

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Tuesday, 20th March, 2018

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

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

PRAYER

COMMUNICATION FROM THE CHAIR

REMOVAL OF SENATE MINORITY LEADER;
SEN. MOSES WETANGULA

The Speaker (Hon. Lusaka): Hon. Senators, on Thursday, 15th March, 2018, I issued a Communication in the Senate in which I informed Hon. Senators that I had that morning, received a letter from the Senate Minority Whip, Sen. Mutula Kilonzo Jnr. Referenced; “Communication on Removal of Minority Leader, Sen. Moses Wetangula and Election of Sen. James Aggrey Orengo, Pursuant to Standing Order No. 20(4), 20(5) and 20(6)”.

In the letter, the Senate Minority Whip informed me that he had, on 15th March, 2018, at 11:00 a.m., received Minutes of a meeting of the Orange Democratic Party held on 14th March 2018 at Crowne Plaza and resolutions dated 14th March 2018 signed by 16 Senators confirming the resolutions of the said meeting.

The Senate Minority Leader proceeded to transmit the resolutions to my Office pursuant to Standing Order No.20(6)(a) of the Senate Standing Orders, for appropriate action.

Hon. Senators will recall that on that occasion, I made an elaborate assessment of the facts of the matter and the governing constitutional and legal provisions, including the relevant provisions of the Standing Orders. In the end, I made a determination of this matter as follows-

- (1) That I found and held that on the basis of the letter of the Senate Minority Whip of Thursday, 15th March, 2018 and the minutes and signatures appended thereto, the criteria and threshold set out at Standing Order No.20(4) had been met and Sen. Moses Wetangula had accordingly been validly removed from the office of the Senate Minority Leader; and

(2) That I also found and held that to the extent that, pursuant to Standing Order 20(1), the appropriate entity to elect a Minority Leader for the Senate is the NASA Coalition, and to the extent that the entity and the meeting that had purported to elect a new Minority Leader for the Senate was the ODM Parliamentary Group, an organ of a constituent party of the NASA Coalition, which entity is unknown to the Senate, the requirements of Standing Order No.20(5) had not been met and accordingly, that the removal of Sen. Moses Wetangula as Senate Minority Leader though valid, stood suspended and would not take effect unless and until a Senator had been elected by the NASA Coalition in the manner provided for by Standing Order No.20(1) and the communication to that effect together with minutes evidencing that decision had been made in writing, to my office by the Senate Minority Whip.

Hon. Senators, today, Tuesday, 20th March, 2018, I have received in my office a letter dated 19th March, 2018 and referenced NASA/Adm/03/021, which I wish to quote verbatim as follows-

Dear Mr. Speaker,

LEADER OF MINORITY IN THE SENATE

The above matter refers.

Further to your communication issued on Thursday, 15th March, 2018, I have instructions from the National Super Alliance Summit comprising of the NASA Principals to inform you that Sen. Moses Wetangula remains the duly nominated leader of minority in the Senate by NASA.

Yours faithfully,

[Signed]

Norman Magaya
Chief Executive Officer

I have also, today, Tuesday, 20th March, 2018, received in my office another letter dated 20th March, 2018, which I wish to quote verbatim as follows-

Dear Speaker,

RE: COMMUNICATION ON ELECTION OF SENATE MINORITY LEADER
PURSUANT TO STANDING ORDER 20(1)

Greetings,

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The attached Minutes and Resolutions dated 20th March, 2018 were forwarded to your office, upon which you directed me to forward the same as per Standing Order No. 20(6)(a) of the Senate Standing Orders, which I hereby do; for your further action.

Yours faithfully,

[Signed]

Mutula Kilonzo Junior

On the basis of these two sets of correspondence, it falls to me to determine what the effect of each letter is and how this matter shall go forward.

Hon. Senators, it is important to note that on the basis of the letter of the Senate Minority Whip of 15th March, 2018 and the ruling thereon which I made, the matter of the removal of Sen. Moses Wetangula as the Senate Minority Leader was completed when, pursuant to standing order 20(4), a majority of the Senators belonging to the NASA Coalition voted to remove him.

A vacancy immediately arose in the office of the Senate Minority Leader. What remained, and which is what I suspended in terms of Standing Order No.20(5), was the effective date for the actual vacation from the office of the Senate Minority Leader which could not occur until the NASA Coalition elected another Senator or, indeed, the same Senator, if the Coalition so desired and communicated that decision to my office through the Senate Minority Whip.

Hon. Senators, it follows that after my Communication last Thursday, the *status quo* remained and would remain indefinitely until such time as the provisions of standing order 20(1) were met.

Hon. Senators, I have perused the letter from the Chief Executive Officer of the NASA Coalition and wish to make the following observations-

- (1) The letter does not communicate the election of a Senator to be the new Senate Minority Leader after the removal of Sen. Wetangula;
- (2) The letter is not accompanied by Minutes of the meeting at which the new Senate Minority Leader was elected and the Senators of the NASA Coalition who were present thereto and subscribed to such election, and;
- (3) The letter is not transmitted to the office of the Speaker by the Senate Minority Whip.

Hon. Senators, in these circumstances, I find that the letter of the Chief Executive Officer of NASA falls short of the requirements of Standing Order No.20(1) in each and every material, particular. Therefore, it is inadmissible.

In fact, it would appear to me that this letter should more appropriately have been addressed to the membership of the NASA Coalition in the Senate rather than to the Speaker, in order to guide the Senators belonging to that Coalition on the position of their Coalition's apex leadership in the matter of the election of a replacement Senate Minority Leader.

I now turn to the letter of the Senate Minority Whip which I first referred to at the onset of this Communication. It bears repeating that Standing Order No.20(1)(a) of the Standing Orders of the Senate provides that-

“The second largest party or coalition of parties in the Senate shall be the Minority Party and shall elect a Senator belonging to the party or coalition of parties to be the Senate Minority Leader.”

I have analyzed the letter sent to me by Sen. Mutula Kilonzo Jnr., the Senate Minority Whip, and make the following observations-

- 1) The letter is addressed to the office of the Speaker and is signed by the Senate Minority Whip;
- 2) The letter has, attached to it, the Minutes of a meeting of the NASA Coalition Parliamentary Group of the Senate held on 20th March, 2018 between the hours of 9:30 a.m. and 10:00 a.m. at the Senate Lounge in the Parliament Buildings;
- 3) The Minutes show that 18 Senators belonging to the NASA Coalition were present at the meeting, 6 others are listed as being “absent with apology” and another three are listed as being absent. It is instructive that the NASA Coalition consists of twenty-seven (27) Senators and the Minutes have accounted for all the Senators, one way or another;
- 4) The Minutes show, under Minute 1/20/03/2018, titled “Election of Senate Minority Leader in accordance with Senate Speaker’s ruling of 14th March, 2018”, that Sen. James Aggrey Orendo was duly proposed and seconded for nomination to the position of the Senate Minority Leader and that there being no other nominee, Sen. Orendo was declared to be elected as the Senate Minority Leader; and
- 5) The letter has, attached to it, the signatures of seventeen (17) Senators, each of whom belong to the NASA Coalition subscribing to the following text-

RE: ELECTION OF SENATE MINORITY LEADER PURSUANT TO STANDING ORDER 20(1)

In furtherance of the ruling of the Senate Speaker regarding removal of Senator Moses Masika Wetangula as Senate Minority Leader according to Standing Order 20(4), and replacement by Senator James Aggrey Orendo according to Standing Order 20(1), herein find the resolution of the NASA Coalition.

We have resolved to appoint Senator James Aggrey Orendo as the Senate Minority Leader with immediate effect as per the attached minutes of the NASA Coalition Senate Parliamentary Group.

Hon. Senators, arising from the observations I have made on this letter, it is clear to me, and I so find and hold, that the requirements of Standing Order No.20(1) of the Senate Standing Orders have been met and, therefore, in accordance with the ruling that I previously made on Thursday, 15th March, 2018, Sen. Moses Wetangula’s service as the Senate Minority Leader ceases with immediate effect and Sen. James Aggrey Orendo is forthwith recognized as the Senate Minority Leader.

Hon. Senators, it is so directed and I thank you.

(Applause)

Please proceed, Sen. Linturi.

Sen. Linturi: Thank you, Mr. Speaker, Sir. Hon. Members of the Senate, I lack better words and adjectives to describe what took place within the NASA fraternity, but for the first time, democracy is being seen to be taking shape. As much as I sympathise with my brother and friend, Sen. Wetangula, I have been wondering how a single Member of a political party can be a leader of the minority coalition in the Senate.

Another reason why I am saying democracy is seen to be working is because our Standing Orders are very clear on how the leadership of this Senate should be arrived at. I have keenly listened to the letters that you have just read to us from the leadership of NASA or ODM stating that the appointment of Sen. Wetangula did not follow the right procedures as laid down in the Standing Orders.

Thirdly, democracy is taking shape because today the Senators within the NASA fraternity have decided to adhere to the rules of this House and elected the leadership that is answerable to them. The leadership that was there was as result of political patronage. This is not the leadership that we would want to see. We want a leadership that is answerable to the people and the Senators. The provisions of electing either the Senate Majority Leader or the Senate Minority Leader are also clear. Let those that are in the other leadership positions take note that they must be answerable and accountable to the Senators in this House.

Mr. Speaker, Sir, it may also depend on what lens you want to look at this matter; that we will also be staring at the death of democracy. If I was to think loudly, probably the handshake that we saw last Friday could be the one that is bringing these goodies around.

I am happy that I have a personal relationship with Sen. Orengo as my lawyer and a friend. I wish him all the best in his new appointment as the Senate Minority Leader. We have a new relationship that we want to nurture for this country. We have this relationship which must work to ensure the economic development of this country is fast-tracked.

Mr. Speaker, Sir, I thank you for your ruling because you have shown the country that the independence of Parliament in terms of making certain decisions is the core of our democracy. As I said, I wish Sen. Orengo all the best in his new job. At the same time, I ask Sen. Wetangula to take it lightly because there are those high and low times in the life of an individual. This is just a normal occurrence; probably, many worse things might have happened to him before. The best thing is to take it lightly and move on.

The Speaker (Hon. Lusaka): I will give three minutes each to the rest of the Members.

Sen. Omogeni: Thank you, Mr. Speaker, Sir. First, let me take this opportunity to congratulate my learned friend, fellow Senior Counsel, Sen. Orengo, for being elected to be the Senate Minority Leader of the NASA coalition in this House. I have no doubt that the leadership of the minority side is on safe hands. Sen. Orengo is not just any other

lawyer, but he is a celebrated lawyer. He is among the few lawyers who have been lucky to be decorated with the title of Senior Counsel.

I sat in this House last week and I heard my good friend and fellow lawyer, Sen. Wetangula, saying that if anybody wants a divorce he will allow it, but it will be noisy and messy. However, I want to tell my colleague, Sen. Wetangula, that we are also able to deliver the divorce. Indeed, we have done so, in a quick, swift manner and with finality.

I want to give some words of advice to my learned colleague and fellow Senator; leadership is not demanded, but is earned by those you want to lead. Last week on Thursday, if Sen. Wetangula had seen that 16 Senators out of the 28 Senators from the NASA coalition had appended their signatures to document saying they had no confidence in him, the best he could have done is to reach out to them and do some soul searching. He would have asked himself: “Why are these 16 Senators not having confidence in my leadership? You do not get elected by baby cries outside the House, but you seek to get the votes of the Senators who will elect you on the Floor of this House.

It is really unfortunate that Sen. Wetangula never saw it coming. He told us that he was not going anywhere. However, I want to assure him that we have delivered the divorce and that he is now standing on quick sand. If he continues to struggle, he will sink deeply. Let him say goodbye to that seat and, with humility, be led by Sen. Orengo.

Sen. M. Kajwang’: Thank you, Mr. Speaker, Sir, for your ruling. Allow me in just one minute to pay gratitude to Sen. Wetangula who has led the minority side for five years going into six years. In the first Senate in the new Constitution, Sen. Wetangula played the role of the Senate Minority Leader which was unprecedented. It was a job that did not have a job description in this Republic. For those of us who were in the last Parliament, we are confident that Sen. Wetangula played his best. He did very well for the Senate and for the minority side.

As a principal of the NASA coalition, we believe that Sen. Wetangula now has an opportunity to work with His Excellency Raila Amollo Odinga and His Excellency Uhuru Kenyatta in delivering and pursuing the peace and reconciliation agenda that this nation has accepted.

Allow me also to congratulate Sen. Orengo on his election as the Senate Minority Leader. Sen. Orengo is a man who needs no introduction in any part of this country. If you go with him to Moyale, Mandera, Remba, Ringiti or Narok County, he is a man who is known because of his commitment to the struggle for good governance in this country. I am confident that he will rally Senators in this House to ensure that the reconciliation agenda that will be coming from the principals; that is, Sen. Wetangula, Hon. Musyoka, Hon. Mudavadi and the Rt. Hon. Raila Odinga, will be effected through the necessary legislative processes.

The Senate Majority Leader (Sen. Murkomen): Mr. Speaker, Sir, I am being threatened, but such things can happen to leadership. I want to thank you for giving me this opportunity. The Bible says in Romans 12:15 that we should weep with those who weep and rejoice with those who rejoice. I stand here at a very unique situation because

on one hand, I want to weep with Sen. Wetangula for we cannot rejoice when he is in such a situation.

Politics is very interesting, and it has ups and downs. A few weeks ago, in this House, Sen. Wetangula mobilized the same Senators to defeat a Bill that I was moving. A few weeks down the line, the same votes that defeated that Bill are the same ones that have been used to oust him from the office of the Minority side. Politics is very fluid and we must always be alert. Like I said last week, I sympathize with the situation of Sen. Wetangula. I believe that it is a lesson for him and it is time for him and his colleagues to sit down, to re-evaluate their political direction in a manner that can lead him to the direction that he wants to go.

Sen. Wetangula has emphasized in this House that he wants to be the President of Kenya. A vote of no confidence has been passed by two-thirds of the leadership of his side. That is a message that he needs to go back to the drawing board, re-plan, re-organize, look at the partners he is working with, look at the methods he is applying and look at the relationship he has with people so that his political career and presidential ambitions can be redirected to the right direction.

The duality of Romans 12:15 is that it says that you weep with those who weep and rejoice with those who rejoice. I would like to also rejoice with Sen. Orengo. Sen. Orengo is one of three Senior Counsel we have in Parliament, all of whom are in this House. One of them is in today, that is Sen. Omogeni, and Sen. Wako is not in. I want to rejoice because that is the highest position any elected leader can hold in Parliament.

(The red timer went on)

I had requested for five minutes.

The Speaker (Hon. Lusaka): Being the Senate Majority Leader, I add you two minutes.

The Senate Majority Leader (Sen. Murkomen): Mr. Speaker, Sir, let me at least enjoy the privileges of the office when they last.

(Laughter)

Mr. Speaker, Sir, I would like to rejoice with him and to tell him that it is a good opportunity for us to work together. As the Senate Majority Leader, I am going to work closely with Sen. Orengo. I believe that he is a man of immense respect in this House. Despite the fact that he is on the minority side, he does not throw insults at us who are in the majority side, like others. It will be a good opportunity for us to partner with him, especially in strengthening the institution of the Senate and ensuring that devolution succeeds. In the same breadth that I wished Sen. Wetangula well, I wish Sen. Orengo well as the new Senate Minority Leader.

I only have a small request. I ask the Parliamentary Service Commission (PSC) and your office, to treat with utmost respect, the extra staffers that were in the office of Sen. Wetangula, in his capacity as the Senate Minority Leader. This is because when dealing with these political situations, the casualties are always the innocent people who

were just doing their job by serving and had to get bread for their families. I hope that the PSC and your office will ensure that the staffers are comfortable and transitioned in a manner that will not affect their careers.

Sen. Wambua: Thank you Mr. Speaker, Sir, for giving me the Floor.

An hon. Senator: *Maembe!*

Sen. Wambua: I will be dumb to comments being made by a colleague Senator about *maembe* because I do not know what that means.

Whereas the principles of democracy are very clear that the majority will have their way, the minority must also have their say. I find myself in that minority within the minority for the reason that the letter that came to your office attests to an election of a new Senate Minority Leader. It lists the names of Senators who participated in the election and it goes on to list the names of those who were absent as three and six Senators who had their apologies registered. Unfortunately and for the record, I am not sure where my name lies. I do not know if it is among the six or the three because I was never invited to that election.

I also want to say that it is not a secret that the Senator for Bungoma, Sen. Wetangula, has demonstrated leadership in and outside this House. I have no doubt about the abilities of Sen. Orendo to offer leadership. The only thing that I will hasten to say is that whatever happens in this House, whether on the majority or minority side; let it be in the best interest of this country, democracy and devolution.

Lastly, I am reminded of a verse in Romans 13:1 which says that we all submit to authority and that the powers that be, are ordained by God. I rest my case.

Sen. Wario: Ahsante Bw. Spika. Ningependa kuchukua nafasi hii kumpongeza Sen. Orendo kwa kuchaguliwa kama kiongozi wawalio wachache katika Bunge hili la Seneti. Kwa hakika, Sen. Orendo alisimama kidete kwa upande wa upinzani. Rekodi zake zimejiandika na kwa hakika, wakati kulikuwa na vuta nikuvute katika kinyang'anyiro cha uchaguzi, Sen. Orendo aligonga vichwa vya habari na kuweza kupeleka sehemu ile yake mbele.

Sen. Orendo anafaa katika cheo ambacho amechaguliwa na kwa wakati huu, tunamkaribisha kuongozi wa wale walio wachache katika Bunge hii la Seneti.

Ningependa pia kueleza masikitiko yangu kwa rafiki yangu, Seneta Wetangula, ambaye aliongoza Maseneta walio wachache katika ugatuzi wa kwanza katika Bunge hilo kwa miaka mitano mpaka kufikia ugatuzi wa pili na siku ya leo. Kwa hakika, Seneta Wetangula aliendesha kazi na Ofisi hiyo kwa ujasiri kubwa sana na aliweza kuusukuma upande huu wa Serikali kwa nguvu zake zote.

Kwa wakati huu, singependa kuchochea upande wa upinzani; lakini kilio huanza kwa wenyewe. Kilio kikianza kwa wenyewe, wanaofariji wakiongezeka, wataanza kilio hicho na pia sisi hatuna budi kulia na wao. Mumetoa uamuzi na sisi pia tunasema tuko pamoja na nyinyi, kwa sababu wengi wape na wale wachache pia wako na njia yao ya kupita. Kwa sababu hiyo, Seneta Wetangula, bado utabaki hapa; ukisukumwa sana, tunahitaji zile *debate* na hoja zako nzuri nzuri unazotoa. Usikae kwenye baridi sana; unaweza vuka upande hii ukaja---

(Applause)

The Speaker (Hon. Lusaka): Proceed, Sen. Olekina.

Sen. Olekina: Thank you, Mr. Speaker, Sir. Let me first register my congratulatory messages to Sen. James Orengo for being validly elected by the National Super Alliance (NASA) Coalition to lead us in this House. The distinguished Senator comes in at the time when the Senate is fighting for the independence of this institution in this country. I want this to be taken as an example by other institutions – maybe the Judiciary, the Executive or this House – that the time for institutions in this country to fight for their positions is now.

I also want to send messages to all the leaders in this House that this is not a time for us to rejoice or to cry. It is the time for us to be reminded that great things never come from the time of comfort. When we were struggling to fight for liberation – what we considered as the second or the third liberation in this country – those people who stood firm with us must always be remembered and rewarded. Leadership is practised not so much in words as in attitude and in action.

Last week, we observed a period of time when we were entertained by different words; those words come and go. However, what is important is for us to remember that we have people whom we represent in this House from 47 counties. These are young men and women who must always learn from the words that we utter in public. I want to remind my brother, Sen. Wetangula, that the work that he has done for the last five years and the work that he will continue to do must always be done while remembering the fact that you never know about tomorrow; you only know about today. So, you should give today all that you can.

Thank you, Mr. Speaker, Sir.

The Speaker (Hon. Lusaka): Lastly, Sen. Mwaura.

Sen. Mwaura: Thank you, Mr. Speaker, Sir. I have to congratulate you for your wisdom. In all the rulings of this House, you have shown great magnanimity, even at the greatest point of provocation.

I also rise to congratulate the distinguished Senator for Siaya County for his election as the Senate Minority Leader in this House. Sen. James Orengo is someone that some of us looked up to. In fact, those of us who fashioned ourselves as centre-left politicians when we thought that ideology would influence politics in this country, looked up to people like Sen. Orengo because he has been steadfast. In fact, his second name is closer to the word reform. So, the reason I am very glad is because Sen. Orengo, in his submission on the Floor of the House, has been very gracious, mature and objective in the way he addresses this House with the respect that it deserves.

This House has witnessed the former Senate Minority Leader – and I am very glad that he is actually out of that position – in the manner in which he has shown utter disrespect to hon. Members of this House.

(Laughter)

It is only about two weeks ago that he stood on the Floor to use unpalatable words that do not deserve to be repeated in this august House. We must find a way of ensuring that

when you are given a position of leadership, you show magnanimity. If you are a senior Member of the House, then show guidance to the so called ‘junior’ Members of the House, including Senators for “nowhere.”

(Laughter)

Mr. Speaker, Sir, I want to reiterate that Article 98 of the Constitution is very clear on representation of this House. There are 47 Members who are elected directly to represent the counties; there are 16 nominated Members to represent women, two Members nominated to represent Persons with Disabilities (PWDs) and two Members nominated to represent the youth. These Senators equally deserve to be respected because they have surmounted many odds to be here to represent the groups they represent in this august House. Therefore, they also need to be respected and given accolades and attention due to them as and when they stand to present issues. However, to have situations where we have leadership of this House that does not respect that group is totally unaccepted.

Mr. Speaker, Sir, this House is constituted by distinguished ladies and gentlemen. These are people who have stood up to fight for what is right; people who are courageous---

The Speaker (Hon. Lusaka): Hon. Members, those who wanted to speak have spoken. I know that there are a few more Members who also wanted to speak, but we must make progress. Allow me to make another communication.

COMMUNICATIONS FROM THE CHAIR

VISITING DELEGATION FROM BOTSWANA HOUSE OF CHIEFS

Hon. Senators, I would like to acknowledge the presence in the Speaker’s Gallery this afternoon, of a visiting delegation from Botswana House of Chiefs to the Senate.

(Applause)

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) Kgosi Puso Gaborone – leader of delegation;
- (2) Kgosi O. Ledimo; and
- (3) Esther Jean.

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

I thank you.

VISITING DELEGATION OF THE JUSTICE AND LEGAL AFFAIRS
COMMITTEE FROM BUNGOMA COUNTY ASSEMBLY

Hon. Senators, I would also like to acknowledge the presence in the Speaker's Gallery this afternoon, of a visiting delegation of the Justice and Legal Affairs Committee from Bungoma County Assembly. I request each member of the delegation to stand when called out so that you may be acknowledged in the Senate tradition. They are:-

- (1) Hon. Rose Imbega – Chairperson
- (2) Hon. Anthony Luseneka, Member
- (3) Hon. Kesia Lukosi, Member
- (4) Hon. James Mukhongo, Member
- (5) Hon. Jane Chebet, Member
- (6) Hon. Hillary Kiptalam, Member
- (7) Hon. Hilda Bedah Siang`a, Member
- (8) Hon. Peter Sindani, Member
- (9) Hon. Everlyne Mutiambu, Member
- (10) Mr. Francis Simiyu Tome, Principal Clerk Assistant
- (11) Ms. Juliet Wanzala, First Clerk Assistant
- (12) Mr. Elijah Odera, Researcher
- (13) Ms. Celestine Moshong, Legal Clerk
- (14) Mr. Protus Simiyu, Hansard Officer
- (15) Mr. Robert Mumbwani, Commissionaire
- (16) Ms. Violet Wakoli, Office Assistant

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

I thank you.

VISITING DELEGATION OF THE MAASAI COMMUNITY
MEMBERS FROM GILGIL, NAKURU COUNTY

Hon. Senators, I would also like to acknowledge the presence in the Public Gallery this afternoon of a visiting delegation of the Maasai community members from Gilgil, Nakuru County.

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

I thank you.

(Applause)

VISITING DELEGATION FROM INYOKONI SECONDARY
SCHOOL, MAKUENI COUNTY

Hon. Senators, I would also like to acknowledge the presence in the Public Gallery, this afternoon of visiting students and teachers from Inyokoni Secondary School, Makueni County.

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

I thank you.

(Applause)

Proceed, Sen. Haji Mohammed.

Sen. Haji: Thank you, Mr. Speaker, Sir. I wish to join you in welcoming the visitors; the Chiefs from Botswana and the delegation from Bungoma and the Maasai community members from Gilgil.

I was once the Provincial Commissioner (PC) for the former Western Province, where the people from Bungoma come from. I was also the PC for the former Rift Valley Province where the Maasai people come from. It gives me great pleasure to reconnect with them this afternoon and welcome them.

Thank you.

Sen. Cheragei: Thank you, Mr. Speaker, Sir. I equally join you in welcoming the Maasai delegation from Gilgil, the Chiefs from Botswana whom we had earlier interacted with, the members of the Committee on Legal Affairs Committee from Bungoma County Assembly and also the students from Makueni County.

I wish them all the best.

Sen. Sakaja: Thank you, Mr. Speaker, Sir. I would like to associate myself with the sentiments from colleagues in welcoming the delegations.

We were privileged as the Committee on Labour and Social Welfare to interact with the delegation from the House of Chiefs of Botswana and we learnt a lot. They have a unique system. As much as their Parliament is unicameral, the traditional chiefs from even before the colonialists, have a house where they sit and advise the Parliament, which creates cohesion. We acknowledge that as much as we have the western systems, our traditional systems also add value. They encouraged us because they focused on maintenance of culture and how to transmit culture to the next generations.

It is quite encouraging for us to have delegations from other African countries. I encourage Committees and Committee Chairpersons that instead of always trooping to the United States of America (USA) or United Kingdom (UK), to also organize trips to other African countries like Botswana, Nigeria, Ghana *et cetera*, so that we can also learn from each other. It must not always be a Western State.

I would also like to welcome the Members of the County Assembly of Bungoma. Your Communication will be transmitted both live on television and by them because they have witnessed it. I am sure when they go back home, they will tell the people of

Bungoma County what has happened to the former Senate Minority Leader. Sometimes, you might think that you have buried someone but he or she is a seed. I know that Sen. Wetangula will still be able to rise from the ashes. However, that is just democracy; *sio uadui*.

Thank you, Mr. Speaker, Sir.

Sen. (Prof.) Ongeri: Thank you, Mr. Speaker, Sir. I rise to add my voice in welcoming our visitors, particularly, the House of Chiefs from Botswana, the MCAs from Bungoma, the Maasai community from Nakuru County and the students from Makueni County. When we interrelate with one another within and outside the country, it obviously enriches this House.

I thank you for enabling us to send a word of congratulations and welcome. We are learning a lot from them just as much as we learn from them when we go to their respective countries.

Since I did not have the opportunity in the last debate, for purposes of record; dignity and respect for one another is the most paramount thing, like we are now according our visitors in both Galleries. I believe that this country is richer when we respect one another and move together, particularly, on the agenda which is before us; of putting this nation together. I was curious to notice in your prayer that you mentioned that peace be our shield as we move into the future.

Thank you, Mr. Speaker, Sir.

Sen. Kihika: Thank you, Mr. Speaker, Sir. I join you and my colleagues in welcoming the guests that we have in both Galleries today. I welcome the Maasai community from Gilgil, Nakuru County, which is my county, as well as the Committee on Legal Affairs from Bungoma County Assembly. I bet today was such an interesting day for them. We met them this morning and as I walked in and realised what the NASA coalition was about to do, I did not know what to think as far as their presence was concerned. But that is just how things go sometimes. I also welcome the House of Chiefs from Botswana as well as the students from Makueni County.

Thank you.

Sen. Mutula Kilonzo Jnr.: Thank you, Mr. Speaker, Sir. Allow me to join you in welcoming the House of Chiefs from Botswana. I would like to learn what they do in Botswana. They are possibly a group of elders who mediate, which is part of the things that we are incorporating in all the laws that we are making. You will note that I did the same in the County Boundaries Bill.

We do not need to re-emphasize the culture and profile the Maasais have given to this country all over the world. Last but not least, I welcome Inyokoni Secondary School from Kaiti. While I welcome this school from Makueni County, I would like to indicate that there was a school that was here from Makueni in the last Session. I dared them that I would educate any pupil who would get above 400 marks and three students got over 400 marks. Therefore, I encourage that we bring more schools, so that they can learn from the Senate.

Thank you, Mr. Speaker, Sir.

Sen. Malalah: Thank you, Mr. Speaker, Sir. I take this opportunity to welcome our visitors and the dignitaries in the Speaker's Gallery. To start with, I welcome the

House of Chiefs from Botswana. I also take this opportunity to recognize and welcome the Maasai community from Gilgil and the MCAs from Bungoma County Assembly. I was once an MCA before I came to the Senate. I encourage them to continue executing their mandates as MCAs. Hopefully, one day they will also come here as Senators.

Lastly, I take this opportunity to welcome the students from Inyokoni Secondary in Kaiti Constituency. These are the leaders of tomorrow. It is time we nurture such attributes from young talents like these students. I encourage them that, in the future, they will be prominent people in our beloved nation.

Thank you.

Sen. Olekina: Thank you, Mr. Speaker, Sir. I rise to welcome our visiting guests from Botswana. I have never been to Botswana, but now that they are here, I will make sure that one of our Committees will come there and benchmark. I also welcome the students from Inyokoni Secondary School. It is always good to be here for you to see where determination and dedication will lead us. This country really requires us to share our experiences and the best place to come and observe is the Senate. I wish I had an opportunity when I was growing up.

Mr. Speaker, Sir, I would also like to welcome the Bungoma County Assembly Members. I would like to let you know that this is democracy and as you go home, you can share with your brothers and sisters that, indeed, the Senate is very democratic.

Finally, I would like to welcome members of my community from both Nakuru and Narok counties from Natooli area. They have visited the Senate to observe how this House of union brings all of us together. This encourages us to embrace and defend our cultures.

COMMUNICATION FROM THE CHAIR

VISITING DELEGATION OF MAASAI COMMUNITY MEMBERS FROM NATOOLI, NAROK COUNTY

Hon. Senators, I would like to acknowledge the presence, in the Public Gallery this afternoon, of visiting delegation of the Maasai Community Members from Natooli, Narok County and the Serjeant-at-arms from Narok County.

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

I, thank you.

PAPERS LAID

REPORT OF THE COMMITTEE ON FINANCE AND BUDGET ON THE SENATE NOMINEES TO SRC

Sen. (Eng.) Mahamud: Mr. Speaker, Sir, beg to lay the following paper on the table of the Senate, today, Tuesday, 20th March, 2018:

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor, Senate.*

The Report of the standing Committee on Finance and Budget on the nominees by the Senate, on behalf of county governments, to the Salaries and Remuneration Commission (SRC).

(Sen. (Eng.) Mahamud laid the document on the Table)

The Speaker (Hon. Lusaka): Chairperson of the Committee on Agriculture, Livestock and Fisheries, proceed.

REPORT ON THE WAREHOUSE RECEIPTS SYSTEM BILL, 2017

Sen. Ndwiga: Mr. Speaker, Sir, I beg to lay the following Paper on the table of the Senate, today, Tuesday, 20th March, 2018:-

The Report of the standing Committee on Agriculture, Livestock and Fisheries on its consideration of the Warehouse Receipts System Bill (Senate Bills No.10 of 2017).

(Sen. Ndwiga laid the document on the Table)

The Speaker (Hon. Lusaka): Next Order.
Sen. Olekina, proceed.

SENATOR'S GENERAL STATEMENT

THE PLIGHT OF THE MAASAI COMMUNITY IN KENYA

Sen. Olekina: Thank you, Mr. Speaker, Sir. I rise pursuant to Standing Order No.46(2)(a), to make a statement on the following issues:-

- (i) The Plight of the Ilchamus Maasai community living in Internally Displaced Persons (IDP) camps;
- (ii) Land ownership among the Maasai community and border conflicts;
- (iii) Disaster management within Narok County; and
- (iv) The inhumane treatment of the former Laikipia North Member of Parliament, Hon. Mathew Lempurkel.

On the first issue, the plight of the Ilchamus Maasai community living in IDP Camps, I would like this House to be informed of the serious social, political and economic challenges facing the Ilchamus Maasais, who have been rendered homeless by insecurity in Marigat, Baringo County.

Due to unresolved land conflicts between the Pokot, Turkana and Ilchamus Maasais, over 147 households have been rendered homeless for the past one year.

Mr. Speaker, Sir, the Eldume IDP Camp which is a home to 147 households comprises of members of Ilchamus community. This community is traditionally a self-sustaining community who engage in land tiling for economic development. The Ilchamus community settled at Eldume Ilchamus IDP Camp 10 months ago following the

killing of one of their members by the neighboring Pokot Community and general insecurity in their ancestral land in Mukutan. As a result of the insecurity which was instigated by Pokot community, the said community has been rendered poor and homeless.

I took some time and visited the good offices of the Cabinet Secretary for Interior and Coordination of National Government, Hon. (Dr.) Fred Matiangi. I sought his assistance to have the situation facing the Maasai from the Ilchamus community resolved. Despite such steps and further correspondences where I highlighted the plight of the said community, I am saddened to report that nothing has been done yet and the poor Maasai from Ilchamus community are still languishing in poverty in the IDP camps.

Mr. Speaker, Sir, the Pokot and the Ilchamus community have been neighbors in Mukutan for quite some time. Since their evictions, however, it has been impossible for the Ilchamus community to return to their homes peacefully. The Ilchamus community is still unable to return to their homes where they have their livelihood. My appeal to the CS then and even now was to request an expeditious action in order to provide the Ilchamus community with enough security to allow them to return to their homes in Mukutan. The members of this community can be provided with the same kind of services provided to the Pokot and the Kalenjin communities living within Mukutan area and not sidelined and left to languish in poverty.

I am aware that the Independent Electoral and Boundaries Commission (IEBC) is currently undertaking some survey and reviewing the boundaries around the county. We appeal that even as they do that, they can clearly define the administration area for the Ilchamus community and help establish a district for this community just like they did for the Pokot who were given Tiaty East District.

On the Second issue, land ownership among the Maasai community and border conflicts; today in this House we have members from the Maasai community who live in Gilgil. These members have been reduced to fighting for land which was originally owned by the Agricultural Development Co-operation (ADC). Let me bring to the attention of this House that if we allow this to continue, these people who are seated here will continue fighting each other and the conflict will now go from ADC to one Maasai and another fighting each other.

The Maasai have historically been known to be peaceful and industrious people. However, as time went by, several Maasais have been evicted from their lands and ownership of their ancestral lands has been relinquished to other people, some of whom take them through crude means and defraud them. As a leader from the Maasai community, I will not shy away from highlighting such incidences and be on the forefront to advocate against such practices.

The issue of Natooli has claimed several lives. The ADC has been in the middle of this. Maasais are fighting among each other and I think it behooves us as Members of this House to ensure that we stand to unite these people.

In the public Gallery, we have two groups which are fighting each other. The ADC has subdivided to some and not to others. I request the Chairpersons of the Committee on Land, environment and Natural resources to look into this matter because our people will continue fighting each other. For instance, the Maasai living in Nakuru

County have been subjected to severe treatment by their neighbors, including recently when a young Maasai man who was busy grazing his cows was killed. This is a very serious matter because if we shy away from dealing with historical injustices, we will continue losing.

A young man called Nelson Mandela was killed outside Marura Farm, which is a vast land located in Gilgil. The person who killed this young man does not even qualify to own a firearm. He was given a gun by the owner of this land, Mr. Francisca Marura. It is now important for us to follow up and find out when guns are given to these people, why are they allowed to vary and carry as many as 50 guns to protect their property. Nelson Mandela was killed on the highway causing a lot of tension in the community.

The mother of Nelson Mandela is in this House today. She has gone to the police to seek justice. Traditionally, they cannot bury the dead until that matter has been resolved. As this House unites this country, we do not have to shy away from the issues of historical injustices.

As I summarize on the issue of Natooli, this matter of land conflict between the Maasai, the Kalenjin and some Kikuyus who live in that area, can only be resolved if ADC come out clean on the amount of land they gave to the people, the process that they used to allocate it and how they will resolve it. Otherwise, we will continue having these conflicts that we will never resolve.

Finally, I must commend the national Government for a swift action early last week and still this week when the road between Narok and Mai Mahiu had split into two and was rendered impassable. Some are saying that it is an easy way for us to get to Canaan. I commend particularly, Mr. Peter Mundia, the Chief Executive Officer (CEO) of Kenya National Highways Authority (KeNHA) for fixing that road in a record time of ten hours. We must recognize public servants who take their jobs seriously and ensure that people are not inconvenienced.

I also commend and recognize the Principal Secretary (PS) for the Ministry of Transport, Infrastructure, Housing and Urban Development for marshalling their efforts to ensure normalcy is restored. The Narok-Mai Mahiu Road serves quite a number of communities and counties. Therefore, we must appreciate the tremendous efforts made by the responsible authorities working on this road.

Unfortunately, the same cannot be said when disaster befalls other regions within this country. Of much interest is the place called Enaramatishoreki which has a bridge that has been constructed year in, year out. Recently, because of the poor workmanship which sometimes we ignore in this House; that bridge was washed away. It has remained impassable for quite some time now. It poses danger to our people. For example, it is very sad that young children lost their lives on their way to school. The people who followed them to rescue them also lost their lives.

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

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

Sen. Malalah: Mr. Speaker, Sir, is the Member on the Floor in order to debate his own statement? A statement is just supposed to be a statement. However, Sen. Olekina is debating his own statement. I would like you to guide us on that.

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

Sen. Cheruiyot: Mr. Speaker, Sir, with tremendous respect, I seek your guidance in reference to the issues being canvassed by my good friend, Sen. Ledama Olekina. Our Standing Order No.46(2)(b) says when we are seeking a statement, the Speaker will direct it to a chairperson---

(Sen. Olekina spoke off record)

I am on a point of order. Learn our Standing Orders.

Mr. Speaker, Sir, without being derailed, because he derailed my train of thought while I was a making point, it says the Speaker will direct it a specific Committee.

Sen. Ledama Olekina has traversed about seven counties so far raising different issues. To which Committee will you refer the issue of Internally Displaced Persons (IDPs), roads and plight of land? It calls to question the quality of statements that are being sought on the Floor. Please, guide us.

The Speaker: (Hon. Lusaka): Sen. Olekina, conclude and confine yourself to one issue. Your 10 minutes are over. Conclude in two minutes.

Sen. Olekina: Thank you, Mr. Speaker, Sir. I wonder why we have an Order Paper because a distinguished Senator does not know on which Standing Order I am making my statement. I am making a statement under Standing Order No. 46(2)(a). I ask the distinguished friend from Kericho County to learn and understand our Standing Orders. I am focusing on matters of national interest.

The Standing Orders are very clear. Allow me to read Standing Order 46 (2)(a) because this matter is very important. It says:-

“A Senator may make a statement on a county issue or on an issue of general topical concern.”

The issues I raised are of general concerned. They are not under Standing Order 46(2)(b).

Finally, I reemphasize on the need for this House to pay attention to what is happening in this country. It should follow up on the issues that I have raised. If there are issues brought about by the Government, particularly by the ADC, they should be resolved so that our people can live in peace.

STATEMENTS

INCESSANT INSECURITY IN ADC NDABIBI FARM, NAIVASHA

Sen. Kihika: Thank you, 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 National Security, Defence and Foreign Relations regarding the incessant insecurity around the ADC Ndadibi Farm LR 2059/86. This is 2,000 acres of Government land that is managed by the ADC.

In the statement, the Chairperson should:-

(a) State whether the parcel LR.No 7265 and LR.No.7281/3, respectively, belong to Natooli Enaibor Ajijik Company Ltd and whether they were legally bought from the ADC;

(b) Explain why the legal owners of some land parcels within the farm stated above and others such as Mwanamorori, Kimosop, Mr. Ngugi, Olandoas and many others have not been facilitated to survey, subdivide, allocate and freely develop their respective parcels without interference by armed gangs who keep attacking and denying them access to their land, despite them having legal documents, including a court order;

(c) Explain why the national Government has not developed the land that was offered to them by ADC in 2013 for construction of a police post and security offices, and;

(d) Explain measures that the Government has put in place to restore security in the area and in particular Kosovo area considering that property of unknown value has been destroyed and up to 12 people have lost their lives; the latest victim being about a week ago.

Sen. Haji: Mr. Speaker, Sir, I will give the answer in one week's time.

The Speaker (Hon. Lusaka): Is one week okay, Sen. Kihika?

Sen. Kihika: Thank you, Mr. Speaker, Sir. I believe one week is good time.

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

STATUS OF THE PHYSICAL DEVELOPMENT PLAN FOR
SOUTH C ESTATE, NAIROBI CITY COUNTY

Sen. Nyamunga: Thank you, 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 Roads and Transport regarding the physical development plan for Mugoya Estate Phase 4 in South C in Nairobi City County. In the response, the Chairperson should address the following:

(a) Table the approved physical development plan for Mugoya Estate Phase 4, South C Estate in Nairobi City County;

(b) Explain why public land and road reserves are being converted into business premises by private developers; and

(c) State the number of houses owned by the government in the estate; indicating the number that has been sold off and the criteria for selling government houses.

The Speaker (Hon. Lusaka): Proceed, Chair of Committee on Roads and Transport.

Sen. Wamatangi: Mr. Speaker, Sir, we will give that answer within two weeks.

The Speaker (Hon. Lusaka): It is sufficient. Thank you. Let us have Sen. Nyamunga.

MUSHROOMING OF SCHOOLS IN RESIDENTIAL
ESTATES IN NAIROBI CITY COUNTY

Sen. Nyamunga: Pursuant to Standing Order 46(2)(b), I rise to seek a Statement from the Chairperson, Standing Committee on Education on mushrooming of schools in Nairobi resident

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

(1) Table a list of all primary and secondary schools in South C estate in Nairobi City County, indicating their respective dates of registration and the registered owners of the private schools.

(2) Explain why the Ministry of Education, Science and Technology has approved registration of the schools, most of which do not meet the criteria for registration due to lack of playgrounds, space for other school amenities, among other requirements since they are established in residential plots.

(3) Explain why *Madrassa* classes are being conducted in private residential houses within South C Estate.

I thank you, Mr. Speaker, Sir.

The Speaker (Hon. Lusaka): Let us have the Chairperson, Senate Committee on Education.

Sen. (Dr.) Langat: Thank you, Mr. Speaker, Sir. That information and the data are still being collected. I would like to request that you give me one more week.

(Loud Consultations)

Sen. M. Kajwang': On a point of order Mr. Speaker, Sir.

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

Sen. M. Kajwang': Mr. Speaker, Sir, you might want to order for expunging of that response from the HANSARD because it might not paint the Senate in very positive light. The Chairperson is responding as if this is an overdue statement, yet, it has just been requested for.

Sen. (Dr.) Langat: Thank you, very much. Mr. Speaker, Sir. May I correct myself by asking for two weeks.

The Speaker (Hon. Lusaka): Is that okay, Sen. Nyamunga?

Sen. Nyamunga: Yes, Mr. Speaker, Sir.

The Speaker (Hon. Lusaka): Let us have Sen. Farhiya.

TRANSFER OF TEACHERS FROM NORTHERN KENYA

Sen. Farhiya: Thank you, Mr. Speaker, Sir. I stand pursuant to Standing Order No. 46(2) b, to seek a Statement from the Chairperson Standing Committee on Education regarding the transfer of teachers from Northern Kenya, specifically Wajir County.

In the Statement, the Chairperson should explain the following:

(1) Why the Government resorts to transfer of teachers from schools in Northern Kenya whenever the area faces insecurity challenges.

(2) Explain the measures taken by the Government to ensure that schools in Wajir County and other areas in Northern Kenya are properly secured.

(3) Explain the measures the Ministry of Education, Science and Technology has put in place to compensate for the time lost and ensure that the syllabus is covered, given that many of the schools remain without teachers, inadequate teachers or remain closed due to insecurity.

(4) Table a report indicating:-

- (a) The number of teachers transferred from and into schools in Wajir County since the year 2014.
- (b) Give statistics indicating teacher/student ratios in all primary and secondary schools in Wajir County.

The Speaker (Hon. Lusaka): Let us have the Chairperson, Standing Committee on Education.

Sen. (Dr.) Langat: Thank you, Mr. Speaker, Sir. That was also a concern during our Committee meeting and we are going to take it seriously. Give us two weeks and we shall respond.

The Speaker (Hon. Lusaka): Is that okay, Sen. Farhiya?

Sen. Farhiya: Mr. Speaker, Sir, two weeks is too long considering that these students are expected to do examinations in November and they are not in school right now. In my view, two weeks is very far.

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

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

(Senators consulted loudly)

Sen. Madzayo: Mr. Speaker, Sir, is it in order for one Senator to stand up when another one is on the Floor, and the Senators who were standing were not consulting? It is in that regard that I am asking whether it is in order for two Senators to address you at the same time.

The Speaker (Hon. Lusaka): It is out of order but I have rectified the situation. Is two weeks okay, Sen. Farhiya, or it is too long?

Sen. Farhiya: Mr. Speaker, Sir, I had not finished. Schools were closed since last week and another two weeks is too long. We need a response by Thursday, if possible.

The Speaker (Hon. Lusaka): Let us have Sen. (Dr.) Ali.

Sen. (Dr.) Ali: Mr. Speaker, Sir, I also wish to state that the problem of Wajir County is not as easy as the Chairperson, Senate Committee on Education, wants to put it. All schools are literally closed and there are no teachers. We had an unfortunate incident where some teachers were killed and most of them left the place. I wish the Chairman in his response includes other measures to be put in place to make sure that the local youths who completed Form Four are recruited urgently and also get online teaching so that these students can get teachers urgently.

The Speaker (Hon. Lusaka): Let us have the Chairperson, Senate Committee on Education.

Sen. (Dr.) Langat: Mr. Speaker, Sir, the matter is of concern and great importance, considering that the education of our children is their right. In fact, this matter came up in our Committee Retreat in Naivasha. We asked the Chief Executive Officer (CEO) of the Teachers Service Commission (TSC) to tell us what is happening. She told us that she has already advertised for the positions and people were applying. However, I am going to push it. I ask for seven days, I am sure we shall have some information.

The Speaker (Hon. Lusaka): Is it okay that some preliminary information will be provided in one week's time?

Sen. Farhiya: Mr. Speaker, Sir, seven days is next week. Anyway, let me just accept. Tuesday next week will be at least okay.

The Speaker (Hon. Lusaka): Provide an answer by Tuesday.

Sen. (Dr.) Langat: Thank you, Mr. Speaker, Sir, I will.

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

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

Sen. Sakaja: Mr. Speaker, Sir, I want to ask for additional information because many teachers from Nairobi who were stationed in Wajir County have been sending me messages appealing to be moved because they are afraid for their lives. As recently as today, I have got messages from them.

On top of the answer on what is to be done, I think this matter needs to be dealt with more comprehensively through the TSC and the security agencies. What assurances and incentives are being given to these teachers who are leaving, not because they do not want to teach, but because they feel that they are not assured of their security and livelihood? I think we need to get that one also from the Chairperson.

Sen. (Dr.) Ali: On a point of order, Mr. Speaker, Sir.

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

Sen. (Dr.) Ali: Mr. Speaker, Sir, with all due respect to Sen. Sakaja, the issue of teachers and insecurity have been there for long time, but on this one, we do not want just to create employment for others. The issue is: How do we solve the problem on the ground since the teachers have already left? It is how we handle the welfare of the students now and not the teachers have already left.

The Speaker (Hon. Lusaka): Let us have Sen. Sakaja.

Sen. Sakaja: Mr. Speaker, Sir, I am asking that because even the new teachers who will be employed will still leave for the same reasons. However, let us get the response from the Chairperson. I will leave it at that.

The Speaker (Hon. Lusaka): Chairperson, you will give us a response in a week's time as I had directed.

The two requests for statements from Sen. Prengei are deferred.

MANAGEMENT OF KNH

HUMAN CAPITAL FLIGHT OF HEALTH PROFESSIONALS FROM KENYA

(Statements Deferred)

The Speaker (Hon. Lusaka)] Proceed, Sen Sakaja.

ALLEGED DEBT OWED TO THE NAIROBI CITY COUNTY
GOVERNMENT BY THE NATIONAL GOVERNMENT

Sen. Sakaja: Mr. Speaker, Sir, I would like to request for a Statement pursuant to Standing Order 46(2)(b) from the Chairperson of the Standing Committee on Finance and Budget. This is regarding Ksh65billion owed by the national government and its agencies to the Nairobi City County Government.

In the response the Chairperson should address the following:-

(1) Explain why national Government agencies have failed to pay money owed to the Nairobi City County Government, which has negatively affected service delivery and development in Nairobi County.

(2) Give a timeframe and plan on how the national Government agencies intend to pay the money.

Mr. Speaker, Sir, this came as a response to a letter I had written to the Governor of Nairobi City County. I will be glad to furnish the Chairperson of this Committee with a breakdown of the specific agencies, the amount of money they owe Nairobi County and for what.

Thank you, Mr. Speaker, Sir.

The Speaker (Hon. Lusaka): Proceed, Chairperson of the Committee on Finance and Budget.

Sen. (Eng.) Mahamud: Thank you, Mr. Speaker, Sir. I will gratefully accept those documents because by requesting for the answers, we will confront the National Government with those details. We will give an answer in two weeks' time.

The Speaker (Hon. Lusaka): I can see he is nodding; meaning that two weeks is okay.

Proceed, Sen. Sakaja.

ISSUANCE OF TITLE DEEDS TO RESIDENTS OF KIBAGARE VILLAGE,
KITISURU WARD, WESTLANDS CONSTITUENCY

Sen. Sakaja: Thank you, Mr. Speaker, Sir. Pursuant to the same Standing Order 46(2)(b), I rise to seek a statement from the Chairperson of the Standing Committee on Land, Environment and Natural Resources. This is with regard to the issuance of title deeds to residents of Kibagare village in Kitisuru ward, Westlands constituency, Nairobi County.

In the response the Chairperson should address the following:-

(1) Explain why it has taken long for the 57,000 residents of Kibagare village – who have been squatters on a 100 acre piece of land since 1959 – to be issued with title deeds.

(2) Assure the residents of Kibarage village – who are facing constant threats of evictions and danger of their land being grabbed – that they will be protected until they are rightfully issued with the title deeds; and,

(3) Give a timeframe of when the residents of Kibarage village will be issued with title deeds, since the matter has been delayed and postponed by successive governments for so long.

The Speaker (Hon. Lusaka): Where is the Chairperson of the Committee on Land Environment and Natural Resources?

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

(The Temporary Speaker (Sen. Nyamunga) in the chair)

Sen. Ndwiga: Madam Temporary Speaker, I am a Member of the Committee and the Chairperson is away. On behalf of the Committee, we promise to give the answer in two weeks' time.

The Temporary Speaker (Sen. Nyamunga): Are you satisfied, Sen. Sakaja?

Sen. Sakaja: Madam Temporary Speaker, I am satisfied.

Madam Temporary Speaker, there is one last statement I want to request for, which was also approved. Allow me to proceed.

The Temporary Speaker (Sen. Nyamunga): Go ahead.

COMPENSATION FOR VICTIMS OF 2017
POST-ELECTION CHAOS

Sen. Sakaja: Thank you, Madam Temporary Speaker. Pursuant to Standing Order 46(2)(b) I rise to seek a statement from the Chairperson of the Standing Committee on Justice, Legal Affairs and Human Rights on the compensation of victims of the 8th August and 26th October 2017 post-election chaos.

In the response, the Chairperson should address the following:

(1) Give a detailed account of how many lives were lost, the actual value of property and businesses that were destroyed and adversely affected.

(2) Explain in details what compensation mechanisms have been put in place so that the victims get justice and restitution.

(3) Give an elaborate plan and timeframe within which the identified victims will be compensated.

The Temporary Speaker (Sen. Nyamunga): Where is the Chairperson of the Committee on Land, Environment and Natural resources?

Sen. Sakaja: I am Sorry, Madam Temporary Speaker. That Statement is for the Committee on Justice and Legal affairs.

The Temporary Speaker (Sen. Nyamunga): Okay. Is the Chairperson of the Committee on Justice and Legal Affairs in the House?

Sen. Kihika: Madam Temporary Speaker, we will have the answer in two weeks.

The Temporary Speaker (Sen. Nyamunga): Sen. Sakaja, are you okay with two weeks?

Sen. Sakaja: Yes.

The Temporary Speaker (Sen. Nyamunga): Proceed, Sen. Outa.

DELAY IN HANDING OVER OF THE LAKE
BASIN MALL TO LBDA

Sen. Outa: Madam Temporary Speaker, pursuant to Standing Order 46(2)(b), I rise to seek a statement from the Chairperson of the Standing Committee on Devolution and Inter-Governmental Relations. This is with regard to the delayed handing over of the Lake Basin Mall to the Lake Basin Development Authority (LBDA).

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

(1) Explain why the Lake Basin Mall in Kisumu County has not been handed over to the Lake Basin Development Authority long after its completion in the year 2017.

(2) Confirm whether the National Treasury availed funds for the payment of the outstanding loan that is owed to the financier of the project, and whether the financier was paid.

(3) State when the mall shall be officially opened for operation and when it shall be handed over to the Lake Basin Development Authority.

Thank you, Madam Temporary Speaker.

The Temporary Speaker (Sen. Nyamunga): Where is the Chairperson of the Standing Committee on Devolution and Inter-Governmental Relations?

Sen. Kinyua: Madam Temporary Speaker, I undertake to answer the question in two weeks' time.

The Temporary Speaker (Sen. Nyamunga): Sen. Outa, are you okay with two weeks?

Sen. Outa: Madam Temporary Speaker, two weeks is such a long time because I saw that the Ministry went to Kisumu sometime last week. I thought they will give an answer this week on whether they will open the mall this week or next week. Therefore, when they tell me that they will give the response in two weeks, I am curious to find out why they went down there. It will be appropriate if they can give the response in one weeks' time, next week or this week.

Sen. Kinyua: Madam Temporary speaker, I will try my level best to do it in seven days.

The Temporary Speaker (Sen. Nyamunga): Sen. Outa, are you fine with seven days? I also have interest in that statement, so you better make it fast.

Proceed, Sen. Seneta.

STATUS OF LAND BELONGING TO THE DEFUNCT LIVESTOCK
DEPARTMENT IN KAJIADO EAST CONSTITUENCY

Sen. Seneta: Madam Temporary Speaker, pursuant to Standing 46(2)(b), I rise to seek a Statement from the Chairperson of the Standing Committee on Land, Environment

and Natural Resources. This is regarding the status of the Ministry of Agriculture Land, formally known as Livestock Department in Sholinke, Oloosirkon Ward, Kajiado East Constituency, Kajiado County. In the Statement the Chairperson should:-

(1) State the status of the land, indicating its current use, size, whether it is registered and, if so, the registration number.

(2) State whether there are plans by the Ministry of Agriculture and Irrigation, given that agriculture is a devolved function, to collaborate with the community and the County Government of Kajiado in the use of the said land.

Madam Temporary Speaker, I have two statements but let me wait for the response of the Chairperson.

The Temporary Speaker (Sen. Nyamunga): Let us have a response on that Statement first and then we can move on.

Where is the Chairperson of the Standing Committee on Land, Environment and National Resources?

Sen. Ndwiga: Madam Temporary Speaker, I undertake to give the statement in two weeks.

The Temporary Speaker (Sen. Nyamunga): Hon. Seneta, are you fine with two weeks?

Sen. Seneta: Madam Temporary Speaker, I am fine with two weeks. I request to move to the next statement.

The Temporary Speaker (Sen. Nyamunga): Please, go ahead.

LOANS OWED TO AFC BY FARMERS IN KAJIADO COUNTY

Sen. Seneta: Thank you, Madam Temporary Speaker. Pursuant to Standing Order No. 46(2) (b), I rise to seek a statement from the Chairperson of the Standing Committee on Agriculture, Livestock and Fisheries regarding the loans owed to the Agricultural Finance Corporation (AFC) by farmers in Kajiado County.

In the statement, the Chairperson should:

(1) Indicate the amount of money owed by farmers in Kajiado County as at 2018 and the amount that was waived by the Government.

(2) Provide a list of beneficiaries with details of how much each beneficiary was paid and how much was waived.

(3) Explain the criteria that AFC used to select the beneficiaries and state whether the criteria was followed in selecting beneficiaries in Kajiado County.

(4) Explain the measures that the Government is putting in place to cushion farmers who have debts, given the prevailing drought which was facing the country.

Thank you.

The Temporary Speaker (Sen. Nyamunga): Chairperson of the Standing Committee on Agriculture, Livestock and Fisheries, please, respond to that.

Sen. Ndwiga: Madam Temporary Speaker, I undertake to give that statement in two weeks.

The Temporary Speaker (Sen. Nyamunga): Hon. Seneta, are you fine with two weeks?

Sen. Seneta: Madam Temporary Speaker, two weeks is okay.

The Temporary Speaker (Sen. Nyamunga): Hon. Senators, we are now moving to Statements due for issue, pursuant to standing order No.46 (2) (b).

SHOOTING OF RESIDENTS IN LUANDA MARKET, VIHIGA COUNTY

The Temporary Speaker (Sen. Nyamunga): We will defer this Statement because the Chairperson is out of the county.

Sen. Sakaja: On a point of order, Madam Temporary Speaker.

The Temporary Speaker (Sen. Nyamunga): What is your point of order, Sen. Sakaja?

Sen. Sakaja: Madam Temporary Speaker, the Chairperson is here. Did you mean the Member who requested the Statement?

The Temporary Speaker (Sen. Nyamunga): I am sorry about that. It is the Member who sought the Statement. Sen. Khaniri is not in.

(Statement deferred)

Let us move to Statement (b) by Chairperson of the Standing Committee on Land, Environment and Natural Resources.

PROVISION OF WATER SERVICES TO KITENGELA
TOWNSHIP AND ITS ENVIRONS

The Temporary Speaker (Sen. Nyamunga): The Chairperson was to issue a Statement on provision of water to residents of Kitengela Township and its environs. The Statement was sought by Sen. Mary Seneta.

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

In the absence of the Chairperson, do we have the Vice Chairperson or any Member of the Committee?

Sen. Ndwiga: Madam Temporary Speaker, since the Chairperson is not here and I have not been furnished with the reply, may I request that we issue the Statement next week.

The Temporary Speaker (Sen. Nyamunga): Fair enough, we will defer the Statement to next week.

(Statement deferred)

The next one is by the Chairperson of the Standing Committee on Agriculture, Livestock and Fisheries on climate change and its effects on the livelihood of pastoralists and livestock. The Statement was sought by Sen. Mary Seneta.

EFFECTS OF CLIMATE CHANGE ON PASTORALISTS

Sen. Lelegwe: Thank you, Madam Temporary Speaker. I wish to issue a response by the Standing Committee on Agriculture, Livestock and Fisheries to the Statement that was sought by Sen. Mary Seneta during the Senate sitting held on Tuesday, 27th February, 2018. She requested for a comprehensive Statement from the Chairperson of the Committee on Agriculture, Livestock and Fisheries on climate change and its effects on the livelihood of pastoralists and livestock.

The specific concerns raised and their corresponding responses by the Cabinet Secretary are as follows:

I will give a brief of the responses.

The Temporary Speaker (Sen. Nyamunga): Please, just give a summary of the response.

Sen. Lelegwe: Thank you, Madam Temporary Speaker.

Sen. Seneta: On a point of order, Madam Temporary Speaker. I have just been given a response of the Statement that I sought last week. I am still looking at some of the information from certain institutions that the Chairperson gave me. In order to be able to come back to the Chairperson for clarification or other information, I request that the Statement be issued in the next sitting. I will have looked at the response that they have given me.

The Temporary Speaker (Sen. Nyamunga): It is important that responses are given to Members in good time, so that they can go through them and understand. Therefore, we will defer the Statement to next week on Thursday.

Is that okay, Sen. Mary Seneta?

Sen. Seneta: Yes, Madam Temporary Speaker.

(Statement deferred)

The Temporary Speaker (Sen. Nyamunga): The next Statement is by Chairperson of the Standing Committee on Tourism, Trade and Industrialization on liquor licensing in the country and coordination of liquor related laws. The Statement was sought by Sen. Mary Seneta.

LICENSING AND CO-ORDINATION OF LIQUOR RELATED LAWS

Sen. Kibiru: Madam Temporary Speaker, the information getting to us is that, that Statement needs to be redirected to the National Authority for Campaign against Alcohol and Drug Abuse (NACADA), which is under the Standing Committee on National Security, Defence and Foreign Relations.

The Temporary Speaker (Sen. Nyamunga): Please, go and consult then let us have the answer by next week.

(Statement deferred)

CONSTRUCTION OF APARTMENT BLOCK
ON THE NAIROBI RIVER BANK

The Temporary Speaker (Sen. Nyamunga): This Statement was to be issued by the Chairperson of the Standing Committee on Land, Environment and Natural Resources on the construction of a 15 storey apartment block on the banks of Nairobi River along Riverside Drive in Nairobi City County.

Since Sen. Yusuf Haji who sought the Statement is not in the House, we will defer it to next week on Tuesday.

(Statement deferred)

The next Statement is by the Chairperson of the Standing Committee on National Cohesion, Equal Opportunity and Regional Integration on alleged derogatory song by two musicians against the Kamba Community. The Statement was sought by Sen. Enoch Wambua

DEROGATORY SONG AGAINST THE KAMBA COMMUNITY

Sen. (Rev.) Waqo: Thank you, Madam Temporary Speaker. The Commission is working with the Directorate of Criminal Investigations and the Office of the Director of Public Prosecutions to ensure that the investigation is complete. The said musicians of the 'Ikamba' song, John Gichiri Njau ---

(An hon. Senator spoke off record.)

We were told sometime back to respond whether or not they are here.

The Temporary Speaker (Sen. Nyamunga): As you all know, there was a ruling on that.

Proceed, Sen. Waqo. Since Sen. (Dr.) Wambua was here earlier on, I do not understand why he is not here for the response.

Sen. (Rev.) Waqo: The said musician known as John Gichiri Njau was arraigned in court sometime last week. Two others are still at large but the matter is in court. I would like to seek your advice on how we should proceed.

I thank you.

The Temporary Speaker (Sen. Nyamunga): The Member was here earlier. I do not understand why he is not in the House right now yet he knew his statement was

coming. The best thing is to defer the statement to next week on Tuesday. I am sorry about that.

Sen. Ndwiga: Madam Temporary Speaker, the matter is *sub judice*. So, I do not think we can expect answers on a matter that would contravene our Standing Orders.

The Temporary Speaker (Sen. Nyamunga): We do not have the details of the matter and we do not know what aspect of it is in court. So, it is difficult to respond to that without understanding the full statement on how it affects us and the fact that it is in court.

I direct that we revisit it next week on Tuesday.

Sen. Sakaja: On a point of order, Madam Temporary Speaker. Going by the question about derogatory music and the response that has been given, it is not enough that the matter is before the court? I think that in itself should be a sufficient answer unless there was something else that was sought from the Chair of the Committee.

The Committee should be telling us that the culprits have been arraigned in court and the matter is ongoing. Unless they want to speak beyond that and talk about issues of cohesion and hate speech through music, that response is enough.

The Temporary Speaker (Sen. Nyamunga): According to Standing Order No.92(4), a Senator alleging that a matter is *sub judice* shall provide evidence to show that paragraphs (2) and (3) are applicable. For that reason, we shall defer this matter to Tuesday next week.

(Statement deferred)

Let us go to the next statement.

RELOCATION OF ELEPHANTS FROM LAIKIPIA TO TSAVO NATIONAL PARK

Sen. Kibiru: Madam Temporary Speaker, we have a response of about nine pages and I will go through it horizontally instead of vertically if you allow. The Ministry has responded and the Senator who asked for the Statement is a Member of the Committee and he has the answers in details. As I said, I will summarise.

The Tsavo ecosystem has about 12,843 elephants but it can accommodate 10,000 extra elephants.

The second question was on the rationale behind ongoing elephant translocation from Solio and Sangare ranches to Tsavo. The Ministry has stated that Solio and Sangare ranches are well-fenced and will take care of the elephants. The other reason is that bulls are known to travel for long distances and can return to their home area and therefore identified habitual fence breakers and problematic elephants should be relocated. Based on the above, elephants were moved and released in Tsavo at sites that are near water sources and have adequate browse materials.

The other question was on measures that the Government has put in place to mitigate human-wildlife conflict in Taita-Taveta County. The background is that the people of Taita-Taveta County, like many communities living near wildlife protected

areas, get into conflict with wild animals. Some of the affected areas are Makitau, Kishushe, Miasenyi, Challa, Ndara and Jipe.

The Kenya Wildlife Service (KWS) is committed to significantly reducing the cases of human-wildlife conflicts in the region and works together with other stakeholders including the county government in the area. So far, the Government has done the following to minimise conflicts in the region:-

(1) Strategic development of KWS staff to deal with problematic animals. The following outposts are fully equipped to respond to conflicts in these areas

- (i) Kisigau outpost with 5 rangers and 1 land cruiser.
- (ii) Bura Outpost with 5 rangers and 1 land cruiser.
- (iii) Kiboko Outpost with 4 rangers and 1 land cruiser.
- (iv) Kone Outpost with 2 rangers.
- (v) Mackinon Road Outpost with 2 rangers.
- (vi) Iltlal Outpost with 2 rangers.

In addition, there are diverse stations spread out within the Tsavo Conservation Area and its environs to ensure conflict issues are addressed as they arise. These are equipped with vehicles designated for addressing Problem Animal Control issues such as Voi, Taveta, Rombo, Komboyo, Chyulu and Makueni stations.

(2) Frequent helicopter elephant drives are carried out in conflict hotspot areas like Ngutuni, Ndara and Sagalla. Additional support is provided by problem Animal Management Unit where necessary.

(3) Repair and maintenance of electric fences in the two Tsavos to ensure that conflicts experienced are minimal. They include Ndi-Ndara which is 44.087km, Bachuma-Dakota which is 45.667km, Maktau-Ndii which is 68.715km, Aliya-Bura-Maktau which is 31.464km, Jipe-Salaita-Ziwani which is 54km, Mtito-Bondeni which is 20.3km, Kiambani-Kithasyu-Tindima-mukururo which is 35.66km and Athi-Kanisiku-Umbi which is 60.489km.

(4) Tsavo Conservation Area is supported with three light aircrafts stationed at the various headquarters. These are used to undertake daily morning and evening aerial surveillance.

(5) Additional support is given.

(6) KWS has conflict hotlines that are given to the public for swift communication for conflict cases. Five toll-free KWS numbers that can be used to report whenever animals are seen have been provided.

The fourth question was about the total value claims, their nature and compensation awarded to the residents of Taita-Taveta County over the last five years due to death, injury of persons and destruction of property by wild animals. The list is comprehensive and it has a column on incident, number of people paid, number of people unpaid, total number of cases, amount paid and amount not paid.

Lastly was on plans for translocation of elephants from Tsavos to other protected areas and the response is as follows. As stated, the Tsavo elephant population density is currently still relatively low and the Government will plan for appropriate management including translocation of excess numbers from Tsavo once the density of elephants in the ecosystem exceeds the recommended carrying capacity.

Thank you, Madam Temporary Speaker.

The Temporary Speaker (Sen. Nyamunga): Sen. Mwaruma, do you have any supplementary questions?

Sen. Mwaruma: Madam Temporary Speaker, the response given by my good friend, Senator Charles Kibiru, is not satisfactory at all. Furthermore, it delayed because we had requested that a letter be done to the Cabinet Secretary for Tourism pronto to check the translocation but it was not.

I was with the Cabinet Secretary two weeks ago and the translocation has already been done. When I read that response about the rationale for translocating the animals from Solio Ranch and Sangari Ranch to Tsavo National Park, I felt like jumping out of my skin. This only serves to confirm my fears.

If you can remember, when I was requesting for the Statement, I had made some claims, that particular areas in this country are supposed to be protected from the animals. It was clear and rational that we have animals in Solio and Sangari ranches in Laikipia counties that are brutal bulls. They are likely to break the electric fences because they are rowdy and disturb the people who live adjacent to those areas.

Madam Temporary Speaker, when you go to Tsavo National Park, there are no fences; people are not protected from wild animals. So, it is true that time I only made a claim without any data or evidence. I only had anecdotal evidence and conjecture. However, I have confirmed that some areas are supposed to be protected from the wild animals while other areas which are traditionally marginalized are given those animals to continue being marginalized. These elephants disturb people.

I have shown you some of the clips when we were chasing the elephants. Food is destroyed and from that data, the people of Taita Taveta County have not been compensated. There are four deaths which have not been compensated running from 2013. There are outposts that have been set but some have no vehicles.

So, I would like to request that the Committee on Tourism and Industrialization, of which I am a Member, to visit Taita Taveta County and see whether those outposts are there. We can also see the progress of the electric fence; how far it has gone and what the government is doing to complete it in time. That is my request.

Sen. Kibiru: Thank you, Madam Temporary Speaker. One issue that we need to clarify is that the response came early on 5th March. However, all along it has been on the Order Paper and has been skipped or postponed to another day. Without belabouring the point, to answer my colleague who is also a Member of the Committee on Tourism, Trade and Industrialization, I would like to concur with him. These answers have been given to us by the respective Ministry.

If, indeed, he is the person on the ground and as the Senator for Taita Taveta County, if he is not satisfied with the answers that we have given here, it does no harm for the Committee or Sub-committee to go and visit the officers in the Ministry of Environment and Forestry. They can confirm whether this response is true or not and then we will report to the House.

The Temporary Speaker (Sen. Nyamunga): Since Sen. Mwaruma is also a Member of the Committee on Tourism, Trade and Industrialization, I would like to refer

the matter back to the Chair so that you sort it out. If you choose to visit the area, we want to leave that to the Committee itself.

The Chairperson of the Standing Committee on Devolution and Intergovernmental Relations should issue a Statement on Severe and Persistent Drought in Isiolo County. This Statement was sought by Sen. Dullo.

SEVERE DROUGHT IN ISIOLO COUNTY

Sen. Kinyua: Thank you, Madam Temporary Speaker. I have the responses with me. They are as follows:-

(1) The amount of relief money available from the Emergency Fund to Isiolo County.

During the 2017/2018 drought, the Government provided relief food on monthly and on need basis and as per the available resources. During the months of February, 2017 to March, 2018 alone, the Ministry of Devolution and arid and Semi-Arid Lands provided 21,540 bags of maize of 50kg bags. In total, the amount of money that was spent on buying maize and rice was Kshs261,252,814 in the purchase of the food.

Further, there was money that was transferred. The Government spent Kshs114,721,6754 to the 12,542 vulnerable households. The beneficiaries were 75,252. Every family was given Kshs3,000 and this is inclusive of Kshs47 that was used for the transfer of money. In addition, the Government in collaboration with the United Nations Children's Fund (UNICEF) spent Kshs14 million to provide supplementary feeds to children less than five years of age in the year 2017 to all Wards in Isiolo County.

Madam Temporary Speaker, the Government, in partnership with the European Union established and operationalized the Drought Contingency Fund (DCF) under the National Drought Management Authority (NDMA) since 2014. The Fund has been supporting drought preparedness and response initiative in the 23 ASAL counties.

So far, the Fund has been able to disburse Kshs1,426,307,622 between 2014 to date in the 23 ASAL counties. Isiolo County specifically, has been able to access its share of Kshs135,118,505 to mitigate against adverse drought since 2014 to date.

Some of the key interventions implemented in the county with the support of the Fund under specific sectors include:-

- (a) Water
- (b) Livestock
- (c) Education
- (d) Health
- (e) Peace and Security
- (f) Drought Management Coordination.

Question No. 2 was on the measures taken by the Government as informed by early warning systems to mitigate against drought effects in Isiolo County.

Madam Temporary Speaker, the Government, through the National Drought Management Authority (NDMA) manages a robust drought early warning system. The drought early warning information is provided to stakeholders on a monthly basis for decision making. In particular, the Inter-Governmental Committee on Drought and Food

Security which is composed of line Cabinet Secretaries and Arid and Semi-Arid Land (ASAL) Governors and the County Steering Group make decisions on drought response needs and resource allocation towards drought response based on drought early warning information.

In response to the 2016/2017 drought, a number of drought preparedness and response activities were carried out in Isiolo County by the Ministry of Devolution and Arid and Semi-Arid Lands as shown in the Annex. That is provided and I handed it to the Member last week.

Question No. 3 was on large scale crop farmers obstructing the flow of Ewaso Nyiro River, disadvantaging the pastoralists downstream.

Madam Temporary Speaker, the water use by the large scale farmers is regulated by the Water Resource Management Authority. Most of the large-scale farmers and ranchers have developed water for their own use. There were minimal instances of reported cases of obstruction by large scale farmers in Isiolo, Laikipia and Meru counties. Indeed, obstruction is more prevalent among the small-scale farmers.

The Government, in collaboration with the other stakeholders, recognizes the need for ecosystem approach to ensure equitable access to the commonly shared natural resources. Towards this effort, the government institutions of Ewaso Nyiro North Development Authority (ENNDA) and Water Resource Management Authority (WRMA), are working with all stakeholders involved in the management of Ewaso Nyiro ecosystem, to ensure the continuous flow of water resource throughout the year to the downstream.

In order to facilitate the common approach, the institutions have developed a framework for ensuring the catchment management. Some of the measures instituted include:-

- (i) Working with water resource users and management committees on water resource use regulation.
- (ii) Regulating the irrigation activities that require volumes of water by the farmers upstream. The enforcement has been ongoing.

The next Question was on action to be taken to address cattle rustling activities in the region.

Madam Temporary Speaker, as you know, cattle rustling is an archaic, criminal activity that has over the recent past become predatory due to proliferation of firearms occasioned by instability in the neighbouring countries. The Government has deployed more security in the region and has invested in the conflict early warning system and peace building activities among the warring communities in Isiolo, Samburu, Meru and Laikipia counties – in fact, in Laikipia County where I come from. In addition, the county governments have improved equipment for the Police Service in order to enhance their service delivery.

Question No.5 is on the immediate measures the county and national Government will take to alleviate the situation.

Drought risk management is a concurrent function between the national and county government, thus should be addressed collectively. In fact, the county government is the first line of defence in responding to the local capacity gaps, especially in the

devolved sectors like water, agriculture, livestock, health and nutrition. In order to enhance local communities coping capacities to prepare and respond to drought, both levels of government are working by adopting the following strategies:-

(1) Ensuring drought risk management strategies are prioritized both in medium to long term strategies through the County Integrated Development Plans (CIDP) as stipulated by the framework.

(2) Promote the livelihoods diversification programmes targeting the vulnerable groups like women, youth and other segments of the society.

(3) Engage stakeholders across the neighbouring counties in strategies to reduce resource use conflicts.

(4) Promote youth development programmes to minimize the illicit activities among the youth.

The last question as I finish was; why the Government has not paid livestock owners for slaughter off-takes by Kenya Meat Commission (KMC).

In 2017, the KMC and the NDMA carried out emergency off-take of livestock. While NDMA paid the beneficiaries directly, KMC purchased animals from beneficiaries through traders that were to be paid after service delivery. However, KMC has not yet paid the traders due to limited funds.

The KMC moved fast to avert death of livestock with anticipation that the national Treasury will avail more funds for emergency off-take programmes. The Ministry of Agriculture, Livestock and Irrigation has requested the national Treasury to provide funding to pay off the traders in Isiolo and Wajir counties, but that is yet to be done.

Sen. Dullo: Thank you, Madam Temporary Speaker. I take this opportunity to thank my brother, Sen. Kinyua, Senator, Laikipia County, who is also the Chairperson of the Committee on Devolution and Intergovernmental Relations.

I have gone through this statement and reluctantly accepted the information given here. With regard to the first question, we have a figure of Ksh261,252,814, which is a lot of money. This is in theory because when you go on the ground, it has not impacted on the communities living there.

It is unfortunate when people sit in Nairobi and give answers to questions without visiting the ground. They need to go on the ground and practically report what is happening there. I wish I can have an opportunity to sit, one-on-one with the Cabinet Secretary (CS) in charge of the Ministry of Devolution and National Planning because I would ask him to change their strategy when allocating this money to relevant departments.

The chairperson has given a figure of Ksh72 million to the beneficiaries with regard to money transfer. This is a lot of money. Could they have better strategies of how this money is disbursed to individuals because it is not done in a transparent manner? Personally, I feel that this money has not helped people of Isiolo.

Question No.3 is on issues of water downstream which is a big problem to our people. When the Ministry says various institutions are involved in ensuring that water reaches downstream, but I believe some of them like Ewaso Nyiro North Development Authority (ENNDA) is a dead entity. ENNDA is literally doing nothing. At some stage,

we need to see how we can deal with these institutions because we are duplicating roles in this country. For example, NDMA is doing the same things done by ENNDA, county governments and national Government. Why are we splitting those activities? ENNDA is doing nothing in Isiolo County. Could the Ministry do something about it?

With regard to cattle rustling, people are being killed on a daily basis. Last weekend, we, as Members of the Committee on National Security Defence and Foreign Relations went to Isiolo County. We were told people are being killed on a daily basis and yet we say we have sophisticated weapons, or we have better strategies in dealing with cattle rustling. There are hotspots where these things happen. Why can the Government not set up a police post in those areas? Cattle rustling activity is no longer a normal tradition, but it is a commercial business. Those who are dealing with these issues are known in many counties. Can we devise better strategies of dealing with them?

On question No.6, some people in Isiolo County borrowed money to deliver animals to the Government for them to be slaughtered. Some of them gave out whatever they had which was their source of livelihood. They use the proceeds from selling those animals to pay school fees for their children. Today, drought has killed all their animals. The Government says it is still waiting for the national Treasury to allocate the money to pay them. Honestly, is that fair? Could the Ministry tell us when these people will be paid? It is not enough to say that they are waiting for money from the national Treasury. Kenyans do not understand that.

Finally, it is not right to be told that fortunately rains are here with us. The situation is worse than it was even before the rains. Families are being swept away, the drainage systems are blocked and the animals are dying. We, as a country; for how long will cry of drought and floods? We were in Isiolo County last week. It is unfortunate that water is just going down the rivers. Why can we not harvest it, for heaven's sake so that it can help our people in future? Let us come up with a better strategy. I am not satisfied with this statement. We need to have a serious discussion on how we can deal with the issue of drought, insecurity and so many other things in this country in order for us to help our communities and make sure Government money allocated to those areas is accounted for.

The Temporary Speaker (Sen. Nyamunga): I will allow a few comments, probably two or three from different Members.

Sen. Seneta: Thank you, Madam Temporary Speaker. I also have a question to the Ministry on drought mitigation measures. I appreciate their efforts to answer our questions, but they need to be more serious. Their responses to statements by Members are similar. It seems as if they retrieve them from the Ministry's shelves and bring them here. It does not matter how long they have been on those shelves.

I have keenly listened to the responses, especially, when they talk about the Kenya Meat Commission (KMC) having been given money to buy livestock from farmers. The same case applies to Kajiado County. Many of those members who sold cows to KMC have not been paid up to today. As we speak, we have people who sold cows to KMC thinking that they will get money to restock back after the dry season, but up to today, they have not received their monies.

They are talking of having distributed loads and lorries of seeds for farmers to plant during the rains. I doubt whether the Ministry takes stock of what they do in our counties. Some of these responses are just stories and policies from the shelves. I concur with the Senate Majority Chief Whip that the Ministries need to visit our counties because what we get here is totally different from the reality on the ground.

When they talk about the National Drought Management Authority, we only hear of the very little activities they do. They neither consult leaders from these counties nor involve the pastoralists themselves. They just sit and do things that we are not aware of. The problem is that the Ministry is not in touch with the people on the ground, they just give stories. I want to urge the Chairpersons of different committees to write to the Ministries to take Members seriously. We are also being pushed by our constituents to give real answers and solutions to the problems they face. It is very unfortunate if you sit here and only read a story instead of telling Members exactly what the Ministry is doing.

The Temporary Speaker (Sen. Nyamunga): Hon. Senators, this is not a time for debate. I kindly ask you to just seek clarifications. So, if I give you an opportunity, just seek further clarification.

Proceed, Sen. Sakaja.

Sen. Sakaja: Thank you, Madam Temporary Speaker. At the outset, I just want to say that I sympathise with my brother, the Senator for Laikipia. Sometimes, some of these responses just come very wordy. It is like there is a template in some of these departments on how to respond to these statements. They emit no light; just heat and words. We have a problem.

If you keep doing the same thing over and over again and expect different results, then there must be something wrong with you. There is something wrong with us as a country. We are talking about billions of shillings that have been sent to some counties for emergency relief. In two months, the Government disbursed between Kshs261,252,000 and Kshs1 billion to those counties, including Isiolo County which received Kshs135 million. You will need much less amount of money to prevent the effects of drought as opposed to what you are using that is not a permanent solution.

If you go to Kipini which is---

The Temporary Speaker (Sen. Nyamunga): Sen. Sakaja, are you seeking further clarification or you are debating?

Sen. Sakaja: Madam Temporary Speaker, I am seeking further clarification.

The Temporary Speaker (Sen. Nyamunga): Please go straight to the point because time is not on our side.

Sen. Sakaja: Madam Temporary Speaker, if you go to Kipini and you see the amount of fresh water that is flowing into the Indian Ocean, you will want to cry. We want the Ministry to tell us what they are doing to harvest the huge amounts of fresh water flowing into the Indian Ocean through Kipini. Tana River alone has a conflict between the farmers and the herders – I was there myself when I chaired the Committee on National Cohesion and Equal Opportunity in the National Assembly – yet the water is going into the Indian Ocean.

We also need clarification on whether we have a drought management authority and also a flood management authority. We cry about floods just like my county was

flooded in the past week, roads were impassable, lives were lost in other parts of the country, yet tomorrow, we will say that there is no water in taps in the houses of residents of Nairobi. Where is the coordination? The Chairman should tell us who between the Ministry of Devolution and Planning and the Ministry of Water and Irrigation is responsible for pumping water to the residents in my county.

Finally, when we talk about cattle rustling, this response should be treated with the contempt it deserves. I am sorry to say that. When they just tell us that cattle rustling is archaic; we know it is archaic and a crime, but what are they doing about it? We proposed legislation in this House to amend the Penal Code to define cattle rustling for what it is; an economic activity. We have not received support for that. We need to be more serious. I will take up this matter as the Vice-Chairperson of the Standing Committee on National Security, Defence and Foreign Relation together with Sen. Dullo who is in my Committee.

We will take away this aspect from the Chairperson of the Standing Committee on Devolved Government and Intergovernmental Relations since it is beyond his Committee's mandate. We will take it up because we cannot go on in this vicious cycle where cows are stolen, women are raped, houses are torched, and then you tell *wazee* to exchange cows and goats as restitution. In the 21st Century when others are in stock theft while others are in stock exchange, we need to change our way of thinking.

The Temporary Speaker (Sen. Nyamunga): Proceed, Sen. Pareno.

Sen. Pareno: Thank you, Madam Temporary Speaker. I would like to just seek a clarification about the actual steps that have been taken to mitigate this drought. In as much as you may send billions of shillings to the counties, we want to hear exactly what has been done; the actions taken to mitigate this issue of drought when it falls. I am also interested to hear the after drought interventions. We lost many livestock. Right now, the rain has come and it has washed away everything including the carcasses that were left due to that drought and the produce that is in the farms.

There is water all over. What are we doing about it? Yes, this has been a drought season and the rains have come; after the effects, what do we do? That is probably linked up with the effects of climate change, but let us hear what they are doing in relation to controlling the after drought effects.

The Temporary Speaker (Sen. Nyamunga): Finally, Sen. (Prof.) Ekal of Turkana County.

Sen. (Prof.) Ekal: Thank you, Madam Temporary Speaker. I am afraid that I may repeat what my sister, Sen. Pareno has just said. However, it is important to emphasise the fact that we do not seem to understand the concept of problem solving. Kenya has been independent for the last 55 years and we are still going through the same problems year after year. Take the example of hunger; it is pestering our people left and right every year. This issue of cattle rustling is also pestering our people year after year.

If in "management-think", like the rest of us to know, that whenever there is a problem--- I do not know if the engineers and the other scientists are the only ones who think like this; that whenever there is a problem, you have to look for a solution. What is the solution to the hunger problem? What is the Ministry doing to stop hunger or to at least reduce hunger that is pestering the people?

Many people are dying because they are hungry. What is the Ministry doing to make sure that cattle rustling is exterminated forever? During cattle rustling, it is not only the cattle which go, but also the people die. In a community like mine, nobody wants their cattle to go, so somebody will lay down his life to save his cattle. Most of the times, they die because the intruder is well armed and the person trying to protect his cattle is not as well armed.

These are problems that need solutions. So, for the people who are in charge, what is it that they think about? I need clarification on these two issues: What is the Ministry doing to exterminate hunger and cattle rustling in this country? If we get these solutions, this country and its people will be happy.

Thank you, Madam Temporary Speaker.

Sen. Dullo: On a point of order, Madam Temporary Speaker.

The Temporary Speaker (Sen. Nyamunga): What is your point of order?

Sen. Dullo: Madam Temporary Speaker, I thought we have sought some further clarification on this. It is, therefore, important for the Chairperson of the Committee to respond on when he will provide those clarifications.

The Temporary Speaker (Sen. Nyamunga): Chairperson, please respond to the other questions raised.

Sen. Kinyua: Madam Temporary Speaker, there are concerns which were raised by the Senate Deputy Majority Leader. She said that there was no transparency in the money that was given to those people. She asked an extra question on the list of people who were given the money and we will answer it in seven days.

On the issue of the drought, it was not only experienced in Isiolo County; it was also experienced in Laikipia County and across the country, where all the rivers dried up. However, as Sen. Sakaja said, right now everybody is complaining about the floods. As far as I am concerned, it is the duty of each and every one of us to collect rain water. For example, when water flows through ones farm, they should, at least, do a small water pan and the water collected can be used to sustain crops.

(Sen. Dullo consulted loudly)

Please allow me to complete my response, Senate Deputy Majority Leader. At the end of the day, it is about you, as a person. The Ministry of Devolution and Planning might not do all these things because they are working together with the Ministry of Agriculture, Livestock and Fisheries as well as with the Ministry of Water and Irrigation. The Ministry of Devolution and Planning provides food and money to people who are struck by hunger. However, the Ministry of Water and Irrigation handles the issue of water, together with the Ministry of Agriculture, Livestock and Fisheries. I have noted the concerns raised and I will respond to them in one week.

The Temporary Speaker (Sen. Nyamunga): Is that okay, Sen. Dullo?

Sen. Dullo: That is okay, Madam Temporary Speaker. However, more importantly, he needs to clarify on the issue of the payment due to the pastoralists. When will they be paid? He should give an answer to that even before the seven days.

The Temporary Speaker (Sen. Nyamunga): Sen. Kinyua, will you give an answer to that in seven days?

Sen. Kinyua: Yes, Madam Temporary Speaker.

The Temporary Speaker (Sen. Nyamunga): Sen. Dullo, he has already mentioned that he will do it in seven days time.

Sen. Sakaja: On a point of order, Madam Temporary Speaker.

The Temporary Speaker (Sen. Nyamunga): What is your point of order?

Sen. Sakaja: Madam Temporary Speaker, I want to plead with the Clerk's Office. We are really being mistreated, as Chairpersons of Committees, because when we come to give responses, we find 30 responses on the Order Paper. We, therefore, sit until 5 o'clock only to be told that the responses will be given next week. We have been walking around this Parliament with files upon files of answers to questions. Can we, at least, be scheduling and know that, for example today, there will only be four or five responses?

We cannot go from Statement (a) to (z); to (aa), (bb), (cc) and (dd), because we have even run out of alphabets. We keep all these Chairpersons here, expecting them to give responses to Statements only for them to be deferred to tomorrow. Please direct administratively that we make good use and respect the time of Chairpersons of Committees. We could be dealing with other matters of national and county interest.

The Temporary Speaker (Sen. Nyamunga): Sen. Sakaja, your point is noted and it will be taken care of. We must also provide time for other Business of the House and, therefore, we have to balance that one.

Hon. Senators, we will defer the rest of responses to Statements to tomorrow, Wednesday at 2.30 p.m. onwards.

REGISTRATION AND PROVISION OF FACILITIES
IN PRIMARY AND SECONDARY SCHOOLS

DISAPPEARANCE OF PATIENT LEMELOI SHONKO
FROM COPTIC HOSPITAL

RAID BY ARMED BANDITS IN SUYIAN AREA,
SAMBURU NORTH CONSTITUENCY

DELAYS IN PROCESSING OF BIRTH CERTIFICATES

ONGOING RECRUITMENT EXERCISE BY KDF

VIOLENCE IN JAMHURI HIGH SCHOOL, NAIROBI

COMPENSATION FOR PERSONS AFFECTED BY KETRACO
HIGH VOLTAGE POWER LINE PROJECT

HARASSMENT OF OPPOSITION LEADERS

RAMPANT ROAD ACCIDENTS ON THE
NAKURU-ELDORET HIGHWAY

COAL EXPLORATION AT MUI BASIN, KITUI COUNTY

CLAN CLASHES AND TERROR ATTACKS IN WAJIR COUNTY

ALLEGED KILLING OF DEMONSTRATORS IN AHERO TOWN,
KISUMU COUNTY

EMPLOYMENT REQUIREMENTS FOR FRESH GRADUATES

RAMPANT FIRE OUTBREAKS IN INFORMAL SETTLEMENTS
OF NAIROBI CITY COUNTY

STATUS OF LAND OWNED BY ADC IN LAIKIPIA COUNTY

AUCTIONING OF CATTLE OF KENYAN HERDERS BY
THE TANZANIAN GOVERNMENT

INVASION BY ILLEGAL SETTLERS/ILLEGAL SUB-DIVISION
OF KALRO LAND

ALLEGED OUTSTANDING LAND DISPUTE BETWEEN
TAITA SISAL ESTATE AND THE LOCAL COMMUNITY

TITANIUM MINING IN KWALE COUNTY BY
VARIOUS MINING COMPANIES

DESTRUCTION OF FORESTS IN KENYA

KDF OPERATIONS IN LAMU COUNTY

BENEFITS OF THE STANDARD GAUGE RAILWAY

(Statements deferred)

Next Order.

BILLS

Second Reading

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

(Sen. Wamatangi on 8.3.2018)

(Resumption of debate interrupted on 13.3.2018)

The Temporary Speaker (Sen. Nyamunga): Proceed, Sen. Wamatangi.

Sen. Wamatangi: Thank you, Madam Temporary Speaker. I do not have much to add to what I said last time when moving this Bill. I thank all the Senators who contributed to this Bill and who made proposals for amendments on some of the Clauses. Most of the Senators have experienced some of the issues that are being addressed by this Bill. We have enriched the Bill in the debate and added value to some of the proposals that we have made. As we proceed, I assure Members that the amendments that were proposed will be considered at the Committee level.

Madam Temporary Speaker, as I elaborated when I was moving the Bill and in the course of debate on it, we believe that all Senators have since then joined together and the Bill has now become the property of the house. We believe that upon passage of this Bill, we will have a neater, hygienic and more organized way of assumption of the office of the governor-elect and the deputy governor-elect. We also expect, as provided under Article 182(2), that the holder of the office of the Speaker may get involved in the process of assumption of office.

Finally, Madam Temporary Speaker, this country has been waiting for this Bill for a long time. I remind the country that other than the election of 2013, we went to an election in 2017 without a firm law. Indeed, the matters that needed to have been put to proper discipline and law were done through regulations proposed by the Ministry of Devolution and Planning, but without any binding recourse or even reference to law. That is why I believe that once this law is passed, this country will enjoy a neater and better process of assumption of office of the governors.

Madam Temporary Speaker, this Bill will now move to the Committee Stage, where any amendments will be taken on board until when we finally bring it back for adoption by this House. As provided for under Standing Order 55(3), I request you to kindly defer putting the question until such a date, as you may rule, that will be convenient, when there are enough Members. This being a Bill that concerns counties, we should vote on it when we have enough Members.

I beg to move.

The Temporary Speaker (Sen. Nyamunga): Hon. Senators, since we do not have the requisite number to go for Division, let us defer it to tomorrow at 2.30 p.m.

(Bill deferred)

Next Order.

*Second Reading*THE COUNTY GOVERNMENTS (AMENDMENT)
BILL (SENATE BILLS NO.11 OF 2017)*(Sen. Murkomen on 15.3.2018)**(Resumption of Debate interrupted on 15.3.2018)***The Temporary Speaker** (Sen. Nyamunga): Sen. Mutula Kilonzo Jnr.

Sen. Mutula Kilonzo Jnr.: Thank you, Madam Temporary Speaker. I rise to support the County Governments (Amendment) Bill (Senate Bills No.11 of 2017) sponsored by the Senate Majority Leader.

Although we have amended the County Governments Act several times, it has been a learning lesson, particularly, where there are gaps. For example, I have a Bill to resolve the question of dissolution of counties. Like in the case of Makueni County, the report was submitted to His Excellency the President. Although public funds were used, there are several lessons which would have benefitted the country if it had come to the Senate. So, we must agree that in the rush to have devolution, the County Governments Act left gaping holes everywhere on several issues.

I will begin with something that I have some passion about, that is, the lacunas left in the law under Article 182 of the Constitution. This is on the filling of vacancies of deputy governor; where the governor assumes office – like in the case of Nairobi and Nyeri counties – and no specific provision is made in law for filling of that vacancy.

Madam Temporary Speaker, the Supreme Court saved us the hustle of having to go through these motions. The Bill on impeachment proposed by the Committee on Justice, Legal Affairs and Human Rights and the Assumption of Office of the County Governor Bill by the great Senator of Kiambu County have similar provisions. It would be very nice if this Senate was to agree where we would place this amendment on filling of the vacancy of deputy governor. There is no mistake in law in having this law replicated as many times as possible, but it is a little untidy.

It would be neater to agree as the Senate that, as a principle, we agree with the Supreme Court in its advisory opinion that a deputy governor can be appointed by the governor in the absence of a deputy governor and approved by the county assembly in the proposed new Section 32D without necessarily having it in so many other Acts of Parliament. My view is that it is in good order to have this seated *in situ* in the County Governments (Amendment) Bill.

Although we are not allowed to criticize other arms of Government, I must say that the Supreme Court advisory opinion left me wondering, because instead of requesting Parliament to make changes to the law, they drafted these sections word for word, in the same way as in the Bill by Sen. Murkomen. That is shocking. They even picked the Bill and put it in the advisory opinion.

It is amazing because the Supreme Court would have asked Parliament to look for a method or even propose one. This is because in the Advisory Opinion No.2 on division

of revenue, where we have a dispute between the National Assembly and the Senate on any Bill, they have proposed that the Speaker should appoint three eminent Senators – Senior Counsel or otherwise – to sit in what would be a small conclave of *wazee*, to agree on what would be a method of moving forward Bills, where under Article 110 (3) of the Constitution, the Speaker of the Senate and Speaker of the National Assembly do not agree on whether a matter concerns counties.

Madam Temporary Speaker, I was a little amazed that the Supreme Court removed clauses from Sen. Murkomen’s Bill and adopted them the way they are. I do not know whether to say that these are proposals of Sen. Murkomen or the Supreme Court. Needless to say, my view is that like in the Bill that Sen. Murkomen and I chaired a Committee of the Constitution amendment, a better way to do things is to have this in the Constitution as opposed to mirroring the vacancy of the Deputy President and that of a deputy governor. I am not quite sure whether I agree with that principle of mirroring and putting them in the same platform.

Similarly, governors will say: “Put me in the same platform as the President of the Republic. I am immune from prosecution and shall not come to the Senate.” We should avoid those provisions where we say the drafters of this Constitution forgot to mirror a deputy governor and a Deputy President. That, for me, is dangerous. I think we must have an amendment to the Constitution to cater for this.

In Clause 2, Sen. Murkomen has proposed that the county executive committee member shall develop the symbols of the county through a consultative process, submit a symbol for approval and apply to the College of Arms for grant of arms. It is a good thing. I said in the Assumption of Office of the County Governor Bill that some governors were handing over carvings. In Nairobi County, papers were handed over and in Kitui and Kiambu counties, the governors refused to come. We must have something that will be a symbol of authority that can be handed over to a governor, the way we have it in the Assumption of Office the County Governor Bill.

Similarly, we grappled with the issue of speakers; how to deal with the vacancy of the office of the speaker because it was missing. We had proposed Clause 11 in the previous law. Sen. Murkomen, in his usual energy, had made a provision on this together with Sen. Elachi, who is now a Speaker, but it never saw the light of day. So, speakers all over the country became powers that be; more powerful than the power itself, to the extent that one of them came to the Senate on an invitation, put his legs up in the air in a conference room, and we could do nothing about it. We cannot allow that.

Madam Temporary Speaker, the last issue is on the question of the deputy governor. The reason we must have that amendment is that it cannot appear--- This is an exception and we do not expect that there will be so many cases like this, but if this deputy governor is elected under this process proposed by Sen. Murkomen and, God forbid, the Governor is no longer there--- That is where the Supreme Court left another lacuna. Take the case of Ms. Ann Kiguta who has been proposed by Gov. Sonko. If something happens, does she become governor or will there be a vacancy? That sort of lacuna must be addressed. That is why I propose that other than lifting these clauses, we must have one more amendment to say that in the absence of the governor, the person holding office under this Clause, shall be subjected to an election, so that we then give

the public, under Article 1, the rightful role under universal suffrage, to elect a new governor and a deputy governor. That, for me, would be a tidier way of doing it.

Otherwise, in the Section, Clauses 13, 14, 15, and 16, the Senate Majority Leader was again trying to tidy up the already existing lacunas in the law. Procedure of nomination and appointment of members of the board are lacunas that we have come across as we go along. There is nothing controversial.

On the promotion of equity in County Public Service Boards (CPSBs), there is controversy of hiring in all counties including Bomet, *et cetera*. Collection and analysis of information by CPSBs, again, the issue of public participation by the CPSB, equity plan under Clause 68 (c) and review of the County Public Service employment equity plan are very innovative methods because one of the problems bedeviling counties is what the Senate Majority Leader has identified which ideally should go through the process proposed in Clause 68 (d) and (b).

Since the Senate Majority Leader has now walked in, all the amendments including the ones I have proposed about the petition to wind up a county should the need arise, to avoid the situation of Makeni County where the President exercised discretion, but the value of that report in terms of legislation and the disputes that would arise out of the budget, we never had the benefit of making statements or pronouncing ourselves as the Senate on such issues that affect counties.

Madam Temporary Speaker, if any of them could be housed in this Bill, I would be very happy. The Senate Majority Leader, if we could have the Assumption of Office of the County Governor Bill; the clauses that are here and the ones in the Impeachment Procedure Bill housed in the County Governments Act, we would have a neater way of amending the County Governments Act. It is a continuous process.

Unknown to us, Sen. Murkomen who was responsible for drafting the County Governments Act is seated here. He was in the drafting committee and that is why we must continue revising these laws. We discovered that in the amendment of the Local Government Act, where the local government authorities enjoyed protection under the Government Proceedings Act, we did not transpose that Clause into the County Governments Act. It is through the amendment of the Government Proceedings Act that the county governments enjoy the protection that is enjoyed by the national Government in terms of anybody who wants to attach.

I say this because I was told by the Governor of this great County of Nairobi City that every time they bank money, the people who are owed funds by the county government garnishee those accounts. I want to tell the Governor of Nairobi City County that they are protected by law under the Government Proceedings Act from any form of attachment through an amendment that we made here and it was signed into law of the Government Proceedings Act. Nobody has a right to attach any ambulance, item or office equipment of any county government because they are protected by law.

Lastly, I thank the energy and the industry of the Senate Majority Leader and my brother Sen. Murkomen.

I beg to support. Thank you.

The Temporary Speaker (Sen. Nyamunga): Since there are no more interests--- Proceed, Sen. Sakaja.

Sen. Sakaja: Madam Temporary Speaker, there is a lot of interest. Most Senators had an opportunity to contribute to this before. I am glad to be the last before the mover replies.

I join the Senator of Makueni County who spoke before me in acknowledging the industry and dedication of our Senate Majority Leader in trying to bring clarity into a lot of these provisions that have been missing within our laws and the lacunas that we have had.

As we all recognize, devolution is growing. We had not done devolution before and this is the first time our country is dealing with it. The lessons learnt in the last five years, indeed, should serve as guiding lights to the areas that we need to look at.

There is merit in the thought that we might want to consolidate some of the Bills that are being proposed that are similar for neatness and clarity of the law. We do not have to look at many statutes that are talking about similar issues. We can have all of them in a bundle or have them altogether.

Mr. Deputy Speaker, Sir, the last term of devolution was almost seen as if devolution was a competition between the two levels of government – the counties and the national Government competing for space, the Senate and governors and Senate and the National Assembly.

It is important that our disposition as the Senate towards devolution, governors and the members of the National Assembly changes. Kenyans are not interested in the competition and the turf wars, for example, between the “Upper House” and “Lower House” over who has the money and who has the knife in their arm. Kenyans want services delivered to them and that is the real object of devolution, based on the principle of subsidiarity where a service is best offered at the lowest level, compatible with the benefit area of the same service. That is what we signed when we promulgated this Constitution. I no longer call it the new Constitution because it is a bit old now. That is what we need to stay true to.

[The Temporary Deputy Speaker (Sen. Nyamunga) left the Chair]

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

I can see there has been a change of Chair. I acknowledge Mr. Deputy Speaker, Sir, in the Chair.

Going to the provisions of this Bill, which I just want to give clarity and provide for what had been left out, there is merit in clarifying the commencement of a sitting of a county assembly. In the last term, there were questions as to the legality of election of many county speakers, given the fact that many of them were elected before nominated Members of County Assembly (MCAs) had taken oath of office.

Many county assemblies already formed committees before the nominated MCAs took office and the question of fairness then arose. Is a county or even the Senate fully constituted if the nominated Members have not yet been sworn in, either because of a court case or a petition against them? Should there be a threshold for that?

It is important that we have symbols of the counties as well and that they go to the College of Arms Act. We might find counties proposing outrageous symbols. If you do not guide some counties; the mixture of colors, the kind of animals they put might alarm you. Some symbols may look appealing to us but they have certain cult or religious meanings. It is good for there to be a consultative process that includes the College of Arms to give them a grant.

Mr. Deputy Speaker, Sir, I would like to pose a question on the amendment in Section 11. I wish the mover would listen. Clause 11 (c) says that if the county assembly resolves a resolution supported by two thirds of the Members of the county assembly, they can remove their speaker. However, the threshold of the election of a speaker is much higher at the first round. Why should the threshold of removal of a speaker similarly not follow the same process of the appointment? You start with 75 per cent and if it is not outright then you move in that manner. That would be fair.

We want speakers to exercise independence. There are many speakers across the country who are being threatened by governors, that if they do not toe their line, then the governor because of access to resources can mobilize MCAs to impeach the speakers. Therefore, there are county assemblies that have become appendages of county executives because of that kind of threshold and fear of losing their positions. As a Senate, we need to protect the speakers from malicious victimization and fear of being hounded out of office because it is very easy.

If I became a governor today, even just through persuasion or the kind of projects I would implement, it would be very easy to control all the MCAs in terms of having them on my side. So, if I do not want so and so as the speaker and I just need two thirds majority, it would be very easy to attain that. I suggest that we amend this provision. I am sure the County Assemblies Forum (CAF) once they bring their memorandum which is not here already, will be proposing the same thing; that we raise the threshold of removal of a speaker.

The recall of the MCAs is way out there. I am not sure we would even ban our own recall. I do not know why we are looking at the recall of MCAs. These are some of those aspirational provisions in the law that are very hard to implement.

Mr. Speaker, Sir, for example, I got elected as a Senator with 850,000 votes. To me, does a recall stand legally if the votes will be lower than what I got? If 10,000 people express their sovereignty in choosing a Member of County Assembly (MCA), should the threshold then for recalling him be the same or more?

I want to talk about the powers of the governor to appoint and dismiss a deputy governor and County Executive Committee (CEC) members. I hold that the system we have has really put encumbrances on our governors. First of all, from the constitutional provision that for you to vie as a governor, you need to have a running mate whom you announce, run with and get elected. Once you get elected, this fellow whom you appointed as your deputy governor, for whatever consideration, then says he brought half of the votes, then you need to do this and that or give him this and that slots. We see tussles in county governments. Many deputy governors are suffering across the country. However, they are not talking about it. If there was no toll on their resignation, I am sure many of them would resign because they do not see eye to eye with their governors.

Mr. Deputy Speaker, Sir, if the executive authority of a county is vested in a governor by the people of that county, then let that entire authority be vested in him. Let them have a free hand to appoint a deputy governor who should always have a docket. There are very many idle deputy governors across the country whose desks have nothing. They have nothing to do. Due to that, they perambulate around counties frustrating their governors. Although this system is in the Constitution, it does not mean it is right. A governor should be able to dismiss his deputy and appoint somebody else so long as they are performing. We all know after five years, it is the governor who has to account to the people of the county as to why he did not deliver on one or two things that he might have promised. The same goes with the issue of the President and running mate.

In my opinion, I do not think that the system we have today is correct. However, since it is what we have in our Constitution, it is good to give clarity, as the Senate Majority Leader has proposed, on the manner in which a governor can appoint his deputy. I am glad that in Nairobi County residents are being asked on *Facebook* who they would like to be their deputy governor. There is a list from which they can choose. It ranges from Anne Kiguta, former solicitor General- Njee Muturi and other people who are known and unknown.

As a result, we have seen a lot of lobbying. I am being called for tea by many people. They are asking me please, *nitete*, or talk to the governor on my behalf. It is good and healthy because it is a public office. The public should participate. Let the public know who is being eyed. I am sure they have, probably, told the Governor of Nairobi County that they have dossier on some of the people he is suggesting. However, let us give them clarity. Let us have this consultative process. Let the governor nominate a member and let that person go to the county assembly and pass with a certain threshold of votes. However, let there be never a time that a county is run by somebody who did not get mandate from the voters there.

If a deputy governor is appointed in that manner and then the governor, for whatever reason, vacates office, that deputy governor should not rise to the position of governor. An election must be held so that at any one time, the person controlling resources in the county which is close to Ksh30 billion cannot be one who has ascended to power without having the mandate of the people of that county. I support the provision for now because it is what we have as law. I hope that during the next stages, we can consolidate these other Bills that have similar provisions and think more creatively.

Mr. Deputy Speaker, Sir, the question arises whether the law was made for man or man for it. I think at this time, especially after “the handshake” we can soberly reflect on a lot of the provisions in our laws, the Constitution, system and structure of governance. We have had five years of this Constitution. Is it efficacious enough? Are we achieving what we need for the people? I hope all of us can be statesmen as we go through this process. Let us not miss this moment. Otto Von Bismarck, the great leader of Germany, once said:

“A statesman cannot create anything himself. He must wait and listen until he hears the steps of God sounding through events; then leap up and grasp the hem of His garment.”

A moment has happened in this country that requires us then to leap from where we are sitting and touch the hem of God's garment. We should use the opportunity to review our Constitution, laws related to devolution, the Senate and the National Assembly, so that we can continue improving the status of life of the people of Kenya, delivering to them and ensuring we have a country that is united.

I hope that we shall be involved in preparation of amendments; that is, of course, up to individual Senators. Moving forward, we will propose some amendments to it, in consultation with my party leadership, in the House.

I support.

The Deputy Speaker (Sen. (Prof.) Kindiki): Very well. Let us have Sen. M. Kajwang'.

Sen. M. Kajwang': Thank you, Mr. Deputy Speaker, Sir. I wish to also go on record regarding this Bill. I congratulate the Senate Majority Leader, Sen. Murkomen, for very speedily coming up with this Bill.

The media reporting on this Bill has mostly focused on the issue of the assumption of office of the deputy governor in the event that there is a vacancy in that office. The provision of legal framework for assumption of office of governor by the deputy governor and the appointment of a new deputy governor is the Clause that has elicited a lot of media attention.

This Bill has several other very important and interesting provisions that I support. First of all, it provides clarity on commencement and sitting of county assembly after election. I have seen this in the past general election. Our elections seem to take almost a year starting with nominations. After that, some people go independent, others remain in the mainstream and then we have a very gruelling general election. After that, as a member of a county assembly, you hope that you will rest and start doing some work on behalf of the people who elected you.

Previously, there was not much clarity on when a county assembly could sit. This Bill seeks to correct that by saying that it shall not be more than 30 days after constitution of the full assembly as provided for under Clause 7A of this Bill. This is something that we need to look at. I remember it was the former Sen. Martha Wangari, now a member of the National Assembly---. She also helped us to come up with clarity by saying that an assembly is fully constituted when nominated members have also been appointed within the assembly.

Mr. Deputy Speaker, Sir, it will, therefore, be possible for members of the county assembly to go into election knowing that they will be able to start earning their first pay check within a certain number of days.

This Bill also makes it clear that an assembly can sit anywhere within that county. I want to laud the Governor for West Pokot, Prof. Lonyangapuo who was with us as a very active contributor in this House. He would be among the few debaters when it got to a time like this when many people are low in energy. He has already implemented what this Bill proposes, that the assembly can sit anywhere. We saw in the media that the county assembly of West Pokot was sitting under trees in the scorching sun and bringing the assembly close to the people.

We have said that even the Senate needs to do this because there is nothing that stops it from sitting anywhere in the Republic of Kenya. We do not need to change any law. We have said that we need to take the Senate to *mashinani*.

Mr. Deputy Speaker, Sir, through the Committee that I chair, we will also start having some sittings of the Senate County Public Accounts and Investment Committee (CPAIC) in various parts of the country so that people can have confidence and understand what the Senate is doing.

There is clarity provided for in this Bill on the office of the county deputy speaker.

Mr. Deputy Speaker, Sir, we have seen an interesting situation in Siaya County. There was an election petition, the governor lost the petition and had to go for fresh election. For a period of three months, the Speaker of the County Assembly of Siaya was the Governor. Should a Speaker, who is carrying out the role of temporary governor, continue to be Speaker? Or should we say through legislation that when the Speaker has taken on the role of governor, then during that three-month duration, the deputy speaker should also act substantively as Speaker? You cannot have a situation where the governor who is in charge of the executive, is also the Speaker in charge of legislature. I hope as we process this Bill, we provide clarity for such scenarios.

Currently, the governor of my county, Homabay, lost his case in the High Court; the matter has gone to the Court of Appeal. We do not know how it will end up. In case Homabay County was to go back for a by-election for the position of Governor, the Speaker will have to act as temporary governor. It will not be proper for the Speaker to be the governor and Speaker at the same time. We can elevate the deputy speaker during such periods.

Mr. Deputy Speaker, Sir, this Bill attempts to provide clarity on the procedure for removal of County Assembly Speakers. This has been a big problem even in the last Parliament. The Speakers of County Assemblies talked and urged us to come up with legislation that would shield them from arbitrary impeachments. At least now, we have provided for certain natural justice rules, the Constitution requires fair administrative action. We came up with a Fair Administrative Action Bill which I believe is now an Act of Parliament. The County Assembly Speakers can now sleep soundly knowing that they are not going to be removed the next day because they refused to approve a trip that the Members of the Assembly wanted to undertake. The Speakers have been held hostage by Members of the County Assemblies.

In my own county, we have a case involving humongous amounts of money, Ksh500 million, being investigated by the Ethics and Anti-Corruption Commission (EACC). You ask yourself, when an Assembly is accused of misusing Kshs500 million; have they been paying salaries, allowances, fuelling vehicles? These Assemblies get just about 10 per cent of the allocation to the counties. A county that get Ksh7billion every year means the Assembly gets Ksh700million. How then can a county lose Ksh500 million?

Mr. Deputy Speaker, Sir, the County Assembly Service Board (CASB), is in charge of County Assemblies. They make most of the decisions relating to operations, development and the financing decisions. In the CASB, the speakers are very important

figures within those boards. These CASBs have become cash cows for Members of the County Assemblies and in as much as we want to shield the Speakers from arbitrary removal, we must also ensure that we make it possible that a Speaker who is errant can be removed. We should not make it impossible, but make sure that there is fairness and the administrative action is consistent with what the Constitution and the other laws that we have passed say.

On the issue of recall of Members of County Assemblies (MCAs), the Bill provides clarity and allows opponents and newly registered voters to initiate the recall of a Member of the County Assembly. The Members of County Assemblies are like Senators. I sympathise with them. The day after your election, you suddenly become unpopular because all the things people expected you to do for them, they suddenly realise that you cannot deliver for a variety of reasons. However, our people are not patient enough to understand what those reasons could be.

If you are a Senator, you got one vote just like the governor. Why is the governor promising a road and the Senator is only talking big English? This is where sometimes, I sympathise with Members. The people want education and you cannot build a school for them. Thus, an innovative Senator will arrive in the village and say ‘we shall build a school for you come what may; whether it is a stone walled, mud-walled, iron-roofed or grass-thatched school.

(Laughter)

The Deputy Speaker (Sen. (Prof.) Kindiki): Order! Order!

Proceed with your contribution, Sen. M. Kajwang’

Sen. M. Kajwang’: Mr. Deputy Speaker, Sir, I was getting a bit emotional because I know you are passionate about education.

The unpopularity is automatic the day after your election. The failure of the Senators and MCAs is what I would call an expectation failure; huge expectations that cannot be delivered. Consequently, you will always find a situation where members of the public will attempt to recall MCAs. We must allow members of the public the opportunity to change their minds about the people they elected. Nevertheless, it should not be something that people are holding against your neck that, if you cannot pay for my school fees or bury my relative, then I shall recall you. We should make it possible but not make it a matter that will be used to blackmail us all the time.

In terms of appointments and dismissals of County Executive Committee (CEC) members, there was a ruling in Bungoma High Court that stopped MCAs from impeaching CEC members. We had a challenge as the Senate and legislature to make sure that the rules or procedures for removal of CEC Members were consistent with the Constitution. We could have all sorts of ideas about that ruling, but we have to abide by that ruling.

As we process this Bill, I hope we shall make it possible for MCAs to exercise their power to oversight and where it becomes necessary to impeach CECs, not out of Mischief but out of necessity. We must also address the issue of chief officers in counties. When most of the new governors took office, they fired the existing chief

officers. There are certain counties like my own, where the chief officers went to court and were granted an order that barred the governor from interfering with their contracts.

You have a situation where you have got a new governor working with chief officers appointed by the previous governor and who were actively campaigning for the previous governor. In such cases, the new governor can resort to disciplinary proceedings and say that the law does not allow you to participate in political campaigns. I urge governors who have issues with the chief officers inherited from past administration to use the right process, procedure in law. It cannot be a blanket condemnation. However, it should also be possible for a governor to choose the kind of team that he wants to work with to achieve the vision that he has for that county.

Mr. Deputy Speaker, Sir, let me talk about the County Public Service Boards (CPSBs) which we have tried to enhance. We want to ensure independence, professionalism, transparency and equity in the functioning of CPSBs. I wish we could look at the CPSBs much more keenly. We have modeled them on Article 251 that talks about Constitutional Commissions. We have created procedures for their removal similar to removal of Constitutional office holders. We have given them a duration similar to the duration of the Chair of the IEBC and any other constitutional office.

We have seen in the last election CPSBs Members being chief campaigners and campaign agents of governors. When the governor they supported loses and a new governor is in place and the new governor wants to use the same board to recruit; the CPSB frustrates the efforts of the new governors. We must ask ourselves whether we should tie the tenure of the County Public Service Board to the term of a governor.

We must ask ourselves whether we should stagger the terms of members of the County Public Service Boards. Assuming that all these CPSBs were appointed on a certain date in 2014 and all of them probably within the same month or year and their term will expire in the same year or month, you will have a situation where you are going to lack institutional memory. You will not have continuity between one board and the other. I hope that as we move to the next stage, we will give this further thought.

Mr. Deputy Speaker, Sir, I have looked at the County Governments Act, particularly on the power of county secretaries. The Act, in Section 56(2), says: "The county public service shall be headed by a county secretary appointed under section 44." Yet, again, we have the County Public Service Board, which is supposed to manage the human resource element within the counties. There is bound to be conflict between the county secretaries and these boards.

We have seen those conflicts in several counties. I can tell of cases where even the County Public Service Board went to court against the governor and the county secretary to seek an interpretation on their mandate. This is because the board felt that the county secretary and the governor were encroaching on their mandate. I hope that as we process this Bill, we will provide that clarity. I also hope that we will professionalise our County Public Service Boards.

Mr. Deputy Speaker, Sir, human resource management is a regulated profession. The law says that you cannot be a human resource manager if you do not belong to the Institute of Human Resource Management. For you to belong to this institute, you must show some competence. We must make it mandatory that every Member of a County

Public Service Board becomes a member of the Institute. You could be an engineer but, then, you can undertake some basic training that makes you a member of the Institute.

The habit that we see in the counties is such that a County Public Service Board is populated by people from diverse backgrounds and professions. You will find Early Childhood Education teachers, school teachers, doctors and nurses. Yes, these people understand their specific domains, but the science of human resource management is something they have not been exposed to. That is why we said that human resource management must be a regulated profession in this country.

Mr. Deputy Speaker, Sir, I will be proposing that members of a County Public Service Board must – if not at entry then at a certain point during their term – become members of the Institute of Human Resource Management because the Board is a human resource management outfit or agency of county governments. Even a professor of law can be a member if they show interest,

Mr. Deputy Speaker, Sir, I beg to support the Bill. We shall process the amendments as we go on.

Thank you.

The Deputy Speaker (Sen. (Prof.) Kindiki): thank you, Sen. Moses Kajwang.' I only want to remind you that in future, when you choose your examples, be careful so that you do not confuse the Chairperson with the Senator for Tharaka Nithi County. Those are two different people, depending on where one is seated. I am sure you have noted that.

Hon. Senators, I do not see any further interest on this Bill. Where is the Mover of the Bill? I saw him moving around the House; he seems to be at large.

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

Hon. Senators, the Senate does not wait for anybody. I, therefore, defer the reply to tomorrow.

(Bill deferred)

Next order!

(Sen. Murkomen walked into the Chamber after the next Order had been read out)

The Senate Majority Leader (Sen. Murkomen): On a point of order, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. (Prof.) Kindiki): What is it, Senate Majority Leader? What is out of order?

The Senate Majority Leader (Sen. Murkomen): Mr. Deputy Speaker, Sir, I am the one who is out of order. I am trying to report myself to you as having been out of order. I beg for your indulgence; I was having consultations in my office. I have had to run very fast to come and reply to this Bill. I will not take more than ten minutes to do so.

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The Deputy Speaker (Sen. (Prof.) Kindiki): Order, Senate Majority Leader. I hear you; it happens to many Senators and it happened to me once in my previous life. Unfortunately, the Standing Orders do not allow me to indulge you because we have already moved on. I had actually said, as you walked in, that “The House waits for no man or woman for that matter.” I, therefore, direct that the reply will be given tomorrow and I reiterate the direction I had given earlier.

I now call upon the mover of Order No. 10, Sen. Mutula Kilonzo Jnr., to move it.

Second Reading

THE NATIONAL FLAG, EMBLEMS AND NAMES (AMENDMENT)
BILL (SENATE BILLS NO.8 OF 2017)

Sen. Mutula Kilonzo Jnr.: Thank you, Mr. Deputy Speaker, Sir. I beg to move that the National Flag, Emblems and Names (Amendment) Bill (Senate Bills No. 8 of 2017) be now Read a Second Time.

Mr. Deputy Speaker, Sir, from the outset, I have done some tremendous research in order to come up with this Bill in terms of the proposal, which is going to change the way we do things in this country. My research has shown that the flag of Kenya has been treated like a privilege. It has become a status symbol and it has been left to the few. That is the reason why those who lost their positions by virtue of being sacked, their flags were removed at any point, even on the road, because that flag represents power. But the concept of the flag of Kenya is something different.

Mr. Deputy Speaker, Sir, allow me to say that the National Flag, Emblems and Names Bill was moved by the then Minister for Justice and Constitutional Affairs, the late Tom Mboya, on 26th November, 1963. That is where I want to begin; from the last statement he made. He said this and I want to repeat it for the record:

“Sir, I can only repeat again that the purpose of this Bill is to secure the dignity and respect that the national flag and emblem of this country deserves, as you have also said of the flag and emblem of the United Nations. We intend that, on our Independence, there should be as much celebration as possible. But there should be no disrespect whatsoever of the flag or emblems of the new nation. We intend that after Independence, the use of the national flag or the emblem shall be on the basis of dignity that these articles deserve. They will be respected because they are the basis and the symbol of the new nation of our country. All our people have sacrificed so much for this Independence and, therefore, the symbols of our independence shall always carry the same degree, affection and respect they deserve.”

Mr. Deputy Speaker, Sir, why is it a crime to fly a flag outside your residence? Why is it a crime to fly a flag outside your office, if it is not a Government office and you are not a State officer? I have gone out of my way to put a flag outside all my offices, even in Ukambani, because I want to see if anybody is going to arrest me because I want to fly the Kenyan flag. This drove me to think carefully about why we have prohibited

the use of the flag. I have proposed in Clause 4B(i) of this Bill that we allow all Kenyans, and I will read it for the avoidance of doubt:-

“Despite any other provisions of this Act, during a public holiday, a person may, as a sign of patriotism, display the national flag, at any private residence or any place of work or business, provided that the display of the National Flag does not undermine the authority or reputation of the State.”

Mr. Deputy Speaker, Sir, there are other amendments in Clauses 2, 3, 5 and 6 to ensure that this Bill is in tandem with the Constitution through replacement of the word “Minister” with “Cabinet Secretary”. The sole intention of this Bill is to ensure that Kenyans fly their flag.

Recently, a Committee on Evaluation was in the State of South Carolina. How beautiful it is to see people flying flags everywhere outside their residences and offices of Senators at Capitol Hill! If you go there, you will see a beautiful flag of the United States of America (USA) and that of the State. That should also happen in our offices and residences.

Allow me to say this with tremendous respect. Kenyans embrace unity the day the Rugby Sevens team wins a trophy and you will see the Kenyan flag flying high. At that time, everybody remembers that there are no tribes but we are Kenyans. The day we win 10,000m or gold, silver and bronze in 3,000m steeplechase, the National Anthem is played and that is the day we remember that we are Kenyans.

This has come at a time when we feel patriotic. I remember your speech during the Motion moved by Sen. Orengo, now the Senate Minority Leader, on the symbolism of the handshake. How much more would it be if Kenyans flew flags on the day the Right Hon. Raila Amolo Odinga shook hands with His Excellency President Uhuru Muigai Kenyatta? Provided that the limits and prohibitions found in this law are respected, I believe that the true symbol of national unity is the flag.

The Constitution recognises the President as a symbol of national unity but I am afraid to say that presidential elections in this country have become a nuisance and theatre of the absurd. We should use every method possible to diminish the culture of tribes because, somehow, the presidency has become a tool that we quarrel and fight over.

The President agreed to meet the former Prime Minister, the Rt. Hon. Raila Amolo Odinga and shook hands for the sake of building this nation and that is the true symbol of national unity. If they are to go round this country, they should have with them the preamble of the Constitution in mind which appreciates the diversity of this country. It states that every culture and every tribe in this Kenya is important; whether your tribe produces a president or will have one in 50 years. I know that you have presidential ambitions and that is a legitimate expectation.

I found great history in the Bill that was moved by Tom Mboya, the then Minister for Justice and Constitutional Affairs and this is what he had to say at Page 2270 of the HANSARD. I will read for the record:-

“I hope that those who have made enquiries to the Independence Celebrations Directorate and to Government from time to time about

whether or not that you may fly the National Flag on the occasion of Independence or use it to decorate your shops and buildings will take not of what I said.”

It is not the flying of the flag that this Bill seeks to prohibit as such but the use for commercial purposes by those who import and manufacture. That was the import and the mischief behind the National Flag, Emblems and Names Act. How it ended up having this preamble is strange to me. It states as follows:-

“An Act of Parliament to prevent the improper use of the National Flag and of certain emblems, names, words and likenesses for professional and commercial purposes, and to prohibit the display of certain flags.”

The prohibition here is not in tandem with nationhood. Therefore without belabouring the point and going into unnecessary details, there are examples upon examples, but I have just cited one.

In Sweden, Germany and all the places I have visited, people fly flags in residences and homes. Why should we not fly flags when Harambee Stars is playing or when receiving our athletes back? We should remind ourselves why we have the flags.

I read in detail the HANSARD and discovered how we ended up having the colours of our flag. It was a compromise because of very many flags by Kenya African Democratic Union (KADU) and others. Everybody contributed to the colours of our flag. On the material day before Independence, we all set aside our political differences to contribute to the colours of the flag of this nation.

I want to fly my flag outside my office with a very long pole to show that I am proud to be Kenyan. I have seen people put on badges like sometimes you do. Let the badges be used even for commercial purposes because the Government of Kenya can create income out of that. The flag in my office cost a whopping Kshs20,000. Maybe that can be one avenue where the Government can make money by regularizing the use of the flag.

We should remove the prohibitions on the flag. Let it not be a preserve of Cabinet Secretaries who break traffic rules by overlapping with blaring sirens on, for those who have them, to show that they are powerful and they can overtake. That should be a symbol to show that we are all Kenyans.

We have been divided and we have lived in a very bad state. I am proud of the two gentlemen who shook hands at Harambee House. Those who have seen the politics of it have turned a blind eye to the politics of that handshake. I believe Kenya is bigger than the President and the Rt. Hon. Raila Amolo Odinga. This Bill does not concern counties but everybody. This is one of the Bills that we must embrace.

Somebody bothered to ask what is more important to me. They wanted to know whether it is the building of dams and bridges and water provision in Makueni or the flag that is important. That is the community of people who are lost.

The Bible says in Mathew 6:33:

“But seek first the kingdom of God and His righteousness, and all these things shall be added to you.”

I say the same about this country; let us seek nationhood first as one country, Kenya and everything else; your presidential ambitions and my ambitions, whatever they

may be, will be added unto us. This is a great nation. Let us not break it apart for temporary gain. Like Solomon said in the Bible, Ecclesiastes; vanity of vanities - all is vanity. This nation must be protected at all costs.

Mr. Deputy Speaker, Sir, I rise to move and ask my brother whom we have been with in this struggle and tried to build bridges even before the Rt. Hon. Raila Amolo Odinga and President Uhuru Kenyatta shook hands. Sen. Sakaja and I had started building our bridges in some form. He is going to support this Bill today so that we take a bipartisan approach to this matter. This matter is serious and we must meditate upon it because Kenya is greater than all of us. God bless Kenya.

I beg to move.

The Deputy Speaker (Sen. (Prof.) Kindiki): Sen. Mutula Kilonzo Jnr., what is the occasion? You are so pious and patriotic today, almost to a fault.

(Laughter)

Sen. Mutula Kilonzo Jnr.: Mr. Deputy Speaker, Sir, are you challenging my patriotism?

(Laughter)

I have just said that if you read the things that I have been reading, you will realize that we made mistakes in this country. I have been waiting for this opportunity to say that Kenya is greater than all of us. I will get in trouble with many people but it does not matter.

The Deputy Speaker (Sen. (Prof.) Kindiki): This is very impressive. I rarely hear you quoting the Bible. You always quote Mahatma Gandhi and Nelson Mandela.

(Laughter)

Please proceed, Sen. Sakaja and I hope that you will take the cue from where the mover has left.

Sen. Sakaja: Mr. Deputy Speaker, Sir, I will take the cue from where Sen. Mutula Kilonzo Jnr. has left off by quoting the Bible in the book of Genesis 11:6, the Lord says;

“If as one people speaking the same language they have begun to do this, then nothing they plan to do will be impossible for them.”

That one language includes having one flag. I will quote Sen. Pauline Hanson of Australia who says that:-

“To survive in peace and harmony, united and strong, we must have one people, one nation, one flag.”

I am very proud today to second this amendment Bill by my brother, the Senator for Makueni County, who as he has mentioned, we have been exploring ways over time on - despite the politics and Kenyans not agreeing on one school of thought in terms of political philosophy and political party – how we can ensure that we can still have our

differences in politics but build a united patriotic country. That is the call for our generation.

Mr. Deputy Speaker, Sir, I have heard some people comment that Sen. Mutula Kilonzo Jnr. should focus on water in Makeni County and other counts of legislation. However, I agree with Sen. Mutula Kilonzo Jnr. completely that without the software, the hardware will make no sense whatsoever. Before 2007, we heralded ourselves in this country for many years as an island of peace and tranquility. We would point at our neighbours such as Uganda which had issues then, South Sudan, Ethiopia, Somalia and Rwanda.

We kept saying that Kenya stands tall as being an island of peace and tranquility within a sea of turmoil in the region. However, 2007 shocked the world but more than that, this country was even more shocked. What we thought was the fabric that holds us together, did not exist. What we thought was a common identity, did not exist. We were just one election away from total disintegration of the hardware that we had built over time.

We can build the Standard Gauge Railway (SGR) and the rail which we saw being uprooted in Kibera in hours. We can build roads and hospitals, but if our people do not have a sense of identity or a common philosophy of Kenya and what Kenya means to them, then everything we are doing will be in vain.

I support the proposed New Section 4B (1) which says:

“Despite any other provision of this Act, during a public holiday, a person may as a sign of patriotism, display the National Flag, at any private residence or any place of work or business, provided that the display of the National Flag does not undermine the authority or reputation of the State.”

The amendment to that is that anybody is allowed to fly the Kenyan flag, as big as possible, outside their house, offices and shops. We can also allow even our children to go to school with miniature flags in their bags. The flag in itself is not what will unite us, but the symbolism that it provides; that we are all under one cover as a country. Someone once said, and I have forgotten who it was, that a true flag cannot be designed; it is torn from the soul of the people. It is an expression of who we are.

I am glad that my good friend, Sen. Mutula Kilonzo Jnr., was quoting Tom Mboya, whom I consider one of the greatest politicians in this country. If you look at the history of Tom Mboya, he was a conflicted man. He was born in Central Province and went to school in Thika. He was always told him that he was not Luo enough, but at the age of 23 years when they were negotiating the Lyttleton Constitution, Lennox Boyd Settlement and up until Lancaster, when they would go to London--- While the late Jaramogi Odinga and *Mzee* Jomo Kenyatta would stay in dormitories, Tom Mboya would stay at the Piccadilly.

Tom Mboya would be hosted by the John F. Kennedy in the United States of America (USA); he was a man of vision. It was good to hear words about what Kenya must win. Therefore, what we are doing is honouring the dream of our forefathers and those who went before us.

Mr. Deputy Speaker, Sir, I would say that deep down Kenyans are inherently patriotic. As I always say every Kenyan, no matter whether they are from Wote in

Makueni County, Kayole in Nairobi, Kisii or Homa Bay, wants the same thing. They want to go about their lives peacefully, make something out of themselves and guarantee their children a future. When you go across the world and meet a Kenyan, you can almost see that the air has changed. They are happy just to hear you speaking Kiswahili. One of the best moments I have, when on a long trip, is when I get into a Kenya Airways plane in Schiphol and the first sentence I hear is: “*Karibuni Mabibi na mabwana.*” I feel like I am already home. Swahili is our language and together with our flag, they unite us.

So, it is unfortunate that over all these years, flying the flag has been a matter of privilege. I am glad that Sen. Mutula Kilonzo Jnr. has said that people say: “*Minister alete bendera nyumbani.*” When we see a flag, we immediately know that is a national or public institution. Let us change this.

Mr. Deputy Speaker, Sir, you will notice that Kenyans are inherently patriotic, when you go to Las Vegas in March, during the Las Vegas Rugby Sevens Series. You will see Kenyans wearing all manner of T-shirts with flags, and the whole world recognizes. The whole world recognized at the last Olympics, the beauty of the national anthem of Kenya and the flag when it was raised just before the closing ceremony. Everybody said: “Wow, that anthem sounds like a movie score and that flag is one of the most beautiful flags that we have in the world.”

However, despite Kenyans being inherently patriotic, we need a deliberate project and process to bring out this patriotism and make Kenyans have a common identity.

Mr. Deputy Speaker, Sir, what will my colleagues or you say if I ask you what it means to be a Kenyan for it is not just about us being over 40 million people who are found within the same borders who have to get along. It will be difficult for many people to answer the question. What does it mean to be a Kenyan? What do we brand Kenya to be? What is the brand that we sell out there?

If you look at the United States of America (USA), at their lowest time during depression, Congress and the President summoned Hollywood and Showbiz and asked them to start creating in the psyche and the minds of the people the idea of an invisible America and the idea of Captain America. They created movies, songs and even christened themselves as home of the free and land of the brave thus creating that identity. In our case, can we say that we are 43 small nations within the 581,309 square kilometres or can we create an identity?

Recently when we interacted with the National Counter Terrorism Centre (NCTC), which is headed by Amb. Martin Kimani, who went to a good school just like you did together with Sen. M. Kajwang', I remember asking him---

The Deputy Speaker (Sen. (Prof.) Kindiki): Senator, be very careful not to attract---

Sen. Sakaja: Mr. Deputy Speaker, Sir, I went to that very prominent---

The Deputy Speaker (Sen. (Prof.) Kindiki): The trouble will not come from this side. I am just alerting you.

Sen. Sakaja: Mr. Deputy Speaker, Sir, I do not see many people who can challenge that statement. They did not go to the Duke of York School, Lenana School. I am very glad that Amb. Kimani is now leading this reconciliation process together with Lawyer Paul Mwangi.

As we fight Al-Shabab, terror and violent extremism, is it possible for a divided nation to fight an external aggressor? It is impossible. The lack of a Kenyan identity or a feeling of being Kenyan is what makes somebody at the border to take Kshs100,000 and allow somebody who is not supposed to be in this country to get in. The lack of patriotism is what allows policemen at a roadblock to turn a blind eye at a vehicle which he knows it will cause havoc down the road. It is just lack of patriotism.

We need to create a project, fellow Senators, especially my colleague, Sen. Mutula Kilonzo Jnr., where we will deliberately look at the activities and symbols that we can create which we can call *Ukenya* or *Kenyanesse* within our society that will make someone to say that I cannot do this because it is not Kenyan to do that. I will not take a bribe because it is not Kenyan to take a bribe. The lack of that identity is what has led us into the two big ills that bedevil this country; tribalism and corruption. Naturally, without a higher identity, people move to the lowest common denominator. That is why when it is not tribe it becomes clan issues because that is the least common denominator. If you tell people to move from ethnicity, you must then provide a higher ideal.

To me, this move is not just about the flag. The flag is amazing and we must fly it, but it is what we do beyond that. We will allow Kenyans to fly the flags, but we need to encourage them to fly those flags. We need to encourage our children to learn the National Anthem and we need to sing it. We used to recite the Loyalty Pledge, but it was a KANU pledge. Is it still in the Constitution? It was pledging loyalty to the President at that time. We need to have a pledge that is not about an individual, but rather about the ideals of this country. I am glad that patriotism is, indeed, in the National Values and Principles of Governance in Article 10(2)(a) of the Constitution, it is the first thing that is mentioned. It states:-

“Patriotism, national unity, sharing and devolution of power, the rule of law, democracy and participation of the people.”

The Deputy Speaker (Sen. (Prof.) Kindiki): Order Sen. Sakaja. I do not want to disrupt your flow of thought for you are sounding quite professorial. However, looking at the clock, the Motion has to be Seconded and the Question has to be proposed, if it has to survive, I am asking you to work around that so that we can propose the Question before 6.30 p.m.

Sen. Sakaja: Mr. Deputy Speaker, Sir, I will not use my entire provision of time though I still have five minutes left. I will not use all of it. This matter is very close to my heart. The first time I left this country was not when I was very young. I first left this country in my twenties and went to The Hague in Netherlands to support Uhuru Kenyatta who had a case at that time. It was my first time out of Kenya. I had never travelled out of this country. I am glad and proud that that was my first trip to support a great man like Uhuru Kenyatta.

When I went to Netherlands, I was dumbfounded at the kind of order, how clean the streets were and at the manner in which pedestrians would stop at the traffic lights at midnight even when there were no vehicles passing. However, when I looked at their monuments, I saw people on horseback with swords. Of course, I saw flags everywhere and I could tell this was a country of a proud people. So, I kept asking myself what is wrong with us Kenyans or Africans.

We took a trip across to Germany just driving. Before that, we went for the flower auction and I saw that they were making more money from our own flowers that we do. I asked what is wrong with us. As we were crossing the border towards Germany, that was where I had a light moment. This was because, first, there was no roadblock. It was just “Welcome to Germany.” Just try to go to Kiambu from here in Nairobi, you will see the problem.

At that moment, a song by Bob Marley was playing in the car saying “emancipate yourselves from mental slavery, none but yourselves can free your minds.” That answered me. The problem with us is that we got physical emancipation but we never freed our minds. That is what we need to do today. If you tie a goat to a tree for two hours and remove the rope, the goat will stay within that radius. We have remained in that radius.

Let this be the beginning of a process to deal with the two biggest issues in our country that have led to mental slavery; that is, ethnicity and corruption. That is why I beg to second this legislation.

Thank you, Mr. Deputy Speaker, Sir.

(Applause)

The Deputy Speaker (Sen. (Prof.) Kindiki): Well done. Sen. Mutula Kilonzo Jnr., you may have to read the book by Mr. Benedict called *The Emergent Societies*. It will tell you that societies, including nations, are actually emergent by three things; the flag, the anthem and the map.

(Question proposed)

Proceed, Sen. (Prof.) Ongeru.

Sen. (Prof.) Ongeru: Thank you, Mr. Deputy Speaker, Sir, for giving me this opportunity to contribute to one of the most monumental and fundamental Bills before this House. I have lived through that history when I was a student and I hosted the independence celebration in Bombay. I had the pride of hosting that celebration because the Committee in Nairobi decided that the President of the Kenya African Students Association will host on behalf of the Kenyan Government. When that flag went up, with the nationals of India, I felt that I was somebody. That is why when I came back, I continued being somebody.

(Applause)

That is the feeling that you get. Even at the time when you were quoting those elements of Tom Mboya or “TJ”, as we used to call him, it is because we were all in one boat. When this flag was decided upon, I remember, as students, we wrote to Lancaster House on the issue of land because we felt that we were totally alienated from the possession of land in our own motherland.

We were supported by great leaders like Jawaharlal Nehru, who was a great Prime Minister; and I am glad that I learnt under his feet. Therefore, nationhood is such a thing that we cannot relegate to any other place other than the first place. Nationhood is always embodied in a country's flag and emblems and as you rightly pointed out, the boundaries of that nation is what constitutes its statehood and pride.

Later on, Mr. Deputy Speaker, Sir, I became the Chairman of the Amateur Athletics Association of Kenya (AAAK), and we went to international games with athletic celebrities like Henry Rono, Ben Jipcho, Naftali Temu, Robert Ouko and Julius Sang. We looked small in the international world, but in that marvelous running when the national anthem was sung, we became a great nation. You could see Kenyans carrying national flags in a very celebratory mood. The flag did not create any division and we did not know our tribes; we only knew that we were Kenyans. We said that we were proud to be Kenyans because of that single moment alone.

Today, we cannot continue condoning the temporary, artificial division which is taking us down the destructive road. We must call it quits and start calculating where the rain started beating us. That is why this Bill is such an important one, because it brings to mind a clarion call for all Kenyans that if you fly that flag, you fly it sentimentally because you feel that we belong to a nation called Kenya. One feels an element of equality in that flag. One believes that he or she is a participant in that flag. One believes that he or she is a part and parcel of what is happening at that moment.

However, where are we today? We are almost in pieces. It took an election and the dispute to arise and this country almost went to the dogs. We cannot blame the younger generations because we have not put enough education and interest in them to appreciate and understand that there is dignity in working together as a group, a people and a nation.

Mr. Deputy Speaker, Sir, I believe that if we take the direction we are taking now, there could not have been a better moment than that handshake. This is because for me, that handshake has given us the momentum to move forward in the correct direction. It is not out of place. That is why at every moment and at every single opportunity, I continue making a call that to whoever is outside the boat to join Noah's Ark, because we are just about to sail off.

We cannot leave this nation suffering in poverty or going the way it is going. We only need some small rainfall of 50 millimeters and the whole country is flooded. What does that mean to us? It means that we have lost discipline in our environmental conservation and in the manner in which we do things, whether at the county or the national level. The level of corruption is beyond recognition in this land.

Therefore, we must have a paradigm shift so as to bear upon the minds of Kenyans that we need to do something more powerful and more interesting in order to weave the nation together. I am sure that somebody listening to what I am saying today in Kisii County or in Kirinyaga County – where I had an opportunity to get a wonderful wife from – will appreciate that we need to be one team all together.

The Deputy Speaker (Sen. (Prof.) Kindiki): Order, Sen. (Prof) Ongeru. When we resume debate on this Bill, you will have a balance of 14 minutes.

ADJOURNMENT

The Deputy Speaker (Sen. (Prof.) Kindiki): Order, Hon. Senators. It is now 6.30 p.m., time to adjourn the House. The Senate, therefore, stands adjourned until Wednesday, 21st March, 2018, at 2.30 p.m.

The Senate rose at 6.30 p.m.