement that will be given next Tuesday?

**Sen. Sakaja:** Mr. Speaker, Sir, not necessarily, it is not.

**Hon. Members:** Ahhh!

*(Laughter)*

**The Speaker** (Hon. Lusaka): Order Sen. Sakaja!

**Sen. Sakaja:** Mr. Speaker, Sir, the question that Sen. (Dr.) Ali has asked for; No.1 is about graduates and their requirements like HELB and the Certificate of Good conduct. I would wish to combine his with the question asked by Sen. Prengei who asked yesterday on similar issues of employment of youths. That is what I meant.

**The Speaker** (Hon. Lusaka): Which answer did you want to give today?

**Sen. Sakaja:** Mr. Speaker, Sir, the one on the Order Paper.

**The Speaker** (Hon. Lusaka): Okay, if they are different then you can proceed.

**Sen. Sakaja:** Mr. Speaker, Sir, I also mentioned that many of the Statements that came are similar.

Mr. Speaker, Sir, those are the numbers for registered jobseekers from 2008 to 2015. For 2016 to 2017, the total number of registered jobseekers is 18,616 and those who were placed are 10,773. The register for jobseekers placed through the Authority are normally retained in the respective county employment offices.

The second question was on the measures the Authority has undertaken to create awareness of its existence and mandate among the youth. Here, I do not agree with the Cabinet Secretary for Labour, Social Security and Services because there is much more that they can do and we are going hard on them on that. The measures include:

- (1) Participation in exhibitions and trade fairs and shows;
- (2) Development of the National Employment Authority website;
- (3) Placing adverts in the print media;

- (4) Inviting the media to cover stakeholders' meetings;
  - (5) Public participation in development, launch and validation of policy documents, strategic plan, *et cetera*; and,
  - (6) Use of National Employment Authority branded billboards in our field offices.
- That is the answer, it is a poor one.

The third question was to explain whether the Authority has developed strategies to mainstream issues of gender, youth, the marginalised and Persons with Disabilities (PWDs) into employment programmes.

The Authority has developed a Sessional Paper on Employment Policy and Strategy which was discussed in the National Assembly. It outlines the various strategies of promoting employment; key among them being addressing gender disparities in access to employment by the youth, the marginalised and PWDs. An action plan has been developed to actualize the strategy on employment.

On registration and placement of jobseekers, the Authority gives equal opportunities to all but gives preference to the marginalized and PWDs.

Mr. Speaker, Sir, the Authority keeps and maintains registers at the head office and field offices of all job seekers seeking employment with the following particulars:-

- (1) Age and particulars of the job seeker;
- (2) Academic qualifications;
- (3) Work experience, if any;
- (4) Contact details;
- (5) The county from which the job seekers come;
- (6) The ethnicity and tribe of job seekers, if known; - This was deliberate to ensure that there is balancing in employment;
- (7) Details of whether the job seeker is living with any form of disability or challenge to make sure PWDs have opportunities;
- (8) Gender;
- (9) Area of specialization, interest or qualifications.

*(Loud consultations)*

**The Speaker** (Hon. Lusaka): Order, Members. Let us consult in low tonnes. Proceed, Sen. Sakaja.

**Sen. Sakaja:** Mr. Speaker Sir, referral of jobseekers to employers for various employment opportunities is done considering the gender, youth, the marginalized and PWDs. Employers are also encouraged to consider them during selection and placement.

Mr. Speaker, Sir, the fourth question was on the number of private employment agencies registered in Kenya. They are 53 registered agencies. I will not name them but I will table the response.

Mr. Speaker, Sir, the fifth question was to explain the mechanisms of accreditation of private employment bureaus and agencies. As listed here, they include:

- (1) Submission of a written application which is accompanied by originals and copies of the following documents-
  - (a) National Identity of the Director(s);

- (b) Work permits, if the director(s) is a non-Kenyan;
- (c) Certificate of registration/incorporations from the Registrar of Businesses or Registrar of Companies;
- (d) Current licence by the local authority or county government in the area of operation;
- (e) A lease/Tenancy agreement
- (f) Police Clearance certificate from the Directorate of Criminal Investigations (DCI); and,
- (g) Two passport size photos of the director(s).

Mr. Speaker, Sir, inspection of the premises is done by the Authority to establish:

- (1) The staff and their qualifications;
- (2) Suitability of the premises;
- (3) Office facilities and equipment; and,
- (4) Licenses

Mr. Speaker, Sir, submission of registration documents to the Directorate of Criminal Investigations (DCI) and the Directorate of National Intelligence Services (NIS) is done for security and background checks. Vetting of the application is also done by an Inter-Ministerial Vetting Committee. Issuance of a registration certificate is done upon the payment of the fees specified.

Mr. Speaker, Sir, there was also a question on the legal framework for employment agencies. That is under the Labour Institutions Act, 2007 and the Employment Act, 2007.

Mr. Speaker, Sir, the other question was on the process of verification of the authenticity of an agency. That was not part of the question, but it is in the response, so I will not read all of it.

Mr. Speaker, Sir, on the data on Kenyan Migrant workers, I am glad that they admit that Kenya lacks comprehensive labour market information on the number, location, experience and resources possessed by Kenyan migrants for now. This is a matter that we are currently dealing with within my Committee. Lack of such data hinders establishment and maintenance of a centralized---

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

**The Speaker** (Hon. Lusaka): What is your intervention Sen. Madzayo?

**Sen. Madzayo:** Mr. Speaker, Sir, much as I appreciate what you have ruled, I would like to know if I am in a position to see the response to that Statement when Sen. Sakaja is through with reading it. I wonder if he is reading a response from the Ministry responsible or whether we are getting a response from the Senator's common knowledge. From the way he is reading that information, it does not look like one that came from the Ministry. I would like him to confirm if the document that he is reading is--

**The Speaker** (Hon. Lusaka): Hon. Senator, how do you know if somebody is reading a Statement---

**Sen. Madzayo:** Mr. Speaker, Sir, that is why I am asking how he is stating the facts before the House. Could he verify?

**Sen. Faki:** Mr. Speaker, Sir, yesterday there was a ruling by the Speaker that these Statements be given in summary for us to save time when dealing with such issues. Imagine if the Statement is ten pages and somebody takes ten minutes, we will not make progress.

**The Speaker** (Hon. Lusaka): What is your response Sen. Sakaja?

**Sen. Sakaja:** Mr. Speaker, Sir, we should decide if we want the Order on Statements or not. We ask for Statements on issues and a Statement like this one has ten questions and when you give responses, you are told that it is too long. We should decide as a House if we want them or not but I am summarizing. In fact, you have heard me skip sections of this response. I have skipped tables and lists.

For Sen. Madzayo, through you Mr. Speaker, Sir, I do not know how a response from a Ministry sounds like. I am flattered that he believes that I have such depth of information in my head. I assure him that this is signed by the Cabinet Secretary for Labour and Social Services, Hon. (Amb) Ukur K. Yatani.

Let me summarise as I finish.

The Authority is developing a labour market information system for migrant workers and Kenyans in the diaspora. This system will be linked to the newly launched Kenya National Labour Market Information System (KLMIS). The data will be useful in projecting labour demand in identified countries, estimating and projecting remittances, developing skills development programmes to meet foreign labour market demands, general dissemination of information on Kenyan migrant workers and those in the diaspora.

Programmes that are available to ensure that all Kenyan migrants in the diaspora in distress are assisted are:-

- (1) Posting of labour attaché;
- (2) Contributory fund; and,
- (3) Security Bond.

I will not read the paragraphs because the document will be available for all Senators in the Journals Office.

Other measures to enhance protection of Kenyan migrant workers are:-

(1) Institutional strengthening and coordination of migration issues by strengthening the Authority;

(2) Regulation of private employment agencies as is going on, and up to date register of licensed agencies;

(3) Bilateral labour agreements between Kenya and other countries. The Government has already signed one with the State of Qatar and the Kingdom of Saudi Arabia. The Government will fast-track negotiations of draft Bilateral Labour Agreements with key labour destination countries to streamline migration of Kenyan workers to the countries and ensure their protection. Joint working committees will also be established for effective implementation of the current and future bilateral agreements.

(4) Pre-departure training and orientation of the Kenyan migrants so that lack of information and such training, which leads to absconding of duty and subsequent premature termination of employment contracts, can be avoided. The response has more details on how that challenge is being addressed.

(5) Policy and legal reform.

The other question was on integration of Kenyan returning migrants and how they are integrated in the society. The Authority is pursuing the establishment of a Fund dedicated to the short term and the low skilled emigrants so that when they return, the funds are used for retraining and assisting them.

There is a question on location of offices of the Authority and there is a table for each region. In Coast, for example, the employment office in Mombasa County is at the Social Security House, 2<sup>nd</sup> Floor and there is also one in Kilifi. The offices are yet to be established in Lamu and TaitaTaveta counties. I will not read the entire table; it will be available for all Senators to refer.

I have summarized that response.

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

**Sen. M. Kajwang'**: Mr. Speaker, Sir, I had earlier wanted to rise on a point of order but this is still sufficient. If this Senate finds it boring and a waste of time to discuss youth and unemployment, then what are we here for? This is happening on International Women's day when we know that the majority of citizens of this country are women and most of them are under 18 years of age. We would rather spend time discussing the youth and unemployment rather than some of the theatrics that we have subjected this House to. I am disappointed but I believe there is still hope.

The Chairperson of the Committee on Labour and Social Welfare has at some point indicated that he is not satisfied with an element of the response that came back. I am also not satisfied with certain elements of the response. There are some numbers that we must validate because when the employment agency says that in 2016/2017 they registered 18,000 job seekers and placed 10,000 of them, one would ask himself or herself: How many job seekers are in this country? If the National Employment Authority (NEA) only reaches 18,000 people out of the hundreds of thousands or millions of Kenyans, this is an Authority that is not doing anything close to the mandate for which it was established.

We need to understand the practical, legal or systemic problems facing this Authority for it not to achieve that. This Authority is even supposed to give advice on issues of employment in counties yet when this Parliament started--- We had serious issues in counties because all the new governors were sacking people who had been appointed by their predecessors. What is the NEA doing about this now that the Chairperson has indicated that certain aspects of that response are not satisfactory? Would it be in order to allow him to go and get a more satisfactory answer because in his own words, it is not satisfactory?

**Sen. Cherargei**: Mr. Speaker, Sir, I agree with the sentiments of Sen. M. Kajwang' that the employment Authority in itself seems not to be alive to what they should be doing. It is very unfortunate if they can only reach 18,000 young people in terms of registration. It seems that they have not tried their best to ensure that they reach the young people, even those at the lowest level. Some of us who are young know what the young people are undergoing in our counties.

In this country, we have the highest number of young people in our history. We need a more comprehensive answer on the issue of unemployment to be addressed once

and for all. One of the challenges that we are facing as a country is that we are having people who are trained, they have gone to school but they do not have equal opportunities.

Finally, even as the Chairperson of the Committee on Labour and Social Welfare seeks and finds out these answers, we must be alive to the fact that a young person in Mombwo, somewhere in Tinderet sub-county and a young person in Kapyego, somewhere in Marakwet East, Elgeyo Marakwet County should have an equal opportunity to that young person in Mbagathi or Kayole in Nairobi County. That matter should be addressed with the urgency it deserves. We should not wish it away.

**Sen. (Dr.) Ali:** Thank you, Mr. Speaker, Sir. I also want to ride on that. When you are told that 18,000 people have been registered with that authority, you even wonder whether it exists. This is the problem of putting all organisations, commissions or bodies' headquarters in Nairobi, because they do not know what is happening in other parts of the country. How will somebody from Wajir know what this authority does, if those in Nairobi have only registered 18,000 people? How will somebody in Maralal or other more marginalised areas of this country know about this authority?

Could the Chairperson, therefore, tell us how far this authority has reached; whether it has representatives in other parts of the country or whether they are only stationed in Nairobi with only five representatives there?

Thank you, Mr. Speaker, Sir.

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

**Sen. Sakaja:** Thank you, Mr. Speaker, Sir. I appreciate that concern raised by Sen. (Dr.) Ali. In fact, I am glad that this question was asked. This issue was our first business during the first meeting of the Standing Committee on Labour and Social Welfare, after we were elected. We summoned this authority and we raised concerns about what is happening with that authority. I do not need to remind the House that this authority was created through a Bill I sponsored in the last Parliament. So, at an individual level and as a Committee, we are very keen to make sure that, for the sake of the young people of this country, this authority picks up and moves on.

One of challenges has been funding for the authority and part of our intervention as a Committee during the Budget Policy Statement (BPS) hearings was to make sure that it is mentioned and funded. This is to ensure that the young person in Sen. (Dr.) Ali's county has the same opportunity to access employment as a young person in the counties of Homa Bay, Nairobi, Migori, *et cetera*. It will also deal with issues of training, among many others.

So, Mr. Speaker, Sir, I accept and that is why I said that I am not happy with this response. I am, therefore, inviting Sen. Chebeni, Sen. (Dr.) Ali and Sen. Prengei tomorrow and the day after to Sankara Hotel, where my Committee will be sitting with the Ministry. This is one of the issues that we will be addressing in that meeting. We are also inviting any other Senator who is concerned about this issue to join us from tomorrow.

Thank you, Mr. Speaker, Sir.

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

**Sen. (Prof.) Ongeru:** Mr. Speaker, Sir, I want to ride on that question. Unemployment in this country is the single most important event that, if we are able to get around it, it will help us in solving many issues and problems. I am sure that every one of you can bear testimony that one of the things you are accosted with as a Senator when you go to your respective counties is the issue of unemployment. Unemployed people keep knocking on your door in the office both here in Nairobi and in your respective counties. Somehow, we do not seem to have ready answers to give them, whether at the national or county level.

Mr. Speaker, Sir, we have to create synergies between the national and county governments to know how well we can handle unemployment. We have the issues of a bloated wage bill, referring to the defunct local authorities and those staff who were inherited. We also have issues dealing with the assets of the counties and the number of employees – ghost or not ghost – in those counties. This is a very expansive topic and I see it as the only way forward. This is because one of the policy enunciations from the Government is that they will carry out employment to the fullest level. I would like to see how that is chronologically tackled and at what level.

Mr. Speaker, Sir, when you see responses that only 18,000 people were registered by the National Employment Authority, that cannot even satisfy the figures in Nairobi alone and, therefore, it is a big concern. As the Senate, we would rather spend quite a bit of time on this matter so as to get to the root cause of why we are not getting these employment opportunities being availed to the young as well as the elderly people.

Thank you, Mr. Speaker, Sir.

**The Speaker** (Hon. Lusaka): Hon. Senators, the matter has generated a lot of interest and there is an open invitation by the Chairperson to that Committee. So, I want to urge all Senators who have information or contributions to make on such an important issue to go and see the Chairperson so that when he comes back, he can give us a very comprehensive answer.

Proceed, Chairperson, Standing Committee on Energy.

ALLEGED DISCOVERY OF GAS IN KIPETO  
VILLAGE, KAJIADO COUNTY

**Sen. (Eng.) Maina:** Thank you, Mr. Speaker, Sir. We have the response and I am going to be brief. The response was forwarded through a letter and before I read the conclusions, I wish to make a few points. This gas was discovered rather accidentally. We must also appreciate that it is at a very preliminary stage and studies are still on-going. Therefore, it is not possible, as of today, to say what we have there. Of course, gases like methane have been identified. The Ministry of Petroleum and Mining has undertaken to carry on with the studies and they will give a more conclusive report. However, they have a few conclusions they wish to make, which I am going to read.

From both analyses, as shown on the table, which hon. Members and the Senate have, no poisonous gases were identified apart from the higher concentration of methane at 38 per cent and above. This is a greenhouse gas which causes the climate change that we hear about. The isotopic analysis plot of 8 degrees and the other tests indicate that the

gas is of thermogenic origin, while the lack of longer chain alkanes indicate possible biogenic source. So, these are the very preliminary tests done which indicate a possible mixed source of both gas and other fluids.

Mr. Speaker, Sir, the Ministry is recommending that to differentiate between multiple thermogenic sources, they would likely want to attempt to analyse carbon of ethane in at least one of those samples. Further geology and geophysics field studies are necessary to be conducted to identify the potential source rocks, possible migration pathways and time of organic matter maturation.

Therefore, Mr. Speaker, Sir, this gas is at a very preliminary stage. I pray that the Maasai people get some gas, which is a natural resource they can use and we will all be very happy. Who knows, maybe it is another source of the precious liquid we all know; oil. But we are at that stage and I have asked the Ministry to report further as they continue with the study.

Thank you, Mr. Speaker, Sir.

**The Speaker** (Hon. Lusaka): Yes, Sen. Olekina.

**Sen. Olekina:** Thank you, Mr. Speaker, Sir. I just wanted to add – since I am a member of that Committee – that from the Statement and the answer we have received, that the gas which was discovered is non-toxic. There is a lot of concentration of methane gas which, in most cases, is extremely flammable. Maybe this gas occurs as a result of a lot of livestock activities and we recognise the fact that there are a lot of cows in the area. Therefore, this could be as a result of the activities of the cows. We interrogated the response and we appreciate the fact that even though the laboratory did not have testing equipment, the Government went ahead to use two different laboratories abroad which gave us these results.

Mr. Speaker, Sir, I just want to raise an issue that is important for the members of the public who are watching, us to know. Methane is an extremely flammable gas and that is the reason why those measures were taken. It can explode between 5 per cent at the lowest and up to 15 percent at the upper explosive limits. So I just want to reiterate that we are still exploring options of getting more information on this. The Committee on Energy assures the Senator of Kajiado, who had asked for this Statement, that we are doing everything we can to get more answers.

Thank you, Mr. Speaker, Sir.

*(Interruption of Statements)*

## COMMUNICATION FROM THE CHAIR

VISITING DELEGATION FROM KASIKEU BOYS  
SECONDARY SCHOOL, MAKUENI COUNTY

**The Speaker** (Hon. Lusaka): Hon. Senators, I would like to acknowledge the presence, in the public Gallery this afternoon, of a visiting delegation of students and teachers from Kasikeu Boys Secondary School, Makueni County. On my own behalf and that of the Senate, I welcome them to the Senate and wish them a fruitful visit.

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Proceed, Sen. Mutula Kilonzo Jnr.

**Sen. Mutula Kilonzo Jnr.:** Mr. Speaker, Sir, mine is brief. I want to join you in welcoming the teachers and students of Kasikeu Boys Secondary School, although I cannot see them and they cannot see me.

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

Yes, that is Kasikeu Boys Secondary School!

*(Laughter)*

Mr. Speaker, Sir, I want to welcome them to the Senate. Kasikeu is in the heart of Kilome. We wish you a fruitful visit. They invited me to their school once. We thank you for the good performance you had last year.

Thank you, Mr. Speaker, Sir.

**The Speaker** (Hon. Lusaka): That is okay. You have talked on our behalf.

Proceed, Sen. Mary Yiane.

*(Resumption of Statements)*

**Sen. Seneta:** Thank you, Mr. Speaker, Sir. I also want to join the Chairperson with regards to the Statement that was requested by Sen. Mpaayei from Kajiado County. I just want to assure the public that there is more that still needs to be done on the site. The Ministry has requested for more time so as to explore and also do more study on the same. I want to assure them that the Ministry will initiate security measures to ensure that the area is secured. Therefore, I want to assure them that we shall work together with the Ministry to make sure that we get further information concerning the gas that was discovered in Kipeto, Kajiado West Constituency, Kajiado County.

Mr. Speaker, Sir, I also take this opportunity to join you in welcoming the students from Kasikeu Boys Secondary School, who are from the neighbouring County of Makeni.

**The Speaker** (Hon. Lusaka): Senator for Kajiado, are you okay with that?

**Sen. Mpaayei:** Thank you, Mr. Speaker, Sir. The report of the Statement he has given to me is not conclusive. Although they are saying it is preliminary, I would have liked the Chairperson to tell us the extent of the gas, the areas it will occupy and the economic advantage or profitability it will bring to the people of Kajiado County.

Thank you, Mr. Speaker, Sir.

**The Speaker** (Hon. Lusaka): I think that is work in progress, as the Chairperson has said. I know that he will give more response---

*(Sen. (Eng.) Maina stood up in his place)*

Sen. (Eng.) Maina, do you want to respond now? I thought it is work in progress?

**Sen. (Eng.) Maina:** Mr. Speaker, Sir, I am not really responding to his sentiments. The point is that we would all wish that there is wealth down there. However, I want to ask my dear brother not to hesitate to look into better ways of improving the lives of the Maasai, because it can take a long time to get downthere and know what is actually there.

*(Laughter)*

**Sen. (Prof.) Onger:** Thank you, Mr. Speaker, Sir. With hindsight; I just want to put a caution on this exploration that there is Methane gas. We have this habit of ploughing all over the place now that we suspect that there is Methane. Considering that this is a highly flammable gas which can just spark off at a little friction; it is toxic and can even cause blindness if it is adulterated with drinking water, what measures is the Ministry taking to ensure that the inhabitants around that region are safeguarded against these toxic effects?

**Sen. Olekina:** On a point of information, Mr. Speaker, Sir.

**The Speaker** (Hon. Lusaka): What is your point of information, Sen. Olekina; if at all Sen. Onger wants to be informed?

**Sen. Olekina:** Thank you, Mr. Speaker, Sir. I just wanted to inform the distinguished Senator from Kisii that Methane is non-toxic. What was discovered there is non-toxic.

Thank you, Mr. Speaker, Sir.

**Sen. (Prof.) Onger:** Mr. Speaker, Sir, I am aware of that. However, if Methane is mixed with water or any other drinking substances, it becomes toxic. Therefore, it is important that we safeguard people from any of these gaseous elements. It is important that we also take care of these things. Methane is just a chain reaction from methyl hydride to Methane gas to when it becomes carboxylated to become a weak or simple acid. Therefore, I just want to know, because it is important information.

This is a technical subject and the public should be guarded against these elements and the side effects that may arise out of this technical subject. It is a good thing if it is commercially viable, but at the end of the day, how do we ensure that the population around that area – where they are still hoping that they will get this gas – are protected from the untoward effects that may arise in these places?

**The Speaker** (Hon. Lusaka): Sen. Ephrahim Maina, do you want to respond to that?

**Sen. (Eng.) Maina:** Thank you, Mr. Speaker, Sir. I understand the concerns of our dear Senator from Kisii. However, Sen. (Prof.) Onger will agree with me that we are all living in this world with small dangers surrounding us. However, I will forward his sentiments. One of the things we need to do is definitely to close up the place and ensure that no emissions are coming out. I do believe that, that has been done. It would be careless and irresponsible for anybody to leave such a gas emitting into the atmosphere and I am sure that, that is not the case.

**The Speaker** (Hon. Lusaka): We have said that this is work in progress. If there are any new developments, the House will be brought up to speed.

The Chairman of the Standing Committee on Agriculture, Livestock and Fisheries is to issue a Statement on the introduction of a Tea Export Tax or levy on tea being exported through the Port of Mombasa by the County Government of Mombasa.

INTRODUCTION OF TEA EXPORT TAX/LEVY  
BY MOMBASA COUNTY GOVERNMENT

**Sen. Lelegwe:** Mr. Speaker, Sir, the response to the Statement has already been provided to Sen. Cheruiyot. I will go ahead and give highlights of specific information sought by the Senator.

The first question was on whether the Government is aware that tea is among the leading export earners in Kenya.

The Government is aware that tea is ranked No.2 in terms of export earnings for the country. In 2017, the export earnings amounted to Kshs129.3 billion as compared to Kshs120.7 billion in 2016, thus registering a seven per cent increase from the previous year. The country exported 415.7 million kilograms of tea in 2017 as compared to 480.3 million kilograms in 2016, thus making tea one of the leading export products in both volume and value. Tea contributes about 14 per cent of the agricultural Gross Domestic Product (GDP) and about four per cent of Kenya's GDP thus underscoring the importance of the sector to the economy.

Mr. Speaker, Sir, we have provided two tables which list the taxes by the Kenya Revenue Authority (KRA) and other bodies in the sector. The Cabinet Secretary (CS) has also provided a table on other levies and charges along the tea value chain. I will not go through the tables because the Senator already possesses this response.

The second question was on why the Mombasa County Government has introduced a tax of Kshs22 per package of tea being exported through the Mombasa Port.

The Mombasa County Government imposed a Kshs22 levy on every package of tea entering Mombasa in 2014 but was suspended in 2015 following a court case filed by the tea traders. However, on 15<sup>th</sup> November, 2017, the court ruled in favor of the County thereby allowing it to collect cess on trucks carrying tea and other goods destined for sale in Mombasa County.

Due to the negative impact of the levy on the competitiveness of Kenya's tea abroad, traders through their umbrella body, the East African Tea Traders Association (EATTA) lobbied for its removal. In a meeting held between traders and the County Executive Committee (CEC) on 24<sup>th</sup> January, 2018, the Mombasa County Government agreed that tea destined for export will not be levied the Agricultural Produce Cess (APC). Therefore, only tea packages destined for local consumption would be levied cess. In order to distinguish the teas for local consumption and export, it was agreed that EATTA regularly updates the Mombasa County Government with a list of trucks ferrying tea destined for export.

Mr. Speaker, Sir, I have just given a summary of the response which has been signed by Hon. Mwangi Kiunjuri, EGH, MP, CS.

Thank you.

**Sen. Ongeri:** Mr. Speaker, Sir, I represent a tea growing area where one of our major products is tea. Looking at this answer, it is quite telling that despite that fact that tea contributes four per cent of our GDP and, in fact, when you consider the agricultural sector as a standby sector, it contributes 15 per cent of the agricultural sector GDP.

There are eight taxes levied by the Kenya Revenue Authority (KRA) varying from Corporate Tax, Value added Tax (VAT), Import Declaration Tax (IDT), Furnace Oil Import Tax (FOIT), Vehicle Advanced Tax (VAT) and Motor Vehicle Inspection Booking Tax (MVIBT), all concerned in the chain of tea transportation. There is also Withholding Tax (WT) from dividends and fuel for agricultural duty operators. These are the taxes which are charged by the KRA.

There are about 30 other taxes which are being charged on the tea value chain. These taxes are charged on the farmer who is the primary producer of the product. The question is: What is the Government doing to release and lessen the burden of taxes? At the end of the day, the benefactor is those at the tail end of the tea value chain. The supplier of the primary product, the green leaf before it goes to the factory, is given peanuts in terms of the green leaf payment.

In fact, I have looked at the various multinationals and the KTDA and the current maximum green leaf fee paid to a farmer who has to apply fertilizer, prune the tea, employ pickers and do all manner of things to be able to put the tea on the table at the green level, is paid about Kshs15 to Ksh27, if one is lucky to be in one of these better paying multinationals. The figures I am giving you are correct because I am also tea farmer. What is the Government doing to enhance the profitability of tea to the primary supplier of the green leaf? If we do not give the farmer adequate employment, even the employment of workers that we have been talking about here today will be at zero level. They may run out of business because they are not making ends meet.

This is an important subject and I welcome the Motion that was moved in this House. However, we need to look at what the tea farmer carries home at the end of the day. It looks as if he is labouring for everybody else. If you combine the 39 taxes on one primary commodity, I do not know what we want to call this.

**The Speaker** (Hon. Lusaka): Sen. Cherargei, since it is a Statement, just seek clarification so that we do not get into discussions.

**Sen. Cherargei:** Thank you, Mr. Speaker, Sir. I also come from a region where we plant tea by extension and it supports many livelihoods. I have heard the answer from the Chairperson. However, we need clarification because we have had complaints especially from Kericho County where Sen. Cheruiyot comes from. We have also had complaints from Bomet County where the KTDA is now fighting with various factories over management, running affairs and payment of tea farmers especially the small scale farmers.

Over taxation of tea leaves has affected the primary small scale farmers. The Ministry concerned, the KTDA, the National Treasury and other relevant agencies should tell us if around 40 types of taxation on one commodity is taxation or extortion. They need to clarify this.

**Sen. (Dr.) Langat:** Mr. Speaker, Sir, I also come from Bomet County, one of the largest tea growing areas. This problem should be taken urgently and seriously. As I am

talking now, farmers in Bomet County have not been plucking tea leaves for the last two weeks. This is because they do not see any need of doing it. They are unable to pay for the fertilizers they have already taken; they cannot pay their workers. I request that we do it urgently, especially as the Committee that has been given this mandate. Facilitate us so that we do it fast.

Thank you.

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

**Sen. Wamatangi:** Thank you, Mr. Speaker, Sir. I also wish to add my voice to what my colleagues have said. Kiambu County is one of the counties that produce a lot of tea in some of the sub-counties, for example, parts of Lari, Gatundu North and Gatundu South. There are Kenyan farmers who are currently living in completely unacceptable conditions, yet they do most of the work of producing one of the essential commodities that has given this country the status in the international market that we enjoy. It has also been said that a lot of returns come from tea. However, there is an issue with the conditions under which our tea farmers live and the amounts they are taxed and what they finally get paid. This story starts all the way from the factories where they supply, under the Kenya Tea Development Agency (KTDA) management and other international companies. The most oppressed person is the farmer.

This debate has been in the House earlier. One of the things this Committee needs to look at is the propensity of counties to impose taxes on products which are locally produced, whether in transit for local consumption or export. We have a central system of tax collection. One of the aspects that has been a big issue is that if we let all counties, for every reason that they might find fit, try and come up with taxation that is justified to tax products inter-county then we will have a chaotic system. I urge that this be looked at keenly to ensure that our tea farmers can enjoy livelihoods equal to the efforts they employ to get us going and enjoy the status we have as a county in tea farming.

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

**Sen. Sakaja:** Mr. Speaker, Sir, I am not a tea farmer and we do not grow tea in Nairobi County, but we are serious consumers of tea. That is where our interest lies.

Article 209 (5) of the Constitution states that:-

“The taxation and other revenue-raising powers of a county shall not be exercised in a way that prejudices national economic policies, economic activities across county boundaries or the national mobility of goods, services, capital or labour.”

I propose that you direct that the Committee on Agriculture, Livestock and Fisheries sits together with the Committee on Finance and Budget, and call all the stakeholders in the tea industry, the National Treasury, the Ministry of Agriculture and Irrigation urgently to address this matter. It is not just the specific matter on tea, but also how counties have been imposing taxes, contrary to Article 209 of the Constitution and other provisions under the Chapter on the Public Finance in the Constitution. It is an urgent matter.

**The Speaker** (Hon. Lusaka): What is your intervention, Sen. Mutula Kilonzo Jnr.?

**Sen. Mutula Kilonzo Jnr.:** Mr. Speaker, Sir, I wish to bring to the attention of the House that we are aware that the Treasury has drafted a Bill on Own-Source Revenue

(OSR). For those who have been following the Press reports, in fact, the governors are up in arms about exactly what Sen. Sakaja is mentioning. It will soon be on the Floor of the House through the Committee on Finance and Budget.

Thank you.

**The Speaker** (Hon. Lusaka): The matter is already being addressed.

The Vice Chair, do you want to make some concluding remarks?

**Sen. Lelegwe:** Thank you, Mr. Speaker, Sir. I have noted the concerns of the hon. Senators. The Committee has already provided the response for this Statement, unless there is any other issue that we may need to go back as a Committee to report to this House. However, we have just provided in this response the list of taxes as was queried by the hon. Senators. There is nothing much we can do as a Committee, but we just provided the information as it is. This House may, as proposed by the Senator for Makueni County, bring a legislation to reduce some of these taxes that make our products not competitive in the international markets.

Thank you.

**The Speaker** (Hon. Lusaka): The Chairperson of the Standing Committee on Finance and Budget to issue a statement on the delay in release of funds to county governments for the Financial Year 2017/2018.

#### DELAY IN RELEASE OF FUNDS TO COUNTY GOVERNMENTS FOR THE FY 2017/2018

**Sen. (Eng.) Mahamud:** Thank you, Mr. Speaker, Sir. I will give a comprehensive answer on this interesting topic. I will be brief.

On 15<sup>th</sup> February, 2018 Sen. Khaniri asked me to:-

(a) explain the respective roles played by the Cabinet Secretary for the National Treasury, the Controller of Budget and the county treasuries in withdrawing money from the Consolidated Fund and respective County Revenue Funds;

(b) state the requirements which must be met after enactment of County Allocation of Revenue Act and approval of Cash Disbursement Schedule for the National Treasury to release funds from the Consolidated Fund to respective county funds;

(c) table a schedule indicating the amount and date of cash disbursement to counties for the Financial Year 2017/2018; and,

(d) state when the National Treasury and the Controller of Budget will release funds to the county governments as per the approved Cash Disbursement Schedule.

Mr. Speaker, Sir, I beg to reply as follows:-

With regard to the role played by the Cabinet Secretary, Article 225 establishes an entity of the national Government known as the National Treasury which comprises the Cabinet Secretary, Principal Secretaries of the departments of the office responsible for economic and financial matters.

The National Treasury through the powers bestowed in the Cabinet Secretary administers the Consolidated Fund account known as the National Exchequer Account kept under the Central Bank of Kenya (CBK).

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

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

The Treasury also ensures that the national Exchequer is not overdrawn at any one time. The Consolidated Fund was established under Article 206 of the Constitution. Money can be withdrawn from the Consolidated Fund only:-

- (i) in accordance with appropriation by an Act of Parliament;
- (ii) in accordance to Articles 222 or 223; and,
- (iii) as a charge against the Fund as authorized by the Constitution or an Act of Parliament.

Mr. Temporary Speaker, Sir, where a withdrawal from the Consolidated Fund is authorized under the Constitution or an Act of Parliament for the appropriation of money, the National Treasury shall make a requisition for the withdrawal and submit to the Controller of Budget for approval. The approval of a withdrawal from the Consolidated Fund by the Controller of Budget, together with written instructions from the National Treasury requesting for the withdrawal, shall be sufficient authority for the CBK to pay for the amounts from the National Exchequer Account in accordance with the approval and instructions provided.

It is clearly stated under Section 17 (6) and (7) of the Public Finance Management Act 2012 that the National Treasury shall, at the beginning of every quarter, and in any event not later than the fifteenth day from the commencement of the quarter, disburse monies to county governments, in accordance with the schedules prepared by the National Treasury, in consultation with the Intergovernmental Budget and Economic Council, with the approval of the Senate, and published in the Gazette, as approved, not later than 30th May in every year.”

The Office of the Controller of Budget was established under Article 228 of the Constitution of Kenya 2010 to oversee the implementation of the budgets of the national and county governments by authorizing withdrawals of public funds under Articles 204, 206 and 207 of the Constitution.

Section 103 of the Public Finance Management (PFM) Act established in the county governments an entity known as the county treasuries bestowed with responsibility and powers to among others:-

- (i) to enforce fiscal responsibilities;
- (ii) establishment of the County Revenue Fund which collects all revenue collected in the county;
- (iii) arrange for the County Revenue Fund to be kept in the CBK or a bank approved by the County Executive Committee (CEC) Member for Finance and kept in an account known as the County Exchequer Account, and ensure that all monies authorized

to be paid by the county government or any of its entities for public purposes is paid through the account without undue delay.

(b) After enactment of the County Allocation of Revenue Act, the process of disbursement of funds by the National Treasury to county governments is guided by the provision of Section 17 of the Public Finance Management Act (PFM) 2012.

In this regard and to make it easy for county governments to requisition exchequer releases, the county governments were provided with guidelines by the Controller of Budget that seeks to clarify the process. In fact, that process has been annexed to the answer we gave the Member.

Based on the approvals of Parliament referred to above, the National Treasury prepares a request for withdrawal of funds from the Consolidated Fund for transfer to counties. The request is then forwarded to the Controller of Budget for consideration and approval. The approval for withdrawal from the Consolidated Fund by the Controller of Budget, together with the written instructions from the National Treasury, are sufficient authority for the Central Bank of Kenya (CBK) to disburse funds from the Consolidated Fund to the respective county revenue funds.

(c) The schedule indicating amounts and dates of cash disbursement to county governments are provided under Annex II. I will quickly talk about this Schedule.

*(Sen. (Eng.) Mahamud referred to a specific document)*

As at 6<sup>th</sup> March, 2018, the National Treasury has disbursed a total of Kshs134,128,650,328.00 as per the attached schedule of disbursements. This is approximately 43 per cent of the total allocations as approved by Parliament in the County Allocation of Revenue Act, 2017/2018.

The total outstanding balances due to county governments as at 6<sup>th</sup> March, 2018 is Kshs177,253,968,302 or 57 per cent.

Mr. Temporary Speaker, Sir, the Schedule shows all the counties, the amounts which were given in both equitable and conditional grants, equitable share allocations, level five, Danish International Aid (DANIDA) allocation and the World Bank. The total and equitable allocation released so far shows Kshs130 billion but then there is also the release money under equitable share which comes to Ksh134,128,658,338. There is a balance of Kshs177,253,968,302. The table is at the annex and Members can see it properly.

*(Sen. (Eng.) Mahamud referred to a specific document)*

Another schedule shows month to month disbursement to counties starting from July 2017 to 6<sup>th</sup> March, 2018 which again shows the total of Ksh134,128,658,338 and the total for each county.

Mr. Temporary Speaker, Sir we met the Cabinet Secretary (CS) Treasury and asked the reasons for delayed disbursement to the counties. He has given several of them. The first was the misalignment between the County Allocation of Revenue Act of 2017 and the Schedule of Disbursement to County Governments for the Financial Year

2017/2018. This was rectified through the County Allocation of Revenue (Amendment) Act of 2017. This Act was placed in the *Kenya Gazette Notice* on 11<sup>th</sup> December, 2017 and the House is aware of this.

The second reason they gave is significant revenue shortfalls recorded in the past. Notwithstanding recent efforts to automate revenue administrative processes and other administrative reforms and policy initiatives, revenue performance has consistently fallen short of targets especially in the last three years. The National Treasury estimates an overall shortfall in ordinary revenues of Ksh.72.1 billion in the Financial Year 2017/2018.

Whereas the National Treasury is working closely with the Kenya Revenue Authority (KRA) to put in place measures to ensure this trend is reversed beginning Financial Year 2018/2019 and over the medium term, there is no scope for raising additional revenue beyond what has been projected in the revised fiscal framework.

Mr. Temporary Speaker, Sir, the National Treasury also will deliberately seek to close the gaps in disbursement arrears as more revenue is collected. What also came to us in that meeting we had with the National Treasury yesterday is that in disbursing funds to county governments, the National Treasury actually prioritises county governments with least balances in their accounts at the CBK. When asked why that is so, they said this is consistent with the constitutional requirement under Article 201 that public funds be used in a prudent and responsible way.

Mr. Temporary Speaker, Sir that is the answer I have. I have given copies to Members. They may look at it as it is very comprehensive.

**The Temporary Speaker** (Sen. Lelegwe): Thank you Chairperson. Let us hear Sen. Khaniri.

**Sen. Khaniri:** Mr. Temporary Speaker, Sir, I thank you for the opportunity. I have two clarifications that I wish to seek from the Chairperson. However, just before I do that, it is regrettable that this answer has taken almost a whole month to come to the Floor of this House. Nevertheless, I thank the Chairperson for his effort and the very comprehensive statement that he has made.

Mr. Temporary Speaker, Sir, this issue is at the core of the Senate, and if we look at Article 96(1) of our Constitution, it states:-

“The Senate represents the counties, and serves to protect the interests of the counties and their governments.”

That is our first and foremost responsibility. Therefore, it should concern all of us when funds are not remitted to the governments that we represent in this Senate. Therefore, when a question like this comes, it should be given priority because that is at the core of our business.

I am sure you are experiencing this in your county. Operations at the counties have come to a halt since there are no funds. In Vihiga County, for example, since the beginning of the financial year, we have only received Ksh76 million for development. All those figures you have given there is recurrent expenditure. One wonders whether we created these counties and their governments just to be employment bureaus or are they supposed to have some duty to do in terms of bringing development to the people.

My two clarifications are: I would like the Chairperson to explain why there is a disparity in disbursement of these funds. It can be seen that some counties up to now have received about just a mere 33 per cent of what they are supposed to get in the entire financial year and yet others have received 60 per cent. Why is there a disparity and a huge one for that matter? A sum of 33 to 60 per cent is a huge disparity.

Mr. Temporary Speaker, Sir, I do not want to name counties here but we all have the schedule that has been tabled by the Chairperson. It can be seen that the disparity is skewed in disadvantaging counties that are considered to be led by the National Super Alliance (NASA) governors. It is very clear and we can see. I want members to take their time and look at the schedule.

My second clarification---

**The Temporary Speaker** (Sen. Lelegwe): What is it Sen. Mutula Kilonzo Jnr.?

**Sen. Mutula Kilonzo Jnr.:** It is not a point of order. I wanted to contribute a comment after Sen. Khaniri is done.

**The Temporary Speaker** (Sen. Lelegwe): Put your request under requests and not interventions.

**Sen. Cheruiyot:** on point of order, Mr. Temporary Speaker, Sir.

**The Temporary Speaker** (Sen. Lelegwe): What is it Senator Cheruiyot?

**Sen. Cheruiyot:** Mr. Temporary Speaker, Sir, with great difficulty I have to interrupt my elder brother and somebody I hold in extremely high regard, Sen. Khaniri. He was making a very persuasive case that I have followed through and agree with him, up to and only that point where he made the point that these disbursements are skewed in a way that they disfavour counties that are considered opposition.

I want to bring to your attention, my elder brother, that Kericho County is at the heart of Jubilee government but we are at 33 per cent. Therefore, what you said is not true. Please include us in your lamentations. Otherwise you lose a very important point that you are trying to make.

**The Temporary Speaker** (Sen. Lelegwe): Continue Sen. Khaniri.

**Sen. Khaniri:** Mr. Temporary Speaker, I want my kid brother, the Senator for Kericho, to look at this schedule in its entirety.

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

**Sen. Wamatangi:** Thank you, Mr. Temporary Speaker, Sir. I had requested for the point of order before the Senator for Vihiga rose to speak. In my point of order, I wanted to draw the attention of Sen. Khaniri and, indeed, concur with him that the matter he is prosecuting is important. While lamenting on some of the woes some of the counties are facing, is it in order for the Senator to lament without qualifying that there are also procedures that have been set by the Controller of Budget?

A major reason why some counties do not receive their disbursements in time is because it is a requirement by the Controller of Budget that before a disbursement is made, the county must justify it. They must send documents to show that what they are requesting for has been approved by the County Assembly. They must also show that the last disbursement they received has been used prudently. Those measures were put in

place to tighten the loopholes because, earlier, some of the counties misused funds and just continued requesting for more funds.

So, Mr. Temporary Speaker, Sir, that qualification is also important so that we do not only urge or agitate that the counties receive the money. Yes, it is important that they receive the money; but on the other hand, we must also emphasize that the due process, especially on accountability, has to be an important part of it.

**The Temporary Speaker** (Sen. Lelegwe): Yes, Sen. Olekina.

**Sen. Olekina:** Mr. Temporary Speaker, Sir, I just want to remind the House that this is a very important matter that affects all of us. I would like to request that the Chairman of the Committee on Budget and Finance circulates this report so that all of us can interrogate it. We are hearing all these figures and we cannot verify the information being given. The report has not been given to the Table Office. We need those documents.

**The Temporary Speaker** (Sen. Lelegwe): Thank you, Sen. Olekina. I request the Chairman of the Committee on Finance and Budget and the clerks to circulate the copies of the response.

Proceed, Sen. Khaniri.

**Sen. Khaniri:** Mr. Temporary Speaker, Sir, I do not know why the Senator for Kiambu wants to derail me. Chinua Achebe, in his book *Things fall apart*, says that 'when old bones are mentioned in a proverb it is the old woman who gets uneasy.' The Senator challenging me represents one of those counties which have received 60 per cent of the allocation. My county has received only 33 per cent. He is, therefore, the wrong person to raise this issue. It is important that the report is given to members so they can look at it in entirety.

Mr. Temporary Speaker, Sir, my first clarification is that I want to understand why there is that disparity. Secondly, the financial year is coming to an end and we are almost coming to the last quarter. This means we have done three quarters and only 43 per cent of what you are supposed to be given to the counties---

**The Temporary Speaker** (Sen. Lelegwe): What is it Sen. Wamatangi?

**Sen. Wamatangi:** On a point of order, Mr. Speaker, Sir. I want my brother to prosecute his case, but as I stand here, you can see that I am not an old woman; I am a man. So, it is wrong for him to insinuate that I am an old woman. But more importantly, the position I was trying to bring to the attention of the House has been expressed by the Controller of Budget more than three times, including during the last time we sat together as the Senate. As a result, we cannot wish away the fact that, yes, we have to say that we want funds to go to our counties. But we also have to remind the counties that when they receive the funds, there is a procedure to be followed, they have to be accountable and bring the documents that are required. There is no contestation about that.

**Sen. Mutula Kilonzo Jnr.:** Mr. Speaker, Sir, I want to help this House so that we can make some progress. The Cabinet Secretary (CS), Mr. Rotich, and his Permanent Secretary admitted that they have used their own discretion in terms of disbursing funds and we want to address the reasons why they have done so. Otherwise, it is already on record that they have used their own discretion as to which county they should give more

funds than the other. The Chairperson of the Committee on Finance and Budget is aware of that information, which will help.

*(Loud consultations)*

**The Temporary Speaker** (Sen. Lelegwe): Proceed, Senate Majority Leader.

**The Senate Majority Leader** (Sen. Murkomen): On a point of order, Mr. Temporary Speaker, Sir. Is it in order for a Member of a Committee to come and contradict his Chairperson on the Floor of the House, the way Sen. Mutula Kilonzo Jnr. has done? Who brings the statement, is it the chair or the Member?

**The Temporary Speaker** (Sen. Lelegwe): Sen. Murkomen, the Senator for Makueni rose on a point of information to this House and he was informing the House. Proceed, hon. Cheruiyot.

*(Loud consultations)*

**Sen. (Eng.) Mahamud**: Mr. Temporary Speaker, Sir, I want to put the record right. We have the statement which was signed by the Treasury Permanent Secretary, and I will repeat what he said:-

“In disbursing funds to county governments, the National Treasury will continue to prioritize county governments with the least balances in their accounts in the Central Bank of Kenya (CBK). This is consistent with the Constitutional requirement under Article 201, that public funds be used in a prudent and responsible way.”  
In fact, when he was challenged why we are not going by that, he said that the Constitution says so and he can only give what he has.

**The Temporary Speaker** (Sen. Lelegwe): Proceed, Sen. Khaniri.

**Sen. Khaniri**: Thank you, Mr. Temporary Speaker, Sir---

*(Sen. (Dr.) Ali stood in his place)*

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

**Sen. (Dr.) Ali**: Thank you, Mr. Temporary Speaker, Sir. In addition to what the Chairperson said, I personally challenged the CS and asked him why there are discrepancies in the allocation of resources. He replied that there are some counties which had a lot of money in their accounts. So, in that case, you allocate funds to those counties that do not have funds in their accounts. So, the issue of Jubilee and NASA did not arise.

**The Temporary Speaker** (Sen. Lelegwe): Proceed, Sen. Khaniri.

**Sen. Khaniri**: Mr. Temporary Speaker, Sir, I would like to get these answers from the Chairperson of the Committee on Finance and Budget. I want to know why there is that disparity. Secondly, we are running into the last quarter of the year and only 43 per cent of what is supposed to be disbursed has been disbursed. So, I am wondering; if in the last three quarters they have only disbursed 43 per cent, will they be able to disburse the remaining 57 per cent in the last quarter?

Lastly, they are telling us that there were revenue shortfalls, we all know that we continue to pay taxes. I know, for sure, that this regime was not pro-devolution. The leadership of the regime opposed the Constitution and that is why they are starving our counties.

*(Applause)*

It is very deliberate that money is not being sent to our counties because they want to set devolution to fail.

**Sen. Cheruiyot:** On a point of order, Mr. Temporary Speaker, Sir. I want to continue pleading with my elder brother, Sen. Khaniri, that this is a very important point you are prosecuting. But you are missing the mark, my elder brother, when you begin to lace it with NASA versus Jubilee politics. Kericho County is hurting, for goodness sake! We have a 33 per cent allocation; Wajir County is also at 33 per cent. We are as concerned as you are about devolution. So, the minute you begin to chase little squirrels while you have a major antelope that you brought to the House---

Mr. Temporary Speaker, Sir, we would wish to know what the National Treasury is about to do so that counties can get these funds as soon as possible. But the minute you begin to ignite small fires in the House by making false statements, like the ones that you have made; that the leadership of this country is against devolution while it is on record that President Uhuru Kenyatta supported this constitution. Where were you?

So, Sen. Khaniri, you are a senior Member in this House---

**Sen. (Dr.) Ali:** Mombasa!

**Sen. Cheruiyot:** Yes, Mombasa County has a 51 per cent allocation; is Mombasa County a Jubilee region? Please, Senator, I beg of you; let us not ignite small fires so that we can get answers. This is a very important question.

**The Temporary Speaker** (Sen. Lelegwe): Order! Order! Sen. Khaniri, take your seat. Proceed, Sen. Murkomen.

**The Senate Majority Leader** (Sen. Murkomen): On a point of Order Mr. Temporary Speaker, Sir. Finally, we have the tabulation here. You will find that Baringo County has 33 per cent; Elgeyo-Marakwet County that I represent has 43 per cent. But, you will find counties like Homa Bay County hitting 51 per cent, Mombasa County 51 per cent, Kilifi County 51 per cent, Trans Nzoia 59 per cent and Kiambu County 59 per cent, Nairobi County 57 per cent, Narok County 59 per cent, and Nakuru County 33 per cent. Our concern as Members who are here to protect and defend devolution is to focus on the issues.

We should not talk about who opposed the Constitution and who supported it, because the persons who supported the Constitution most are the ones who are crying now. They are saying: “We want the Prime Minister position and the Bomas Draft. We want to create more offices.” If we start a debate as to who is now against the Constitution, it will be apparently clear that those who were swearing themselves, against the constitutional order and doing unconstitutional things, are the ones who at that point and time of the Referendum on the Constitution were saying: “*Katiba ni sasa; kama si sasa, ni sasa hivi*”

**The Temporary Speaker** (Sen. Lelegwe): You have made your point, Senate Majority Leader.

Sen. Mutula Kilonzo Jnr., what is your point of order?

**Sen. Mutula Kilonzo Jnr.:** Mr. Temporary Speaker, Sir, we are losing the point. What the Senate should be interrogating is something that I believe is unconstitutional. To the extent that the Cabinet Secretary has quoted Article 201 of the Constitution, the question that all of us should be interrogating is whether the discretion exists in law, when we pass the cash disbursement schedule, for the Cabinet Secretary to go in to the account of Makueni County and wonder why it has a billion shillings and why Elgeyo-Marakwet has half a billion. Does that discretion exist? That is what we should interrogate, so that we can have an answer to the Cabinet Secretary. I believe the Chairperson is defending an indefensible position; that the Cabinet Secretary has that discretion. Is he in order? I believe he does not have that discretion.

Thank you.

**The Temporary Speaker** (Sen. Lelegwe): Order! Sen. Wamatangi, what is your point of order?

**Sen. Wamatangi:** Mr. Temporary Speaker, Sir, I rise on a point of order on the continued misinformation. I am sure that most of the Senators who are contributing are aware about the facts.

Once we pass the County Allocation of Revenue Bill, the money goes into the accounts of the counties. That is why the issue of how much has been withdrawn arises. So, when you hear the explanation that this and that county has got so much, it is on the basis of how much they have withdrawn. When we pass that Bill in this House, we normally get a schedule. The last schedule we passed here had the amounts that were going to counties. We are the ones who approved that schedule which showed where the money went. So, when the schedule is passed, that money will go in to the Consolidated Revenue Fund (CRF) account of that particular county. It is only the permission to withdraw that this counties seek from the Controller of Budget. The money is held there, but for them to withdraw it, they have to get permission from the Controller of Budget, by presenting documentation that will satisfy that the previous amounts withdrawn were accounted for and used properly.

Once we allow this back and forth between The National Super Alliance (NASA) and Jubilee Party--- I agree with everybody here that we are pursuing and prosecuting a very important point, but let it be guided by the law and the procedures we have set.

**The Temporary Speaker** (Sen. Lelegwe): Thank you, Sen. Wamatangi.

What is it, Sen. Cherargei?

**Sen. Cherargei:** Thank you, Mr. Temporary Speaker, Sir. I agree that our counties need money. I also agree with the sentiments of Senator Khaniri up to the point that he hits a dead end. He said, and it is on record, that it is a deliberate move, yet everybody knows that there are procedures and law on how the money should be disbursed to counties.

I am surprised, because he is my neighbour, that he gets 43 per cent according to this schedule, while we, who are 110 per cent Jubilee, are getting 33 per cent. Facts are always stubborn and will continue to be so. Is it in order for him to allege that this is a

deliberate move? He has alluded that it is under the whims of a particular person to either allocate the money or not.

Thank you.

**The Temporary Speaker** (Sen. Lelegwe): I call upon Senator Khaniri to seek more clarification.

**Sen. Khaniri:** Mr. Temporary Speaker, Sir, I have sought three clarifications; I want to hear from the Chairperson.

**Sen. M. Kajwang’:** On a point of Order Mr. Temporary Speaker, Sir.

**The Temporary Speaker** (Sen. Lelegwe): What is your point of order, hon. Sen. Kajwang’.

**Sen. M. Kajwang’:** Mr. Temporary Speaker, Sir, I will be failing in my duty as a Senator if I do not talk to this matter seriously without the blinders of Jubilee and NASA. I think you must guide us in this discussion, so that we become relevant and stop talking about irrelevancies like Uhuru Park and swearing in, which has got nothing to do with disbursements to counties.

All of us here are faced with contractors and employees in our counties, some of whom have not been paid salaries and governors are saying they have not received money. I am looking at Homa Bay County where 51 per cent has been disbursed and there are certain counties where 33 per cent has been disbursed in the final quarter of the year. You ask yourself: How will these counties manage to pay? Even when that money comes in, we will just be creating an opportunity for corruption.

This Senate got money in the last Parliament for monitoring and evaluation three weeks to the end of the Financial Year and we rejected it. We said that we would not have the capacity to absorb and utilize it. So, for us to encourage this kind of numbers and then hide under political party affiliations, we are missing the point.

Mr. Temporary Speaker, the issue should be Article 219 of the Constitution. The only reason this House is still relevant is not because we come here and talk big English, it is because the Constitution gives us a responsibility to divide revenue, under Article 217 of the Constitution and allocate revenue, under Article 218 of the Constitution. Once we do that, we expect that under Article 219 of the Constitution, we will ensure that those monies are released to the counties. If you may allow me to read, Article 219 says:-

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

Need we say more? When we go to Kakamega for the Devolution Conference, the first thing that the governors will ask us is: “Given that the Treasury is not releasing our money, what are you doing as the Senate?” Will we tell them that we have been wrangling over political party affiliations?

This Schedule has just been distributed to some Members here and Sen. Khaniri has raised pertinent points. He is not only speaking on behalf of Vihiga County, but devolution and everyone here.

Mr. Temporary Speaker, Sir, if you could give direction that we analyse some of these numbers. You could even order that we create time on Tuesday next week, so that we can substantively discuss this matter or create an opportunity to sit with the Cabinet

Secretary for the National Treasury because, as you can see, even Members of the Standing Committee on Finance and Budget are coming with different points of information.

I beg that this is too critical to be lost in our usual political wrangles.

**The Temporary Speaker** (Sen. Lelegwe): Hon. Senators, I now give this chance to the Chairperson to respond.

**Sen. (Eng.) Mahamud:** Mr. Temporary Speaker, Sir, a question was raised on the Floor of this House and we tried to respond to it. In fact, the answers we have here are the only ones. It is not fair to digress into things which are not there, but let me answer what the questioner asked.

Our role is clearly stated in Article 96 of the Constitution and there is no doubt about that. Sen. Khaniri said that there is no money for development. There is no discretion when it comes to disbursing money to the counties for recurrent expenditure and development. Looking at what went to Vihiga County, there is no column for money for development and recurrent expenditure. It is difficult at this stage for us to separate money for development and recurrent expenditure.

The disparity has been talked about in the points of order. If you look at the Schedule, you will see that it cuts across the board. Low disbursements to counties cuts across the board in the whole nation. That is a fact and it is what we should be concerned about as the Senate. It is unfortunate to talk about favour. Those are just sideshows. This cuts across all counties including those perceived to be the NASA or Jubilee strongholds. The CS also said that because of low collections, there is discretion where people have got more than Kshs300 million in the account.

We are not debating the mandate of the Treasury here. That part of the question was not there. We should leave the question that was raised by my colleague Sen. Mutula Kilonzo Jnr. for another day. They have quoted Article 201 of the Constitution and I agree with Sen. M. Kajwang' that Article 219 is clear.

*(An hon. Senator spoke off record)*

Yes; it says that.

On the issue of revenue shortfalls, they said that there are shortfalls which they know more than I do. In fact, the CS said that they cannot disburse what they do not have. He did not say he was broke but he said that he has no money.

My friend Sen. Khaniri also said something but he should not make political statements here. We do not know who supported the Constitution and who did not. Majority of us were not in Parliament at that time.

Mr. Temporary Speaker, Sir, we have done our best to bring the answer. We are concerned and we will engage the Treasury further to see how we can have money for our counties because it is our job to support our counties and we will do that. We will not support anything that will strangle our parties. We should not ask about issues that I cannot answer at this time as the Chairman.

I thank you.

**The Temporary Speaker** (Sen. Lelegwe): Thank you honourable Chair.

(i). Hon. Senators, we need to make progress. Therefore, I will defer statements (e) to

ONGOING RECRUITMENT EXERCISE BY KDF

RELOCATION OF ELEPHANTS FROM LAIKIPIA TO  
TSAVO NATIONAL PARK

THE STATE OF TOURISM IN MALINDI,  
KILIFI COUNTY

RAID BY ARMED BANDITS IN SUYIAN AREA IN  
SAMBURU NORTH CONSTITUENCY

DEROGATORY SONG AGAINST  
THE KAMBA COMMUNITY

*(Statements deferred)*

I now call upon the Senate Majority Leader to issue a statement on the business of Senate for the coming week.

BUSINESS FOR THE WEEK COMMENCING  
TUESDAY, 13<sup>TH</sup> MARCH, 2018

**The Senate Majority Leader** (Sen. Murkomen): Mr. Temporary Speaker, Sir, pursuant to Standing Order No.46(2)(c), I hereby present to the Senate the Business for the Coming Week.

The Senate Business Committee (SBC) will meet on Tuesday, 13<sup>th</sup> March, 2018, to schedule the business of the Senate. Subject to further directions of the SBC, the Senate will continue with consideration of business that will not have been concluded in today's Order Paper and other business scheduled by the SBC.

On 14<sup>th</sup> and 15<sup>th</sup> March, 2018, the Senate will proceed to consider business that will not be concluded on Tuesday and any other business scheduled by the SBC.

Mr. Temporary Speaker, Sir, as you will note, on today's Order Paper, debate on the Second Reading of The County Boundaries Bill (Senate Bills No.6 of 2017) will resume. Other Bills due for Second Reading are The Assumption of Office the County Governor Bill (Senate Bill No.1 of 2018), The County Government (Amendment) (No.2) Bill (Senate Bills No.7 of 2017), The County Government (Amendment) Bill (Senate Bills No.11 of 2017), The National Flag, Emblems and Names (Amendment) Bill (Senate Bills No.8 of 2017) and The Food Security Bill (Senate Bills No.12 of 2017).

I take this opportunity to commend committees for conducting public participation on the various Bills committed to them and I urge them to table their reports

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as soon as possible. I also urge committees to whom the various positions have been committed to endeavour to report within the stipulated timelines.

Additionally, there are a number of Motions before the Senate for consideration. I therefore once again urge all the honourable Senators to be available whenever the Senate is sitting, so that the scheduled business is executed expeditiously.

Mr. Temporary Speaker, Sir, I thank you and hereby lay the statement on the Table of the House.

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

**The Temporary Speaker** (Sen. Lelegwe): Next Order!

## BILLS

### *Second Reading*

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

*(Sen. Mutula Kilonzo Jnr. on 1.3.2018)*

*(Resumption of debate interrupted on 7.3.2018)*

**The Temporary Speaker** (Sen. Lelegwe): If there are no requests, we will proceed to the next Order.

*(The Temporary Speaker (Sen. Lelegwe)  
consulted with the Clerk-at-the-Table)*

Sen. Mutula Kilonzo Jnr., you can request for deferment.

**Sen. Mutula Kilonzo Jnr.:** Mr. Temporary Speaker, Sir, we had agreed prior to the commencement of the Second Reading that you defer the Division and my reply to await the public hearing that is ongoing. This is particularly because we are expecting the contribution by the Council of Governors (CoG).

I was in a meeting this morning. Therefore, it will be important for me to respond to both the contributions by my colleagues on both sides and those by the public. So, I kindly request that you defer my replying until that time when I receive the committee report.

**The Temporary Speaker** (Sen. Lelegwe): I can see Sen. Cherargei wants to say something.

**Sen. Cherargei:** Mr. Temporary Speaker, Sir, I was supposed to contribute yesterday but unfortunately I was not in. I thought that the procedure of the House is that if you do not get a chance to contribute, you can do it the next day. I stand guided.

**The Temporary Speaker** (Sen. Lelegwe): Proceed, Senator.

**Sen. Cherargei:** Mr. Temporary Speaker, Sir, I want to congratulate Sen. Mutula Kilonzo Jnr. for this well thought out Bill with a lot of guidance. He is one of my Members in the Standing Committee on Justice, Legal Affairs and Human Rights.

I must say that there are so many challenges that affect us especially regarding county boundaries. One of the issues has to do with resources and sharing of assets and liabilities. I told Sen. Mutula Kilonzo Jnr. who is the Mover in person that we do not have to use the map of 1992.

There is a problem between Kisumu and Nandi counties over where Chemelil Sugar Company, which is undergoing privatisation, belongs. When you meet people there, the argument normally is that the map of 1963 shows that that facility was in Nandi County. Even Nyando Escarpment is in Tinderet Sub-County but the problem is that there is that tussle.

I agree that there are many issues and I hope that this law will cure that. I hope that Sen. Mutula Kilonzo Jnr. will ensure that we go back and look at the Map of 1963. I know that most of the boundaries were created out of colonial convenience.

Mr. Temporary Speaker, Sir, the second aspect is about the marginalized communities. Out of colonial convenience, you will find communities in three, four or even up to five counties. This has caused a lot of agony and disunity amongst communities like the Tirki. We have the Tiriki in Vihiga County and in my county. Some of these disputes are in courts because marginalized communities have sued their county governments to be recognised. I am aware the Constitution has a provision for the marginalized communities and there are affirmative programmes on how to address such short comings.

The County Boundaries Bill (Senate Bill No.6 of 2017) should clearly state how best to accommodate these communities so that their interests are well protected. These challenges are being experienced in counties like Isiolo and Meru. At the moment, we do not have many boundary disputes between county governments.

Another challenge is how the toll centres will be managed. I am hopeful that Sen. Mutula Kilonzo Jnr. will look into this. For example, when you are travelling to Baringo County, you could get a toll centre at Elgeyo Marakwet County. Barely five or 10 metres you get another one by Baringo County. We can avoid double taxation by having a no man's land like in some countries. Alternatively, we can agree on how to harmonize taxation such that if you are getting into a boundary from one county to another, you do not have to be subjected to taxation based on the same commodity. I believe those are some of the issues that will solve issues of boundaries and revenue collection between counties.

Mr. Temporary Speaker, Sir, another issue is on the boundaries with our neighbouring countries. I know the threshold is 15 percent where somebody can petition the county assembly be it at the ward level or at the sub-county level. However, I request that we relook at that threshold as it is very low and will cause vexatious or unnecessary petitions to our county assemblies. A small community may not have been considered to county appointments and as we know elections in this country are very competitive. You might find in a particular section of a society, some people have not accepted and moved on. They may decide to petition and we will be wasting a lot of time. Therefore, the

threshold of 15 per cent should be made a bit higher and measures be made more stringent, so that by the time that petition is done, it would have eradicated any unnecessary petitions or fictitious claims that might come to the county assembly. It is important to review this.

The other two aspects are the Mediation Committee and the Authority. The country is still grappling with the issue of the wage bill. Therefore, my proposal is that if we can find a way of having one Authority so that we do not have to create a Mediation Committee or a Commission. We can co-opt the Independent Electoral and Boundaries Commission (IEBC). I propose that we have members in that commission who are not remunerated. This will be like in some of the commissions where they only sit and discuss matters. This way, we will allow synchronisation of some of the boundaries issues that have been raised.

I know the importance of the Mediation Committee and the Commission that will be set up which is critical. However, we should look at how we can strike a balance between the Mediation Committee and the Commission. I agree with Sen. Mutula Kilonzo Jnr. that the African set up is meant to promote cohesiveness, integration, togetherness and to sing songs of unity and not disunity. In addition, the process of mediation has always been the spirit and in tandem with our African culture when solving our issues without involving the rigorous litigation process.

Therefore, the Mediation Committee is important in solving boundary disputes between communities. I am aware that the IEBC will be reviewing boundaries in counties and sub-counties. Therefore, this Bill is critical. We must pass it so that the IEBC can use it as a primary source of information for us to promote cohesion and integration.

Mr. Temporary Speaker, Sir, finally, the County Boundaries Bill (Senate Bills No.6 of 2017) is crucial in the sense that it will not divide Kenyans. It promotes a civilized, sober, legal and acceptable process in addressing issues of county boundaries without involving politicians. I agree with Sen. Mutula Kilonzo Jnr. that the timing is right as it will ensure a peaceful and civilized way of handling resources. I am aware that the issues of numbers will come in later especially when there is demarcation of elective areas, wards, sub-counties and counties.

Going forward, this Bill is important and with the many amendments that my colleagues have raised, it will go a long way in ensuring cohesiveness and peace along our borders. In addition, it will resolve disputes of natural resources. For example, the Mau Forest, which Sen. Olekina is so passionate about, that stretches between three, four or five counties or disputes between Kenya and another country. Since Sen. Mutula Kilonzo Jnr. is a man of high legal standing, he will deal with the grey areas to avoid unnecessary litigations in future.

I support this Bill. We will give it the necessary support to ensure that it comes to fruition. I thank you.

**Sen. Mwangi:** Mr. Speaker, Sir, the County Boundaries Bill (Senate Bills No.6 of 2017) could not have come at a better time than now. About 90 per cent of the current demarcations were done before independence. For example, Kiambu and Meru counties have more than one million residents. Nyeri and Kericho Counties also have big

populations. Therefore, the time to review county boundaries is now and not yesterday. The boundaries should be looked at positively.

We should have smaller units of counties because the population is just too big. Smaller units are manageable unlike when you have a county like Kiambu, which has over one million residents. Actually the voters are just about one million and you are talking of about 1.7 million residents. So, this is a very important Bill.

Mr. Temporary Speaker, Sir, a county like Nyandarua, where I come from, needs to be split into two. We have Nyahururu Town, which is within the vicinity of Nyandarua and it borders Laikipia, but it used to be in Nyandarua. More than 95 per cent of the investors in Nyahururu Town are from Nyandarua. So, it is important that Nyahururu Town is alienated and joined with Nyandarua because it used to be in Nyandarua. I cannot understand the logic used by whoever decided that Nyahururu Town should be in Laikipia. When the people of Nyahururu pay taxes, these taxes go to develop Laikipia.

This is unfair because the investors in this town are from Nyandarua. So, the taxes collected from Nyahururu town should go into developing Nyandarua, rather than Laikipia. There are large investments in Nyahururu which would help in developing Nyandarua. The taxes which have been collected over five, ten or twenty years are huge amounts of money that can develop Nyandarua. The boundary of Nyahururu should be reviewed, alienated and amalgamated to Nyandarua rather than remaining as it is now.

Mr. Temporary Speaker, Sir, a county like Mombasa, with a huge population, should be split into about two for it to be manageable. It is big---

*(Sen. Omogeni spoke off record)*

You will say what you have to say when it is your time to contribute. Chair, it is now my time. Please tell the Member to wait for me to finish making my contribution---

**The Temporary Speaker** (Sen. Lelegwe): Order, hon. Senators!

Proceed Sen. Mwangi.

**Sen. Mwangi:** Thank you, Mr. Temporary Speaker, Sir.

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

**The Temporary Speaker** (Sen. Lelegwe): What is it Sen. Omogeni?

**Sen. Omogeni:** Mr. Temporary Speaker, Sir, is my good friend, Sen. Mwangi, in order to make reference to the fact that this Bill is about dividing counties so as to have additional counties from the 47 that we have to maybe 48 or 49? Is he in order to make reference to the fact that this Bill will enable Mombasa County to be split into two, whereas this Bill is about the boundaries of the counties as they are now? Is he in order?

**Sen. Mwangi:** Mr. Temporary Speaker, Sir, I am in order to also suggest that this Bill be amended to include what I am saying. It gives a wider scope to know that this Bill can be amended in this House so as to include what I am suggesting. I hope the Member will be contented with that. If, in any case, he has an issue with what I am saying, he should seek for time to contribute and, perhaps, say something different from what I am saying.

**The Temporary Speaker** (Sen. Lelegwe): Proceed, Sen. Mwangi.

**Sen. Mwangi:** Mr. Temporary Speaker, Sir, even the County where Sen. Omogeni comes from should be split into two because it has a huge population. For heavens' sake, we need smaller units to manage because they will be easier and cheaper than managing a county with more than one million people. Some of the cities, like Nairobi, are too big. So, when it comes to alienation of these boundaries, we should have Nairobi West and Nairobi East. This will enable these counties to be managed in a manner that is going to be profitable to Kenyans. That is the way to do it. When considering these boundaries, we should not do so just for the sake of doing it; we should consider the boundaries in terms of what they can offer to the populace. The bigger they are, the more difficult they will become to manage.

Mr. Temporary Speaker, Sir, that notwithstanding, we may want to consider county units which can be joined. For example, Nyandarua, Laikipia and Nakuru can be one administrative area that we can now call a county. Administrative boundaries should be a little bit bigger because the Government is spending a lot of money running 47 counties, yet Kenya is not that big. Kenya does not need more than 15 administrative units, whatever name we call them. We can even call them 'states.' We can have Bomet, Kericho and Nakuru joined together to make one state. That will help us to save a lot of money, particularly when it comes to employment. This is because the people who will be employed in what I am suggesting to be a 'state' will be fewer as compared to having three or four units employing people to do the same work that would be done by fewer people in a large area.

I beg to support this Bill.

**Sen. (Prof.) Ongeri:** Thank you, Mr. Temporary Speaker, Sir. I want to be very brief. This Bill sets out to anchor the boundaries of the counties with the main document, which is the Constitution of Kenya. When you look at the boundaries of Kenya, we have beacons that mark all the boundaries of the country. In the event there is a dispute between Kenya and its neighbouring states, we can then call to action the beacons that have been marked as relates to the boundaries between Kenya and other states.

Equally so, when we had the defunct local authorities and I had the occasion to be the Minister for Local Government, one of the most thorny issues that came about is the question of boundaries between one county government *vis-a-vis* another, more so when it is related to services. We now have 47 distinctive counties created by the Constitution of Kenya and there is nowhere in those 47 counties where boundaries have been delineated by an Act of Parliament.

I want to congratulate Sen. Mutula Kilonzo Jnr. for being able to bring us to speed with this Bill, which eventually when passed with the amendments, will bring about sanity in the recognition of boundaries within the Republic of Kenya.

Therefore, these counties stand as county governments and they are recognised by the Constitution of Kenya. Just as Kenya, as a country, is recognised by its boundaries, we should now recognise the county governments with their boundaries. That is my first point. Therefore, we are taking the right step in creating structures that will be necessary for the administration of one county government from another.

Secondly, we should be cognisant of the fact that there will be cross-cutting interests among counties. For example, Kisii and Nyamira counties have cross-interests.

Sen. Okong'o Omogeni comes from Nyamira County and I come from Kisii County, but we share a market called Keroka. During the day Keroka Market has a very high population, but at night it dissipates. People come there to do business; it is a point of convergence.

We need to be very clear on how the services are being cleared between Nyamira and Kisii counties, so that we do not leave people in conflict. People should not start fighting one another just because we have not sat down and agreed where the boundaries are. The last time when the Independent Electoral and Boundaries Commission (IEBC) wanted to delineate boundaries, with Nyaribari Masaba being alienated to Nyamira County Council at that time, we made an objection. This was because we were being detached from another part of Nyaribari Chache. I now believe that with this Bill in place, it should help us to get the right beacons and demarcations, which will resolve a lot of disputes that arise out of these markets.

The other thing that has come out quite clearly is that there is now room for mediation. Before, these things were left at the mercies of the two governors, and if they failed to talk, then the issues were at limbo. Therefore, no progress was being made and the inhabitants of these counties were suffering, until the two governors agreed to meet. Now that there is a legal process that will lead to mediation and the manner in which that mediation committee is appointed, it will be very critical towards the administration of justice to the disputes arising between the two counties. It could be two, three, four or five counties, whatever the case may be. It is an important factor that we now have an avenue upon which we can redress the boundaries.

It may not look apparent, but it is possible that, in future, the cross-county towns may become so huge in population that the IEBC may want to award constituencies to those particular towns. How do we treat this matter when it comes to that level, unless we are very clear right from the beginning whether or not the boundaries exist? Therefore, this is a forward looking Bill that will help to forestall any arguments or disputes that are likely to come up when the IEBC will be demarcating constituencies, particularly, in the growing towns and cities.

I heard the contribution by the Senator for Nyandarua, who is a good friend of mine, and understood him. Probably, what he had in mind is, for example, a city like Nairobi which is so huge that the county government does not know the tail-end of their services. The most logical thing that people normally do, like in London, is to create administrative boroughs for the convenience of that city and its inhabitants; both permanent and temporary residents who come in and go out during the day and night respectively. It is important that we foresee a situation where such populations expand across counties. This Bill should then provide us with a way forward on how to deal with those issues.

We are complaining that we are creating so many commissions, but this is one area that deserves a commission, and I will tell you why. We were prosecuting an issue earlier on during the debate on National Employment Authority. We were questioning its value and existence because they have not been able to generate enough business. But, at any given time when a dispute of this nature erupts, this standing commission will be able

to cool down tempers and bring about cohesion in the manner in which we deal with the inter-county disputes.

Already, there is a dispute not in a closer county, but a distant county about the business movements. We have seen in the Press and are all witnesses to what is going on. I do not want to refer to that because it will take me to another debate, which I am not interested to enter into at this stage. We must find mechanisms of sorting out disputes among ourselves. We must find out mechanisms on how to relate in this Senate. It is important that when we are dealing with county matters, which are our primary responsibility, we should ensure the smooth governance structures of the counties. We should safeguard them from anything that is likely to disrupt their movements, revenue source and format of employing people.

Therefore, I am in full support of this Bill. We will be quite happy to participate in whatever amendments that may come up during the Committee stage. But at the moment, the way I see it, at least it has given us a starting point. We should not continue the way we are with regard to boundaries. It is a big shame that we had not thought of this Bill earlier on; it has now come during the Twelfth Parliament. This should have been one of those enabling Bills, which should have become an Act of Parliament before we even started talking about the county governments.

Therefore, by bringing this Bill to this House, Sen. Mutula Kilonzo Jnr. has rescued us, so that we can put our House in order to manage the affairs of the counties. There are bound to be disputes arising between the counties; make no mistake about it. We are not cast in stone; there will be disputes. Therefore, we need to create a mechanism and channel through which these disputes can be resolved.

I remember, for instance, even at the constituency level, there have been disputes arising out of constituencies that cut across borders. We had disputes between Nyaribari Masaba Constituency and Kilgoris Constituency, which is in Trans Mara. We had to appoint some *wazees* because at that time, we realised that we did not have a mechanism of dealing with this matter. So, we appointed a committee of five from my side and another committee of five from the other side. Together they sat down, agreed and, thereafter, called a huge *baraza* to address this matter.

However, that agreement was not recorded anywhere as having been mutually agreed and accepted by both sides. But I can assure you that it brought us peace for the rest of the period. I walked from one end of the border to the other and it created awareness. Since that time, we have never had any dispute along that border. But this was a dispute that was resolved by elders from both sides of the divide of the constituency. We now have a bigger unit of county governments and we must now lay down the legal framework upon which we can resolve this matter and come clean so that we are not in any doubt on what we are dealing with.

Regarding the population dynamics, I think it is a matter of the future. We should look at the new urban agenda that it is envisaged; that in order to stem rural-urban migration, we must create favourable urban centres within the various counties which will cut across the common boundaries of the counties. If they do so, how will we handle arbitration for the centres that come up? Once this Bill becomes an Act of Parliament, it will help us to delineate and settle disputes arising out of these comments.

With those few remarks, Mr. Temporary Speaker, Sir, I fully support this Bill and hope that it will move forward to the next level.

**The Temporary Speaker** (Sen. Lelegwe): Thank you, Sen. (Prof.) Ongeru Proceed, Sen. (Rev.) Waqo Naomi.

**Sen. (Rev.) Waqo:** Thank you, Mr. Temporary Speaker, Sir. I stand to congratulate Sen. Mutula Kilonzo Jnr. for coming up with the County Boundaries Bill (Senate Bills No.6 of 2017), that will support us. I would also like to thank and appreciate him for being a visionary leader. As many hon. Members have said, this is something that needed to have happened a long time ago, but it is okay to do it even now and in a good way.

Mr. Temporary Speaker, Sir, I stand to support this Bill because of the challenges that we have gone through as Kenyans. Many hon. Members have expressed the challenges they have in their inter-county boundaries and also the boundaries with our neighbouring countries. I come from the border of Kenya and Ethiopia and we have always had challenges and conflicts. The lack of a proper demarcation has caused some of the challenges that we have gone through. When I went through the proposed Bill, I found that it provides a mechanism for resolution which will help us to overcome some of the conflicts that we have had on the ground. Part two of the Bill talks of the county boundaries while part three talks of management of disputes, which will promote cohesion.

Mr. Temporary Speaker, Sir, The Bill also provides the procedure for alteration of county boundaries. We currently have a case with Turkana County because of Lake Turkana. We are wondering whether the lake is in Marsabit or Turkana county. Just last week, we were advised on how the case is going on. It is my prayer that this Bill will solve some of these problems.

Mr. Temporary Speaker, Sir, this Bill also proposes the establishment of an Independent County Boundaries Commission at the ground level, where they will sit, listen and resolve all their problems. Having looked at the Bill under Part II, I was especially excited by Clause 4(1), which states that:-

“The Cabinet Secretary shall keep and shall, upon request by any person, make available an up-to-date electronic record of the boundaries of the counties”

This is what we are currently lacking and having a lot of challenges with. People have fought over boundaries. Some of our political leaders have been given names and have fought in the past because some people suspected that they had ‘eaten’ money and compromised our boundaries. So, this Clause will help to resolve some of our problems.

Clause 4(3), under the same Part II says that:-

“Any person who unlawfully interferes with the records kept under this section commits an offence and is liable, upon conviction, to a fine of two million shillings or to five years imprisonment or to both.

This is also very protective to our people on the ground and, for those reasons, I support this Bill and thank the Senator who has brought it.

I beg to support.

**The Temporary Speaker** (Sen. Lelegwe): Thank you, Senator. Proceed, Sen. (Dr.) Christopher Langat.

**Sen. (Dr.) Langat:** Thank you, Mr. Temporary Speaker, Sir. Most of the things that I would have wished to say have already been mentioned. But I would like to say that I support this---

*(Sen. Olekina consulted loudly)*

Sen. Ledama, *unasema nini?*

Mr. Temporary Speaker, Sir, my neighbour from Narok County, Sen. Ledama, interfered a bit. I think he suspects that I want to say that part of Narok should be in Bomet County. I would like to tell him to relax.

*(Laughter)*

Mr. Temporary Speaker, Sir, I strongly support this Bill, which has come at the right time. It will bring a solution to the problem that was created by our earlier friends who fell into the trap of the colonial boundaries, which divided us into particular communities and promoted our disunity instead of unity. We should be careful to stick to the principles guiding this Bill so that we may not fall into the trap that was there before the colonial era. If we go into some historical boundaries as one of my friend said, for example, reclaiming areas like Chemilil and some of the areas which are already in other counties, it might bring us trouble.

Mr. Temporary Speaker, Sir, I support this Bill based on the objectives that are already there. I have read the Bill and if we restrict ourselves to the guiding objectives, we will achieve the greater objective of this particular Bill. For example, as Sen. Githiomi Mwangi has said, everybody wonders why Nyahururu is in Laikipia instead of being in Nyandarua County.

Sometimes the current boundaries inconvenience our people, as evidenced by some of the boundaries that are in some counties. This is because they force some county members to go through long processes for their problems or issues to be solved instead of getting solutions within the nearby counties. For example, the issues of the people of Trans Mara can be served well within Kisii or Bomet counties instead of them travelling all the way up to Narok County.

*(Sen. Olekina consulted loudly)*

Sen. Olekina is already saying; no, no.

Mr. Temporary Speaker, Sir, we should support this Bill with amendments, but within its objectives.

I beg to support. Thank you.

**The Temporary Speaker** (Sen. Lelegwe): Thank you, Sen. (Dr.) Langat.

Proceed, Sen. Wario.

**Sen. Wario:** Thank you, Mr. Temporary Speaker, Sir, for giving me this chance. Bills Nos.8 and 9 are before the Committee on Devolution and Intergovernmental Relations for public participation. Today, we heard from the Council of Governors (CoG) and the forum of Deputy Governors. Tomorrow, we will write up the inputs that we got

today and a comprehensive report on the same. The same will be presented to this House next week.

I seek your direction because whatever we are doing today is what we will do next week. In that case, the Senators who would like to give their input are welcome tomorrow in Committee Room No.9. We are still writing the report.

Mr. Temporary Speaker, Sir, I seek direction on the same.

Thank you.

**The Temporary Speaker** (Sen. Lelegwe): Thank you, Sen. Wario. The Bill is already before the House and we will commit it later to the Committee. We are even yet to call upon the Mover to reply. So, we will proceed with comments and contributions from the hon. Senators.

I see only one request from Sen. Halake.

**Sen. Halake:** Thank you, Mr. Temporary Speaker, Sir, for giving me the opportunity. Any pastoralist who does not contribute to this Bill will be in big trouble. So, I have sat here very patiently to make sure that I add my words to it. I stand to support and also congratulate Sen. Mutula Kilonzo Jnr. for this timely Bill.

As you know, the previous Act under the old Constitution entrenched historical and colonial injustice for most parts of the country with regards to boundaries. Therefore, this Bill gives us a second chance to ensure that we rectify those historical injustices, especially for pastoralist communities, who for a long time did not really pay attention to boundaries and freely roam the plains of northern Kenya and other parts of Kenya. Therefore, they were very disproportionately disadvantaged by especially the old Constitution, where district boundaries were deemed to now become county boundaries.

I support this Bill because it gives effect to Article 188 of the Constitution on the alteration of county boundaries. Again, given the fact that there was no mechanism in place for resolution of conflict between different counties with regard to boundaries, this is really timely especially now that we are all very cognizant of the fact that counties are our unit of service delivery, resource allocation and other advantages.

Mr. Temporary Speaker, Sir, for me, more than even the contents of the Bill itself, I am very impressed with the possibilities that this Bill provides us as a country. This is in regards to boundary disputes where the Bill proposes to have an *ad hoc* county boundaries mechanism. It also puts timelines on the work of the Committee and, therefore, the land issues that went on for 99 years until everything lapsed and we went back to square one are going to be resolved. I like the time-bound nature of the work of these *ad hoc* committees. This is, therefore, very timely.

The other area where I think the consequences of this Bill will help the country move forward is the scenario of the boundaries of the districts in the Districts and Provinces Act. These boundaries are deemed to be the boundaries of the corresponding counties at the moment. For us, that is an injustice that will be corrected by this Bill. For pastoralists, for instance, we keep moving from county to county with our animals and sometimes we are blind to county boundaries. That said, traditional boundaries should also be taken into consideration as we look at this Bill.

The issue around resolution of boundary disputes between counties through the mediation process is such a welcome part of this Bill. Of course, the Constitution is a

broad guideline or law. As the Senate, this is the opportunity for us to then break down this broad law under Article 188 into a very useful Bill that will enable everybody to resolve boundary issues. Land issues have driven insecurity in this country and have been politicized for a long time. Having these mechanisms in place will ensure that we move forward as a country and correct some of the past injustices that many people have suffered.

I support this Bill and look forward to see it work for our people.

**The Temporary Speaker** (Sen. Lelegwe): Thank you, hon. Senators. There being no other requests, Sen. Mutula Kilonzo Jnr. will reply at a later date. This is in line with the directions given earlier by the Chair.

*(Bill deferred)*

Next Order.

*Second Reading*

THE ASSUMPTION OF OFFICE OF THE COUNTY  
GOVERNOR BILL (SENATE BILLS NO.1 OF 2018)

**Sen. Wamatangi:** Mr. Temporary Speaker, Sir, I beg to move that the Assumption of Office of the County Governor Bill (Senate Bills No.1 of 2018) be now read a Second Time.

The Assumption of Office of the County Governor Bill (Senate Bills No.1 of 2018) was published on 12<sup>th</sup> January and read for the First Time on 15<sup>th</sup> February, 2018. The object of the Bill is to provide for the procedure and the ceremony of the assumption of office of the County Governor elect. This is one of the Bills that we had introduced in the previous House, and in the processes of Parliament, it never saw the light of day.

Just as a recap, when the elections of 2017 were held, the guidelines that were picked to assist in the assumption of office for all county governors by the Ministry of Devolution and Planning, indeed, were drawn from the proposals that we had done in this Bill. Thus, the importance of the Bill cannot be overstated. Presently, there is no legal framework governing the assumption of office of the county governor and the legal framework is important because it ensures a successful and smooth transition into the office of the county governor by the county governor elect.

Clause 3 of the Bill limits the application of the Bill to the assumption of office of the county governor by the governor elect, with the necessary modifications of the assumption of office by the deputy governor elect and the county assembly speaker, in a case as contemplated under Article 182(2) and (4) of the Constitution.

Article 182(2) states that:-

“If a vacancy occurs in the office of the county Governor, the deputy county Governor shall assume office as county Governor for the remainder of the term of office of the county Governor.”

Mr. Temporary Speaker, Sir, this scenario is remembered in the situation that prevailed following the demise of the late Governor for Nyeri County, the brilliant Gov. (Dr.) Gakuru - May God rest his soul in peace. Following his demise, pursuant to the

provisions of the Constitution, the deputy governor assumed office. However, even now, the same scenario prevails. The office of the governor is occupied by the deputy governor with a lacuna in law. That does not provide for onward movement.

Article 182(4) states:

“If a vacancy occurs in the office of county governor and that of deputy county governor, or if the deputy county governor is unable to act, the speaker of the county assembly shall act as county governor.”

As provided for in the Assumption of Office of the President, there is a clear line up in assumption of office which envisages all scenarios in the event that any of the emergent or perceived situations occur. However, this has been lacking and was silent in the Assumption of Office of the County Governor. Those are some of the areas that this Bill seeks to address.

Clause five of this Bill provides for the establishment of the Assumption of Office of County Governor Committee which shall be an *ad hoc* committee consisting of various personnel and people within the county. We envisage an *ad hoc* committee because the period of time and the mandate of this committee is time bound. The purpose of the committee is to only facilitate work around the requirements, provisions and facilitation for the county governor-elect to smoothly assume office. That is why this committee can only be provided for under the terms of an *ad hoc* committee.

Mr. Temporary Speaker, Sir, for the record, the various individuals who have been envisaged to be members of this *ad hoc* Committee on the Assumption of Office of the County Governor are:-

- (a) The County Secretary who shall be the chairperson;
- (b) The Principal Legal Advisor in the respective county;
- (c) The Chief Officer in the department responsible for matters relating to the county public service;
- (d) The Chief Officer in the department responsible for matters relating to information and communication;
- (e) The Chief Officer in the department responsible for matters relating to finance;
- (f) The Chief Officer in the department responsible for matters relating to public works, roads and transport;
- (g) The County Commissioner;
- (h) The head of National Police Service in the county;
- (i) The Policing Authority representative in the county;
- (j) The Clerk of the county assembly; and
- (k) Two persons nominated by the governor-elect.

The persons enlisted in this Bill are key people within the county. They are all persons who in one way or the other, either in the previous county government have held important positions within that county and are thus custodians of important knowledge, tools, facilities. They would play an important role in ensuring that the governor-elect is not only properly facilitated but is informed, catered for, has got all the necessary tools, information and access to ensure that there is a smooth assumption of office of the governor who is elected in a county.

Mr. Temporary Speaker, Sir, amongst those individuals in this committee is the clerk of the county assembly. I included the clerk of the assembly because in the life of the county government, it is envisaged that the county governor's office works hand in hand with the county assembly in passing laws. It is also important to notice that the clerk of the county assembly is an important custodian of a lot of information and data. He or she is one of the key people who are always in the office whether or not the life of a previous government has expired by virtue of an election. The continuity that will be offered by the presence of the clerk of the county assembly and other officials like the county commissioners is important.

Mr. Temporary Speaker, Sir, Clause Six of the Bill provides for the functions of the Committee as follows:

(a) To facilitate the handing over process by the outgoing governor to the governor-elect.

Without belaboring the point, it is important that after the elections, there be a handing over process that is well facilitated. The key word here is "facilitate." We are presuming that there are no parameters set that the governor-elect must first be informed or given access before. Therefore, the facilitation is important.

Let me speak on the question of facilitation. As I will outline in the few other points that I will make, the chaos that ensued after the elections in 2013 when we had what I would call our 'virgin' governors" were not only sometimes hilarious, but also expensive. There was mix-up and pandemonium. People did not know what to do. In the process, the country ended up losing a lot of money.

Mr. Temporary Speaker, Sir, the other functions of this Committee include:-

(b) Ensure the provision of security services for the governor-elect.

It is also important for this House to note that we are all here by virtue of an electioneering process. We know what happens. When a candidate, especially, one of the status of a governor-elect has been given the mandate by the people of that county, it is important to ensure that he has adequate security services. I do not want to go into a lot of details about this particular issue. However, we have had interesting history as a country after elections where candidates have either been abducted and a lot of other things have happened.

The next function of the Committee is to:-

(c) Put in place the necessary facilities and deploy the necessary personnel to be at the service of the governor-elect upon assumption of office.

We are assuming that a governor-elect comes into office when he or she has not been a county employee before. There are thousands of workers in different departments. There needs to be a provision where all these personnel are put at a vantage position for the governor-elect, for him or her to access either the information they have or any information he or she may require. This function is important to be dealt with by this committee.

Mr. Temporary Speaker, Sir, the next one is:-

(d) Co-ordinate the briefings of the governor-elect by relevant county public officers.

Once more, we remember, for example, when governors assumed office the first time, since these were 'virgin' offices, as I said, the trend was to hire mostly their friends,

loyalists, campaigners and henchmen. Sometimes you find in the core team that is at the centre of the county is a group of people who are loyal to that particular person only. The requirement of the law that one needs to understand is that at the expiry of the term of a governor, the officers employed by that government owe and pledge allegiance to the government of the day. That may be taken for granted but in most cases it does not happen. That is why it is important for this to be included in part of the functions that will be addressed by this Committee.

The next function is:-

“(e) Facilitate communication between the outgoing governor and the governor-elect.”

These are pertinent issues. As elected Members, we all know what happens in an electoral process. Sometimes it gets so grueling and competitive that at the end of the process, candidates cannot even look at each other, let alone speak. Therefore, facilitation of communication between the two, especially where there is exchange of important information that will help the governor-elect continue with the work that was being done by the governor who was in office is important and is part of the functions.

Mr. Temporary Speaker, Sir, the other function of this Committee is:-

“(f) prepare the programme and organise for the swearing-in ceremony.”

In the absence of an organised programme, we can probably imagine what would happen and happens in the processes of swearing-in. I again bring my mind to the events of 2013. I was there in my county and others where I paid a visit to help my friends as one of their guests. It was chaotic. One would find that some people did not know where to start or what to do. Some events were being held all the way up to after 6.00 p.m. where you would find people still dancing. There was no date or programme and people did not know who was going to speak where.

Generally, this is what we are trying to address by ensuring that there is a programme that can be followed on this day.

Lastly, the other function is to:-

“(g) Carry out any other activity necessary for the performance of its functions under this Act and perform any other function assigned to it under any written law. “

Clause Nine of the Bill tasks the Assumption of The Office of County Governor Committee with the duty to provide adequate security for the county governor-elect and deputy governor-elect upon the declaration of the final results of the election of the office of the governor by the Independent Electoral and Boundaries Commission (IEBC) following their election.

The key words here are “upon declaration of the final results”. When we are going through the election process, most of the times these results are announced in open halls where multitudes of people have come. Some come expecting to win, others disputing the results and others with other intentions.

Upon the declaration of a governor-elect and deputy - it is on record and we all have seen it - that in some places it ends up breaking into a fight. In other places you find somebody grabbing the results from the IEBC officer before they declare the results and running away with them. Others will literally jump onto the candidate about to be declared winner and strangle them.

Since the results are already there ready to be declared, the implication of any harm occurring to this governor-elect would mean another very expensive and lengthy process for that county to get back to the same point. Therefore, Clause Nine addresses the necessity of providing security to the governor-elect and deputy governor-elect upon declaration of the results at the point of declaration.

Under Clause 11 the Bill also proposes that:-

“If a county governor-elect dies after being declared elected as governor, but before assuming office, or is unable to assume office for whatever reason---”

Mr. Temporary Speaker, Sir, we will need to address this a little bit in detail. This is because it is unlike the other scenario whereby I gave an example of what happened in Nyeri County. What happened at that time was that a governor, who had already assumed office, passed on. In this case, the Bill premises – because it is a possibility – that a county governor maybe elected and, for any one reason, he is not able to assume office upon being declared a governor elect.

What the Bill proposes here is that if the county governor-elect dies after being declared as the county governor but before assuming office; or is unable to assume office, then it is the deputy governor-elect who shall be sworn in, in an acting capacity, as the acting county governor. Fresh elections shall then ensue within 60 days after the death of the governor-elect. I hope I have stated that clearly.

Mr. Temporary Speaker, Sir, the idea here is that you have a person who has gone into a competition, he has been elected and declared as the county governor-elect; he is ready to assume office but he dies before he does that. So, what would happen in this kind of a scenario? That is why we are saying that the deputy county governor-elect would be sworn in as the acting governor. Thereafter, elections would ensue within 60 day to ensure that the wish of the people of that county to have a governor of their own choice, notwithstanding the calamity, is still addressed by virtue of the election to be held within 60 days.

In addition, Mr. Temporary Speaker, Sir, if the deputy county governor-elect dies before assuming office or is unable to assume office, the office of the deputy county governor shall be declared vacant on the assumption of office by the person declared elected as the county governor. Once more, let me take a second to clarify that point. Here, the thought reverts to this scenario. You have two individuals who have been running together as running mates for office as governor and deputy governor. The deputy county governor has been declared as the deputy governor-elect, but before assuming office, he dies. Then what happens? In sealing that loophole, we are saying that the county governor himself shall take the mandate and declare the office of the deputy county governor vacant. Thus, the governor will take the responsibility of transiting with the process.

Mr. Temporary Speaker, Sir, the Bill further sets out timelines and procedures for swearing in a person who assumes the office of the county governor under Article 182(2) of the Constitution as follows. If you allow me, I will read it out.

“If a vacancy occurs in the office of county governor, the deputy county governor shall assume office as the county governor for the remainder of the term of the county governor.”

This is the case with Nyeri County. The Bill gives power to the person who assumes the office of the county governor, under Article 182(2) of the Constitution, to nominate, with the approval of the County Assembly, a deputy governor within 14 days. The Motion for the approval of the appointment of a deputy governor shall be supported by a majority of the Members of that County Assembly.

Mr. Temporary Speaker, Sir, the scenario we are trying to address here is the one that has prevailed in Nairobi County, whereby you have a governor but no deputy governor. The governor is unable to move in the absence of an enabling law. So, the process is set out here that a deputy governor can be nominated. The nomination will require the approval by a majority of the Members of the County Assembly within a set timeline of 14 days. That will address the lacuna and the limbo that exists right now, for example, in Nairobi County.

The Bill also sets out instances when the office of the Deputy County Governor may become vacant, such as when he dies, resigns by notice, and we saw such an instance when it was done by the good former Nairobi County Deputy Governor, Mr. Polycarp Igathe. It also envisages a scenario where the Deputy Governor ceases to be eligible for nomination as the Deputy County Governor under Article 185 of the Constitution. Also, if he assumes office of the Governor under Article 182(2) of the Constitution and if he is convicted of an offence punishable by imprisonment by at least six months or he is removed from office under the procedure provided in the Bill.

Mr. Temporary Speaker, Sir, the Bill provides for the swearing in of the governor-elect to be conducted in a public ceremony before a resident High Court Judge or in the absence of such a Judge, before a resident chief Magistrate. The swearing in ceremony shall take place on the first Tuesday following the 21<sup>st</sup> Day after the declaration of the results of the election of a county governor. It is important that this procedure is clearly set out in law. In the 2013, there were all manner of happenings, other than recently in the year 2017 case, where the Ministry of Devolution and Planning borrowed from the Bill that we had moved at that time.

Making sure that there is legality and legitimacy to this process, by ensuring that we have a High Court Judge present to swear in the Governor, within a specific date and time, as has been clearly set out in the Assumption of the Office of President Act, is very important. This time a lot of confusion and precedents, some of which may not be good, about swearing in have happened. It is good to have a swearing in that is legal and witnessed by a High Court Judge or resident Magistrate within the set time line.

Clause 17 of the Bill provides for the handing over of the following symbols as a sign of transfer of executive power and authority in the county. The symbols of power and authority are: The county flag, the Constitution of Kenya, 2010 and the county public seal. It is also important to note that, even as we speak, some counties do not have a flag of their own. Actually, during the handing over in 2017 all manner of items were exchanged as symbols of change of power and authority.

I remember going to one ceremony where one of the governors was handing over something that looked like a small model of a small Elephant. I was asking myself what was being exchanged, but that was their symbol. If you ask most of the counties where their county flags are, they will tell you that they do not have them. If you were to

challenge them to show where their public seals are, you will find out that they do not have them. It is important for the symbols of authority and power to be well spelt out.

Clause 17 (2) of the Bill sets out the circumstances where the handing over of the instruments of power and authority shall not apply. One of them is when the outgoing governor is not present during the inauguration. Most of the county governors who were defeated in the 2017 general elections refused to go for the swearing in ceremonies of the governors-elect. We have to address a case where one refuses to attend, because we cannot delegate that responsibility to another person. Also, when the incumbent is re-elected into office, there is no point of handing over these symbols and instruments of power.

Clause 17 (4) of the Bill provides that the failure by an outgoing county governor to hand over those instruments of power to the governor-elect shall not invalidate the assumption to the office of county governor by the county governor-elect. It is important that it becomes clear that one cannot scheme that because they are the ones who are keeping the symbols of power and authority in their office; if they do not come to hand them over to the governor-elect, it will be presumed that governor-elect has not been validly elected or cannot assume office properly. So, in this kind of cases, even if the outgoing governor does not show up---

**The Temporary Speaker** (Sen. Lelegwe): Order, Sen. Wamatangi. You still have 31 minutes left for your contribution to the Bill.

#### ADJOURNMENT

**The Temporary Speaker** (Sen. Lelegwe): Hon. Senators, it is now time to adjourn. The Senate, therefore, stands adjourned until Tuesday, 13<sup>th</sup> March, 2018 at 2.30 p.m.

The Senate rose at 6.30 p.m.