

# **PARLIAMENT OF KENYA**

## **THE SENATE**

### **THE HANSARD**

**Thursday, 17<sup>th</sup> April, 2014**

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

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

#### **PRAYERS**

#### **STATEMENTS**

**The Speaker** (Hon. Ethuro): The Senate Majority Leader, do you have a Statement to make? I mean the weekly one.

**BUSINESS FOR THE WEEK COMMENCING  
TUESDAY 22<sup>ND</sup> APRIL, 2014**

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): Mr. Speaker, Sir, I am sorry and thank you for coming to my rescue. I have a Statement. This is a Statement regarding the business of the week pursuant to Standing 45 (2) (c).

The Order Paper for today contains, among other things, a Motion of Adjournment of the Senate until Tuesday 3<sup>rd</sup> June, 2014 which I will be moving later in the course of business today. Any business that will be outstanding at the close of business today, if the Motion of Adjournment is carried, will be prioritized by the Rules and Business Committee and scheduled for consideration when the Senate resumes.

Hon. Senators, since the first sitting of the Senate on 28<sup>th</sup> March, 2013, the Senate while executing its legislative role, has passed a number of crucial Bills. In executing its deliberative and oversight role, the Senate adopted many Motions and sought Statements from Committee Chairpersons. In executing its constitutional mandate of safeguarding interests of counties, the Senate has through its Committees visited majority of the counties and witnessed first-hand the challenges bedeviling them. The Committees have tabled various reports. Some of which, the Senate has adopted. The Senate, through the Committee on Implementation, continues to follow up on the resolution to ensure implementation of its recommendations by the Executive. You may also recall that

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following requests by numerous counties, we recently conducted public hearings on transfer of functions to counties. The Report of the Sessional Committee on Devolution on the matter is currently before the Senate. I trust that it will be adopted.

This, dear colleagues, is an indication of the Senate's commitment to fulfilling its mandate as bestowed on us by the citizenry. Let us endeavour to do all we can to make devolution work and make Kenya a better country for the benefit of our generation and the generations to come.

Hon. Senators, even as we adjourn for the recess, let us be alive to the provisions of Article 218 of the Constitution which requires that Parliament considers the Division of Revenue Bill and the County Allocation of Revenue Bill before the end of each financial year. The Senate, therefore, maybe recalled from recess for a Special Sitting when the two Bills have matured for consideration. I trust that Senators will avail themselves for this noble constitutional duty if and when called upon.

I take this opportunity to thank all of you for your cooperation and commitment to work which has brought us this far. I wish you a fruitful recess and happy Easter.

Thank you.

**The Speaker** (Hon. Ethuro): Any other Statements? Yes, Sen. Haji?

#### IMPLEMENTATION OF THE POWER OF MERCY ACT

**Sen. Haji:** Mr. Speaker, Sir, thank you very much. In compliance with the ruling you made yesterday, I wish to make the following Statement in response to a request by Sen. Kembi-Gitura.

First and foremost, I stand to commend the Attorney-General for having responded to my very short notice at 9.00 a.m., to appear before my Committee which he obliged, inspite of the fact that he was in a very crucial meeting with the Committee responsible for making recommendations on the workings of parastatals in this country. My Committee was very grateful and we hope and expect other Cabinet Secretaries to follow his example so that the work of this work and the other House can be smoother than it has hitherto been.

The Power of Mercy Act, 2011, came into force on 5<sup>th</sup> September, 2011. The Power of Mercy Advisory Committee was constituted on 26<sup>th</sup> October, 2011, and it went into office on 31<sup>st</sup> October, 2011. The Committee proceeded to hold its first meeting immediately upon being sworn into office. Section 3 of the Power of Mercy Act stipulates that the Act shall govern all matters relating to petitions for the exercise of the power of mercy by His Excellency the President pursuant to Article 133 of the Constitution.

The function of the Committee is to advise the President on his prerogative under the Constitution. Despite numerous financial, administration and secretarial challenges relating to the transition from the former Board of Review which has continued to be in existence under the Prisons Act, Cap.90, the Committee has prepared their 2012 and 2013

recommendations to the President for the exercise of the prerogative of mercy as required by the Constitution and the Act. The recommendations were reviewed by the Cabinet in December 2012. The Cabinet directed that that National Security Advisory Committee reviews and vets the cases in light of the security concerns prevailing in the country.

The Committee has drawn the attention of the Office of the President to the timelines stipulated under Section 23 of the Power of Mercy Act and has received assurances from the Chief of Staff and Head of Public Service that the recommendations will receive due consideration once the vetting process is concluded. We undertake to keep the Senate Committee fully informed.

Thank you.

**Sen. Kembi-Gitura:** Mr. Speaker, Sir, I wish to take this opportunity to thank the Chairperson of the Committee for the initiative he has taken to see to it that at least a Statement is issued on due date because you had directed that, that Statement must come today. I am also grateful to him because at the close of that Statement, he has indicated that the Committee will keep the House seized and informed of any developments on this issue. Since I belong to that Committee, I want to take this opportunity to thank the hon. Attorney-General because he came at a short notice and he was candid with the Committee on this issue. I am not talking about the Attorney-General emeritus, but I am talking about the sitting Attorney-General.

Mr. Speaker, Sir, the answer is not quite satisfactory, but I would like to give the Chairperson the opportunity to pursue that issue further, particularly taking into account the provisions of Section 23 of the Power of Mercy Act. It is mandatory, in its form, that the President must within 30 days exercise or not exercise the power of mercy after he has received that Statement.

Finally, we have been informed by the Chairperson that the National Security Advisory Committee looks at this list after it has left the relevant Committee and before it reaches the President. I think there is a danger there. So, I would like to request the Chairperson to look at the possibilities of amending the relevant law so that the relevant people from the National Intelligence Service at least see the list before it goes to the President so that the risk of being tampered with after it leaves the Committee by other people for other reasons is minimized. The list that leaves the Committee should be the list that reaches the President and the list on which the President in exercise of his power of mercy under Article 133 of the Constitution relies on. The Committee is statutory.

**Sen. Haji:** Mr. Speaker, Sir, once again, I really want to thank the Attorney-General who gave us plenty of time and took us through all the problems that he is facing. I cannot agree less with the comments of the Senator. Yes, there are some delays which we have noted. This is attributed to the fact that before these recommendations are sent to His Excellency the President. They are sent to the National Security Committee which takes time to go through them. We have recommended and we will follow up to ensure that it is revised. First, the list should go to the National Committee to peruse and then go back to the Committee to verify that the record remains intact and then after that,

the list is sent to the President. That will cut any delay in between when the report is submitted and when His Excellency the President is supposed to take action.

We have also told the Attorney-General that if he thinks the Senate can assist in enhancing the Act that deals with the power of mercy, we are prepared to help him so long as he pinpoints the areas where he wants us to help him.

**The Speaker** (Hon. Ethuro): Good. Next Statement!

**Sen. Haji:** Mr. Speaker, Sir, I cannot be commended?

**The Speaker** (Hon. Ethuro): I was about to do so, Chairperson. I wish to commend you on behalf of the House for making that quick and reliable progress, obviously, from the intervention of the Senator for Murang'a. That is just but the beginning. So, just as I commend you, I would like to fully appreciate you by the time we finish the issues for further compliments.

#### COMPULSORY ACQUISITION OF LAND TO PAVE WAY FOR THE CONSTRUCTION OF THE STANDARD GAUGE RAILWAY

**Sen. Chiaba:** Thank you, Mr. Speaker, Sir. I have a Statement here with me. We received it today and we went through it with the other Members of the Committee. We have noted that this Statement is not adequate. I have also consulted with the distinguished Sen. (Prof.) Lesan and we have written back to the Cabinet Secretary to furnish us with an adequate answer. We have agreed to postpone issuing it to a later date.

**The Speaker** (Hon. Ethuro): This was a Statement about what?

**Sen. Chiaba:** Mr. Speaker, Sir, this was about Compensation on the Standard Gauge Railway.

**The Speaker** (Hon. Ethuro): It was sought by who?

**Sen. Chiaba:** Mr. Speaker, Sir, it was sought by Sen. (Prof.) Lesan.

**The Speaker** (Hon. Ethuro): Sen. (Prof.) Lesan, what is your comment on this?

**Sen. (Prof.) Lesan:** Thank you, Mr. Speaker, Sir. We have actually consulted and I have seen the written reply. It is not adequate as the Committee Chairperson has said. I am in agreement that they go back and give us an appropriate answer.

**The Speaker** (Hon. Ethuro): Good. Sen. Kembi-Gitura!

#### SAFETY ALONG NAIROBI-THIKA SUPER-HIGHWAY

**Sen. Kembi-Gitura:** Mr. Speaker, Sir, I wish to seek a Statement from the Chairperson of the Standing Committee on Roads and Transport on safety along the Nairobi-Thika Superhighway.

There have been reports about many avoidable deaths of pedestrians on the Thika Superhighway. Indications are that most of the accidents are due to dangerous crossing of the highway by pedestrians. In the Statement, the Chairperson should report on the following:-

(a) How many designated crossing areas are there on the Nairobi-Thika Superhighway and how convenient are they to pedestrians?

(b) Since the highway opened, how many pedestrians crossing at areas other than those designated have been hit by motorists and of those, how many have been killed?

(c) Why has it not been made a traffic offence for pedestrians who cross the highway at areas other than those designated? If it is an offence under the Act, how many pedestrians have been charged in courts of law in this regard?

**Sen. Chiaba:** Mr. Speaker, Sir, the question is very adequate. We will take it seriously to seek the clarification and everything that the Senator has requested. This will be done after the recess.

**The Speaker** (Hon. Ethuro): After the recess is very elastic.

**Sen. Chiaba:** Mr. Speaker, Sir, either the first or second week after we resume.

**The Speaker** (Hon. Ethuro): The recess for you is time to conclude all the pending business. So, it can only be the first week.

**Sen. Chiaba:** Most obliged, Mr. Speaker, Sir.

**Sen. Kembi-Gitura:** Mr. Speaker, Sir, with your permission, can I assume that will be the first Tuesday after we resume? Like you said it is important that we are clear on when the answer will be given.

**Sen. Chiaba:** Yes, we will do that.

**Sen. Kembi-Gitura:** On a point of order, Mr. Speaker, Sir. I do not understand what this means. Since we have a calendar can the chairperson indicate when he shall give the answer? This is important because if we are not here the answer is not given.

**The Speaker** (Hon. Ethuro): Order! Sen. Kembi-Gitura, you are pushing hard.

**Sen. Kembi-Gitura:** Mr. Speaker, Sir, clarity is very important.

**The Speaker** (Hon. Ethuro): If it is not clear to you, it is clear to the Speaker and the chairperson. That clarity was sought by none other than your good self who demanded after the Speaker assisted to make it the first week. You even made it better that it should be the first day of the week, which is the first Tuesday after we resume.

**Sen. Kembi-Gitura:** Most obliged, Mr. Speaker, Sir.

**The Speaker** (Hon. Ethuro): I thought you cannot get anything more clearer than that.

**Sen. Kembi-Gitura:** Mr. Speaker, Sir, that is my understanding.

**The Speaker** (Hon. Ethuro): Next Order.

### PROCEDURAL MOTION

**The Speaker** (Hon. Ethuro): Order, Members. We have two Order Papers. At this point, we will now deal with the Supplementary Order Paper. I hope every Senator has a copy. The Senate Majority Leader, you may proceed.

REDUCTION OF THE PUBLICATION  
PERIOD OF BILLS

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): Mr. Speaker, Sir, I beg to move the following Procedural Motion:-

THAT, pursuant to the provisions of Standing Order No.125 the Senate resolves that the publication period of the following Bills be reduced from seven days to one day:-

- (i) The Division of Revenue Bill, 2014 and
- (ii) The County Allocation of Revenue Bill, 2014

Mr. Speaker, Sir, under Standing Order No.125, Bills once published must remain for 14 days after which they may be introduced to the House for debate. For the Division of Revenue Bill and the County Allocation of Revenue Bill that period is less, it is seven days not 14 days. But the same Standing Orders allow the Senate to reduce that period. That period can be shortened from 14 days for other Bills, but also from seven days for the Division of Revenue and the County Allocation of Revenue Bill. That reduction can even come to zero, one or two days, depending on the circumstances.

Mr. Speaker, Sir, the particular circumstances of these two Bills is that this House, if the Adjournment Motion that I intend to bring later today is carried, will proceed on recess. Other than that, counties are supposed to know how much money is available to them as soon as possible so that they can prepare budgets. In fact, the law requires that by 30<sup>th</sup> April, 2014, counties should be able to share with the National Treasury their budget estimates so that by 30<sup>th</sup> June, 2014, which is the end of the financial year, by the time the Budget is read, counties will have had opportunity to present their budgets for integration with the national Government estimates.

In the circumstances, therefore, it is important that this Bill be laid before this House and also read the first time so that, if as it appears, the Senate resumes for a Special Sitting to discuss the two Bills then we can start from second reading and expedite the process to ensure that we do not clog the country in terms of the budgetary process. In any case, the Division of Revenue Bill is just about quantum between the national Government and the county governments. The County Allocation of Revenue Bill is about applying the formula to the counties of the proposed quantum. So, these are straight forward Bills. But given that this House is likely to be going on recess today for a while, it is important that the period be reduced from seven days to one day to allow first reading and tabling of these two Bills, so that when we come for a Special Sitting, we can proceed with the usual process of second and third reading.

Mr. Speaker, Sir, in that context, I beg to move this Procedural Motion. In the spirit of bi-partisan politics of this House, I want to request the Deputy Leader of the Minority, Senator for Wajir County, the hon. Abdirahman Hassan, to second this Bill – sorry – to second this Procedural Motion.

**The Speaker** (Hon. Ethuro): The Senate Majority Leader, I was wondering which Bill you were talking about. It is good you have clarified.

Proceed, Sen. Abdirahman.

**Sen. Abdirahman:** Mr. Speaker, Sir, I stand to support this Procedural Motion as proposed by the Senate Majority Leader. I equally find it prudent to shorten the period as these two Bills form the cornerstone of the work that the Senate is purely involved in with regard to counties.

I support this because counties have started to publicize public hearings for the collection of their priorities and plans for their estimates. Therefore, it is important for us to shorten this period with a view to meeting the relevant deadlines with regard to financial procedures which we anticipate in the coming one or two months.

Mr. Speaker, Sir, without much ado, I beg to second this Procedural Motion.

*(Question proposed)*

**Sen. (Dr.) Machage:** Mr. Speaker, Sir, the Constitution clearly defines the responsibility of this House on matters concerning financing of the county governments. One of our duties is to participate fully and make decisions which are binding on the Division of Revenue Bill and the County Allocation of Revenue Bill.

The background and ground work has already been done. Governors met the Committee on Finance, Commerce and Budget and gave their views on their requirements. Therefore, this House is privy to what the county governments may need in terms of financing of the Exchequer for the forthcoming financial year. Indeed, reduction of the time from seven days to one day gives us the opportunity to make sure that this is done before we proceed on recess today as per our calendar. If this is not done, it will mean that we are not able to do it or the House is reconvened for the same to be done with all the consequences involved. In any case, after the First Reading of these Bills, there is a mandatory period of 30 days that must be taken before the Second Reading is enacted. This process of reducing this period today is to make sure that we hit the timelines. As has been clearly stated, we may require at some time during the recess to come back and continue with the second reading of these Bills. This is a necessary and mandatory procedure. It is necessary that we pass this request by the Senate Majority Leader.

Mr. Speaker, Sir, I beg to support.

**Sen. Nabwala:** Mr. Speaker, Sir, I stand to support the Mover of this Motion. The Procedural Motion on the Division of Revenue Bill, 2014 and the County Allocation of Revenue Bill, 2014. It is important for this House to have enough time to deliberate on these two Bills that are very important as they touch on our mandate of oversight and determining revenue for counties.

Reducing the period from seven days to one day is important because it will give us enough time. It will also enable the counties to be able to know how much money is

being allocated to them, so that they can start working on their budgets, to be able to meet the deadline of 30<sup>th</sup> June, 2014. I, therefore, do not see anything wrong in reducing that period to one day.

Mr. Speaker, Sir, I beg to support.

**Sen. Sang:** Mr. Speaker, Sir, I know this is a Procedural Motion and ordinarily all of us would be requesting you to put the question. But it is important to raise a few things with regard to this Procedural Motion.

As I support the Motion, I want to congratulate the Senate Majority Leader. One of the greatest responsibilities of this House is to consider and pass the two very crucial Bills that go towards financing of our county governments. A lot of things have been said in the last two or so months. A number of governors have been quoted suggesting that this House is not committed to supporting devolution in this country. Some of the issues that we are handling in this House like reducing the publication period to ensure that we are able to do our responsibility as a Senate to support county governments should be noticed by Kenyans that this is a commitment by this House to support devolution. Therefore, some of the governors that have been quoted trying to do civic education on Senators, that we need to protect county governments and support devolution, need to know that we have not been prompted by the Council of Governors to move this Procedural Motion. We have not even been prompted by governors to do the responsibility that we are committed to do.

In the same vein, Members from the minority side, some of them have been reported of accusing the Government of not being committed to support devolution. This is a Motion moved by the Senate Majority Leader. This shows the commitment of the Jubilee Government to support devolution.

Mr. Speaker, Sir, I support this Motion and urge the Members of this House that we all work together in ensuring that counties have resources that they require.

**Sen. Okong'o:** On a point of order, Mr. Speaker, Sir. Is my good friend, Sen. Sang in order to purport that the minority side of this House have condemned the Government in terms of the issue of devolution? Could he substantiate?

**Sen. Sang:** Mr. Speaker, Sir, I do not want to go into greater details. But as we celebrated one year of the Jubilee Government a number of leaders were asked to give their views with regard to the performance of the Government. A number of leaders, including the Senate Minority Leader, Sen. Moses Wetangula, have been quoted publicly stating that the commitment of the Jubilee Government to supporting devolution is in question. I am saying that the moving of this Procedural Motion is an indication that we, on the Jubilee side, are keen on supporting devolution.

**Sen. Abdirhaman:** On a point of order, Mr. Speaker, Sir. I wonder whether Sen. Sang is in order to applaud the Jubilee Government in this House. I think the legislature bit that has to be applauded for the very good efforts with regard to devolution is the Kenyan Senate. Therefore, the score card, when it comes to rating, we should be able to do Government performances elsewhere because it is not fully represented in this House.



Is the Member in order to actually attribute performances of the Senate to the Jubilee Government?

**The Speaker** (Hon. Ethuro): Sen. Abdirahman, I thought you would add that the Senate being composed of the two sides---

**Sen. Abdirahman:** Thank you for helping me, Mr. Speaker, Sir. Also noting the fact that the Senate comprises of both sides of this House and because of our bi-partisan approach---

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

**Sen. Abdirahman:** I will not spoil anything. I only plead with you to allow me the last second to say that there is a bi-partisan approach in this House which we just demonstrated minutes ago. So, let us be careful.

**The Speaker** (Hon. Ethuro): Hon. Senators, this is a Procedural Motion. Let us not deal with issues that invite further comments.

Sen. Kajwang.

**Sen. Kajwang:** Mr. Speaker, Sir, it is procedural, but it is sweet!

*(Laughter)*

Finally, the Jubilee Government has realized that this Bill that deals with Division of Revenue is actually a function of this House.

*(Applause)*

Last time, they took it to the National Assembly. The National Assembly brought it here, we debated the Bill and amended it and then they ignored it. Instead of taking it where it should have been taken where we could have negotiated, the President of the Republic of Kenya quickly signed it into a Bill denying the county governments that this Senate really wanted to increase---

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): On a point of information, Mr. Speaker, Sir.

**Sen. Kajwang:** Oooh, if it is information, I can listen.

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): Mr. Speaker, Sir, for the record, I agree with Sen. Kajwang that this Bill is properly here and that is something that we acknowledge. But I want to inform him that the mistakes of last year did not emanate from the Presidency. They emanated from misadvice along the way. In fact, the leadership of this House, on the Government side, did a lot of work to convince the national Executive so that when you see this Bill here, it is not here by default or by guesswork. It is here because we exercised our role to give proper advice to the national executive that these Bills need to be considered by both Houses.

**Sen. Kajwang:** I am very happy with what the Senate Majority----

*(There was a technical hitch)*

**Hon. Senators:** The microphone is off!

**An hon. Senator:** *Imekataa.*

**Sen. Khaniri:** On a point of order, Mr. Speaker, Sir. Considering that this is a Procedural Motion and that we have four other Motions to debate before the Adjournment Motion, would I be in order to call upon you to put the question?

**The Speaker** (Hon. Ethuro): Let us just allow Sen. Kajwang to conclude. I am sure the Senators have heard the views of Sen. Khaniri. I want to believe that is the mood of the House.

Let us allow Sen. Kajwang to conclude and then we dispose of the Motion.

**Sen. Kajwang:** Thank you very much, Mr. Speaker, Sir. I was very sensitive to that and wanted to do it in one or two words.

It took the Senate Majority Leader and the Speaker of the Senate to go to the Supreme Court for an opinion for us to assert our rights to look at these Bills. I must celebrate what has happened. So, Senate Majority Leader, help me to celebrate that we are telling the world that this is our responsibility. We are going to be in charge of division and allocation of revenue, together, of course, with the Lower House. I think that our opinion will be better advised by our friends who now run the county governments. The country will be with us on this.

Mr. Speaker, Sir, I support.

**The Speaker** (Hon. Ethuro): I now wish to proceed to put the question and confirm that this Procedural Motion does not affect counties.

*(Question put and agreed to)*

Next Order!

## **BILLS**

### *First Readings*

THE DIVISION OF REVENUE BILL, 2014

THE COUNTY ALLOCATION OF REVENUE BILL, 2014

*(Orders for First Readings read - Read the First Time and ordered to be referred to the relevant Senate Committees)*

**COMMUNICATION FROM THE CHAIR****REORGANISATION OF ORDER OF BUSINESS**

**The Speaker** (Hon. Ethuro): Hon. Senators, before we proceed to the next Order, as correctly observed by many Senators, and in particular the Senator for Vihiga County, we have Motions under Order Nos.11, 12, 13, 14 and 15. Given the powers given to me under Standing Order No.39 (2) and, in consultations with the Mover of the Motion on Order No.14, Order No.14 will not be taken today. So, we will proceed with Motions on Orders No.11, 12, 13 and 15.

*(Order No.14 deferred)*

Next Order.

**MOTIONS****ADOPTION OF REPORT ON APPEALS FOR THE  
TRANSFER OF FUNCTIONS TO THE COUNTIES**

THAT, the Senate adopts the Report of the Sessional Committee on Devolved Government on the Appeals for the Transfer of Functions to the Counties pursuant to Section 23(7) of the Transition to Devolved Government Act, 2012 laid on the Table of the Senate on Thursday, 10<sup>th</sup> April, 2014.

*(Sen. Murkomen on 16.4.2014)*

*(Resumption debate interrupted on 16.4.2014)*

**The Speaker** (Hon. Ethuro): Who had the Floor when debate on this Motion was interrupted? It was Sen. Mositet who concluded.

Sen. Kembi-Gitura.

**Sen. Kembi-Gitura:** Thank you, Mr. Speaker, Sir. From the outset, let me indicate that I support the Motion on the transfer of the functions to the counties that is before this House. When we visited the counties to discuss and listen to their views on this issue, I was privileged to have chaired the cluster that listened to the appeals that were to be brought from the counties of Kirinyaga, Isiolo, Marsabit, Laikipia, Nyeri and Murang'a. From the start I must say that whereas the four counties appeared, the counties of Nyeri and Murang'a were not represented, neither had they filed any appeals with you or your office.

Mr. Speaker, Sir, I was quite impressed by the preparedness of the counties that came to Nanyuki to present their appeals. In the first instance, I want to commend the Governor of Kirinyaga County with a senior member of his cabinet. He was very well prepared. He was able to articulate the case for Kirinyaga County very clearly. As you see from the schedule, he is the first in the schedule. You find that we agree that the issues that he had brought were to be allowed. I must also say that in our case we allowed, where the members of the county executive came, like in the case of Marsabit, Isiolo and Laikipia counties. We allowed them and listened to them because they told us that they were duly authorized by the county government.

The preparedness with which these people came, particularly the young executives from Marsabit; the way they articulated their case on the issues of water, livestock, roads, agriculture and all those other issues, I must say I was very impressed. I got the impression that those counties take their work seriously. When the work we are supposed to be doing is taken seriously coupled with the oversight role that we, as the Senate, are endeavouring to articulate as best as we can, devolution is going to succeed.

Mr. Speaker, Sir, I also listened very carefully to my colleagues who contributed yesterday. I listened to Sen. Kajwang in his very well thought out debate. I also listened to Sen. Wako when he was seconding, who said that, in his opinion, the appeals, as one would say in law, have been allowed by the Senate. But the question is: Which appeals have been allowed? When I was practicing law, you had to make an appeal for it to be allowed. A court cannot sit and assume that you want to be released from prison or that you are not satisfied with the decision of a lower court and that, therefore, you have filed an appeal. That is why I want to underscore or underline the debate or contribution by Sen. Kajwang.

The whole Senate went throughout the counties to listen to appeals. True, they may have been generic. They may have come out almost in one format as if it was from one template. However, it is also true that the counties that took them seriously sent their Governors or senior officers to come and argue their appeals before us. It is based on that process that we filed our reports. You will find that in the case where the counties were not represented, there is no return or finding. There is, therefore, no recommendation on those counties. If our oversight role and our right to listen to appeals is to be taken seriously, then one must beg the question why would we allow appeals that were not before us? Why is the transfer to be symmetrical and not asymmetrical?

We do not know why they did not appeal. Maybe they do not feel confident to undertake the roles that were appealed. Maybe they do not have the capacity to appeal and they are happy to go on with what they are going on with. Why would we force it upon them that we listened to their appeals when we did not? Why would we then tell them that we are transferring this function to them when they did not ask for it? We are dealing with serious business in this House and it is important that we must lead from the front. When we spread out and listen to appeals- they do not have to come from all the counties or most of the counties like this one happened - we are going to expect to listen

to appeals from specific counties because they feel that they are either competent or they have reached a stage where they want to deal with those issues. So, even as we debate this Report, it is important that we ask ourselves what we will do with those counties that did not appeal because we do not know whether they are interested or not. We are not going to assume.

Mr. Speaker, Sir, to my mind, the issue of capacity building is one of the most important issues that we need to deal with. For example, I had the privilege of working in the Ministry of Agriculture as an Assistant Minister in the defunct central Government. One of the things that I know the Ministry of Agriculture tried to emphasize a lot of times was extensions services. These are services given by extension officers.

One of the biggest failings why we have shortage of food in this country is lack of capacity building in agricultural activities. Initially, extension officers were trained in Egerton College which is now current Egerton University. Even nowadays farmers do not take extension services seriously. An extension officer was taken to Murang'a to show farmers how to deal with soil erosion or how to use fertilizers, or what seeds to use. When that happened, we found that the counties or those farmers were able to maximize their production. That died naturally. The extension officers became joy riders. They went to the counties and started doing their own businesses and forgot what it is that had taken them there. Extension services died.

Mr. Speaker, Sir, even as we talk about the functions that we need to transfer to the counties, it is my considered and humble opinion that the challenge is now upon the counties to identify their needs. Agriculture has almost been wholly devolved to emphasize and to underline the emphasis on extension services so that we can, at least, have food security in all those counties where agriculture is fundamental. It is possible to deal more seriously with extension services in the devolved system of government because we are dealing with smaller areas. I know that was always a challenge for the Ministry of Agriculture in the then central Government. However, the time is now for the county governments to take this function more seriously.

Mr. Speaker, Sir, we have discussed about the court cases, and Sen. Kajwang talked about the referral of our matter to the Supreme Court. I feel good that, yesterday, the High Court found that the Senate acted properly in summoning Governors to come and explain matters of financial impropriety in their counties.

(Applause)

I applaud that finding because it shows that we have that role. If we negate the role of oversight as Senators, then devolution will have its own challenges. I say so now in the context of what we call the separation of powers. I know many governors would want to say that Senate is over asserting itself or that we are interfering with the separation of powers. Separation of powers is a constitutional provision. I want to surmise that, in my opinion, the separation of powers in the current dispensation and level of development of

our country cannot and must not be taken in such a way that it defeats development and the needs of the people. What the people of Murang'a, Bungoma and all the counties want is to see development and food on the table. We will not have food on our tables unless there is proper governance.

That is why I have been a very ardent supporter of Sen. Sang's Bill. This is because the Constitution emphasizes on the need for consultation, servant leadership and the need to see what the needs of the people are. It is only through consultation that we are going to address those needs for the people. Therefore, it is my view that even as we talk about separation of power, we must appreciate the current needs of our nation. We must consider where we are in our level of development and see that we cannot, strictly speaking, talk about things that are not going to benefit the development of our country.

Finally, Mr. Speaker, Sir, I want to touch on only one asset or national resource; that is water. I notice that water and forestry have not been devolved in full. We have only devolved them in terms of implementation of the national Government policy. I think that is important because we cannot leave water tower to the counties. However, my question is: In my county, the only natural resource we have is water. The only minerals we have in Murang'a are quarry stones and murram. We have no other resource like oil, *et cetera*. I am giving this by way of example as I emphasize the need of dealing with resources seriously. Murang'a county supplies Nairobi with 70 per cent of its water needs. Nairobi produces 60 per cent of the Gross Domestic Product (GDP) of this nation. I want to understand how much of the 70 per cent that Murang'a gives Nairobi in terms of water helps towards the attainment of that 60 per cent of the GDP, and how Murang'a County benefits from that water resource.

I am sure I speak for many counties because it cannot be just a question of Corporate Social Responsibility (CSR), that water is coming to Nairobi, therefore they do a classroom near Ndakaini Dam and say that, that is sufficient. It cannot be. There must be a way that we will share resources. That is why the Bill that was to be brought here by Sen. (Dr.) Zani must be fast tracked so that we understand; if you give oil, which is your resource, what do you get back? If you get coal from Mui Valley, what do you get back? If Murang'a can only give water to Nairobi and be able to make Nairobi get 60 per cent of the GDP of this nation, what do we get back in Murang'a? These are important questions to ask, even as I say that issues like forests and water resources must remain a function of the national Government in terms of policy.

We do not want every county to stand up and say "this is our water; we are going to shut it out; you are not going to receive it." That would be destruction of our national economy and it cannot be acceptable. But those counties must benefit from the resources that they produce. I want to ardently support that a Bill, like that of Sen. (Dr.) Zani, be fast tracked and brought to this House so that we understand how we will share the resources of this country.

Mr. Speaker, Sir, as I wind up, I want to thank those Senators who were in the cluster that went to Mt. Kenya Lodge, in Nanyuki, to listen to the counties that I have

mentioned, for their dedication and devotion to devolution because devolution is the future of this country. We, as Senators, are committed to devolution. I know that is bipartisan, and it goes without saying at every part of this very important House.

Mr. Speaker, Sir, with those few remarks, I beg to support.

(Applause)

**The Speaker** (Hon. Ethuro): Sen. Abdirahman Hassan.

**Sen. Abdirahman:** Thank you, Mr. Speaker, Sir. I want to join my colleagues who supported this particular Motion on the transfer of functions to counties. From the outset, I want to say that we thank you, as the Speaker, and we thank the efforts of the Senate for allowing Senators to go to the regions that they represented. In fact, that gave us the opportunity, a firsthand experience or account of what the status of our counties are with regard to how they are performing. I also want to thank the various counties that made their representations with regard to the county functions that they appealed for.

Mr. Speaker, Sir, I also want to take us back to how we fared in the first few months or how each of the players in the devolution process participated in these matters regarding the transfer of power and resources to the grassroots or to the local communities, including the Transition Authority (TA). There were mixed signals which had been sent from various quarters. We were starting to worry because some quarters, including those who are now saying that the Jubilee Government was supporting devolution, were getting a feeling that they were not giving it 100 per cent support. I say so because I remember attending one of the fora where the TA was participating with regard to matters that relate to health. In fact, they were not accorded an opportunity to give their side of the story.

Mr. Speaker, Sir, as much as we have a provision for the Inter Governmental Relations Act or the formation of a Committee which is supposed to manage the affairs that relate to both the national and county governments, from a development perspective, I think TA is not a group that could just be replaced. When you have a baby that has just been born, the baby has to start suckling. The baby has to, probably, start sitting at one stage, crawling at another stage and even standing up to walk. Without having an institution like the TA, which was underfunded in the last financial year, we were going to actually contribute to the killing of the much sought for devolution, which we all want to associate with.

Mr. Speaker, Sir, many people believe that counties do not have capacities. If counties do not have capacity, they do not have capacity because successive governments have actually managed them from the top, and that did not help the people much. Counties have capacity with regard to the functions. The functions that are now in the Report that we listened to from the county governments that relate to roads, Rural Electrification Authority (REA) and agricultural machinery. Even in the areas like the one that I come from, where people think they do not have potential in terms of

agriculture, I want to state very clearly that there are pockets that, if cultivated, will actually help make those people food secure. I am happy that the Report has been brought forward to this House, and I want to ask the national Government – I say the national Government because I have a feeling that we do not have 100 per cent commitment from it with regard to the transfer of these functions.

Mr. Speaker, Sir, as much as the national Government was saying that county governments did not have the capacity, they also do not have the capacity to actually handle matters that are vested in the national Government. I want to pick one particular example where they cannot help us take care of primary and secondary education comfortably. I remember there was a Motion that was passed in this Senate in the last session with regard to county governments entering into agreements with the national Government with regards to primary and secondary education. I would want that to be followed up. I would want to see county governments entering into agreements with national Government because it is allowed. They can go into agreements with the national Government to handle matters that relate to primary and secondary education.

Mr. Speaker, Sir, I finally want to conclude by saying that we may adopt reports here and we may have the Committee on Implementation looking at it, but we want to look at these things critically to ensure that we develop a mechanism that will help the Senate monitor progressively how the county governments are shaping up.

With regard to our relationship with county Governors, I think that things are now shaping up in the fact that they have accepted to work with the Senate in the interest of the counties. They must work with Senators for the interest of the counties.

*(Applause)*

The political leadership is very important if we have to witness success in the development goals that our people aspire to achieve.

Thank you, Mr. Speaker, Sir, for allowing me to contribute to this very important Motion.

**The Speaker** (Hon. Ethuro): Sen. (Prof.) Lonyangapuo.

**Sen. (Prof.) Lonyangapuo:** Mr. Speaker, Sir, thank you for giving me the opportunity. I also rise to support the adoption of this Report from the Sessional Committee on Devolved Government. Together with the team that went to Eldoret to listen to the six counties, we met on 14<sup>th</sup> November, 2013 and we were surprised that the team leaders of the counties who are supposed to be the governors terribly failed us. They did not attend to present their requests which they had made on paper. This gave us an impression that some of the people who have been given the responsibility of running our counties have suddenly discovered that they are in the wrong place in the sense that they forgot that they are supposed to fight and speak for the county any time; be it day or night.

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When some of us wanted to know why they had not come, they said that the County Executive Committee (CECs) came and will represent them. Amazingly, some of the governors were staying in hotels in Eldoret at that time. So, that did not augur very well with us. This brings a point out, that is, servant leadership which we were parading looking for votes. That is beginning to be replaced by some kind of power. So, the governors are forgetting that they are supposed to serve the people.

I am hoping that as we enter into the second year of devolution the teething problems of people thinking that they are bigger than other leaders will be eliminated. Servant leadership entails being humble enough to present your county any time when you are required. This is the spirit that the Constitution envisages. Some of the key issues that we brought up for request in order for the counties to function well in their appeals, include rural electrification which has become a problem in some counties, especially the counties in the North Rift where some schools are not covered. I want to give credit to the former Chief Executive Officer (CEO) of Rural Electrification Authority (REA), Mr. Ayieko. Together with his team, they were dedicated and made sure that the grid was taken to almost every part of the country as was decreed by the President in the Grand Coalition Government at that time. The President said that all schools must be connected to power. Even in this Jubilee Government, the President made a decree that every school that had not been covered must be connected. This calls upon people to work together.

Mr. Speaker, Sir, some contractors who are involved in REA projects are not serious. Some of them have been on site for over four years. I was even surprised to find that we have some Chinese who are taking electrical polls to some very remote areas and they fear going to those areas. This is where I call upon the national Government to work in tandem with the counties.

*(Loud consultations)*

Mr. Speaker, Sir, there are loud consultations here.

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

**Sen. (Prof.) Lonyangapuo:** Mr. Speaker, Sir, I was saying that those contractors who are doing rural electrification need to be serious. If they are not working, then the authority that gave out the contract must terminate them and get the right people.

The other area that was mentioned was roads. This is an area that is very confused even up to now where the Kenya Rural Roads Authority (KeRRA) is handling some roads and county government is also handling some roads and funds. In some very remote areas in our counties, for example, West Pokot, you can easily have duplication of duties where some funds can be voted for the same road. We also have the Constituencies Development Fund (CDF) which can be used in construction of some of these roads. It is important that these funds are consolidated and is fully transferred so that it is easier to be monitored.

One challenge that is coming up clearly is the qualification of the technical personnel working in the counties. We have an acute shortage of the technical people in the counties to the extent that even the designs given for houses, buildings, schools and roads are not adequately analyzed because of the calibre of staff found in the counties. I was surprised when I visited one construction site where the contractor was using draft drawings. The draft drawings are very dangerous. It means that the contractor will have to use guesswork and the work will not be done to the required standards. This calls upon the national Government to make sure that qualified people are appointed on the ground.

Mr. Speaker, Sir, one issue that was very prominent is the management of primary and secondary schools. The infrastructure and equipment in these schools is a very big issue. The national Government should not pretend to be holding on to something that they have not been doing. They have never build primary schools, except the two that were given during the Economic Stimulus Programme (ESP) where it was said that they will build two schools in every county. Today in the morning when we sat down with Cabinet Secretary for Industrialization---

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

**The Speaker** (Hon. Ethuro): Sen. (Prof.) Lonyangapuo, do you want to be informed by Sen. Kajwang?

**Sen. (Prof.) Lonyangapuo:** Yes, Mr. Speaker, Sir.

**Sen. Kajwang:** Mr. Speaker, Sir, I would like to inform the professor that in this city, for example, all the primary schools are owned by the former city council which is now the County of Nairobi. However, by the stroke of this rule, all schools, both primary and secondary, are now supposed to be run by the national Government. The Governor of Nairobi cannot now put money in Jericho Primary School or in Lang'ata Primary School which is a city school owned by the city. He cannot put money there because it is supposed to be run by the national Government. It is a serious contradiction that we must deal with. I just wanted to inform you.

**Sen. (Prof.) Lonyangapuo:** Mr. Speaker, Sir, I concur with my colleague, Sen. Kajwang, that things are now being done upside down to the extent that some of the schools that were being managed by the local county councils are purportedly being handled from Nairobi and no shilling whatsoever is going there. Even if there is a leakage in the roof, the county governments will just fold their hands because they have been told not to do it. In my county, there is no single school that was ever built by the Government. Even the famous schools that were built by our fore fathers were not done by the Government. The first President, Mzee Jomo Kenyatta build schools himself and some were built by the former President Moi. The few that are there are now being inherited by the national Government; we call them national schools and yet there is no single shilling that was put there.

These calls upon all of us to say that if the national Government wants to build national schools like Alliance, Maseno and Mang'u schools, we can give them free land in the counties. They should build their own schools to the standards they want. I find this

to be a bit weird because we want the counties to continue building schools, laboratories and libraries. This is one key function that I want released to the county.

Mr. Speaker, Sir, agriculture and livestock in my county is very key. The nature of our economy is livestock-based. I would like to inform this House that Government never employed technical officers for a long time. Today, the counties have a serious challenge due to lack of technical people. I was surprised at how the counties have recruited the CECs and the chief officers. You find that somebody who is not trained in agriculture is the CEC in charge of agriculture followed by the chief officer who also is not knowledgeable in agriculture. So, you can imagine where that county will be heading to yet we have a TA which is trying to assist county governments.

Mr. Speaker, Sir, we are privileged in West Pokot to have Cherangany forest, but sometimes we have a problem where---

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

**Sen. Lonyangapuo:** Yes, Mr. Speaker, Sir.

**The Senate Minority Leader** (Sen. Wetangula): I want to inform the distinguished Senator for West Pokot that the counties are just following the example set by the national Government. Look through the entire Cabinet and see the mismatch of professions and their dockets and you will understand why it has happened in West Pokot.

**Sen. (Prof.) Lonyangapuo:** Mr. Speaker, Sir, thank you for that information. It is not only in West Pokot. Even the ones in Bungoma and Trans Nzoia are completely mismatched. This Senate needs to come in and see how we can correct them. We should not copy a system that is not working. We need to move on and make sure that ours are working.

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

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

**Sen. Mositet:** Mr. Speaker, Sir, I do believe that the systems in the national Government are working. Therefore, no one can say that they are not working.

**Sen. (Prof.) Lonyangapuo:** First of all, you are seated in the wrong side.

**The Speaker** (Hon. Ethuro): Order, Senators! I am equally wondering what Sen. Mositet is up to.

**Sen. Mositet:** Mr. Speaker, Sir, the Senator is out of order by indicating that the systems in the national Government are not working while we know they are working very well and that is why we were able to have a Bill here read for the first time.

**Sen. (Prof.) Lonyangapuo:** Mr. Speaker, Sir, my colleague did not understand me. Sen. Wetangula rose to say that even the national Government has not aligned the systems. Then I said that since we are in devolution we should not copy what is not working. I am particularly keen to see that we must have a technical person particularly in the counties. You cannot have an adult education teacher as a chief officer in charge of

livestock. That is what I am seeing in some places and we should actually see how to change that.

Mr. Speaker, Sir, we have lost forest cover because some people are given tenders here in Nairobi and they walk to the catchment areas to harvest trees. How can you harvest trees yet we do not have commercial forests in some of those catchment areas? This is why the counties need to work in tandem with the national Government.

As I conclude, I want to echo the words of Sen. Obure who said yesterday that the Ministry of Public Works then decided to come up with a programme on how counties can be assisted through certain programmes. Treasury assisted us to make sure that county assemblies are built as a replica of the Parliament here. However, we did not build because of the conflicting interests of some departments who claimed that they are the ones who should be doing it. With such kind of conflicting competitions, we will never make progress. Now counties are left to use their little money to do that work. Yesterday evening, one governor said that he had spent Kshs140 million to buy his residence near the ocean. Those are some of the things that had been rejected at that time. I hope the others do not follow that example.

With those few remarks, I beg to support.

**Sen. Orendo:** Mr. Speaker, Sir, I also rise to support and emphasize what Sen. Kajwang said yesterday. The allocation of functions between the national Government and the counties should take the provisions of the Constitution innovatively. When I am reading the Constitution my understanding is that if we have a county which has resources it cannot be stopped from building a referral hospital for example. That county can do that so long as it is not a national referral hospital. We have some churches in this country which have built schools, universities and hospitals. So, if Siaya, for example, has enough resources from fishing and they want to build a university, I do not think there is anything in the Constitution that says that a county cannot build a university.

That is my understanding and moreso in the area of secondary and primary schools. The local community is expecting the counties to come and fill the gap. If a school is not properly built and does not have proper infrastructure, they expect the county government to do something about it. So, if a county has those resources, independent from the national resources, then I do not see why that cannot be done. There are clear examples in the world. If you go to India, there is a state called Gujarat. It is performing better than the national economy. The chief minister of the state of Gujarat is now becoming the Prime Minister of India because the way he has performed in his county is above others. That state has its own power plant and education institutions from primary to university. If you are following what is going on in India, this particular chief minister who once came to this country as a guest, he is becoming the Prime Minister of India because of the way he has run the county. The national government has failed in terms of the national economy and the state of Gujarat has become a good example for India. So the Indians are saying that if this gentleman can fix it, then why not elect him.

Mr. Speaker, Sir, sometimes we have to read the Constitution innovatively and achieve the purpose of the Constitution itself. The Constitution wants a nation in which people have services and our children can go to school and be properly taken care of. I think ultimately in the area of devolution of functions, the legal framework is already in place, but the Jubilee administration is shy to allow the county governments to participate in matters to do with security. The County Security Council Chairman is supposed to be the Governor. There was a time I was appearing in court for a Member of Parliament for Turkana, hon. Ekidor, where he was charged with an offence in cattle rustling. There was an invasion by cattle rustlers across the border. The security people, the police and the OCPD came to the courts and said that they wanted this man released so that he could help them carry out border operations between Ethiopia and Kenya.

Mr. Speaker, Sir, I know you know the former Member of Parliament for Turkana, Mr. Ekidor. From being my client, he was whisked into a police helicopter and when they came back they said that they had taken care of the problem. We went to court and the police came and said that they had instructions although they had no letter from the Attorney-General to withdraw the case against my client. That was one of the easiest cases that I succeeded in. I cannot imagine a situation like that in Samburu, Pokot or for that matter, Siaya, where you carry out a security operation, but do not involve the local administration, the county government and even the political leadership.

When there were incidences going on in Bungoma County, there was a lot of political noise being made. However, it was political leaders who were behind what was happening there. When the police were allowed to deal with the problem on their own, the violence continued. As soon as we involved a local leader in Bungoma, there was a quick solution. So, probably, in the future, we must also think innovatively on how county governments can function more effectively. If there is no proper security, then all these things we are talking about cannot take place; be it in Nairobi or any part of the country.

In my view, there are counties where there are minorities. If we do not deal with minorities very well we will not also succeed. At a national level in matters of security, the national Government should involve everybody across the board, including minorities and all centres of the population.

I will stop there because I will have an opportunity to talk about this issue. I hope that you will not go away because I have a very important message to deliver on this issue of security as we discuss the Motion of Adjournment.

Thank you.

**The Senate Minority Leader** (Sen. Wetangula): Thank you, Mr. Speaker, Sir for giving me this opportunity to contribute. I intended to contribute yesterday, but I sat to listen instead. I will start by congratulating Sen. Murkomen for moving the Motion very ably and bringing out most of the ideas and issues.

One very important issue that this Senate must be vigilant about is to make sure that we do not slip back from any issue. The Constitution provides that every devolved

function must have a correspondent budget and transfer of funds. We, as the custodians of devolution, we must make sure that whatever we transfer through the National Assembly does not hang on the resources that are meant to service the transfer of functions.

Just quickly, I want to point out a few things that Sen. Murkomen may wish to look at. The transferred functions should also have addressed the issue of real estate property. Literally, in every county, there is massive real estate; that is houses that were occupied by colonial governors like Provincial Commissioners, District Commissioners and by officers of functions that have already been devolved. However, those properties are legally still under the hands of the national Government. It is important that we also take steps to transfer the real estate, office blocks and other properties to the county governments so that they house and accommodate the staff of the devolved functions. If you go to Marakwet, perhaps, you will find the head of Agriculture staying in a House that belonged to the national Government and yet it is designated as a House under the Ministry of Agriculture. We should have these assets moved to the county governments.

The second issue is that I am persuaded by my colleagues here that Class “D” roads should remain with the counties. If you look at the country; you will see that Class “D” roads, cumulatively, are more than “A”, “B” and “C” roads put together. We also have unclassified roads. There is a likely tendency and a temptation to hold on the bulk of money for roads at the national Government. The national Government will continue to pretend that it can superintend on the construction of roads. You have seen what has been happening in this country before. Some regions of this country have tarmacked roads; whether they are classes “A”, “B”, “C”, “D” or “E” roads. They are now dealing with unclassified roads yet in other counties like Wajir and Turkana, not even roads in classes “C” or “B” have been tarmacked.

This Senate must ensure that there is equity in the distribution of national resources even those that were at the national level. We should constantly interrogate the national Government on how vital facilities like roads are being managed and developed. I want to see a situation where in every budget, the so called-unbundling and desegregating of funds, will help us see how much money is put on roads for paving and in which areas. There are some areas in the country where the headache is how to maintain tarmac roads. In other areas in the country, the nightmare is how to have murram roads. This is something that we must address properly. Even in counties like the one where the Chairman who moved the Motion comes from is not any better. They also have a nightmare of how they will have murram roads and not how to maintain tarmac roads. We want to correct this.

I enjoin Sen. Orengo on the issue of security. If there is anything that the Jubilee Government has dealt with like a deaf stone is on the matter of security. We have spoken and spoken until we are now telling them like the story of the hyena and the stone; that even if you do not answer, you have heard us. The Constitution provides that the Governor chairs a security committee in the county. If you go to the county, you will find

a County Commissioner of Police operating completely independent and parallel to the Governor.

**The Speaker** (Hon. Ethuro): Sen. Wetangula, did I hear you talk about a deaf stone?

**The Senate Minority Leader** (Sen. Wetangula): Yes, Mr. Speaker, Sir. Some stones have ears. I am sure you have heard about the crying stone of Kakamega which has some human instincts. When you talk about a deaf stone in relation to Jubilee, you know what I am talking about.

I was talking about the issue of security. You will find that every county has a County Police Commissioner. The Chief Executive of the County is the Governor. That Commissioner operates completely independent of and parallel of the Governor. Even if there is an issue, the Governor is a bystander and an irrelevant character like anyone else. However, the Constitution says that the Governor should chair the county security meetings. We must make sure that the Governor takes charge of security. Look at the case of Machakos; the much talked about Governor Mutua has bought - I think - 120 police vehicles.

**Hon. Senator:** He has hired them.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Speaker, Sir, I do not know whether he bought or rented them. However, he paraded them. These vehicles have been given to the police to perform a national function. I am sure he has not been allowed to chair the security committee and even to superintend over the enjoyment of those vehicles. I have seen this happening in Mombasa as well. We must ensure that we do not operate on panic buttons that the Jubilee Government is using in cordoning estates and carrying out night raids which are criminal in nature. They are swooping people, taking them to Kasarani and keeping them in cages like chicken. If they could listen to grassroots leaders, consult, invest and use intelligence to arrest crime we would not be having the circus that is going on in the security sector. Simply because an incident has happened, you cannot just become like a reckless fisherman who casts his net in the lake while it does not matter whether you catch a crab, omena, *mbuta* or *ngege*. That is how security is managed. We want to see proper structures and everybody being involved so that we manage our security.

A County Police Commissioner will be sent to Siaya, a place he has not been and the following day, he is busy chairing meetings of what he does not know and yet the Governor is there, someone who was popularly elected by the people. He is the one who receives information from the people and can help him mount security.

My last point is on the trans-county boundary resources. I heard Sen. Murkomen and Sen. Kembi-Gitura, as I drove here, talk about the issue of water in Ndakaini. Let it not be lost to us that we are a federal state. We are a unitary state with devolved units. Both our domestic or municipal and international law protects the access and use of natural resources by communities to the extent that your brothers in Pokot County cannot block Murunyi and Turkwell rivers from flowing into Turkana just because they start

from there. Both domestic and international law will not allow that. The people of Murang'a and Nyeri counties cannot block the waters of Tana River from being used by the Akamba downstream and the Tana River County because it starts from Mt. Kenya. This is not allowed by the law. The national Government as enjoined by the Constitution should formulate proper policies that will help compensate communities in counties that have time immemorial protected these natural resources and looked after them so that those that enjoy the resources downstream can also know who the custodians of these public and human good are.

We will be veering to a very dangerous situation if we start saying that if a water resource starts in your county, those who drink it downstream must pay for it. That is not the way to go and should not be part of our devolution. Our devolution should be centred on appreciating the protected resources. The national Government should compensate the counties which are the sources of these resources and not by charging the user counties down the line. That is what is done all over. As I said, I have been involved in the long protracted Nile Treaty reformulation. All of you who do not know what the 1918 Nile Treaty said; the British said that the waters of the Nile shall be used as follows; 80 per cent by Egypt, 15 per cent by Sudan and 5 per cent through evaporation. This was without caring that Uganda, Ethiopia, Kenya, DRC Congo, Rwanda and Burundi were there and were the sources of the water. That is how we have now formulated a new Nile Treaty which they have refused to sign because we have taken away 85 per cent exclusive use.

These trans-boundary resources include grazing rights, for instance, between Turkana and Pokot, Narok and Kajiado, Kajiado and Makueni, Mwingi and Machakos and so on. These also affect the northern counties. These rights must be protected so that communities that have lived together harmoniously, grazing their livestock and moving with them from Liboi all the way to Habasweni and to Merti continue to do so. This should not be curtailed simply because we have devolved units. This is a lifestyle that we must protect. We must ensure that lifestyles of Kenyans are respected.

As we finish this and go to the Division of Revenue and Revenue Allocation Bills, we should ensure that the circus we saw last time will not happen. We should not pass Bills here, take them to the Lower House, and see them being disregarded and the President moves on to sign Bills that are patently against the spirit of the Constitution. We want things to be done differently. We want to make sure that things are done right.

Finally, I want to remind young Sen. Sang from Nandi that everything done here is by the Senate and not by the Jubilee Government. In fact, the Jubilee Government has been engaging a reverse gear to the many progressive things that we do here.

**Sen. Haji:** On a point of order, Mr. Speaker, Sir. Is the Senator in order to say that---

**The Speaker** (Hon. Ethuro): Order, Sen. Haji! You rose on a point of order to ask whether another Member is in order when you are completely out of order. You have not been granted an opportunity.



**Sen. Haji:** I am sorry, Mr. Speaker, Sir.

**The Speaker** (Sen. Ethuro): You have been pardoned and you can proceed.

**Sen. Haji:** Mr. Speaker, Sir, is he in order to say that the Jubilee Government has done everything wrong against devolution whereas it is the Jubilee Government that sustains the county governments?

**The Senate Minority Leader** (Sen. Wetangula): Mr. Speaker, Sir. First of all, it is wrong for the distinguished Senator for Garissa to refer to me simply as “he”. I am the Senator for Bungoma with a name.

Secondly, I have not said that the Jubilee Government has done everything wrong. I said that the Jubilee Government has been engaging a reverse gear on devolution. This is common knowledge.

**The Speaker** (Hon. Ethuro): Order, Sen. Wetangula! On the Second one, you are absolutely right. He used a preposition which is perfectly in order. It is not in every instance that a name is referred to. It was obvious who he was referring to and to use the word “he” is perfect English Language.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Speaker, Sir. I hope that the Chair will be consistent in this. Recently, the Chair resisted to my continued reference to one Sen. Kindiki as Professor and demanded that I cite his titles. Now that I have humbly requested to be referred to by name, the Chair has changed course.

**The Speaker** (Hon. Ethuro): Order, Sen. Wetangula! The Chair has not changed course. You know the context in which the altercation between you and Sen. Kindiki took place. The issue was relevant because Sen. Kindiki was moving a Motion by virtue of a particular position which you are persistently ignoring. But this was just one instance, which I do not think you should take offence.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Speaker, Sir, finally, I want to urge that since we have very weighty issues ahead of us, we should try to bring to conclusion this Motion, so that we can go to the next matter.

Mr. Speaker, Sir, I beg to support.

**The Speaker** (Hon. Ethuro): Senators, I think that you have heard from the Senate Minority Leader, that really we have a lot of pending business before us. I would really like us to conclude this one, so that we can go to the next Motion and then, take voting at the same time.

Since I saw the Senator for Marsabit shooting straight and very high, maybe being provoked by Sen. Wetangula, who did not make references to the grazing rights between Marsabit County and Mandera County, I will give him a chance.

**Sen. Hargura:** Thank you, Mr. Speaker, Sir. I rise to support the adoption of the Report of the Sessional Committee.

Mr. Speaker, Sir, taking into account the issue of time, I would like to raise a few points. The first one is the issue of transfer of functions. I think that we should not forget that the last time we had a meeting with the Transition Authority (TA), they explained to us what they are going through. So, it is better to make sure that the Transition Authority

is in place to deliver on the transfer of functions through the transition period of three years.

Mr. Speaker, Sir, when we transfer these functions, I think that we have to make sure that they are based on requests. We have to ensure that the counties actually have the capacity, because I believe that you give somebody what he can do better than whoever was doing it before. You do not take it away from the national Government when the county government will not deliver the service in a better manner. For example, in the education sector, right now as it is, the county is only dealing with the Early Childhood Development (ECD) education and the polytechnics. But as it has been raised, the issue of infrastructure and equipping of primary and secondary school needs to be addressed by the county governments, especially from the marginalized areas where these facilities have not been there and now we have the opportunity of constructing these facilities ourselves and equipping them.

Mr. Speaker, Sir, on the ECD education, there is an issue which is contentious, that is, engagement of teachers. We know that teaching is about having some particular standards and that is why the teachers in secondary and primary schools are under the Teachers Service Commission (TSC). So, we have to look at who should handle the ECDs because that is where the foundation is laid. If the counties have their own standards, then it is difficult to translate that to primary schools. So, I think that the issue of teachers' employment, training and remuneration should be left to the TSC at all levels, so that we can have some maintenance of standards.

Mr. Speaker, Sir, rural electrification is an issue which needs to be devolved also, because we have had cases of power stations which were constructed by the Rural Electrification Authority (REA) for the last four or so years and have not been commissioned. Because of thinking centrally, you have to commission them and at the same time, buy the equipment. So, some areas have stations which have been there for the last four years without operating. So, it would be better if this kind of function is devolved.

Mr. Speaker, Sir, in the case of roads, I think that we need to move quickly in terms of the legislation, because there is need to have a better definition of county roads. Right now we have cases where a county has about Kshs2 billion or Kshs1 billion for roads, but still those roads are said to be under the Kenya Rural Roads Authority (KURRA), which gives at most Kshs30 million per constituency. It would be better if the roads are devolved and also the funding and the technical staff. This is because right now counties are trying to employ technical staff to handle large amounts of monies, while we have staff who are idle at the counties, because what they are getting is not enough to maintain any road. This is because a county is maybe allocating Kshs30 million for a whole constituency. So, it would be better if these functions are devolved and done where they can be sourced properly.

Mr. Speaker, Sir, there is also the issue of legislation. I think that as the Senate, we need to streamline many of these legislations. The Report mentions several

legislations. If it is roads, it mentions about five or so legislations. So, it would be better if we streamlined these legislations in the roads sector and any other sector, so that we can have a smooth transfer of resources and functions to the relevant level of Government, with the supporting legislation.

Mr. Speaker, Sir, I support the adoption of the Report.

**The Speaker** (Hon. Ethuro): Having no other participant, it is now time to call upon the Mover to reply. I also urge the Mover not to maximize the time available to him.

**Sen. Murkomen:** Thank you very much, Mr. Speaker, Sir. First of all, I would like to congratulate my colleagues who have made very useful comments and very insightful policy statements here on matters transfer of functions.

Mr. Speaker, Sir, as I reply to this Motion, I want to, first, appreciate my colleague and former Vice-Chairperson of this Committee, Sen. Martha Wangari, who has since exited the Committee, for the able work that she did as a Member of the Committee and also in terms of her contribution to this Report. She did a very good job together with Sen. Karue, who is also no longer a Member of the Committee. The rest of us who are still Members of the Committee appreciate their effort.

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

**The Speaker** (Hon. Ethuro): Sen. Murkomen, do you wish to be informed?

**Sen. Murkomen:** It is okay, Mr. Speaker, Sir.

**Sen. Adan:** Mr. Speaker, Sir, I wish to inform Sen. Murkomen, who is the Chairperson of the Committee on Devolved Government that my name is not appearing on the list of the Senators who were present. I believe that my team can confirm that I fully participated in the team that I was supposed to be in, especially the Mt. Kenya. So, it is important to correct that.

**Sen. Murkomen:** Mr. Speaker, Sir, it is not only Sen. Dullo whose name is missing. There is also Sen. Omondi Godliver and a few others. These are typos which we agreed that we will insert, together with the names of the Governors that appeared yesterday. We have agreed that we correct that part. Therefore, everybody who contributed to this Report--- I was about to mention Sen. Mshenga who also exited the Committee and made tremendous contributions to the Report. Therefore, we are very proud as a team of the work that was done, not only by the Sessional Committee on Devolved Government, but also all the Senators who went round the country, took their responsibility seriously and came up with such a very important Report.

Mr. Speaker, Sir, there are many issues that have been raised by the Senators. They really emphasized the question of participation by the county executive. There are those sent Deputy Governors and other officers and did not come for whatever reasons. There are those who did not come because they wanted to show that they are greater, bigger or stronger than us, which is unfortunate. But I want to appreciate Governor Julius Malombe, Governor Peter Munya, Governor Ali Hassan Joho, Governor (Prof.) Kivutha Kibwana, Governor Amos Kingi, Governor (Dr.) Evans Kidero, Governor Kinuthia

Mbugua, Governor Jack Ranguma, Governor Benjamin Cheboi, Governor Wycliffe Oparanya, Governor Joseph Ndathi, Governor John Mruttu, Governor Salim Mvurya and Governor Cornell Rasanga for taking this exercise seriously and availing themselves. We have said, as a House, that we do not want to generalize condemnations in situations where people have done wrong.

Mr. Speaker, Sir, we also want to appreciate those who are on the right side and take their responsibility seriously. We want to tell them that the Senate recognizes what they are doing and is always their partner and is here to appreciate the things that they are doing. Therefore, I would like to tell those counties that were unable to come that although we became magnanimous and proceeded with the exercise without considering the fact that they did not appear, they should not think that the Senate of Kenya will not act when the situation needs. Sometimes the reason you become humble and magnanimous is to collect enough social capital for future friendships in difficult times. When a difficult time occurs for somebody who has been very active and working with the Senate, for whatever reasons, we will even apply more energy in trying to salvage a situation that may require, in terms of maybe relationships within the county, which require mediation or a situation which requires a Committee to go there and address. We will be more magnanimous to the groups that have shown mercy, magnanimity and respect to this House.

Mr. Speaker, Sir, one of the most debated issues here was roads. I agree with the Members that we have to do proper classification of roads. Remember the Report is very clear that this is just a temporary measure to facilitate, for this initial stage, the transfer of the functions. Therefore, the Committee on Roads and Transport has a humongous task of ensuring that the function is properly unbundled and classified in a manner that responds to the devolved system of Government.

Mr. Speaker, Sir, on matters education, indeed, you will remember that in my first Motion to this House, I said that it is important for the national and county governments to sign agreements and agree on transferring certain functions. So, as we debated then, we do not require Nakuru County to transfer back schools that were being managed by Nakuru County Council to the national Government, because of the new Constitution, but actually formalize by agreement that transfer to those counties and so forth.

Mr. Speaker, Sir, we must note that the motive of the county government in arguing for support of educational infrastructure has not been right. I have heard arguments that we want to be given the primary schools and secondary schools infrastructure, because that is where the votes are. We are not doing these things because of votes or it attracts more clapping of hands and so forth. We are doing it because we want to ensure that, as I read yesterday from the Report of the Taskforce on Devolved Government, that we do not want situations where functions are not funded, addressed or there is an overlap and wastage of resources. Therefore, the reason we are saying that infrastructure should go low is for the purpose of ensuring that the function is delivered.

Mr. Speaker, Sir, in my county, Members of the National Assembly have agreed that they will concentrate more of the Constituencies Development Fund (CDF) money on education infrastructure. In fact, more money is being given to education, so that they can leave matters of roads, bridges and health facilities to be done by the county government. If the CDF money, in the interim, would be spent on education alone, the results will be seen in a short while. I think that even as we work on the transfer of that function to the counties and agreements being worked on, my advice to the CDF committees and Members of the National Assembly is to apply more money on education infrastructure.

Mr. Speaker, Sir, the second last issue was security. Sen. Orengo and the Senate Minority Leader discussed the issue of devolving security to the counties. I was among the first people to say that there must be a proper role by the county governments on matters security. But the conduct of the Governors over the past one year has negated that argument. This is because if the Governor cannot sit and share information with his Senator, it means that if they become the chairman of the county police authority, some of them in the manner that they are behaving now, can easily use that power against the Senator. So, the Governor might order for the arrest of the Senator for Bungoma, because the power has been given to him.

So, indeed, it is important for our Governors to demonstrate that maturity that goes with handling security matters. Otherwise, if this supremacy issue continues, this House will be reluctant to agree that more security functions should go to an entity that is managed by people who are pursuing petty agenda. By the time someone is the commander-in-chief or commanding the police division, there is high level of discipline that is expected of that person.

Mr. Speaker, Sir, as proposed by the Senate Minority Leader, maybe we should start by saying that the Governor should be the chair of the *Nyumba Kumi* Initiative in every county, as a way of enhancing the non-policing functions of security, as they move gradually to other functions.

Mr. Speaker, Sir, the Constitution in its preamble, says that Kenya is one indivisible sovereign nation, which exercises a devolved system of Government. So, the part of “one indivisible sovereign nation” must be emphasized. This is because I have gone for meetings where you sit and then somebody says: “Mheshimiwa Rais.” When you look back, you realize that “Mheshimiwa Rais” is the Governor of that county. I am not exaggerating; I have been there. It is important that we continue emphasizing the issue of unity. That is why what the Senate Minority Leader said about water and all other natural resources is very important. This is because once we begin to have boundaries for resources that are supposed to benefit the whole country, then we will put our country in a situation of anarchy.

Mr. Speaker, Sir, I believe that the functions that we will devolve now will lead to the final stage of taking functions to the counties. Therefore, gazetting should be done soon and counties should prepare. Now the debate will shift from transfer of functions to

the allocation of resources for those functions that have been transferred. When that time comes, when we are discussing the Division of Revenue Bill, then we must be able to match the functions that we have devolved with the resources that are going to be put in the counties.

Mr. Speaker, Sir, lastly, we cannot be oblivious of the happenings in the country at the moment. Even as we debate here, the courts yesterday and the day before made very important decisions that have profound impact in terms of governance and matters of devolution. As a lawyer and this House, we have always emphasized that we respect the rule of law and the fact that the court yesterday, during the judgement of the case of the Governor for Embu, made very important statements. One was that all Governors are required to appear before the Senate. That is very important because this has been debated all the time and it is black and white in the Constitution. That emphasis was very important; that the court addressed itself to that fact. But I want to say – because we are now allowed to discuss judgements that are in public domain – that there is a growing unhealthy trend of judicial activism in the country, which is not intended, like in other nations, to address matters of accountability or public interest. I have no problem with judicial activism if that activism is in the public interest.

Mr. Speaker, Sir, in India, judicial activists have been used so well to address environmental problems. In other countries, it has been used so well to address matters of corruption and holding countries and governments accountable. It is unfortunate that our courts, instead of using judicial activism to promote accountability and good governance in our counties, have constricted that space and focused on technicalities of whether or not there was a court order, and forgot the substance; that there were allegations of corruption which were proved on matters of governance. I think that it is important that as we move together with the Judiciary, we bring back our courts to believe that it is important to use the institution of the Judiciary to further good governance and not constrict the space of good governance. That is the message. What is the point of sending one back to a situation of political quagmire or democratic anarchy?

If you know that two-thirds of the Members of the County Assembly made a certain decision against a Governor, you do not just throw that person to that same den of lions because when he goes there, nothing will pass because he needs that County Assembly. The relationship is sour and I think the courts should have even talked about arbitration. They should have even asked the Senate to intervene in a particular way. But just to imagine that they are oblivious of the realities of governance in the Embu County, I think that was really unfortunate and it is setting the county to lack of progress and making people think that devolution cannot work.

Mr. Speaker, Sir, the second last thing I want to say about that is that, when the courts order that the Speaker of the County Assembly of Embu and the Clerk should be committed for contempt, what indeed were they saying? We believe in this House that you cannot injunct Parliament and the County Assembly when they are performing their functions. So, when you say that the Clerk and the Speaker of the County Assembly

should be arrested and sentenced to six months or fined for acting in protection of public interest, you are actually intimidating all the county assemblies across the country that they must not take action against maladministration. The stage is being set where the county assemblies are continuously being undermined.

Even within the Judiciary, some people still think of county assemblies as county councils. They do not want to give them powers to bite. I am bleeding in my heart because the County Assembly Speaker of Embu and his clerk are having sleepless nights for sacrificing their time and energy to fight for democracy and accountability. This cannot be the case; to intimidate institutions that are fighting for accountability is like to sacrifice those that are making the greatest contribution for better democracy in our country. Therefore, my message to the Judiciary is that they must look for innovative ways of dealing with matters of governance so that we can facilitate a country that is more accountable and not a country that is dark because of lack of accountability.

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

**Sen. Murkomen:** I will take the information, but I am almost finishing.

**Sen. Orengo:** Mr. Speaker, Sir, I like what Sen. Murkomen is saying and I think the spirit of the law is exactly what the Senator is saying. According to the Powers and Privileges Act, no Member of Parliament can be arrested while attending to the functions of the legislature or when you are travelling to perform the functions of a legislative nature. That was to give protection so that Members of Parliament cannot in any circumstances be intimidated. If situations arise where in performance of your legitimate and constitutional duties, you stand accused, then the role of Parliament cannot be as robust as it should be.

**Sen. Murkomen:** Mr. Speaker, Sir, the reason why I allowed Sen. Orengo to inform me is because he oozes wisdom and that additional information is very important particularly coming from a Senior Counsel.

I know we have hammered in this House the question of separation of powers. If every time that is the way we are going to manage the processes of county assemblies, Senate and the National Assembly, I am worried. There is a consistent trend, even in the previous judgement that the court is saying that we cannot oversight the Judicial Service Commission, and now it says that we cannot oversight a Governor. Really, where are we heading to, particularly where we know that the officer who is making the decision is an employee of the institution that is in question? They must tread very carefully because emotions can be allowed to run high in Parliament because as politicians, we have sectarian interests to protect, but in the Judiciary, the courts must walk the thin line; like Caesar's wife. They must be above reproach and suspicion. The phrase Caesar's wife came about because one time a man who wanted to be close to Caesar's wife decided to dress like a woman and attended a dance that Caesar's wife was attending. Caesar's wife did not know that she was dancing with a man because he was dressed like a woman. But because Caesar's wife was expected to be above reproach, Ceaser divorced his wife even when the situation and the circumstances did not indicate that she was culpable in terms

of permitting the man to dress in a woman's dress. That is how serious it should be in the Judiciary.

The Judiciary must be very careful particularly in situations where it looks like there is a supremacy battle or an upper hand to deal with other people. If they do that, it will be akin to courts engaging in acts of cutting off the nose to spite the face and we should not do that. It is important that this is dealt with, if not, this country will slide into anarchy.

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

**Sen. Murkomen:** Let me allow Sen. Orengo.

**Sen. Orengo:** Mr. Speaker, Sir, this is again another very important point. I have been looking for an occasion to say it in relation to the Judicial Service Commission (JSC). My reading of the Constitution is that the judicial authority is to the courts and the tribunals; it is not to the Commission and it is there in black and white. So, any organization which is created under any law or under the Constitution must be subject to the oversight role of Parliament. That is very clear. Today, the Senator for Elgeyo Marakwet is behaving very well.

*(Laughter)*

You realize he has been sitting on this side a lot of these days.

**Sen. Murkomen:** Mr. Speaker, Sir, I thought it is the other way round; it is Sen. Orengo who is behaving even far much better.

**The Speaker** (Hon. Ethuro): Sen. Orengo, are you also implying that your assertions are being considered by the Senate Majority Leader?

**Sen. Orengo:** *(Spoke off record)*

**Sen. Murkomen:** Mr. Speaker, Sir, lastly, I wanted to say something about an issue that we debated for long with Sen. Orengo and other lawyers in this House particularly when we were in the Committee. This is the issue of due process and the process of impeachment. Impeachment in a presidential system is equivalent to a vote of no confidence in a parliamentary system. It is a process that is supposed to check maladministration. It is matters of politics. In that process, the process by Parliament is final. All over the world, whether it is in the United States, Nigeria, South Africa or Kenya, the impeachment process has two stages. The first is the indictment of the officer being impeached. In that process, you collect and investigate the charges, but at that point in time, you do not require the officer in question to appear before that stage because there is a second stage. The second stage which is very important is usually done in other countries by the second chamber. This is actually where there is an actual trial akin to the court room where you call the officer in question to appear before you and the trial continues, you look at the evidence and then you make a final decision.

When the second chamber sits to make the final decision, they are like the final Court of Appeal on that decision. Now the courts are saying that there was no due



process in Embu when the due process of allowing the Governor to be heard was supposed to be done here at the second stage, we did that; we allowed the Governor to present himself before the Committee; he came to this House. In fact, it was clear that instead of defending himself in this House, he was threatening this House that there is still the court. We now know why he was threatening us, because the ultimate decision now is here!

But, Mr. Speaker, Sir, it is important to say that, as a country, let us grow our democracy; let the courts behave in a manner that will allow institutions to work; let them allow the Judicial Service Commission (JSC) to be accountable; let them allow the Parliamentary Service Commission (PSC) even of this Parliament when summoned by a Committee to this House, it must be accountable to us because none of us is immune from accountability. So, this is important, and it is important that the message goes out there; that in Article 94 and at the preamble of the Constitution when it talks about Parliament's role, it is very clear.

We are a democracy; we are not a juristocracy. Be that as it may, if the courts want to be activist, they must respect the fact that we are a democratic institution. Therefore, the message to our brothers, the Governors – because we are all brothers – is that here are the functions we have given you; in the same spirit and the fight that we fought for those functions to come and in the spirit that we are using to fight now for the resources to come, we will apply the same measure in fighting for accountability, and even greater.

*(Applause)*

This is so that the resources that are going to the local level can do the work that we want them to do. This is because we have agreed in this House that we do not have the Constituencies Development Fund (CDF); the only CDF we have is the devolved functions, and our CDF manager is the Governor.

**Hon. Senators:** Yes!

**Sen. Murkomen:** We must, together, work as a team to ensure that we devolve resources and functions to our counties and make a difference for our country.

Mr. Speaker, Sir, with all those many remarks, I beg to move and ask this House to finally approve this Report so that it can be used for the benefit of our country.

Thank you, Mr. Speaker, Sir.

*(Applause)*

**The Speaker** (Hon. Ethuro): Order, Senators! We are not going to put the question now, because that should be the next stage. So, we will move to the next one and then we will take the voting together.

What is it, Sen. Murkomen?

**Sen. Murkomen:** Mr. Speaker, Sir, I thought this is a matter affecting counties and the other one coming after this is not a matter affecting counties. I request that we put this Motion to the vote because there are Senators who are travelling and I do not want us to lose them.

**The Speaker** (Hon. Ethuro): Put your request, but do not try to imagine that the Chair was not aware of the difference of voting in the two Motions. Your request is declined for reasons that you are actually a beneficiary. That is the wisdom of the Chair.

Next Order, Senate Majority Leader.

APPROVAL OF DEPLOYMENT OF KENYA DEFENCE  
FORCES IN SOUTH SUDAN

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): Mr. Speaker, Sir, I beg to move:-

THAT, pursuant to Article 240(8)(a) of the Constitution and Section 18 of the Kenya Defence Forces Act (No.25 of 2012), the Senate approves the deployment of the Kenya Defense Forces in South Sudan for the purpose of regional peace support operations.

Mr. Speaker, Sir, for many years, Kenya has been requested to contribute to peace keeping operations. This is from as early as 1973 into the 1980s where, in particular, in 1980, Kenya participated in the peace keeping operation in Zimbabwe. In 1984, through the auspices of the Organization of African Unity (OAU) and under Chapter 8 of the United Nations (UN) Charter, Kenya participated in the peace keeping operation in Chad; while in the 1990s after the fall of the Berlin Wall, so many crises erupted around the world, and it is during this time that Kenya really came out very strongly in the participation and support of peace keeping around the world.

Mr. Speaker, Sir, mention will be made, for example, to the peace keeping mission that Kenya successfully participated in, in 1989 in Namibia. Similarly, in the former Yugoslavia after the eruption of the Balkan War, Kenya participated in the peace keeping operation in countries like Bosnia Herzegovina and Croatia. In 1993, Kenya also participated in peace keeping operations under the auspices of the UN in Eritrea, Mozambique and, later on, in Cambodia, Liberia, Sierra Leone, Darfur in the Sudan, and the list is endless.

Mr. Speaker, Sir, even as we speak, the force commander of the UN Peace Keeping Operation in Liberia, Maj-Gen. Ng'ondi, is a Kenyan. As we speak, the Deputy Force Commander of the African Mission in Somalia (AMISOM) troops in Somalia is a Kenyan. Kenyans will recall the exemplary role we played with regard to the Sierra Leone Peace Keeping Operation by a Kenyan known as Gen. Opande, who was the force commander of the overall UN Peace keeping troops.

Mr. Speaker, Sir, what all this demonstrates is that Kenya is a giant in peace keeping; it demonstrates that Kenya is a nation which is endowed with professional and

disciplined soldiers who have been respected around the world for many decades. You will agree with me that one of the greatest honor for a nation is for it to be recognized by the rest of the family of nations as a country which can support the purposes for which the multilateral and the global community of nations exist. I say so because Kenya, being a member of the UN, in sending its troops for many years to support peace keepers under the auspices of the UN, it is assisting in the fulfillment of the purposes of the UN which are articulated in Article 1 of the UN Charter. These purposes include the maintenance of international peace and security.

Therefore, Mr. Speaker, Sir, it is a great honor for our country to have performed so well and even to continue receiving requests from the UN. I think this is something that we should be proud of as a nation and hope that, going forward, we can maintain this leadership, not only in this region, but also globally.

Mr. Speaker, Sir, in 2005, Kenya played a critical role mid-wifing the peace process between the Sudan and South Sudan. The following year, 2005/2006, the peace agreement was signed here in Nairobi. I take this opportunity to thank the many Kenyans that tirelessly got involved in this process including Gen. Rtd. Sumbeiygo who was the Special Envoy to President Daniel Moi during that time, Hon. Kalonzo Musyoka who was the Minister for Foreign Affairs and so on. There are so many Kenyans who did a great job. At the same time, just before the peace process in Sudan was entered into, the United Nations Security Council, which is a superior organ of the United Nations in the area of maintenance of international peace and security, passed Resolution No. 1590, in December, 2005 to create the United Nations Mission in Sudan (UNAMIS).

The following year, 2006, Kenya was requested to send troops to UNAMIS. That was done and at that time there was no requirement for parliamentary approval because we were under the old Constitution but we are happy the country complied with that request. From 2006, 690 Kenyan troops have been involved in peace operations in Sudan. When South Sudan got independence on 9<sup>th</sup> July, 2011, the UNAMIS was converted with UNAMIS, that is, the United Nations Mission in South Sudan. The contingency remained the same at 690. The country entered into a memorandum of understanding between Kenya and the United Nations. It was agreed that the contingent be retained at 690. As we know due to realities of battle, the memorandum of understanding provides that every year, there should be a possibility of rotating personnel but within the 690 so that if people are unwell they can be replaced by other people who are feeling better.

Mr. Speaker, Sir, that has been going on for some time now. Fast forward to 15<sup>th</sup> December, 2013, allow me to commend my brother, the Leader of Minority and Senator for Bungoma County, Sen. Wetangula because when Kenya did the actual deployments of the 690 soldiers to UNAMIS, my brother was then Kenya's Minister for Foreign Affairs and he did well for the country. I really applaud him because a country without a clear forceful foreign minister and a foreign policy is a country that is going nowhere. Let me illustrate what I mean by this: As we speak what the Ministry of Defence is requesting through the National Security Council is not a new deployment. It is actually

to upgrade a little bit and to increase our troops. Since there is a new Constitution, the additional 310 soldiers that are being looked for cannot be sent their without approval by both Houses of Parliament.

The point I wanted to clarify here is that when the UN decided a few months ago, because of the breakdown of law and order in South Sudan to increase the troops of UNAMIS from a total of 7,000 the global number to 12,500 troops, many countries volunteered to send troops and were declined. I will not name some of those countries for diplomatic reasons because we do not want to jeopardize our relationship with other countries. Many countries even those outside this continent wanted to contribute to the number of soldiers and were told by the UN that priority will be given to Kenyan soldiers. This is something that we must be proud of as a country and we must appreciate our military for giving Kenya a good name abroad.

Mr. Speaker, Sir, a request has been made consistently since December and in fact, the request for another 1,000 soldiers but I think the President and military agencies thought that the number will be too big because of other commitments internally and elsewhere. So, they negotiated for the increase of the troops to be a total of 1,000, that is, 690 in addition to 310. So, the request which is being made today is a request to send an additional 310 soldiers to join their colleagues, the men and women who have served this country very well outside South Sudan for the last several years.

Mr. Speaker, Sir, allow me also to say that this request is for the 310 soldiers to be deployed to what is referred to as static posture, which means that it is not a fighting force but a force to defend civilians and secure areas in a place called Wau in the southern part of South Sudan especially those who might be fleeing and would want to get refugee status in the nearby UN refugee camp in Wau. So, it is that clarity that I thought would help colleagues to understand the nature of this request.

Mr. Speaker, Sir, allow me in this context to applaud our new Constitution because in the past, our men and women in the military were being deployed all over the world without consulting anybody, without asking Kenyans or their representatives. Courtesy of the new Constitution and courtesy to the people of Kenya who passed it, it is now clear that the Houses have to be involved. Allow me to briefly read Article 240 which is the basis of this request. Article 240(8) it says:-

“The Council with the approval of Parliament may deploy national forces outside Kenya for regional or international peace support preparations or for other support operations.”

Likewise, if any foreign military forces were to be deployed to Kenya, God forbid, but if that was required, again a recommendation by the national Security Council must be approved by Parliament. I think I should also clarify something which is important in this connection even for the consumption of Kenyans and the consumption of people who are involved in processing of requests to this House. That whenever the Constitution uses the word “parliament”, it refers to both Houses. I think some kind of civic education should go out there to assist so that in future people do not ask which House should be doing

this. Where the Constitution requires one House to do something, it uses the name of the individual House. For example; National Assembly or Senate. Therefore, it is important that this be approved by this Senate and also by the Lower House so that Parliament would have approved the request by the National Security Council.

Mr. Speaker, Sir, I wish to applaud our National Security Council and the Commander-in-Chief, the President, for complying with the law. I know that when people comply with the law, it is said that is what is expected of them. We need a culture where when a public institution does something good in the confines of law, they are appreciated. When time comes to criticize, when they go outside the ambit of the law, then we also become objective and appreciate the situation.

I know that the President did not have a choice. The National Security Council did not have a choice in complying with the Constitution. Every time, the President of this country complies with the Constitution; every time that this country complies with the National Security Council, it makes the right step towards being a country that is governed by the rule of law and not the rule of men.

I want to recommend that this House approves the deployment of 310 additional troops to join their comrades in Southern Sudan. This will improve Kenya's image abroad. It will also improve its position in this region as a leader in terms of our foreign relations and diplomacy. Later, when we want to flex our economic muscle in the region, we can have the high moral ground the same way that our brothers in the west, Nigeria, have benefited a lot. Their economy has grown because of the leading role they have played to secure the region and to support peace in the auspices of ECOMOG under the Economic Community of West African States (ECOWAS). ECOMOG is the military arm of the ECOWAS.

**An hon. Senator:** It is ECOWAS and not ECOMOG.

**The Senate Majority Leader** (Sen. (Prof.) Kindiki: Before I came to this House, I was a Professor of International Law. Therefore, my choice of ECOMOG is deliberate because that is the military arm of ECOWAS. That, notwithstanding, I am a happy man and a proud Kenyan even as I move this Motion.

On that note, I beg to move and request the Senate Minority Leader, who is also the Senator for Bungoma and a former Foreign Minister of our country, Moses Masika Wetangula, to second this Motion.

I thank you.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Speaker, Sir, he deliberately forgot to say; "my former boss" because he worked for me.

I beg to second. This is a bipartisan constitutional matter. It is not the first time that Kenya is deploying its boys and girls or men and women to go and do international good. We have had Kenyans keep peace, enforce peace, maintain peace in many countries like Nigeria, Sierra Leon, Corte' de' vore, Chad, Darfur and far away in East Timor. When East Timor was going for independent elections, Kenyans were called upon

to go and join the international force. When Yugoslavia broke up, Kenyans were at hand to join the international community in helping to stabilize the fractured country.

I recall my very good friend, Maj. Constance Ong'ayo, who was leading one platoon in Yugoslavia rolling off the cliff and losing his life in the course of duty.

**Sen. Orengo:** On a point of order, Mr. Speaker, Sir. I think as we praise everybody else, particularly in the military - in those efforts - it should be remembered that the *emeritus* Attorney General was a special envoy to the Secretary General in East Timor during those operations. That was Sen. Amos Wako.

*(Applause)*

**The Senate Minority Leader (Sen. Wetangula):** Mr. Speaker, Sir, I was going to praise him in much more generous terms than that.

We also remember that Sen. Wako was the special rapporteur on human rights in Suriname in what was then called the Guyana; the British, French and Dutch Guyana. He did a very good job not to mention other good things that he has done with a permanent smile on his face.

**Sen. Murungi:** On a point of order, Mr. Speaker, Sir. I have a small clarification. Emeritus Amos Wako was not just a UN Special Rapporteur but the UN Special Rapporteur for Human Rights and extra-judicial executions. For that reason, he was declared a *persona non-grata* in a neighbouring country.

**The Senate Minority Leader (Sen. Wetangula):** Mr. Speaker, Sir, I thank the distinguished Senator for Meru. We saw our troops perform a sterling job when they went to police the boundary dispute between Ethiopia and Eritrea. We saw what happened in Mozambique and we saw our officers when the UN Protectorate mandate was coming to an end in Namibia. It was Kenya that was called upon. A distinguished Kenyan called Maj. Opande was the head of the combined UN force. I am told that a lot of Namibians named their children after Maj-Gen. Opande for the great work that he did. That is what our troops have been, not to mention the recent movement into Somalia, courtesy of yours truly. When the piracy menace was at its worst and the nerve cell of piracy was in Kismayo, our troops moved into Somalia, took the Port of Kismayo and in effect cut off the head of the nightmare of piracy where everything was being done in terms of smuggling contraband, among other things.

Our troops have done a wonderful job. When I recently heard our President announce that Kenya had sent battalions to South Sudan, I wanted to take issue with him because I knew what the Constitution says. After one enquiry, I learnt that he was speaking about troops that were already there that were sent by the Kibaki Government. He was only owning up that our troops are in Sudan. He is doing the right thing for a change by bringing to Parliament a request, for approval, as required by the Constitution so that we can deploy our troops.

Kenya must play a role that is commensurate to its status in this region. We are the super power of this region, economically and in many other ways. When you look at the African picture - the United Nations Development Programme (UNDP) tells us that we have the highest and most qualified human resource, better than any other African country apart from the Arab North. This is something we hold with a lot of pride. If you go to Namibia, South Africa or wherever, you will find Kenyan nurses, professors, doctors and engineers. The same engineers that mess up our roads here do a very wonderful job down in South Africa because of the better systems they work under.

You feel very proud when you go out there and find your compatriots doing a job that everybody is proud of. Everywhere you go, you will hear that the Kenyan troops have done a wonderful job. We owe it to our region. Somalia, Uganda, Rwanda, Burundi, Sudan and Ethiopia have had their fair share of problems. The only neighbours to Kenya that have had peace throughout our history is Tanzania and the Indian Ocean. Nowhere else have we had peace. We know what happened during the era of Idd Amin in Uganda where Kenya was a recipient of serious security challenges. We must, as a country, rise to the occasion and help others, the same way Nigeria took it upon itself and said that as the big brother in West Africa, under ECOWAS, they will command ECOMOG and move into each and every country and stabilize them.

They are now in Mali, where I nearly lost my life and in many other countries, stabilizing West Africa. When you go to West Africa now, Sierra Leone is stable and maturing. Cote d'Ivoire and Liberia are also stable and maturing, and things are moving on well. The only nightmare that we see now is the erratic behaviour of the President of a little country called Gambia, who doubles up as a witchdoctor and President at the same time. He is doing crazy things. Today, he is overthrowing the constitution and the next day he is banning foreigners and doing all manner of things.

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): On a point of order, Mr. Speaker, Sir. I do not want to spoil the mood of the Senate Minority Leader. But I am just wondering, again, this being a serious House, whether he is in order to cast aspersions on a Head of State of a nation friendly to Kenya, considering that the Seconder of this Motion is a former Chief Diplomat of Kenya, as Minister for Foreign Affairs.

**Sen. (Dr.) Machage:** On a point of order, Mr. Speaker, Sir. Indeed, Standing Order No.90 strongly prohibits that. It would be advisable that the Leader of our side of the House desists from doing that.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Speaker, Sir, it is diversionary, but probably the two Senators do not know what I know about this President. First of all, the Gambia was friends with Kenya in the Commonwealth and it has pulled itself out of it. Secondly, that President has declared himself, without any medical knowledge, that he cures AIDS, and everybody knows this. He does very many things that are bizarre. I have not cast any aspersions, but simply stated facts about him.

**Sen. Haji:** On a point of order, Mr. Speaker, Sir. Is the hon. Senator in order? Does whatever the President does change the situation that he is still a Head of State?

**The Senate Minority Leader** (Sen. Wetangula): Mr. Speaker, Sir, I do not know what aspersions I have cast on the President. I simply said what he has said he can do; that he can cure AIDS when he cannot. He also uses all manner of bizarre activities and it is common knowledge. Just do your reading. Go and google President Yahya Jammeh of the Gambia and you will see what is written about him.

Mr. Speaker, Sir, let me come back to the point.

**The Speaker** (Hon. Ethuro): Order, Senators! If you look at Standing Order No.90 (1) it says:-

“Neither the personal conduct of the President, nor the conduct of the Speaker or of any judge, nor the judicial conduct of any other person performing judicial functions, nor any conduct of the Head of State or Government or the representative in Kenya of any friendly country or the conduct of the holder of an office whose removal from such office is dependent upon a decision of the Senate shall be referred to adversely, except upon a specific substantive Motion of which at least three days’ notice has been given.”

I do not think that Sen. Wetangula has discussed the personal conduct of a President or Head of State. It is on record that the Gambia actually pulled out of the Commonwealth and that they claim that the British, for 400 years, did not even build a classroom. That is not new. So, you are perfectly in order.

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): On a point of order, Mr. Speaker, Sir. I am not challenging your decision, because I cannot anyway, but when you say that the Head of State of a country is a witchdoctor and pretends that he can do this when he cannot--- Secondly, when you use the excuse, as the Senator for Bungoma is doing, that, that country anyway has pulled out of the Commonwealth and is, in other words, therefore, not a friendly country, is that not misleading? As far as I know, the Gambia is a Member of the African Union. So, I doubt whether it is in order really for us in the Senate--- One of these days, the Head of State of the Gambia may want to visit Kenya and we do not want to enter into unnecessary diplomatic spats over issues that are not beneficial to this country.

**The Speaker** (Hon. Ethuro): Order, Sen. Kindiki! In fact, if you followed the line of reasoning and arguments proffered by the distinguished Senator for Bungoma – to use his preferable word – he was careful not actually to discuss--- He was saying what has happened in the rest of the region and only giving one case that was out of the norm. Now, it is actually you who is attempting to hold discussions by persistently engaging and interrogating this particular matter, as you attempt to do the opposite.

Let us terminate it here and allow Sen. Wetangula to proceed.

**The Senate Minority Leader** (Sen. Wetangula): Thank you, Mr. Speaker, Sir. At an appropriate time, I will invite my distinguished learned junior for a lesson or two about what I was talking about.

Mr. Temporary Speaker, Sir, I want to come towards the end of my contribution.



**The Senate Majority Leader** (Sen. (Prof.) Kindiki): On a point of order, Mr. Speaker, Sir. I just need clarification from the Senate Minority Leader. He can do the lesson as a Member of the Bar, but no other lesson. In fact, on this question, because we are discussing international law and relations, the Senate Minority Leader is not qualified to be my student. So, in matters of the legal profession in the Bar, I can be his student, but in these other matters, he is not even qualified to sit in my class. He will fail the exam!

**The Senate Minority Leader** (Sen. Wetangula): Mr. Speaker, Sir, those who are lawyers, like my learned Senior, Sen. Kembi-Gitura, will know that one of the greatest brains in our judicial history in this country, Justice C.B. Madan, whom we all quote with pride and admiration, had only a first Degree – he was never a Professor - and could teach you many things in law. You can go and read his judgements and see how brilliant he was.

**Sen. Wako:** On a point of information, Mr. Speaker, Sir. I just want to inform him that Lord Denning, the Master of Laws and probably the greatest judge Britain ever had actually failed his Bachelor of Laws degree, but he then passed and went on to become the greatest reformist judge that the English Bench has ever had.

**The Senate Majority Leader** (Sen. Wetangula): Mr. Speaker, Sir, some of the most ignominious judges we have had in the history of this country are former professors.

**Sen. Murungi:** On a point of order, Mr. Speaker, Sir. We cannot sit here and allow our learned friends to mislead this House. The Senate Leader of Majority made it very clear that when it comes to matters of the Bar, then he has things to learn from the Senate Leader of Minority, but when it comes to matters of international law and international relations, those eminent lawyers are not qualified to be his students. I think we need to distinguish the fact that---

**The Speaker** (Hon. Ethuro): Order Sen. Murungi! Even as you assist the Senate Majority Leader, how do you get disqualified from being a student?

**Sen. Murungi:** Mr. Speaker, Sir, you can be disqualified by not meeting the basic qualifications of being allowed to join that class.

*(Laughter)*

**The Speaker** (Hon. Ethuro): Order Senators! Let us conclude this. Proceed, Sen. Wetangula.

**The Senate Majority Leader** (Sen. Wetangula): Mr. Speaker, Sir, let us avoid the Mt. Kenya conspiracy and conclude this debate.

One of the most important underlying principles in this deployment of troops that the Mover of the Motion omitted to say is that it does not cost Kenya any money; this is paid for by the United Nations (UN). The boots they wear, the food they eat, the rations they get, the stipend they get and everything. They are better paid than even what they get here. Of course, they maintain their small salaries back in Kenya but every single expense

is paid for by a UN Fund. So, this does not cost this country any dime. The UN pays, Kenya does the job and we get a good name.

Mr. Speaker, Sir, I want to end by saying that as we agree to the Executive to deploy our young men and women in uniform in Sudan to go and do a very noble duty of stabilizing a neighbour in trouble, we must always remember that it makes little sense in law, in fact and in common sense for you to run with a pail of water to extinguish fire on your neighbour's house when your own house is on fire. As we go out there to extinguish fires in South Sudan, Darfur and Cote de Voire, we must remember that this country has serious internal security challenges. We must remember that whatever we are going to do out there and come back with medals and smiles and praises, we must also face and tackle our internal security challenges.

I know that we cannot deploy the army to deal with our internal security but we vote money for other organs of security that must keep our peace. It makes little sense for us to go to South Sudan and make sure that the Nuers and Dinkas are living at peace and yet here in Kenya, we cannot even walk to a local café and enjoy a cup of tea without a grenade being tossed at us. We cannot go to a social place without an alarm that something may happen. We cannot go to Westgate Mall for shopping with innocent children and wives and then come out with bullets in our heads like my learned classmate, the late Peter Simani. So, as we do that out there, we must remember that charity starts at home and we must make sure that Kenya is absolutely secure for us to export peace to other countries. We cannot export peace if we do not have peace.

I beg to second.

*(Question proposed)*

**Sen. Haji:** Thank you, Mr. Speaker, Sir. From the outset, I want to support this Motion and take the opportunity to congratulate His Excellency the President who is also the Commander-in-Chief of the Kenya Defence Forces for the commendable work that he is doing both in East Africa and beyond to cement good relations aimed at achieving peaceful co-existence among neighbours and the world. Whereas Kenya's foreign relations policy was classified as "a wait and see" policy, now we can say that our foreign relations have matured under the leadership of President Uhuru Kenyatta because he has gone further than East Africa to visit other African countries, Asia and Europe to cement that relationship which is beneficial to us as a country.

Mr. Speaker, Sir, all these efforts will yield fruits. This Motion which seeks us to send our troops to South Sudan is a good example. The previous speaker talked about the history of Kenya and he said that it has a track record in peace keeping missions not only in Africa but the entire world. I think this mission is very important to us because South Sudan is a close neighbour and we have a lot of ties and interests in that new country. These include bilateral economical and social. Kenya has never spared any effort in helping South Sudan to be what it is. I recall the peace negotiations which were

spearheaded by the former President Moi which ended up with the signing of a peace accord under his chairmanship. It would be very sad if we lost this track record.

We cannot talk about KDF without mentioning its leadership as well as---

*(There was a technical hitch)*

Mr. Speaker, Sir, while my colleagues have talked about history, I would like to talk about what the KDF is doing right now. The KDF did a wonderful job. When I was in Germany recently, I was very proud as former Minister for Defence, because when the countries of Europe had doubts as to the intention of Kenya going into Somalia, one of the speakers who spoke to us was a Director of Foreign Affairs by the name Dr. Khadim. He recognized the role played by Kenya, through its defence forces, in securing Somalia and in particular, Kismayo, which was the heart of the menace of those who were hijacking ships, which affected our trade and the trade of many East African countries.

Mr. Speaker, Sir, he also told us how happy they were when the Cabinet Secretary (CS) for Foreign Affairs, Amb. Amina, visited them and brought them up to date about the happenings in this country. They were very happy to know the progress that Kenya is making under the new Constitution. All this indicates that the leadership of the Kenya Defence Forces (KDF) from the top – the Chief of Defence Forces (CDF), the service commanders and the other high ranking file – are doing a very good job. Not to mention that there are neighbouring countries who have been in Somalia for the last 10 years and they could not venture out of Mogadishu. Even inside Mogadishu, they lost soldiers in their hundreds. By the time I left, the KDF had only suffered the death of only eight troops. That clearly indicates how well trained our soldiers are; how disciplined they are and how committed in fulfilling any assignment that is given to them.

Mr. Speaker, Sir, His Excellency the President needs to be commended by this House. When war broke out in South Sudan, he was the first Head of State to visit the country to bring together the warring factions. Not only that, when several political leaders in that country were detained, he went and secured their release; they were handed over to him here in Kenya. All this is an attribute of a good leadership. We hope and pray that this will continue. We want to tell our soldiers wherever they are *heko*; we pray for you, we are with you; please continue with the good service that you are doing.

Thank you, Mr. Speaker, Sir.

*(Applause)*

**The Speaker** (Hon. Ethuro): Sen. Amos Wako.

**Sen. Wako:** Thank you very much, Mr. Speaker, Sir, for giving me this opportunity to speak on this very important Motion. I will be very brief. One, I like the bipartisan approach in which we are handling this particular Motion because, really, on all security issues, whether internal or international, we should adopt a bipartisan

approach. When we talk about Sudan or the security internally, as far as the internal security is concerned, we should also adopt a bipartisan approach. As I said earlier, you cannot get enough security for people here to live in peace without county governments and the decentralized units of county governments being involved.

(Applause)

Two, Mr. Speaker, Sir, I want to applaud the Constitution. If you look at the section which the Senate Majority Leader quoted, the people of the National Security Council (NSC) are heavyweights – from the President, Deputy President, Cabinet Secretary for Foreign Affairs, Attorney-General, the Director of Intelligence and so on. These are heavyweights, and it would have been very easy for them to have decided. But the new Constitution has said that even with these heavyweights being on the NSC, when it comes to the issue of deploying troops, Parliament must be involved. If you read Article 1 of our Constitution, we know that the sovereignty of this country lies in the people of Kenya. Article 2 says:-

“The people may exercise their sovereign power either directly or through their democratically elected representatives.”

Therefore, as you sit here to give approval to this very important Motion, we are giving that approval on behalf of the people of Kenya. Giving it on behalf of Kenya is also, to me, recognition that South Sudan is a good neighbour. If you have a good neighbour, their house cannot be burning as you just stare. I believe that is why President Moi, President Kibaki up to now with President Uhuru Kenyatta, have all very closely been involved in issues relating to Sudan. Even the Cabinet Secretary for Foreign Affairs was responsible for sending the original contingent of 690 people there.

Mr. Speaker, Sir, an issue has been raised here; this issue is what the Senate Majority Leader stated; that many countries wanted to send troops to South Sudan, but the United Nations (UN) said “no, the priority must be given to Kenyans.” Let me tell you that this is not an accident. We know the history of our armed forces in peace keeping operations within the UN; they have a very good name there, and that cannot be stated for the forces that come from other countries. We know, for example, what the forces that went to Congo did there – we know they looted property, raped the women of Congo and they did everything wrong. In fact, the UN Security Council had to mount an investigation into the atrocities carried out by the peace keeping operations in Congo. That is why, because of what went on there and in other places, the UN is now very careful on the type of people that can give assistance to peace keeping operations – people who are respected, who have a good reputation, and so on.

Mr. Speaker, Sir, I know the Senate Majority Leader said that he was a professor of law; and I want to commend him for really being the professor of law today when he was moving this Motion.

(Applause)

But I think he can also agree that I am the one he can also consult on issues of international law, because I am a member of the International Law Commission, which is an organ of the UN. The UN Charter says that for one to be a member there, you must be a well known, renowned and recognized authority on international law.

(Applause)

So, I am saying this because it is related to what I am going to say. The National Law Commission, of which I am a member, is currently, because of the misdeeds of peacekeeping operations from other countries, developing a qualification on the responsibility of soldiers engaged in peacekeeping operations. We are now actually doing that. So, as I said, Kenya should be proud of our soldiers who are working in those places.

Mr. Speaker, Sir, the other issue that I wanted to mention is the fact that the Senate and National Assembly have all the time to be involved in the issues of security. It was mentioned and true enough if you read the Constitution, it is Parliament which can bring laws; Parliament means the Senate and National Assembly. Parliament can bring laws to establish institutions relating to security issues.

**Sen. Murkomen:** On a point of order, Mr. Speaker, Sir. I would not want to interrupt the distinguished scholar and my senior council. I am looking at the time and considering at the number of people who are standing to contribute, am I in order to ask, under Standing Order No.98 that we limit the debate and if possible agree that at 6.00 p.m., we go to the voting so that the next 10 minutes can be shared among those who want to say one word?

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): Further point of order, Mr. Speaker, Sir.

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

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): Mr. Speaker, Sir, I wanted to try and see whether it is possible through you that we strike a balance between the need to vote on the transfer of functions which is critical but on the other hand, this is also a very important debate. It should not be curtailed. So, is it in order that we look at the voting now and then try and see if the House can approve extension of time so that we can clear both?

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

**The Speaker** (Hon. Ethuro): Let me get the mood of the House.

**Sen. Abdirahman:** Mr. Speaker, Sir, between the two colleagues, I actually want to go by Sen. Murkomen's suggestions that we limit debate on this particular Motion as much as it is important. We could limit the number of minutes a Member can contribute.

At least three minutes should be okay for each Member so that we finish by 6.10 p.m. or so.

**Sen. (Dr.) Machage:** On a point of order, Mr. Speaker, Sir. Using your discretion in Standing Order No.1, I have not submitted a written proposal for my moving of this Motion but allow me to move that the time for the sitting of this House be extended past 6.30 p.m.

**Sen. Kembi-Gitura:** On a point of order, Mr. Speaker, Sir. Sen. (Dr.) Machage has said what I wanted to say. I propose we vote for the extension of time. We can vote for the transfer of functions now and then extend time so that we can debate the current Motion sufficiently without restricting us to two or three minutes. What can one say in two minutes?

**Sen. Murungi:** On a point of order, Mr. Speaker, Sir. This is a very important Motion but both sides of the House agreed on it. It was moved by the Senate Majority Leader and seconded by Senate Minority Leader. We would have much to say but in support. Would I be in order to call upon the Mover to reply?

**The Senate Minority Leader** (Sen. Wetangula): On a point of order, Mr. Speaker, Sir. I share the views of the Mover of the Motion. Let us remember that under the new Constitution, this is the very first time that the President has respected and come to Parliament to ask for authority to deploy our troops out of the country. It would not be good precedence setting for us to curtail debate on the matter when there are so many distinguished Members like the Deputy Speaker, and Sen. Boy Juma Boy with his wonderful Kiswahili wanting to speak. Let us ventilate and set a precedence to follow in future. We can extend our sitting by 30 minutes so that we can finish up this matter.

**The Speaker** (Hon. Ethuro): Mr. Speaker, Sir, under Closure of Debate, Standing Order No.98 as requested by Sen. Murkomen and Sen. Murungi, I am afraid it says the Speaker may defer putting a question. I guess that applies to Sen. (Dr.) Machage also. I will give a middle ground. We have to do two things while looking at the clock. In less than five minutes, the Majority Leader needs to do what he needs to do under Standing Order No.33 by extending time along the lines of the Minority Leader so that we conclude the remaining business. That business will exclude Order No.13. We will be left with the current business on Order No.12. We had already deferred Order No.14. So, we are left with the current business of Order No.12 and Order No.15. In the meantime, we need to vote on the extension and transfer of functions and then we resume debate.

Proceed, Sen. Wako.

**Sen. Wako:** Mr. Speaker, Sir, in that speed, I will now curtail my speech. I wanted to mention many more points but I can---

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

**Sen. Wako:** I want to conclude by paying tribute to our soldiers and wishing them well in executing their duties in South Sudan. I also pray that peace should prevail in South Sudan because this is a country which is a good neighbour of Kenya and the

entire East Africa. We want South Sudan to come to normality so that they can also join the East African Community (EAC)

I support.

### PROCEDURAL MOTION

#### EXTENSION OF SITTING TIME PURSUANT TO STANDING ORDER NO.30 (3)

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): Mr. Speaker, Sir, I beg to move the following Motion:-

THAT, pursuant to Standing Order No.30(3)(a), the Senate resolves to extend its sitting time until the conclusion of business appearing on the Order Paper excluding Order No.13 and Order No.14 for the reasons which have already been given.

I beg to move and request the Senate Minority Leader to second the Motion.

**The Speaker** (Hon. Ethuro): Order. This is a Procedural Motion. Read your Standing Orders.

*(Question put and agreed to)*

### MOTIONS

We will proceed to vote on the Adoption of Report of the Sessional Committee on Devolved Government on the Appeals for the Transfer of Functions to Counties.

#### ADOPTION OF REPORT ON APPEALS FOR THE TRANSFER OF FUNCTIONS TO COUNTIES

THAT, the Senate adopts the Report of the Sessional Committee on Devolved Government on the Appeals for the Transfer of Functions to the Counties pursuant to Section 23(7) of the Transition to Devolved Government Act, 2012 laid on the Table of the Senate on Thursday, 10<sup>th</sup> April, 2014.

*(The Division Bell was rung)*

### DIVISION

#### ROLL CALL VOTING

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*(Question put and the Senate proceeded  
to vote by County Delegations)*

**The Speaker** (Hon. Ethuro): According to Standing Order No.77 (3), no Senator shall thereafter enter or leave the Chamber until after the Roll Call vote has been taken.

I also wish to announce the Tellers. They are Sen. Boy Juma Boy for the Noes and Sen. Mvita Mshenga for the Ayes.

Proceed!

## DIVISION

### ROLL CALL VOTING

*(Question put and the Senate proceeded  
to vote by County Delegations)*

**AYES:** Sen. Abdirahman, Wajir County; Sen. Adan, Isiolo County; Sen. Boy Juma Boy, Kwale County; Sen. Chelule, Nakuru County; Sen. Chiaba, Lamu County; Sen. Haji, Garissa County; Sen. Hargura, Marsabit County; Sen. G.G. Kariuki, Laikipia County; Sen. Kembi-Gitura, Murang'a County; Sen. (Prof.) Kindiki, Tharaka-Nithi County; Sen. Kisasa, Kilifi County; Sen. (Prof.) Lesan, Bomet County; Sen. Lesuuda, Samburu County; Sen. (Prof.) Lonyangapuo, West Pokot County; Sen. (Dr.) Machage, Migori County; Sen. Melly, Uasin Gishu County; Sen. Mositet, Kajiado County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Murungi, Meru County; Sen. Ntutu, Narok County; Sen. Obure, Kisii County; Sen. Okong'o, Nyamira County; Sen. Ongoro, Nairobi County; Sen. Orengo, Siaya County; Sen. Sang, Nandi County; Sen. Wako, Busia County; Sen. Wamatangi, Kiambu County and Sen. Wetangula, Bungoma County.

**Teller of the Ayes:** Sen. Kisasa.

**NOES:** Nil

**Teller of the Noes:** Sen. Boy Juma Boy.

**The Speaker** (Hon. Ethuro): Hon. Senators, the results of the Roll Call voting are as follows:-

**AYES:** 28

**NOES:** Nil

So, the "Ayes" have it.

*(Question carried by 28 votes to nil)*



APPROVAL OF DEPLOYMENT OF KENYA DEFENCE  
FORCES IN SOUTH SUDAN

**The Speaker** (Hon. Ethuro): You may now open the doors. So, we resume the debate on Order No.12. Senators, I think the mood of the House was such that you should really minimize your contributions so that we can conclude this debate in good time.

**Sen. Kembi-Gitura:** Thank you very much, Mr. Speaker, Sir, for the opportunity.

**The Speaker** (Hon. Ethuro): Can we reduce it to five minutes for each Senator?

**Sen. Kembi-Gitura:** Mr. Speaker, Sir, I hope it will not affect me because I am already on my feet.

**The Speaker** (Hon. Ethuro): You have not even started. I am ordering five minutes. Deputy Speaker, you are so directed.

**Sen. Kembi-Gitura:** I am obliged, Mr. Speaker, Sir, although it is unusual to punish somebody when they are already on their feet.

Article 1 of the Constitution, as has been clearly stated by my colleagues, provides that the people of Kenya would exercise their sovereignty through Parliament. So what we are doing is historical and important because for the first time, if we pass this Motion, the people of Kenya would have made a decision that 310 troops be deployed to South Sudan. This is very important not just for the national psyche but for the right of the people to make a decision like that. I want to applaud the passage of the new Constitution because we now have pure democracy which is the rule of the people, by the people, for the people. The history of deploying troops has been said here and I need not go back there.

Mr. Speaker, Sir, why do we want troops in South Sudan? It is common knowledge that for a long time, there has been no peace and security in the Horn of Africa region and that this has been a very great cost to those countries that have had peace continuously like Kenya and Tanzania and all those other counties, even those that have spats over lack of peace in their countries. All of us know and appreciate that without peace and security, however, much you try there cannot be meaningful development in a country. We know that because of lack of peace in the Horn of Africa and generally in the IGAD region, there are a lot of small arms making rounds in this part of the world. We know that what my colleague called internal security challenges is not as easy to tackle as it would appear on the face of it because however much we may try to deal with the situation internally, the regional peace impacts directly on our country and what happens in those other countries when the movement of those small arms affects us directly.

When you look at the broader system of the necessity of peace and security in this region and why I applaud the President for bringing it to us, the National Security Council having made a decision subject to our concurrence, how are we going to develop as a region? I am a big proponent of the East African Community. Anybody who has read

history knows that for more than 400 years, there was continuous bloodbath in Europe culminating in the first and second world wars in 1914 and 1939/45.

One of the reasons the European Community - as it was then called - was formed, was to have people within certain boundaries who would agree largely to abide by certain rules so that then they could create peace in that region. That is why I have always said that South Sudan has applied to become a member of the East African Community and should be commended. Once they have certain systems in place, I would like to encourage that they are embraced in the Community so that they can abide and play by the rules of the larger community, reap the benefits of the community and see that there is no need of that internal strife because they have a bigger picture and a bigger market.

Mr. Speaker, Sir, I have also propounded and I continue to do so, that even a country like Somalia, sooner than later must join the Community. Once it joins the East African Community and plays within the rules, we can become borderless and be able to move freely from one country to the other. This way, we shall reap the benefits of peace and security. We should not continue to have camps like Kakuma in this country. We know that because of international rules and standards, the Kakuma Camp is there because we are abiding by the rules, but at what cost to this country? Why do we have Kakuma Camp? It is because of lack of peace and security. So, if our soldiers can help bring peace and security in this region, that must be commended. It is important that Kenya continues to play the role of peace and security in the region.

I beg to support.

**Sen. Ongoro:** Thank you, Mr. Speaker, Sir. I rise to support this Motion. I do not wish to repeat myself because my colleagues have spoken on most of the issues. It is now a constitutional requirement as stated here under Article 240 (8) that Parliament approves such a move through a Motion.

The first reason why I support this Motion is because of the need for regional peace. We belong to this region and what affects any member State affects us either positively or negatively. If they are at peace, it affects us positively but if they do not have peace, then by extension, we do not have peace. So, it is only in order that we intervene.

Secondly, we cannot be partisan; get involved in one member State, and then just stand and watch as another member State burns. We already took a very strong stand on the Somali issue and it is only in order that we do the same now that the same circumstances are obtaining in the neighbouring Sudan.

Thirdly, it is a security issue for us. While we spend a lot of money, energy and time trying to organize our own security, by extension, any insecurity in one of the neighbouring countries means insecurity in our nation. It is only in order that we get involved to avoid the infiltration of small arms and other elements into the country.

Fourth, I support this Motion because we intend to save lives. We owe it to ourselves, to humanity and to our conscience. Lives are being lost in that county and we

cannot just sit back and watch. As a nation, collectively, we should strive to save the innocent lives.

Lastly, I am now impressed that as a nation, we are beginning to adopt a proactive foreign policy and, to me, that is a really good issue and we need to sustain the policy that is becoming increasingly proactive. Before, we were a nation that did not have a strong foreign policy but now, I think actions speak louder than words. What we are doing now is stating that we are now changing that perception.

I support.

**Sen. G.G. Kariuki:** Mr. Speaker, Sir, I understand my time is very short. First of all, we need to thank ourselves and also the President for being loyal to the Constitution of Kenya. Unless we behave this way, it will take us time to achieve what we call constitutionalism. Constitutionalism can only be attained when we all adhere, respect and be faithful to the Constitution. Therefore, I would like to thank the President for his action. This is a reminder that he is still loyal and ready to defend the Constitution. This is not a new phenomenon because since 1973, Kenya has been deploying armed forces to foreign peace keeping missions. In 1979, we were most active in peace keeping operations in the world. Now this time, this peace operation which was popularly referred to as the Blue Berets, Kenya participated very much in supporting this peace keeping force. By 1979, Kenya was serving in nine countries. This was on operational basis.

Mr. Speaker, Sir, Kenyan officers have been used to observe security in many other countries, which amount to about 25, including the United Nations (UN) Headquarters. What is the benefit? Previous speakers have not raised this issue or mentioned the benefits. It is not just about sending our troops outside Kenya; they should also consider the kind of benefits that accrue to this country when we send our armed forces there. One, our army increases their technical knowledge about maintenance of security and they have the opportunity of training with new equipment. I think it is also important that even if there was no request, we should have requested, because our armed forces or the Kenya Defence Forces (KDF) will benefit a lot from these international engagements.

Some of the training and experience from such areas like promoting human security and strengthening the rule of law can go a long way in boosting our ability to protect even our own country. So, the most important thing here or the most operative words here are what is Kenya going to benefit out of all these issues? It not just about applauding them for being deployed in those countries; but we also have to understand that there is a huge benefit that will come along with our armed forces when they go to those countries; when they are deployed outside Kenya.

We should not consider our security here when we are talking about deploying our armed forces there, because this is our country and we have enough armed forces here; you can even take 10,000 of them and there will still be those who are left behind who are professional enough and they believe in their work. No problem shall affect this country in terms of security.

Therefore, Mr. Speaker, Sir, I want to also thank the Mover of this Motion because---

**The Speaker:** Your time is up, Sen. G.G. Kariuki!

**Sen. G.G. Kariuki:** Thank you very much, Mr. Speaker, Sir. I beg to support.

**The Speaker:** Sen. (Dr.) Machage.

**Sen. (Dr.) Machage:** Thank you, Mr. Speaker, Sir. Indeed, the security and stability of a neighbouring country is very important for our own security in this country. With the fall of Siad Barre, what happened in Somalia cannot be over emphasized. The lack of security in Somalia enhanced the starting of small armies and escalation in the importation of small arms into this country and, hence, what we have now in this country.

Looking at our Constitution, it lacks a direct provision for terrorism, but it embodies the principles that are contained in the various international Human Rights conventions, supported by Article 2(5) of our own Constitution, which says that “the general rules of the international law shall form part of the Kenyan laws.”

Mr. Speaker, Sir, Article 238 of the Constitution provides for the creation of the national security and protection against internal and external threats. Article 239 provides for the National Security Organs; Kenya Defence Forces (KDF), National Intelligence Service (NIS) and the National Police Service (NPS). Article 240 establishes the National Security Council (NSC), which includes the President, Deputy President and other members of that Committee. Indeed, Part VIII of this Article states that Parliament must give permission in case the country has to send our own forces outside this country. My concern on this area is that in Somalia, we have Kenyan forces, and I do not remember us passing that move; that was completely unconstitutional.

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

**Sen. (Dr.) Machage:** Yes; so long as my time is preserved.

**The Speaker:** Sen. (Dr.) Machage, you cannot have your cake and eat it too!

*(Laughter)*

**Sen. (Dr.) Machage:** Okay; you can inform me, Sen. Haji.

**Sen. Haji:** Mr. Speaker, Sir, this is the first time for the Senate, but for Parliament in the National Assembly, I remember as the Minister for Defence taking a similar Motion for us to deploy our soldiers in the African Mission for Somalia (AMISOM) just before the elections.

**Sen. (Dr.) Machage:** Mr. Speaker, Sir, Parliament means the National Assembly and the Senate; we were not given that opportunity and we never did it, and that is a constitutional problem.

**The Speaker:** Order! Order, Sen. (Dr.) Machage! If you read your Constitution, for all that period before the Senate came into existence after August 2010, the National Assembly acted as both.

(Applause)

**Sen. (Dr.) Machage:** Mr. Speaker, Sir, I stand to be guided. The Kenya Defence Forces Act 25(18) also demands that this is done by this House.

Mr. Speaker, Sir, whereas I very much support this move, I would very much be interested to know the safety and safeguards of our own soldiers in that country; and in case of losses of life, what insurance and safeguards are in place for the families and dependants. We have seen what happens in Somalia; we lost quite a few people, including some from my own county. But what followed thereafter is disturbing because there is no support. As we sacrifice ourselves to keep the peace of Sudan or play some part in Sudan, then our sons and daughters must also be protected by the international law. Maybe, we should look at the clauses that are available from the African Union (AU) and the UN Charters and resolutions on this.

Mr. Speaker, Sir, I beg to support.

(Applause)

**The Speaker** (Hon. Ethuro): Order, Senators. I hope you remember that you imposed an additional 30 minutes. That is really 7.00 p.m. We still have the Motion of Adjournment. This being an open ended Motion, maybe some of you could spare some of your contributions to that point.

Sen. Wamatangi, you may proceed.

**Sen. Wamatangi:** Mr. Speaker, Sir, the choice of whether this country should send our sons and daughters to contribute to the peace in Sudan is not a choice we can make in the negative. The enjoyment of peace between countries and in countries is a shared treasure but the maintenance of that peace is a shared responsibility.

In the 21<sup>st</sup> Century, boundaries and borders have been erased by common interests so fast that currently in the world, we should be our brother's keeper, that there is no me without you and that if you are in trouble, so am I. When countries fail to act promptly and in good time, either in other nations or with their neighbours, the victims have been those countries that have not acted. In this case, this country is an example. If there was a force that had acted on time in the case of Somalia, probably we would not be suffering the consequences we are suffering today.

Recently, we remember the situation that was in Rwanda when there was massive genocide and the whole world was left with shame, including us, as a country. We asked ourselves: Why did we not act on time? Why did we not send our people collectively to go and maintain peace there? For that reason, I support this Motion.

As I support this Motion, it brings forward a very important aspect of how we, as a people, appreciate the role that is being played by sons and daughters of this country that we send to go and help maintain peace in those countries. This is not forgetting, as

has been said by most of my colleagues, that it is important as we do that to also guard our boundaries.

As I summarise, my curiosity is piqued by a matter that was recently in the press whereby some military officers were being prepared for court martial for having participated in foreign duties. It is important that, as a legislature, we come up with a clear of policy of when it is right and when is it not right for countries to act in uniformity and in support of these countries.

Mr. Speaker, Sir, I support the Motion. Let our sons and daughters be a part of the force that will be making and keeping peace in the entire world.

**Sen. Orenge:** Thank you, Mr. Speaker, Sir, for this opportunity. I will not take a lot of time. One of the things that make me really proud is the history of the black man; that throughout history, Africa was seen as a dark continent. We were seen as a race that is not in the same category as the rest of the human race. In 1936, when a black American ran in the Olympics in Berlin, Hitler refused to acknowledge that victory. But the military in Kenya made me proud when they were sent to Eastern Europe. There were black soldiers keeping peace in a European country. In circumstances where the Americans were not ready to place their troops on the ground, Kenyans were there keeping peace in Eastern Europe. This, to me, was a great demonstration, that we have a role in history and internationally.

Lastly, I commend the Senate Majority Leader and the President for bringing this Motion for discussion and approval by Parliament. But I hope next time, when such a Motion is brought here, there should be a memorandum that indicates the objectives in clear terms of any deployment of foreign troops in another country together with timelines. This is because sometimes when they are sent out there and the objectives are not clear, then we may run into problems. I think it is not for the Senate to give a blanket approval. I would be very happy, after the Senate has given its approval, then I can go out there and say we approved the deployment of our military soldiers in such a country on the basis of objectives which are clear. Otherwise, when the military objectives are not clear, deployment of troops sometimes can be counterproductive.

With those few remarks, I support.

**Sen. Murungi:** Mr. Speaker, Sir, I rise to support this Motion. I only wish to make three points. One, we want to commend the President for taking the Constitution seriously. During the height of imperial presidency in the 1980s, a senior Cabinet Minister said that the Constitution is a mere piece of paper and it can be torn at any time. This Motion is clear evidence that things have changed and that the Presidency is now taking the Constitution seriously. I want to commend him for that.

Two, it is in our interest as a country to support a peaceful South Sudan. Even if we forget anything else, we saw their President at Lamu when we were launching the LAPPSET corridor project. Without peace and security in Sudan, the LAPPSET Project is in jeopardy. It is in our own interest that we support peace in that country for our own fundamental interest.

Thirdly, peace keeping is just one aspect. It is just like collecting water which has poured on the floor. Kenyans should do a little more by going upstream. The cause of insecurity and political violence in any country is first because there is injustice; there are some people who feel marginalized while others feel their human rights are not being respected. As a country, we should work within the African Union (AU) framework and other UN structures to delve further into the root causes of insecurity in South Sudan, see whether there is something which can be done, so that the people of South Sudan do not feel oppressed or exploited, so that we can have lasting peace in Sudan. Otherwise we will be called next year and the year after to send peace keeping troops because we have not addressed the root causes.

I thank you, Mr. Speaker, Sir.

**Sen. Abdirahman:** Mr. Speaker, Sir, I will also be very brief. I just want to add my voice on the importance of deploying our troops to Sudan and even Somalia where we have ventured in the past. Kenya is part of a region that is characterized mostly by civil strife and conflicts. Stable nations like ours definitely have to respond when there is an emerging need like this one of Sudan. I also want to appreciate the involvement of the Kenya Defence Forces (KDF) in Somalia. We all remember what our situation was like before they were deployed towards mid 2011. Many of us are worried of the repercussions. We know there are repercussions but this is something we should not relent as a country. We should continue to protect our borders from militia, the *Al Shabab* and from any organised group that is about to create uncertainty or instability in this country.

I would say that the South Sudan peace initiative is one of the most important initiatives Kenya has contributed to in terms of the peace processes. We all know what Kenya did. That is what culminated to the South Sudan Republic. Therefore, it is a strategic partner for Kenya in terms of trade and business.

There is one thing which I wanted to say before I sit down. As much as we make initiatives to restore peace and security in Somalia and in South Sudan, the Kenyan Government must be keen on businessmen and political leaders who are causing problems in their own countries and who want to use Kenya as a safe haven. Those people must be dealt with. Kenya should not accommodate those who are causing crises in Somalia and South Sudan because it can be an embarrassment for us as a nation after investing heavily in the security of these areas. Internal security is a challenge for all us and all of us must support efforts to ensure that we get security around our borders.

Thank you very much, Mr. Speaker, Sir.

**The Speaker** (Hon. Ethuro): Sen. (Prof.) Lesan.

**Sen. (Prof.) Lesan:** Mr. Speaker, Sir, I also wish to take this opportunity to congratulate His Excellency the President and the entire leadership of the National Security Council and indeed all Kenyans for the deployment of the security forces to help in a neighbouring country. This message of congratulating and showing support for His Excellency the President is a morale booster for our soldiers when they are on the ground

maintaining peace. One of the things that we know is that there is actually no peace to keep in South Sudan. This is one of the things that we must admit and therefore prepare ourselves. There is no peace in South Sudan. Last night, there was a lot of fighting in the Upper Nile and they are planning to attack South Sudan. We are aware there is no peace and therefore we must prepare ourselves and our soldiers so that when they go on the ground to act accordingly in order to safeguard perhaps the little peace that is there.

Mr. Speaker, Sir, Kenya has previously involved herself in diplomatic negotiations where some relative peace has been achieved in Sudan before. We know how difficult it is to stop wars in Sudan. For as long as I know, there has been fighting in Sudan. Therefore, as we send our soldiers to South Sudan, we must know the history of that country and we must try and shorten the period they are there. The only way we can do so is to encourage our political establishment to continue talking about how to achieve peace in South Sudan.

Therefore, I want to take this last opportunity to congratulate not only the soldiers but also those Kenyans who, when they go outside there, do an excellent job. In that regard, therefore, I will not forget to congratulate Her Excellency Margaret Kenyatta for hitting the tarmac for seven hours and completing the London Marathon. This is an achievement for Kenya as well. It is also an achievement for the health sector in this country because of the funds that are going to accrue through her meritorious activity of finishing the marathon in London.

Otherwise, I support this Motion. I wish and hope that our Kenyan peace will be extended to South Sudan.

Thank you, Mr. Speaker, Sir.

**The Speaker** (Hon. Ethuro): Sen. Okong'o.

**Sen. Okong'o:** Mr. Speaker, Sir, thank you for giving me this opportunity to support this Motion. From the outset, I want to commend the President of Kenya for having seen it important to hold the constitutional requirement that this House is given the mandate it deserves to deliberate on this issue. As far as I do not subscribe to the school of thought of East African integration, I agree with those who say that Kenya has been an island of peace in terms of internal and regional integration. Therefore, I support the young men and women who are going to fly our flag in trying to sustain peace in a fragile nation.

It is very important for us, Kenyans, to understand that as much as we have contributed to stability in some of these nations, there has not been any reciprocation to Kenyans. You are aware that so many Kenyans who tried to invest in South Sudan lost their lives and property even when there was some relative calm and peace in that nation. It is very important that when we send our young men and women to some of these regions and some semblance of peace and stability is found, we also expect reciprocation in terms of hospitality when we venture into business and build schools in those regions.

With those very few remarks, I beg to support.

**The Speaker** (Hon. Ethuro): Sen. Madzayo.



**Sen. Madzayo:** Bw. Spika, asante kwa kunipa nafasi hii. Jambo la kwanza ni kwamba nataka kuunga mkono Hoja hii na kumpatia heko Rais kwa kufikiria mpango huu wa Katiba wa kujadiliana ili kupeleka majeshi katika nchi ya South Sudan. Pia, ningependa kumuunga mkono ndugu yangu Sen. (Prof.) Kindiki kwa kuleta Hoja hii katika Bunge hili la Seneti.

Pili, ningependa kusema kwamba majirani wakiwa na amani, sisi pia kama wenyeji hapa Kenya tutakuwa na amani. Lakini ikiwa majirani wetu hawatakuwa na amani, sisi hapa pia hatutakuwa na amani. Ukiangalia nchi ya Somali, hakuna amani. Ndio utaona kwamba jeshi na askari wetu wamehusika sana na mambo haya.

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

**Sen. Mwakulegwa:** Sawa.

**Sen. Haji:** Ningependa kumweleza mheshimiwa kwamba wale ambao hawana amani ni Wasomalia. Somali ni mimi niko hapa na nina amani hapa Kenya. Kwa hivyo, tofautisha hiyo Somalia na Somali.

**Sen. Mwakulegwa:** Asante, nimekubali ndugu yangu mkubwa kwa umri na Seneta Mwenzangu wa heshima.

Ninaongea juu wa Wasomali walioko Somalia sio Wasomali walio Kenya. Wasomali ambao wako Kenya ni ndugu zetu na wao wanaishi kwa amani. Lakini kuna wale wengine ambao wamepita mipaka yetu na wakajipata Nairobi ndio sababu kumekuwa na mushkin wa amani.

Ningependa kusema kwamba sisi tunapeleka majeshi yetu kule na nchi yetu itatumia hela nyingi. Kuna umuhimu wa kuona ya kwamba amani imedumishwa katika nchi za Jumuiya ya Afrika Mashariki. Singependelea kuendelea zaidi lakini ni kurudi nyuma na kumshukuru Rais kwa kuchukua nafasi kuzingatia Katiba na pia kwa Mkuu wa Walio Wengi katika Bunge letu la Seneti kuleta Hoja hii.

Naunga mkono.

**The Speaker** (Hon. Ethuro): Tulikuwa tumekubaliana tumalize saa moja lakini naona niwape Seneta Obure na Hargura dakika mbili kila mmoja halafu tufunge. Watakapomaliza, tutamuita Kiongozi wa Wengi ili afunge.

**Sen. Obure:** Mr. Speaker, Sir, I thank you for this opportunity. I will make very few remarks. As neighbours, we have an obligation to extinguish the fire in South Sudan. We cannot afford to watch the situation deteriorate in South Sudan as we did when Somalia had challenges. Our failure to intervene in Somalia has resulted into what we witness on a daily basis. Our intervention in South Sudan can be justified on account of achieving good neighbourliness. This will be good for trade, business, economic and social development and for peace and prosperity in the entire region.

I support.

**Sen. Hargura:** Thank you, Mr. Speaker, Sir. I rise to support this Motion. It is good for us, as a neighbour, to contribute to the stability and security of a country like South Sudan. We know very well that if it is stable, our northern parts like Turkana County will be peaceful.

The last time that the Kenya Defence Forces (KDF) were deployed to Marsabit and Samburu counties, I do not think an approval was sought from the Senate. I do not know why that did not happen.

**An hon. Member:** It was sought.

**The Senate Majority Leader** (Sen.(Prof) Kindiki: On a point of information, Mr. Speaker, Sir. I do not intend to disrupt the Senator. For internal deployment, the approval is sought from the National Assembly in accordance with Section 33 of the Kenya Defence Forces Act, 2012.

**Sen. Hargura:** Thank you, hon. Senator, for the clarification. Mine was to mention something about southern Sudan. Our men and women are mistreated when they go there. Since we take good care of their people, they should also reciprocate and allow us to benefit from the peace in the region.

**The Speaker** (Hon. Ethuro): Let me now call upon the Mover to reply. However, on internal deployment, let us get the facts rights.

First, I would like to agree with the Senate Majority Leader that it is the National Assembly to approve that. Secondly, the approval was sought and granted.

Sen. (Dr.) Machage, I am addressing you in particular.

**The Senate Majority Leader** (Sen. (Prof.) Kindiki: Thank you, Mr. Speaker, Sir, for the last clarification. For the record, the requirement for the internal approval is described in the Kenya Defence Forces Act, 2012, Section 33, read together with Section 34.

Today, I am a very proud Kenyan. Today, I am a proud Member of this House. Today, I must appreciate my colleagues that on a matter as grave and as serious as this one, all those who have contributed have done so factually and in good faith for the interest, image and record of our nation.

Once more, we have demonstrated, in this House, that when it comes to grave issues, we will not be divided by politics, party affiliations and where we come from. I appreciate my colleagues from both sides of this House. This country has a serious role to play in regional security and that must be maintained. Nigeria has done it in the West Africa. South Africa has done it in the southern part of Africa. Until recently, Egypt had done well in the northern lines of Africa until they started having challenges.

Kenya must, therefore, maintain the leadership role on this part of the globe. I want to say, once again, that when investors see a country being secure both internally and playing a leadership role in the region, they get a signal. They get a signal that it is a country where they can invest. That, therefore, brings a connection in our regional law in peacekeeping and the economic take off in our country. There is a strong connection. No one wants to invest in an area where they feel that some teenager will overthrow the Government the following day and all the investments will go up in flames.

It is in that connection that I want to comment on the statement made by Sen. Wetangula, the Senate Minority Leader, about serious internal challenges. It is true and it would be hypocritical to pretend that we do not have serious challenges in security. The

Jubilee Government has admitted that there is a serious problem. We are addressing it and the debate on what to do to fix security is going on.

Once more, I am grateful that that I have not heard serious deviations or diversionary issues in terms of finding solutions to our homeland problems. Sometimes, these are things that can psyche people up in the wrong direction and we end up losing the core objective. Once again, I want to say that I am grateful to the political opposition of this House for maintaining sobriety.

As you criticize, you should do so with a view to solve the problem and make sure that our country is safer. The issue of internal challenges will be discussed another day. However, allow me to say two other things which were raised. I know that the Senator for Nyamira County, Sen. Okong'o, Sen. Hargura and Dr. Machage asked about the safety of our men and women who go there. These are people who will go to join the UN Peace Keeping contingent. Not only are they highly paid and appreciated and equipped, but highly secured in terms of insurance of our people there. We want to assure the people of Kenya; should anything happen in the course of the battle field or peacekeeping activities, our soldiers are taken care of. Indeed, even for internal security operations, maybe I should just clarify something for the benefit of the House and our nation.

With regard to our local security operations, starting 1<sup>st</sup> July, 2014, the Jubilee Government has undertaken to insure every police officer and military officers with full life insurance. Our soldiers who work very hard and are rarely appreciated will get that benefit and their families will be cushioned from the exigencies of security operations.

The last point is that the South Sudan is on its way to becoming a Member of the East African Community (EAC). As the House may be aware, the current Chairman of the Community at the moment is the President of our country. So, it joins in very well that one way of encouraging our good neighbour, South Sudan and to also take part in their integration into the East African Community, is to stand with them during the hour of need, at a time like this one.

Mr. Speaker, Sir, again for the record, I mentioned that the troops being deployed are going to be involved in static posture, meaning that they are not going for combat. They are going to secure civilian places and personnel.

Mr. Speaker, Sir, finally, as I thank everybody, let me also say for the record that there are some things that I said here, which I thought that I should modify a bit. This is because I am always very careful on what I say as a leader, a Senator and a Member of this distinguished House. Those are the off-the-cuff remarks that I made about my brother, Sen. Wetangula. He has not asked me and nobody else has asked me, but voluntarily I think that I went a bit overboard. I am reminded by Sen. Haji that I should say the remarks that I made; that the Senate Minority Leader is not qualified to be my student. Those remarks should be expunged from the HANSARD record, because I apologize and withdraw them. It is not actually even characteristic because---

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

**The Speaker** (Hon. Ethuro): Let him finish; I will allow you, especially on that bit.

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): Mr. Speaker, Sir, the reason I said this is because I have been very critical, in my view, when any Member of this House, from whichever side, makes certain remarks which might look as if they do not fall within the boundaries of decorum. I remember Sen. Sonko had issues one day, about Governor Kidero, and I insisted until the Chair really ruled that he was out of order to try and use the advantage that we have in being in this House to discuss some things in a certain way. So, I thought that maybe that remark was not consistent with my own record in this House.

**The Speaker** (Hon. Ethuro): I think that you have made your point.

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

**Sen. (Dr.) Machage**: Mr. Speaker, Sir, it is only the Speaker who has the powers to expunge any remarks by a Member from the HANSARD. The only thing that the Senate Majority Leader could do is to withdraw and apologize. Is he in order to demand that the remarks he made be expunged?

**The Speaker** (Hon. Ethuro): That is correct position, Senate Majority Leader. I had a suspicion that Sen. (Dr.) Machage would be moving in that direction. First, I want to commend you for being big enough to own up. You remember the Chair tried very hard to intervene, but I was also bound by the same constraints of decorum. I did not want to deal with you directly, but thought that you would borrow the cue. It takes a while, but it has come. So, withdraw, apologize and request the Chair that those words be expunged. I will grant that.

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): Mr. Speaker, Sir, accordingly, I withdraw, apologize and request the Chair to order that, that part of the record be expunged.

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

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): Thank you, Mr. Speaker, Sir.

Mr. Speaker, Sir, finally, I want to pay tribute to all the distinguished colleagues who have contributed to this Motion passionately and with a lot of experience, right from the Attorney General *emeritus*, Amos Wako and all the Senators, literally. This House is quite rich and I am actually impressed. Sen. Wetangula himself is a former Minister for Foreign Affairs. There is also Judge Madzayo. I cannot fail to mention the distinguished Senator for Garissa, our former Minister for Defence, G.G. Kariuki, our former Minister for Internal Security, Kembi-Gitura, a seasoned lawyer and former Assistant Minister for Foreign Affairs. So, I am in good company and a happy man.

Mr. Speaker, Sir, with those many remarks, I beg to move.

**The Speaker** (Hon. Ethuro): Order, Members! Of course, this is a matter not affecting counties, for purposes of voting. I, therefore, wish to put the Question.

*(Question put and agreed to)*

### MOTION FOR ADJOURNMENT

ADJOURNMENT OF THE HOUSE TO A DAY  
OTHER THAN THE NEXT NORMAL SITTING DAY

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): Mr. Speaker, Sir, I beg to move the following Motion:-

THAT, pursuant to Standing Order No.28 (3) this Senate adjourns until Tuesday, 3<sup>rd</sup> June, 2014.

Mr. Speaker, Sir, I will take less than three minutes to say the following. First, unlike before, this House has a calendar. That calendar demands that we adjourn. In respect to our own calendar and programmes, I see no reason we should not adjourn. It is during this recess that we will be able to visit our counties. It is also during this recess that Committees can do the work, perhaps, they were constrained by virtue of the fact that we had Sittings during the week. So, it is in that connection that this Motion is brought.

Mr. Speaker, Sir, secondly, this Motion is in recognition that Senators have worked very hard during this first part of the Second Session, which began I think in mid February. We have passed a number of legislations and some are in the pipeline. Therefore, it is only fair that we take this recess to reflect and strategize on how to conduct the remaining two parts of this Session. One of the things that make me happy is that looking at this Session, it is very possible that we are going to have not less than a dozen Bills. Therefore, we have done a good job and need a bit of time, in accordance with our calendar, to attend to our other duties and come back on 3<sup>rd</sup> June, 2014 to continue with our work.

Mr. Speaker, Sir, finally, as I said when I was issuing the Statement, under Article 45, because of Article 218 of the Constitution that has certain timelines regarding the passage of the Division of Revenue Bill and the County Allocation of Revenue Bill, it is almost obvious that we might have to be recalled, at least, for a day or two, to pass those Bills. Ordinarily, because of timelines, those Bills should be in place earlier than June, to make sure that other processes around the Budget are not disrupted. I think that this House will find no problem disrupting its recess because we have done it before and secondly, this is national duty. When national duty calls, we should be available and do what the Constitution demands us to do.

Mr. Speaker, Sir, with those many remarks, I beg to move and in our tradition, request the Senate Minority Leader, Sen. Wetangula, to second.

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

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

**The Senate Minority Leader** (Sen. Wetangula): Thank you, Mr. Temporary Speaker, Sir, I beg to second. This is a Motion that we do not need to belabour a lot. We are actually acting in obedience to our own calendar that we have set that gives us clear determinate timelines on when we start a session, when we go on recess and when we come back. This is such a time and I hope and believe that after this short, but very illustrious session, Senators will have the opportunity to go to their counties which are much larger than ordinary constituencies. We need time to interact and meet our electorate and also make sure that we see that the money we vote to send to the counties is being put to good use in terms of public visible projects. So, it is a time for us to be in our counties to have time, not only to see what is going on, but interact with our voters.

Lastly, I think as we adjourn, we must remember our constitutional responsibility in terms of the Bills that were tabled today for the First Reading. We may be called upon any time and we should be able to come back and deal with the two critical Bills of revenue allocation. I wish all my colleagues a happy recess so that we come back in one peace. The current challenges we are facing notwithstanding, it is planting season for those of us who come from western Kenya and it is time for us to go and join our farmers.

Thank you.

*(Question proposed)*

**Sen. Orendo:** Thank you Mr. Temporary Speaker, Sir. I will also take a short time. I want to commend the House during this very short Session. As the Senate Leader of the Minority has said, it has been a very illustrious Session. He and the Senate Majority Leader have shown exemplary leadership. I hope when we come back we will continue the way we have started this particular Session.

In the old days when the House was going on recess, then you knew something was going to happen while you were away. But the Constitution has pointed out that we can be recalled at any time when there is need. Not just be recalled by the leadership, but the Members have a mechanism for calling back the House.

I wanted to say this in regard to what is going on in the country in matters to do with security. We appreciate the on-going security operations in terms of the fact that we must protect lives and property, but when we find out that during this operation, we are being told that there are so many aliens, then that is a matter which I cannot determine; probably, the courts. This means that in the first place, somebody is sleeping on his job. While we are conducting an operation in relation to terrorism, this operation is looking more like we are trying to make sure that the aliens are removed from the country.

So, the security organs must really wake up. When we are doing an operation like this, it means that we affect the lives of many peaceful and ordinary Kenyans who get

mixed up with those, probably, the law is targeting. The truth of the matter is that a section of Kenya is believing that this operation is targeting a particular community or is being undertaken on religious grounds so that next time it is important that we urge our security apparatus to make sure that they do the things that they must continue to do in to make our borders safe. They must make sure contraband sugar does not enter the country and all that. They must do this job so that when there is an operation targeting agents of terror, we do not affect the lives and properties of ordinary, law abiding citizens.

Mr. Temporary Speaker, Sir, I saw some article somewhere which was talking about what used to happen in Chile or in Argentina; that those who were seen to oppose the Government were being taken into stadia, like we have taken people to the – is it the Nyayo Stadium or the Moi Kasarani Stadium – There are so many of these Moi things that I sometimes get confused.

*(Laughter)*

But, you know, that image internationally is not good for Kenya. The things that we have said with regard to the last Motion; the things that are happening, the images that are being seen internationally are not good for this country. So, I hope that during this time of recess, the security will rethink their operations and make sure that they do things the right way so that we do not fall into these traps the next time.

Mr. Temporary Speaker, Sir, I beg to support.

*(Applause)*

**Sen. Mositet:** Thank you, Mr. Temporary Speaker, Sir. From the outset, I support this Motion of adjournment. I even wanted to contribute to the Motion seeking to deploy our armed forces to South Sudan, but I did not get time.

First of all, let me commend the Senate for showing proper leadership in this country. It has shown us that this is the unifying House for the entire country.

*(Applause)*

For sure, I have always thought anytime I speak about my county and somebody else from the other side also speaks about his county, we have one common denominator. We want the lives of our people to change for the better and we always feel that security of our people and our country is paramount. So, when I see my Senate Majority Leader moving a Motion and it is seconded and supported by the Senate Minority Leader, to an extent that even when Sen. Orengo speaks and talks about security, he gives out some positive ways of doing it, I feel that I am a proud Senator. For sure, this is the House we belong to, and this is the House I believe Kenyans are proud of.

Mr. Temporary Speaker, Sir, during this Session many activities took place. There were a lot of exercises where Governors and Senators were involved. It is within the same period that we saw Governor Wambora being impeached. This House has really done us proud, as Senators. Let me just commend each and every Senator for that.

I doubt whether Senators have had time to be in their counties. So, this is the time we feel we may do that. At the same time, we have a lot of work at the Committee level. In fact, the Bills which were just read this afternoon by the Senate Majority Leader will be handled at the Committee level. So, the Committee on Finance, Commerce and Budget, where I am the Vice Chairperson – and I know many other Senators are - must start working. I am happy because the Chair and also the Senate Minority Leader are also Members of that Committee. So, from even next week, I know we will not have that holiday. We will still go on working.

Mr. Temporary Speaker, Sir, let me just comment on the training of our military. I feel that we need to also look at the training of our police forces. The Senate Majority Leader, as he comes up with his Bill about the security of the counties as he had indicated, I think the way the military of this country are trained is really commendable. We remember very well that during the 2007/2008 Post Election Violence (PEV), our armed forces stepped in and played a major role in stopping the violence. We are proud of the way they handled that situation. As we talk about the issue of training of our police force, it high time that we also know what they do in the military that they do not do at the police force.

With those few remarks, I support.

**Sen. G.G. Kariuki:** Mr. Temporary Speaker, Sir, this being a Procedural Motion, I need not spend a lot of time. However, I need to say the following.

The Senate has just concluded one year and we are now putting our leg into the second one. Everyone realizes that we have moved on very well. This is because of the leadership of the Senate, which includes the Speaker, the Senate Majority Leader and the Deputy Senate Majority Leader. They have done a very good job. In fact, we have no complaints about the staff. They have also done their work extremely well and they deserve our support. It is only when leadership is united that a house can progress.

I am happy with the way the Senate Minority Leader and also the Senate Majority Leader are conducting their business in this House. The only thing I feel a bit concerned about is that they take their job a bit far. I was very impressed when the Senate Majority Leader voluntarily came up and realized that things were not going the right direction. I hope that next time both leaders in this House will give us the support that we require.

Mr. Temporary Speaker, Sir, security is a universal requirement for all of us. No one can take it easy when we are not secure. We, as a country, need to support the President with his Deputy and see how far they will be able to help this country. This is, especially so, in their effort to ensure there is security in this country. He has indicated this in many forums, particularly when he admitted that there is a problem in the Office of the President. That was indication that he is really ready to move far.



The other thing that I would like to comment on before my time is over is on our armed forces. These officers are highly trained. From experience, I know there are no better trained armed forces in the south of the Sahara than those in this country. We should all appreciate this because it is a fact. The only problem you find is when our issues are messed by the greed for money. This has intruded in every institution in this country. It is not that people are doing it without knowing. The state of insecurity that we are in today, the people who are in charge of the security docket in this country are aware of our problems. But there are times you can have a problem and there is no way of solving it because of its nature. That is why I keep on saying, let us give the Head of State time to see what he can give to give this country the peace that we all deserve.

Lastly, Mr. Temporary Speaker, Sir, some Kenyans are not extremely happy, especially in Laikipia County. We have home guards in Baringo, Samburu and Isiolo counties. We have all these people to help defend these counties. But in Laikipia County, we are just left that way. We have tried for a long time, but this has not worked. The Senate Majority Leader can take note of that. I have already talked to the Chair of the Committee in charge of security. I have done all that is required. I have supplied the names, contacts and everything else. Therefore, I believe that before we come back here, something would have been done.

With those few remarks, I beg to support.

**The Temporary Speaker** (Sen. (Dr.) Machage): Just to get the HANSARD records right, this is not a procedural Motion. It is a Motion of Adjournment.

**Sen. G.G. Kariuki:** Mr. Temporary Speaker, Sir, I stand corrected.

**Sen. (Prof.) Lesan:** Mr. Temporary Speaker, Sir, I would like to also take this opportunity to, first of all, congratulate the Speaker of the Senate who has been sitting here for close to six hours today for the first time. I also wish to congratulate the present Chair because we are now going to another hour. I congratulate each and everybody.

Mr. Temporary Speaker, Sir, I also wish to congratulate Senators, my colleagues. We can pat ourselves on the back because of what we have done in this period. More particularly today we have been able to table the Bill on the flagship activity of Senators, that is, the Bill on County Allocation of Revenue. This is, perhaps, one of the major things that we will be doing in this country. All I want to say this afternoon is that I expect the county chiefs or the governors to take time to make professional budgets because they now have time and the expertise. We are doing this early so that we can give them time to do that. This time we want to use the Division of Revenue and the resources of this country to truly say that devolution is here to stay. Therefore, we want to request that the budgets should reflect the purpose of devolution.

To my colleague Senators, I would like to say that we are going out this time to become the face of devolution as we move around our counties propagating the whole aspect of devolution as has been expanded by the Constitution of this country. It is here to stay and as Senators we should come out as the face of devolution which is the essence of why the Senate exists.

With that I want to wish all our Senators the very best, happy Easter and happy recess. When we are beckoned to come back to deal with the Revenue Bill, I do believe the entire lot of Senators will be here to debate it and pass.

With that I support the adjournment and I wish you a happy Easter.

**Sen. Melly:** Mr. Temporary Speaker, Sir, I think I will be the “last born”.

**The Temporary Speaker** (Sen. (Dr.) Machage): Order! You cannot anticipate that.

**Sen. Melly:** Thank you.

Mr. Temporary Speaker, Sir, I also want to take this opportunity to thank the Senate Majority Leader for bringing this Motion of Adjournment. I also want to thank the leadership of both Majority and Minority for giving us direction as young leaders.

Mr. Temporary Speaker, Sir, the commitment that we have seen so far, indeed, describes that this House is a House of men and women who are determined to change this country for good. We have been learning since we came here as young leaders. We appreciate the fact that although we are not yet there, but we are slowly learning. Sooner than later, we will be at their level. I want to ask the senior Members of this House to keep on doing the good work of giving us direction as young Senators. You have made us proud and together we will change this country. In a number of times, you have heard people calling this House as a House of Retirees.

I want to believe that this is actually the House of wisdom and knowledge. This is the only House that, I believe, will give solutions to the issues and challenges that this country is facing today if it is given a change. Going by what we have already done, I appreciate and see a future for this House, not only in terms of our progress, but for the progress of this country and the development of our people. This is because we represent matters affecting counties. This House is also doing well in representing matters concerning our young people who also want to see what we are doing as a Senate.

Thank you. I beg to support.

**Sen. Kisasa:** Asante sana Bw. Spika wa Muda. Naomba pia kuchangia kama mama. Kama mnavyoniona, niko hapa peke yangu kama mwanamke Seneta. Ningependa kumshukuru kila mtu.

Ningepende kutoa mawazo yangu kwa Kiongozi wa Wengi na Kiongozi wa Wachache. Naona hawafai kuleta mzaha katika kazi kwa sababu jambo hilo litatuharibia. Hii ni Bunge ambalo linaheshimika. Sote twajua tuko sawa. Tusiulete mzaha mwingi. Unapotamka neno, neno hilo huwa limeshatoka kwenye kinywa chako na hauwezi kulirudisha tena.

**The Temporary Speaker** (Sen. (Dr) Machage): Hoja ya nidhamu, Seneta. Hii sio Seneti ya mzaha na hakuna mtu ambaye amefanya mzaha hapa. Endelea.

**Sen. Kisasa:** Samahani, Bw. Spika wa Muda. Noamba tusiwe na mizaha mingi.

Naomba muwe na Pasaka njema nyote.

**Sen. Okong'o:** Thank you, Mr. Temporary Speaker, Sir for the opportunity to contribute on this Adjournment Motion. I appreciate the roles of the leaders of this

House. I appreciate all the leadership in Committees. Most of us have learnt a lot, especially those who have joined Parliament for the first time.

There are many issues that have been discussed concerning security in our country. There are exaggerations also by the media regarding the security crackdowns taking place.

The President and the Deputy President must be supported in rooting out criminals in this country. After the terrorist attack of 11<sup>th</sup>, September, 2011, in the American history, when the Americans created their homeland security, they forgot about issues of human rights and what is entailed in their Constitution. That is why we saw some suspects being taken to the Guantanamo Bay for the safeguard of other Americans. To safeguard the interests of the Kenyan people who are suffering, our security forces go to the ground to act. This is an issue that has been there for a while. Successive governments have evaded the issue of combing out criminals. However, when the current Government takes an initiative to act, then we must support it.

When we go for the recess, let us talk to our County Commissioners and Governors so that they embark on sensitizing our people about knowing their neighbours. The issue of security is paramount. I support the President of Kenya and the Deputy President for what they are doing for this country. We should not just be following what we are seeing and reading from the newspapers.

We were on a trip sponsored by Parliament to Berlin. We watched the pictures that were appearing on television. After that, the following day, the Minister for Interior and Coordination of National Government took on the media. I do not think that the Government could have stage-managed a scenario. There are, probably, some media persons who are working with crooks.

I respect the feelings of my colleague, Sen. Orengo. However, even though he has crusaded for human rights for more than 40 years, at times, we need to look at some issues critically. It is important that we, as leaders, support the Government of Kenya, the President and the Deputy President when they are right.

With regard to the politics that take place in this House, we have agreed and disagreed. I heard the Senate Majority Leader saying that at times we do not stand up to speak on issues. We have been very vocal in criticising the Government constructively. Today, we supported the House, very eloquently. We will continue doing that without bringing issues of party affiliations.

With those remarks, I support the Motion.

*(Sen. Mositet stood up in his place)*

**The Temporary Speaker** (Sen. (Dr.) Machage): Order, Sen. Mositet! I thought that you had spoken. You cannot speak again.

**Sen. Mositet:** Mr. Temporary Speaker, Sir, I am not rising on the same.

**The Temporary Speaker** (Sen. (Dr.) Machage: Order, Sen. Mositet! What are you rising on?

**Sen. Mositet:** On a point of order, Mr. Temporary Speaker, Sir. As we break, I want to note that the equipment in this Chamber has really been wanting. Sometimes when you try to switch the microphones on, they do not respond. I think that it needs to be upgraded, so that by the time we come back, we should not have the same problems.

**The Temporary Speaker** (Sen. (Dr.) Machage): Very well. We do note the sentiments of Sen. Mositet. I very much hope that the new Chamber will be ready by the time we resume our Session. I also wish every Member of this House a good recess and, indeed, a happy Easter.

As per our Standing Order No.28(1) and (3), I do not need to put the Question.

### ADJOURNMENT

**The Temporary Speaker** (Sen. (Dr.) Machage: Hon. Senators, the Senate stands adjourned until Tuesday, 3<sup>rd</sup> June, 2014, at 2.30 p.m.

The Senate rose at 7.48 p.m.