

# PARLIAMENT OF KENYA

## THE SENATE

## THE HANSARD

Thursday, 29<sup>th</sup> October, 2015

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

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

### STATEMENTS

**The Speaker** (Hon. Ethuro): Hon. Senators, let us begin with the statement listed as 2(a).

#### BUSINESS FOR THE WEEK COMMENCING TUESDAY, 3<sup>RD</sup> NOVEMBER, 2015

**Sen. Keter:** Mr. Speaker, Sir, pursuant to the provisions of Standing Order No.45, I rise to present the business of the Senate for the coming week.

The Rules and Business Committee will meet on Tuesday, 3<sup>rd</sup> November, 2015 at 12 noon to schedule business of the Senate for the week. Subject to further directions by the Rules and Business Committee, the Senate will continue with business that will not be concluded in today's Order Paper focusing on debate on Bills at the Second Reading stage and Committee of the Whole. In addition, the following Bills will be scheduled for Second Reading and Committee of the Whole:-

#### (a) Bills for Second Reading-

1. The Kenya National Examinations Council (Amendment) Bill (Senate Bill No.7 of 2015).
2. The Preservation of Human Dignity and Enforcement of Economic and Social Rights Bill (Senate Bill No.8 of 2015).
3. The Employment (Amendment) Bill (Senate Bill No.1 of 2015 and ;
4. The County Governments Disaster Management Bill (Senate Bill No.40 of 2014).

#### (b) Bills for the Committee of the Whole-

1. The Climate Change Bill (National Assembly Bill No.1 of 2014);
2. The County Assemblies Services Bill (Senate Bill No.27 of 2014); and,
3. The Parliamentary Powers and Privileges Bill (Senate Bill No.15 of 2014).

On Wednesday, 4<sup>th</sup> November, 2015, the Senate will continue with business not concluded during Tuesday's sitting. The Senate will consider any other business scheduled by the Rules and Business Committee.

On Thursday, 5<sup>th</sup> November, 2015, the Senate will consider Bills at the Second Reading stage, deliberate on Motions and any other business scheduled by the Rules and Business Committee.

Let me take this opportunity to once again appeal to Senators to avail themselves to dispose of pending business before the Senate especially Bills at the Committee of the Whole.

I thank you and hereby lay the Statement on the Table.

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

**The Speaker** (Hon. Ethuro): Let us move on to Statement 2(b) by Sen. Omondi.

SECURITY OF PERSONS LIVING WITH  
ALBINISM IN THE COUNTRY

**Sen. Omondi:** Thank you, Mr. Speaker, Sir, for giving me this opportunity to seek a statement.

I rise pursuant to Standing Order No.45 2(b) to seek a statement from the Chairperson of the Standing Committee on National Security and Foreign Relations regarding the security of persons living with albinism in the country. In the Statement, the Chairperson should state whether:-

(1) He is aware that the Government of the Republic of Kenya had promised to protect all persons living with disability in the country.

(2) State whether he is aware that one Mr. Enock Jameya, a 56 year old Kenyan living with albinism, who was viciously attacked on 10<sup>th</sup> September, 2015, succumbed to the injuries five days after he was discharged from hospital.

(3) Explain the circumstances under which the victim was attacked and the steps the Government is taking to ensure the perpetrators of the attack are brought to book.

(4) Explain what steps the Government is taking to ensure that persons with disability are protected particularly in the light of perceived growing demand for body parts of persons with albinism in the neighbouring county of Tanzania.

**The Speaker** (Hon. Ethuro): Chair of the Committee?

**Sen. Haji:** Mr. Speaker, Sir, we will make an endeavor to issue this Statement in the next two weeks.

**The Speaker** (Hon. Ethuro): Let us get the response in the next two weeks.

DEATH OF MR. ALEX MADAGA FOLLOWING A  
ROAD ACCIDENT

Hon. Senators, this Statement has been deferred to Tuesday, next week.

*(Statement Deferred)*

Let us move to the next statement. Deputy Majority Leader, if you may proceed.

THE GOVERNMENT'S PREPAREDNESS IN MITIGATING  
EFFECTS OF THE IMPENDING *EL NINO* RAINS

**Sen. Keter:** Mr. Speaker, Sir, I have just received the Statement although it was never directed to the right place. We did it within last night and we have an answer. I will just read it and Members may seek clarifications.

This is the Statement on the preparedness on the forecasted *El Nino* rains. It is a very long statement. Do I have to read the whole of it?

**The Speaker** (Hon. Ethuro): Order, Deputy Majority Leader. You may familiarise yourself with it as we move on to the next ones and then I will call you.

**Sen. Keter:** Thank you, Mr. Speaker, Sir.

**The Speaker** (Hon. Ethuro): We are now at the Statement listed as 2(e). Chairperson Committee on Roads and Transportation, you can proceed.

STATUS OF ROAD CONSTRUCTION IN URBAN CENTRES  
BY KENYA URBAN ROADS AUTHORITY

**Sen. Obure:** Mr. Speaker, Sir, on behalf of the Chairperson of the Standing Committee on Roads and Transportation, I wish to respond to the various questions raised by Sen. Ndiema, the Senator for Trans Nzoia County. His request is in six parts:

(a) I wish to respond that a list of new roads designed and constructed by KURA since its inception in the Financial Year 2010/2011 is indicated in Appendix B, which I will table at the end of my answer.

(b) Again, I want to respond that the list of roads which have been repaired by KURA is contained in Appendix B, which, again, I will table after my answer.

(c) In construction of new roads, KURA conducts feasibility studies in various urban centres. From these studies, it is able to establish the status of the roads that require intervention. This is also guided by the traffic volumes, the capacity of the towns and areas that require to be decongested. Designs are then carried out on a priority basis and request for funding made to the Ministry of Transport and Infrastructure, after which procurement for construction work is done based on the budget ceilings received from the Treasury.

(d) KURA has repaired several roads within Kitale Municipality including rehabilitation with asphalt concrete overlay as per the brief attached in Appendix 3 which I will be tabling.

(e) This Financial Year, 2015/2016, KURA has advertised for routine and periodic maintenance of road projects to be undertaken. Again, I attach Appendix 4 which indicates which roads these are.

(f) KURA has been in continuous consultation with the county governments in respect to road works and preparation of the annual work plan as well as involving them in running the projects. KURA has also been assisting the county governments in designing and supervising road projects being undertaken by counties based on their requests.

In regard to road construction and designs being carried out by KURA, county governments are the major stakeholders and they fully participate in the decision making process.

*(Sen. Obure laid the documents on the Table)*

**Sen. Ndiema:** Mr. Speaker, Sir, first, I want to thank Sen. Obure for the response and the Ministry for being frank and giving a detailed report on what they have done since inception. They have given the details as requested. However, we can deduce from the report that KURA has not been fair in allocation of resources and roads. KURA is not alive to devolution. I want to seek the following clarifications.

Why has KURA allocated a lot of resources and constructed roads mainly in Nairobi, as if Nairobi is the only urban centre? They have also constructed roads in a few townships or municipalities around Nairobi. The Municipality of Kitale, if you are to look at the details, has been poorly funded hence it is no surprise that the roads in Kitale are dilapidated. Even those which were tarmacked in the early years of Independence have never been revisited or repaired.

On the issue of whether KURA involves the counties, it is quite clear that KURA has not been involving the counties. When will the function of urban roads maintenance and construction be devolved? Since inception of KURA, no new road has been constructed or tarmacked in Kitale Municipality. Even the road to Milimani, which is a very important area and Matisi with a high population, have not been tarmacked. No wonder the residents recently planted bananas on the Milimani Road. This is a low density area. We would want to pride ourselves that we are a town.

I need those clarifications and I wish that other Senators look at this report in detail because it clearly shows that KURA is discriminative in the manner it is allocating resources. It is also selective. The principle of equality is not being considered.

**The Speaker** (Hon. Ethuro): Sen. Obure, you may now respond.

**Sen. Obure:** Mr. Speaker, Sir, Sen. Ndiema is clearly raising concerns about the basis or criteria which Kenya Urban Roads Authority (KURA) applies in allocating resources. To a large extent, I am personally quite sympathetic with the concerns Sen. Ndiema is raising. I request the Committee, in our next meeting, to invite the KURA, draw their attention to this concern and request them to review the criteria for resource allocation.

In respect to the question on devolution, this is a fairly grey area up to now. We have been waiting for a review of the Roads Act which will define new roles for the road authorities and county governments. When it is finally here, we will be able to sort out the question of which functions are devolved and which are retained by the road agencies.

**Sen. Ndiema:** Mr. Speaker, Sir, I agree with the proposal by the Chairperson that the Cabinet Secretary (CS) in charge of roads as well as KURA be invited to the Committee so that this Senate can further interrogate this report to ensure fairness. I am happy that the chairperson---

**The Speaker** (Hon. Ethuro): Order, Senator! You are being repetitive.

Let us move on to the next Statement listed as 2(f).

## ISSUANCE OF TITLE DEEDS IN MERU COUNTY

The Member is not here. Let us move on to Statement listed as 2(g). Proceed, Chair of the Committee on National Security and Foreign Relations.

**Sen. Nabwala:** On a point of order, Mr. Speaker, Sir. My Statement has been skipped. It has been put on the Order Paper twice---

**The Speaker** (Hon. Ethuro): Order! Which one is it?

**Sen. Nabwala:** Mr. Speaker, Sir, it is listed as 2(d) on the Order Paper.

**The Speaker** (Hon. Ethuro): Order, Senator. Just consult your neighbours, they will advise you.

Proceed, Chairperson National Security and Foreign Relations.

## KILLINGS IN KITUI COUNTY

**Sen. Haji:** Mr. Speaker, Sir, Sen. David Musila requested for a Statement on the security situation along the Kitui/Tana River County border. I wish to state as follows;

The Kamba, Somali and Orma communities live along that border. Generally, the security situation is currently satisfactory in the area. It is important to know that Kamba tribesmen are generally farmers while Somalis and Ormas are nomadic pastoralists.

The causes of conflict among the members of the different communities residing in the area include;

i. Competition for resources

Pasture and water are the main causes of conflict between the farmers and pastoralists, especially between the months of August and November when the dry spell is severe. Some of the Kamba tribesmen have leased out water points to pastoralists against the wishes of the larger Kamba Community and advice of the peace committees. Twamboei Earth Dam in Mutito Sub County and Sasumua Dam in Mwingi East Sub-County are the most affected by the conflict due to the leasing.

ii. Boundary dispute between Kitui and Tana River counties.

The Somalis and Ormas have settled in Kalalani and Enyali areas of Kitui respectively which is detested by Kitui County leaders who view this as an act of aggression, trespass into and occupation of their county land. Galole Constituency Development Fund has aggravated the situation through building of schools, sinking of boreholes and grading of Waldema-Mutha Road. In Mwingi East Sub-County, Somalis have occupied Mwanzele area which is 16 kilometers inside Kitui County. Again, Bura Constituency Development Fund has developed permanent structures in the area.

iii. Banditry

This takes place within Mwingi National and South Kitui Game Reserves where Kamba people who reside in the two reserves are attacked by armed bandits, usually of Somali origin. The vastness and inaccessibility of the area has unfortunately hampered effective policing.

iv. Proliferation of the small arms and light weapon

Somali herdsmen are usually armed with illegal firearms which they claim to use while guarding their livestock.

v. Poaching: This is witnessed in South Kitui Game Reserve and Tsavo National Park where elephant tusks and other game profits are targeted.

vi. The human-wildlife conflict

Elephants from Kyulu National Park---

**The Speaker** (Hon. Ethuro): What is it, Sen. Musila?

**Sen. Musila:** Mr. Speaker, Sir, the distinguished Chairperson, Sen. Haji, is reading a Statement that I asked for in May. From this week's ruling, the Cabinet Secretary (CS) was coming. He is reading the same statement he read then. Is he in order to read a statement when we are expecting the CS on Tuesday? I think the Senator is out of order.

**The Speaker** (Hon. Ethuro): Chairperson National Security and Foreign Relations.

**Sen. Haji:** Mr. Speaker, Sir, I hate to argue with my brother, Sen. Musila.

**The Speaker** (Hon. Ethuro): Who is senior to the other?

**Sen. Haji:** Mr. Speaker, Sir, he is senior to me. However, there was a time I was senior to him.

*(Laughter)*

It appears in the Order Paper and I do not have any other option other than reading. I wish he would have raised that at the beginning. Yes, we have summoned the CS to appear on Tuesday. The Senator should opt between me reading the statement and him pursuing with the CS, when he comes. Optionally, I could leave it and he will handle it when the CS is here

**The Speaker** (Hon. Ethuro): Those are the options you should have given the House and the Member. We will go by the Member's option.

**Sen. Haji:** Mr. Speaker, Sir, I have no problem.

*(Statement deferred)*

#### ALLEGED DISCRIMINATION IN ISSUANCE OF ID CARDS TO RESIDENTS IN ISIOLO COUNTY

**Sen. Haji:** Mr. Speaker, Sir, this is a Statement regarding alleged discrimination in issuance of national identity cards in Isiolo County. On Thursday, 15<sup>th</sup> October, 2015, Sen. Fatuma Dullo requested for a Statement on the same. I will go straight to the Statement.

The Government is not aware of long delays in the issuance of national identity cards to residents of Isiolo County. National identity cards are processed and issued as per the timelines indicated in the service charter depending on the region and the distance from Nairobi. The timeline for border and ASAL areas including Isiolo County is 35 days, while Nairobi and other areas have timelines of 15 and 25 days, respectively.

Mr. Speaker, Sir, the Government is not further aware that some applications for identity cards dating back to 2010 have not been processed. Currently, the National Registration Bureau is processing registration forms received from Isiolo in September, 2015. It is therefore advisable that any applicant holding a waiting slip that is older than six months to see the deputy county registrar for assistance.

Mr. Speaker, Sir, the Government is similarly not aware of long delays in delivering successful vetting forms from Isiolo County office to the head office in Nairobi. The department has contracted expedited mail services to ferry the applicants' forms from the county to the head office. However, there are exceptional circumstances where registration forms for applicants from far-flung areas take longer than the timelines provided in the service charter to reach the county.

Mr. Speaker, Sir, individuals whose applications are rejected are informed of the same in a timely manner. Those who have volunteered their mobile phone numbers to the office are informed through the number given while others can inquire through a short message service code 20031 to follow the status of their application.

Applicants can also consult the department's website, [www.identity.go.ke](http://www.identity.go.ke), to find out the status of their applications. Copies of rejection statements are also given to the chiefs and the assistant chiefs to inform the affected applicants.

Lastly, Mr. Speaker, Sir, in order to expedite the issuance of identity cards to the residents, the department has been partnering with the county government and Constituencies Development Fund (CDF) to carry out mobile registration programmes at the locational level across the country. In addition to this, the department has been following up the pastoralists to the herding areas for the purpose of registering them. This Statement was signed by the Minister.

**Sen. Adan:** Mr. Speaker, Sir, I wish to appreciate the answer given by the Chair and also the struggle he has gone through to try and answer some of the issues I raised. Let me registrar my dissatisfaction. The answer given by the registrar and the Ministry is not practical on the ground. We are being given false information and I would request this House to summon the registrar along with the Cabinet Secretary on Tuesday to answer some of the questions that were raised by the members previously including the issue affecting Isiolo County.

Finally, I want to request the Chair to consider this; there is a lot of discrimination taking place in Isiolo County. The foreigners are the ones who have the right to identity cards in Isiolo County. It is important for the registrar to remove the deputy registrar in Isiolo County with immediate effect. There is a lot of corruption taking place in that county.

**The Speaker** (Hon. Ethuro): Hon. Senators, we need to make a decision again. If the Cabinet Secretary is coming on Tuesday, whatever is remaining can come to the Floor. We complain about Statements taking a lot of time so if there is that window, let us make use of it. It is so directed. I am willing to entertain more after the Cabinet Secretary fails to respond to them.

Let us move to Statement (i).

#### STATUS OF LAND BOARDS IN MERU COUNTY

Is Sen. Murungi here? He is not here. Let us move to Statement (j); Sen. Karaba, the Chairman, Committee on Education.

## NON-PAYMENT OF SEPTEMBER SALARIES TO TEACHERS

**Sen. Karaba:** Mr. Speaker, Sir, upon receiving this question from my friend, Sen. Khaniri, I had to summon the Teachers Service Commission (TSC) yesterday. I met them for quite some time and they confessed to us that it is not possible to release the Statement until the court so orders; which is going to be done today. Therefore, by next week, they will release information about salaries.

**Sen. Khaniri:** On a point of order, Mr. Speaker, Sir. We all know how the law of *sub judice* applies in this House. If you critically look at the Statement and the issues I have asked, they have nothing to do with the issues being deliberated in court. Is the Chairman in order to run away from answering this question?

**Sen. Karaba:** That is not running away from the question. I am giving you information as I got from the source, which is TSC. I will give the answer next week when the case has been heard.

**The Speaker** (Hon. Ethuro): When?

**The Senate Minority Leader** (Sen. Wetangula): On a point of order, Mr. Speaker, Sir. This matter is of grave national importance and the distinguished Chairman of the Committee should read the full content of Article 41 of the Constitution and understand that the question of paying teachers of this country their salaries cannot be hidden under the smoke-screen of the rule of *sub judice*. The teachers deserve their salaries and must be paid their salaries. Anything less is a violation of the Constitution and their rights under Articles 37, 39 and 41 which the Chairman should have an opportunity to read and advise the Teachers Service Commission (TSC) accordingly. Could he tell us, *sub judice* or not, when are the teachers going to get their salaries for September? These are parents like you, they have children---

**The Speaker** (Hon. Ethuro): Order, Sen. Wetangula!

**Sen. Obure:** Mr. Speaker, Sir, I am sure the Chairman appreciates that this is a matter of grave concern when we talk about the predicament of teachers. Teachers are Kenyans who have personal obligations, they pay rent, buy food for their families and so on. Is it in order, even after a court ruling has been made to the effect that the teachers be paid, they have not been paid and the Chairman still wants to postpone the issue of payment of teachers to another week? Are we really being considerate?

**Sen. Mutula Kilonzo Jnr.:** On a point of order, Mr. Speaker, Sir. The Chairman should be fair to this nation. The issue before the court is not the payment of salaries; it is the increase of salaries. The salaries are due whether the court matter is there or not. Therefore, you cannot afford to tell people who are supposed to be paid salaries to wait for seven days as you try to think. He is out of order, and please Mr. Speaker, rule so.

**Sen. Haji:** Mr. Speaker, Sir, I think we should not be very hard on the Chairman. He has tried his best and; anyway, who told these teachers to go on strike? If they were not working, how can they be paid and they did not work? They should go and demand money from Sossion.

**The Speaker** (Hon. Ethuro): Order, Sen. Haji!

*(Loud consultations)*

Order, Members!



Sen. Haji, you are completely out of order. When you rise on such occasions, it is meant to seek a clarification: That was not a clarification, neither did you rise on a point of order. I am sure your plate is full, as the Chairman of the Committee National Security and Foreign Relations. Let Sen. Karaba carry his baby.

Sen. Leshore, is it a point of order?

**Sen. Leshore:** No, Mr. Speaker, Sir.

**Sen. Karaba:** Mr. Speaker, Sir, I think I gave my Statement and it is clear as it was yesterday. The reason why I called TSC to a Committee meeting was for the same purpose. They confessed to us that they were going to release information to us by the end of today. There is a court process and I am willing to give information about teachers' salaries next Tuesday. If there is anybody who is affected more, it is the Chairman of the Committee on Education who has been once a teacher. I know what it means to be in that position

**Sen. Khaniri:** Mr. Speaker, Sir, I guess we have no choice. We will have to wait for next week. I hope when the Chairman comes, he will address all the issues that I raised in the statement exhaustively.

**The Speaker** (Hon. Ethuro): Sen. Karaba, bring your statement next week. Also take into account all the issues that Members have raised. Indeed, there is a difference between a salary and a contest for a salary hike. There is also a difference between a matter being *sub judice* and to what extent are the matters being canvassed. You need to demonstrate part of that particular thing to the House; failure to do so, you will have no choice.

Next Statement!

Sen. Haji, you were so quick to spring to the defence of Sen. Karaba; now deal with him.

#### THE KILLING OF MR. ELIUD WACHAIRA GACHOKI

**Sen. Haji:** Mr. Speaker, Sir, unfortunately, I have not received the Statement yet. We will still pursue the Ministry to give us maybe next week; and not only that, since the Cabinet Secretary is appearing before the whole House on Tuesday, Sen. Karaba, can pursue it with the Cabinet Secretary.

**Sen. Karaba:** Mr. Speaker, Sir, some of these statements will require a lot of time because it is a matter of going to the police stations, going through files and coming up with a statement. This incident occurred three months ago, and I am sure this information is already lying in the police stations. So, I do not know why it is not possible for it to be done today, but if he is suggesting that we wait further---

*(An hon Senator spoke off record)*

I will go by the wishes of the Chairman.

**The Speaker** (Hon. Ethuro): Statements sought by Sen. Murungi will be pushed by one week to next Thursday.

## ISSUANCE OF TITLE DEEDS IN MERU COUNTY

## STATUS OF LAND CONTROL BOARDS IN MERU COUNTY

*(Statements deferred)*

Now, let us revisit Statement 2(d). Proceed, Senate Deputy Majority Leader.

*(Sen. Nabwala stood up in her place)*

Sen. Nabwala, you will wait for the response. You are not the one to respond to your Statement.

THE GOVERNMENT'S PREPAREDNESS IN MITIGATING  
EFFECTS OF THE IMPENDING *EL NINO* RAINS

**Sen. Keter:** Mr. Speaker, Sir, I am ready to give the Statement, but as I told you, it is long. I will try to shorten it and then I will get a clarification in case of anything. After what transpired yesterday, this is the work that has been done overnight. However, I will read the major issues.

The Kenya Meteorological Department issued an alert stating parts of the country which will receive enhanced rainfall during the short rains season of October to December leading to *El Nino*. As a result, in view of the above, the Government moved with speed to put in place measures that will address the impact of the *El Nino* rains in various sectors of the economy. It was clear that the rains will impact positively in some areas and negatively in others. Adequate preparation was initiated so that the country could avoid the negative impacts which may be caused by heavy rains. As a result, a Cabinet sub-Committee chaired by the Deputy President was formed to deal with *El Nino* disaster preparedness and response.

The Government then put in place a multi-sectoral task force under the Presidency which brought together a technical team from the various Ministries to address the various intervention measures required to address the issues exhaustively.

The Ministry of Interior and Coordination of National Government was tasked to lead the process. A national contingency plan that had been prepared in 2014 and coordinated through the national disaster operations was activated and a National Preparedness Action Plan on *El Nino* was put in place. The task force was constituted with the sectors drawn to include agriculture, health, livestock, fisheries, water, transport, infrastructure, food and non-food items, education, energy, environment, security, communication and coordination sectors. The Council of Governors and the Red Cross were also incorporated in the process.

The following are the major areas of intervention identified by sector; health, agriculture, and livestock sectors were highlighted and adequate measures, for example, in the livestock sector were put in place. The livestock in some areas have been vaccinated while the vaccines are in stock in readiness for *El Nino*.

On raising awareness, the Government has used all the available means to raise awareness among communities; for instance, electronic and print media and public

*barazas* have also been used to raise awareness. A multi-agency communication team that will issue a daily media update concerning that has been constituted.

On the issue of the resources needed to prepare for the *El nino* rains, the counties have been advised to use the budget allocations that are normally set aside to meet disasters and emergencies in their budgets to prepare for the *El Nino* rain. The National Treasury released the budget allocation for the first half and counties have been advised to use those funds. Where necessary, the Ministries have been advised by the National Treasury to allocate funds within the annual allocations in order to address the interventions required. Meanwhile the National Treasury has set aside Kshs5 billion for the contingency funds to mitigate negative impacts of *El Nino*.

The Government has also mobilized development partners and private sector to step in and assist in this intervention.

Mr. Speaker, Sir, in conclusion, the Government has put in place an elaborate action plan to deal with the *El Nino* problem and mitigate its negative impact while taking advantage of the opportunity that the additional water provides.

**Sen. Nabwala:** Mr. Speaker, Sir, I am sorry; the Statement was not given to me in advance to enable me to interrogate it. However, I would have liked to have the costs which the Government has spent per county so that, we, as legislators, can also see what is happening on the ground---

**The Speaker** (Hon. Ethuro): Order, Sen. Nabwala! You also owe the House and the Chair an apology because you came late and we deferred the Statement because of you. Now when you came you are accusing us of skipping the Statement.

Order! Give Sen. Nabwala the microphone.

**Sen. Nabwala:** Thank you very much Mr. Speaker, Sir. First, I apologise for coming late; it was due to traffic but I am here. I must also appreciate the efforts by the Deputy Majority Leader for giving us the information. My complaint had been that the Statement had been postponed twice when it appeared on the Order Paper. I wonder if there is *El Nino* or not.

Mr. Speaker, Sir, what I wanted to talk about is the cost incurred by the Government to prepare for the *El Nino* rains. We would like to have the cost per county. For instance, in my county, the seed farmers are very much affected because the rains are already very heavy and they had not harvested their maize. I would like the Deputy Majority Leader to tell us if the Kenya Seed Company can intervene, because if we kill the maize sector in Trans Nzoia County and also the seed maize, then the maize sector is going to collapse and we will have to rely on the maize that comes from neighbouring countries to feed our nation.

Thank you.

**Sen. Karaba:** Thank you, Mr. Speaker, Sir. I think we are not very sure about what the Deputy Majority Leader was telling us about *El Nino*. He should have told us the meaning of *El Nino*, because the meaning was not captured properly. What is happening today is the normal rainfall pattern being followed, going by the meteorological department. The intensity of rain distribution and reliability is what will make us understand that there is *El Nino*, which has not started. There are some areas which have not received rains. What is going to happen with those counties which have received money and there is no *El Nino*?

**Sen. Kagwe:** Thank you very much, Mr. Speaker, Sir. I just needed a little clarification. The first one has to do with the degree of confidence. Can the Chairman tell us, with what degree of confidence can we operate on the information given *vis a vis* the *El Nino*, because various regions are supposedly going to get *El Nino*? In some places, it has not rained even for three years and they are supposed to be getting *El Nino*. People are spending huge sums of money in preparation for these things. So, is there any degree of confidence? Can he tell us that there will be a 10 percent chance in Kyeni and may be 100 percent in Turkana, so that we know how to prepare for those areas?

Secondly Mr. Speaker, Sir, this has to do with the way in which we are preparing for *El Nino*. We hear that money is being allocated, but when you look at the activities on the ground, for instance, we raised a matter in this House of the trees that are hanging on power lines. You do not see any activity going on, cutting trees near power lines. So, could he clarify to us the various activities that are taking place on the ground in preparation for *El Nino*?

**The Senate Minority Leader** (Sen. Wetangula): Thank you, Mr. Speaker, Sir. I want to thank Sen. Nabwala for raising this very important issue. We want the Deputy Majority Leader to tell us - and not to lose his fuse like yesterday- where the authority for this country to believe that there will be an *El Nino* came from. Where did it come from? Is it scientific? Every morning, when you listen to the Meteorological Department's forecast, it is the usual showers and nothing else. When will the so called *El Nino* rains start because we were told it was going to start around the first week of October? October is now over.

Mr. Speaker, Sir, he has said that Kshs5 billion has been earmarked for the programme. We have also heard Cabinet Secretaries saying on national televisions that the amount designated for mitigating *El Nino* effects is Kshs30 billion. Now, we are being told it is Kshs5 billion. And like I said yesterday, I just hope that this is not another conspiratorial arrangement to loot from public coffers. Like the distinguished Senator for Nyeri has said, there are different effects of *El Nino* to different places.

**The Speaker** (Hon. Ekwere Ethuro): Order! Senator, please distinguish a general debate from interrogating a Statement.

**The Senate Minority Leader** (Sen. Wetangula): Yes, Mr. Speaker, Sir. I am seeking a clarification. In the *El Nino* of 1997, the Government knows that people lost lives because they were living on river embankments in Nairobi. I have not seen anybody being moved away from river embankments within the crowded areas of Nairobi. What are we preparing for? We are told they are vaccinating animals. We do not need an *El Nino* to vaccinate an animal, surely, unless we are doing things at the wrong time in the wrong place.

**Sen. Ndiema:** Thank you, Mr. Speaker, Sir. The effects of *El Nino*, if at all will be there, will be felt in the area of agriculture and the area of food production. How much has been allocated to agriculture especially in purchase of maize which is now going to waste in Trans Nzoia and other counties?

Mr. Speaker, Sir, we have heard of situations like Turkana where the county government has spent a lot of money advertising in the press, full page and giving hotlines to Turkanas on what lines to ring in the event of *El Nino*. Is that what they really need? I would imagine that in Turkana, they would need---

**The Speaker** (Hon. Ekwere Ethuro): Order! Senator, do not imagine; interrogate the real Statement, your time is over.

**Sen. Billow:** Thank you Mr. Speaker, Sir. Indeed, I think there are *El Nino* effects in some parts of the country. In Mandera County last week in a sub-county called Elwak, there was unusual rain which had the effects of flooding. In fact, one person died and dozens of people have been displaced and they are now living in make shift camps in Elwak. Could the Chairman explain what help, if any, as we speak, has been given to the people of Mandera who have been affected by what can be categorized, based on the definition that he gave, as *El Nino*?

**Sen. Njoroge:** Thank you, Mr. Speaker, Sir. I think the last time *El Nino* came; we did not know it was *El Nino* until it was declared as *El Nino*. This time, I think we are over-excited to receive the *El Nino* and I believe this is not something which was to happen throughout the country, at the same time. In Central Province, we saw a report that there was a house which collapsed because of the effects of *El Nino*.

Mr. Speaker, Sir, the other question I am asking myself ---

**Sen. Ongoro:** Mr. Speaker, Sir, further to all the questions that have been asked, I am interested in knowing how much of the amount that has been set aside to mitigate *El Nino* will be used towards harvesting the water knowing that 70 per cent of this country experiences arid and semi arid conditions perennially. Now that we know *El Nino* is coming, how much of the billions of shillings have been set aside to harvest the water so that we help counties like Mandera and other dry counties?

Secondly, what mitigation and cushioning measures have been put in place to assist Kenyans living in informal settlements, especially in urban areas like Nairobi; riparian areas like Kibera and Mathare? How much and how prepared is the Government--

**The Speaker** (Hon. Ethuro): Your time is up, Sen. Ongoro!

**Sen. Kittony:** Thank you, Mr. Speaker, Sir, for giving me this opportunity. I would like to know whether our people are aware of this *El Nino* phenomenon because it is important. As Sen. Billow said, the rains have come and caused damage. In future, we also need to trust our Metrological Department. What measures have been put in place to create awareness so that there is preparedness in case of disaster? I also need to know how much has been set aside in preparedness because we have witnessed the effects of *El Nino* in the past

**Sen. Hargura:** Mr. Speaker, Sir, I would like to seek clarification on the estimates. Are there any estimates from the Government Ministries? In case of the Kshs5 billion contingency fund, we need to get the breakdown per sector or county, if possible. In terms of the mitigating measures, the positive ones like water catchment were supposed to have been put up before the rains. Are there any preparations that are ongoing in terms of the mitigating measures?

**Sen. Omondi:** Mr. Speaker, Sir, what legal or disciplinary action will be taken against the department in case the *El Nino* is not felt or received? It is assumed that all parts of the country will receive *El Nino* rains. In areas where it will not happen, and money has been used, what action will the Government take against those officers who will have misled our people?

Secondly, how prepared is the Government to handle people with disabilities? How will the Government evacuate them if *El Nino* affects them? What feeding programmes and treatment will be put in place?

**Sen. Leshore:** Mr. Speaker, Sir, I do not want to say that *El Nino* rains has started, but some areas in this country are facing heavy rainfall. Last week in Baragoi, we lost over 70 goats after two days of heavy rainfall. In 1997/1998, we suffered very many diseases in Kenya, especially in the former Rift Valley Province where we had the Rift Valley Fever. In North Eastern and parts of the former Eastern Provinces, we had the Blue Tongue disease which killed many livestock. I would like to get a response from the Chairperson on how the Government will mitigate against those diseases.

**Sen. Sang:** Mr. Speaker, Sir, the clarification I would like to seek from the Senate Deputy Majority Leader is whether the coordinating team is working with the counties. We have seen in the media many counties allocating huge amounts of money. For example, one county has set aside Kshs300 million. Is there a mechanism of ensuring that there is proper coordination so that we do not have certain officials within the county and national Government misusing this money instead of ensuring that our people are helped with the challenges that they face?

**Sen. Haji:** Mr. Speaker, Sir, my concerns have been alluded to by Sen. Leshore. However, I would like to ask the Chairperson to give us an assurance that there will be adequate vaccine against the Rift Valley Fever which killed many people and livestock in northern Kenya.

**Sen. Obure:** Mr. Speaker, Sir, I would like know how much of the total amount set aside to mitigate the effects of *El Nino* has been earmarked to deal with the destruction to infrastructure, in particular, the Mai Mahiu-Narok Road which is prone to destruction in such events.

**Sen. Mositet:** Mr. Speaker, Sir, I do not know whether we are experiencing *La Nina* in my county because my people are suffering from starvation. I expected that the money earmarked for *El Nino* should be used to cater for the people who are suffering already. We have lost many animals in my county due to drought. People's lives are at risk. I am shocked to see the level of mobilization in preparation for the *El Nino* by the national and county governments instead of directing their energies to the needy people.

Looking at the infrastructures that were taken over by the county government, there are bridges that were swept away by water last year, but have not been repaired until now. We are talking about *El Nino* now, yet there is infrastructure which was destroyed about one or two years ago and has not been repaired.

**The Speaker** (Hon. Ethuro): Order Senator. Your time is up. It is now time for clarification, not time to air views.

**Sen. Mositet:** Mr. Speaker, Sir, my people are suffering. Why can that money not be directed to cater for the immediate problems?

**The Speaker** (Hon. Ethuro): Order, Senator!

**Sen. Keter:** Mr. Speaker, Sir, there are so many clarifications that have been sought. Although I just got the response this afternoon, I will endeavor to respond to the ones I can. The ones I am unable, I will give the response next week. I would also like to remind the Senate Minority Leader that my fuse is okay, it is his that needs to be checked. This is a multi-sectoral agency. It involves all the Ministries and county governments which I mentioned earlier. We have heard that even the county

governments are signing or re-allocating some funds as provided for in the Constitution, in the Fourth Schedule; which gives the county governments the authority on what to be done by the National and county government. I want to say that I do not have the details of every county, and I think it is prudent. I will get the details of the amount as signed per county and those which have been used.

It is good to apportion those that have been used because they are ongoing activities. In some of the counties, there are no activities. I will give a detailed breakdown on the cost next week. The Kshs5 billion is from the National Treasury. There are also some Ministries that have set aside some of the funding. For example; like Ministry of Water and Irrigation is providing plastics, water dams and pans in some of the areas. So, they are using the funds within the Ministry.

I will get all the details about the monies which have been used by various Ministries and also the county governments, so that we can exactly come up with the figure and say we have spent Kshs20 billion or Kshs30 billion earmarked for *El Nino*. The detailed document will provide that.

On the issue of infrastructure, that also depends on how much of this kitty had, if it is Kshs5 billion which had been earmarked for its re-allocation, like what Sen. Elizabeth asked. On the relocation of the people living along the river banks, I will give the details of how much has been earmarked and what activities are ongoing now and even in terms of the infrastructure. I have seen that there is a weekly, report or brief to the Committee, which is being done always. It shows every county like in Vihiga, there is a school which was flooded and collapsed, I will give those details.

About the details on harvesting, which I said that some of the Ministries are providing plastic, subsidized fertilizers and seeds to some of the farmers, I would want to come to this House and say which areas have been given all this. I do not have the details now. I will provide the details as requested by the questioner, not a false estimate. I think, essentially, what I can say this is---

Mr. Speaker Sir, so that we can have a way forward on some of the activities like the vaccination which is ongoing and they have already bought some of the vaccines---. I have been told they are enough but, I want to come up with a proper answer touching on all those areas because I think it is good for all of us. In some of these areas where we come from, there is rain, like in my place but in Kericho, it is ever raining. I have also been informed that it is raining in Makueni.

(Laughter)

Mr. Speaker Sir, maybe, you will allow me to come up with a proper answer by Thursday next week, on those details so that I can itemize on what areas the Government and the county governments are doing, so that there is no overlapping of the resources.

I beg that I be given one week to come up with this because what I have given is just an overnight work but given five days, I will come with a proper answer.

**Sen. Leshore:** On a point of order. Mr. Speaker Sir. You must have heard our Chairman say that they are going to provide fertilizer. Is he telling us that fertilizer is going to be used before *El Nino* rains so that it will be washed away?

**Sen. Keter:** Mr. Speaker, Sir, In some of the areas where they are harvesting now like in Trans-Nzoia, the situation is different while in others where they have already harvested, they need to plant. I said the *El Nino* impacts positively and negatively. So where it impacts positively, we will provide seedling and everything for farmers to use. However, it impacts negatively in some of the areas by destroying roads, displacing people and causing havoc everywhere.

**Sen. Nabwala:** Thank you, Mr. Speaker, Sir, in his answer the Deputy Majority Leader, should specifically touch on the seed maize farmers in Trans-Nzoia. There is a lot of rain, and the maize is still in the field. The Kenya Seed Company is not helping the farmers and they are likely to incur huge losses.

**Sen. Keter:** Mr. Speaker, Sir, if I am getting you right, you mean the seeds planted by the farmers? Pertaining to the maize seeds, I do not have an answer to that but I will include it on Thursday when I come up with the comprehensive statement. I will also consider even those which are due for harvest.

**The Speaker** (Hon. Ethuro): Order, Members. So when do we get the detailed one, Deputy Majority Leader?

**Sen. Keter:** Mr. Speaker, Sir, I have requested for one week. I will issue the Statement on Thursday next week.

**The Speaker** (Hon. Ethuro): It is so directed. That is the end of Statements. We should now move to the next order.

## COMMITTEE OF THE WHOLE

*(Order for Committee Read)*

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

## IN THE COMMITTEE

*[The Chairperson (Sen. Kembi-Gitura) took the Chair]*

### CONSIDERATION OF THE PRESIDENTIAL MEMORANDUM ON THE PUBLIC PROCUREMENT AND ASSET DISPOSAL BILL

**The Chairperson** (Sen. Kembi-Gitura): Hon. Senators, we are now in Committee of the Whole. I hope that the Senate Majority Leader is ready.

**Sen. Keter:** Mr. Chairman, Sir, for purposes of clarification to the House, there are two Bills; the Public Procurement and Asset Disposal Bill and the Public Audit Bill. Which one are we starting with?

**The Chairperson** (Sen. Kembi-Gitura): But we are on Order No. 8 which is the Public Procurement and Asset Disposal Bill.

**Sen. Keter:** Thank you, Mr. Chairman, Sir.



**POINT OF ORDER****THE LEGALITY OF LEGISLATIVE RECOMMENDATIONS CONTAINED  
IN THE PRESIDENTIAL MEMORANDA ON BILLS**

**Sen. Orengo:** On a Point of Order, Mr. Chairman, Sir. My matter relates to Order Nos.8 and 9, but I will stick to Order No. 8. With utmost humility, looking at the Memorandum from the President of the Republic of Kenya and the proposed amendments, I find the proposition that the Memorandum which has been received in the House and subject to Order No.8 is unconstitutional.

The language used by the President in this Memorandum is the language of the former Constitution and not the current Constitution. The distinction is that under Section 30 of the old Constitution the President was part and parcel of Parliament. In fact, the President was the first component of the Parliament by virtue of Section 30. Parliament of Kenya consisted of the President and the National Assembly. The President was throughout an active Member of Parliament. However, the current Constitution providing for complete separation of powers, forbids the President without the authority of Parliament from being a legislator. It is important that we look at this carefully. I am doing this with utmost humility.

Mr. Chairman, Sir, I have taken the liberty to bring along a copy of the old Constitution. Where the President refuses to assent to a Bill under the old Constitution, Section 46(2) reads as follows:-

“When a Bill has been passed by the National Assembly, it shall be presented to the President for his assent.

(3)The President shall, within twenty-one days after the Bill has been presented to him for assent under subsection (2), signify to the Speaker that he assents to the Bill or refuses to assent to the Bill.

(4) Where the President refuses to assent to a Bill he shall, within fourteen days of the refusal, submit a memorandum to the Speaker indicating the specific provisions of the Bill which in his opinion should be reconsidered by the National Assembly including his recommendations for amendments.

(5) The National Assembly shall reconsider a Bill referred to it by the President taking into account the comments of the President and shall either—

(a) approve the recommendations proposed by the President with or without amendment and resubmit the Bill to the President for assent”

Mr. Chairman, Sir, this compared with the current Constitution, the wording is very different. It emphasises on the separation of powers that the President should never be a lawmaker. He can only become a lawmaker by way of subsidiary legislation. That is when Parliament or the Constitution empowers him. Article 115(1) provides that:-

“Within fourteen days after receipt of a Bill, the President shall—

(a) assent to the Bill; or

(b) refer the Bill back to Parliament for reconsideration by Parliament, noting any reservations that the President has concerning the Bill.

(2) If the President refers a Bill back for reconsideration, Parliament may, following the appropriate procedures under this Part—

(a) amend the Bill in light of the President’s reservations; or

(b) pass the Bill a second time without amendment.”

Mr. Chairman, Sir, looking at the Memorandum, there are not only just recommendations, but are also proposals for amendments. The President has gone far beyond what the Constitution empowers him to do. In matters of legislation, the President other than the role he plays on the question of assent, is just like any other member of the public that desires Parliament to act in a certain way for legislation to be enacted. If the matter comes before Parliament, both Houses must fully follow the procedure.

If we are confronted with a recommendation which is in itself an amendment which we must pass in the form it is in, it means that Parliament will not be looking at the entire picture, including any material that would have come to Parliament in terms of public participation. The Standing Orders support this view fully.

Standing Order No.158(5) states that:-

“Where the Joint Committee fails to submit a report under paragraph (2), or the report of the Joint Committee is to the effect that the Committee has failed to agree to the President’s reservations or where the Joint Committee fails to agree on a version of proposed amendments to the President’s reservations, the President’s reservations shall be taken to have been approved by Parliament upon the laying of the report on the Table of the Senate under paragraph (2)”

Mr. Chairman, Sir, I plead with you that we look at this matter carefully. I suggest that it is committed to the Committee on Legal Affairs and Human Rights or we look for a technical assistance because it touches on the question of the authority of the Parliament.

Normally, Parliaments lose authority and power gradually and not on a single day. The way the Lancaster Constitution was amended, was by a slow motion. Parliament gradually lost its power to the Executive and eventually it became an appendage of the Presidency. It took Hon. Oloo Aringo, in the last two Parliaments, to try and bring back the dignity and power of Parliament.

What we are faced with is - we take it the way the President has brought it, or we have no alternative. Are we legislators, or are we an appendage of the Presidency? More often than not, we agree with the President’s reservations. However, it is important that the role of Parliament should not be eroded. I am saying this with utmost humility.

Mr. Chairman, Sir, if you also look at our Standing Orders, you will see that there are some procedural issues. Where the President has reservations, that should not only appear before joint committees, but relevant committees of Parliament. For example, on this issue, the Committee on Finance, Commerce and Budget should have played a role so that we are sure that we still remain lawmakers and not the Executive becoming the lawmaker. Those are my views.

Thank you, Mr. Chairman, Sir.

*(Several hon. Members stood up in their places)*

**The Chairperson** (Sen. Kembi-Gitura): Order, hon. Members! There are very many requests and, therefore, you have to be patient. Let us listen to each one of them. I have them here. Therefore, you do not have to rise.

**Sen. Kagwe:** Mr. Chairman, Sir, I have heard what the distinguished Sen. Orenge has said. However, I just want to seek clarification. Yesterday in the afternoon, the

Speaker spoke about this matter and made various rulings on it. Given what the Speaker said yesterday regarding whether this matter is properly before the House or not and what Sen. Orenge has said, I just want to find out if there is any contradiction between what the Speaker ruled and the present question on the Floor of the House.

**The Senate Minority Leader** (Sen. Wetangula): Thank you, Mr. Deputy Speaker, Sir. Sorry, Mr. Chairman, Sir.

**The Chairperson** (Sen. Kembi-Gitura): Could you decide what you want to call me?

**The Senate Minority Leader** (Sen. Wetangula): You are the Chairman. However, you are our Deputy Speaker. Therefore, we are tempted to look at your bigger picture rather than the smaller one in which you are now.

Mr. Chairman, Sir, Sen. Orenge has raised a very fundamental point. I want us to look at it in a very rational manner. Many of us have been in this Parliament for a very long time. In many cases, when the President sends back a memorandum to the House – unless it is a serious transgression – Parliament has often accommodated the views of the President. When these Memoranda from the President came on the two Orders, they were, as it is required under the Standing Orders and Constitution, referred to Joint Committees. The Joint Committees did their work and reached a deadlock.

When committees retreat to attend to a memorandum, the natural flow, consequence and end is for the committees to bring a report and lay it on the Table. This is what is envisaged in our Standing Order No.158(5). The distinguished senior counsel, Senator for Siaya, did not read it in full. Please, allow me to read it.

“Where the Joint Committee fails to submit a report and under paragraph (2), or the report of the Joint Committee is to the effect that the Committee has failed to agree to the President’s reservations or where the Joint Committee fails to agree on a version of proposed amendments to the President’s reservations, the President’s reservations shall be taken to have been approved by Parliament upon the laying of the report on the Table of the Senate under paragraph (2).”

Mr. Chairman, Sir, no report has been laid on the Table of the Senate. Even if there was a disagreement, the exit strategy designed under Standing Order No.158(5) is not available.

Mr. Chairman, Sir, I associate myself wholly with the eloquent arguments by Sen. Orenge about Article 115 of the Constitution. I submit to you and the House that, in fact, the memorandum before us is incompetent to the extent that the language usage alone is not in conformity with the language of the Constitution. Nowhere in the Constitution is there any use of the word “recommendation.” The Constitution only talks of “reservation.” Reservation is not recommendation, neither is recommendation reservation. The two are distinctly different. The use of any word in the Constitution is not casual, accidental or a mistake. The drafters of the Constitution normally pick the words they use very carefully so that when you say “standing,” you cannot be sitting.

Mr. Chairman, Sir, apart from the use of the word “recommendation” which is not available to the President to recommend anything because he can only express reservation, the Memorandum even goes further and introduces new clauses. It is not available to the President, once a Bill has been taken to him to assent, to recreate legislation. Under this Constitution, he cannot bring a new clause. A new clause means a completely separate part of a Bill that, when it comes to the House, must be subjected to

all the necessary steps of legislation of First Reading, Second Reading, Committee Stage and Third Reading on the new clause because it is a new recommendation.

I am very happy that I am submitting to you because you are my senior in law and you have a very distinguished career in understanding, appreciating and prosecuting the law. When you read through this Constitution, there is no provision for the President to bring Bills to the House. He cannot sit in the State House, draft a Bill, sign and bring it to the House. That provision is not available. What is available is different and it is what we have been doing. If my distinguished colleague, Sen. Leshore, listened without interjecting, he would benefit immensely from what we are saying.

Mr. Chairman, Sir, I submit to you, therefore, that although we are on Order No.8, Order Nos.8 and 9 have come like hand and cloth because they are the same Memoranda from the President. They carry the same degrees of culpability and incompetence in law, under the Constitution and within our own Standing Orders.

Mr. Chairman, Sir, I urge you not to give us any casual ruling to retreat---

**The Chairperson** (Sen. Kembi-Gitura): Order! Sen. Wetangula.

**The Senate Minority Leader** (Sen. Wetangula): I am sorry, Mr. Chairman, Sir, I withdraw that word. However, I urge you to give serious consideration to this matter. As Sen. Orenge, Sen. G.G. Kariuki and other older Members here can tell us, this Parliament has walked through valleys and hills in this country to get where it is.

The Clerk of Parliament was always a junior officer from the Office of the President until the amendments came. This Parliament now enjoys an equal authority, if not superior authority, to the Executive and the Judiciary. That is why it is Parliament that approves the appointment of the head of the Judiciary and it can impeach the head of the Executive. Nobody in the other Arms of Government can impeach Parliament.

I want to submit as I end, that if we take any partisan position or a position of political convenience, arguing against what is on the Floor now, has nothing to do with who is the President. It has everything to do with what is right for the country and for the future. I want us to take a non-partisan position on this. I want us to secure the institution of Parliament from encroachment by other arms of government.

*(An Hon. Senator spoke off record)*

**The Chairperson** (Sen. Kembi-Gitura): He is on a point of order.

**The Senate Minority Leader** (Sen. Wetangula): I am on a point of order.

**The Chairperson** (Sen. Kembi-Gitura): Sen. Wetangula, you must now wind up.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Chairman, Sir, just a minute. I am winding up.

We are trying to create a precedence for the future that will help generations to come. Because when we are not here tomorrow, confronted by a similar situation, the Third and Fourth Senate will look at what the distinguished Senator for Murang'a, seating as the Deputy Speaker of the House, wrote and delivered for guidance. That is why we fall back to our Standing Order No.1. We are guided by usage, precedence and everything else that helps us build a chronological future for the orderly running of our Houses of Parliament.

I urge you to find these Memoranda incompetent to the extent that they does not comply with either our Standing Orders or the Constitution and step them down so that

we can go to the next order that has got no constitutional Standing Order or legal challenges.

**The Chairperson** (Sen. Kembi-Gitura): Order, Senator! I get your point.

What is your point of order, Sen. Leshore?

**Sen. Leshore:** Mr. Chairman, Sir, my point of order is that my two colleagues who are very senior lawyers in this country, are misleading this Senate and the nation by saying that the President has no role in bringing Bills to this House. Bills originate from the Executive, then they are brought here for discussion. Apart from private Members' Bills, what other Bills do we discuss here? In the Constitution, the President is given the power of assent. Why are they misleading us?

**The Chairperson** (Sen. Kembi-Gitura): Order, Senator! There is a lot of interest in this matter. Normally, it is not in my place to curtail debate. This is very serious as Sen. Mutula Kilonzo Jnr. said.

I have a small problem here and I know how you expect me to sort it out. Senators Orengo and Wetangula have raised very important issues. However Sen. Kagwe has raised another very important issue. He said that yesterday, at the request of Senators Wetangula, Orengo, and Dr. Khalwale, the Speaker issued a Communication from the Chair.

I was here when the communication was issued and there was no debate on it; none that I heard. He was issuing the Communication on exactly the same issues that you are now raising.

Some time earlier in October, the issue of these two Memoranda came in to question. Senators Omar, Wetangula, Dr. Khalwale and Orengo raised the issue with the Speaker and asked him to make a considered ruling on this issue. That is exactly what Sen. Wetangula is asking me to do now.

That ruling by way of communication from the Chair was given yesterday and was not debated. In part five, it was answering the question on whether the President can participate in lawmaking. That is exactly the issue raised by Sen. Orengo. The Speaker referred to Section 46(4) of the repealed Constitution on whether or not the President can do so.

The Speaker also spoke to the issue of whether the President can introduce new clauses in the memoranda, another issue that has been raised by Sen. Orengo. If the President did so, he would be taking up the legislative role of the Senate. He also spoke to the issue on whether the new Clauses have to follow all the legislative stages. Just to recap, he said at part II, and I quote.

"I wish to state that Article 115(1)(b) provides that the President shall

"refer the Bill back to Parliament for reconsideration by Parliament, noting any reservations that the President has concerning the Bill".

This means that the President can only object to what is already in the Bill. In proposing how to deal with the reservations, he may propose amendments to the specific clauses, including such other consequential amendments in form of new clauses. Therefore, new clauses in place of those in the Bill can be proposed so long as they are within the scope of the Bill."

That is what the Speaker said yesterday in his Communication. Regarding the stages of the legislative process, he said:

"By considering the Memorandum, Parliament is not re-opening debate on a Bill,

but restricting itself to the “reservations”. In my view, the new clauses need not go through the entire legislative process of First, Second and Third Readings.

Arising from this and upon further reflection and given the fact that the Joint Committee appointed to consider the Memoranda failed to submit a report, I now direct that the Memoranda on the two Bills be placed in the Order Paper for Thursday, 29<sup>th</sup> October, 2015, for consideration in Committee of the Whole.”

*(Sen. Hassan entered the Chamber and stood at the Bar)*

Order, Senator! If you are willing to enter the Chamber, kindly do so. We are transacting very important business here.

So, that is the ruling given by the Speaker yesterday.

I do not know whether you are asking me as a Chairman of the Committee of the Whole, to reopen and reissue a new communication from the Chair on the same issue.

*(Sen. Hassan consulted loudly)*

Order, Sen. Hassan! You have just come in. You do not even know what we are discussing. Give us some peace, this is a serious issue. You cannot purport to understand what we are talking about.

The problem is I am not sitting as Speaker at the moment. I am sitting as the Chairperson of the Committee of the Whole. So, you cannot expect me to reverse the Speaker’s ruling, even if I could, from where I am sitting. The Speaker gave directions on this issue yesterday. The reason I am saying this is because you are raising serious points, which in my considered opinion, ought to have been raised when the Communicated was issued.

I say this with great respect, that, two of the gentlemen who have raised this issue are Senators who sit in the Rules and Business Committee (RBC) which scheduled this two orders to be on the order paper today. So, at the moment, I am in a quandary because from where I am sitting, I cannot reverse yesterday’s communication. We could find a way maybe, but not from the position I am at right now.

*(Sen. Wetangula spoke off the record)*

Order, Senator! I am making that as a way of intercession. There are still a lot of points of orders to be raised. I have not raised any issue.

**The Senate Minority Leader** (Sen. Wetangula): You have, Mr. Chairman, Sir.

**Sen. Billow:** On a point of order, Mr. Chairman, Sir. Sometimes it is good to hear the non-lawyers also.

**The Chairperson** (Sen. Kembi-Gitura): Order, Sen. Billow! You know---

**Sen. Billow:** Mr. Chairman, Sir, I know you are one of them---

*(Laughter)*

Just before we went on recess three months ago the Speaker gave a very lengthy Communication on this matter, here. Pursuant to that, he set up a Mediation Committee of both Houses.

I happen to have been the Chairperson of that Mediation Committee that looked at both Memoranda. I have also heard what the Speaker said in his ruling yesterday. I was not in the House, but I was listening. I understand that yesterday he did not allow interventions. He said that interventions could be made today. That was his ruling. The reasons are very clear because based on his ruling yesterday, that consequential amendments can come in as new clauses. What we have in this memorandum is that some of them are not even consequential; you find a completely new clause. So, we will look at that.

However, Article 115 of the Constitution gives a whole process of how to deal with the Memorandum. Therefore, when the Memoranda came, the National Assembly went ahead and applied exactly this Article and voted on the two Memoranda. Our Speaker then came with the ruling and said; Article 115 is subject to the Standing Orders that we have, and, in fact, ruled that the National Assembly action was an a nullity because they did not comply with the provisions of their Standing Orders which are a photocopy of our Standing Order No.158.

Our Standing Orders provides for a Mediation Committee to look at both memoranda, but the Constitution does not go to the issue of Committees; it simply says; both Houses shall consider. How it should be done, is in the Standing Orders. The Committee was set up, we have already considered – we did a report and now the import of the Speaker’s ruling yesterday is to throw whatever else we did in terms of the report to the dustbin and go back to Article 115 again. This is the same Speaker who ruled earlier on that we must comply with the provisions of the Constitution. I do not understand; there is confusion. We spent many days as a Joint Committee of both Houses to look at these two amendments.

Mr. Chairman, Sir, I would like to agree with our distinguished Members that in the interest of the future of this House and the authority of Parliament, we use this blue book. The Standing Orders is authority of this House. If we make Standing Orders and we do not comply with them, we ignore them, then, we are setting a precedence that will haunt this House tomorrow. So, I plead in the same way that this matter be stood over until we debate it, perhaps in a *Kamukunji*.

**The Chairperson** (Sen. Kembi-Gitura): Proceed, Sen. Mutula Kilonzo Jnr.

Sen. Wetangula, you have bitten the cherry, let us listen to Sen. Mutula Kilonzo Jnr.

**Sen. Mutula Kilonzo Jnr.:** Mr. Chairman, Sir, in fact, I raised this issue yesterday and the Speaker, in his considered view, thought that any objections to this matter, being in the Order Paper today should be raised today. That is in response to what Sen. Kagwe said. I raised an intervention yesterday because I was concerned that what appeared to be legislation in some form that I would call back door—

*(The Chairperson consulted the Clerk-at-the-Table)*

Now that I am on my feet, I would like you to lend me your ear. It is not a coincidence that you are seated there; it is because you are a lawyer of high distinction. So, this is a “Marende” moment for you. History will judge you harshly; and I am not being rude.

**The Chairperson** (Sen. Kembi-Gitura): You could judge me harshly, but do what---

**Sen. Mutula Kilonzo Jr.:** Mr. Chairman, Sir, history will judge you harshly if you do not do the right thing. My understanding of this Constitution is that under Article 259, the interpretation of this Constitution shall be construed according to the doctrine of interpretation that the law is always speaking and amongst other things, a function or power conferred by this Constitution on an office may be performed or exercised as occasion requires by a person holding office and continues as such.

Mr. Chairman, Sir, being a renowned lawyer, you know about the golden rule of interpretation; that the law shall be interpreted in the most logical form unless that form can lead to an absurdity. This is what an absurdity is. There is a word which I think, we, as the Senate, and this is one moment when the Senate is now required to lead this country and speak the law, not partisan politics. I have bothered to look at the dictionary in my phone; the word “reconsideration” in Article 115(1)(b) in my own reading - forget about reservations, the one that Sen. Wetangula has spoken to, that this memorandum is not actually a reservation. The word “reconsideration” would mean a review; what you and I used to do in court. The review would mean that you cannot introduce a new issue that was not there before. You reconsider, which means that if Clause 10 is unconstitutional, the President would say; Clause 10 contradicts Article 20, contradicts another law or would lead to an injustice, not another clause. That would not be reconsideration.

Mr. Chairman, Sir, we are calling upon you because this objection was supposed to be raised today. That the word “reconsideration” in this Constitution is not a coincidence; it is not a term in English, it is a legal term which presupposes that our role when there is a reservation is to reconsider our previous position. Now, when you have a new clause, what are you reconsidering? When you have a new clause from the President, you are actually considering his proposal and not reconsidering what you have passed. To that extent, it would be unconstitutional to have a new clause in a memorandum because that would not be reconsideration; it would be a consideration.

Mr. Chairman, Sir, if you do not give direction on this – and your ruling will be read for years and years to come, you will lead to what the golden rule of interpretation was trying to stop.

A memorandum of this nature purporting that it is coming for reconsideration would lead to an absurdity of the word “reconsideration.” That is why in Article 115(2)(a) and (b), the wisdom of the drafters of this Constitution when they said; “amend the Bill in light of the President’s reservation”, not amend the Bill in light of the President’s new clauses. “Pass the Bill a Second time without amendments,” presupposes that the President should have returned the Bill the way it is. The most he can do in the clause is do a highlight - the way you would highlight a document; bold and underline and say; please, consider this clause again because that clause would contradict the laws of this country. I urge you to consider.

*(Applause)*



**The Chairperson** (Sen. Kembi-Gitura): Sen. Keter, do you have a point of order?

**Sen. Keter:** Mr. Chairman, Sir, I am not a lawyer, but I understand one or two things.

**An hon Senator:** But you are a law maker.

**Sen. Keter:** Mr. Chairman, Sir, yesterday, the Speaker made a ruling on whether the new clauses have an impact on the memorandum. Where you are as a chairman, you may not make proper decisions - there are two alternatives, either at this Committee Stage now, we move and if that amendment is unconstitutional, we vote on it so that whether we accept it or not, is not the issue; we are here to do that. If it is unconstitutional, we vote on it to that effect. At the same time, Standing Order No.158(5) says:-

“Where the Joint Committee fails to submit a report under paragraph (2), or the report of the Joint Committee is to the effect that the Committee has failed to agree to the President’s reservations or where the Joint Committee fails to agree on a version of proposed amendments to the President’s reservations, the President’s reservations shall be taken to have been approved by Parliament upon the laying of the report on the Table of the Senate under paragraph (2).”

Mr. Chairman, Sir, there was no report, the Speaker, at that time, said; let us consider it as a House, so that we can pronounce ourselves on it. That is why we are in this stage now. That is why we are on this decision. We can proceed or alternatively, if anybody thinks that it is unconstitutional, we make a decision on that.

I beg that we proceed.

**Sen. G.G Kariuki:** Thank you, Mr. Chairman, Sir. I think we have to use all the wisdom available in this House today, because I think the matter is getting out of hand. The question I want to ask is whether we are debating or we are talking about the ruling by the Speaker, and now the House wants you to rescind the ruling of the Speaker. If we have to do away with the Speaker’s ruling, I do not think we are in order as we sit now, unless somebody brings a substantive Motion to request that the Speaker rescinds his decision. I do not know what we expect you to do. The Speaker said that the Memorandum is at the right place and it is acceptable. Do we want you to say that the Speaker made a mistake or we want you to say we proceed without even mentioning the name of the Speaker?

Mr. Chairman, Sir, my recommendation here, if you allow me, is to, perhaps, adjourn this House for a few minutes, for you to consult with the Speaker; if he stands by what he said, we shall have to continue.

Thank you.

**The Chairperson** (Sen. Kembi-Gitura): Order, Members! As I said, I have a list here and I will give everybody an equal chance, except Sen. Omar Hassan who has just come and wants to jump the queue. He will be the last person to talk on this issue.

**Sen. Ndiema:** Thank you Mr. Chairman, Sir. I will be very brief. The issues that have been raised here are very weighty and have a lot of implications, not only on Parliament, but also as a way of setting precedents for the county assemblies and the governors.

Mr. Chairman, Sir, I want to agree that we do not rush this matter. We need to consult widely and deeply and come up with the best interpretation that is in the interests

of the people of Kenya because the sovereign power belongs to the people of Kenya, instead of rushing and, later on, we cause a problem.

**Sen. Mugo:** On a point of order, Mr. Chairman, Sir. I want to add my voice, and I have listened to the arguments and I am just wondering because I know that learned lawyers sometimes do twist words. They bring new meanings. If you put 10 lawyers in a room, there will be five different interpretations of the law.

Mr. Chairman, Sir, yesterday after considering this question, the Speaker made a ruling. Unless you are saying, yes he made a mistake, let us bring a Motion to debate him; I do not think it is right to reverse the Speaker's ruling from the Chair.

Mr. Chairman, Sir, the learned friend, the Senator for Bungoma told us that Parliament is paramount and the Executive is down here, and yet he wants to be in the Executive from Parliament, because he has wanted to be the President. The President has more responsibility and we should not belittle the Presidency or the Executive. If---

*(Sen. Wetangula talked off record)*

Do not talk back.

Mr. Chairman, Sir, if those who wrote the Constitution envisaged that the President had no role in law making, they would not have wanted the President to assent; to go and sign and put his signature. This power could have been given to the Speaker of the House since the House is so superior to pass the laws. I do not think it carries water to say that the President does not have a role in law making. If he is going to implement and sign it, tell me whoever signs anything that you do not agree with or you cannot implement?

Mr. Chairman, Sir, I propose that we go ahead with the ruling that was made by the Speaker, and do what we have to do, either way pass it or not. I think we have that choice to do. But to start twisting things here, this way or that way, I do not think it is healthy for this House.

I thank you.

**Sen Haji:** On a point of order Mr. Chairman, Sir. These arguments are really confusing. But all the same, as many of the people who stood before me said, we are being confused by the lawyers here. However, going by the ruling of the Speaker, we are putting the Chairman in a very difficult predicament and a very awkward position to expect him to rule otherwise. All the same, we are being told that under Article 115(2)(a) of the Constitution, when something is referred to the President for assent, it says:-

“Amend the Bill in light of the President's reservations.”

Mr. Chairman, Sir, the question of reservation has been raised here by Sen. Orenge that instead of reservation, recommendations were made. But the two words have some similarities. They all start with “R”. Somebody came, then instead of reservation, wrote recommendation.

Secondly, which takes precedence? Is it the Constitution or the Senate Standing Orders? The Constitution takes precedence over the Standing Orders. Therefore, I think the President has a right to give his reservation which is now recommended and say I do not agree with some, but propose that the Senate or the Parliament should consider this or the other. If we are not going to proceed, I then agree with what has been said by Sen. G.G Kariuki, that we proceed with whatever we can and those issues which are

contentious may be dealt with at an appropriate time. People can sit together and resolve them.

**Sen. Ongoro:** Mr. Chairman, Sir, I would like to add a quiet voice of reason, having listened carefully to those who have spoken before me. Let me remind all of us that politics is a double edged sword. One time you are sitting on the Opposition side and in the next Legislature, you sit on the Government side. I would like us to consider this matter with a sober and clear mind. Would we speak in the same way if Hon. Raila Odinga was the President and brought such a Bill to Parliament? I would like us to consider this matter very soberly, devoid of the consideration of who is occupying the Presidency.

I agree with a few Senators who have spoken. One, I do not think that the Speaker made a mistake in his ruling yesterday. I also do not believe that from where you seat, as you had stated before, that you find yourself between a rock and a hard place. However, having listened to some weighty matters that have been brought forward, if it is true that our mandate as a Legislature is in question here, if we proceed, and that we are required in this senior Chamber to consider a completely new clause, and if it is true that the powers of the Legislature, if we proceed this way, are at a threat of being reduced, then I plead with all hon. Senators to soberly consider this issue devoid of political affiliation. When the powers of the Legislature are reduced, it will not be the Opposition's powers that are reduced, but your own powers will also be reduced as well as powers of future Legislatures.

Mr. Chairman, Sir, we do not want to kill this Bill or do anything extreme. All I am asking for is that we give ourselves more time in view of the weighty matters that have been brought forward, so that each one of us individually and collectively can have more time to interrogate this matter and come to a conclusion. Thereafter, we can come to a collective conclusion as the Senate. We can come back to debate on this issue in this Chamber with a lot of clarity of mind on which way to go, having considered a lot of legal opinions and after having an ample time to review the former and current Constitutions as we proceed. That is the best way to proceed.

I conclude by stating that I think almost everybody who has spoken from both sides of the House has a valid point. However, in view of these weighty matters, would it be proper for us to stay this matter and consider it at a later date when have a bigger picture of what we are dealing with?

**Sen. Mositet:** Asante sana, Bw. Mwenyekiti. Mimi si wakili lakini kulingana na yale Maseneta waliotangulia wamesema, Spika alitoa mwelekeo wake jana lakini ukweli ni kwamba hatuwezi kuukosoa kwani Maseneta hawakupewa fursa ya kuukosoa mapema kabla ya kikao hiki. Tunajua kwamba kulikuwapo na Kamati ya Uwiyano iliyokaa chini na kuzungumza lakini hawakukubaliana. Jana, Bw. Spika alitoa mwelekeo lakini tutakayoizungumzia sasa ni ripoti ya Kamati ya Uwiyano ambayo haijaakifishwa mbele ya Seneti. Kusema ukweli Rais wetu anapewa aibu.

Bw. Mwenyekiti, naomba tuihairishe Hoja hii ili Bunge la Seneti lisije likapata aibu. Ni kama tuko kwa majaribio. Kwa hivyo, nakusihi utumie hekima yako kuhairisha mjadala huu hadi tukae chini tutatue tashwishi zilizopo. Hoja hii haikuletwa kama ripoti kwa Seneti.

**Sen. Kagwe:** On a point of order, Mr. Chairman, Sir. We run the danger of making two wrongs that do not make a right. First and foremost, I do not know of a

clause in our Standing Orders that challenges the Speaker's ruling. According to the Speaker's ruling, the matter is properly before the House. Let us accept that first. Having accepted that, the issue that arises thereafter; a secondary matter of the merits or demerits of what the memorandum itself has.

My very considered view is that let us not say that because the memorandum may have issues of it being wrong or right, the process by which we eliminate the memorandum or address it, is to question the ruling of the Speaker. The ruling has already been made and whether we say that it should have been discussed or not, it is a matter that is water under the bridge. This matter was discussed in whichever form, brought here and a ruling was made.

Mr. Chairman, Sir, the only way that this matter is on the Order Paper today is by virtue of the Speaker's ruling. Therefore, the issue of whether the matter is properly before the House or not, is a matter, which in my view, legal reading or not, is here with us properly. Let us now proceed to the second issue.

**An Hon. Senator:** On a point of order, Mr. Chairman, Sir.

**Sen. Kagwe:** I am on a point of order. At least, I know that much of the law. If we do not discuss the matter, then it has to be brought in another way, but it cannot be by overruling the Speaker's ruling.

**Sen. Orengo:** On a point of order, Mr. Chairman, Sir.

**The Chairperson** (Sen. Kembi-Gitura): Sen. Orengo, I will allow your point or order because you are the one who brought this issue up then I will close.

### **ADJOURNMENT OF DEBATE UNDER STANDING ORDER NO. 99(1)**

#### CONSIDERATION OF THE PRESIDENTIAL MEMORANDUM ON THE PUBLIC PROCUREMENT AND ASSET DISPOSAL BILL (NATIONAL ASSEMBLY BILL No.40 OF 2014)

**Sen. Orengo:** Mr. Chairman, Sir, as a way forward, I want to move an adjournment of debate on this matter on the basis of Standing Orders No.99(1). I beg to move:-

THAT, the Committee of the Whole House do now adjourn and the Chairperson do report progress.

Mr. Chairman, Sir, it is not unheard of that where there is controversy in Committee of the Whole stage, debate can be adjourned and the Chairperson of the Committee of the Whole reports progress. I think that the Speaker was right because this matter came as Order No.8 which could not be dealt with by the House while it was sitting as a full House. It could only be considered in the Committee of the Whole stage. It is also not right that if in the Committee, a direction given by the House is not in conformity with the law that you just go on, because a direction had been given. You can report back to the House that, when we commenced debate these issues arose to which we want to report progress.

Mr. Chairman, Sir, I want to urge you, most respectfully, to follow the Speaker of the National Assembly. Recently, there was a Bill before them on Powers and Privileges. At the Committee Stage, he found that this was going to be a national disaster. The

National Assembly would have been made to pass a law that was unconstitutional. In fact, my shame was that, that Bill came to the House through a Member of Cord. We were very ashamed and I continue to be ashamed. We talked about it.

Although the Speaker of the National Assembly had approved the process from the First reading, Second Reading to the Committee of the Whole House; when the matter went to the Committee Stage, they voted for it. However, on his own motion, he said no and suggested the matter be taken back for reconsideration by the Committee.

Sometimes we may blame lawyers, but if you look at Tony Blair, today he is apologizing all over. If he had listened to his Attorney-General, the man would have been the greatest Prime Minister in Great Britain. However, he refused to listen to what his Attorney-General was telling him and took his country to war. Now, every Briton regrets why they went to Iraq. Even in America, there was this man who was Secretary of State, Collin Powell; he was misled and America is forever regretting why they went into war. They do not know how to get out. Getting out is as bad as continuing to being there.

This House has a moment to show that we do not just pass everything that comes here; and we are doing this out of respect for the law of the land.

With those few remarks, I beg to move that we adjourn and report progress.

**The Chairperson** (Sen. Kembi Gitura): Hon. Senators, I have listened to all of you. I have heard what you said, but one thing I would like to make it clear from where I am sitting is that I cannot overrule the Speaker's Communication from the Chair. In fact, even if I was sitting in the main Chamber, I cannot overrule what the Speaker has said. The matter is of great importance to all of us, and we have to reach a decision on it. The Speaker gave a considered ruling or communication yesterday on the issue. It is because of that ruling that we are now here.

I do not believe that it was contemplated by the Speaker when he gave the ruling that the sitting at Committee, which we are - as Sen. Orengo refers to, because we are sitting correctly at Committee. Therefore, the Speaker was right not to be here. There is nothing I can do to reverse this issue. So, there are only two things now that stand between us. We are dealing with Order Nos.8 and 9. The question is for us to decide whether or not, we are properly constituted. If we are properly constituted pursuant to the ruling of the Speaker, then we must proceed. If we are not properly constituted, then we must report progress. That would have to be done, but I cannot sit here and pretend that I am superintending the Speaker in his ruling.

As the Speaker, when he made this ruling or communication, in the first instance, it was after a debate that had been instigated by the four Senators that I mentioned. He gave what Sen. Wetangula calls a considered Communication from the Chair. The only thing I can deal with now is not by way of trying to make a reversal. So, we must proceed with the two orders.

Sen. Orengo has moved under our own Standing Order No.99 that the Chairperson do now report progress. However, if you look at Standing Order No.99 (1), it is clear in its terms and it does not give me a window. It only gives me a window if I consider it to be an abuse of the process of the Senate. I do not consider it to be an abuse because, as I said in my considered opinion again, this communication ought to have been debated before the Speaker, so that you could tell him like you are telling me now and you are telling me with your eyes open knowing that I cannot change the ruling. You

cannot tell the Speaker or myself if I am the one sitting there, the things you are now saying so that I can make a considered ruling from the Chair.

In my opinion, I cannot do otherwise than to respect our own Standing Order No. 99(1). If we must, as Sen. Orengo finds a Secunder to his dilatory Motion of Adjournment, then we will have to proceed under that because I respect the rules of the House and Standing Order No.99 does not give me an option.

*(Question proposed)*

*(Question put and negatived).*

*(Several hon. Senators stood in their places)*

**The Chairperson** (Sen. Kembi Gitura): So, the debate will proceed. Are you asking for a division?

*(Resumption of consideration of Presidential Memorandum)*

*Clause 51 (3)*

**Sen. Keter:** Thank you, Mr. Chairman, Sir, I beg to move:-

THAT, the Bill be amended by inserting the words “and licensed” immediately after the word “registered”.

*(Question of the amendment proposed)*

**The Chairperson** (Sen. Kembi-Gitura): I propose that we defer voting that so that we vote for all clauses.

*Clause 124*

**Sen. Keter:** Mr. Chairman, Sir, I beg to move:-

THAT, the Bill be amended by deleting subclause (4) and substituting therefor the following new subclause:

(4). Subject to the foregoing provisions of this section, in the evaluation of tenders by public entities, the criteria for assessing the technical and financial capability of the tenderers shall as may be prescribed by the accounting officer in the tender documents.

*(Question of the amendment proposed)*

**Sen. Kagwe:** Mr. Chairman, Sir, I support Sen. Keter by adding that the two Clauses in respect of the Public Procurement and Disposal Bill have been discussed by the Joint Committee on Public Procurement and Disposal Bill. Even though it was not brought before the House, the Committees had reached a consensus on these two clauses as presented by the President. The import of the amendment by the President was to

explain that, when a tender is considered in terms of technical and financial considerations, it is proposed to be discussed as equal.

However, the President proposed that instead of both being considered universally equal and since tenders are not homogenous, it became necessary that the accounting officers of the procuring bodies are the ones to tell how the weighing is supposed to be done. Therefore, as per the amendment, it shall left to the accounting officers to determine how the tender documents should be framed. I support that; that it is in order.

**The Chairperson** (Sen. Kembi-Gitura): I cannot see any more interest.

Members, I still see some names and I do not know if some Members want to speak.

I will defer the putting of the Question to a later time.

*(Putting of the Question on Clause 124 deferred)*

That is the end regarding the Memorandum by His Excellency the President on Public Procurement and Asset Disposal Bill.

### **PROGRESS REPORTED**

THE PRESIDENTIAL MEMORANDUM ON THE PUBLIC PROCUREMENT  
AND ASSET DISPOSAL BILL (NATIONAL ASSEMBLY BILL NO. 40 OF 2014)

**Sen. Keter:** Mr. Chairman, Sir, pursuant to Standing Order No. 139 I beg to move:-

THAT the Committee of the Whole report progress on its consideration of the Presidential Memorandum on the Public Procurement and Asset Disposal Bill (National Assembly Bill No. 40 of 2014) and seek leave to sit again tomorrow.

*(Question proposed)*

*(Question put and agreed to)*

*(The House Resumed)*

*The Deputy Speaker (Sen. Kembi-Gitura in the Chair)*

### **REPORT**

**Sen. Sang:** Mr. Deputy Speaker, Sir, I beg to report progress; that the Committee of the Whole has considered the Presidential Memorandum on the Public Procurement and Asset Disposal Bill (National Assembly Bill No. 40 of 2014) and seeks leave to sit again tomorrow.

**Sen. Keter:** Mr. Deputy Speaker, Sir, I beg to move:-

THAT the House do agree with the Committee in the said report.

**Sen. Kagwe** seconded.

*(Question proposed)*

*(Question put and agreed to)*

**COMMITTEE OF THE WHOLE**

*(Order for Committee read)*

*[The Deputy Speaker (Sen. Kembi-Gitura) left the Chair]*

**IN THE COMMITTEE**

*[The Temporary Chairperson (Sen. Mositet) took the Chair]*

**CONSIDERATION OF THE PRESIDENTIAL MEMORANDUM ON THE  
PUBLIC AUDIT BILL (NATIONAL ASSEMBLY BILL NO.38 OF 2014)**

*(Sen. Sang stood up on his place)*

**The Temporary Chairperson** (Sen. Mositet): Order, Sen. Sang. Please resume your seat.

*(Sen. Sang resumed his seat)*

Hon. Senators, we are now in the Committee of the Whole. We shall consider the Presidential Memorandum on the Public Audit Bill (National Assembly Bill No. 38 of 2014). Let us begin with the President's recommendation on Clause 4.

*Clause 4*

**Sen. Keter:** Mr. Temporary Chairman, Sir, I beg to move:-

THAT Clause 4 (2) of the Bill be amended by deleting the existing sub-clause and substituting therefor the following new sub-clause-

(2) The Office shall comprise the Auditor –General as its statutory head and all other staff appointed by the Auditor-General as may be delegated in accordance with Article 234 (5) of the Constitution.

**Sen Kagwe:** Mr. Temporary Chairman, Sir, I beg to second this Clause and raise the following---

**The Temporary Chairperson** (Sen. Mositet): Order, Senator. Sen. Keter has moved, therefore, I will propose the Question.

*(Question of the amendment proposed)*

**Sen Kagwe:** Mr. Temporary Chairman, Sir, as I support this amendment, there were reservations that were raised regarding this particular Clause even in the mediation process. We raised certain reservations regarding the independence of the Auditor-General's Office. The import and objection was as to whether the Auditor-General's



Office is being interfered with to the extent that the independence of the Auditor-General is threatened. However, in terms of an address through the Constitution, the feeling of the proposed amendment was that the Auditor-General's office was not being reduced. Instead, the idea was that the two offices; both the Auditor-General's office and the Public Service Commission be working together in terms of the staffing of the office of the Auditor-General. To that extent, it is necessary – as we pass this amendment through regulation – to ensure that the Auditor-General's office remains independent.

I beg to support.

**The Temporary Chairperson** (Sen. Mositot): Since there are no other contributors, I defer putting of the Question.

*(Putting of the Question deferred)*

*Clause 8*

**Sen. Keter:** Mr. Temporary Chairman, Sir, I beg to move:-

THAT Clause 8 of the Bill be amended by deleting paragraphs (a), (b), (c), (d), (h) and (j) and substituting therefor the following:

Administrative Powers of the Office of the Auditor-General

(a) develop an organization structure and staffing establishment for the office of the Auditor-General, subject to Article 234(5) of the Constitution;

(b) subject to Article 234(5) of the Constitution, recruit and promote qualified and competent staff to perform the office's functions;

(c) subject to Article 234 (5) of the Constitution, exercise disciplinary control over staff;

(d) subject to Article 234 (5) of the Constitution, develop human resource of the office;

(h) subject to Articles 230 (4) (b) and 234 of the Constitution, determine the remuneration and benefits of each member of staff;

(j) in addition to what is provided for under any other relevant law, develop and maintain a code of conduct and ethics for the office, specific to auditing, guided by the international code of practice, and code of ethics issued by the International Organization of Supreme Audit Institutions and in consultation with the Public Service Commission and the National Treasury;

**The Temporary Chairperson** (Sen. Mositot): Senator, just come and get some briefs.

*(Sen. Keter consulted with the Clerk-at-the-Table)*

*(Question of the amendment proposed)*

**Sen. Kagwe:** Mr. Temporary Chairman, Sir, the argument on Clause 8 is the same. The proposed amendment is supposed to create cohesion in Government structure and in the governance of the Auditor-General's Office and to ensure that it is properly staffed. In doing so – as we make the amendment that is necessary and crucial –the President should ensure that the Auditor-General's Office remains independent with the support of the Public Service Commission.

**The Temporary Chairperson** (Sen. Mositet): Since there is no other contribution, I defer putting the Question.

*(Putting of the Question deferred)*

*New Clause 11A*

**Sen. Keter:** Mr. Temporary Chairman, Sir, I beg to move:-

THAT, a new clause be inserted immediately after Clause 11 of the Bill as follows:-

Acting Auditor- General

11 A. (1) Where:

- (a) the office of the Auditor- General becomes vacant;
- (b) the Auditor-General has been suspended in accordance with the Constitution
- (c) the appointment of a person as Auditor-General is pending; or
- (d) the Auditor – General is, for any reason unable to perform the function of his or her office, then, until a person is appointed to and has assumed the functions of that office in accordance with Section 11 above, or until the Auditor-General has resumed the performance of those functions, the Public Service Commission shall recommend the most senior officer in the office of the Auditor-General to the President to designate such a person as the acting Auditor –General

(2) A person designated under subsection (1) shall meet the minimum qualifications for appointment to the office of the Auditor-General and shall serve for a period not exceeding ninety days.

(3) When acting in terms of subsection (1), the acting Auditor-General shall have all the powers of the Auditor-General.

*(Question of the amendment proposed)*

**Sen. G.G. Kariuki:** Mr. Temporary Chairman, Sir, it seems everyone agrees with what we are doing. The little I can say is that we expect the Auditor-General's Office to be protected by both the Public Service Commission and the Executive. Therefore, I beg to support.

**The Temporary Chairperson** (Sen. Mositet): I defer putting of the Question.

*(Putting of the Question deferred)*

*Clause 16*

**Sen. Keter:** Mr. Temporary Chairman, Sir, I beg to move:-

THAT Clause 16 of the Bill be amended in sub-clause (1) by inserting the expression “and 234 (5)” immediately after expression “230”

*(Question of the amendment proposed)*

**Sen. Haji:** Mr. Temporary Chairman, Sir, I beg to support.

**The Temporary Chairperson** (Sen. Mositet): I defer putting of the Question.

*(Putting of the Question deferred)*

*Clause 19*

**Sen. Keter:** Mr. Temporary Chairman, Sir, I beg to move:-

THAT Clause 19 (2) of the Bill be amended by:

- (a) inserting the words “review and” immediately after the words “year for”; and
- (b) deleting the words “with the Cabinet Secretary’s comments”

*(Question of the amendment proposed)*

**Sen. Haji:** Mr. Temporary Chairman, Sir, I beg to support.

**Sen. Njoroge:** Mr. Temporary Chairman, Sir, I beg to support.

**The Temporary Chairperson** (Sen. Mositet): I defer putting of the Question.

*(Putting of the Question deferred)*

*New Clause 40A*

**Sen. Keter:** Mr. Temporary Chairman, Sir, I beg to move:-

THAT a new Clause be inserted immediately after Clause 40 of the Bill to read as follows:

Auditor-General

not to question

Government policy

objective

40A. Notwithstanding the provisions of this Act, in an examination under this Act, the Auditor-General shall not question the merits of a policy objective of the national government or county government or any other public entity.

*(Question of the amendment proposed)*

**Sen. Haji:** Mr. Temporary Chairman, Sir, I beg to support.

**Sen. Njoroge:** Mr. Temporary Chairman, Sir, I beg to support.

**The Temporary Chairperson** (Sen. Mositet): I defer putting of the Question.

*(Putting of the Question deferred)*

**The Temporary Chairperson** (Sen. Mositet): Next clause.

Clause 66

**Sen. Keter:** Mr. Temporary, Chairperson, Sir, I beg move:-  
THAT, Clause 66 of the Bill be amended by deleting the words “Auditor-General” immediately after the word “The” and substitute therefor the words “Cabinet Secretary responsible for matters relating to finance”.

**Sen. Njoroge** seconded.

*(Question of the amendment proposed)*

**Sen. Kagwe:** Mr. Temporary Chairperson, Sir, it is necessary for us to understand this Clause because it is a good clause. It has to do with the fact that the Cabinet Secretary responsible for matters relating to finance is responsible for making regulations and that it should not be inconsistent with the Act in respect of this matter.

Therefore, matters related to finance, whether they are being dealt with by the Attorney-General or anybody else, must be done in consultation with the Cabinet Secretary responsible for finance.

**The Temporary Chairperson** (Sen. Mositet): I defer putting the Question and ask the Mover to report the progress.

*(Putting of the Question deferred)*

### **PROGRESS REPORTED**

PRESIDENTIAL MEMORANDUM ON THE PUBLIC AUDIT BILL  
(NATIONAL ASSEMBLY BILL NO.38 OF 2014)

**Sen. Keter:** Mr. Temporary Chairperson, Sir, pursuant to Standing Order No.139, I beg to move that the Committee of the Whole reports progress on its consideration of the Presidential Memorandum on the Public Audit Bill (National Assembly Bill No.38 of 2014) and seeks leave to sit again tomorrow.

*(Question proposed)*

*(Question put and agreed to)*

*(The House resumed)*

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

### **REPORT**

PRESIDENTIAL MEMORANDUM ON THE PUBLIC AUDIT BILL  
(NATIONAL ASSEMBLY BILL NO.38 OF 2014)

**The Temporary Speaker** (Sen. Mositet): I ask the Chairperson to report.

**Sen. Kagwe:** Mr. Temporary Speaker, Sir, I beg to report progress; that the Committee of the Whole has considered the Presidential Memorandum on the Public Audit Bill (National Assembly Bill No.38 of 2014) and seeks leave to sit again tomorrow.

**The Temporary Speaker** (Sen. Mositet): I ask the Mover to move.

**Sen. Keter:** Mr. Temporary Speaker, Sir, I beg to move that the House do agree with the Committee in the said report. I request Sen. Haji to second.

**Sen. Haji** seconded.

*(Question proposed)*

**The Temporary Speaker** (Sen. Mositet): I can see one request.

Proceed, Sen. Kagwe.

**Sen. Kagwe:** Mr. Temporary Speaker, Sir, I know that we want to dispose of the matter, but the manner in which we have dealt with it is that we have taken the matter seriously and there is nothing we have taken lightly. It is in the spirit of the Constitution and strengthening our offices that we have supported the President's Memorandum.

**Sen. G.G. Kariuki:** Mr. Temporary Speaker, Sir, apart from what my colleague here said, my reservation is in terms of management of what we intend to do or what the Bill will do; it is highly political. I expect that it will be straight forward. It shall not be misused to do anything that will not be in the interest of the public. We are here for the people and the people are there for us.

Therefore, we are in our right mind to think that whatever we are doing is right. I agree with my friend here because everything was done constitutionally. I want the public out there to understand that there was no political pressure in this matter. It is in line with what the Constitution says. It is the intention of those in authority to see the work going on the way it is.

As a party, our job is to stand with our party, the President and the Government. We support good ideas. We anticipate that things will be conducted and managed in the right way. Of course, there are political problems everywhere; a human being is a political animal. There is no person who will be given a position and will not have his own ideas. He or she also has a political inclination. These are the things you cannot stop. Whether you do this or that, complications will always be there. That is why we are here to scale down the amount of complication that may arise.

**The Temporary Speaker** (Sen. Mositet): Since there are no more people who are interested in contributing - *mzee* tried a bit. He said that the law is like a knife, after sharpening it, you just keep it in store.

*(Question put and agreed to)*

Next order!

## BILL

### *Second Reading*

THE OFFICE OF THE COUNTY ATTORNEY BILL  
(SENATE BILL NO.37 OF 2014)

*(Bill deferred)*

**The Temporary Speaker** (Sen. Mositet): We will defer this Order.

**COMMITTEE OF THE WHOLE**

THE PUBLIC APPOINTMENTS (COUNTY ASSEMBLY APPROVAL)  
BILL (SENATE BILL NO. 20 OF 2014)

*(Deferred)*

THE COUNTY EARLY CHILDHOOD EDUCATION BILL  
(SENATE BILL NO. 32 OF 2014)

*(Deferred)*

THE UNIVERSITIES (AMENDMENT) BILL  
(SENATE BILL NO. 31 OF 2014)

*(Deferred)*

**BILL**

*Second Reading*

THE COUNTY GOVERNMENTS DISASTER MANAGEMENT BILL  
(SENATE BILL NO. 40 OF 2014)

**The Temporary Speaker** (Sen. Mositet): Who was on the Floor? Let us also defer that Order.

**Sen. Ongoro:** Mr. Temporary Speaker, Sir, I thought there are Senators who want to contribute.

**The Temporary Speaker** (Sen. Mositet): No, I cannot see any request.

*(Bill deferred)*

Next Order!

**BILL**

*Second Reading*

THE PRESERVATION OF HUMAN DIGNITY AND  
ENFORCEMENT OF ECONOMIC AND SOCIAL  
RIGHTS BILL (SENATE BILL NO. 8 OF 2015)

**The Temporary Speaker** (Sen. Mositet): Where is the Mover?

*(Bill deferred)*

### MOTION

#### MEASURES TO MITIGATE TRAFFIC CONGESTION IN NAIROBI METROPOLITAN REGION

THAT, aware that traffic congestion in Nairobi Metropolitan Region is increasingly becoming worse leading to increased costs, longer travel times, constrained economic productivity and adverse health and environmental externalities;

CONCERNED that the economic cost of the congestion is estimated to be Kshs.1 billion annually on account of wasted man-hours and wasted fuel due to vehicular queuing;

APPRECIATING the government's effort in mitigating the problem by expanding infrastructure and initiating other interventions such as installation of traffic lights in the Central Business District;

The Senate now calls upon the Government to consider formulating additional policy interventions to mitigate the problem by:-

1. Enacting legislation to allow only high capacity public transport to operate in the city; and
  2. Creating regulations to:-
    - a) Require all deliveries to business premises to be done at night;
    - b) Require construction on roads that are in use to be done at night,
- and;
- c) Reroute heavy commercial vehicles to use the bypasses.

*(Sen. Kittony on 17.9.2015)*

*(Resumption of Debate interrupted on 17.9.2015)*

*[The Temporary Speaker (Sen. Mositet) left the Chair]*

*[The Temporary Speaker (Sen. Ongoro) took the Chair]*

**Sen. Mositet:** Thank you Madam Temporary Speaker. I rise to support the Motion by the gracious Sen. Kittony. She came up with the Motion after realizing that many Kenyans, particularly those living in Nairobi and its environs, are going through agony because of the traffic jam, the cost it has been pushing into their pockets and also on their lives.

Madam Temporary Speaker, when I looked at the Motion, I thought the Senator must have been an engineer, but only to realize that at one time she served as the Chairlady of *Maendeleo ya Wanawake*. I think she got a lot of experience to know what

bothers the majority of us who live in urban centres and she is requesting in this Motion that, at least, roads need to be improved so that the city can be decongested.

We should come up with new systems where we can have, if possible, other means of transport other than just public means and the passenger vehicles we find in Nairobi where may be the number of passenger vehicles are so many. Almost all of them are driven by single drivers without even somebody being given a lift in those vehicles.

Madam Temporary Speaker, the Motion has come at the right time and I do believe what the Senator will do is to come up with a Bill so that she is able to move and make sure that the implementation part of it is done. Following the earlier plans when the City was planned by the “white” people and in the early 1960’s and 1970’s, people could really enjoy the rides in Nairobi. They could drive to see the High Rise Estate which was coming up that time, the Nairobi National Park, Uhuru Park and many other areas. But because of the traffic jam, that leisure is no longer there for anybody wanting to come to the city just for a visit.

Madam Temporary Speaker, there are some cities that people go to, just to stroll around and enjoy themselves. For example, a city like Panama, at least you will go there and enjoy. Looking at what we have been going through in our city, very few people, even youngsters will want to come and watch movies like it used to be. Many other people will not want to come even to do shopping. Because of that, you find quite a number of our businesses are no longer viable within the city because of the traffic jam.

Madam Temporary Speaker, the traffic jam has caused many other problems, even the issues of insecurity. You will find that many people, while driving, make sure that the windows are totally shut because of fear that some street boys will pass along the road, rob them of their watches and mobile phones. Because of that, there are a lot of disadvantages because of the traffic.

If you were to go to Nairobi county archives today, there are quite a number of reports, quite a number of documents which had been written on how to decongest Nairobi. We have leading experts who are traffic engineers who have carried out surveys, research and have seen how Nairobi can be decongested and those reports are there. You will be shocked that when these reports were carried out, a lot of money was paid to the consultants to do those reports and after that, they were shelved. This happened when it was the Nairobi City Council.

Madam Temporary Speaker, it is just a matter of picking one document where some consultant or people had been paid, and using that report, we can recapture the lost glory of Nairobi. With all due respect, I find that even the business communities within the city centre lose a lot because many of the people who will want to come and buy or do their purchasing within the city, do not come, because of traffic congestion. So, you find them travelling to other areas. Others will take advantage when they are out of the country to do their shopping only because of fear of being in our city due to traffic congestion.

Madam Temporary Speaker, I think it is the responsibility of the Nairobi governor, and the governors of our urban centres to make sure that our centres are well planned, are put into the correct order, to make sure that people can drive, park comfortably and do their shopping without any inconvenience. They should make sure that at least they participate in improving the business atmosphere by making sure that money is spent within those cities and within those urban centres.



Madam Temporary Speaker, if we are to do that, I am sure the governor will sit in his parlour or in his beautiful office and know that at least people are enjoying or doing business comfortably. People are moving without any fear, and even at this time when we have been talking a lot about terrorism, you can just imagine what will happen with our traffic jams. They pose a grave danger and people can really be exposed. I think it is high time our governors took a step and made sure that they get reports, they consult, so that they can decongest not only Nairobi, but the cities and the urban centres that we have.

Madam Temporary Speaker, you will be shocked, even if you were to go to Nyeri today, there are some days you will find it is quite congested. You cannot drive. I am sure the Senator for Nyeri is here and he can attest to that. Personally, there are some small centres; you go to Ngong, you go to Ongata Rongai as you drive to go and eat *nyama choma*. With all due respect I would like to differ with the World Health Organization's (WHO) stand on red meat and inform them that the *Maasais* have been living on red meat since time immemorial, they are very healthy and cases of cancer are at their lowest. So, I do not know how they do their research.

Madam Temporary Speaker, we even take raw blood. Personally, when a goat is slaughtered and it is a nice one, I will enjoy that. Over the weekend if you are traveling to Olepolos and pass through Ongata Rongai and Kiserian, the traffic is too much simply because of poor planning. However, I believe that if we plan and do proper consultancy, we can decongest our towns. I, therefore, take this opportunity to congratulate Sen. Kittony and encourage her to go beyond this and come up with a Bill. We shall support her and put all the ideas that she has together, so that we achieve our objectives.

Madam Temporary Speaker, if we do that, we shall be in line with Vision 2030. If we quantify the losses that we incur from traffic jams, you will be shocked at the amount of money that we lose as fuel, hours and accidents. You can equate the loss of billions of shillings that can be used to come up with major infrastructure which can be used by motorists.

I beg to support this Motion.

**Sen. Kagwe:** Thank you, Madam Temporary Speaker. I rise to support this Motion and congratulate Sen. Kittony for her foresight in addressing this matter that is of concern to the entire nation because Nairobi is the capital city. While supporting this Motion and the regulations that have been proposed, the main cause of traffic jams on our roads in Nairobi today is indiscipline. There are things that we can legislate and those that we cannot. The issue of courtesy on our roads and general bad behavior exhibited by our drivers cannot be legislated. Some of these things relate to our culture as a people. When a society is indisciplined, the symbolism of that indiscipline is exhibited in its drivers, police officers and other people.

Madam Temporary Speaker, unless we are prepared to face this issue head on, see our problems as they are and not as we would like to pretend that they are, if we know what the problem is, it is possible to resolve it. However, if we do not admit the problem, then it is very difficult for us to solve a problem that does not exist in our minds. It is good for us to admit that we are indisciplined drivers. As we expect the *El Nino* rains, traffic jams are bound to get worse because we are discourteous. We do not let other drivers pass even when we know that by blocking the other driver, on a T-junction, for instance, it does not help. It will not make you move faster because it will just delay the other person.

It is necessary for us to invest in disciplining ourselves through legislation. When you go to western countries, for example, the United Kingdom or the United States of America (USA) and see that there is discipline, it is because the penalties for indiscipline are extremely high. I recall that Hon. Midiwo moved a Bill, in the last Parliament to create heavy penalties that would create deterrence of misuse or abuse of traffic laws.

Madam Temporary Speaker, we have installed cameras that can help us in this practice. However, unless the cameras are used for serious purposes and to apprehend individuals who abuse the law, then they serve no purpose. The cameras can only serve the purpose of informing the authority of people who double park or overtake wrongly in traffic jams. This always happens. It is as if there are some people who are always in a hurry to get somewhere earlier than others, pay higher road fees than others or operate on different laws from others.

I say this because, an individual sees traffic queue a mile down and decides to overtake all the cars on the wrong side of the road, as if everybody else who is queuing is an idiot. This is something that should be taken very seriously and individuals like those ought to be punished viciously. Those vehicles ought to be put in a police station for a month because we have to address the issues as they are.

There is a saying in my community that in the dark, when an arrow is shot at you, you also shoot another in the direction where that one came from even if you cannot see it. The import of this is that, if indiscipline is caused by a person who wants to earn a lot of money that day, it appears to me that a small fine here or there will not resolve the problem. It also appears to me that the issue is of an individual who will do anything including risking people's lives while driving like a maniac just so that they get a little bit more money. It is that extra money that we ought to go for when we get them.

Madam Temporary Speaker, my view is that the cameras that we install must be used for the purposes of prosecution. Every traffic police station must have cameras installed in it. Legislation must come to bear so that we prosecute people on the basis of digital evidence that is there with us. Only then can we say that we are addressing the issues and creating a good business environment on our roads as well. It is strange that in spite of the heavy traffic jams that are there in our city, I do not hear any policy debates regarding trains.

The Mover of the Motion is asking us to consider formulating additional policy interventions. The policy that ought to be highlighted in the respective Ministries and county administration in the county governments is one where we start talking about the use of trains and trams because no matter how many lanes we expand our roads to, as long as the traffic keeps on increasing with individuals putting an additional vehicle on the road, the problem will never be resolved.

When Mombasa Road was one lane, the traffic was terrible, when it was expanded to two lanes, the traffic jam did not reduce and even after it was expanded to three lanes, the traffic jam is still terrible. It, therefore, appears that expansion of roads is not the ultimate solution to the movement of persons and goods. We have to have a paradigm shift and think about how other big cities are managed. Addis Ababa in Ethiopia has already started a train system to manage the traffic. We should have done that before Addis Ababa did it.

The debate that we should have today is how we are going to have trains that can run from the town centre to Kangemi to Kawangware estates and other parts of our city,

so that we can leave cars behind and use the train. It is only then that we can make sure that no four wheeled vehicles are coming into our city *en mass* and in a manner that we cannot function.

The other idea, is also of timing, where we ask our employers to ensure that they can stagger the timing of reportage to the offices, so that people do not have to be at the office at 8.00 a.m. For goodness sake, let our people come at 9.00 a.m., so that every vehicle is not moving into town at 8.00 a.m. Elsewhere, children are not taken to school in one car per child or one car for two children. They are taken to school via buses, not even that, there are particular regions where you can take children.

We would like to see best schools built in every area so that people do not transport their children all the way from Buru Buru to Langata or from Langata all the way to the United Nations (UN) areas and so on. In the morning, you find so many vehicles on the road because they are taking children to school. Let us encourage or develop policies where children are dropped in schools by buses. That way, we will reduce the number of vehicles on our roads.

When you think about it you will find that during holidays traffic is almost non-existent in our cities, but when schools are opened, then the problem begins. If you have got a school with 300 children and each of those children is being taken with one car, or at most two children in one car, that adds to 150 vehicles moving to one school. There is no way you are not going to have congestion.

In addition to indiscipline there is also the policy issue with regard to our behaviour as community and how we are going to resolve the problem without necessarily resorting to extending another lane on our roadside. In any event, it is clear that we cannot continue to afford that sort of expenditure. Indiscipline is so serious in our society. It is a problem in terms of our national image. Friends who come to visit from overseas tell us that Kenyans are very nice people until they get behind the wheel, then you will not recognize the individual who had earlier on been nice to you.

As soon as they grab the wheel and start driving they become unnecessarily aggressive. Most times they become totally indisciplined, they become unreasonable because, for instance, why would you block others at a T- junction? Why do you not just stop and let me pass if the car in front of you is not moving so that we can all go home? If Kenyans and Nairobian expect that by expanding roads or creating other lanes the traffic jam is going to go away, it will not. We can build the roads and the railway line, but we also have to be disciplined.

I hope that the Mover of the Motion, Sen. Kittony, is going to bring a Bill that is going to address some of the issues that I have raised, including the penalties that are necessary so that our people can stop behaving as if they are driving for the last time in their lives when they are on the roads.

I would also like to bring to the attention of the Mover that it will be interesting to hear the opinions of the *matatus*, bus associations when the Bill comes, so that we know whether they can be part of the solution of the problem rather than part of the problem. I am convinced that behind those organizations are individuals who also want to develop a good name for *matatus*; they are very important institutions for this country. Without *matatus*, so many things would go wrong but with disciplined *matatus*, so many things will go well. We do not want to condemn any sector in our community because they serve a great purpose.

If you go to Nyeri Town, you can see proper behaviour by *matatu* associations'; self-governing and self-disciplined individuals who have organized themselves. Passengers queue properly. You will not find *matatus* double parked in the middle of the streets, but this has got nothing to do with policing. It has something to do with the organization that the Saccos and the *matatus* in Nyeri have. I would like to encourage them to continue doing exactly what they are doing. I would like to ask other counties that are facing indiscipline problems such as Nairobi, to come to Nyeri and learn one or two things about how things are done.

Things can get better if Sen. Kittony's Motion is adopted by the House and translated into a Bill, so that our people can also begin to enjoy driving. People suffer while driving these days. When you get into your car, you do not smile and say to yourself; I am going to enjoy this ride. You actually say to yourself "I am not looking forwards to driving to my house; I know how the jam is going to be." It is another form of stress and disease. When you see people getting sick, sometimes, it has got something to do with the stress they go through during traffic jams. You recall a while back there was a gentleman who brandished a gun, wanting to shoot people in the streets when they blocked his car on Naivasha Road.

Thank you

**Madam Temporary Speaker** (Sen. Ongoro): You did not conclude by stating whether you support. I give you two seconds to make that statement.

**Sen. Kagwe:** Madam Temporary Speaker, I support.

**Sen. Kisasa:** Asante sana, Bi. Spika wa Muda kwa kunipa fursa hii, ili nami niunge mkono Hoja hii ya Sen. Kittony. Hoja hii imeboba kama mamangu, Zippora kwa sababu ni Hoja ya maana sana ambayo imechukua muda mrefu, na tujuavyo wakati ni mali. Lakini sisi hatuoni kama wakati ni mali kwa sababu muda mwingi sana tunaharibu barabarani, muda mwingi sana hatujui tutafika salama ama vipi kwa sababu ukiangalia ule msongamano, haujui nani atakuzaba kofi au atakupiga risasi.

Tulitembelea Uchina, na tulishangazwa kuona kuwa sera zao zinahimiza kila familia kuwa na mtoto mmoja. Tulijiuliza mbona hii nchi haina watu, ilhali tunasikia kwamba wamezaana sana. Tulishtuka sana tulipofika chini kuingia kwenye gari moshi zao, tuliukuta umati ambao hata hatujauona maishani, watu wengi sana. Lakini, jinsi Wakenya tulivyo, kila mtu anataka kuonekana kwamba ana gari. Magari yote lazima yaingie Mjini na pengine jamii moja ina magari matano; zote zinakuja kazini.

Tukiangalia pia tunaona kwamba nidhamu imechangia sana. Unapoagangalia barabara, hazina nafasi. Hata barabara zikipanuliwa, bado msongamaono ni ule ule. Tufanye aje? Ukiona akina mama wamejifunga kibwebwe kama Sen. Kittonyi, ujue kwamba kuna mchezo, mbao anataka kucheza. Hoja hii ina maufaa sana.

Msongamano huu unasababisha vifo kwa sababu ambulensi ikitokea hujui mgonjwa yuko mahututi kiasi gani. Wagonjwa wengi hupoteza uhai barabarani. Muda pia hupotezwa. Hakuna anayetamani awe mgonjwa na apitishwe kwa barabara yenye msongamano wa magari. Kaunti nyingi zimenunua ambulensi, na kwa hivyo, barabarani ni kelele ishara ya mgonjwa mahututi. Lakini kwa sababu ya msongamano wa magari, hatapishwa. Hoja hii itasaidia wagonjwa wasife njiani bila kufikishwa hospitalini. Msongamano barabarani huhelewesha wagonjwa na wanaweza wakaishiwa na hewa kwenye vifaa vya usaidizi.

Madam Spika wa Muda, kuna siku tumekaa barabarani hadi alfajiri. Ni kilomita chache lakini kulikuwa kunanyesha na pia msongamano wa magari. Ukifika nyumbani, una saa mbili pekee ya kulala. Wakati mwingi tuko barabarani hadi watoto wamesahau sura zetu kwa vile tukitoka alfajiri, tunarudi saa nne usiku. Tumepoteza muda mwingi kwa kusafiri barabarani. Wakati mwingine unatamani kutembea kwa mguu. Msongamano huu umetutesa sana. Kuna madereva ambao wana ugonjwa wa kisukari au wa high blood pressure na wanaweza kufia njiani. Ni bugdha ilioje ambayo imetukiri?

Lazima tuone wenzetu wanafanya namna gani. Tunapoondoka nchi za nje kusoma, lazima turudi na tuige wenzetu ambao wameendelea. Huu msongamano tutasuluhisha namna gani? Agunduaye nywele ndio mganga. Leo Sen. Kittony anataka tugundue zile nywele ili tusaidike kama Wakenya na tuwe kama nchi zingine. Tusipozingatia muda kwenye harakati zetu za kawaida, tutapata shida. Pia kama Wakenya, tuko na tabia ambayo sisi sote tunajipata barabarani kwa wakati mmoja. Kuna uwezekano kuwa tunawacha koti kazini na kutoka nje kwa ziara zetu ndiposa tunasababisha msongamano. Je, hili jinamizi tusalitibu vipi? Tukilitibu, tutapata manufaa kubwa na hata uchumi wetu utapanda. Wale walaghai ambao wanachelewa kazini watagunduliwa.

Msuada huu umekuja wakati mwafaka. Sisi Wakenya lazima tuwe na nidhamu tukingoja barabara au reli zitengenezwe. Ni kawaida yetu tukikosa, hatuna haja kuwaambia wenzetu samahani. Hatuwezi kuwalaumu kwa vile labda mtu ana mgonjwa ndani ya gari ama anasafiri kwa ndege na anachelewa.

Siku moja nilikuwa Likoni Ferry na kulikuwa na msongamano mkubwa lakini nilipita magari yote. Nilipofika mbele, nilipatana na polisi. Nilimtanganya kuwa tumbo linaniuma na kwamba naenda chooni. Tumekuwa waongo kwa sababu ya jam. Pale Likoni ferry watu wanakanyagana kila wakati. Si msongamano wa magari pekee, pia msongamano wa watu kwenye Likoni ferry kila wakati. Ukivuka kivuko cha ferry saa sita usiku, Ferry itakaa upande ule saa moja na irudi upande huu saa moja. Kwa huo wakati, utakuwa umelala na badala ukanyage breki, ukakanyaga acceleration na uingie kwa maji. Kuna kesi kama hizo. Hizi barabara zetu zinatufanya tuwe wanyonge, tupoteze uhai mapema na pia tupoteze biashara zetu. Saa zingine mtu anatamani afike kwake mapema na inabidi atoroke mapema. Barabara hizi zinatufanya tukose maono na tubaki tukitatizika.

Naunga mkono Hoja hii. Asante.

**The Temporary Speaker** (Sen. Ongoro): I now call upon the Mover to reply.

**Sen. Kittony:** Thank you Madam Temporary Speaker. I take this opportunity to reply and to thank all the Members who have supported this Motion. It has generated a lot of interest and contributions, given its gravity. A lot of contributions are about accidents, insecurity, scarcity of time and time wasted to reach offices and to take patients to hospitals.

It has been proposed by a number of speakers that a Bill should be drafted. We will do a research and a write up on the enactment of a Bill to help alleviate the traffic problems. The enacting of legislation will support a number of issues in its environs and the paralysis we are seeing in our cities.

Madam Temporary Speaker, we see quite a number of encouraging situations such as better traffic lights when we visit other cities of the world. The Nairobi County should adopt such modern systems of traffic lights. When you visit our neighbouring

county Rwanda, you will find that Kigali has better facilities on roads than we have. The challenge that we have is the policies that I have mentioned. I will take the challenge and bring up a Bill to address that. In the meantime, we should enact a legislation to allow the high-capacity public transport system to operate in the city. We should pass a law to ensure that all deliveries are done only at night but not during the day.

Transporting cabbages or potatoes from all over the county during the day causes congestion. Most of the drivers from upcountry do not know the city well. Therefore, they cause more problems. As it has been mentioned, even if fear is instilled into motorists, passengers and everybody else who uses our roads, the challenge will still remain. We should draft a Bill so that the Ministry of Transport and Infrastructure looks at these issues.

The Nairobi County government should also ensure that heavy commercial vehicles use bypasses. We should also have clear signs on roads because sometimes, you will find that motorists are not given early warnings. You may find that roads are being repaired or constructed and that creates a lot of time wasting.

Madam Temporary Speaker, this is a very important Motion. I am happy that enough support has been given to it. I can assure you that I will do more research and draft a Bill that will help in alleviating problems of transport and congestion, not only in Nairobi but also in other cities.

The other issue is about motorcycles which have become a menace. Motorcycles have caused very many accidents. I am a Member of the Committee on Health and when I visit any hospital, I find wards specially reserved for motorbike accidents. Why should we have such? We need to alleviate traffic problems. I thank those who have supported this Motion.

With those few remarks, I thank you.

**The Temporary Speaker** (Sen. Ongoro): We do not have the numbers. Therefore, I expected you to request that we put the Question another day.

**Sen. Kittony:** Madam Temporary Speaker, I want to read paragraph (2)

Paragraph (2): “The Speaker, may, on the request of a Senator, defer putting the question to the following day---“

**The Temporary Speaker** (Sen. Ongoro): Please, make reference to the particular Standing Order. Could you mention it?

**Sen. Kittony:** Madam Temporary Speaker, “the following day”. In which case, the Speaker shall, therefore, nominate a time at which the Question shall be put.

**The Temporary Speaker** (Sen. Ongoro): Order, Senator. For the sake of the record, I would like you to mention the specific Standing Order that you are making reference to. Just mention the specific Standing Order. For example, according to Standing Order No.---

**Sen. Kittony:** Madam Temporary Speaker, pursuant to Standing Order No.54 (3), I request that putting of the Question be deferred.

**The Temporary Speaker** (Sen. Ongoro): That is quite in order. Your request is granted. We will put the question on Wednesday, next week.

*(Putting of the question deferred)*

Next Order!

ESTABLISHMENT OF TASK FORCE TO SURVEY AND FIX  
BEACONS FOR ALL COUNTY BOUNDARIES

GIVEN the clear provisions of Article 6 (1) and the First Schedule which establishes the 47 counties of the Republic of Kenya;

CONSIDERING the clear provisions of the Districts and Provinces Act (Cap 105 A) of 1992 which specifically delineates the geographical boundaries of each county;

NOTING the provisions of Article 188 of the Constitution, which clearly state that the boundaries of a county may be altered only by a resolution of an Independent Commission set up for that purpose by Parliament and with the support of at least two-thirds members of the National Assembly and two-thirds of the county delegations in the Senate;

FURTHER NOTING that the boundaries in counties have not been surveyed and no beacons have been fixed;

CONCERNED that failure by the National Government to mark and fix the county boundaries has led to endless and sometimes violent conflicts, in which innocent Kenyans have been killed and their property destroyed, and is generally perpetuating poverty and underdevelopment in counties;

THIS HOUSE urges the Office of the President and the Ministry of Land, Housing and Urban Development to urgently establish a Task Force to survey, mark and fix beacons for all the county boundaries and to submit a report of the said Task Force to this House on or before 31st March, 2016.

**The Temporary Speaker** (Sen. Ongoro): Sen. Murungi is not in the House. Therefore, the Motion is also deferred.

*(Motion deferred)*

**ADJOURNMENT**

**The Temporary Speaker** (Sen. Ongoro): Hon. Senators, there being no other business, the Senate stands adjourned until Tuesday, 3<sup>rd</sup> November, 2015, at 2.30 p.m.

The Senate rose at 6.15 p.m.