

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Wednesday, 2nd March, 2016

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

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

PRAYERS

NOTICE OF MOTION

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

Sen. Mositet: Mr. Speaker, Sir, I beg to give the following notice of Motion to the Department of Education:-

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.

The Speaker (Hon. Ethuro): Next Order.

STATEMENTS

Let us begin with the Statement listed as “a” to be responded to by the Chairperson of the Committee on Lands and Natural Resources.

STATUS OF POSSESSION OF LAND TITLE DEEDS
BY PUBLIC SCHOOLS IN KENYA

Sen. Obure: Mr. Speaker, Sir, the Ministry gave an undertaking that they would give us a written response in two weeks which expire today. So far, we have not received that Statement. We hope that it will be delivered before the end of the day.

The Speaker (Hon. Ethuro): What do you have to say, Sen. Khaniri?

Sen. Khaniri: Mr. Speaker, Sir, being a Member of that Committee, I am privy to the correspondence between the Ministry and the Committee. The Ministry said that they needed two extra weeks from 18th February, 2016. Indeed, the two weeks expire today. Therefore, I request that the Statement comes next week.

The Speaker (Hon. Ethuro): It is so ordered. Let us have the statement one week from today.

(Statement deferred)

However, Sen. Obure, it is not enough to tell us you have not received the Statement. You also need to explain to the House why you have not received it.

Sen. Obure: Mr. Speaker, Sir, we have asked our clerk to follow up and ensure the Statement is obtained.

Sen. (Dr.) Machage: On a point of order, Mr. Speaker, Sir. The Constitution under Article 125 clearly prescribes to the Committee what they should do in case of no response from the Ministry. We would have expected them to tell this House that they have summoned the Ministry officials to bring the answer.

Sen. Obure: Mr. Speaker, Sir, we are aware of those provisions. We will not shy away from invoking them at the right time. However, I think it is premature at the moment, given the fact that the Ministry gave this undertaking. The letter is right here. We are confident that we will be able to obtain the Statement from the Ministry.

The Speaker (Hon. Ethuro): Sen. (Dr.) Machage, some of these provisions should not be invoked in the first instance. They are supposed to be used quite sparingly.

Let us move on to the next Statement. Let us have a response from the Chairperson of the Sessional Committee on Devolved Government, Sen. (Prof.) Lesan.

ROLE OF THE SENATE AND ITS ENGAGEMENT WITH
COUNTY GOVERNMENTS

Sen. (Prof.) Lesan: Mr. Speaker, Sir, I note that the Senator who requested for this Statement is not in the House. This is a question that can be answered straightaway by the Chairperson of the Committee on Devolved Government. If the Senator was here, I would attempt to answer the question.

The Speaker (Hon. Ethuro): Are you ready?

Sen. (Prof.) Lesan: Yes, Mr. Speaker, Sir. I can attempt to answer the question.

The Speaker (Hon. Ethuro): Okay, let us defer it until the Member is available.

Sen. Kagwe: On a point of order, Mr. Speaker, Sir. This question as it stands is for the Committee Chair to issue a Statement on the role of the Senate and its engagement with county governments. I thought this is something clearly defined in the Constitution. I would like an explanation as to what the Statement is really asking.

The Speaker (Hon. Ethuro): The matter has been deferred. Wait for it to come up and then you can raise that matter.

(Statement deferred)

Let us have a response by the Chairperson of the Committee on Education on the Statement sought by Sen. (Dr.) Zani.

DEVELOPMENT AND REVIEW OF CURRICULA AND SUPPORT MATERIALS
FOR EARLY CHILDHOOD, PRE-PRIMARY, PRIMARY
AND SECONDARY EDUCATION

Sen. Karaba: Mr. Speaker, Sir, it appears Sen. (Dr.) Zani is not here. We are still waiting for the answer from the Ministry.

The Speaker (Hon. Ethuro): Do you have the answer?

Sen. Karaba: No, the answer is expected--- I am happy that she is not here.

(Laughter)

The Speaker (Hon. Ethuro): The moment you say the Member is not here, you are already imputing---

Sen. Karaba: Mr. Speaker, Sir, we are happy that we are not going to be interrogated at this time because the answer is not with us. The answer will be brought next week.

The Speaker (Hon. Ethuro): When do you think the answer will be ready?

Sen. Karaba: Next week, Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): Let us have the Statement one week from today.

(Statement deferred)

Let us move on to the next Statement to be responded to by the Chairperson, Finance, Commerce and Budget.

DELAY BY THE NATIONAL TREASURY IN DISBURSEMENT
OF FUNDS TO COUNTY GOVERNMENTS

Sen. Billow: Mr. Speaker, Sir, this Statement is not ready. The National Treasury has requested for a week. I want to appeal that we have this Statement next Thursday.

The Speaker (Hon. Ethuro): Sen. Obure, did you hear the Chairperson?

Sen. Obure: Yes, Mr. Speaker, Sir. However, he has not explained why they are not ready, given the fact that they gave an undertaking to provide the response today.

Sen. Billow: Mr. Speaker, Sir, there is no other reason except that the National Treasury's argument is that in the last couple of weeks they have been extremely busy with issues of the budget. They have requested for a week. Hopefully, this will be the last extension they will seek.

The Speaker (Hon. Ethuro): How many weeks had we previously given the National Treasury? I would imagine the two weeks would be sufficient. But Chairperson, why would you be satisfied with that explanation because this should be a routine matter, it should not be affected by the exigencies of the moment? There is a law in place which determines the frequency of disbursements. It is either done or not done. Anyway, you have one more week.

(Statement deferred)

Let us move on to the Statement listed as "e" on the Order Paper.

STATUS OF MOGONGA-KENYENYA-NYANSEMBE ROAD

Is the Chairperson of the Committee on Roads and Transport here? Let us leave it pending.

STATUS OF THE YOUTH ENTERPRISE DEVELOPMENT FUND

Let us move on to the Statement listed as "f" to be responded to by the Chairperson of the Committee on Labour and Social Welfare. Where are the Chairpersons?

(Sen. Karaba stood up in his place)

Order, I meant the relevant Chairs!

(Laughter)

Sen. Karaba, communication is always within a context. It was not a generic call out for the chairpersons.

Sen. Nabwala, what do you have to say?

Sen. Nabwala: Mr. Speaker, Sir, my Statement was very urgent as it was on the issue of the Youth Enterprise Development Fund (YEDF). We have seen in the media today that there are more funds which have been stolen from the National Youth Service (NYS). This is money meant for the youth. We need a response as early as yesterday.

The Speaker (Hon. Ethuro): Order, Senator. How does the NYS and the YEDF connect?

Sen. Nabwala: Mr. Speaker, Sir, large sums of money have been stolen from both the YEDF and the NYS. We have not seen any recoveries or anybody---

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

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, this matter is so urgent and important that, for the interest of this House, none other than the President himself was quoted on 411 this afternoon disowning the assertion by the CEO of Youth Enterprise Development Fund that they were desk mates in school. The same CEO, who yesterday the “Lower House” found that he could not account for Kshs155 million.

I do not impute any improper motives on him, but the chairperson could be taking cover because the matter is very hot. The youth of this country want to know how an individual, Bruce Odhiambo, could be the sole signatory to an account where Kshs400 million was misappropriated.

It is very serious given that this is Jubilee, the first Government in the history of Africa to preside over position three for Kenya in terms of rating in corruption. We find it very difficult to trust them.

The Speaker (Hon. Ethuro): Order, Sen. (Dr.) Khalwale!

(Laughter)

If the matter was really that serious and urgent, you would be looking for your chairperson. Is the Vice Chairperson or any other Member who sits in that committee here? Well, we will revisit that towards the end.

Statement listed as “g” on the Order Paper. The Standing Committee on Legal Affairs and Human Rights, Sen. Kilonzo Jnr.!

ONGOING MASS VOTER REGISTRATION EXERCISE

Sen. Mutula Kilonzo Jnr: Mr. Speaker, Sir, I have just been given the Statement. Allow me to go through it and give it towards the end.

The Speaker (Hon. Ethuro): Next Statement. Chairperson Finance, Commerce and Budget!

EXPENDITURE OF MONEY SET ASIDE TO MITIGATE THE EFFECTS OF EL-NINO RAINS ACROSS THE COUNTRY IN 2015/16

Sen. Billow: Mr. Speaker, Sir, I seek the indulgence of Sen. Khaniri. This Statement is not ready. I know it is urgent. However, the *El Nino* funds are disbursed through very many Ministries. They have to compile the figures. The implementing Ministry is also a different Ministry. They have requested for a week. Therefore, next Thursday, I should be able to give an answer on this.

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, it is becoming clear that the Jubilee Coalition does not want accountability. This is a straight forward question. If *El Nino* rains came at all in certain parts of the country, it ended long time ago. This is a question of going to extract records. This is supposed to be an e-Government. Why should it take months to give us this information? We insist that the Chairperson gives us the answer tomorrow.

Sen. Billow: Mr. Speaker, Sir, I have also personally been trying to find out how much money has gone to my county for *El Niño*. Therefore, I have been tossed from one Ministry to another before this question came. It will take a bit of time for them to

respond comprehensively. The Ministry that was disbursing and the ones which were implementing are different. If it is infrastructure that was damaged, they were sending money to the Ministry Roads and Infrastructure. They are compiling the figures. A week is not too much to ask for.

Sen. Okong'o: Mr. Speaker, Sir, the chairperson is telling this House that because his county is involved and he has not gotten the information, he cannot execute his mandate as the Chairperson of that committee. This is a substantive issue. You need to rule him completely out of order. Does it mean that if he does not receive the one for his county, he cannot give an explanation as to why they are delaying a very simple and straight forward matter?

The Speaker (Hon. Ethuro): Order, Sen. Okong'o! You are deliberately misrepresenting the chairperson. I agree with you though. The fact that he was also looking for information for his own county, he should have made sure the response is given sooner rather than later. He is equally affected. Therefore, it is not out of malice that he is not getting the report. He is equally eager. That is the understanding.

However, I also wonder; if the Government spent money, there must be a framework of expenditure including a framework of reporting so that at any one time an officer or an entity, basically, can have information, especially for a digital Government.

Sen. (Dr.) Machage: Mr. Speaker, Sir, monies that were handled by one particular Ministry that oversees over National Youth Service (NYS), the Youth Enterprise Development Fund and now the *El Nino*, has a history that we cannot ignore. Can we get just one assurance that this is not another third group of money that this Ministry has misappropriated?

Sen. Billow: Mr. Speaker, Sir, the hon, Senator is economical with the truth. The question here is the Ministry of National Treasury. It is not this other Ministry that was dealing with these other things. The National Treasury has no history of dealing with those things that he has mentioned.

(Laughter)

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, will the Speaker allow the chairperson to get away with the Statement of those things he is talking about?

Sen. (Dr.) Machage was very specific. He never talked about "things". He talked about loss of funds meant for NYS under Anne Waiguru, loss of funds at Youth Enterprise Development Fund under Anne Waiguru and now possible loss of *El Nino* funds under Anne Waiguru. Therefore, those are not issues.

The Speaker (Hon. Ethuro): Order, Sen. (Dr.) Khalwale! While the Chair is sympathetic to your issue and the one of Sen. (Dr.) Machage, I am afraid on the basis of your specific request whether I can let the chairperson get away with it, yes, I will.

On this understanding; he has demonstrated that the NYS and Youth Enterprise Development Fund are going to a particular Ministry. The *El Nino* fund is going to a different Ministry. He does not have to be explicit. He wants a response to the information that you already have.

Chairperson Committee on Health!

Sen. (Dr.) Kuti: Mr. Speaker, Sir, I stand to respond to a Statement sought by Sen. Khaniri. In view of the fact that Sen. Khaniri has sought another Statement, seeing

that there were few answers today, could the Speaker allow me to give both Statements now that he is also available and I am here. That is on the Zika virus and the lease of medical equipment for counties.

The Speaker (Hon. Ethuro): I will allow you to do so. Start with the one on Zika virus.

ZIKA VIRUS EMERGENCY

Sen. (Dr.) Kuti: Thank you, Mr. Speaker, Sir. This is the response to the Zika virus outbreak. I will give a brief background; that this is a viral disease transmitted through a mosquito bite. The mosquito is called *Aedes aegypti*. It is different from the one that causes malaria. The virus was identified in 1947 in monkeys in a forest in Uganda while the human disease was identified in 1952 in Uganda and the United Republic of Tanzania.

Zika virus outbreaks were reported for the first time from the Pacific in 2007 and 2013 in Yap and French Polynesia, respectively. The geographical spread of Zika virus has since been steadily increasing. Zika virus disease generally causes mild illness. The symptoms include fever, skin rashes, conjunctivitis, that is redness of the eye, muscle and joint pain, malaise, headache which normally lasts about two to seven days.

There is no specific treatment for Zika virus disease. However, symptoms normally are mild and can be treated with common pain killers and fever medicines, rest and drinking plenty of water. People usually do not get sick enough to go to hospital and they rarely die of Zika.

In response to the specific questions sought by Sen. Khaniri, I will explain the danger posed to the Kenyan public by the virus. On the potential complications of Zika viruses, there are no large outbreaks. Therefore, Zika virus cases were not recorded before 2007. Little is known currently about the complications. However, following Zika virus disease outbreak in Brazil and French Polynesia in 2015 and 2014, respectively, neurological complications have been reported.

During the first outbreak of Zika from 2013 to 2014 in French Polynesia which also coincided with an ongoing outbreak of dengue fever, national health authorities reported an unusual increase in Guillain-Barre Syndrome. A similar observation was also made in 2015 in the context of the first Zika outbreak in Brazil.

Guillain-Barre Syndrome is a condition in which the body's immune system attacks parts of the nervous system. It can be caused by a number of viruses and can affect people of any age. What exactly triggers the symptoms is not known. The main symptoms include muscular weakness and tingling in the arms and legs. Severe complications can occur if the respiratory muscles are affected. This is not very specific to Zika virus.

In 2015, local health authorities in Brazil also observed an increase in babies born with Microcephaly at the same time of an outbreak of Zika virus. Microcephaly is a situation where babies are born with a very small head and the brain development is markedly reduced. Although these cases are partially temporarily associated with Zika outbreaks, more robust investigation and research is needed to better understand a causal link in other countries. Therefore, it is not very well known. These are just speculative research findings.

On the question of the potential risk of the outbreak in Kenya, an emergency committee was convened by the Director-General of World Health Organization (WHO) under International Health Regulation (2005) on 1st February, 2016. Following the advice of the committee, the WHO Director-General declared the recent cluster of Microcephaly babies and other analogical disorders reported in Brazil to be a public health emergency of international concern.

The World Health Organisation ((WHO) conducted a risk assessment and has classified Kenya as being a medium risk country for Zika Virus epidemic. This risk assessment is based on several parameters like hazard exposure, which includes issues like availability of mosquitoes, urbanization and population density. There are also other factors like vulnerability, where seeking treatment for fever and Government effectiveness are all in doubt. There is also lack of coping capacity, where integrated disease surveillance, response implementation and laboratory capacities are in all doubt. These are the risk factors for Kenya.

The other question was on measures taken by the Ministry of Health to monitor and control effects of the virus in the country, given the fact that the virus mutates. The measures are as follows:

(a) Issuing of alerts, fact-finding sheets, surveillance, distribution of mosquito nets and conducting public awareness;

(b) The Kenya Medical Research Institute (KEMRI) centre for Viral Research has been tested to have a laboratory capacity to test for the virus and confirm the disease should it happen in Kenya;

(c) establishment of an emergency operations centre; and,

(d) setting up of rapid response teams.

On the plans undertaken to ensure the protection of Kenyan athletes who will participate in Brazil Olympic Games in August, 2016, the medical team accompanying Team Kenya has been trained on the prevention, early detection and management of Zika Virus. The athletes have also been sensitized and the team supplied with materials, which include, fact-sheets, brochures and frequently asked questions on Zika Virus. Updates on Zika Virus have also been shared with the National Olympics Committee.

Mr. Speaker, Sir, it is a long and technical answer; I hope the Member understood it.

Sen. Khaniri: Mr. Speaker, Sir, allow me to thank the Chairman for the elaborate answer. I must say that for the first time I am satisfied with the response given by the Chairman, probably due to the heavy medical terminologies that he used to confuse some of us who have not been to the School of Medicine. Although he has given an assurance that the disease does not kill, we all know that it has devastating effects. We have seen children being born with small heads and many other negative effects.

I am contented with the measures that they are taking to monitor the development of this disease. I am also contented and satisfied with the measures being taken to ensure that---

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

The Speaker (Hon. Ethuro): Sen. Omondi, who do you want to inform?

Sen. Omondi: Mr. Speaker, Sir, I want to inform Sen. Khaniri.

Sen. Khaniri: Mr. Speaker, Sir, if you allow me, I will take the information.

The Speaker (Hon. Ethuro): Sen. Khaniri, finish interrogating that Statement first. I do not think there is any issue to be informed on.

Sen. Khaniri: Mr. Speaker, Sir, I was saying that I am contented with the measures that are being taken to ensure that our athletes travelling to Brazil are safe. However, I want them to intensify the awareness programme because people do not seem to know much about this new phenomenon of Zika Virus. The Ministry must ensure that they intensify awareness to the public.

If this was happening in Africa, there would already be travel advisory for people travelling to Africa, but since it is not Africa, nobody is saying anything and we are preparing our athletes to go for the games. Africa is unfairly mistreated on the international arena. It is time we stood up and made a lot of noise against the injustices that are being done to our continent.

I am satisfied with the measures and hope that they mean what they have stated in the response.

Sen. Omondi: Mr. Speaker, Sir, I want to inform Sen. Khaniri that that virus causes disability. Therefore, it can affect any family in this country, including yours.

The Speaker (Hon. Ethuro): That is important information.

Sen. “(Dr.)” Billow.

(Laughter)

Sen. Billow: Mr. Speaker, Sir, could the Chairperson advise the House how many countries outside Brazil, particularly in Africa or Europe, have identified any case of Zika Virus, so that the focus of the surveillance is not only on people coming from those countries in Latin America, but also those other countries?

The Speaker (Hon. Ethuro): Sen. (Dr.) Machage, actually my mind was on you, but I wanted to give balance. That is how Sen. Billow became “doctor.”

Sen. (Dr.) Machage: Thank you, Mr. Speaker, Sir. The vector *Aedes aegypti* is also known for transmission of *Wuchereria bancrofti*, which is otherwise known as *filariasis*, which is the main cause of elephantiasis at the coast and other parts of Kenya.

Has the Ministry researched to ensure that we do not have Zika virus also being transmitted at the coast with the same vector? Secondly, we know that it has been documented that this virus is also transmitted sexually. Has any action been taken at our airports and other points of entry into this country to screen all Brazilians on their seropositivity for the Zika virus?

The Senate Minority Leader (Sen. Wetangula): Mr. Speaker, Sir, listening to Sen. (Dr.) Machage reminds me of a book called “*The Imaginary Invalid*” by Moliere, where doctors bite their tongues searching for difficult words to confuse people.

I want to follow up the point that Sen. (Dr.) Machage has mentioned. When there was Ebola outbreak, there were active screening facilities set up at the airport. Contrary to what the Senator has asked, the screening was not limited to people coming from West Africa.

It was extended to everybody because you could be a non-Brazilian but coming to Kenya through Brazil or having been in contact with Brazilians. What efforts or measures is the Government taking to set up screening facilities not just at the airports but at all international entry points so that any detection that is necessary can be done to entrants into our country?

The problem with such a virus, even as it is less dangerous than malaria which kills millions of children in Africa, is due to the fact that its effects on the economy and other factors of life in a country can be very devastating. Could he assure us that the Government is going to set up such screening facilities as urgently as possible so that we can engage everybody coming in?

Sen. Okong'o: Mr. Speaker, Sir, I need a brief clarification on the issues of athletes traveling to Brazil. The last time I checked, I was told that athletes from Kenya were not allowed to travel, is it true? If they are travelling, could the Chair give us sufficient and medical assurance whether the athletes can be safe from the virus?

Sen. Hargura: Mr. Speaker, Sir, I am following up on information given to us by Sen. (Dr.) Machage, that this is sexually transmitted. Are the athletes aware of that?

The Speaker (Hon. Ethuro): Who is Temporary 1?

Sen. Haji, when you are using a temporary card you must always come to register.

Sen. Haji: Okay, Mr. Speaker, Sir. When the Chairman was responding, he said that the Zika Virus can either be treated with painkillers or water. Is he aware I went to Mombasa and I felt a bit unwell and I was advised that if you have Zika virus, you drink pawpaw leaves. There is that theory also. Is he aware?

(Loud consultations)

You can call me "Professor" Haji.

Sen. Hassan: On a point of order, Mr. Speaker, Sir. Is Sen. Haji in order to give innuendos that in Mombasa, the county I represent, he was told to boil pawpaw leaves and drink it as treatment for Zika? Is he confirming that he is suffering from Zika?

Sen. Haji: Mr. Speaker, Sir, I had the symptoms that the Chairman has explained. I was feeling feverish, I had body pain and when I was told to take that, I was cured.

The Speaker (Hon. Ethuro): Sen. Haji, you want to tell the whole world, that a Senator of your stature and standing does not seek medical advice?

Sen. Haji: Mr. Speaker, Sir, when elections are near, I think many of us in this House, excluding me go to witchdoctors.

(Laughter)

Sen. (Dr.) Kuti: Mr. Speaker, Sir, while surveillance is ongoing, the main areas of focus are Brazil and Polynesia although in my earlier statement, we have heard that the origin and isolation of the virus was in the 1940s in Uganda and Tanzania. The surveillance is still going on. About the association of the mosquito, it has been noted and we know that the former coast province has this kind of mosquito that causes Filariasis and Zika. I cannot confirm that any extra special surveillance is ongoing in the coast. The Committee needs to find out.

The issue of semen, the association of Zika---

The Speaker (Hon. Ethuro): Mr. Chairman, since the originator of the Statement was satisfied, just summarize the other issues.

Sen. (Dr.) Kuti: Mr. Speaker, Sir, one important issue that I wanted to mention is the border checks as raised by Sen. Wetangula. For Ebola, temperature checks were

required, this one requires a laboratory and KEMRI is the only institution with that capacity. That is why it is not possible to put up a facility at every border point. About the athletes, the awareness has been created and they will have brochures on how the disease can be contracted.

With your permission, I would like to go to the next Statement which is on the leasing of equipment sought by Sen. Khaniri.

The Speaker (Hon. Ethuro): Can we do it tomorrow because we need to proceed with the other items on the Order Paper. That also includes, Sen. Mutula Kilonzo Jnr. and others.

Hon. Senators, we would like to take a vote on Order No.9 then we shall go back to Order No.8, which we were supposed to conclude yesterday but we were unable to. The rest will follow the normal sequence.

Before we do so, let me make two brief Communications.

MESSAGE FROM THE NATIONAL ASSEMBLY

CONCURRENCE ON THE SENATE RESOLUTION TO APPOINT SEN. BILLOW AS A MEMBER OF THE PAN AFRICAN PARLIAMENT

Hon. Senators, I wish to report to the Senate that pursuant to Standing Order No.40(3) and (4) I have received the following message from the Speaker of the National Assembly regarding the concurrence by the National Assembly with the Senate's resolution to appoint Sen. Billow as a Member of the Pan African Parliament. I quote:-

“Pursuant to the provisions of Standing Order No.41 of the National Assembly Standing Orders, I hereby convey the following message from the National Assembly.

That pursuant to the provisions of Article 5 of the Protocol to the Treaty establishing the African economic community relating to the Pan African Parliament, the National Assembly by a resolution made on Thursday 25th February, 2016, concurred with the Senate's resolution to appoint Sen. Billow Kerrow, MP, as a Member of the Pan African Parliament, in place of Sen. Kipchumba Murkomen, MP.”

Thank you.

COMMUNICATIONS FROM THE CHAIR

MEETING OF THE COMMITTEE ON FINANCE, COMMERCE AND BUDGET WITH THE GOVERNOR OF CBK

The Speaker (Hon. Ethuro): Hon. Senators, I have a communication to make on the meeting of the Standing Committee on Finance, Commerce and Budget with the Governor of the Central Bank of Kenya (CBK).

As you may be aware, on the 10th of February 2016, the Senate Minority Leader sought a Statement from the Chairperson of the Committee on Finance, Commerce and Budget regarding the continued editions by the CBK of currency bearing portraits of individuals in contravention of the Constitution of Kenya.

On Wednesday, 24th February 2016, the Chairperson of the Standing Committee on Finance, Commerce and Budget issued a response on the matter. However, the response was not satisfactory going by the number of interventions raised by the Senators. I, therefore, directed the Committee to convene a meeting for all interested Senators and invite the Governor of the CBK to respond to the issues raised.

Hon. Senators, I wish to inform you that the Standing Committee on Finance, Commerce and Budget has convened a meeting of all the Senators to deliberate on the matter. The Governor of the CBK, Dr. Patrick Njoroge has confirmed his attendance. The meeting will be held tomorrow, Thursday, 3rd March 2016 in the Senate Chamber, Main Parliament Building starting 10.00 a.m. I urge all hon. Senators to attend.

VISITING DELEGATION OF STAFF AND STUDENTS FROM
TANGAZA UNIVERSITY COLLEGE

Hon. Senators, I would like to acknowledge the presence in the Speaker's Gallery this afternoon of visiting staff and students from Tangaza University College. The delegation is here on a benchmarking visit and attachment. I request the delegation to stand so that we acknowledge them in the Senate tradition.

*(The visiting delegation from Tangaza University College
stood up in their places in the Speaker's Gallery)*

(Applause)

I hope that they will have a fruitful visit.

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

What is it, Sen. Kagwe?

Sen. Kagwe: Mr. Speaker, Sir, I know that we are pressed for time. However, I want to take 30 seconds to congratulate Sen. Billow on his appointment to the---

The Speaker (Hon. Ethuro): Order, Sen. Kagwe! You had plenty of opportunity to do so during the Motion.

Sen. Kagwe: Mr. Speaker, Sir, mine is on a different matter all together.

The Speaker (Hon. Ethuro): Hon. Senator, if you were absent, too bad for you. You cannot hold the House hostage.

(Loud Consultations)

Order, Senators! There is a serious petition to acknowledge the visitors. Therefore, in that regard, I will allow Sen. Kagwe one minute to conclude and then the Senate Minority Leader, on our collective behalf, to welcome them.

I will give Sen. Orenge one minute; his leader will have one and half minutes. Lastly, I will give one minute to Sen. Omondi to welcome the visiting delegation

Sen. Kagwe: Mr. Speaker, Sir, mine is to request that when Sen. Billow goes to South Africa, which he has been unable to do because of lack of VISA, the first order of business he should raise there, is to move the seat of Pan African Parliament (PAP) from

South Africa to Kenya or Ethiopia. We cannot operate in a hostile county that does not respect other countries in Africa or issue VISAs. It is only right and fair that, that be the first Motion that Sen. Billow takes there.

Sen. Orengo: Mr. Speaker, Sir, I thank you for this opportunity to acknowledge the visiting delegation from Tangaza University College. I welcome the delegation here and request for prayers from them. This country needs prayers from them because they are people who live by example. They take vows and keep them as opposed to some of us who swear by the Constitution, but violate it the next day. In fact, both sides of the House need prayers.

This country is going through a period that I have never seen in my life because money is being stolen left, right and centre. When we think that we have had enough of this corruption, the next day, you wake up to witness more money stolen.

The church is a very important instrument; lest we forget that the Constitution that we have is as a result of great men and women of the flock like the bishops who made sacrifices and some of them were beaten up. More importantly, I advise them to never allow politicians who have robbed this country to come to their churches and give money because that will be corruption. All that we need from them are prayers. However, they should not accept our money because the money that is in the hands of politicians is completely rotten and it will destroy the church.

Sen. Omondi: Mr. Speaker, Sir, I join you on behalf of my fellow Senators to welcome and thank the staff and students from Tangaza University college. As Sen. Orengo stated, we, as a country, need prayers. The strength of women in prayers is very strong and we can see from the sisters who have visited us. It is biblical that even when Jesus rose from the dead, women were there. This afternoon this House is blessed because we are being visited by nuns. Indeed, we need prayers. I thank them for visiting the Senate.

Sen. Hassan: On a point of order, Mr. Speaker, Sir. For purpose of clarity to the visiting delegation, could Sen. Orengo name a few of those politicians so that they can take note as they attend their church harambees?

The Speaker (Hon. Ethuro): Sen. Orengo finished his submission a long time ago. In any case, if you listened carefully to him, you would have heard that he did not say a section, segment or some of us. He said we, as politicians.

Please, proceed Sen. Wetangula.

The Senate Minority Leader (Sen. Wetangula): Thank you, Mr. Speaker, Sir, for this opportunity to welcome the visitors from Tangaza University College.

Mr. Speaker, Sir, the preamble of our Constitution reads as follows:-

“We, the people of Kenya—

ACKNOWLEDGING the supremacy of the Almighty God of all creation:”

When we are visited by members of a respected church, for example, the Catholic Church visiting a House that has all manner of characters; it is gratifying because we hope and believe that the Almighty God will now descend on this House.

The Speaker (Hon. Ethuro): What is it, Sen. (Prof.) Lonyangapuo?

Sen. (Prof.) Lonyangapuo: On a point of order, Mr. Speaker, Sir. Is it proper for the Senate Minority Leader to generalize? Hon. Senators vied for their seats and were

elected. Therefore, hon. Senators do not have dubious characters as he implied. Is he in order to use some terminologies that cast our House in bad light?

The Senate Minority Leader (Sen. Wetangula): Mr. Speaker, Sir, the term “character” is not demeaning at all. The distinguished Senator has just added a description to it, “dubious.” If you listened to me carefully, I did not use the word “dubious.” I said, “All manner of characters.” We have the good, the bad and the ugly in this House. However, the point is---

The Speaker (Hon. Ethuro): Order, Sen. Wetangula. I heard you. You did not use the word “dubious” but you used the word “character” which you have even qualified; that it is an omnibus; good, ugly and bad. That is what the hon. Senator is exactly objecting to.

The Senate Minority Leader (Sen. Wetangula): Mr. Speaker, Sir, for his comfort, he falls within the good. He is neither the bad nor the ugly.

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

The Speaker (Hon. Ethuro): Let us allow Sen. Wetangula to proceed.

What is it, Sen. (Dr.) Machage?

Sen. (Dr.) Machage: On a point of order, Mr. Speaker, Sir, our Standing Order No.90(6) says:-

“A Senator shall refer to another Senator by the title “Senator” and not “character”.

Is he in order to refer to us as characters?

The Senate Minority Leader (Sen. Wetangula): Mr. Speaker, Sir, I have said over and again that English is a foreign language. I did not mention any name in relation to the character. So, I did not talk about any Senator. All manner of characters could include our clerks, orderlies or anybody; but the guilty are afraid.

Mr. Speaker, Sir, I urge the distinguished guests---

The Speaker (Hon. Ethuro): Order, Sen. Wetangula! Even the Chair takes great exception to that one, especially when you are seeking blessings for us. You do not start by making us look bad in order to get blessings.

The Senate Minority Leader (Sen. Wetangula): Mr. Speaker, Sir, Jesus said that he never came for the pious; he came to save the wrongdoers. In fact, if you are holy, you do not have to go to church. We go to church to confess our sins and seek---

The Speaker (Hon. Ethuro): Order, Senator! You are making it worse. You are confirming that they came to save us and that we all have fallen short of glory.

Proceed, Senator. You know the English Language better than the expressions you are using. There are many other expressions you can use that have a different connotation.

(Laughter)

The Senate Minority Leader (Sen. Wetangula): Mr. Speaker, Sir, let me finish by echoing the words of Sen. Orengo. This country is at cross-roads and on the brink of self-destruction. We need prayers, divine intervention and collective thinking in that direction. I urge our distinguished guests to pray for this country at their solemn moments. Pray for the good Almighty God to descend upon the Jubilee leadership that

has lost network so that they can come back to their senses and run this country in the manner expected of the people of Kenya.

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

Sen. Kagwe: On a point of order, Mr. Speaker, Sir. Would I be in order to propose that prayers be done for both CORD and Jubilee coalition because, at the end of the day, we are one nation?

(Laughter)

The Speaker (Hon. Ethuro): Everybody needs prayers.
Let us move on to Order No. 9.

BILL

Second Reading

THE PERSONS WITH DISABILITIES (AMENDMENT) BILL (SENATE BILL NO. 13 OF 2015)

(Sen. Omondi on 25.2.2016)

(Resumption of Debate interrupted on 25.2.2016)

Order Senators; let the Division Bell be rung for 30 seconds.

(The Division Bell was rung)

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

Let it be rung for another 30 seconds.

(The Bar was drawn and doors closed)

DIVISION

ELECTRONIC VOTING

(Question, that The Persons with Disabilities (Amendment) Bill (Senate Bill No.13 of 2015) be now read a Second Time, put and the Senate proceeded to vote by county delegations)

AYES: Sen. Billow, Mandera County; Sen. Boy Juma Boy, Kwale County; Sen. Hargura, Marsabit County; Sen. Hassan, Mombasa County; Sen. Kagwe, Nyeri County; Sen. M. Kajwang, Homa Bay County; Sen. (Dr.) Khalwale, Kakamega County; Sen. Khaniri, Vihiga County; Sen. (Dr.) Kutu, Isiolo County; Sen. (Prof.) Lesan, Bomet County; Sen. (Prof.) Lonyangapuo, West Pokot County; Sen. (Dr.) Machage, Migori

County; Sen. Mohamud, Wajir County; Sen. Mositet, Kajiado County; Sen. (Eng.) Muriuki, Nyandarua County; Sen. Musila, Kitui County; Sen. Muthama, Machakos County; Sen. Mutula Kilonzo Jnr., Makueni County; Sen. Mwakulegwa, Taita-Taveta County; Sen. Ndiema, Trans Nzoia County; Sen. Ntutu, Narok County; Sen. Obure, Kisii County; Sen. Okong'o, Nyamira County; Sen. Wamatangi, Kiambu County and Sen. Wetangula, Bungoma County.

NOES: Nil.

The Speaker (Hon. Ethuro): Hon. Senators, the results of the Division are as follows:-

AYES: 25

NOES: Nil

ABSTENTIONS: Nil

The "Ayes" have it.

(Question carried by 25 votes to nil)

(The Bill was a read a Second Time and committed to a Committee of the Whole tomorrow)

(The Bar was undrawn and doors opened)

The Speaker (Hon. Ethuro): We will now go to Order No.8.

MOTION

ADOPTION OF REPORT ON THE MEDIUM TERM BUDGET POLICY STATEMENT, 2016

THAT, this House adopts the Report of the Standing Committee on Finance, Commerce and Budget on the Medium Term Budget Policy Statement, 2016 laid on the Table of the Senate on Thursday, 25th February, 2016.

(Sen. Billow on 1.3.2016)

(Resumption of Debate interrupted on 1.3.2016)

The Speaker (Hon. Ethuro): Order, Members! We will proceed to vote on the amendment proposed by Sen. (Dr.) Khalwale.

DIVISION

ELECTONIC VOTING

(Question, that the Motion be amended by deleting the fullstop after the figure 2016 on the third line and inserting the following words:- 'Subject to amending the recommendation of the committee on paragraph 109 (F)(iii) on page 49 by

deleting all the words after the word “ recommends” on the fourth line and inserting the following words in place thereof:- “that the official average rate of growth of revenue over the last four years of 13 per cent should be used at the minimum to compute the equitable share of 2016/17”, put and the Senate proceeded to vote by County Delegations)

AYES: Sen. Boy Juma Boy, Kwale County; Sen. Hargura, Marsabit County; Sen. Hassan, Mombasa County; Sen. Kagwe, Nyeri County; Sen. M. Kajwang, Homa Bay County; Sen. (Dr.) Khalwale, Kakamega County; Sen. Khaniri, Vihiga County; Sen. (Dr.) Kuti, Isiolo County; Sen. (Prof.) Lesan, Bomet County; Sen. (Prof.) Lonyangapuo, West Pokot County; Sen. (Dr.) Machage, Migori County; Sen. Mohamud, Wajir County; Sen. Mositet, Kajiado County; Sen. (Eng.) Muriuki, Nyandarua County; Sen. Musila, Kitui County; Sen. Muthama, Machakos County; Sen. Mutula Kilonzo Jnr., Makueni County; Sen. Mwakulegwa, Taita-Taveta County; Sen. Ndiema, Trans Nzoia County; Sen. Ntutu, Narok County; Sen. Obure, Kisii County; Sen. Okong’o, Nyamira County; Sen. Wamatangi, Kiambu County; and Sen. Wetangula, Bungoma County.

NOES: Sen. Billow, Mandera County

The Speaker (Hon. Ethuro): Hon. Senators, the results of the Division are as follows:-

AYES: 24

NOES: 0

ABSTENSIONS: 1

(Question carried by 24 votes to 1)

(Question, that the words to be left out, be left out, put and agreed to)

(Question, that the words to be inserted in place thereof be inserted, put and agreed to)

(Question of the Motion as amended proposed)

Sen. Billow: Mr. Speaker, Sir, I voted ‘No’ but when the results were announced, there was ‘No’ vote. May I know what happened?

The Speaker (Hon. Ethuro): Hon. Senators, we have scrutinised the records and we can confirm that Sen. Billow voted ‘No’. Therefore, the “1” under Abstentions should be ‘No’. However, his migratory nature does not affect the final outcome. For purposes of record, the results of the Division are as follows:-

AYES: 24

NOES: 1

ABSTENSIONS: 0

(Question carried by 24 votes to 1)

Sen. Elachi: Mr. Speaker, Sir, I beg to move that the Mover be now called upon to reply to the Motion.

(Loud consultations)

The Speaker (Hon. Ethuro): Order Senators. We are behind schedule by a day on this matter. We will have plenty of opportunity to raise what we want to in other events. I will put the Question and you may object it, if you wish.

(Question, that the Mover be now called upon to reply, put and agreed to)

Sen. Billow: Mr. Speaker, Sir, I thank the Members who contributed yesterday and I beg to reply.

Thank you.

The Speaker (Hon. Ethuro): Hon. Members, I, therefore, wish to put the question. This is a matter affecting counties. So, we will go to Division.

Could the Division Bell be rung for 30 seconds?

(The Division Bell was rung)

Order Senators, the time has elapsed. Could the door be closed and the Bars drawn?

(The door was closed and the Bars drawn)

DIVISION

ELECTRONIC VOTING

(Question, that this House adopts the Report of the Standing Committee on Finance, Commerce and Budget on the Medium Term Budget Policy Statement, 2016 laid on the Table of the Senate on Thursday, 25th February, 2016 (as amended), put and the Senate proceeded to vote by County Delegations)

AYES: Sen. Billow, Mandera County; Sen. Boy Juma Boy, Kwale County; Sen. Elachi, Nairobi County; Sen. Hargura, Marsabit County; Sen. Hassan, Mombasa County; Sen. Kagwe, Nyeri County; Sen. Kajwang M. Homa Bay County; Sen. Karaba, Kirinyaga County; Sen. (Dr.) Khalwale, Kakamega County; Sen. Khaniri, Vihiga County; Sen. (Dr.) Kuti, Isiolo County; Sen. (Prof.) Lesan, Bomet County; Sen. (Prof.) Lonyangapuo, West Pokot County; Sen. (Dr.) Machage, Migori County; Sen. Mohamud, Wajir County; Sen. Mositet, Kajiado County; Sen. (Eng.) Muriuki, Nyandarua County; Sen. Musila, Kitui County; Sen. Muthama, Machakos County; Sen. Mutula Kilonzo Jnr., Makueni County; Sen. Mwakulegwa, Taita-Taveta County; Sen. Ndiema, Trans Nzoia County; Sen. Ntutu, Narok County; Sen. Okong'o, Nyamira County; Sen. Wamatangi, Kiambu County; and, Sen. Wetangula, Bungoma County.

NOES: 0

The Speaker (Hon. Ethuro): Hon. Senators, the results of the Division are as follows:-

AYES: 26

NOES: 0

ABSTENTIONS: 0

The “Ayes” have it.

(Question carried by 26 votes to nil)

(Question of the Motion as amended, put and agreed to)

Resolved accordingly:-

THAT, this House adopts the Report of the Standing Committee on Finance, Commerce and Budget on the Medium Term Budget Policy Statement, 2016 laid on the Table of the Senate on Thursday, 25th February, 2016, subject to amending the recommendation of the Committee on paragraph 109(F)(iii) on page 49 by deleting all the words after the word “recommends” on the fourth line and inserting the following words in place thereof – “that the official average rate of growth of revenue over the last four years of 13 per cent should be used at the minimum to compute the equitable share for 2016/17”

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

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

Sen. Ndiema: Mr. Speaker, Sir, while we have exhausted that issue and voted, let me just raise a concern. This House is not being given adequate time to debate on an issue of allocation of resources that is as important as this one.

(Applause)

Right from the word go when consultations began up to now, we have not been given time. This Senate does not have another opportunity to interrogate the allocation of resources since the Constitution does not allow us to discuss the appropriations. This was the only opportunity for us to interrogate the BPS. It seems that we are being denied the opportunity because hardly anybody really debated on the substance of this Report. We only debated the amendment, but not the actual substance. There are so many issues hidden in this budget which we wanted to go through.

Sen. Elachi: On a point of order, Mr. Speaker, Sir. I believe this was the Budget Policy Statement (BPS). If I am in order, I know that now the Division of Revenue Bill will be coming in this House based on the amendments that we have just made.

The Senate Minority Leader (Sen. Wetangula): On a point of order, Mr. Speaker, Sir. First, I thank you for having led this House this far. However, we must resist the temptation to be an Executive rubberstamp. If you look at the record of debate on this matter – the Motion was moved, seconded, two Members made contributions and then Sen. (Dr.) Khalwale moved an amendment. The rest of the afternoon was spent on

the amendment which has far reaching consequences on the statement, but did not go into the substance of the matter.

I fully share the sentiments of the distinguished Senator for Trans-Nzoia; there are so many issues in this BPS that will inform the Budget. All these mega scandals we are seeing emerged through this kind of papers. We have a duty as representatives of the people of this country to put forward the views of the people that we represent through debate. Those who vote may vote against what we say, but we must have our say. This afternoon, we have just steamrolled through a document that has far-reaching consequences on the unfolding budget process – a budget that has so many questionable issues that we need to raise. The Division of Revenue Bill is not a panacea to this Statement.

Mr. Speaker, Sir, I want to go on record as having expressed my displeasure alongside those who record similar displeasure, that we can do things better. We, as a House, representing 47 counties – 40 plus million Kenyans – cannot pass an important document after four contributions. It is neither right nor fair. In the strongest terms possible, I record my dissent in the manner in which we have truncated debate, steamrolled a vote and passed this paper. It is neither right nor proper.

Sen. Hassan: On a point of order, Mr. Speaker, Sir. I also share in those sentiments. Yesterday as I was going out of the House, I told Sen. M. Kajwang that I shall come to contribute today. I also want to be a bit kind to your chairmanship because you are bound by the rules of this House. The Member asked whether we can now ask the Mover to respond. Therefore, that vote won and was acclaimed by both sides.

I throw the ball to the Rules and Business Committee (RBC) in terms of how they organise the business of this House. In future, I urge them to allocate more time to this type of debates and papers. In fact, yesterday and today should not have had any other business apart from this business of the BPS. So, in future, the Chair, in your capacity as the Chairperson of the RBC, must ensure that adequate time is allocated to this type of debate. Ensure that this paper is brought in good time so that those who wish to contribute give part of their issues into this paper.

We can also take advantage of the Committees that we sit in. In fact, I had intended to see Sen. Billow to tell him how I wanted him to introduce issues of ECOSOC Rates so that we finance some of these areas. We need to exploit the full potential of the process of the Senate. I know you were tied on this Motion and I sympathise. I also wish that, in future, we can be allowed more time to contribute to these types of important documents.

Sen. Billow: On a point of order, Mr. Speaker, Sir. Let me clarify that this Motion was not voted as a surprise. The timelines for this Motion was clearly communicated to my Committee – in which the Senate Minority Leader is a Member – and we approved them. Two, the timelines were submitted to the leadership of the House in the Liaison Committee and they were again approved at that level.

Thirdly, all the Chairpersons, including the Senator for Trans-Nzoia and the Senate Minority Leader, were invited to a fully sponsored half day workshop at the Villa Rosa Kempinski to go through this document. They were all there. All the reports of the respective departmental Committees were included. Their recommendations have been taken up.

Lastly, yesterday when we moved this Motion, you advised Members that the deadline was yesterday, which was also available for debate. None other than the Senate Minority Leader walked out of this House. I went with him all the way to the lounge to plead with them that we come to the House to debate because the timeline is set by the Public Finance Management (PFM) Act and not us. This is not about the Executive, but a law that has been passed by Parliament. So, we must stick to the timelines. Nobody is trying to hide anything in the BPS.

All recommendations submitted by all the departmental Committees whose Chairpersons are here were included in that document. I do not think there is any reason why people should politic; particularly the Senate Minority Leader should desist from going political on such a matter, when it is clear that the timelines are set in the PFM Act. We are not the ones who determine the timelines.

The Senate Minority Leader (Sen. Wetangula): On a point of correction, Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): Sen. Wetangula, you know the rules better. There is no provision for a point of correction.

Sen. (Dr.) Machage: Mr. Speaker, Sir, the only way a Member can express displeasure against a Motion is by voting “No”. To my knowledge, we had 26 “Ayes”, “Noes” nil; and no “Abstention”. With respect to the Senate Minority Leader, to whose party I proudly belong, sometimes it is also good to accept the sentiments of others and the law. The Chair is very immune to what happened in the House today. Again, it is the House which voted by majority that we move ahead and take the vote, especially taking into consideration the timelines as has been ably described by the Chairperson of the Committee.

My only request is that when our leadership thinks that there is an issue, it is good to tell Members early of the sentiments of objection so that Members are not taken by surprise during voting time. Maybe, this advice goes to The Senate Minority Leader.

The Speaker (Hon. Ethuro): Order Senators, I think the interventions made are quite adequate. We have heard from both sides of the argument and I think I have nothing more useful to add except to agree in entirety with what the Chairman of Finance, Budget and Commerce Committee has stated eloquently, giving details. These are matters of fact and law. My only assignment is to enforce the law and the procedures of the House. To cut the story short, the debate has a procedure and that procedure was followed. I do not know what else we are supposed to do. I think it is important for Members not to read conspiracy theories in every undertaking in the House.

Some of us carry a weightier burden and we have always discharged it without fear or favour. Anyone casting aspersions - I am not going to entertain that. For the record, Sen. Billow, Sen. (Prof.) Lonyangapuo, Sen. Elachi, Sen. (Dr.) Khalwale, Sen. Wetangula, Sen. Nabwala, Sen. M. Kajwang, Sen. Hassan, Sen. Ndiema and Sen. Karaba, those are more than four who contributed, whether to the amendments or to the Motion.

The Senate Minority Leader sits in the Rules and Business Committee (RBC) where we all agreed yesterday that this Motion should have been disposed of yesterday. So, today is a bonus. I made a communication when we got this Report that for the first time, we are going to ensure that the departmental committees make recommendations so

that for the first time in history, this House has had an opportunity to make interventions to the Report.

The Committee Chair has assured this House - and nobody has contradicted him - that he has taken each recommendation from the Departmental Committees. How else do we build consensus and maximum participation from the House? It is not only just because we must come to the Floor. I said time and again that a hundred and one opportunities will be available to Members to ventilate on this when we deal with the Division of Revenue Bill and the County Allocation of Revenue Bill. If you find all those limiting, bring a Motion. This House will interrogate that matter on its own merit.

I have a communication to make---

(Sen. Wetangula spoke while the Speaker was on his feet)

Order! Leader of Minority, I will not allow you. I made an undertaking yesterday to make a communication on the status of the Sessional Committee on County Public Accounts and Investments.

COMMUNICATION FROM THE CHAIR

STATUS OF THE SESSIONAL COMMITTEE ON COUNTY PUBLIC ACCOUNTS AND INVESTMENTS

Hon. Senators, as you recall at the sitting of the Senate yesterday Tuesday 1st March, 2016, the Deputy Speaker, Sen. Kembi-Gitura rose under Standing Order No. 45 (2) (b) of the Senate Standing Orders, seeking a Statement from the Chairperson of the Sessional Committee on County Public Accounts and Investments regarding the report of the Special Committee on the proposed removal from office by impeachment of hon. Mwangi Wa Iria, Governor of Murang'a County, dated 6th November, 2015.

The Deputy Speaker set out a number of issues on which he sought the way forward from the Committee. Sen. Wamatangi, a Member of the Sessional Committee on the County Public Accounts and Investments then informed the House that the matter raised by Sen. Kembi-Gitura was similar to other matters that were pending before the Committee. He further stated that the Committee was in limbo and had been unable to transact business following the de-whipping of the Chairperson of the Committee, Sen. Okong'o.

Sen. Wamatangi sought the guidance of the Chair on whether a committee should be rendered dysfunctional by the de-whipping of its chairperson or whether despite the de-whipping of its chairperson, the Committee could continue to transact its business. The Senator argued that if a committee could be rendered dysfunctional by the de-whipping of its chairperson, this would create an avenue to be used by political parties to ensure that when there was business before a committee that the party did not favour, the business did not proceed.

He further expressed concern that the present status of the Sessional Committee on the Sessional Committee on County Public Accounts and Investments would set a bad precedence for the Senate. A number of Senators rose on points of order to speak to this matter including Sen. Kembi-Gitura, Sen. (Dr.) Machage, Sen. Muthama, Sen. Okong'o, Sen. Billow, Sen. Hassan, Sen. Orenge and Sen. Elachi.

On account of the gravity of the issues raised, I undertook to deliver a ruling on this matter today, Wednesday, 2nd March, 2016. From the deliberations on this matter, three issues arise that require the direction of the Chair, namely:-

(1) The manner in which the Sessional Committee on County Public Accounts and Investments should be constituted,

(2) The manner in which the chairperson of a committee can be de-whipped,

(3) The effect of such de-whipping.

Hon. Senators, before I proceed to give direction on these issues, it is important that I set out the sequence of events in this matter.

(1) Following the reconstitution of the Sessional Committee on County Public Accounts and Investments, in accordance with Standing Order No.183(1) of the Standing Orders, the Clerk of the Senate convened the first meeting of the Committee on the 16th February, 2016 for purposes of election of the Chairperson and the Vice Chairperson of the Committee.

(2) At that meeting, Sen. Okong'o was elected the Chairperson of the Committee while Sen. (Prof.) Lonyangapuo was elected to the position of the Vice Chairperson. Thereafter, by a letter dated 17th February, 2016, the Coalition for Reforms and Democracy (CORD), through its Whip, notified the Speaker that Sen. Okong'o had, pursuant to Standing Order No. 180, been discharged from the Committee and that the Coalition would be replacing the Senator with Sen. (Dr.) Zani. By letters dated the same 17th February, 2016, Sen. (Prof.) Anyang'-Nyong'o and Sen. Khaniri informed the Speaker that they had also resigned from the Committee.

Hon. Senators, on the first issue which is how the Sessional Committee on County Public Accounts and Investments should be constituted, as you are aware, the Sessional Committee on County Public Accounts and Investments is established under Standing Order No. 212 of the Senate Standing Orders.

Standing Order No. 212 (2) provides that:-

“The County Public Accounts and Investments Committee shall consist of a Chairperson, who shall be a member of the second largest party or coalition of parties in the Senate, and not more than eleven other Senators.

It is important to observe from the Standing Order no 212 (2) that despite Standing Order No. 182 (a) of our Standing Orders which provides for the manner of elections of chairpersons of committees, special provision has been made relating to the election of the chairperson of the County Public Accounts and Investments Committee. The rationale for this is that the Committee is an oversight committee and, therefore, one which going by the practices and traditions of our Parliament and those of comparable jurisdiction cannot be chaired by a Member from the majority party.

Hon. Senators, you will, however, observe that Standing Order No. 212 of the Senate Standing Orders makes no further special provision relating to the election of the vice chairperson or the nomination of the other Members of the Committee. Therefore, although it was argued by some Senators in the various points of order on this matter that the Vice Chairperson of the Committee should be a Member of the minority party, the Standing Orders are silent on this.

Consequently, the general provisions of the Standing Orders that apply to the election of vice chairpersons and the nomination of Members to serve in committees

apply to this particular Committee. The upshot of this is that the decision as to which Member of a committee shall serve as its vice chairperson is a decision only for the Members of the particular committee. Indeed, even the decision for the chairperson is still for the Members of the committee except the Standing Orders clarify where the chairperson can come from.

The second issue that requires my direction relates to the removal or de-whipping of a chairperson of a committee. As Hon. Senators are aware, political parties are a key pillar of the system of governance established in our Constitution. Political parties, therefore, play a major role in the identification and nomination of Members to serve in the committees. They are similarly bestowed with the prerogative of removing or de-whipping their Members from the committees.

In this regard, Standing Order No. 180 (1) provides that:-

“A Parliamentary Party that nominated a Senator to a Select Committee may give notice, in writing, to the Chairperson of the Rules and Business Committee that the Senator is to be discharged from a Select Committee”.

Standing Order No. 180 (2) of the Standing Orders further provides that:-

“The discharge of a Senator shall take effect upon receipt by the Chairperson of a notice under paragraph (1)”.

Therefore, you occasion the move, and your wishes are granted as they are.

In the case of the Sessional Committee on County Public Accounts and Investments, in terms of Standing order No.210(1) of the Senate Standing Orders, for purposes of the Fourth Session of the Eleventh Parliament, Sen. Okong’o was by letter dated 9th February, 2016, nominated by the CORD Coalition to serve as a Member of the Committee.

Subsequently, Sen. Okong’o was on 17th February 2016 elected to serve as the chairperson of then said committee. However, on the same day, by letter of the same date, the Senator was, pursuant to Standing Order No.180(1) discharged the same evening and, therefore, removed by the party from membership in the Committee. That is as it is.

The third question relates to the effect of the de-whipping of a chairperson of a committee on the business and affairs of the committee. The question that arose was whether in light of the de-whipping of the chairperson of the Sessional Committee on County Public Accounts and Investments, then the Committee could continue to transact its business.

On one hand there were Senators who argued that the de-whipping of a chairperson of a committee would not affect the continued transactions of the business of the committee, so long as the committee continues to retain a quorum and; further, that in the absence of the chairperson, then the vice chairperson of the committee would chair all subsequent sittings until the election of the new chairperson. It was, therefore, argued that the committee was not in limbo and could, indeed, proceed to consider matters before it. On the other hand, other Senators implied that the committee was, indeed, in limbo and could not possibly proceed to transact any business before the election of a new chairperson.

The latter position is the correct position. Standing Order No.183(2) provides as follows:

“Whenever a vacancy occurs in the office of the Chairperson or Vice-Chairperson of a Select Committee, the Clerk shall, within seven days of the vacancy arising, appoint a place, date and time for the meeting of the Committee to elect a chairperson or the vice-chairperson.”

It is evident from this Standing Order that where there is a vacancy in the office of the chairperson or the vice chairperson of a committee, then filling of the vacancy takes precedence over all other business before the committee. This is why the Standing Orders make specific provision on the timelines relating to the filling of such vacancies. This will be all the more important in the case of the Sessional Committee on County Public Accounts and Investments, which under Standing Order 212 of our Standing Orders has special requirements relating to the election of its chairperson.

Proceeding with the business of the Committee on County Public Accounts and Investments without ensuring the observance of Standing Order No.212(2) would open the proceedings of the committee to questions as to the validity of the composition of the committee. Possibly so, it would lead to questions on the status of any business transacted by the committee in that period. It is, therefore, imperative that a chairperson of the committee be elected in accordance to Standing Order No.212(2) before further proceedings of the committee.

Although under Standing Order No.192 of the Standing Orders, the vice chairperson may act in the absence of the chairperson, a vacancy is not an absence within the meaning of that Standing Order. Consequently, it is not open to a committee, particularly one such as this that requires a chairperson to be from the minority party to proceed with business during a period of vacancy in the office of the chairperson.

It is, however, imperative to underline that contrary to the position implied by Sen. Wamatangi in his request for direction that the removal of a chairperson renders a committee dysfunctional, the position is that such removal has no effect on the validity of the committee except for the requirement that the committee first elects a chairperson before proceeding with its next business.

I note by the correspondence dated 1st March, 2016, and addressed to members of the Sessional Committee on County Public Accounts and Investments, the Clerk of the Senate has, pursuant to Standing Order No.183(2) appointed Thursday 10th March, 2016 as the date on which the election of the chairperson of the Sessional Committee on County Public Accounts and Investments shall be held.

I thank you,

(Applause)

Sen. Okong’o: Thank you, Mr. Speaker, Sir, for that well researched position. I pass a message to those who masquerade that they stand for democracy in this country. Since the letter to de-whip me was done, they are not better than the people they oppose. This country requires prayers as I have heard the Leader of Minority state.

First and foremost, I owe my allegiance to the people of Kenya. Secondly, to the people of Nyamira, who bestowed upon me the honour to be in this House. Thirdly, I owe my allegiance to the so-called parties. I will consult widely with Kenyans, particularly the people of Nyamira. I condemn leaders in this country who masquerade as

democrats whereas they are dark demons in the history of democratization of the nation. Their ways and plans will not succeed.

It is a dark day for me to be in this House today. I have been sacrificed. When there is a genuine pregnancy and truly done, an irregular abortion brings consequences, a mother may die. The person who aborts a genuine pregnancy will have to bear consequences. History will be on my side.

Sen. Wamatangi: Mr. Speaker, Sir, I stand to congratulate you and laud your direction on this matter. I respect your ruling. However, with your permission, I will briefly expound on what I was saying. This is for the sake of how we will continue with the business of this House even in future.

Your ruling is pretty correct as interpreted by the Standing Orders and yourself. However, the Standing Orders of this House are derived from our Constitution. Our Constitution, when mirrored or compared to any other regulations, laws or even our Standing Orders, it is supreme. The sequence of events of that day when Sen. Okong'o was elected as the chairperson was the first day of the sitting when this Committee renewed its business.

By presumption, a party has the authority under our Standing Orders to de-whip any member. It is then presumed that on the same day that he appeared in a sessional committee that renews its mandate every year, he had had the blessings of his party to come on that particular day and participate in the process.

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

Sen. Muthama: On a point of order, Mr. Speaker, Sir. After listening to Sen. Wamatangi, my understanding is that he is trying to build up a case on a matter that has been ruled on by the Chair. By revisiting the matter, he is trying to say that the Speaker is wrong. Is he in order to try and challenge the ruling of the Speaker, which has been delivered?

The Speaker (Hon. Ethuro): He is, definitely, not in order to challenge my ruling, but I think he is seeking some understanding. The Speaker's ruling is quite heavy.

Proceed, Sen. Wamatangi.

Sen. Wamatangi: Mr. Speaker, Sir, I started by acknowledging that I respect your ruling, and so, I am not challenging it. I was only explaining---

The Speaker (Hon. Ethuro): Just go straight to the constitutional matter that you are trying to raise.

Sen. Wamatangi: Mr. Speaker, Sir, I was building up on the constitutional matter that I want raise, so that it can be appreciated from my line of thought. Indeed, on that date that Sen. Okong'o and nine other Senators participated in that election, it is presumed - this is a sessional Committee which renews its mandate every year - that on that particular day he had the mandate and authority of his party to participate. What stands out in this particular case is that he was de-whipped after being whipped into the Committee that day. After the election, he was de-whipped on the same day. The most tenable and logical explanation is that he was de-whipped as a consequence of having been elected.

I believe with all my heart that the Standing Orders of this House are intended to be in tandem with what our Constitution provides. This House cannot make rules, regulations or Standing Orders, which are intended to defeat the same purpose of the

House. Granted to say the Standing Orders also cannot provide a scenario where a party's interests are above the business and interests of the Senate.

The issue that I want to raise is provided for in Article 10 of our Constitution, which is clear on national values and principles of governance. It states:-

(1) "The national values and principles of governance in this article bind all State organs, state officers, public officers and all persons whenever any of them –

- (a) applies or interprets this Constitution;
- (b) enacts, applies or interprets any law; or
- (c) makes or implements public policy decisions.

(2) The national values and principles of governance include-

- (a) Patriotism, national unity, sharing and devolution of power, the rule of law, democracy and participation of the people.

My interest is the provision under 2 (b), which states:-

(b) human dignity, equity, social justice, inclusiveness, equality, human right, non-discrimination and protection of the marginalized."

That is what I am arguing about. We should not make an argument from a political party's stand. What is provided for in Article 10 regarding our national values and principles of governance is superior. The action of de-whipping a Member simply because he has been elected is discriminatory, abuse and a travesty of a human being's rights.

Mr. Speaker, Sir, grant me to say that for the life and the years that I will be in this House, every Member sitting here has the liberty to dream and aspire to be anything in this House and country. It is right for any Member to sit here, look at you and aspire to be where you are. The Senate Minority Leader in this House is a presidential aspirant. He has been granted that liberty to dream and aspire to go for that position. In the Holy Book, Jesus said: "If you do not acknowledge me in this world, I will not acknowledge you in front of my father in Heaven." The Senate Minority Leader in this House is also the leader of FORD-(K). His silence is absolutely and cacophonously loud on this issue. This is a question of human rights and freedom of a person.

I want to finish as follows, so that it goes on record. As I said yesterday, the contempt that was visited upon elected Members from both sides of the House, when they exercised their granted and given parliamentary democracy and authority in a committee, to elect a Member to be the Chairperson of that Committee was not right. Even if it will require that the Standing Orders be eventually re-visited and revised--- I absolutely believe that the provision of Standing Order No. 180 do not intend at all that a constitutional provision will be abused by the application of that particular Standing Order, which can be misused at any one time, when any side of this House especially the other side---

The Speaker (Hon. Ethuro): Conclude, Senator.

Sen. Wamatangi: The other side of the House can use that Standing Order to de-whip a Member who has been elected validly and properly to stand and represent that Committee. I have no issues against the Members who stood in that election; it is their right. I want to uphold the truth and the democracy that we have stood to defend. We fought against oppression from the time of colonialism and when this country repealed Section 2A of the Constitution. We cannot entertain it again inside Parliament.

Sen. (Dr.) Machage: Thank you, Mr. Speaker, Sir. The writing of history sometimes may be complicated and draconian. I belong to the Orange Democratic Movement (ODM) Party whose leadership, I am sure, would have taken a little thinking before making this decision. Your ruling as the Chair was properly guided by our Standing Orders; you had no otherwise. That was the only way to go. However, the decision and action that was taken leaves a gap; that wisdom will ask questions. Where is the right of Members as expressed in Chapter Four of the Constitution and in the Bill of Rights? Article 25 of the Constitution states:-

“Despite any other provision in this Constitution, the following rights and fundamental freedoms shall not be limited-

- (a) freedom from torture and cruel, inhuman or degrading treatment or punishment;
- (b) freedom from slavery or servitude;
- (c) the right to a fair trial; and
- (d) the right to an order of *habeas corpus*.

It is true that Sen. Mong’are may have erred grievously against our party before. However, it would have been quite in order for the decision to de-whip him to have been done following his being called by the party and asked to answer one basic question which is; “Are you a supporter of the CORD coalition or not?” If his answer was that he does not support the CORD Coalition, then he would have been de-whipped, but not on the same day that he is allowed by the party to be in that Committee and then be de-whipped. What message have we passed to the people about our party?

As much as I respect the leader of the party, I do not respect wrong decisions that make our party look draconian before Kenyans. Where are the rights of the minority of this country; that to be a leader of a committee of the magnitude of the County Public Accounts and Investments Committee (CPAIC), one must belong to a certain ethnic group? Where will the minority go to?

I have been a fighter all my life in Parliament for the rights of minority and the marginalized groups. Here was an opportunity for a Member of one of the small groups of this country to lead a committee and for us to have an opportunity to see his statesmanship. Why could he not be called and warned? This is prescribed in the Constitution of our coalition.

The Speaker (Hon. Ethuro): Please, conclude.

Sen. (Dr.) Machage: Mr. Speaker, Sir, what was done to a fellow Senator by my own party was wrong.

(Applause)

Sen. Mutula Kilonzo Jnr.: Mr. Speaker, Sir, I sympathize with the people who are asking you to make some determination.

The Speaker (Hon. Ethuro): Order, Senator! Who do you sympathize with?

Sen. Mutula Kilonzo Jnr.: Mr. Speaker, Sir, I sympathize with them. They are asking you to do something that is not within your powers.

(Sen. Okong’o consulted loudly)

The Speaker (Hon. Ethuro): Order, Sen. Okong'o! The Floor has been given to Sen. Mutula Kilonzo Jnr.

Sen. Mutula Kilonzo Jnr.: Mr. Speaker, Sir, this is the Senate. If there is a person aggrieved by a political party's decision, you are not the person to determine that. There is no question of violation of Article 10. Sitting in a committee is not a substantive right. It is a discretionary right donated by a political party. If there is a person discriminated by a political party under Article 91, we have a method prescribed in the Constitution. Therefore, the gospel being preached here is in the wrong church. They should preach it elsewhere. If a person has been discriminated---

(Loud Consultations)

I am saying this and you had better listen because you are preaching to the wrong priest. Do not allow yourself---

(Loud Consultations)

The Speaker (Hon. Ethuro): Order, Senators. Let us listen to Sen. Mutula Kilonzo Jnr. We have been very orderly.

Sen. Mutula Kilonzo Jnr.: Mr. Speaker, Sir, do not allow this House to be dragged into political parties' disputes because you will lower the threshold of this Senate, if you do so.

The Speaker (Hon. Ethuro): Order, Sen. Mutula Kilonzo Jnr.! You are also preaching in the wrong church.

Sen. Mutula Kilonzo Jnr.: Mr. Speaker, Sir, the people who are pleading to your sense of mercy are doing so to the wrong person. You have no jurisdiction to make those determinations, whether it is on minorities or discrimination on political rights. This is the wrong place.

The Speaker (Hon. Ethuro): Order, Sen. Mutula Kilonzo Jnr.! If I may ask you, are you commenting on a ruling that I have made?

Sen. Mutula Kilonzo Jnr.: Mr. Speaker, Sir, I have not said anything about your ruling. I said you are right, but beyond that, you are *Functus Officio*. If a person wants to make an appeal, there is no appeal Chamber. If a person wants to make a determination about their political party's rights, there is another place. It is not over for him out there. However, it is done here unless you donate another power because there is no power for appeal.

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

Sen. Wamatangi: Mr. Speaker, Sir, it is unfortunate that the Senator has concluded what he was saying and sat down. I wanted to point out whether it was in order for him to be given latitude to mislead this House and the nation in general by implying that there are certain political party rights or rules which are superior to the provisions of the Constitution. It is not right and there is no amount of legalese whether he says *Functus Officio* or whatever other words. There is no amount of legalese that is beyond the pedestrian provisions of the Constitution as understood by the most common persons in this country. Therefore, using those words to try and convince us is not right. The

gospel that Sen. Mutula Kilonzo Jnr. is talking about being preached is that of freedom, democracy and human rights including that of Senators when they come to this House.

The Speaker (Hon. Ethuro): Hon. Senators, I would like to conclude this matter. I can see six more interventions. I will give time to the six requests, but let them be very brief. I will follow the order in which they appear.

Please, proceed Sen. Billow.

Sen. Billow: Mr. Speaker, Sir, I would like the Hon. Senators from the other side to listen to me carefully because we do not want them to embrace the infamous traditions of the old days of KANU where people were expelled simply because of expressing dissent. The decision they made is not only contemptuous, but dictatorial. When we set up a committee in this House, it can work in a bipartisan manner at any one time. There are many times that we support the views of our colleagues in a bipartisan manner; and the same can also be expressed. It defeats the whole essence of parliamentary democracy if we start expressing sensitivity to a very simple matter. If there was anything wrong with their Member, they should have de-whipped him before he was elected as the Chairperson of the CPAIC.

As we have heard from Sen. (Dr.) Machage, that Coalition had no wisdom. They should have consulted. We, as a House, must respect that each one of us is equal to the task of being a Senator. We are all here rightfully. Sen. Mongare was elected by the people of Nyamira County to represent them here.

It is true that the parties have their own political party rights, but the Constitution is more supreme. The constitutional right of a Member should not be undermined under the guise of political party discipline. That is why I am saying that if we allow this culture to go on, it can be used tomorrow to their own disadvantage.

There are chairpersons whom we have elected to lead committees where we, as Jubilee, are in the majority. It is not right for us to de-whip somebody simply because of their opinion or because we do not like the views that they have given. It would be a shame on this party that many have said is draconian. Many have said that the leader of CORD is a dictator and they have now demonstrated that in their rank and file in this House through their Minority Leader; that they truly represent a dictatorial party.

(Laughter)

Sen. (Prof.) Lonyangapuo: Mr. Speaker, Sir, I would like to remind my neighbour here that the old days of KANU are gone and they went with you, people, who left, including you. Those of us in KANU are brand new.

(Laughter)

I would like to clarify two issues which did not come out clearly in your Communication.

First, it was not clear in your ruling whether it is indicated in our Standing Orders that you can just be de-whipped for exercising your right as a Member of the Committee.

Secondly, I wish to confirm that I have just received this letter informing us about next week's meeting to elect a chairperson. When we met for our first inaugural meeting this Session to elect the Chairperson, - I hope the Senate Minority Leader is listening; it

seems he is not. I want them to listen because they are the ones who caused this confusion. As you indicated your preferred Member, I hope you had identified him or her in your heart and mind as a coalition; you need to just give us a name or identify a priority and say, "we are presenting our candidature as follows:-" There was nothing to that effect.

Traditionally, for the last three years, we have presented our names and conducted elections. It defeats logic that suddenly you can quickly remove a Member who has been elected and replace him with a name which is not in this list. Two names are missing in the list in this letter; Sen. (Prof.) Anyang'-Nyong'o and Sen. Khaniri; who tendered their resignations. I expected that if you wanted this business to be transparent, you should have rescinded their resignation---

The Speaker (Hon. Ethuro): Order, Senator. Please, conclude.

Sen. (Prof.) Lonyangapuo: Mr. Speaker, Sir, their names should appear here. Otherwise, as it is, it is as if we are being prepared to do something that we do not know because the membership is not complete.

The Speaker (Hon. Ethuro): Order, Sen. (Prof.) Lonyangapuo. If you had considered the view, - Who authored that letter? It is not the Senate Minority Leader. Please, read properly.

Proceed, Sen. Obure.

Sen. Obure: Mr. Speaker, Sir, from the beginning, I wish to state that I am a staunch CORD supporter. I thank you for the ruling you have made. I listened to it carefully. I do not think that taking into consideration our Standing Orders, you had any other option.

Members of the Senate County Public Accounts and Investments Committee were invited to carry out their elections which, indeed they did. Under normal circumstances, their decision should be accepted and respected. However, events took place immediately after that election, namely, de-whipping of Sen. Okong'o who had just been elected the Chairman of that Committee. I, personally, think that this measure was demeaning and very unfortunate. My party should have carried out more consultation among its Members. Therefore, I take this opportunity to advise my coalition that in future we should demonstrate more respect and an element of dignity for our Members, particularly, and avoid situations where we take decisions which are demeaning. I feel embarrassed. I am sympathetic to my brother, Sen. Okong'o, but I hope that within our House we can rectify some of these things so that we avoid them in future.

Sen. Karaba: Mr. Speaker, Sir, allow me to say something about the elections. It is as if we had timelines. The returning officer was the Director of Committee Services who presided over the elections. They were conducted democratically. However, to the amazement of most of us, those who participated in the elections were belittled by the exercise that seems to be in futility. It should not have been the case. Whoever voted in that election has been belittled because he or she voted in futility. I, therefore, ask that; suppose in the same election which has been called, the same challenge is encountered where another person who is not favoured by CORD is elected, will we continue doing that? That is wrong. Let us recognise the voting powers of Senators. We are all equal and also very intelligent. Let us not assume that whatever happens is taken for granted.

Sen. Elachi: Mr. Speaker, Sir, I wish to remind the House that as we conduct our business, let us not forget that we are always on air. Sometimes it becomes very political.

We have just set a precedent. I hope that we will not have to elect the Chairpersons of Committees again as is the case with this one. We have set a dangerous precedence where Members can just have discretion to do anything in their Committee. We do not want to have this scenario in the last years of the term of this Senate. We have worked so closely together. We need to ensure this calms down. I hope this will not go to the fields of Kisii and Nyamira. In addition, I hope the Members of the National Assembly will not just hold a press conference in the next 30 minutes. It is not good for our House. We should manage this through dialogue without bringing it to the Floor of the House.

The Speaker (Hon. Ethuro): Order, hon. Senators. My ruling remains as it was presented. I appreciate these other interventions. I assure Sen. Mutula Kilonzo Jnr. that his sympathies are misplaced. I know that they were not directed to me but I would like every Senator to feel free. If they feel aggrieved, they can approach the Chair so that at the very minimum, they can be comforted. That is what I have done today. I have clarified the role of political parties in our process in my ruling. There was no way I would have entertained an appellate process. I said as much and it is important to say so.

Concerning what Sen. Wamatangi and Sen. (Dr.) Machage said, in terms of invoking the Constitution; I am afraid that all the Articles you quoted are completely irrelevant to the matter you are canvassing.

Indeed the Constitution gives Parliament the provision to make Standing Orders drawn from the same Constitution. The Standing Orders carry more weight than ordinary legislation and, therefore, they are already anchored in the Constitution. There is no discrimination because there was no cruelty or torture in Article 25 that Sen. (Dr.) Machage quoted.

The issue of a discharge of a Member as provided under Standing Order 180 is that, it is the House that decided it. It gives the Speaker absolutely no room. My work is that once I receive the letter from whoever is responsible, it takes effect immediately. It is actually not 'dead on arrival' but 'alive on arrival'; upon receipt. I am trying to use the famous quote by the United States of America (USA) 'dead on arrival'. This is 'alive on arrival'. Upon receipt, the Member is discharged.

I was also looking for the rationale and justification; like any other human being, it is right and proper to agonize over things. However, that is not my duty because there was no requirement to inquire "why" and "why not". I wish it were possible. As I have always said, my job is to interpret things as they are. I am happy that this is not one that I have to agonize about. This was a straight forward matter as I promised yesterday.

If you feel that, that Standing Order is not serving your interest, as some Members have expressed, it is this House that changes the Standing Orders. Whatever you give me, I will comply with it.

Thank you.

(Sen. (Dr.) Machage stood up in his place)

Order Sen. (Dr.) Machage! Some things must come to an end.

Sen. (Dr.) Machage: Mr. Speaker, Sir, allow me to read Article 2(4) of the Constitution. It states:-

“Any law including customary law that is inconsistent with this Constitution is void to the extent of its inconsistency and any act or omission in contravention of this Constitution is invalid”.

Thank you.

(Laughter)

The Speaker (Hon. Ethuro): Sen. (Dr.) Machage, I confirm to you that I am an active student of the Constitution and I may be one of those fortunate few to have participated in making and enacting it. I am still pursuing it in terms of implementation not only on this Floor but also elsewhere. So, take it from me that you have only read what is provided but you have not argued and neither have you stated why. If you want more treatises on this one, you may revisit the S.M. Otieno case.

I rest my case.

Hon. Members, your points of order on the Communication from the Chair have created a crisis. Most Members who were here to transact business have left. We have no other business on the Order Paper.

Sen. Mutula Kilonzo Jnr.: Mr. Speaker, Sir, you are right because on Order No. 10, 11 and 12, we were remaining with the Division on amendments that we have already done. We can postpone to another day.

COMMITTEE OF THE WHOLE

THE KENYA NATIONAL EXAMINATIONS COUNCIL (AMENDMENT) BILL
(SENATE BILL NO. 7 OF 2015)

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

THE OFFICE OF THE COUNTY PRINTER BILL
(SENATE BILL NO. 42 OF 2014)

THE WATER BILL (NATIONAL ASSEMBLY BILL NO. 7 OF 2014)

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

(Committee of the Whole deferred)

ADJOURNMENT

The Speaker (Hon. Ethuro): Order Members. There being no other Business, the House is adjourned until tomorrow Thursday, 3rd March 2016 at 2.30 p.m.

The Senate rose at 5.16 p.m.