

**PARLIAMENT OF KENYA****THE SENATE****THE HANSARD****Thursday, 24<sup>th</sup> November, 2016**

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

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

**PRAYER****PAPERS LAID****THE BPS 2017 AND ATTENDANT DOCUMENTS**

**Sen. (Prof.) Lonyangapuo:** Mr. Speaker, Sir, I beg to lay the following Papers on the Table of the Senate today, Thursday, 24<sup>th</sup> November, 2016:-

1. The Budget Policy Statement, 2017.
2. The Medium Term Debt Management Strategy for the financial years 2017/18 to 2019/2020.
3. The Draft County Allocation of Revenue Bill, 2017.
4. The Draft Division of Revenue Bill, 2017.

*(Sen. (Prof.) Lonyangapuo laid the documents on the Table)*

**NOTICE OF MOTION FOR ADJOURNMENT  
UNDER STANDING ORDER NO. 31**

ADJOURNMENT OF SENATE SITTINGS TO  
WEDNESDAY, 30<sup>TH</sup> NOVEMBER, 2016

**Sen. (Prof.) Lonyangapuo:** Mr. Speaker, Sir, on behalf of the Senate Majority Leader, I give notice of the following Motion:-

THAT, pursuant to Standing Order No.31, and notwithstanding the provision of Standing Order No.30(1), the Senate resolves to adjourn today, Thursday, 24<sup>th</sup> November, 2016 and resume sittings on Wednesday, 30<sup>th</sup> November, 2016, to allow the East African Legislative Assembly to hold its sittings in the Senate Chamber on Tuesday, 29<sup>th</sup> November, 2016.

**STATEMENTS**

ONGOING RECRUITMENT OF PERSONNEL BY  
THE MINISTRY OF HEALTH

**Sen. Wangari:** Mr. Speaker, Sir, pursuant to Standing Order No.45(2)(b), I rise to seek a Statement from the Chairperson of the Standing Committee on Health regarding the ongoing recruitment of health personnel by Ministry of Health for deployment to the counties.

In his Statement, the Chairperson should:-

(a) state the aspects of health services that have been devolved and the working mechanisms between the national and the county governments in relation to provision of health services;

(b) state whether it is the mandate of the national government to recruit staff for county governments;

(c) state whether the national Government consulted the county governments before commencing the recruitment process, as advertised in *The Star* Newspaper of 17<sup>th</sup> November, 2016;

(d) assure the Senate that the ongoing recruitment of the health personnel will be stopped until the national Government consults with the county governments and agree; and,

(e) explain the arrangement in place for deployment and remuneration of the officers who are being recruited.

Thank you, Mr. Speaker, Sir.

**The Speaker** (Hon. Ethuro): Sen. (Dr.) Machage, can you respond?

**Sen. (Dr.) Machage:** Mr. Speaker, Sir, I endeavor to reply to the Statement in two weeks time.

**Sen. Wangari:** Mr. Speaker, Sir, we are almost breaking for recess. Most importantly, these recruitment positions had a deadline. Will we not be time barred in two weeks time? I request the Chairperson to get this information in a week, so that we can debate it in this House. The information is available.

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

**Sen. Ndiema:** Mr. Speaker, Sir, with your permission, I would like to seek clarification on a matter related to what Sen. Wangari has asked.

**The Speaker** (Hon. Ethuro): Proceed.

**Sen. Ndiema:** Mr. Speaker, Sir, the Ministry of Health has been recruiting staff since 2013 for the county governments. We need to know whether the staff recruited so far since 2013 have been entered into any pension scheme. Staff cannot just be recruited without their terms of service being streamlined.

**Sen. (Dr.) Khalwale:** On a point of order, Mr. Speaker, Sir. I request that the Chairperson be compelled to bring the response quickly. This is because Kenyans no longer have confidence in the manner in which the Government is driving the Ministry of Health. The issue of recruitment speaks to the matter of opportunities. The health function is fully devolved, but when it comes to money, the Ministry of Health wants to control from Nairobi. Now, they want to control recruitment from Nairobi. If we go for the Christmas Recess without settling this matter, they will get away with it. We do not want them to recruit for governors. The governors should recruit according to their needs.

**The Speaker** (Hon. Ethuro): Sen. (Dr.) Machage, you have heard the views of the Members. I can confirm that I got a letter from the Council of Governors on the same. There are very legitimate concerns.

I direct that you bring a response on Tuesday next week.

**Sen. (Dr.) Machage:** Mr. Speaker, Sir, whereas I may not want to contest your order, I pray that you allow me to answer on Thursday next week. The question is lengthy. For the same reasons raised by Sen. (Dr.) Khalwale, I want to go into depth to get a comprehensive answer on this very serious issue.

**The Speaker** (Hon. Ethuro): Order, Sen. (Dr.) Machage! You claim that to get a comprehensive answer you need a lot of time. This is a straightforward matter. It is a matter of the functions between the two levels of government and information must be available. I still insist that you bring a comprehensive response by Tuesday.

CHANGE OF MEDICAL INSURANCE COVER FOR NPS STAFF FROM  
NHIF TO AAR INSURANCE KENYA

**Sen. (Prof.) Lonyangapuo:** Mr. Speaker, Sir, 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 change of medical insurance cover for National Police and Kenya Prisons Services from the National Hospital Insurance Fund (NHIF) to AAR Insurance Kenya.

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

- (a) When was the change from NHIF to AAR Insurance Kenya effected?
- (b) What necessitated the sudden change from NHIF to AAR Insurance cover?
- (c) Aware that no medical services are accorded to the officers and their families when they visit the newly opened AAR centres today, what action is being taken to ensure that officers and their families are accorded necessary medical services?
- (d) Is the Ministry of Interior and Coordination of National Government aware that there is disgruntlement amongst officers regarding the provision of AAR insurance services?
- (e) Could the NHIF insurance cover be restored and AAR insurance cover shelved forthwith?

**The Speaker** (Hon. Ethuro): The Chair.

**Sen. (Dr.) Machage:** Mr. Speaker, Sir, I seek that you allow me to answer on Thursday next week.

**The Speaker** (Hon. Ethuro): So ordered.

**Sen. Wangari:** On a point of order, Mr. Speaker, Sir. I thought the statement was directed to the Committee on National Security and Foreign Relations but not the Committee on Health according to Standing Order No.45(2)(b)?

**The Speaker** (Hon. Ethuro): Sen. (Prof.) Lonyangapuo, you may approach the Chair with a copy of the statement.

*(Sen. (Prof.) Lonyangapuo consulted with the Speaker)*

Order, Members, indeed, Sen. Wangari is right. The response should come from the Standing Committee on National Security and Foreign Relations.

**Sen. Adan:** Mr. Speaker, Sir, I am sorry I have just come in. However, I request to be given time until we come back after recess because we only have one week. I am foreseeing that we might not get the answer in the next coming week.

I thank you.

**The Speaker** (Hon. Ethuro): Why do you not just try so that you issue it by Thursday? You must also consider the issues being addressed.

**Sen. Adan:** Mr. Speaker, Sir, I will try my best.

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

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

**Sen. Karaba:** My point of order is with to regard an earlier ruling that was made sometime last month if not two weeks ago over a statement I had sought and it was as confusing as the one that has been given out by my friend, Sen. (Prof.) Lonyangapuo. It was about sewerage construction in Kirinyaga County. Since that time, I do not know what happened to it. It just disappeared because it has not been appearing on the Order Paper. What became of it?

**The Speaker** (Hon. Ethuro): Order, Senator. Please, approach the Clerks-at-the-Table because they may assist you.

*(Sen. Karaba consulted with the Clerks-at-the-Table)*

**The Speaker** (Hon. Ethuro): Let us now go to the statements to be issued.

#### STATUS OF THE EQUALIZATION FUND

For Statement (a), I cannot see the Member. Let us have Statement (b) issued because both the Chair and the Member are present.

#### AFFIRMATIVE ACTION ASSISTANCE TO PASTORALIST COMMUNITIES

**Sen. Adan:** Mr. Speaker, Sir, I promised to issue the Statement today but unfortunately, I do not have the answer. So, I request Sen. (Prof.) Lonyangapuo to give us more time. Hopefully, we will issue it before we go on recess.

**Sen. (Prof.) Lonyangapuo:** Mr. Speaker, Sir, the Chair told me that they are unable to get the response. You had directed the statement to be issued today and this is the third time it is not being issued. Could the Vice Chairperson make attempts by all means to live by what she has said so that they issue the Statement next week? Any day next week will be okay.

**The Speaker** (Hon. Ethuro): Order, Members. This Statement will appear on the Order Paper on Wednesday next week.

*(Statement deferred)*

Let us go to Statement (c) to be issued by the Chair of the Committee on Finance, Commerce and Budget, Sen. Billow.

## THE LEGAL AND REGULATORY PROCEDURES IN RECEIVERSHIP OF BANKS

**Sen. Billow:** Mr. Speaker, Sir, we have some response from the Treasury which after looking at it, I think is not adequate. They sent circulars to all the 47 counties seeking information regarding the money deposited in the bank accounts but not all the counties have responded. I have since talked to an official at Central Bank of Kenya and we have established the right office is the Deposit Protection Fund Board (DPFB). I talked to the Chief Executive Officer (CEO) and he has asked for this letter. He will give us all the information we need next week.

So, I seek the indulgence of the Member so that we reroute that letter to the DPFB where the receiver managers of the three banks are. They are the only ones who can access the information because the banks are under receivership.

**Sen. Ndiema:** Mr. Speaker, Sir, I sought this Statement in April this year. If indeed the counties were asked to provide information and they have not responded up to now, that shows the impunity that is developing in our counties and that must be checked. This is a serious matter. Even if he gets the answer from the institution that has been mentioned, I do not think they will answer adequately. They may tell us how many counties have deposited money but they may not answer the other points of clarification but counties still have to answer. So, it will be useful if we get it by next week before we go on recess but I appreciate---

**The Speaker** (Hon. Ethuro): Order, Sen. Ndiema.  
Let us listen to the Chair.

**Sen. Billow:** Mr. Speaker, Sir, it is true that the Treasury sent the letters to the counties on 7<sup>th</sup> June. Counties, as you will appreciate, do not normally insist that the two levels of Government are distinct and therefore do not like taking instructions from the national Government offices. Nonetheless, from my discussions with the CEO of the DPFB, they will provide most of the answers sought in the Statement except maybe the second question about whether there was authorization because authorization has to be at the country level. However, we will get substantial amount information. In fact, they will tell us how much money is in those three banks. We will get the information by next week before we go on recess.

**The Speaker** (Hon. Ethuro): So, the Statement will appear on the Order Paper on Wednesday next.

*(Statement deferred)*

Let us go to Statement (d) to be issued by the Chair of the Committee on National Security and Foreign Relations.

## MURDER OF MR.MUSA KOECH FROM NANDI COUNTY

**Sen. Adan:** Mr. Speaker, Sir, on 22<sup>nd</sup> September, 2016, Mr. Hillary Serende, an assistant chief in Shaviringa Location, Nandi County, informed the Cheptulu Police Patrol Base that a gang of criminals who were riding in a motorcycle, were terrorizing residents at---

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

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

**Sen. Sang:** Mr. Speaker, Sir, you will recall that yesterday, this Statement could not be issued because the response by the Chairperson had one or two pages missing and I have not been served with a copy of the same. I request that we proceed to the other statements so that those particular pages can be photocopied.

**The Speaker** (Hon. Ethuro): Chairs, you know you need to give Members a copy of the statement. So, do that as we move to the next statements and then we will come back to it in the second round.

*(Statement deferred)*

We are now on Statement (e).

DETENTION OF MR. PHILIP MBITHI MUTISO  
BY TANZANIAN AUTHORITIES

**Sen. Adan:** Mr. Speaker, Sir, I do not have the statement. I request Sen. Muthama to give us more time.

*(Sen. Haji entered the Chamber)*

**The Speaker** (Hon. Ethuro): Now that your Chair has walked in, maybe he has brought it.

*(Sen. Haji spoke off record)*

We will come back to it.

*(Statement deferred)*

**Sen. Muthama:** On a point of order, Mr. Speaker, Sir. Before we go to the next statement, I had communicated with the Chair himself and he had informed me that the Statement is not ready. We took a position that it should be---

**The Speaker** (Hon. Ethuro): Order, Sen. Muthama. That is a matter that you should raise when we get back. If you wanted to inform the Chair, you would still have done so privately.

UNLAWFUL ISSUANCE OF TITLE DEEDS IN  
THE MWEA TRUST LANDS

**Sen. Orengo:** Mr. Speaker, Sir, I would seek the indulgence of the Chair to seek more time as we have met over this issue and it turns out to be complicated and requiring us to summon various Cabinet Secretaries (CSs) including the Attorney-General (AG). We have done that but they have not appeared before us. We had a meeting today and there are court proceedings which are also relevant and we need to look into. The matter

is so serious that Members of the Committee who met almost full house this morning agreed on a programme of action next week.

So, I am seeking the House's indulgence that you give us another seven days with a possibility of reporting to the House on Thursday next week. The matter is a bit complex.

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

**Sen. Kivuti:** Mr. Speaker, Sir, I would like to seek your direction on this matter because although the Chair of the Joint Committee has not mentioned it, the matter of Mwea Trust Land is actively in court and it is coming for hearing on 6<sup>th</sup> December, 2016.

Mr. Speaker, Sir, I request that you give guidance as to whether we should continue investigating a matter which is before court.

**The Speaker** (Hon. Ethuro): Hon. Members, I will start by granting the Chair of this Joint Committee the request of seven days. So, the statement should appear on the Order Paper on Thursday next week. In response to Sen. Kivuti, you know the rules of *subjudice*. I will not be of any help to you now because it is just your word. You have not given me any documentation. More importantly, that is still a subject that the Committee and the Chair will still establish. The Chair has already alluded to the fact that they are also aware. So, you need to look onto that matter. I thought I heard him well and that is the position. It is handled in the Committee. So, you will make the necessary representations. Whatever verdict the Committee will come up with is what we will adopt.

The Committee has the same powers as the Chair at the Plenary to deal with those kinds of matters when they are brought before the Committee.

**Sen. Kivuti:** Mr. Speaker, Sir, while I thank you for not giving a direct ruling, nonetheless, I would like it to be on record that we all know what has been the precedence on a matter which is in court. I was bringing this to your attention because we are going to use resources of this country to deliberate on a matter that we may be competing with what the court may be doing. I still request that you give advice on what happens when a matter is coming for hearing a week from now and our Chair has given a declaration that they are going to investigate and report.

**The Speaker** (Hon. Ethuro): This matter is straight forward unless you have anything useful to add, Sen. Khaniri.

**Sen. Khaniri:** On a point of order, Mr. Speaker, Sir. Indeed, I do agree with you that this is a straight forward matter. The Standing Order that deals with matters *sub judice* is Standing Order No. 92(4) which I think you also alluded to. I do not understand why my Chairman, the Senator for Embu County, will still insist for the Speaker to make a pronouncement on this matter when he is guided by Standing Order No. 92 (4) which says a Senator alleging that a matter is *sub judice* shall provide evidence to show that paragraph (2) and (3) are applicable.

Secondly, this matter is handled by three committees as stated on the Order Paper. One of the committee that is handling this matter is a committee Chaired by Sen. Kivuti where I am a Member and his Vice Chair and we had extensive discussions this morning under the chairmanship of Sen. Adan and Sen. Orengo. My Chairman did not come to this session. He was there and left before the meeting started. We discussed this matter extensively, and I do not see why my Chairman should bring it to the Plenary when we are handling it in the Committee.

**The Speaker** (Hon. Ethuro): Sen. Kivuti, you cannot thank me for not giving an answer. I have an obligation to you and this House to give answers at the time they are requested or give them later but giving, I must give. So, I find it not in good faith for you to thank me for nothing. More fundamentally, I actually gave a ruling. I invite you to look for Standing Order No. 92 which has been read to you.

In fact, to add on what Sen. Khaniri, who is your Vice Chairman has said, for him to feel compelled to assist the Chair, it means it is important. A Senator alleging that a matter is *sub judice* shall provide evidence to show that paragraphs (2) and (3) are applicable. You have not provided any evidence to me. So, if you provided the evidence to the Chair, the more reason why you should accept my directive. I said the matter is being handled by a Committee of the Chair which I directed from this Chair. I cannot go back to remove the work that I have delegated to a Committee and yet they have reported progress. In fact, you are a Member of that Committee. More fundamentally in terms of saying resources may be used, you note in Standing Order No. 92 (5) that notwithstanding this Standing Order, the Speaker may allow reference to any matter before the Senate or a Committee.

Do I need to say more? I, therefore, rule Sen. Kivuti out of order. We will proceed. Before you raise your point of order, you better read the Standing Orders first.

Let us go back to Statement A. I can see the Chairperson, Committee on Finance, Commerce and Budget.

#### STATUS OF THE EQUALIZATION FUND

**Sen. Billow:** Mr. Speaker, Sir, this Statement is not available. I really tried. I have been told that before this sitting starts or after it starts, I will get it. I am still waiting. I have confirmed from National Treasury that it is ready, but it has not yet landed on the desk. So, I seek indulgence of the Member to wait. If it comes before we conclude, we will present it. However, I am waiting for it. It is on the way from the National Treasury.

**The Speaker** (Hon) Ethuro: Order, Senator Hargura! You can only say something at the end of this particular order. For now, let us all wait. Statements (B) and (C) have been disposed of. So, we go to Statement (D).

#### MURDER OF MR. MUSA KOECH FROM NANDI COUNTY

**Sen. Adan:** Mr. Speaker, Sir, I believe Sen. Sang has gotten a copy of the missing pages.

On 22<sup>nd</sup> September 2016, Mr. Hilary Serende, an Assistant Chief in Shaviringa Location, Nandi County, informed Cheptulu Police Patrol Base that a gang of criminals who were riding in a motorcycle were terrorizing residents of Shaviringa Stage. Two police officers responded to the distress call vide Occurrence Book No.16 of 22<sup>nd</sup> September, 2016 at Sigongo Stage. The officers came across four suspects who were riding on a motorcycle. Subsequently, the officers challenged the suspects to stop, but they defied the orders prompting the officers to shoot in the air.

Unfortunately, one of the pillion passengers Musa Koech was hit by a bullet and later succumbed to the injuries. One of the motorcyclists identified himself as Personal



No. 25016072 APC Eli Songok, deployed to Nandi East Sub County. During the interrogation, the motorcyclist escaped, but returned to the police station the following day where he recorded as statement.

Mr. Speaker, Sir, I wish to table a copy of the Occurrence Books from Cheptulu Police Post and Serem Police Station for the period between 22<sup>nd</sup> and 24<sup>th</sup> September, 2016, which is attached to the statement. (See attachment).

Subsequently, officers from the Serem Police Station---

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

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

**Sen. (Dr.)Khalwale:** Mr. Speaker, Sir, did you hear the Vice-Chairperson tell the House that the police shot in the air and then she subsequently tells us people were shot? Is she suggesting that the people were on a tree or were they flying like birds? What is she talking about? You are either talking facts in the House or you look for the answer to bring it when you are ready. Where were the people? Were they in the air?

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

Proceed, Sen.Adan.

**Sen. Adan:** Mr. Speaker, Sir, consequently, officers from Serem Police Station---

**The Speaker** (Hon) Ethuro): Order, Senator! You have been challenged to respond to something. Why do you not dispose of that one?

**Sen. Adan:** Mr. Speaker, Sir, I think that clarification can come later since I am just reading the statement as I was given. I will clarify that later.

**The Speaker** (Hon) Ethuro: Order. That is also a fair comment.

Proceed.

**Sen. Adan:** Thank you, Mr. Speaker, Sir. Consequently, officers from Serem Police Station visited the scene and confirmed that about 200 metres from the scene of shooting, Derick Munyi and his wife Sheila Muhonja had been attacked by men who escaped on a motorcycle. Mr. Derick sustained panga cuts and was robbed Kshs150 and a mobile phone of Techno make while one of the suspects attempted to rape the wife.

The Sabatia DCIO commenced investigations immediately vide Inquiry File No.2/2016. The security situation along Nandi-Vihiga is calm and the police officers have suspended patrols besides collaborating with the local communities through community policing committees.

My Ministry will not compensate the family of the deceased since it has no vote to cater for such expenses. The recommendations by Independent Policing Oversight Authority (IPOA) and implementation as directed by the Director of Public Prosecution (DPP), all cases of shooting are investigated and where the shooting is found to be unjustified appropriate action is taken upon advice by the DPP. The Government has no policy to perpetuate extra-judicial killings neither does it condone the same. According to the Constitution of 2010, every person has a right to a fair hearing and no one can be judged unheard. Further, a suspect according to the national laws is deemed to be innocent unless proven otherwise.

In this regard therefore, any officer who is suspected to be involved in murder related cases is always subjected to the full force of law. However, there are incidences where suspected criminals have died during exchange of fire with police officers. In such cases, an inquest file is open and investigations carried out and appropriate action accordingly.

I thank you.

**Sen. Sang:** Mr. Speaker, Sir, it is very tragic when Government officers mandated to protect the lives of Kenyans bring such kind of a statement that seems to give a narration of a video of some sort. We are talking about the loss of life.

The Vice-Chairperson or the Ministry is giving us stories that do not point to the issue. She has told us that on 22<sup>nd</sup> September, police officers received a distress call from the assistant chief that some thugs had attacked some village or some people. She then went ahead to say that the police officers met some suspects 200 metres from the house that was attacked. However, the person in this case was shot on 23<sup>rd</sup> while the distress call came on 22<sup>nd</sup>. They are telling us that they met the suspects only 200 metres from the family where they were attacked. Does she want to tell us these suspects were riding at a very slow speed that in one day they only covered 200 metres? We are getting very interesting things like what was asked by Sen. (Dr.) Khalwale.

They said that the police officers shot in the air and that Mr. Musa Koech sustained injuries from the bullet shot in the air and died. The information we have is that this person was shot by the police. We have to be serious and must avoid taking the lives of Kenyans so lightly. How can we be treated to some public relation exercise by the Ministry? They are not telling us how this person was shot yet we know that the police officer who shot him is a Mr. Ekirapa and nothing has been done to him. He is still serving in the same police station. Could the Chairperson clarify the following:

(a) Has the Government charged the cyclist and the two passengers for the alleged offence if indeed they were suspects?

One of the passengers is a police officer who is on duty right now. He is still working because he was not a suspect. They were innocent Kenyans who were going about their businesses and a trigger-happy police officer shot one of them.

(b) Could we be told of the investigation that has been done by the Government to establish if these people were indeed suspects and what is the outcome of these investigations is?

(c) What has the Government done with regard to this trigger-happy police officer known as Mr. Ekirapa?

(d) What does the policy say when it comes to assistance of the affected families?

I am asking this question because the police are saying that they have no budget, thus, they will never compensate families whose members are victims of the police extra-judicial killing.

**Sen. Billow:** Mr. Speaker, Sir, the answer given by the Vice Chairperson is very disappointing. I am shocked that the Chairperson of the Committee on National Security and Foreign Relations who has at one time raised concerns about extra-judicial killings in her own county can present a Statement without taking trouble to go through it. She said at the beginning if you heard clearly, that she was reading what she had been given. We have a duty to examine and critique the documents that we have been given so as to see if they make sense.

The number of people officially reported to have been killed by the police officers as from January up to now is close to 3,000. This is in excess of the number of people killed by thugs, hijackers and murderers. Could the Chairperson explain why files are opened and closed yet nobody is convicted in regard to this specific case? Could she

explain what actions have been taken to date? It is more than three months since this Statement was requested. She should save this House from the generic answers that she keeps bringing here on matters of security.

**Sen. Muthama:** Thank you, Mr. Speaker, Sir. The killing of innocent Kenyans in this country is becoming unbearable. When I listened to the Statement from the Vice Chairperson, I realized that those who killed have not been arrested and that there is no compensation to be paid to the families of the victims. If it is true that an innocent Kenyan can be killed by the law enforcers, the killers are not arrested and no compensation is paid, what will happen to our lives in this country?

Recently, there was commotion of people trying to grab bananas when the Deputy President was leaving Kisii after his visit and a Standard Seven girl was killed. We are yet to hear of the arrest of the officers who committed that crime. The Vice Chairperson has previously complained about killings that take place where she comes from as Sen. Billow has said. If she presents such Statements, what will happen if killings happen in her county? We have to defend Kenyans.

**Sen. Wako:** Mr. Speaker, Sir, indeed the answer that we have received on the incident in Nandi County is inadequate and full of contradictions. I toured my county last weekend where an incident happened where the police used live bullets that led to loss of life. When we inquired, we realized that the members of the public were annoyed with the police officers. This is because two security guards had been killed at a market place and the police officers went to investigate with dogs. The dogs sniffed the trail that led to the house of a particular Administration Police (AP) officer.

That particular AP was very notorious in soliciting money, blackmailing people and threatening them yet nothing happened to him. The public got annoyed and they went to demand for his arrest. Live bullets were used and lives were lost. I had to visit about five homes---

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

**Sen. Wako:** Mr. Speaker, Sir, I am relating this incident because of the consistent use of live bullets by the police. How can a bullet shot in the air kill somebody? There is a lot of contradiction there. How can a Ministry say that they will not compensate the families because they do not have money? The Government cannot say that they will not compensate because they do not have money when a legitimate case arises like in this one, money has to be found. That is how things were done when I was the Attorney-General of the Republic of Kenya. I am surprised that a Ministry can now say that they are not going to compensate not because they are not liable yet in a sense, they admit that they are liable, but the Ministry has no money---

**The Speaker** (Hon. Ethuro): Order, Sen. Wako. You have made enough clarifications. Let us go to the next statement---

**Sen. Wako:** Mr. Speaker, Sir, allow me to say one thing. We have had numerous instances of the use of live bullets throughout the country just as it happened in Nandi County because the attitude of the police is similar to the answer we have received. I would plead with the Committee led by a former Provincial Commissioner, to summon the Cabinet Secretary in charge internal security so that he can explain the Government policy on the use of guns and generally on what they are doing.

**The Speaker** (Hon. Ethuro): Order, Sen. Wako. That is enough. We must make progress.

**Sen. (Dr.) Khalwale:** Mr. Speaker, Sir, on 20<sup>th</sup> July, 2016, the Executive Director of Human Rights Watch, Mr. Kenneth Roy, stated that extrajudicial killings in this country are sanctioned by top Government organs. He urged the President to acknowledge that this was the problem. Could the Chairperson tell us why the President has not responded either in the affirmative or otherwise so that we know whether top Government organs do or do not sanction extrajudicial killings in this country?

**Sen. Cheruiyot:** Mr. Speaker, Sir, we owe it to the people of this Republic, and more so the people who elected us to this House to prosecute all matters that are brought to this House with the seriousness it deserves. Unfortunately, this response does not meet that threshold. The family of the late Mr. Musa Koech do not have any other place in this country where they can seek solace and perhaps find some retribution for the injustice meted on one of their kin other than through the voice of their Senator. When someone provides a statement stating that a bullet was shot in the air and it killed somebody, it shows that person treats this House with contempt. It is time we found ways of getting back to such people. This is a House of serious men and women.

**The Speaker** (Hon. Ethuro): Order, Senator! What is your clarification?

**Sen. Cheruiyot:** Mr. Speaker, Sir, what is the position of the Government on this officer who has been named by the Senator for Nandi County and continues to serve in the same police post? Do they consider that he has committed no crime even after members of the public positively identified him as the one who shot the late Mr. Musa Koech?

**Sen. (Dr.) Machage:** On a point of information, Mr. Speaker, Sir.

**Sen. Cheruiyot:** Please, inform me, senior.

**The Speaker** (Hon. Ethuro): What is your point of information, Sen. (Dr.) Machage?

**Sen. (Dr.) Machage:** Mr. Speaker, Sir, I would like to inform Sen. Cheruiyot that shooting in the air could also mean shooting downwards, upwards and straight. That is it. So, we should have a clarification on what direction the firearm was directed.

**The Speaker** (Hon. Ethuro): Order, Sen. (Dr.) Machage! Some of this information is extremely harmful. You do not just volunteer information that is not useful. All our conversations, discussion and readings are based on general usages; the normal meaning. You cannot create another meaning unless you identify that particular context. Everybody in the world knows what shooting in the air means. It cannot be upwards.

Proceed, Sen. (Prof.) Lonyangapuo.

**Sen. (Prof.) Lonyangapuo:** Mr. Speaker, Sir, I join my colleagues in seeking clarification. I wonder how the Ministry is responding when they say suspects were on a motorbike. First, the Constitution of Kenya does not allow killing. Is it not logical that you can immobilize a motorbike than to kill the rider?

Secondly, if you are on a motorbike, you cannot fight back. In addition, I have never heard where a senior officer takes moral responsibility and resigns because of a mess occasioned by junior officers. To us, it will be like a drama, if someone does so; as it is in the first world, where someone quickly resigns and gives way for investigation. We need to know whether there is evidence of people who have taken moral responsibility as a result of lives that have been lost due to carelessness.

**Sen. Karaba:** Mr. Speaker, Sir, it may sound as if this is an isolated case concerning Nandi County, which is not true. It happens anywhere in this Republic. We need you to give us a ruling regarding this statement. The same has happened even in Kirinyaga, where a policeman strangled a taxi man to death. Then the best thing they can do is to transfer the officer to another station. Another example is where an officer kills a person with gunfire yet this is not even talked about. People fear to go to the police station to report this matter because they can also be arrested. Therefore, we need to be given the way forward regarding trigger-happy police officers.

**Sen. Sang:** Mr. Speaker, Sir, the Vice Chairperson told us that during interrogation, the motorcyclist escaped but returned to the police station the following day to record a statement. At the point of interrogation, that means if you are already determined that this is the suspect. How does the motorcyclist run away and then appear tomorrow again to record a statement? This is why this looks more like a movie.

Secondly, the officers---

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

**Sen. Sang:** Mr. Speaker, Sir, the statement also reads that after this interrogation, the officers from Serem Police Station visited the scene and confirmed that 200 metres from the scene of the shooting, that a Mr. Derrick Munyori and his wife Ms. Sheila Muhonja had been attacked by men who escaped in a motorbike. The question is; you have these people you referred to as suspects; were these two families given the opportunity to identify the suspects who attacked them?

Was there an identification parade to establish the suspects? Did this family also report the matter to a police station? If they were attacked with a panga and the wife was raped, they should have reported this incident. Was this reported?

**Sen. Adan:** Mr. Speaker, Sir, I understand the frustrations of Members of Parliament and members of the public. Let me confirm to the House that this statement was prepared on 31<sup>st</sup> October, 2016. I am sure there must have been a lot of development after that, which is not in this response that was given then. So, I will clarify most of the issues raised here especially concerning whether the officers were arrested or not, especially Mr. Ekirapa as mentioned by the Senator for Nandi.

Secondly, let me respond to the issue of extra-judicial killings. I believe the law is very clear in terms of what should happen in case of this. Action should be taken against those responsible by following due process of the law.

**The Speaker** (Hon. Ethuro): Order, Senator! What are you proposing? To respond today or---

**Sen. Adan:** Mr. Speaker, Sir, I will give full information on the issue raised by hon. Senators, especially on compensation. There is a legal procedure that needs to be followed where the families of the affected individuals are supposed to file a case against the Government. Then, compensation is awarded through the court process. The issue of identification of the suspect and all other information will be provided before we go on recess next week.

**The Speaker** (Hon. Ethuro): Vice-Chairperson, you are directed to come with a completely new response by Wednesday, next week taking into account all the issues that Members have raised. More importantly, you have raised the issues of extra-judicial killings. You read a bit of it in the Statement although nobody allowed you to do so.

However, in this particular instance, the House is asking that you demonstrate your commitment to the law.

Next Statement.

I thought that there was an agreement and I had asked Sen. Muthama to inform me rather than inform the Plenary?

Proceed, Sen. Muthama.

DETENTION OF MR. PHILIP MBITHI MUTISO  
BY TANZANIAN AUTHORITIES

**Sen. Muthama:** Mr. Speaker, Sir, when I stood, I wanted to inform you that the Vice-Chairperson communicated to me and gave me a copy of the letter that was written to say that the answer would come in two weeks' time. Looking at the urgency of the matter, my kind request is that it should be here at least by next week. If you look at the contents of the issues that I have raised and what has happened, the person and his family are suffering and the whole society is in total confusion.

**Sen. Adan:** Mr. Speaker, Sir, the letter from the Ministry is requesting for two weeks. However, I have promised Sen. Muthama that I will issue the Statement before we go on recess.

**The Speaker** (Hon. Ethuro): On what basis are they asking for two weeks? I am sure when the Statement was sought, they must have been two weeks. So, it means an additional two weeks. Let us have it on Wednesday, next week.

Could we move on to Statement (g)? Sen. (Prof.) Lonyangapuo, take the Floor on behalf of the Senate Majority Leader.

BUSINESS FOR THE WEEK COMMENCING  
TUESDAY, 29<sup>TH</sup> NOVEMBER, 2016

**Sen. (Prof.) Lonyangapuo:** Mr. Speaker, Sir, pursuant to the provisions of Standing Order No.45, this is to present the Senate business for the coming week.

I wish to draw the attention of the Senate to the proposed Motion in the Order Paper to adjourn today until Wednesday, 30<sup>th</sup> November, 2016 to allow the East African Legislative Assembly (EALA) which is currently holding its sittings in Nairobi, to utilise the Senate Chamber on Tuesday, 29<sup>th</sup> November, 2016 when they will be addressed by His Excellency the President of the Republic of Kenya. Consequently, the Senate Business Committee (SBC) will meet on Wednesday, 30<sup>th</sup> November, 2016, at 12.30 p.m. to schedule the business of the Senate for the week. Subject to further direction by SBC, 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 and Committee of the Whole.

In addition, the Senate will consider the following Bills at the Committee of the Whole:-

- (1) The Physical Planning Bill (National Assembly Bill No.10 of 2015)
- (2) The Assumption of Office of Governor Bill (Senate Bill No.10 of 2016)
- (3) The National Hospital Insurance Fund (Amendment) Bill (Senate Bill No.9 of 2015)
- (4) Persons With Disabilities (Amendment) Bill (National Assembly Bill No.23 of 2013)

The Senate will consider any other business scheduled by the SBC. On Thursday, 1<sup>st</sup> December, 2016, the Senate will consider Bills at the Second Reading, deliberate on Motions and any other business scheduled by SBC.

According to the Senate Calendar, Thursday, 1<sup>st</sup> December, 2016, will be the last sitting day for this Fourth Session. I, therefore, urge you to avail yourselves to dispose of all the pending business before the Christmas break.

I thank you and hereby lay the Statement on the Table on behalf of the Senate Majority Leader, Sen. (Prof.) Kindiki.

*(Sen. (Prof.) Lonyangapuo laid the document on the Table)*

**Sen. (Dr.) Khalwale:** On a point of order, Mr. Speaker, Sir. In that communication, Sen. (Prof.) Lonyangapuo has pointed to a Motion in regard to a request for us to leave this Chamber to EALA. He has also referred to two Bills from the National Assembly. Could you confirm that he has rescinded his position which he stated yesterday; that is, such a request from the Government and the National Assembly will not be considered until after the *kamukunji*?

**The Speaker** (Hon. Ethuro): Order, Sen. (Dr.) Khalwale! That is not what the Senate Majority Leader said yesterday. That matter arose yesterday along those lines and I clarified that if that decision were to be made, it would be made in *kamukunji* meeting. That decision is yet to be made and so it cannot be enforced.

More importantly, this is a Statement about the business for next week. We cannot anticipate the outcome. He is only informing the House what business is there for the House to transact. So, we will deal with specific matters, including Motions when that particular issue comes up.

COLLAPSE OF A SECTION OF BUKHUNGU  
STADIUM IN KAKAMEGA COUNTY

**Sen. (Dr.) Khalwale:** On a point of order, Mr. Speaker, Sir. Before you move away from Statements, you will recall my Statement on the collapse of a section of Bukhungu Stadium was due on Tuesday. You advised that it comes yesterday, but unfortunately, because of the way business was transacted, you were not given an opportunity to indicate when it should come. So, it is now hanging.

I am requesting that you direct it comes on Tuesday next week.

**The Speaker** (Hon. Ethuro): It is so directed.

*(Statement deferred)*

MISERY OF RESIDENTS OF KASARANI IN MALEWA  
WEST WARD, GILGIL CONSTITUENCY

**Sen. Wangari:** Mr. Speaker, Sir, I had also asked for a Statement a while ago from the Committee on Legal Affairs and Human Rights on the issue of the confusion of boundaries in Malewa West, specifically Kasarani in Gilgil Constituency. It has not come and we are anticipating that very soon, there will be recruitment either of National Youth

Service (NYS), Kenya Defence Forces (KDF) or Kenya Police Service (KPS) and the issues will still recur. We need to get an update from the Committee on that issue.

**The Speaker** (Hon. Ethuro): First, we need to know when the statement was due.

**Sen. Sang:** Mr. Speaker, Sir, the Statement was due two weeks ago. You realise that we have not received the response. However, in terms of progress, the statement sought by Sen. Wangari, though directed to our Committee, the matter also involves the Committee on National Security and Foreign Relations because of the component of provincial administration boundaries. That has to be sorted out because the conflict here is between a ward, locations and districts. We have been advised that they are doing internal consultations so that we get a comprehensive response addressing that issue from both the legal aspect from the Attorney-General's Office and the Ministry of Interior and Coordination of National Government. I request that you grant us one more week as we push.

**The Speaker** (Hon. Ethuro): Let us have the Statement on the Order Paper next Thursday.

**Sen. Karaba:** Mr. Speaker, Sir, next week will be congested and we have either Wednesday or Thursday. Yesterday, if you can remember, there was a ruling that there will be a *kamukunji* on Tuesday. It is reported in today's *The Daily Nation* and *The Standard* newspapers that we will have a *kamukunji* to discuss the problem of oversight facilitation. I do not know whether the *kamukunji* will be held on the same day that there will be a sitting of the East Africa Legislative Assembly (EALA). Will it be held in another place or suspended forever and our fate remain unknown?

**The Speaker** (Hon. Ethuro): Order, Members. There will be a Communication to Members with regard to that matter. So, the *kamukunji* will be held.

That is the end of the Statements. However, Sen. Karaba had raised a matter on the Statement that he sought. Which Committee was it?

**Sen. Karaba:** Mr. Speaker, Sir, it is not known because the matter has never been resolved. I do not know which Ministry is handling sewerage construction in the counties.

*(The Speaker consulted with the Clerk-at-the-Table)*

**The Speaker** (Hon. Ethuro): I am told that it is with the Committee on Lands and Natural Resources. Let the Statement be on the Order Paper on Wednesday, next week.

*(Statement Deferred)*

## COMMUNICATION FROM THE CHAIR

### PROCESSING OF THE BUDGET POLICY STATEMENT 2017

Hon. Senators, before we proceed to the next order, I have a Communication on the processing of the Budget Policy Statement 2017.

As you may be aware, Section 25 of the Public Finance and Management Act requires the National Treasury to prepare and submit the Budget Policy Statement to



Parliament by the 15<sup>th</sup> February, each year. You may also note that the General Elections are scheduled to be held in August, 2017 and as such, the electioneering period will have an impact on the 2017/2018 budget process.

Arising from this, the National Treasury after consultation with stakeholders, including relevant Committees of Parliament, has now submitted the Budget Policy Statement together with other related documents to Parliament for consideration. For our case, these were laid on the Table this afternoon.

In this regard, by letter Ref. No.Con.MOF83/02TY.5/14 dated 22<sup>nd</sup> November, 2016 and received in the Office of the Clerk on 23<sup>rd</sup> November, 2016, the Principal Secretary for the National Treasury submitted the following documents for consideration and approval by Parliament:-

- (a) The Budget Policy Statement, 2017;
- (b) The Medium Term Debt Management Strategy, 2017;
- (c) The Draft Division of Revenue Bill, 2017; and,
- (d) The Draft County Allocation of Revenue Bill, 2017.

Consequently, at Order No.5 in today's Order Paper, I will allow the Chairperson of the Standing Committee on Finance, Commerce and Budget to formally table these documents.

Hon. Senators, the Budget Policy Statement is an important tool as it sets out the broad strategic priorities and policy goals that will guide the national Government and county governments in preparing their budgets both for the following financial year and over the medium term. It contains, among other things:-

- (i) an assessment of the current state of the economy and the financial outlook over the medium term, including macro-economic forecasts;
- (ii) the financial outlook with respect to Government revenues, expenditures and borrowing for the next financial year and over the medium term;
- (iii) the proposed expenditure limits for the national Government, including those of Parliament and the Judiciary and indicative transfers to county governments; and,
- (iv) the fiscal responsibility principles and financial objectives over the medium term, including limits on total annual debt.

In a nutshell, it means that any proposal that Senators have regarding the Division of Revenue Bill and the County Allocation of Revenue Bill, including funds for conditional allocations to the counties, should be canvassed and forwarded to the National Treasury for possible factoring in the Budget Policy Statement, failure to which it will be difficult for changes to be accommodated later on.

Hon. Senators, Section 25 (7) of the Public Finance Management Act provides as follows-

“Parliament shall, not later than fourteen days after the Budget Policy Statement is submitted to Parliament, table and discuss a report containing its recommendations and pass a resolution to adopt it with or without amendments.”

Based on the importance of the Budget Policy Statement and the above timelines, I direct that the Budget Policy Statement be considered by all Standing Committees, each concentrating on its mandate. The Standing Committees will then forward their recommendations to the Standing Committee on Finance, Commerce and Budget for consolidation and tabling of the Report, not later than Wednesday, 30<sup>th</sup> November, 2016.

The Senate should then debate and approve the same report by Thursday, 1<sup>st</sup> December, 2016.

Please, note that, pursuant to Section 25 (8) of the Public Finance Management Act, the Cabinet Secretary of the National Treasury is expected to take into account resolutions passed by Parliament in finalising the budget for the relevant Financial Year.

Hon. Senators, I, therefore, urge you all to prioritise the scrutiny of the Budget Policy Statement, taking into consideration our most important function of safeguarding devolution.

I thank you.

**The Speaker** (Hon. Ethuro): Order, Members, if you look at the Order Paper, we have divisions on Order Nos.8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18 and 19.

We will defer those orders until the requisite numbers are attained.

## BILLS

### *Second Readings*

THE COUNTY STATISTICS BILL (SENATE BILL NO. 11 OF 2016)

THE TREATY MAKING AND RATIFICATION (AMENDMENT) BILL  
(SENATE BILL NO. 5 OF 2016)

THE WAREHOUSE RECEIPTS SYSTEM BILL  
(NATIONAL ASSEMBLY BILL NO.12 OF 2015)

THE IMPEACHMENT PROCEDURE BILL  
(SENATE BILL NO.8 OF 2016)

THE CONSTITUTION OF KENYA (AMENDMENT) BILL  
(NATIONAL ASSEMBLY BILL NO.26 OF 2013)

THE CONSTITUTION OF KENYA (AMENDMENT) BILL  
(NATIONAL ASSEMBLY BILL NO.2 OF 2015)

THE CONSTITUTION OF KENYA (AMENDMENT) BILL  
(SENATE BILL NO. 16 OF 2015)

*(Bills deferred)*

## COMMITTEE OF THE WHOLE

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

THE PERSONS WITH DISABILITIES (AMENDMENT) BILL

(SENATE BILL NO.13 OF 2015)

THE BASIC EDUCATION (AMENDMENT) BILL  
(NATIONAL ASSEMBLY BILL NO.35 OF 2014)

THE NATIONAL CEREALS AND PRODUCE BOARD  
(AMENDMENT)BILL (SENATE BILL NO.15 OF 2015)

THE COUNTY STATUTORY INSTRUMENTS BILL  
(SENATE BILL NO.10 OF 2015)

*(Committee of the Whole deferred)*

### COMMUNICATION FROM THE CHAIR

PROCEDURE FOR CONSIDERATION OF AMENDMENTS TO  
THE STATUTES LAW (MISCELLANEOUS AMENDMENTS)  
BILL (SENATE BILL NO.6 OF 2014)

**The Speaker** (Hon. Ethuro): Hon. Senators, I have a Communication on the procedure to be followed in considering amendments by the National Assembly to the Statute Law (Miscellaneous Amendments) Bill (Senate Bill No.6 of 2014).

Hon. Senators, before we move to the next Order, which is a Motion by the Chairperson of the Standing Committee on Legal Affairs and Human Rights, on the consideration of the National Assembly amendments to the Statute Law (Miscellaneous Amendments) Bill (Senate Bill No.6 of 2014), I wish to inform the Senate that this is the first time that we will consider amendments by the National Assembly to a Senate Bill.

Hon. Senators, I, therefore, wish to guide the House as follows:-

(i) The Motion to be moved by the Chairperson is a Motion for the Senate to resolve whether it will consider or not consider the National Assembly amendments to the Statute Law Miscellaneous (Amendments) Bill (Senate Bill No.6 of 2014), pursuant to Standing Order No.151.

(ii)The debate on the Motion will be limited to the issue of to consider or not to consider the said amendments.

(iii) In the event the Motion is negatived, we shall not proceed to a Committee of the Whole as shown in Order No.20. I will refer the Bill to the Mediation Committee to be established under Article 113 of the Constitution.

(iv) If the Motion is passed, the Senate will proceed to a Committee of the Whole as indicated in Order No.20 to consider and vote on the same amendments, pursuant to Standing Order No.152.

(v) If the Committee of the Whole agrees to all the amendments by the National Assembly, I will then forward the Bill as amended to His Excellency the President for assent. However, if the said amendments are rejected, I will refer the Bill to a Mediation Committee to be established under Article 113 of the Constitution.

Hon. Senators, it is my hope that my communication has clarified the procedure to be followed under Order No.20.

I thank you.

Yes, Chairperson, Standing Committee on Legal Affairs and Human Rights.

**Sen. Wako:** Mr. Speaker, Sir, I have asked my Vice-chair to move the Motion because of your directive about the County Public Accounts and Investments Committee.

**The Speaker** (Hon. Ethuro): Order! That was not in contest. Apparently, your Vice-Chairperson does not seem to have those instructions, or else he would have acted unless you are sacking him on the Floor.

Proceed, Sen. Sang.

### MOTION

CONSIDERATION OF THE NATIONAL ASSEMBLY AMENDMENTS  
TO THE STATUTE LAW (MISCELLANEOUS AMENDMENTS)  
BILL (SENATE BILL NO.6 OF 2014)

**Sen. Sang:** Mr. Speaker, Sir, I beg to move the following Motion:

THAT, the Amendments by the National Assembly to the Statute Law Miscellaneous (Amendment) Bill (Senate Bill No.6 of 2014) be now considered.

Thank you for that communication that you have given. The Statute Law Miscellaneous (Amendment) Bill (Senate Bill No.6 of 2014) was a Bill that we conceived as the Legal Affairs and Human Rights Committee.

The purpose of this Bill was to carry out amendments to the various legislations that were passed in the last Parliament. Those legislations did not give room for devolution. We, as a Senate, did not give input as we were not there by then. The Bills were passed without due regard to the Constitution with regard to the two levels of Government. Therefore, we isolated a number of legislations, proposed amendments to try and ensure that county governments have a role in each of those functions with regard to the provisions of the Constitution on the mandate and functions of county governments' *vis-à-vis* the functions and mandate of the national Government.

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

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

One of the legislation being amended under the Statute Law Miscellaneous (Amendment) Bill (Senate Bill No.6 of 2014) is the Cancer Prevention and Control Act. Whereas we know that the Constitution has devolved health, if you look at the Cancer Prevention and Control Act, there was no mention of county governments or the Council of Governors or the Senate or devolution as it were. Therefore, we proposed several amendments to this legislation to ensure that we mainstream the participation and the role of county governments in cancer prevention as provided for in that law.

The other legislation that we are amending under this Bill is the National Transport and Safety Authority Act.

Mr. Deputy Speaker Sir, you know that public transport is a function that has been devolved. If you look at the National Transport and Safety Authority Act as it was enacted then, there was no mention of county governments, the Council of Governors and

this House. That is why we did several amendments to this legislation with the intention of ensuring that we entrench and mainstream the participation and contribution of counties or county governments and to ensure that devolution is recognized and appreciated within this Act.

The other Act is the National Authority for the Campaign against Alcohol and Drug Abuse (NACADA). Under the Constitution, control of drugs is a function given to county governments and yet this Act had no reference to county government and devolution.

This is the same for the sports law which we know is a devolved function. However, the Sports Act had no role for county governments and did not appreciate the existence of devolution as provided for under the County Governments Act.

It is the same for the Pyrethrum Act. Agriculture is a devolved function. We have an Act of Parliament called the Pyrethrum Act with no reference to devolution and county governments. We, therefore, proposed several amendments.

The Prevention, Protection and Assistance of Internally Displaced Persons and Affected Communities Act is one of the Acts that was passed by the last Parliament. Again, it has no reference to devolution.

The final one is the National Honours Act. You will appreciate that now we have two levels of Government yet the Act made no reference to devolution, county governments and their leadership. We, as a Committee on Legal Affairs and Human Rights, proposed to have this Bill. This is a Bill that was drafted in 2014 and sent to them the same year. They have been with it since then. It is only this year, they considered it.

If you look at the amendments that have been made by the National Assembly, it is the exact reverse of what we are trying to address. While we tried to bring in the contribution of counties and the position of county governments into these legislations, they have gone ahead to reverse the same. Therefore, in essence, we are being taken back to where we came from. This is one of the challenges that we have faced in this House. Our colleagues in the National Assembly do not seem to appreciate that we now live in a new constitutional dispensation with two levels of government and two Chambers.

According to the Communication you gave in this House today, we, as a Committee, have two approaches available to us. One is for us to move this Motion, adopt it, and go back to the amendments in the Committee of the Whole. They have undone the same amendments and reverted back to the original Bill that we had drafted. If this Bill is taken to the National Assembly, they will reject it because it is the exact position that we had when we drafted it. We will then go into mediation, which is a long route. Our position as the Committee on Legal Affairs and Human Rights is to reject this Motion so that we can proceed to mediation.

Mr. Deputy Speaker, Sir, we made proposals to the Statute Law (Miscellaneous Amendment) Bill to ensure that county governments and devolution are entrenched within the various legislations. However, when the National Assembly got hold of the Bill, they reversed the same. This is a cat and mouse game. Therefore, whereas the responsibility of the Mover is to move that the Motion be adopted, unfortunately, based on the decision that we have made as a Committee, we urge Members of this House to defeat this Motion and reject the proposed amendments by the National Assembly in totality, so that we can proceed to mediation and get an agreed version. At that point, we

will make our point and make them understand why we introduced these amendments to the various legislations.

Mr. Deputy Speaker, Sir, I will, therefore, not dig into the details. I ask this House to reject this Motion, so that we can proceed straightaway to mediation and address those issues.

With those remarks, I request Sen. (Dr.) Khalwale to second this Motion towards rejecting it.

*(Laughter)*

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. Sang, this is the first time I have heard anybody moving a Motion and asking for it to be defeated. It is an unusual thing in the Senate.

**Sen. Sang:** Mr. Deputy Speaker, Sir, if you allow me, I can change my mind in terms of who will second the Motion.

**The Deputy Speaker** (Sen. Kembi-Gitura): We have not gotten there yet. Did you move a Motion?

**Sen. Sang:** Yes, Mr. Deputy Speaker, Sir. I moved the Motion that the amendments to the National Assembly Statute Law (Miscellaneous Amendments) Bill (Senate Bill No. 6 of 2014) be now considered.

I now ask Sen. (Dr.) Khalwale to second.

**The Deputy Speaker** (Sen. Kembi-Gitura): I still find it unusual.

Proceed, Sen. (Dr.) Khalwale.

**Sen. (Dr.) Khalwale:** Mr. Deputy Speaker, Sir, I rise to speak to the Motion, under Order No.20, in support of the request by the Mover of the Motion that this House rejects the consideration----

**The Deputy Speaker** (Sen. Kembi-Gitura): Order, Sen. (Dr.) Khalwale. Are you not seconding the Motion?

**Sen. (Dr.) Khalwale:** Yes, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. Kembi-Gitura): Go ahead and second the Motion.

**Sen. (Dr.) Khalwale:** Mr. Deputy Speaker, Sir, that is exactly what I am doing.

**Sen. Billow:** On a point of order, Mr. Deputy Speaker, Sir. It is obvious that the Vice Chairperson and his Secunder do not want this Motion to succeed, in which case, they have an option but to withdraw it. The way it is now, it simply says 'the Motion be considered.' After the Motion is seconded, the Vice Chairperson can propose an amendment that the Motion be rejected. However, the way it is now there is contradiction as to what you are saying.

**The Deputy Speaker** (Sen. Kembi-Gitura): This is a House of records. This Motion belongs to Sen. Sang because he was the one who moved it as the Vice Chairperson of the Committee. He can only move it in the terms that are stated. He cannot express any view contrary to the Motion that he has moved. Since that is now *fanctus officio*; it is now the duty of Sen. (Dr.) Khalwale to second the Motion. You can express your opinion on it, but you will second the Motion as drawn.

**Sen. (Dr.) Khalwale:** Mr. Deputy Speaker, Sir, I rise to second the Motion that the amendments by the National Assembly to the Statute Law (Miscellaneous Amendments) Bill (Senate Bill No. 6 of 2014) be now considered.

In seconding the Motion, I urge the Senate to note and consider the concerns that in all amendments, the National Assembly has made provisions to leave out matters of devolution, that is, the county governments, Council of Governors (CoGs) and this House. Therefore, in that consideration, I urge this House to reject the amendments *in toto*.

Mr. Deputy Speaker, Sir, I beg to second.

*(Question Proposed)*

**Sen. Wako:** Mr. Deputy Speaker, Sir, I asked my Vice Chairperson to move the Motion because of the order that was given by the Speaker to the County Public Accounts and Investments Committee (CPAIC), that we continue to sit until we have a report for this House before we adjourn. I stayed on a bit because I noticed that Sen. Mutula Kilonzo Jnr. is not here to support the Vice Chairperson.

Mr. Deputy Speaker, Sir, you may recall that the first Statue Law (Miscellaneous Amendments) Bill was passed by the National Assembly and brought to this House without any consideration whatsoever on the role of the county governments in the various Bills pursuant to the functions that have been devolved to the county governments. The various Committees were tasked to look at the relevant legislations, so that we could find ways of incorporating the role of county governments in those legislations. It was quite an exercise.

Those amendments came to the Committee on Legal Affairs and Human Rights and we incorporated them. We accepted nearly all the legislations, except the ones that were rejected, which are now before this House. Therefore, it is of no use for us to consider each clause because we had already rejected them. It will be a waste of time for the Senate.

Therefore, we ask this House to reject consideration of this Motion. That is why the Speaker gave an elaborate procedure.

**The Deputy Speaker** (Sen. Kembi-Gitura): Do you want me to consider anything?

**Sen. Wako:** Mr. Deputy Speaker, Sir, the Speaker said that this is the first time we are considering this type of matter and he outlined the procedure. He said that if we reject the consideration, the Bill will go to mediation. Otherwise, if we consider it, it will mean that we go clause by clause. After we have amended it, it will go back to the National Assembly and we will not have achieved any purpose.

Mr. Deputy Speaker, Sir, in other words, in order to save time on a Bill that we have already considered, we should not bother going item by item. We should reject it. That is what the Speaker directed us. When I saw it myself, I said that this is a very unusual procedure. However, the Speaker, said, yes, it is unusual, it is a factor in considering these things and it is the way he wants it to go.

Therefore, I move that this House rejects the consideration of the Report.

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. Sang, what is your point of order?

**Sen. Sang:** On a point of order, Mr. Deputy Speaker, Sir. Is Sen. Wako in order to champion the rejection of his own Motion?

**The Deputy Speaker** (Sen. Kembi-Gitura): Order, Sen. Sang! You cannot bite hot and cold. I raised the issue with you. You were quite comfortable with doing what you did.

**Sen. (Dr.) Machage:** Mr. Deputy Speaker, Sir, I listened keenly to the Mover of this Motion and heard his recommendations. I again listened to the Seconder of the Motion and the submissions by the former Attorney General, Sen. Wako on matters as pertains to this Motion. Would I be in order that we do not spend more time of this House on discussing a Motion that derogates, abuses and insults the status of this House, it insubordinates matters as pertains to county government system and negates the Constitution as put under annex (4) of the Constitution on areas that are supposed to be delegated to county government system as a matter of devolution, would I, therefore, be in order to request that you call upon the Mover to reply?

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. (Dr.) Machage, in fact if you had not stood on a point of order, there was nobody else requesting the Floor. Therefore, I was going to ask the Mover to reply if he has anything to say in reply.

**Sen. Sang:** Mr. Deputy Speaker, Sir, I thank my colleagues for those wonderful and insightful contributions to this Motion.

I therefore, beg to move.

**The Deputy Speaker** (Sen. Kembi-Gitura): Hon. Senators, this is not a Motion requiring a vote by counties. Therefore, I shall now put the Question.

*(Question put and negatived)*

Hon. Senators, in line with the direction that was given by the Speaker earlier on, that would then mean that Order No.21 on the Order Paper will not be considered. The Message will be sent to the National Assembly as necessary to convey the decision of the Senate on the consideration that it has had on Motion listed as No.20 on the Order Paper.

Hon. Senators, we have to alter the Order Paper a little. We will stand down order Nos.22, 23, 24, 25 and 26 on the Order Paper.

## **BILL**

### *Second Reading*

THE CYBER SECURITY AND PROTECTION BILL  
(SENATE BILL NO. 12 OF 2016)

*(Bill deferred)*

## **MOTIONS**

INSTALLATION OF CCTV CAMERAS IN ALL POLICE  
STATIONS AND POLICE POSTS

THAT, CONCERNED about the numerous reports of the arbitrary arrests of innocent people by the police;



FURTHER CONCERNED that a large number of those arrested are allegedly locked up in police cells without being recorded either in the Occurrence Book or elsewhere;

DEEPLY CONCERNED that some of the arrested people disappear without a trace and that many who are subsequently traced are found dead away from where they were known to have been locked up;

ALARMED by the recent incident where three young men were locked up for hours at Syokimau Police Post without any record indicating they had been at the police post, only for them to be found days later, in another area far from the police post, having been brutally killed;

APPRECIATING that the Closed Circuit Television (CCTV) system installed by the Government in Nairobi has helped a lot in criminal investigations;

NOW THEREFORE the Senate calls upon the National Government to-

- a. install CCTV cameras in all police stations and police posts in order to record each and every person going in and out of the station;
- b. have the CCTV system designed in such a way that it is capable of capturing the Occurrence Book entries every twelve hours; and
- c. ensure the CCTV system is connected to a central depository in order to minimize chances of subsequent tampering.

#### COUNTRYWIDE AUDIT ON THE DISTRIBUTION OF TEACHERS IN ALL PUBLIC SCHOOLS

WHEREAS Article 43(1)(f) and 53(1)(b) of the Constitution guarantees every citizen a right to education and every child a right to free and compulsory basic education, respectively;

NOTING that the Teachers Service Commission is mandated to handle employment, deployment, remuneration and discipline of teachers in public schools in Kenya;

CONCERNED that there are great disparities in the distribution of teachers in public schools across the country leading to oversupply in some schools and undersupply in others and ultimately leading to major teacher shortage especially in rural and marginalized areas;

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

FURTHER CONCERNED that the statistics on the number and distribution of teachers in public schools is not readily available;

NOW THEREFORE, the Senate directs the Ministry of Education, Science and Technology to conduct a countrywide audit on the distribution of teachers in all public schools indicating the requisite establishment per school and the corresponding number of teachers who

are in-post and further that the Ministry submits a report to the House on the matter within ninety (90) days.

INQUIRY INTO THE IMPLEMENTATION OF THE NATIONAL  
SPECIAL NEEDS EDUCATION POLICY FRAMEWORK, 2009

AWARE that Article 43 (1) (f) of the Constitution of Kenya provides that every person has the right to education and that Article 53 (1) (b) of the Constitution provides that every child has the right to free and compulsory basic education;

COGNIZANT that Article 54 (1) (b) of the Constitution provides that a person with any disability is entitled to access educational institutions and facilities for persons with disabilities that are integrated into society to the extent compatible with the interests of the person;

RECOGNIZING that education in Kenya is a shared function of both the county and national governments;

CONCERNED that while significant gains have been made under the Free Education Programme introduced in the year 2003, access and participation of children with special needs is generally low across the country and their needs have not been specifically addressed;

NOW THEREFORE the Senate directs the Standing Committee on Education to inquire into the performance of the Ministry of Education, Science and Technology in the implementation of the policy statements and strategies made in the National Special Needs Education Policy Framework, 2009 and report back to the Senate within three months.

NOTING OF REPORT ON EALA REPORTS AND RESOLUTIONS  
PURSUANT TO STANDING ORDER NO.235

THAT, the Senate notes the Report of the Standing Committee on National Security and Foreign Relations on the EALA Reports and Resolutions pursuant to standing order 235 laid on the Table of the House on Tuesday, 19th April, 2016.

*(Motions deferred)*

**MOTION OF ADJOURNMENT  
UNDER STANDING ORDER NO.31**

ADJOURNMENT OF SENATE SITTINGS TO  
WEDNESDAY, 30<sup>TH</sup> NOVEMBER, 2016

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. Billow, is that your Motion?  
Sen. (Dr.) Machage, what is your point of order? Before you speak, I would like to say that in my own oversight, I should have stood down Order No.22.

**Sen. (Dr.) Machage:** Mr. Deputy Speaker, Sir, I know it is your prerogative over what I am just about to say; that the Mover for Motion No.27 on the Order Paper is either not in the House or has decided not to move it. Would I therefore, be in order to request that we do not just stand down this Motion, but drop it?

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. (Dr.) Machage, you cannot give direction to the Speaker on this or any other issue. The best thing is that you leave it to me to deal with it the best way I know how.

Sen. (Dr.) Khalwale, what is your point of order?

**Sen. (Dr.) Khalwale:** Mr. Deputy Speaker, Sir, I am glad that you have directed that you will deal with it the best way you know. However, in keeping with the tradition of this House, allow me to express my anger on how this Motion found itself on the Order Paper. Imagine if this Motion is on the Order Paper---

**The Deputy Speaker** (Sen. Kembi-Gitura): Order, Sen. (Dr.) Khalwale! There is no Motion on the Floor of the House.

**Sen. (Dr.) Khalwale:** Mr. Deputy Speaker, Sir, I said on the Order Paper.

**The Deputy Speaker** (Sen. Kembi-Gitura): Order, Sen. (Dr.) Khalwale! There is nothing for you to vent your anger on. Not right now.

#### ADJOURNMENT

**The Deputy Speaker** (Sen. Kembi-Gitura): Order, Senators! There appears to be nobody to move Order No.27 which was the only business left for the House to deal with. Therefore, there being no other business, the Senate stands adjourned until Tuesday, 29<sup>th</sup> November, 2016, at 2:30 p.m.

The Senate rose at 4.30 p.m.