

# PARLIAMENT OF KENYA

## THE SENATE

## THE HANSARD

Thursday, 1<sup>st</sup> August, 2013

*The Senate met at the Kenyatta International  
Conference Centre at 2.30 p.m.*

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

### PRAYERS

### QUORUM CALL AT COMMENCEMENT OF SITTING

**The Speaker** (Hon. Ethuro): Order, hon. Senators! Let us first determine if we have a quorum.

**The Clerk of the Senate** (Mr. Nyegenye): Mr. Speaker, Sir, we have 31 hon. Senators in the House. We have a quorum.

**The Speaker** (Hon. Ethuro): Let us proceed.

### ADMINISTRATION OF OATH

*(The Senator-Elect for Makueni County entered the Chamber  
escorted by Sen. Hassan and Sen. Kanainza)*

**Sen. Hassan:** Mr. Speaker, Sir, it is my honour and pleasure to introduce to you the new Senator-Elect for Makueni County, the hon. Mutula Kilonzo Junior.

**The Speaker** (Hon. Ethuro): Welcome, Senator.

We may now proceed with the swearing-in of the new Senator.

The Oath of Allegiance was administered to the following Senator:-

Mutula Kilonzo Junior

*(Applause)*

### COMMUNICATION FROM THE CHAIR

WELCOME TO THE NEW SENATOR FOR MAKUENI,  
SEN. M. KILONZO JUNIOR

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**The Speaker** (Hon. Ethuro): Order, hon. Senators. I do not have any formal Communication but I want to use this opportunity, for all of us, as a Senate, to welcome the new hon. Senator for Makueni County. I want to wish him well for the duration of his tenure in this House. I want to assure him that the rest of the hon. Senators will accord him every necessary support to induct him and also to ensure that he plays his role in this House. I also wish to assure him, as the Speaker, that we shall provide him with the every opportunity to play his role.

Senator Mutula Kilonzo Junior, you are most welcome.

*(Applause)*

### NOTICE OF MOTION

**Sen. Keter:** Thank you, Mr. Speaker, Sir. I wish to---

**The Speaker** (Hon. Ethuro): Order, Sen. Keter! Who has given you the Floor?

*(Laughter)*

**Sen. Keter:** Mr. Speaker, Sir, I thought you gave me the chance.

**The Speaker** (Hon. Ethuro): I am now giving you the chance, Sen. Keter.

### ALTERATION OF THE SENATE CALENDAR

**Sen. Keter:** Mr. Speaker, Sir, I beg to give notice of the following Motion:-

THAT, pursuant to Standing Order 28 (4), the Senate resolves to alter its calendar (Regular Sessions) for the first Session for the recess to commence on 2<sup>nd</sup> August, 2013 and end on 17th September, 2013.

### STATEMENTS

#### WITHHOLDING OF KCSE CERTIFICATES BY SCHOOL HEADS

**Sen. Musila:** Mr. Speaker, Sir, I want to seek a Statement from the Committee on Education, Information and Technology.

*(Sen. Kagwe consulted other hon. Senators)*

I wish the Chairperson could listen to me because he is just in front of me.

**The Speaker** (Hon. Ethuro): Order, Sen. Kagwe! Sen. Musila is addressing you.

**Sen. Musila:** Mr. Speaker, Sir, as you are aware, in October last year, the Kenya National Assembly passed an amendment to the Kenya National Examinations Council Act, Act No.29 of 2012, outlawing the withholding of examination certificates by any

institution. However, regrettably, as I speak here, heads of institutions continue to withhold certificates of students who did KCSE examinations from 2007 till now.

I would like the Chairperson of the Committee on Education, Information and Technology to tell this House:-

1. Why are these certificates being withheld, depriving students, particularly from poor counties, an opportunity to seek employment?

2. When will the Cabinet Secretary issue instructions to all schools to release all certificates held by heads of institutions without any condition?

**The Speaker** (Hon. Ethuro): Sen. Kagwe, do you have any response?

**Sen. Kagwe:** Mr. Speaker, Sir, I will respond to that request as soon as we resume from recess, possibly the second week after the recess.

**The Speaker** (Hon. Ethuro): Order, Chairman! Why should it be the second week after the recess yet we will be coming from a recess? You should deliver the Statement during the first week. You have a lot of time.

**Sen. Kagwe:** As ordered, Mr. Speaker, Sir.

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

NON-PAYMENT OF POLICE RESERVISTS SERVING  
IN WEST POKOT COUNTY DURING  
THE GENERAL ELECTION

**Sen. (Prof.) Lonyangapuo:** Mr. Speaker, Sir, I wish to seek a Statement from the Chairperson of the Standing Committee on Legal Affairs and Human Rights. The Statement relates to non-payment of dues to a group of people called the Kenya Police Reservists who were engaged by the Independent Electoral and Boundaries Commission (IEBC) along with regular police officers to provide security services in West Pokot County during the last general election.

In the Statement, I would like the Chairperson to:-

1. Explain why only regular police officers were paid and the reservists left out yet both provided services as required by the IEBC;

2. State what has caused the inordinate delay in paying the reservists; and,

3. Indicate when the reservists will be paid.

**The Speaker** (Hon. Ethuro): Who is the Chairperson of this Committee? Could he respond?

**Sen. Sang:** Mr. Speaker, Sir, on behalf of the Chair of the Legal Affairs and Human Rights Committee, I propose that we provide the answer on the first week after the recess, possibly on a Thursday.

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

ABDUCTION OF CONSTABLES JOSEPH MARITIM  
AND JOSEPH WAMBUGU BY SOMALI MILITIA

**Sen. (Prof.) Lesan:** Mr. Speaker, Sir, I rise to ask for a Statement from the Ministry of Interior and Co-ordination of National Government regarding Messrs. Joseph

Maritim and Joseph Wambugu, ID No.1748681 and 5504164 respectively. These are constables in the forces. These two individuals were abducted from Damajale on 25<sup>th</sup> May, 2013 and were taken into Somalia.

Mr. Speaker, Sir, the families of these individuals are in real anguish because they do not have any information on their whereabouts. The only time that they were informed is on 21<sup>st</sup> June, 2013. Since then, the families are anticipating and waiting for some information on them.

Mr. Speaker, Sir, I would like to know the following:-

1. Why these families are not being informed or updated on the whereabouts of these individuals?

2. These individuals have families that relied on the salaries of abducted officers. I would like to know why they are not being paid the salaries of these individuals since they have been missing for many months. These families are suffering.

3. Lastly, what is the Ministry doing to try and secure these individuals and ensure their safety? The information coming from Somalia is that these individuals are still alive. One of them actually rang the family. I wish to know what the Government is doing to get these individuals home.

Thank you, Mr. Speaker, Sir.

**The Speaker** (Hon. Ethuro): Is the Chairperson here?

**An hon. Senator:** Hayuko!

**The Speaker** (Hon. Ethuro): What about the Vice-Chairperson?

**Sen. Hasan:** Pia hayuko! Any member of the Committee?

**The Speaker** (Hon. Ethuro): Order, Sen. Hassan Omar! Any member of the Committee to respond to this? Any other Chairperson to undertake to inform the Committee's Chairman? Senator Kagwe, will you do so?

**Sen. Kagwe:** Mr. Speaker, Sir, I undertake--- (*Spoke off record*)

**The Speaker** (Hon. Ethuro): Sen. Kiraitu Murungi!

#### MANAGEMENT OF 99 YEAR-OLD LEASES BY THE GOVERNMENT

**Sen. Murungi:** Mr. Speaker, Sir, this is a slightly different issue although the *miraa* issue is still alive.

I rise to request a Statement from the Chairman of the Committee on Agriculture, Land and Natural Resources seeking answers to the following questions:-

1. Could the Chairman table a list showing the owners, nationality and properties whose 99 year leases have expired since the new Constitution came into force in August, 2010?

2. How many expired leases have been renewed?

3. What criteria is used by the Government to extend the 99 year leases after they have expired?

4. What is the procedure for application of renewal of an expiring lease?

5. What is the role of the Cabinet Secretary and her staff in the renewal or denial of such a lease?

6. What is the role of the National Land Commission in the renewal or denial of renewal of such a lease?

7. What mechanisms have been put in place to ensure that property rights of lessors under Article 40 of the Constitution are protected and there is prompt and just compensation for all legitimate interests and development in the expired leases?

8. What mechanisms have been put in place to ensure that hardworking indigenous Kenyans, whose leases have expired, are not unjustly or arbitrarily deprived of their livelihoods by unethical and unscrupulous Government land officers?

Thank you, Mr. Speaker, Sir.

**The Speaker** (Hon. Ethuro): Chairman, Committee on Agriculture, Lands and Natural Resources? Vice-Chairman? Any member of the Committee?

**Sen. Boy Juma Boy:** Bw. Spika, nachukua jukumu la kumfahamisha Mwenyekiti wa Kamati ya Kilimo, Aridhi na Mali ya Asili ili alete jibu wiki ya kwanza baada ya mapumziko.

**The Speaker** (Hon. Ethuro): Sawa. Sen. Juma Boy Juma, baada ya kumfahamisha kutakuwa aje.

Sen. Karaba!

#### CONSTRUCTION OF SAGANA-KUTUS-KERUGOYA-KARATINA ROAD

**Sen. Karaba:** Mr. Speaker, Sir, I would like to request for a Statement from the Chairperson of the Committee on Energy, Roads and Transportation. It seems he is not here.

**An. hon. Senator:** *Wewe endelea!*

**Sen. Karaba:** Mr. Speaker, Sir, this regards a road in Kirinyaga County–Sagana-Kutus-Kerugoya-Karatina Road C74. The construction of this road was supposed to have commenced more than three years ago but it has not yet commenced. I would like the Chairman to issue a Statement as regards its completion. I would like to know the following:-

1. Who is the contractor?

2. When is construction supposed to commence? This was supposed to commence three years ago.

3. If there is any amount of money that has been paid to the contractor, how much is it to date?

4. When will construction of the road be completed?

**The Speaker** (Hon. Ethuro): Is the Chairman here?

**Sen. Wangari:** Mr. Speaker, Sir, on behalf of the Chairman of the Standing Committee on Energy, Roads and Transportation, I undertake to inform him and to give a response to this House on the first Thursday after recess.

**The Speaker** (Hon. Ethuro): Sen. (Dr.) Zani.

MANAGEMENT OF OIL, COAL AND NIOBIUM  
IN TURKANA, KITUI AND KWALE COUNTIES

**Sen. (Dr.) Zani:** Mr. Speaker, Sir, I rise to request a Statement from the Chairman of the Standing Committee on Agriculture, Lands and Natural Resources regarding the discovery of oil in Turkana County, coal in Kitui County and niobium in Kwale County as well as the imminent exploitation of the same.

In the Statement, I would like the Chairman to address the following issues:-

1. Whether community negotiations have been duly completed before investors are given mining licences?

2. What is being done to address the complaints raised by various communities residing in the counties where the natural resources are found? Lately, there have been a lot of complaints especially in the media. Communities and heads of county governments are complaining that they have not been involved in this process that is meant to be participative.

3. Whether the provisions of Articles 62 and 63 of the Constitution have been taken into consideration in the case of exploitation of Niobium in Kwale County and indication of the land rights or the level of land ownership of Mrima Hills, so that it is clear whether the negotiation is being done on it, in terms of it being a public land or community land.

4. Whether the Government is satisfied that the provisions of Article 69 of the Constitution on obligations of the State to ensure there is public participation in the management, protection and conservation of the environment have been adhered to?

5. Lastly, whether transactions relating to the respective natural resources have been ratified by Parliament as per the requirements of Article 71 of the Constitution? If not, what measures is the Government taking to ensure such compliance?

Thank you, Mr. Speaker, Sir.

**The Speaker** (Hon. Ethuro): Is the Chairman here?

**Sen. Boy Juma Boy:** Bw. Spika, nitamu *inform---*

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

**Sen. Boy Juma Boy:** Bw. Spika, nimechukua jukumu la kumjulisha mwenyekiti was Kamati ya Agriculture, Land and Natural Resources ili alete jibu wiki ya kwanza baada ya likizo.

**The Speaker** (Hon. Ethuro): Sen. Daisy!

MANAGEMENT OF UWEZO FUND

**Sen. Kanainza:** Mr. Speaker, Sir, I rise to seek a Statement from the Chairperson of the Sessional Committee on Devolved Government regarding the disbursement of Uwezo Fund of Kshs6billion.

In the Statement, the Chairperson should – I hope he is listening:-

(a) Confirm whether the Government intends to disburse Kshs6 billion through the CDF model, which is already alleged to be unconstitutional;

(b) State whether the Fund is a grant or a loan to the youth knowing that the youth have fallen prey to many false promises;

(c) Explain why the Fund could not be managed at the county level in line with the principles of devolution; and,

(d) Lastly, state whether the youth, who are the key stakeholders, and the institutions involved, such as the Youth Enterprise Development Fund (YEDF), the National Youth Council (NYC) and the National Youth Service (NYS) have been involved in the arrangements to have the Fund launched soon. We know that the youth have been told to keep off. This is a matter of great concern.

**The Speaker** (Hon. Ethuro): Where is the Chair?

**Sen. Murkomen:** Mr. Speaker, Sir, allow me to say that is a very brilliant question. I will respond to it in the first week after recess.

**The Speaker** (Hon. Ethuro): Mr. Chairman, there are no questions here!

**Sen. Murkomen:** Mr. Speaker, Sir, this is a very brilliant request for a Statement. I congratulate the representative of the youth in this House for that.

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

#### REVENUE ALLOCATION TO COUNTIES

**Sen. Abdirahman:** Mr. Speaker, Sir, as a reminder, Sen. Hargura sought a Statement from the Chairman of the Committee on Finance, Commerce and Economic Affairs regarding budgetary allocations to various sectors. We are yet to get a response to this.

**The Speaker** (Hon. Ethuro): What does the Chairman have to say?

**Sen. Billow:** Mr. Speaker, Sir, the Senator for Marsabit County, who asked for the Statement, wanted to know how much money had been disbursed in respect of infrastructure to each of the 47 counties in the last 20 years.

The second part of his question was about the Equilisation Fund and whether that amount is adequate to help the marginalized counties to catch up. The responses from the relevant Ministries are as follows:-

Mr. Speaker, Sir, the devolved system of governance was ushered in by the promulgation of the Constitution of Kenya on 27<sup>th</sup> August, 2010. Before the creation of counties, budgetary allocations were appropriated at the line Ministry level in line with the existing laws. Consequently, the line Ministries issued disbursements to districts in form of Authority to Incur Expenditure (AIE) to execute their mandates. In this regard therefore the National Treasury is not in a position to report on allocation to counties in the last 20 years as requested as that would be an onerous exercise.

Secondly, Article 241 of the Constitution establishes the Equalisation Fund into which shall be paid 0.5 per cent of all the revenue collected by the national Government based on the most recent audited accounts of the revenue received. The National Treasury allocated Kshs3.4 billion in this financial year to the Equalisation Fund based on the constitutional requirement. This amount has been allocated to selected counties based on the recommendation by the Commission on Revenue Allocation on the criteria for identifying marginalised areas for the purposes of the Fund.

Mr. Speaker, Sir, to answer the question, this provision adequately meets the constitutional requirement. Thank you.

**Sen. Abdirahman:** Mr. Speaker, Sir, I am surprised that the Chairman is satisfied with that answer himself. I believe he is one of the first of casualties of such unfortunate manner in which things were handled in the past. Part two of the response looks fairly okay but part one does not meet our expectation. It is not cumbersome or onerous to compile. We know that as much as Ministries were issued with the Authority to Incur Expenditure (AIE), the line budgets are very specific. If, for instance, money is allocated to a water project, it is very clear and it is not even hard to identify these things because the budget estimates are still available at the old Ministry of Finance. It is not hard to get it.

Mr. Speaker, Sir, I will plead that you ask the Chairman to go back to the relevant Ministry and get us an appropriate answer. I do not think we can proceed with this.

**Sen. Kajwang:** Mr. Speaker, Sir, first of all, I am amused by the word “onerous” which has been used by the Chairman because 20 years down the line, we know how much money was given to Mbita and Homa Bay districts and you can add them up. We have eight districts there, so you can add them up and say Homa Bay received so much money just like you can say how much money was invested in Kenya. We know how much was allocated and how much was used because some were brought back to the National Treasury. So, this is the most important question that this House is supposed to deal with because we are dealing with matters of devolution. We want to know where there are deficits in terms of development. I hope that the Cabinet Secretary who has given that answer can go back and ask his officers to add up those allocations for the last 20 years in the districts that form that county and give us an appropriate answer. It is not an “onerous” job but his job.

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

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

**The Senate Minority Leader (Sen. Wetangula):** Mr. Speaker, Sir, when the Chairman of the Committee on Finance, Commerce and Economic Affairs was giving that misleading answer, I stared at you to see if you are going to stop him because you come from one of the most marginalized districts, and now counties, in this country.

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

**The Senate Minority Leader (Sen. Wetangula):** I retract that, Mr. Speaker, Sir.

**The Speaker (Hon. Ethuro):** You know I cannot stop him. That is your job, not mine.

**The Senate Minority Leader (Sen. Wetangula):** Worse still, the Chairman himself, comes from the marginalised of the marginalised and it is very easy because the current counties are predicated on districts as they were in 1992. Within those districts, new districts were created and if money was being segregated to districts, I do not see why he should call it onerous to bring the facts. I urge you to order him to bring a detailed and comprehensive statement when we resume the Senate after recess, county by county because there are no districts that stride across county boundaries. They are all



within counties. We need to know what this Jubilee Government is doing to mitigate the marginalisation of many parts of this country including the Chairman's own county.

**Sen. Hassan:** Mr. Speaker, Sir, one of the core principles in terms of division of revenue is equity. In fact, our Constitution provides for equity. That is why I want to support the call that we need a breakdown. My interpretation of equity is that it is not about what we already have but also for those who used to have unjust benefits before must get much less so that those who never used to get any benefits, like Mandera County, to get much more. Equity means you redress historical injustices and this Constitution is about that. So, I think---

**The Speaker** (Hon. Ethuro): Order, Senator. Make your point.

**Sen. Hassan:** Mr. Speaker, Sir, I would also urge the Chairman of the Finance, Commerce and Economic Affairs Committee to bring that breakdown because this Senate must discharge its responsibility to ensure equity is done and historical injustices are redressed.

**The Speaker** (Hon. Ethuro): Chairman for Finance, Commerce and Economic Affairs Committee!

**Sen. Billow:** Mr. Speaker, Sir, I appreciate the concerns by some of my colleagues about the level of marginalisation in my county but it is the policy of the Jubilee Government not to drive the country forward using the rear view mirror. The Constitution is very clear on redressing historical problems in terms of resources allocation; and the redress is through the Equalisation Fund. There is no other recourse other than the fact that devolution has been brought in to address that inequality. Even if we submit county by county, assuming it was possible to do so---

**Hon. Senators:** It is possible!

**Sen. Billow:** I will explain why it is not possible. You asked a question and I am going to respond.

Assuming that it was and it came out clearly that Mandera County was disadvantaged in terms of resource allocation for the past 20 years relative to Bungoma, for instance---

**Sen. Abdirahman:** On a point of order, Mr. Speaker, Sir. The Chairman is, in fact, in my own understanding, misleading the House because the essence of bringing this information is not only about trying to know whether there was fairness or not. There has been, at times, a mismatch in terms of priorities. It is much more than that.

Is the Chairman in order to tell us that it is just going to show us the imbalance which we have seen when it gives us more benefits in terms of learning lessons for the future?

**The Speaker** (Hon. Ethuro): Order, Senator. You are arguing now. I think I have given hon. Senators sufficient time to raise their clarification. Let us allow the Chair to answer, then I will give directions.

**Sen. Billow:** Mr. Speaker, Sir, I think one of the questions is not here. I think Sen. Hassan is probably not aware of the question. The question is specifically asking about allocations to counties.

**The Speaker** (Hon. Ethuro): Order, Chairman. Sen. Abdirahman was given permission by Sen. Hargura to request the Statement. That Statement that Sen. Hargura

requested is in the public domain. It is in our HANSARD. So, apart from just the public records, even the Senator himself who was given that responsibility is fully aware of the Statement. I think it is improper, Chairman, to impute improper motive on the part of Sen. Abdirahman.

So, you need to apologise to Sen. Abdirahman.

**Sen. Billow:** Very well, much obliged, Mr. Speaker, Sir. I apologise. I did not impute any improper motive.

**Hon. Senators:** Why do you apologise?

**Sen. Billow:** Directions and the ruling from the Speaker.

Mr. Speaker, Sir, let me get back to the questions. Regarding the clarification sought by Sen. Kajwang and Sen. Wetangula, the most important thing to note here, and I emphasized that in the past budgetary provisions or allocations were appropriated at the line Ministry level and disbursements were made through AIEs. So, there were no allocations to a district, like Kshs20 million being given to a district, no. There were AIEs which sometimes could not be spent and the monies returned back to Treasury. So, because of that, it is not easy to say how much had been spent with regards to water in a particular district in a particular year. It is not. You cannot say so. That is the reason why it is not possible to get those figures.

*(Loud consultations)*

Mr. Speaker, Sir, I need protection from you.

**Sen. Bule:** On a point of order, Mr. Speaker, Sir. Is Sen. Billow, the Chairman, in order to say that there are no records? I think there are records for everything which was done by the previous governments. He has to go to the line Ministries and search for the records.

**Sen. Muthama:** On a point of order, Mr. Speaker, Sir. Will I be in order to tell the Chairman that he is misleading the House? If he can stand here and say that there are no records of the money that was spent on water and they cannot be traced, is he trying to imply that the funds were just dished out, taken, squandered and cannot be traced? Could he stop misleading the House?

**The Speaker** (Hon. Ethuro): Order, hon. Senators. Sen. Billow, the Chair is satisfied that the answer you have given is inadequate. The use of the word “onerous” is not necessary because we can account. Governments and all the bureaucracies are all there for accounting purposes. Authority to Incur Expenditure (AIEs), for a fact, is issued to district AIE holders. So, if you purport that this happened because it was a line Ministry, you may end up being in serious trouble with Sen. (Prof.) Lonyangapuo who is a former Permanent Secretary and knows how this business is done.

So, take advantage of the recess to do your work. The first week that we resume, we will be expecting a complete answer covering the entire period and counties. It is so directed, Mr. Chairman. Can we get your compliance?

**Sen. Billow:** Mr. Speaker, Sir, much obliged. However, I want to clarify one thing which is important. Members need to look at the question that was sought and compare with the answers. The question is very clear in terms of the budgetary allocation. The

answer here indicates that the system that was used is not similar to the devolution system that we have now where we have budgetary allocations. The system we had then used an AIE for the disbursement of actual Exchequer. It is important for Members to know that the essence of this question is to seek mitigation for those counties that have been marginalised. We have answered that in the second part. The mitigation is one, through the devolution; the allocations we approved yesterday and two, through the Equilisation Fund.

In essence, the ultimate aim of the question has been answered but I will comply. The point is that it may not add a lot of value.

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

**Sen. Billow**: Much obliged, Mr. Speaker, Sir. I will provide the information.

**The Speaker** (Hon. Ethuro): It is not up to you to decide what use can be put to the statistics. Statistics on their own have their own lives. Any Senator can use them. So, that information is extremely necessary and should be supplied.

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

**The Speaker** (Hon. Ethuro): What is it, Sen. Abdirahman? I thought that we have asked the Chairman to come back with an answer?

**Sen. Abdirahman**: Mr. Speaker, Sir, you have made a very wonderful ruling but--

I am not following up on that. You heard hon. Billow, the Chair---

**The Speaker** (Hon. Ethuro): Order, you cannot say that something is wonderful and then you add the word "but."

**Sen. Abdirahman**: Mr. Speaker, Sir, I am not asking you to change anything.

**The Speaker** (Hon. Ethuro): If you want to proceed, you must withdraw the word "but" if the issue must remain wonderful.

**Sen. Abdirahman**: Mr. Speaker, Sir, the bit I am concerned about is the fact that hon. Billow repeatedly used the words; "Members do not know what the question was asking."

We were all here. This House has records. My worry is that if we go by what he is trying to say, we may not achieve much even after the recess. Could the hon. Member refer to the HANSARD so that we get adequate response when we come back from the recess, God willing?

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

#### PROVISION OF SECURITY TO COUNTY ASSEMBLY SPEAKERS

**Sen. Murungi**: On a point of order, Mr. Speaker, Sir. I rise on a point of order regarding the Statement I requested three weeks ago from the Senate Majority Leader. This is a Statement regarding provision of Government security to all the Speakers of County Assemblies in the Republic of Kenya.

You ordered that the Statement be delivered by the Senate Majority Leader to this House on Thursday last week. This Statement was not delivered. I had an opportunity to ask him when he could deliver it and he said that he could do so today. He is not here and we find ourselves in a fairly difficult situation.

I am wondering whether the Senate Deputy Majority Leader, Sen. Keter, has any information regarding the Statement because we are ready for it.

**Sen. Keter:** Thank you, Mr. Speaker, Sir. Unfortunately, I have no information regarding that Statement. However, I undertake that immediately we resume, we will deliver the Statement to my former boss, hon. Sen. Kiraitu Murungi.

**Sen. Murungi:** Mr. Speaker, Sir, we know that the Senate Majority Leader is a very busy person. However, I think he should take his responsibilities to this House very seriously, more so, when he has been ordered to do so by no other than the Speaker of this House. It is quite clear that the Senate Majority Leader has failed, neglected or refused to give the Statement to this House.

*(Sen. Hassan consulted with the Speaker (Hon. Ethuro))*

Is it in order for hon. Hassan to keep on talking to you every time I stand to speak?

**The Speaker** (Hon. Ethuro): The Senator is right to consult the Chair but is out of order when he does it every time you are on your feet.

*(Laughter)*

**Sen. Murungi:** Mr. Speaker, Sir, given the situation we find ourselves in, would I be in order to request you to issue the last warning to the Senate Majority Leader to deliver this Statement the first week after we come from recess and that failure to do so, he should face dire consequences as stated in the Standing Orders because he will be in contempt, not just of the Speaker, but of this House?

**Sen. Murkomen:** On a point of order, Mr. Speaker, Sir. Is it in order for Sen. Murungi, a very good neighbour of the Senate Majority Leader, to insinuate or impute improper motive in the person of the Senate Majority Leader when we know that his able Deputy is here, Sen. Charles Keter?

There are rules and procedures of working in this House. The reason why every officer has a deputy is because of such reasons. When Sen. Keter, who is sitting in his proper seat, is here, is the same as having Sen. (Prof.) Kindiki around.

**The Senate Minority Leader** (Sen. Wetangula): On a point of order, Mr. Speaker, Sir. Is it in order for the distinguished Senator for Elgeyo-Marakwet to extravagantly describe Sen. Keter as able when he has just demonstrated his inability to answer the question?

**Sen. Keter:** Mr. Speaker, Sir, is it in order for hon. Wetangula to say that I am incapable of demonstrating how I do things?

I have statements here. I said that I do not have that particular Statement. Otherwise, I would have tackled it. I have statements which I will deliver when the time comes. Can he withdraw that and apologise to me?

**The Speaker** (Hon. Ethuro): Sen. Wetangula, under what terms did you describe Sen. Keter as unable? If you spoke too soon, you may as well admit and we proceed.

**The Sen. Minority Leader** (Sen. Wetangula): Mr. Speaker, Sir, he stood here and said that he had no idea regarding Sen. Murungi's Statement. That is the person he deputises. That inability cannot be turned around to be ability. That is in the HANSARD.

**The Speaker** (Hon. Ethuro): Order, Sen. Wetangula. You are playing with words now.

Let us take Sen. Bule. Probably we will conclude this and he may help the Chair.

**Sen. Bule**: On a point of order, Mr. Speaker, Sir. My point of order is with regard to Sen. Kiraitu Murungi. Sen. Murungi threatened the Senate Majority Leader by saying that he should be dealt with and will face dire consequences. That was a threat and he has to withdraw the statement.

**Sen. Keter**: Mr. Speaker, Sir, I think it is good that whatever I said is on record. I said that I do not have information regarding that Statement by Sen. Murungi. That does not mean that I am unable to answer. I still demand that Sen. Wetangula withdraws that remarks and apologises to me.

**The Speaker** (Hon. Ethuro): In fact, the Chair has listened to both parties; both Sen. Keter and Sen. Wetangula. Sen. Wetangula, your objection to Sen. Murkomen's defence of the Senate Majority Leader was that he was extravagant. I would also say that you are being extremely extravagant by describing the failure of the Senate Majority Leader to produce one Statement as inability.

Inability means the total sum of one's abilities. The fact that the Senate Majority Leader or any Senator or even you as the Senate Minority Leader, may not be ready to respond to a matter or are not available to transact some intended business cannot amount to inability.

So, in all fairness, you should withdraw that word used on the part of the Deputy Senate Majority Leader and I will give other directions regarding the matter requested by Sen. Murungi.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Speaker, Sir, I withdraw the use of the word "inability" and substitute with "not ready."

**The Speaker** (Hon. Ethuro): It is, therefore, ordered that you apologize.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Speaker, Sir, we always say: "*Kama ni kusikia alisikia.*" I apologize.

**The Speaker** (Hon. Ethuro): Hon. Members, first, Sen. Kiraitu's request for his Statement to be responded to is fair. It is his right and the entire House is actually entitled to the Statement. Once it is sought, it becomes the property of the House. For him also to consider further dire consequences is also fair and proper because our Standing Orders provide for gross misconduct. Failure to persistently respond to a particular matter should attract some punishment. But Sen. Kiraitu was also magnanimous because he said that we should give him one more chance. So, I do not see any harm or improper motive on the part of Sen. Kiraitu. He was just expressing his frustration, especially given the subject matter of security for county assembly speakers. I think that all of us, as a House, have a responsibility under Article 96 (1) to represent counties and protect the interests of counties and county governments. County governments include county executives and

county assemblies. So, I think that it is really on that basis that he was saying it. I do not think that it is a statement on the ability of either the Senate Majority Leader or Senate Deputy Majority Leader, but just the need to resolve the matter.

As far as Sen. Murkomen also clarified, indeed, we have provided for positions in this House for the Senate Majority Leader and the deputies. So, the office will always be represented when one of them is present. So, do not look for the person, but the office, unless Sen. Kiraitu for some reason was looking for the good neighbour.

**Sen. Murungi:** Mr. Speaker, Sir, I could look for my good neighbour for other good reasons. I am satisfied with your interpretation of my questions and my frustration. I will be very happy if the very able Deputy Senate Majority Leader, who is here, could now give a definite undertaking as to when this Statement will be delivered to this House.

**Sen. Keter:** Mr. Speaker, Sir, I had already promised that it will be delivered the first week after we resume.

**The Speaker** (Hon. Ethuro): Sen. Keter, I think that you are now aware that your ability is being assessed on the basis of delivery of your promises.

**Sen. Mohamud:** Mr. Speaker, Sir, some three weeks ago, I requested for a Statement from the Chairperson of the Standing Committee on National Security and Foreign Relations and he promised to bring it some two weeks ago. When I raised the matter on the Floor of the House two weeks ago, the Senate Majority Whip, Sen. Elachi, promised to address the matter with the Committee. But up to now, the Statement has not been delivered. I would like to know why the Committee is not taking my Statement very seriously.

**The Speaker** (Hon. Ethuro): Is there any Member of the Committee on National Security and Foreign Relations here?

**Sen. Orengo:** Mr. Speaker, Sir, I do not want dire consequences to befall upon my Chair, Sen. Haji. I undertake to give him the information and the question will be dealt with in the second week upon the Senate resuming from recess. We have had many promises already on the first week.

**The Speaker** (Hon. Ethuro): Order! Order! That is no basis. The Chair will prioritize because this matter was actually sought on 11<sup>th</sup> July. The time of the House should never be used in vain. There were subsequent requests on 17<sup>th</sup> and 25<sup>th</sup>. These were all promises given. I think that in all fairness, this is a matter that should be given priority next time. For the sake of the clerks, the directive is that all the statements that have been sought more than twice, must be given priority in the first week.

**Sen. (Prof.) Lonyangapuo:** Mr. Speaker, Sir, I am in the same scenario as Sen. Halima. On the same date, you approved a Statement that I raised and it was directed to the Chairperson of the Committee on Finance, Commerce and Economic Affairs. The Statement was about the status of the implementation of Vision 2030 and whether there were any gains achieved in the medium term plan that ended last year. The Chair is seated here and seems not to show any interest in responding to this Statement.

**Sen. Billow:** Mr. Speaker, Sir, I had sought the indulgence of the Member early this week that this question is very important and the Ministry is trying to get an actual status report on the Vision 2030 and whether or not it succeeded. I checked even this

morning and it is not ready. So, I would seek his indulgence to be patient, so that he gets a very meaningful answer.

**The Speaker** (Hon. Ethuro): What did you agree on with him then?

**Sen. Billow:** Mr. Speaker, Sir, this was before today. I am just seeking his indulgence that he needs to be patient, so that he can get a very meaningful answer that will satisfy his question, as soon as maybe the first week after recess.

**The Speaker** (Hon. Ethuro): Hon. Members, if a Member and the Chair are actually in consultation, you do not have to raise the matter on the Floor.

**Sen. (Prof.) Lonyangapuo:** Mr. Speaker, Sir, the Chairman is referring to last week. He had undertaken to bring the Statement on 18<sup>th</sup>. Last week, I looked for him and he said that he was still tracing the answer. He promised to respond this week. Now, this week is ending and there has not been consultation. So, let the Chairperson really treat this issue seriously. Now that we are going into devolution, we do not know the status of Vision 2030 and how we are carrying it forward.

**The Speaker** (Hon. Ethuro): It shall be given priority the first week after recess. What is your matter, Sen. Kagwe?

**Sen. Kagwe:** Mr. Speaker, Sir, I did seek your leave to go back a little bit on the Motion--

**The Speaker** (Hon. Ethuro): Let us conclude this first.  
Senate Deputy Majority Leader!

**Sen. Keter:** Mr. Speaker, Sir, I do have three Statements to make. One of them is a response to Sen. (Prof.) Anyang'-Nyong'o and the other is a response to Sen. (Prof.) Lonyangapuo. The other Statement is from the Senate Majority Leader.

Mr. Speaker, Sir, I will start the one sought by the Senator for Kisumu.

#### BUDGETARY ALLOCATION FOR BITUMIZATION OF MASENO-KOMBEWA-AKADO-ASEMBO BAY ROAD

**Sen. Keter:** Mr. Speaker, Sir, the Senator for Kisumu wanted to know the budgetary allocation for the tarmacking of Maseno-Kombewa-Akado-Asembo Bay Road and when the tender will be awarded.

Mr. Speaker, Sir, the Maseno-Kombewa-Akado-Asembo Bay Road has been allocated a tentative budget of Kshs5 million in this financial year, 2013/2014. The budgetary allocation is for feasibility study and preliminary and detailed engineering design. A contract has been awarded to Itech Consulting Engineers to do that job. The whole feasibility study will take Kshs34 million. This is only for design.

Mr. Speaker, Sir, therefore, the question regarding when this road will be tarmacked and whether the tender has been awarded does not arise in the sense that the road is still under design and in this year's Budget only Kshs5 million has been allocated for feasibility studies. But I am made to understand that they are looking for ways to make sure that the design work is completed, so that by the next financial year, they will be able to contract that road.

Thank you, Mr. Speaker, Sir.

**Sen. (Prof.) Anyang'-Nyong'o:** Mr. Speaker, Sir, this is a very unfortunate road because in 1984, it was supposed to be tarmacked, and then the money was diverted. In the year 2003, this road was widened and murramed, and my recommendation then as the Minister for Planning and National Development was that using Kshs96 million to widen the road and then murram it, was a waste of money. This is because as soon as the rains fall, it will be back to its former self. That was what happened. Now, it has been allocated Kshs5 million this financial year and the other day, I saw some people walking around and putting pegs here and there. I do not know how long those pegs will last. It is also said that Kshs38 million has been allocated for design. This is what is called being pennywise and pound foolish. The Government is wasting a lot of money because contracts will be given for "good boys" to eat, without doing the real thing, which is tarmacking the road and finishing it in one go.

Mr. Speaker, Sir, could the Senate Deputy Majority Leader assure this House that there is a plan to tarmac this road rather than just give Kshs5 million and then design without concretely saying that the aim is to tarmac it by a particular date? The money may not be there, but a plan and intention should be there on paper, because roads are not things that are done in a day. We should not be hoodwinked in spending little money here and there to do this road.

**Sen. Keter:** Mr. Speaker, Sir, at least, the Senator for Kisumu has admitted that he saw some people doing some work on the road. That is part of what I had said. The feasibility study and detailed design work is being done. This will end in this financial year. A company by the name Itech Consulting Engineers has been mandated to do the job. So, I want to assure the hon. Senator that come the next financial year, after the design work has been done, a contract will now be awarded for this road to be tarmacked.

**The Speaker** (Hon. Ethuro): Proceed and give the next Statement.

TARMACKING OF KAPENGURIA-KAPIPICH-KAPSAIT-  
KAPSANGAR-ITEN ROAD

**Sen. Keter:** Mr. Speaker, Sir, the next Statement is by Sen. (Prof.) Lonyangapuo. He sought to know:

(a) when the Kapenguria-Kapichich-Kapsait-Kapsang'ar-Iten Road will be tarmacked; and,

(b) when the Kapenguria-Kacheliba-Kolowa-Alale-Lodwar-Lokichok-Chokorot Roads will be tarmacked.

Mr. Speaker, Sir, the two roads end up in Kapenguria and my response to part "a" is as follows: The Kapenguria-Kapichich-Kapsait-Kasangar-Iten Road, measuring about 125 kilometres, has been considered for tarmacking. The section between Iten-Bugar, measuring 12 kilometres, is under a contract for tarmacking while the section from Cheptongoi to Chebiyemit has been tendered for construction and the procurement process is in progress. The rest of the section from Bugar-Chebiyemit-Cheptongoi-Kapenguria, measuring 100 kilometres, will be programmed for tarmacking after the designs are complete.



Mr. Speaker, Sir, on part “b” of the question, this road starts from Iten and it is a loop to Kapenguria. The other part which goes through Kacheliba, measuring over 230 kilometres, will not be tarmacked this year. Some sections of the road between Kapenguria and Konyau, which is 83 kilometres, were designed in the year 2008. However, it has not been tendered for construction to tarmacking standards due to budgetary constraints. The construction of the section of Lodwar-Lokichok-Chokorot Road has been identified as part of the priority road section of the Sudan link road, whose rehabilitation is intended to be financed by the World Bank (WB) under the South Sudan East Africa Regional Transport Trade and Development Facilitation Programme, subject to confirmation of assistance from development partners. Construction works may start in the financial year 2014/2015. I wish to report that the WB has already committed US\$100 million for this road; that is the section between Lodwar-Lokichoggio Road. So, they are waiting for the funding from the Kenya Government.

Thank you, Mr. Speaker, Sir.

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

**Sen. (Prof.) Lonyangapuo:** Mr. Speaker, Sir, I want to thank the Senate Deputy Leader of Majority for bringing the answer.

Mr. Speaker, Sir, you did mention that these are some of the Statements we sought sometimes ago. I listened to the response quite clearly. We were talking about two roads; the Kapenguria-Kapichich-Kapsait-Kapsang’ar and then it goes to Iten. He is saying that there are some portions which have been done and for the other remaining 100 kilometres, no design has been done yet. He also acknowledges in his response that it will be done, yet the consultants have not been identified. I want to hear from the Senate Leader of Majority clearly; is it this the year that the tarmacking of this road will start; or when will it start? The reason being---

**The Speaker** (Hon. Ethuro): Which particular road are you referring to, Sen. (Prof.) Lonyangapuo?

**Sen. (Prof.) Lonyangapuo:** The Kapenguria-Marakwet-Iten Road because this is the granary of the north rift where, now---

**The Speaker** (Hon. Ethuro): Order! You are clarifying; are you not?

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

**The Speaker** (Hon. Ethuro): I am sure when you sought the Statement, it was because it is important; is it not?

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

Secondly, Mr. Speaker, Sir, I heard him talking about the second road, Kacheliba and some name called Kolowa; where did Kolowa come from? There is no Kolowa in that road; it is Konyau. So, I do not know who changed my Statement between here and the Ministry!

*(Laughter)*

Kolowa is in Baringo County, but I am talking about Konyau.

Mr. Speaker, Sir, he is saying that 83 kilometres are set to be done but from as early as 2008, nothing has started. He is also saying that the whole of this road will not be

done this year; the 230 kilometres, but at the end of it, he split Lodwar-Lokichoggio, saying it can be done through the WB, which is okay. He also split Kapenguria-Konyau, measuring 83 kilometres, saying it will be done. I want to hear when it will be done, because if he wants to do it in bits, he needs to state it clearly. Which year will Kapenguria-Konyau Road be done? When will the Konyau-Loya-Lodwar Road be done? That is what I want to hear clearly.

Thank you, Mr. Speaker, Sir.

**The Speaker** (Hon. Ethuro): I thought you would also talk about Kainuk-Lodwar Road?

**Sen. (Prof.) Lonyangapuo:** Mr. Speaker, Sir, I was privy to that and I think some work is going on. You remember he said that for the Lodwar-Lokichoggio Road, there is WB funding which is coming? That is a major undertaking from Loret-Kitale-Kapenguria-Lodwar, and I think it is one and the same. But this other one – the shortcut that I am talking about ---

*(Laughter)*

**Sen. Keter:** Mr. Speaker, Sir, these are three roads, all starting from the centre point, which is Kapenguria; one is going through Kacheliba; the other one is going through Iten. As for the first question, which the hon. Senator has requested an answer, the road from Iten going through Cheptongoi all the way to Kapenguria, a section of it, which is about 12 kilometres is ongoing right now; that is from Iten. The remaining 100 kilometres is what I have said the design work will be done and the road will not be done this year. It will be done next year when the design has been done. That is the road which I have mentioned linking Iten-Kapenguria.

The second part of the question is what I have mentioned. The 83 kilometres is from Kapenguria to Konyau. I think there must have been a problem in the drafting of the statement, which said “Kacheliba-Kolowa.” But in the response, it does not mention Kolowa; so, I believe that the hon. Senator is okay, because the answer is 83 kilometres of the whole road through Kacheliba to Lodwar, it is about 230 kilometres and 83 kilometres of the road which was designed in the year 2008 and nothing has been done up to now. They have said there is nothing; the remaining part – do the calculation; 230 kilometres minus 83 kilometres – that is ongoing; there is no design and there is nothing so far. So, the records the way they are signed, show nothing.

Mr. Speaker, Sir, the priority of the road now is the one he has mentioned all the way from Eldoret, going through Kitale, Kapenguria to Lodwar to Lokichoggio, which the WB has given US\$100 million, expecting works to commence by next year. Therefore, I want to plead with my colleague Senator that there is no funding on the other road through Kacheliba.

Mr. Speaker, Sir, the third one is as follows:

## DEFERMENT OF OUTSTANDING BUSINESS

**Sen. Keter:** Hon. Senators, pursuant to the provisions of Standing Order No.43(2), I stand to make the following short Statement. The Order Paper today contains, amongst other things, a Motion of Adjournment of the Senate until Tuesday, 17<sup>th</sup> September, 2013, which I will be moving later in the course of the business of today. Any business that will be outstanding by the close of business today, if the Motion of Adjournment is carried, will be prioritised by the Rules and Business Committee and scheduled for consideration when the Senate resumes.

Thank you, Mr. Speaker, Sir.

*(Applause)*

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

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

**Sen. Murkomen:** Mr. Speaker, Sir, just as I wanted to do a follow up to the Statement on the roads, the Senate Majority Leader---

*(Loud consultations)*

Can you protect me, Mr. Speaker, Sir?

**The Speaker** (Hon. Ethuro): Order! Order, Senators! Sen. Murkomen has the Floor.

**Sen. Murkomen:** Mr. Speaker, Sir, just as I wanted to make a follow up, he immediately read the next Order, and I did not want to interrupt him when he was midway. That thing I wanted to raise is very important to us---

**The Speaker** (Hon. Ethuro): Order! Order, Sen. Murkomen! Indeed, infrastructure is very important to this House and to this country. But when the matter was being deliberated on, the Chair could clearly see all the interested Senators, and you were not one of them!

*(Laughter)*

So, it is a bit difficult to know your interest. I appreciate, but for reasons known to you, you were not available to do it at that particular time.

Okay, that is the end of Statements. We will allow a point of order from Sen. Orenge, but before I do so, under Standing Order 39(2), I will allow the Chairman of Information, Communication and Technology Committee to give notice of his Motion.

**NOTICE OF MOTION****LINKING OF ALL COUNTY HEADQUARTERS  
TO FIBER OPTIC INFRASTRUCTURE**

**Sen. Kagwe:** Thank you very much, Mr. Speaker, Sir, you for your indulgence because this is only possible because of your generosity.

Mr. Speaker, Sir, I beg to give notice of the following Motion:

THAT, considering the need for Implementation of an Integrated Financial Management System (IFMIS) as required by the law; noting that most counties are not linked to the National Optic Fiber Broadband Infrastructure (NOFI); aware that the rolling out of e-government will be hindered by lack of such infrastructure; recognising the principles of good governance, integrity, transparency and accountability set out in the Constitution and the need for public participation and access to information; further recognising that investment in ICT creates opportunities for youth employment, the Senate calls on the national Government to connect all county headquarters to the National Optic Fiber Broadband Infrastructure and to link all county headquarters to relevant institutions such as the Senate and Treasury through video conferencing capability to save unnecessary expenses, enhance efficiency and accountability and improve the performance of our county governments.

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

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

**The Temporary Speaker** (Sen. Murkomen): What is it, Sen. Orengo?

**Sen. Orengo:** Do I have permission?

**The Temporary Speaker** (Sen. Murkomen): When you stand to stretch, I cannot imagine you have a point of order but you can go on.

**POINT OF ORDER****MISREPORTING BY *THE PEOPLE* NEWSPAPER OVER  
SENATE POSITION ON CDF**

**Sen. Orengo:** I am sorry, it is partly because I have sat throughout.

Mr. Temporary Speaker, Sir, I rise here to seek directions from the Chair on an article that appears on the front page of *The People* newspaper with a heading;

“MPs win control over the Kshs21 billion CDF over Senate”

There is a further statement in that article which says the following and I quote:-

“Now with the CDF funds for 2013 and 2014 rolled out, the battle for its control may have slipped out of the hands of the Senate for now”

There are similar statements which appear throughout this article. I do not have a problem with the newspaper as such but there is a false impression that is being created that this Senate has a battle over the control of the Constituencies Development Fund (CDF) and that the MPs have won control over the Fund, the Senate has lost the battle.

Mr. Temporary Speaker, Sir, I think it is on record that this Senate is more concerned about the big questions, mechanisms, processes and institutional arrangements. Even when it came to the question of Division of Revenue Bill, the question was not about control but about processes. In fact, when it came to quantum, the National Assembly tried a little bit but we put in much more. That notwithstanding, I wish that you, as Speaker, should express yourself on this because it would be wrong for the impression to be created out there that there has been some business in this House, either in terms of a Bill or a Motion or any other manner, and that this House is trying to fight for the control of CDF when we know that is not the position. This is a misleading article, and I do not want to attack the newspaper because that is not my wish, but it is being used in other fora including the National Assembly, to miss the debate that is going on regarding the larger question of constitutionality and processes of certain things that are now live before this House.

So, I beg you to express yourself on this so that the Senate is not misunderstood on this matter.

**Sen. Hassan:** On a point of order, Mr. Temporary Speaker, Sir. I also rise on a point of order, first and foremost, to associate myself with the views expressed by Sen. Orengo. It is evident that this article spells mischief and it is in bad faith. I think media houses that sent their journalists to report from this House must also be capacitated to understand the processes of this House. It is erroneous and is misleading a wide diversity of Kenyans. I believe that some Senators, including yourself, have proclaimed that they do not have interest in having a fund similar to CDF as Senators. We are trying to create a clear separation between the legislative and executive functions that are outlined in the Constitution. Also to tie to the same point of order that Sen. Orengo has raised, I am also privy to media reports that a resolution or a Motion in this Senate that appointed Members to the Pan-African Parliament is purportedly being rejected by the National Assembly on account that the Senate has no business to be represented in the Pan-African Parliament.

Mr. Temporary Speaker, Sir, we are wasting and draining ourselves of a lot of energy by allowing ourselves in this - what I call, turf wars, some imagined, some real - which are being perpetuated by forces that are out to undermine the authority of this Senate. That media report was intended to undermine the authority and stature of the Senate by making it appear that it cannot proclaim itself over the National Assembly on such matters.

Mr. Temporary Speaker, Sir, it is wrong even to contemplate or imagine an action that presupposes that the Senate is not a part of the Parliament of this Republic because Pan-African Parliament is about Parliament and not just the National Assembly. Therefore, repeatedly, the National Assembly has taken upon itself the convenience to land on us one blow after another. This House has also shown the maturity not to respond with any quantum of recklessness.

As one of the Senators has told me now, with the inclusion of Sen. Mutula Kilonzo Junior, the average age of this Senate is far younger than that of the National Assembly. Therefore, they cannot always abrogate themselves this luxury that they are younger, more vibrant and more dynamic. We also won very competitive elections and many of us are within their age brackets. We have here Sen. Murkomen, Sen. Sang. Sen. (Prof.) Kindiki and other young Senators including Sen. Mutula Kilonzo Junior who by being in this Senate demonstrate high achievements. Everybody was asking us why we did not start with the National Assembly.

During the tallying, Sen. Murungi asked me, why I did not start with the National Assembly. Therefore, it is mandatory for us, as a Senate, to device clear strategies, not only about reports in the media, but such kinds of travesty by the National Assembly. It would be wrong and unacceptable to have any move, Motion or proceedings in the National Assembly, that purports to exclude the representation of the Senate from the Pan-African Parliament. I believe that the Speaker will have to pronounce himself on that matter and ensure that representatives of the Senate shall sit in the Pan-African Parliament. Therefore, I support the sentiments by the previous speaker, Sen. Orengo, and also ask this Senate to re-assert itself as we go for recess. Use your platforms of politics to drive a few messages to these Members of the National Assembly. It is not that we do not have the platform to articulate our position.

**Sen. (Prof.) Anyang'-Nyong'o:** Mr. Temporary Speaker, Sir, I would not like to belabour the point but I do share the concerns of my colleagues who have spoken. I have a feeling that there are bigger issues to debate in this nation and something called "turf wars" is a minor footnote in this whole process. Let me just put it on record that the Committee for the Implementation of the Constitution (CIC) raised a legitimate question, that is, whether CDF is constitutional. That is an objective question that cannot be wished away. I think it is better to leave it with the CIC whose job it is to decide which laws are within or without the Constitution, then we can see the road forward. I do not think that there is any issue for one House or the other to battle over this issue. This is something that should be soberly left to the CIC and the courts because it is a constitutional issue. Once it is sorted out through normal legal process, then we can go ahead.

So, for one House to stand up and shout at the top of their voices will not help. We, as the Senate, should just appeal to the Chairman of CIC to expedite that process, settle the issue and come to a clean conclusion.

**The Temporary Speaker** (Sen. Murkomen): Order, Senators. The issues raised by Sen. Orengo, Sen. Hassan and Sen. (Prof.) Anyang'-Nyong'o are very important. We must all remember that from the beginning since we started the Senate, this House has pronounced itself publicly in support of the media. Indeed, even where the media is hosted in this building is not far from where the Senators are sitting. So, we have been together in this journey and we have always stood firm but it is important to remind our journalists that our S.O. No.23(6) requires that they uphold high standards of practice in journalism, to be precise in what they are reporting and also avoid situations where reporting would put any House into disrepute. It is important also that we foster the relationship between the two houses now that we are in a bicameral legislature and we are moving step by step to build this relationship. So, we request members of the press to

try their best not to be alarmist or sensational but to correctly report on issues that affect the nation and which relate to the two Houses.

It is important, regarding the matter in question of CDF, to reiterate that this House is very clear that the CDF Act is existing and there are interpretations that are being sought by CIC and the Non-Governmental Organisations (NGOs) at the Supreme Court, and that this House respects the National Assembly. Indeed, the Senate believes that more resources going to the local level is a true reflection of devolution and we have never had a quarrel with resources going to the constituencies. Just like Sen. (Prof) Anyang'-Nyongo said, I think it is important to leave this matter to the necessary constitutional institutions like the High Court, the Court of Appeal and the Supreme Court to ventilate on the issue and give us direction. Both the National Assembly and the Senate are Houses of laws and when time comes when we need to amend any legislation, we shall be in a position to discuss these issues.

We need to remain focused on issues and I think there are more important things that the media can report relating to both Houses; issues like transfer of functions to counties and the joint relationship that we have as two Houses.

On the question of Pan-African Parliament, the Chair will pronounce himself in a bigger way in the near future but what we need to avoid is the possibility of anticipating what the National Assembly is going to discuss because we do not know. The report we have is that the National Assembly still has time to discuss the approval of the names to the Pan African Parliament. So, it is not good to impute improper motive or imagine the decisions they are going to make.

Lastly, as we have always pronounced ourselves here as a sober House, to continue ventilating national issues in a more sober way and to continue upholding S.O. No.88 (5) and any discussion related to our partner House must be done in good faith, with maturity and decorum. Thank you.

Next Order!

## MOTIONS

### ALTERATION OF THE SENATE CALENDAR

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

THAT, pursuant to Standing Order 28 (4), the Senate resolves to alter its Calendar (Regular Sessions) for the first Session for the recess to commence on 2nd August, 2013 and end on 17th September, 2013.

Mr. Speaker, Sir, going by the calendar which we approved, we are supposed to resume on 3<sup>rd</sup> September, 2013 but the addition of two weeks is to allow the completion of the County Hall Chamber which we were meant to understand during our meeting of the Rules and Business Committee that it is ready but they are waiting for seats to be imported. We said that whether seats are there or not, we have to move. So, the allowance of two weeks is for the Parliamentary Service Commission to make sure that things are in order so that as we resume, we will go to a Chamber which is friendlier, digital and which is better than the lecturer room or garage which we are using. You can describe it

by all names. I think that would be better so that the whole world can even see that the Senate is serious. This is just a procedural Motion and I request hon. Senators not to take time on this because the Motion of Adjournment is coming and we will discuss so many issues. It is just an addition of 14 days.

I will now request the Senate Minority Leader to second.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Speaker, Sir, I beg to second. This is a Procedural Motion. The House Rules and Business Committee is informed of the status of the refurbishment of the County Hall Chamber. We are reliably informed that the extra two weeks will enable the Senate to move out of this garage type of Chamber to one that is not only closer to the expectations of the Senators but the country. Here, Senators will transact their business properly and vote electronically.

You know how much time we have been spending on divisions. In transition to the Old Chamber which – I understand will be ready a year later – the new Chamber we will move to will allow Senators to vote digitally. The time we spend on divisions will be cut by 90 per cent and we will do better work.

I urge the House that this being a Procedural Motion, in the interest of everybody, considering that we have more business ahead of us, that we all support it. The Chair should use his discretion to propose and put the question consequent to that so that we move to other business.

*(Question proposed)*

*(Question put and agreed to)*

#### RESTRUCTURING OF PROVINCIAL ADMINISTRATION

THAT, aware that the recent actions taken by the Inspector General of Police to appoint police commanders at the County level have raised concerns on the implementation and interpretation of Article 246(3) of the Constitution; realizing that the Government has since then gone further to appoint former Provincial Commissioners to hold regional positions raising further concerns on the implications of Article 1(4)(a) and (b) of the Constitution; aware that paragraph 17 of the Sixth Schedule to the Constitution states that “within five years after effective date, the national Government shall restructure the system of administration commonly known as the Provincial Administration to accord with and respect the system of devolved government established under this Constitution”; the Senate hereby calls upon the Government to clarify the actions taken by the Inspector-General of the Police given the constitutional provisions and to table in the Senate a policy paper providing a time action plan for the restructuring of the Provincial Administration.

*(Sen. (Prof.) Anyang’-Nyong’o on 31.7.13)*



*(Resumption of Debate interrupted on 31.7.13 – Afternoon sitting)*

**The Senate Minority Leader** (Sen. Wetangula): Mr. Temporary Speaker, Sir, may I continue?

**The Temporary Speaker** (Sen. Murkomen): Yes, you may continue. You have a balance of nine minutes if you will be talking as the Senate Minority Leader.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Temporary Speaker, Sir, I am talking as a leader. I have a balance of nine minutes but I may not use all of it. I had spent about 10 minutes yesterday.

When we adjourned, I was calling upon this Senate to approve this Motion. However, more importantly and I hope that the illustrious Deputy Leader of the other side is listening, it is important that we do not continue groping in the dark.

Two-and-a-half years down the line, one would have expected, if the Jubilee Government was truly interested in and committed to devolution, to bring a policy paper on how to give effect to Section 17 of the Sixth Schedule of the Constitution.

Section 17 of the Sixth Schedule reads as follows:

“Within five years after the effective date, the national Government shall restructure the system of administration commonly known as the Provincial Administration to accord with and respect the system of devolved governments established under this Constitution.”

What we are hearing are endless lofty pronouncements about support for devolution which are immediately followed by undevelopment activities by the same people who have made the pronouncements. I pointed out yesterday and questioned the wisdom and rationale of posting Provincial Commissioners to non-existent entities of Government formerly known as provinces.

Mr. Temporary Speaker, Sir, if you read the Constitution - I know that you are an ardent supporter of devolution - you will not find an entity called a “region” and yet we talk about Provincial Police Officers (PPOs) and Regional Commissioners. So, even the person designated as a Regional Commissioner is a misnomer. These are all geared to cause confusion. This country is in need of enormous funds to actualise the new structures of devolution. We will do this country a lot of good if we dismantle the layers that were competing with each other on issues of public management of affairs. I support that we must have a situation where the Government will clarify what the Motion seeks to clarify.

Yesterday, we cautioned that we had come a long way. I remember in 1990 after my hard day's work when I went to a pub in town to meet my friends. Next to my table, unknown to me, were people considered to be subversives. The next day, as I reported to my office, there was a policeman waiting for me to walk me to Nyayo House to record a statement as to why I was sitting in a bar where there were subversives. We do not want to take this country towards that direction again. Those exhibiting juvenile excitements about these issues will feel it when the shoe is on the other leg. This comes much sooner rather than later when they will understand that draconian behavior by persons in authority knows no relative and community. A tyrant is a tyrant and an intolerant leader

is an intolerant leader, irrespective of where they come from. In most cases, they consume those around them first before they move elsewhere.

We intended to create a National Police Service. I see a clear intention by the Jubilee Government to recreate a police force. It has taken a lot of efforts to move away from a force to a service. I have been talking to many people including the Inspector-General of Police and Mr. Kavuludi. I took time to repeatedly read the two Acts and the constitutional provisions and found out that there is absolutely no lack of authority in the hands of the Inspector-General of Police, neither is there any conflict between the Office of Mr. Kavuludi and the Office of the Inspector-General of Police. Before we look for more authority, let us exhaust the authority available to us. I dare say that those Bills that have been published in the Lower House, whatever their intentions, run contrary to the spirit and express provisions of the Constitution. If for any reason they are passed, you will see the plethora of litigation that will follow in the Supreme Court to have them struck out for unconstitutionality.

In fact, in reflection, those who were involved in the writing of the Constitution should have borrowed from modern jurisdictions where every law passed by the Parliament; whether the Lower House or the Upper House is automatically forwarded to the constitutional court to determine its constitutionality so that we do not end up with unhelpful litigation. You simply pass the law and the final stage of the law, before assent, is to place it before a constitutional court that gives a reasoned legal opinion on its constitutionality so that we do not end up with the benevolence of Okiya Omutata and many others who are always available to challenge laws that they do not agree with, sometimes rightly so but at times not. In future, I hope that progressive leaderships will take the country to that level so that we do not end up having some inferior forces arrogating themselves the responsibility of declaring what concerns counties and what does not; what is constitutional and what is not. That way, we will have an orderly society.

I want to end by informing this Senate that so far we have done very well in our pronouncements; in defense of devolution and in articulating issues. Sometimes, we enjoy a bit of humour on the Floor, as we should. I remember the many statements of humour that the late hon. Martin Shikuku used to bring to the House in the previous Parliaments.

New Members who are in this House are encouraged to speak. You may make mistakes but that is part of the learning process. You may, along the way, become as good as Prof. Anyang'-Nyong'o, the bullfighter from Kakamega or the tycoon from Nyeri, among others.

With those many remarks, I fully second the Motion.

*(Laughter)*

*(Question proposed)*

**Sen. (Dr.) Khalwale:** Thank you, Mr. Temporary Speaker, Sir. I rise to support this Motion and to use this opportunity to congratulate Sen. (Prof.) Anyang'-Nyong'o for finding time to wake us up on this unfolding drama.

The Constitution provided that we had a whole five years in which we should reflect on how to restructure the Provincial Administration because its drafters were aware that this was a very important exercise. The least that the Government can do for the country is to give us a policy paper. The policy paper will initiate a national conversation on FM stations, talk shows on television, newspaper write-ups and so on. Then, the few of us who are privileged to be in these organs that make law would then be informed by that conversation. But just to go on, the way the President did and appoint the so-called Provincial Commissioners and the County Commanders the way the Inspector General did, contrary to the provisions of the Constitution and attempts further in the Lower House, to bring in two amendment Bills, is actually an affront to constitutionalism.

Mr. Temporary Speaker, Sir, I want to use this opportunity to confirm that when this matter came up, I happened to share the same DNA with Kavuludi. I have taken trouble and reread the Constitution again and again, to see whether, indeed, there is any contradiction between the Inspector-General (IG) and the Chairman of the Police Service Commission. The more I read it, the more I convince myself that there is no contradiction. But thank God, I am a doctor of Medicine and not a doctor of Law. So, I can be forgiven if I am doing the wrong thing. But I have gone further and talked to Kimaiyo, Kavuludi and other senior officers. I have also talked to police officers in Shauri Moyo, Kisumu and Kakamega, and apart from Mr. Kimaiyo, they all told me that the status quo should stay. Why do we not call a spade a spade? The reason the President appointed those regional commissioners is so as to create competition to the governors in order to frustrate devolution. The reason the Inspector-General has appointed those commanders and is being allowed, through an attempted amendment of an Act, is to compete with the Chairman of the Commission. Africans do not like losing power, but the President should subject and submit himself to the Constitution and know that it is the Constitution that is sovereign.

Mr. Temporary Speaker, Sir, what is of greater concern to me is the attempt, in a very clever way, to remove Kavuludi. To remove Kavuludi is a further confirmation---

**Sen. Kagwe:** On a point of order, Mr. Temporary Speaker, Sir. You have just heard Sen. (Dr.) Khalwale say very clearly on the Floor of this Senate that the idea is to remove Kavuludi. That is a very serious statement. Could the hon. Senator either prove that, that is the case, substantiate or withdraw and apologize?

**Sen. (Dr.) Khalwale:** Mr. Temporary Speaker, Sir, indeed, my brother and Senator for Nyeri knows that I would not withdraw and apologize for that which is right. This is because by removal, I am talking about functional removal. You remove him functionally, so that he is impotent. If I am wrong, why is the number one protector of the Constitution, the President of Kenya, not protecting Kavuludi, who is the holder of a constitutional office? Probably, this is being done because this is a Government that is only supposed to attract appointments from three communities and leave out 39 other communities.

**Sen. Kagwe:** On a point of order, Mr. Temporary Speaker, Sir. With all due respect to my brother, Sen.(Dr.) Khalwale, we cannot let him get away with this. This is a national Government and not a Government that belongs to three ethnic communities, and it has been established in every manner possible. We have got a very serious Motion before this House. Is Sen. (Dr.) Khalwale in order to demean this whole discussion that we have here, by imputing improper motive on the part of the Government and making accusations that have got no ground? Basically, they amount to just heckling.

**Sen. Keter:** On a point of order, Mr. Temporary Speaker, Sir. I always do not like interrupting my brother, Sen.(Dr.) Boni Khalwale but is he in order to say that this Government is composed of only three ethnic communities? Could he elaborate, because as far as we are concerned, it is a Government for all Kenyans?

**Sen. (Dr.) Khalwale:** Thank you, Sen. Kagwe and Sen. Keter, for giving me an opportunity now to substantiate using facts.

Mr. Temporary Speaker, Sir, the first item that I will use to substantiate is a report from the National Cohesion and Integration Commission. You can download this document from the internet. It says that within the police service, 40 per cent of the jobs are held by only two communities. Since I am forced to substantiate, I have to be specific. It says that 20.38 per cent of the office bearers in the Police Force are from a community called Kalenjin. Also, 16.18 per cent is held by a community called the Kikuyu. That is the report by the National Cohesion and Integration Commission.

**The Temporary Speaker** (Sen. Murkomen): Order, Sen.(Dr.) Khalwale! If I got the question right, Sen.(Dr.) Khalwale has been asked to substantiate his statement, which says that this Government and not the police service is composed of only three tribes. Even if it is the police service, you need to name the three tribes and then demonstrate that all other tribes are not there; then we can proceed.

**Sen. (Dr.) Khalwale:** Mr. Temporary Speaker, Sir, I am being factual. We say in science that you cannot hide the facts of life forever. Those are the facts. This is not my Commission but that of Kibunjia.

Mr. Temporary Speaker, Sir, on the issue of the Government, we have 22 Ministries.

**The Temporary Speaker** (Sen. Murkomen): Order, Sen.(Dr.) Khalwale! The Chair is ordering you, based on your assertion, to name the three tribes and then, proceed to demonstrate that there is no other tribe. We can then close that issue and you will proceed with your debate.

**Sen. (Dr.) Khalwale:** Mr. Temporary Speaker, Sir, I know English very well. I might not speak with a cockney accent, but I know English. I never said that there are no other tribes. I said “dominated by three communities against the balance of the other 39 tribes.” I am demonstrating and this is serious. If we want to have a cohesive nation called Kenya, you cannot haunt Kavuludi, just because he does not come from one of those three communities.

Mr. Temporary Speaker, Sir, for the benefit of these two Senators, there are 22 Ministries in this country. Out of 22 Ministries, 15----

**The Temporary Speaker** (Sen. Murkomen): Order, Sen.(Dr.) Khalwale! The Chair has directed you to proceed in the manner that you are doing. You have named two tribes and are going to the third. Make your substantiation and then we will proceed.

**Sen. (Dr.) Khalwale:** Mr. Temporary Speaker, Sir, if the House could just be patient, all that I am saying will come out there, as I lay the facts. I am doing it my way because it is my debate.

Mr. Temporary Speaker, Sir, out of those 22 Ministries, 15 Cabinet Secretaries---

**The Temporary Speaker** (Sen. Murkomen): Order, Sen.(Dr.) Khalwale! You cannot do things your way and challenge the Chair. You asserted that there are three communities that basically control this Government, but went ahead to use the Police Service to demonstrate that. While using the police service, you mentioned only two communities. You have not named the third and their percentage.

**Sen. (Dr.) Khalwale:** Mr. Temporary Speaker, Sir, I would never go against you. I have said the three communities and given you the Kalenjin and Kikuyu. Those two stick out in the police department, where they control 40 per cent, and I will table this document. Then, I am going to the Cabinet Secretaries to show you how the three now stick out.

**The Temporary Speaker** (Sen. Murkomen): Sen.(Dr.) Khalwale, you have just mentioned that you understand English. I would like to use the plainest English of all. You have named two communities in the Police Service and have the document in the hand. You need to proceed to name the third one and the percentage, and then we proceed. You cannot keep on challenging the Chair.

**Sen. (Dr.) Khalwale:** Mr. Temporary Speaker, Sir, the third one is the Somali community. But when police department was being constituted, they were not the active players they are in the current Government. That is why in this example of the police department, I am using this 40 per cent. But when I go now to the Cabinet Secretaries, 15 out of 22 are from these three communities. Out of the 26 Principal Secretaries 17 are from these three communities; the Kikuyu, Kalenjin and Somalia. Are we building Kenya or---

**Sen. Keter:** On a point of order, Mr. Temporary Speaker, Sir. I think that it would be good if Sen.(Dr.) Khalwale could elaborate. This is because if I am not wrong, in a county like Kericho, we do not have any appointment of either Cabinet Secretary or Principal Secretary. Maybe he is making noise because in the last Parliament, there were nine Luhya Cabinet Ministers. Now that they have two, is that a problem?

**The Temporary Speaker** (Sen. Murkomen): Order, Sen. Keter! We cannot mix up issues by adding others. The most important thing that we want to deal with here is substantiated statements. Sen.(Dr.) Khalwale has just said that 15 of the Cabinet Secretaries come from three communities. He can table that report when he is ready to do so. But what is very important is that we must carry out the debate in a very honest manner. Sen.(Dr.) Khalwale, I do not even know whether there is a community called Somali. I do not know whether that is the manner in which it is referred to and if it is the report of the Commission. I would like you to stick to the report.

**Sen. Hassan:** Mr. Temporary Speaker, Sir, that notwithstanding, I feel a little compelled to direct also some order to the hon. Senator. We have to realize that Somali as

a community in this country has been historically disenfranchised. Just the fact that three quite good professionals of the Somali community, that is, Adan, the lady in the Ministry of Foreign Affairs--- The third one has skipped my mind. For members of the Somali community, who are distinguished professionals in this country, to be appointed does not necessarily mean that Somali is one of the major shareholders in this country's Government. I think that the statement is in bad faith because the Somali as a community has struggled with marginalisation for many years. Therefore, they must not be lumped in that category, as if they have a principal shareholding in this country.

**Sen. Sang:** Mr. Temporary Speaker, Sir, the distinguished Senator for Kakamega has indicated that in the report that he is going to table in this House, the Kalenjin community is number one within the police force, followed by the Kikuyu community. Could he confirm from the report that he has shared with us, that number three is actually the Somali and not any other tribe?

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

**The Temporary Speaker** (Sen. Murkomen): The last one, Sen. Keter.

**Sen. Keter:** Mr. Temporary Speaker, Sir, it will be of more help to us if you can have the document and ascertain the facts which Sen. (Dr.) Khalwale is reading so that we do not waste his time interjecting.

**The Temporary Speaker** (Sen. Murkomen): Sen. Keter, you know the seriousness of this Upper House. Hon. Senators, you like to call yourselves the Upper House when it comes to substantiating issues, keeping within the law and being truthful to the Constitution. So, I have no reason to doubt what Sen. (Dr.) Khalwale is reading. But if there is any doubt from any hon. Senator who has read the same report, he can only bring it to the attention of the Chair. In the meantime, I want him to read the first ten in the Police Service and their percentages.

**The Senate Minority Leader** (Sen. Wetangula): On a point of order, Mr. Temporary Speaker, Sir. Just in case we derail debate by unhelpful insensitivities, I understood Sen. (Dr.) Khalwale to be debating the Motion, but he mentioned the Kibunja Report only to the extent that it talked about the police. He did not talk about it in relation to anything else in Government. It is not good for us, as a Senate, to demonstrate short fuses and unhelpful intolerance when facts are mentioned. It is not right to do so.

*(Laughter)*

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

**The Temporary Speaker** (Sen. Murkomen): Order, Sen. Keter! It will be of great help if Sen. (Dr.) Khalwale can go ahead and become fact full in substantiating what he is saying. I have ordered that he reads the first ten from their communities. I need to let you know hon. Senators that I am very keen in this Chair. Sen. (Dr.) Khalwale started his argument by saying "the Government". He did not say "the police". But to substantiate his argument, he went for the percentages which were in the police. So, I want him to keep to that fact of ten and then we close that part. It just an example and then he can continue with his debate. I have held your time for the main debate.

**Sen. (Dr.) Khalwale:** Thank you, Mr. Temporary Speaker, Sir, for being so kind.

Mr. Temporary Speaker, Sir, indeed, I would not bring here rubbish. This is just a downloaded document from the website of the National Cohesion and Integration Commission (NCIC). I am going to table it. They have done even much more; besides giving us all of them, at number one is Kalenjin with 20.3 per cent; number two is Kikuyu with 16.1 per cent; number three is Kamba with 11.0 per cent; at number four is Luhya with 9.7 per cent; at number five is Luos with 7.3 per cent; at number Six is Meru with 6.8 per cent; at number seven is Kisii with 5.3 per cent; at number eight is Miji Kenya with 4 per cent; at number nine is Somali with 2.7 per cent, and so on.

Mr. Temporary Speaker, Sir, what will make the Senators wake up to this injustice is that the NCIC has gone further and done what they call the variance in the sense that they have given it the ethnic group and population. When they show you the entitlement in the civil service, they show you the variance. This variance is telling you the injustice. This is not my main Motion. I beg to table the document.

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

Mr. Temporary Speaker, Sir, I want to substantiate---

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

**The Temporary Speaker** (Sen. Murkomen): Yes, Sen. Keter?

**Sen. Keter:** Mr. Temporary Speaker, Sir, he mentioned number three being Somali. Could he withdraw and apologise to the Somali people for mentioning their community as the most represented in the police?

**The Temporary Speaker** (Sen. Murkomen): Sen. (Dr.) Khalwale, this is a very serious matter. You kept us guessing about the third community for more than five minutes.

*(Laughter)*

Even thereafter, you went ahead to lie in the presence of the Chair and the House by saying that the third most represented community was the Somali.

Sen. (Dr.) Khalwale, this is the last day before we go for recess. I would have wished to impose on you a more severe punishment, but because this is the holy month of Ramadhan and in the kindness of the Chair, I have ordered that you withdraw the argument that Somalis are the third most populous in the police, apologise and proceed to complete the rest of your debate.

**Sen. (Dr.) Khalwale:** Mr. Temporary Speaker, Sir, I have been debating in this nation for many years, with utmost respect. I never said Somalis are number three in the police force.

**Hon. Senators:** You said so!

**Sen. (Dr.) Khalwale:** Mr. Temporary Speaker, Sir, I said "in the Government" and the HANSARD will bear me out. Sen. Keter and I came to Parliament at the same time.

I want to demonstrate my facts based on the Cabinet Secretaries and Principle Secretaries. Can I be heard on that?

**The Temporary Speaker** (Sen. Murkomen): Sen. (Dr.) Khalwale, the Chair would have heard you on that, but you have been mixing a lot of issues. The Chair is even mixed up.

*(Laughter)*

Sen. (Dr.) Khalwale, I want you to proceed with your debate. This business of unsubstantiated statements will put you in more trouble. Complete your remaining two minutes.

**Sen. (Dr.) Khalwale:** Mr. Temporary Speaker, Sir, two minutes would then be very short.

Mr. Temporary Speaker, Sir, this hullabaloo about Kavuludi being given too much power---

*(Sen. Keter gestured wildly in the air)*

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

**The Temporary Speaker** (Sen. Murkomen): Yes, Sen. Wetangula?

**The Senate Minority Leader** (Sen. Wetangula): Mr. Temporary Speaker, Sir, is it in order for Sen. Charles Keter to make gestures at the Chair in a manner that indicates that the Chair should curtail Sen. (Dr.) Khalwale's time?

*(Laughter)*

**The Temporary Speaker** (Sen. Murkomen): Sen. Wetangula, if Sen. Keter made any gesture to the Chair, he is completely out of order. But the advantage is that the Chair did not see.

*(Laughter)*

**Sen. (Dr.) Khalwale:** Thank you, Mr. Temporary Speaker, Sir. I just wanted to submit on this issue of these two Bills that are in a clever way trying to cut down the powers of the Chairman of the National Police Service Commission (NPSC) just because he does not come from the right community. Kenyans must know that the reason we have the NPSC is because it is not intended to command the police service. It supposed to do three cardinal things; first, when the police is serving us, it will make sure that it protects the sovereignty of the people of Kenya. Secondly, it will ensure that in serving Kenyans the police force observe constitutionalism. Lastly, in line with other Commissions, it will secure the observance of all democratic values and principles under the Constitution.

Mr. Temporary Speaker, Sir, if we change this deed by amending the Constitution or using Acts of Parliament, we will be doing what the late hon. Shikuku told some of us. He told us at Independence that there should be no detention without trial. He vehemently



opposed detention without trial. Those who were supporting detention without trial were detained before the late hon. Shikuku was detained. Your time is coming.

I thank you, Mr. Temporary Speaker, Sir. I beg to support Sen. (Prof.) Anyang'Nyong'o.

*(Laughter)*

**The Temporary Speaker** (Sen. Murkomen): Order, hon. Senators! Ordinarily, you should know that the Chair is impartial. It is supposed to act only after being moved by the Members of the House. But there is something that Sen. (Dr.) Khalwale said that may not be very good for our national integration and I want it to be put on the record. He said that the Chairman, Mr. Kavuludi does not come from the “right” community. I think everybody in this country comes from the right community, Sen. (Dr.) Khalwale. For the record, I would like you to withdraw that remark and apologise to the House.

**Sen. (Dr.) Khalwale:** Thank you, Mr. Temporary Speaker, Sir. In the heat of debate, these things do happen. I know that Kavuludi comes from that very right community called the Abaluhya people. But, unfortunately, that community is not politically correct at the moment. I meant that he does not come from a politically correct community.

Thank you, Mr. Temporary Speaker, Sir.

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

**The Temporary Speaker** (Sen. Murkomen): Let that issue rest.

Yes, Sen. Murungi.

**Sen. Murungi:** Mr. Temporary Speaker, Sir, I want to thank you for giving me the opportunity to support his Motion. At the very outset, let me completely agree with you that there is no Kenya in a vacuum; Kenya is made up of all the communities that live in this country. There is no community which is better than the other ones. There is no community which is worse than the others. We all have the right to be in this country in every possible term, irrespective of our economic or social status. All communities in this country should be equal.

**The Senate Minority Leader** (Sen. Wetangula): “Should be equal,” that is correct!

**Sen. Murungi:** Mr. Temporary Speaker, Sir, what Sen. (Dr.) Khalwale was talking about was ethnic injustice.

**Sen. (Dr.) Khalwale:** Yes!

**Sen. Murungi:** This is not a matter which we should hide. We should confront it and deal with it upfront.

*(Applause)*

**The Senate Minority Leader** (Sen. Wetangula): Well done!

**Sen. Murungi:** In Singapore also, there are ethnic communities. There are Chinese, Malaysians and Indians in Singapore. These issues used to arise there also. What was done in Singapore is that the Government developed a quota system for entry into the civil service. They looked at the populations of the various ethnic groups that formed Singapore. Every group was given its own quota in the public service in proportion to their population.

**The Senate Minority Leader** (Sen. Wetangula): Yes!

**Sen. (Dr.) Khalwale:** Yes!

**An hon. Senator:** Sen. Murungi for President!

**Sen. Murungi:** I think people should be happy in this country. We all appreciate that the Kikuyus are more populated than the others. So, give them a proportion which is slightly higher, but in terms of percentage. Then to follow are the Kalenjins who are the next more populous community. Followed by the Luhyas---

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

Now, the statistics will bear us out.

**The Temporary Speaker** (Sen. Murkomen): Order, hon. Senators!

Yes, Sen. Ongoro?

**Sen. Ongoro:** Mr. Temporary Speaker, Sir, is the hon. Senator in order to adulterate statistics that were recently produced and presented officially to the nation indicating that, indeed, the Luhyas are the second most populous and, in fact, almost at par with the Kikuyu? Is he in order?

**The Temporary Speaker** (Sen. Murkomen): What is it, Sen. Sang?

**Sen. Sang:** Mr. Temporary Speaker, Sir, is the hon. Senator for Meru, Sen. Kiraitu Murungi, in order to suggest that we go into this to rationalize quotas after they have had ten years of taking advantage of the same? So, should we not allow other communities also to proceed?

*(Laughter)*

**Sen. Murungi:** Mr. Temporary Speaker, Sir, I think Sen. Sang should learn more about the social structure in this country. I have not even reached our ethnic group, the Merus. I am not among those you are talking about.

*(Applause)*

Meru is a distinct community and we come after the Kisiis. I think we are number six or seven. So, we are among the marginalised groups in this country. So, I am seeking ethnic justice, but in a structured manner.

**Hon. Senators:** Yes!

**Sen. Murungi:** Mr. Temporary Speaker, Sir, since we agree that the Kikuyus are more than everybody else, give them a larger share than the others. Then if the Luhyas are number two, give them their own equal double share, then go down the list. If the

Merus are number seven, give us number seven. Whatever number of years according to statistics is called equity, then we have a manner of entry into the service so that we can remove these perpetual complaints. The reason people really fight for the presidency in this country - that is what has been causing all these political tensions - is because when you look at a situation where a Somali will be a President in this country given their numbers, it will take a long time. This is what causes problems in this country. If we have this clear quota system---

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

Is the hon. Member in order to say that a Somali cannot vie for presidency? They can because they are Kenyans and have the same rights as other Kenyans.

**Sen. Murungi:** Mr. Temporary Speaker, Sir, I really do not want to spent a lot of time on this because I did not say people cannot vie for presidency. The question is: How will they get there?

*(Laughter)*

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

**Sen. Murungi:** No, Mr. Temporary Speaker, Sir. I am fully informed. Let us focus on the Motion.

**Sen. Hassan:** On a point of order, Mr. Temporary Speaker, Sir. Is Sen. Murungi in order to impute improper motive by saying he does not know how Somalis will get there? The import of the statement, “getting there”, to first give an ethnic threshold then go further on to say that getting there is the issue. I think what we are doing is positively constructing our politics around an ethnocentric kind of approach. Is the hon. Senator, who is a distinguished and a senior member of this society, in order to impute that there are tribes that might never be able to get there?

**The Temporary Speaker** (Sen. Murkomen): Hon. Senators, I think we need to settle that issue. What Sen. Murungi said was that from history, if presidential elections will be based on ethnic numbers, then communities with less numbers will be disadvantaged.

Sen. Murungi, move on with the Motion.

**Sen. Murungi:** Mr. Temporary Speaker, Sir, that was by way of response to the issue raised by Sen. (Dr.) Khalwale. Let us leave it at that. Let us look at the Singaporean Model as one of the possible ways of addressing these issues in future. Sen. (Dr.) Khalwale should also know that we are counting the number of Kikuyus and Kalenjins in the police force. We should not stop there. Count those ones in the city mortuary, those in Kamiti and he might find some pattern which is almost similar. So, it is a question of numbers.

Mr. Temporary Speaker, Sir, we seem to be developing a new divide in our politics. In the past, we used to talk about reformers and anti-reformers. The new divide is about who are pro-devolution and those who are anti-devolution. It is not easy to do that divide because here in the Senate, we are all pro-devolution. We have all come to fight for our counties. So, I would like to plead with my fellow Senators not to draw a political line which says CORD is pro-devolution and Jubilee is anti-devolution. As a

Senate, this is a collective responsibility. We are supposed to make sure that both power and resources are devolved to the counties by the Constitution that we all support.

Mr. Temporary Speaker, Sir, I have been with Sen. (Prof.) Anyang'-Nyong'o for a long time. We were together in the original FORD and in FORD-Kenya. It was in our manifesto then that we should abolish the provincial administration. We fought for 20 years to try to abolish the provincial administration because they were very ruthless on us. I personally was caned by administration police officers when I was a Member of Parliament. Whenever we went anywhere we were greeted with tear gas by the police.

**Sen. G.G. Kariuki:** Maybe you deserved it.

**Sen. Murungi:** Sen. G.G. Kariuki, do not say we deserved it because you were also in the cold for a long time after taking such a line.

Mr. Temporary Speaker, Sir, it is as a result of those experiences that we formed our position that the provincial administration must go. Fortunately, we were able to come to the Government with my friend, Sen. (Prof.) Anyang'-Nyong'o. We tried to raise issues even in Parliament and within the Government regarding the role of the provincial administration. The position that was later taken after looking at all the factors was that the provincial administration should not be abolished, but be reformed and retrained, so that they cease to be agents of oppression and become agents of national cohesion and development. That is the spirit that is captured in the new Constitution. That is why the Constitution gives five years for the provincial administration to be restructured to fit in the new structures of the devolved government. We have had only slightly over 100 days since we came to power as Jubilee Government.

**The Temporary Speaker** (Sen. Murkomen): Your time is up! However, I will add you three minutes.

**Sen. Murungi:** Thank you, Mr. Temporary Speaker, Sir. There is still time for the provincial administration to be restructured. What the professor is asking for is fair. We should see a policy paper from the Government, brought to this Senate, so that we may see the programme that they have for reforming and restructuring the provincial administration within the next five years because we will not be able to do so through first hand and *ad hoc* moves.

Mr. Temporary Speaker, Sir, the role of the chiefs is accepted by everybody. If there is cattle rustling between the Toposa and the Turkana at the border of Kenya, it will take a long time for anybody in Nairobi to get to know. But the chief on the ground will be able to report what has happened. Even other counties within the region like Uganda and Tanzania, have the *nyumba kumi* strategy where all the visitors and people who are not known are reported. That is one way of enhancing security. I think the provincial administration will still have relevance in providing security for the country, but what we are saying is that they should not frustrate the efforts of county governments.

The recent move by President Uhuru Kenyatta to recall provincial commissioners is very welcome because we thought now the buck was stopping at the county level with the county commissioner. But when we heard that the provincial commissioners were being re-invented again under the name of regional commissioners and, again, this is causing problems. They are saying we are moving one step forward and two steps backwards. If the provincial administration is being removed from the provinces, they

can coordinate as officers in Nairobi as part of the national Government. I think the county commissioner should be given space because they are the people on the ground and can work with governors and other people and coordinate Government affairs within the counties. This is a very counterproductive move. It is being used to say that the Jubilee Government is anti-devolution even when both the President and his Deputy have publicly declared that they are for devolution. Let us not create impressions by these moves which are not well thought out.

Therefore, I am totally opposed to the provincial commissioners going back to their stations in the name of regional commissioners.

**Sen. Ongoro:** Mr. Temporary Speaker, Sir, I rise to support this Motion which I think is very timely, appropriate and which requires us, as a Senate, to undertake something that is in order. It simply demands a policy paper providing a time action plan.

In my opinion, we are not running out of time with regard to this issue. If you listened to speakers; both in the Senate and in the Lower House, you will realise that this country that we love so much called Kenya is wounded. Kenya is wounded and the wound is bleeding very much. It is actually festering. We tried covering it up in 2008. We also tried bandaging it so that the international community and everybody else would think that the wound had healed. However, in all honesty, let us be frank and fair to ourselves, to our children and to our children's children. We have to face certain facts and to make some hard decisions. There are certain things that we should not allow.

Recently, one gentleman in the name of Mr. Ayiecho, who was the Managing Director of the Rural Electrification Authority (REA), was unceremoniously bundled out of his office without convincing reasons. Shortly after, Mr. Odongo of the National Social Security Fund (NSSF) was also bundled out. Now, we are here in the Senate.

**Sen. Keter:** On a point of order, Mr. Temporary Speaker, Sir. It is good to be factual. I respect Sen. Elizabeth very much. However, when she says that Zachary Ayiecho was bundled out of his office, she is wrong. Zachary's term ended and his contract was just not renewed. So, she needs to differentiate this incident with the one of Mr. Odongo so that she does not lump up things together.

I just wanted to make that clarification.

**Sen. Ongoro:** Mr. Temporary Speaker, I challenge the Senator to provide facts to that effect because I believe that the statement he has made is not true. However, that notwithstanding, I want us to proceed.

**The Temporary Speaker** (Sen. Murkomen): Sen. Keter, without giving you more time to talk, I think you can table that evidence when we come back from the recess.

**Sen. Keter:** Mr. Temporary Speaker, I just want to say that if she does not agree with what I have said, then she should also table the facts.

**Sen. Ongoro:** Mr. Temporary Speaker, as you can see, the hon. Senator is disobeying your order.

**The Temporary Speaker** (Sen. Murkomen): Sen. Keter, whereas what you have raised may be true, that Sen. Ongoro may have referred to a matter that she has no prove in terms of bundling of Sen. Ayiecho out of office, I would rather you table the facts because you are better placed to do so.

**Sen. Keter:** On a point of order, Mr. Temporary Speaker, Sir. I was an Assistant Minister. Since the former Minister, hon. Sen. Murungi, is here, he can also table that evidence.

**The Temporary Speaker** (Sen. Murkomen): We have further business coming up, but we also need to ventilate on this matter. To avoid further discussions, I have ordered that Sen. Keter tables those facts when we come back from the recess.

**Sen. Ongoro:** Mr. Temporary Speaker, Sir, I want to deviate from that line of thought and proceed with my contributions.

In supporting this Motion, we need to draw our attention back to the Constitution of Kenya and the manner in which the NPSC was created under Article 246. When we get to the reason the police service was created, in the first place, then we will find an absolute need to support its existence and allow it to execute its mandate to the fullest without interference and all these schemes by the Inspector-General of Police for reintroducing certain aspects that led to the creation of the NPSC.

Why was it created in the first place? This NPSC was created because we, as a nation, were trying to decentralise too much power that was vested in one person referred to as the Police Commissioner. He had the absolute authority to control the police units and anyone who fell under his jurisdiction.

Two young police officers would get married. In case one hawk-eyed senior police officer had an interest in the lady, the man would be transferred and given 24 hours to report to North Horr while his wife would be retained in Nairobi or transferred to Mombasa. This family would, therefore, disintegrate. There were very many such instances. Policemen would be fired at will, sent on forced leave or posted to some areas without due respect to the family unit or even bothering that bundling 10 family men in a 10 feet by 10 feet was anti-social and did not allow them to work. The NPSC was, therefore, created. What is being attempted is to take us back. This is a retrogressive process that seems to be taking us back to where we came from. If we do not stop this process, let us ask ourselves, by rebranding provincial commissioners; giving them new names and allowing them to hold regional positions, where does this leave the spirit of devolution that we hold which is enshrined in the Constitution? Where does that leave Article 1(4)(a)? It says:-

“The sovereign power of the people is exercised at-

(a) the national level; and,

(b) the county level.”

The other level we are trying to create known as the regional level, on what platform is it being created? What are the pillars that will support this restructuring and the system? What are the regions? I thought we were moving away from the eight regions that we used to call provinces and that now we have the national Government and the 47 counties?

Where do the eight regional governments which are the former provinces fall? They are absolutely out of place. Their existence is unconstitutional. Their drawing of salaries from the taxpayers is unconstitutional. Their mandate is parallel and contradictory to all other mandates that exist. Therefore, by effecting this, I believe that we will be acting retrogressively. I believe that it will not be adding any value. If we

allow this to happen, many other systems will be put in place that will completely neutralize all the other systems of devolution that we are trying to support.

Mr. Temporary Speaker, Sir, without even exhausting my time, I beg to support this Motion.

**Sen. Hassan:** Mr. Temporary Speaker, Sir, I am grateful again for this opportunity. I think that the issues that have been raised by Sen. (Prof.) Anyang'-Nyong'o in his Motion, are very weighty. They are constitutional issues. I get a little concerned when a Government comes into place and the first amendments that it thinks of are to load more power onto the police service.

Mr. Temporary Speaker, Sir, I was the person in charge of security sector reforms and accountability when I was in the Commission. The shifting paradigms of security is that we need to deviate or depart from regime policing to democratic policing. The three statutes that touch on policing in this country, that is, the Independent Police Oversight Authority (IPOA), the National Police Service Commission Act and the National Police Service Act were intended to lay the foundation of democratic policing in this country. Absurd as it might be, at the very advent of the Jubilee Government, their first inadequacy that they are able to plot, is that the police do not have sufficient power operationally. It concerns me that any Government would, first and foremost, try to preserve the structures of security that have been known to be oppressive in this country, be it the structure of the national police or provincial administration.

Most of these allegations that have been made, that the police or Inspector General (IG) is not powerful enough, are fallacious. These Acts were negotiated when the late Prof. George Saitoti was the Minister for Internal Security. He had internalized fully that there was need for democratic policing in this country. The Permanent Secretary at that time was none other than Mr. Kimemia. The person who was in charge of security reforms at that time at the Ministry was the Under Secretary, Mr. Peter Okioma. What has changed hardly one year after these Acts were operationalized? There is something wrong in the value system and positioning of the current Government.

Mr. Temporary Speaker, Sir, you have to understand that the IG, as per the Constitution, was not expected to be an operational commander, but a strategic manager. That is why an IG of the NPSC could be even a civilian. That is the interest, spirit and letter of the Constitution. This is because they intended that man or woman not to be putting on a combat fatigue to operational areas. That was the domain of the Deputy Inspector General (DIG) in charge of the Regular Police and the Administration Police. Little knowledge or the perception to position yourself with nostalgia of what your predecessor, the Police Commissioner, Ali or Iteere, used to do because you were the Director of Operations--- He lives in the nostalgia of those immense and broad powers and has not internalized what reforms are all about in this country. That is why to a certain degree, the NPSC erred in appointing an old school police officer to administer under a new constitutional dispensation. It was important to have a civilian so that we could have a bird's eye view, looking inside rather than inwardly.

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

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

Madam Temporary Speaker, therefore, the position that is being taken by elements of the Jubilee Government tends to reverse the gains that have been made constitutionally and in terms of our democratic growth. Let the IG know that his responsibility is not to design a new uniform. His responsibility was simply to sit in the office that he was allocated and give strategic management to the two police services. The operational commander was the DIG of the two services. It pains me that any Government would think about transformation. August 1<sup>st</sup> was the day that men in uniform tried to take over the leadership of this country by force, but it was resisted. Men in uniform cannot amend the law to make this a police state. As per the Constitution, policing shall be under the authority of Parliament. Policing shall bear its orders from civilian authority. That is why the NPSC is there. We need to civilianize our police service. These were debates that were exhausted. That is why the late Prof. Saitoti could have the audacity to table those Bills. Every stakeholder was represented. \

If Prof. Saitoti, who we believed transformed from one region to another, could have that kind of foresight, it is totally saddening for anybody who regards himself digital, to take us back to analog. Digital is not how you use a computer, but the brilliance of your ideas, as they evolve with the passage of time. So, if somebody thinks that giving people toys is what is digital, it simply means that, that person does not understand that great societies were built on value systems. We need to go and inculcate values and constitutionalism in our young Kenyans, not to just give them laptops, so that they can play Disney land kind of games. This is not a Disney land Government. We need to build and inculcate a new value system.

Madam Temporary Speaker, this intention to consolidate the provincial administration and police and preserve the abject power that they had, is the highest form of archaicism. This country must transform. The cornerstone of any democracy is democratic policing. If you reverse democratic policing, you reverse democracy.

Madam Temporary Speaker, I support this Motion because there is a dangerous trend. We have the rhetoric, yet do not have the intention and value systems to do what we need. Great governments are defined by their values and not how many computers we have or how we connect ourselves to currency. If it is about development, the Arabs have had it all. Have we built more roads than the Arabs have? Do we have more money than they do? Look at the infrastructure in their countries. Our position about development cannot be mechanical. It must be about values.

I support this Motion because we need to fundamentally restructure the provincial administration to, first and foremost, allow devolution and censure the IG and ask him who is giving him this audacity to alter or abrogate our Constitution. Do you think that a police officer who has simply designed his new uniform can have--- He has designed a new uniform and it looks like that of a colonel of a military. He is very proud in that uniform. But do you think that he has the audacity to breach the Constitution if somebody else somewhere is not telling him? Does he know the consequences of a breach of the Constitution if the court finally decides in the affirmative? He will never hold public office and face possible prosecution.



Madam Temporary Speaker, today people are bearing the consequences of actions that they undertook. I am a bit emotional about this issue because this is a reversal of progress that we have made in restructuring the two arms of security in this country and the provincial administration. Any person who tries to transform the police force back to regime policing has totally missed the idea. We are moving from the securitization of our democracy to the democratization of our security. If you are not a participant in your security, you will forever live in fear, notwithstanding how much police force we create in terms of a standing police force.

Therefore, I urge those who have continued to encourage this Government towards these excesses that they should ask those who know. You do not know everything. Some of you are economists and others from different fields, but you want to take over everything. We have participated in this process for five years. Sen. G.G. Kariuki will tell you. A police force without accountability can lead to massive loss of lives. Look at what they did to the young people from Central Kenya under the aegis of the *Mungiki*. Now, you are trying to take away the mandate of the IPOA, so that they can lodge bullets in the heads of the poor.

Madam Temporary Speaker, I beg to support this Motion because I believe that it is in the interest of the Kenyan public.

**Sen. Kanainza:** Thank you, Madam Temporary Speaker, for giving me this opportunity. I stand to support this Motion brought by Sen. (Prof.) Anyang'-Nyong'o. It is truly unconstitutional for the Government to appoint former Provincial Commissioners (PCs) to hold regional positions. As we know, we have counties headed by governors. That means that we do not need these regional positions in the police force. It has been fashioned in a way that we see it is a power struggle between two people.

*(Loud consultations)*

**The Temporary Speaker** (Sen. Ongoro): Hon. Senators, Sen. Kanainza is on the Floor!

**Sen. Kanainza:** Madam Temporary Speaker, looking at the proposed structural amendments and changes in the Police Commission Act and the other one, it is very clear that there is something fishy happening. This means that we are doing something very wrong by investing imperial powers to one person called the Inspector General of Police (IGP). If you do not know this, the IGP will be in charge of, one, hiring; two, deployment; three, transferring; and, four, promoting and disciplining officers, which we do not advocate for because it is unconstitutional. I am convinced that the actual purpose of this Bill which is before the National Assembly is ensuring that particular communities remain in certain positions in the police force. I want Senators and even Kenyans to know that the real intention of this is for the control of billions of shillings meant for the procurement of equipment and materials. As we are aware, the NPSC has been given a lot of money in the Budget. If we do not stand strong as the Senate to reject this Bill, we will be doing a disservice to our counties and to the people we represent. We should also be made aware that even in the military service, there is a board which is chaired by a civilian who recommends promotion of senior commanders to the President. If we do not

support this Motion, it means we are headed to the excesses of power vested in one person.

Lastly, let us appreciate devolution. We do not have provinces or regions in the new Constitution.

*(Applause)*

We have county governments. Governors are in a better position to do their work. That means it will be a duplication of roles, which will give our governors a hard time.

Madam Temporary Speaker, with those few remarks, I beg to support this Motion.

**The Temporary Speaker** (Sen. Ongoro): Sen. Chris Obure.

**Sen. Obure:** Madam Temporary Speaker, I will be very brief. The major motivation among Kenyans to adopt the 2010 Constitution was devolution. That was the rallying point. People wanted power and resources to be devolved. I have watched surveys of public opinion in the electronic media in the last few days with people being asked whether in their opinion, there is commitment on the part of the national Government to support devolution. The answer throughout has been in the negative. Wananchi out there, feel that there is not sufficient commitment towards devolution.

The question we should be asking is why should wananchi feel that way? First, you will recall that in this Senate, we discussed the Division of Revenue Bill. We felt that we needed to give more funds to the devolved units so that they can each deliver services to their citizens. Even after we felt that the amount proposed at the time was not sufficient and we decided to increase the amounts available to the counties, surprisingly, this was not to be because it was reduced to Kshs210 billion which we all knew was not sufficient. As you know, this was done between two institutions; the national Government and the National Assembly. The effect of what they did was to deny the counties approximately Kshs1 billion each, money they needed to provide services to the people out there.

Mr. Temporary Speaker, Sir, you know what we did yesterday despite the feelings we had about this. We did, in fact, agree to the figure of Kshs210 billion reluctantly, this was done. In a meeting with the National Assembly, the Cabinet Secretary at the Treasury urged the National Assembly to reduce this amount even further so that the two roads authorities – I think it is Kenya Rural Roads Authority (KERRA) and Kenya Urban Roads Authority (KURA) – could be given their portions out of the money we approved. These actions are giving very negative signals out there that the national Government does not support devolution. I think that is a very unfortunate state of affairs.

Madam Temporary Speaker, the other thing which is giving the wrong signals is the Issue we are talking about of police reforms. The feeling among Kenyans generally is that we are now going backwards and away from police reforms by proposing these amendments. The expectations of the people, of course, were to create a people-friendly and efficient Police Force which will serve Kenyans. But these amendments which are being proposed are reversing all this and they are giving very wrong signals to the people out there.

The third one, of course, Madam Temporary Speaker, is the appointment of the PCs, regional commissioners and police commanders out there. This is not the direction we should be moving. Some of these provincial administration officers are very unpopular out there. You can confirm this through what we saw last weekend when wananchi decided to eject a whole PC and his team of security people from the Naivasha meeting. They chased him away, pelting them with stones. We should even learn from that incident. Why would ordinary wananchi, who are bare handed, do a thing like that? I think we should rethink this whole issue.

Lastly, Madam Temporary Speaker, I want to say something about national cohesion. I want to agree with the formula provided by my brother, Sen. Murungi, that in doing national appointments, we should heed and follow the formula he told us about a few minutes ago. I think it was borrowed from Singapore. That will help us.

I also want to say something else out of my experience in politics; I think that if we are going to achieve national cohesion properly in this country---

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

**The Temporary Speaker** (Sen. Ongoro): You cannot be requesting for that while sitting!

Sen. Obure, do you wish to be informed?

**Sen. Obure:** It is fine, Madam Temporary Speaker

**The Temporary Speaker** (Sen. Ongoro): Okay. Have a seat.

Proceed, Sen. Wetangula.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Temporary Speaker, Sir, I want to inform the distinguished Senator for Kisii that even closer home in Rwanda, the new Constitution provides for exactly what the distinguished Senator for Meru advocated for here. So, it is nothing new. It is happening in the neighborhood and we can do it here.

**Sen. Obure:** Thank you for that information. That is the direction we should go in effecting national appointments. People from Western Kenya, the Luhyas, have been complaining. Last time they had nine people appointed to the level of Ministers, today, I am told they have two or one. In fact, it is a lady from Western Kenya who is married in Kiambu. So, there is a general feeling that it is not right. Even in Kisii County---

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): On a point of order, Madam Temporary Speaker. Thank you for this opportunity. I find it out of order for the distinguished Senator for Kisii County, whom I respect so much, to suggest that any part of this country has been left out of the Government. He is out of order precisely because considering that there were 18 Ministerial slots and the distinguished Senator for Kisii is comparing that with the bloated Grand Coalition Government where the Senate Minority Leader and others were Ministers. We had nearly 50 ministers. Is he in order to use those statistics and mislead the country, as a senior politician, that certain communities have been left?

**Sen. Muthama:** On a point of order, Madam Temporary Speaker. The Senate Majority Leader has just mentioned here 18 slots for Cabinet Secretaries which were shared according to geographical arrangements of this country. But out of the 18 slots, 12

slots went to two communities and yet he is saying that there was national distribution. This Motion is just to bring fairness to Kenyans and nobody should try to block it.

*(Several Senators stood up in their places)*

**The Temporary Speaker** (Sen. Ongoro): Order! Can we allow Sen. Obure to proceed.

**Sen. Obure:** Madam Temporary Speaker, I was making reference to obstacles in our way to national cohesion. I am saying that even in my own county Kisii which is the fifth largest community in Kenya today, but in the appointment of principal secretaries, we have always had a minimum of two for the last 50 years. But this time, we do not even have one. So, the way to go to achieve national cohesion which is important for us, as a country, is to reduce the premium we attach to the office of presidency. The only way to reduce that premium, reduce all the tensions and reduce everything else that is attached to it, is to allow devolution to work effectively so that counties are given resources and power. Let us recognise these counties as governments in their own rights. That is the only way to achieve cohesion. I think Sen. (Prof.) Anyang'-Nyong'o is putting us back on track. That is one reason I support this Motion.

**The Temporary Speaker** (Sen. Ongoro): Hon. Senators, I know this is of immense interest and everybody would like to speak, but under Standing Order No.28(3), if we are to adjourn then we have to move that because the Motion is supposed to be debated for not more than two hours. I am of the opinion that we move that and, once it is passed, and if we still have time left, then we can continue a little bit with this Motion. So, I want to call upon the Mover of this Motion to reply so that we have time to move on to the next Order which is adjournment.

Sen. (Prof.) Anyang'-Nyong'o.

**Sen. (Prof.) Anyang'-Nyong'o:** Madam Temporary Speaker, thank you for calling me to reply. Before I do so, I will donate two minutes to Prince Murkomen.

**The Temporary Speaker** (Sen. Ongoro): Okay, Sen. Murkomen, you have two minutes.

**Sen. Murkomen:** Thank you, Madam Temporary Speaker. The Motion before us is very important. I have heard the opportunity to listen to many contributions from hon. Senators. It is important for us to have a clear policy on devolution. I have said that it is not just about the regional commissioners, I wish the Senate Minority Leader could listen, it is more than that. It is about the system of government commonly known as the provincial administration. What is important for us is to move forward to advise the Ministry of Devolution and National Planning to complete the policy framework so that we do away with everything called "provincial something," for example, provincial director of education, provincial director of health, provincial director of agriculture, provincial engineering director and so on. This is to enable the national government to deal directly with counties. They should then have administrative structures within the counties to the level that is possible.

As soon as counties have put in place their administrative structures like sub-county administration, ward administration and village administration, I would rather see

us again coming here to discuss whether it is necessary for the government at the national level to even have a village administration. I have heard some arguments that the chief is very important. I was in the task force and people said that office of the chief is a very important one, but there is nothing that stops that chief to report to the county government and still provide a service to the nation. These are policy issues that we need to debate in a more sober manner and I would rather it be not mixed with the issue of police. We should go further and look at the whole system. Every time people miss this point because they targeted the provincial commissioners, the district commissioners and so on. You miss the point when you forget about the provincial agricultural officer, district agricultural officer and so on. We want to reorganise this system.

When it comes to the question of dealing with resources at the district level, I am on record saying that the question of whether we should maintain District Development Committees (DDCs) is something that we need to debate and deal with.

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

**Sen. Murkomen:** Madam Temporary Speaker, it is not my time. So, I do not know if I can be informed.

**The Temporary Speaker** (Sen. Ongoro): Professor, would you donate a minute for a point of information to Sen. Wetangula? You still have about seven minutes.

**Sen. (Prof.) Anyang'-Nyong'o:** I am donating one minute to Sen. (Prof.) Lesan.

**The Senate Minority Leader** (Sen. Wetangula): Madam Temporary Speaker, I stood to inform the distinguished Senator for Elgeyo-Marakwet, he was in the Chair and, indeed, most of us called for a Government policy paper on the reformation of the entire system called the provincial administration. It seems he was not listening.

**Sen. (Prof.) Lesan:** Madam Temporary Speaker, from the outset, I wish to support the Motion by professor, but I want to point out one thing. I know there is a lot of legal brain power in this House.

I will refer to Article 245(4) of the Constitution. We would like this Constitution to represent us in letter and spirit. If you look at the provisions of Article 245(4), you notice some contradictions that need to be addressed. I am sure that lawyers who are here will help this country to live by this, if it truly reflects what we want.

That is the provision that has given all the powers to the Inspector-General of Police to do what he is doing. It is within this Constitution. Therefore, we may be required to go back to our Constitution and amend issues that do not represent the spirit of the people of this country. I think this Article, 245(4), does not represent the spirit of this country.

**An hon. Senator:** Which Article are you talking about?

**Sen. (Prof.) Lesan:** The Article is there. You can read it. I am not a lawyer. The lawyers will read it and interpret it better.

I support the Motion.

**Sen. (Prof.) Anyang'-Nyong'o:** Madam Temporary Speaker and hon. Senators, Article 245(4) is very simple. It contradicts the Articles under the NPSC. It says:-

“The Cabinet Secretary is responsible for police services may lawfully give a direction to the Inspector-General with respect to any matter or policy for

the National Police Service, but no person may give direction to the Inspector-General with respect to;

- (a) the investigation of any particular offence or offenses;
- (b) the enforcement of the law against any particular person or persons; or,
- (c) the employment, assignment, promotion, suspension or dismissal of any member of the National Police Service.”

There is something that needs to be clarified. The finer dots and eyes of the law, as one Sen. Murkomen said, have no contradictions. However, I suppose that is what is causing confusion. That may be what led to the amendments to the Police Service Act and the National Police Service Commission Act that is now being proposed. Once it has been debated in the National Assembly; depending on what happens, we can take further action because the laws will affect counties.

I just want to thank those who have contributed to the Motion. The Motion, in its intention, is really basic. It says that we must take cognisance of paragraph 17 of the Sixth Schedule of the Constitution that gives us the hand to restructure and reform the provincial administration to accord with devolution.

People are misunderstanding the effective date. The effective date is not when the elections were held this year. This is in reference to the date of the promulgation of the Constitution, in which case we have only two years to go. The Constitution was promulgated on 27<sup>th</sup> August. So, by 27<sup>th</sup> August, 2015, everything we need to do with regard to restructuring the provincial administration to accord with devolution must be completed.

If after three years we still do not have a policy paper or a road map to do that, then we must race against time. This is one of the reasons the Inspector-General of Police was taking certain actions. He did not realise that they contradicted certain provisions of the Constitution, especially devolution.

As Sen. Murkomen has said, when we are talking about devolution, we are not just talking about the provincial commissioners, but a whole structure of government which was commonly known as the provincial administration.

Secondly, when we talk about devolution, we are not just talking about a governor and the county assemblies. We are talking about the provisions of the whole devolution up to the village council which is there. We cannot begin establishing offices at the sub-county level, at the village level and still pay assistant chiefs among other people. This would be a huge wage bill to the Government. It is the same Government that will want to collect taxes from us to pay all these super structures.

It is extremely important, therefore, that we move with speed to bring to the Senate this policy paper; one that restructures the provincial administration to accord with devolution which is a concern of the Senate so that we discuss the matter and give the Government the power to proceed with what it is doing.

However, at the moment, we will be putting Kenyans in jeopardy if we keep on having this ping-pong game where the Government proposes issues, Parliament realises that the proposals are not legal and corrects them then people go to court. We will waste too much time on this ping-pong game which I think, as a planner, is not a good thing.

Plans proceed on the basis that you have an idea, you put it on paper, you cost it, you time it, you approve it and then you take action. Unless you do something rational like that and take action out of a proper framework, I am afraid that we will be losing a lot of time.

The project of building the Kenyan nation is something we have been talking about here. I liked the ideas of my good friend, hon. Sen. Murungi, from Meru. The project of building the Kenyan nation has been a major problem since Independence. I would like to urge the Senate, along with what Sen. Obure and Sen. Murungi said, that we give serious thought to this.

Unless we speak honestly about these issues and come out with a much more imaginative project of building the Kenyan nation - using our people as they are and not as they ought to be – Kenya will not be built successfully. We will not be doing ourselves a lot of good.

Since this came up within the framework of today's discussion, that, probably, at a later date, hon. Sen. Murungi can come up with a Motion which would be seconded by Sen. Obure on this issue. This issue should be substantively discussed by the nation.

I beg to move.

**The Temporary Speaker** (Sen. Ongoro): Hon. Senators, this Motion does not affect counties, but the national Government. I will just put the question.

*(Question put and agreed to)*

Let us move on to the next Order.

Sen. Zani is not in the House and we have not received any instructions from her. We will move on to the next Order.

#### FORMULATION, MAPPING AND OPERATIONALIZATION OF DEVELOPMENT AGENDA FOR COUNTY GOVERNMENTS

THAT, aware that the county is the main focus of devolution and that there exist multi-level structures within county governments; noting the need for counties to succeed and improve the social, economic and political well being of citizens and attain optimum levels of development within the said counties; appreciating that the devolved government structure envisioned in the Constitution of Kenya 2010 provides for different levels of government functions and responsibilities and that the interpretation and enforcement of these roles has been the subject of debate; concerned that there is still no county impact analysis strategy; the Senate urges the Council of Governors to take measures to require all counties to formulate, map and operationalise, with measurable indicators, key development agenda and deliverables for each term of the respective county governments.

*(Motion deferred)*

## MOTION FOR ADJOURNMENT

### ADJOURNMENT TO A DAY OTHER THAN THE NEXT NORMAL SITTING DAY

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): Thank you, Madam Temporary Speaker. I beg to move the following Motion.

THAT, pursuant to Standing Order No.28(3) this Senate adjourns until Tuesday, 17<sup>th</sup> September, 2013.

According to the calendar that was passed by this House, it was expected that around this time, we shall have an opportunity for recess.

Madam Temporary Speaker, the reason this adjournment is important at this point in time, is that, first, the Senators require time to go back to their counties and also serve the residents and electorates. Sometimes the nature of business when the Senate is on is that it is almost impossible for Senators to catch up with events in their counties. This can be very detrimental, given that the electoral circle is quite short.

Madam Temporary Speaker, the House also is aware that in the last few weeks, there have been very many workshops in Mombasa, until some people were beginning to think that all of us have become Senators for Mombasa County. This is because every other weekend, there have been Senate retreats or workshops. That has denied many of us an opportunity to be at the counties. That is why this recess becomes completely and absolutely necessary. It is unfortunate that the newest Senator is being sworn in as we prepare to go for recess. Perhaps, at this juncture, since I was not in, I want also to congratulate Sen. Mutula Kilonzo Junior, the Senator for Makueni and welcome him to the Senate. Of course, I had a very strong team from my side in Makueni, but we were not lucky to get the seat. That is democracy. We, as democrats, accept the outcome. We will work together for the better of our nation, because elections should not divide people. The Senator has come on a day that we are going on recess. But I think that he needs to go back also and thank the people for voting for him.

Madam Temporary Speaker, the second reason is the fact that the Committees of the Senate require this recess to organize and clarify their strategy going forward. Some of them have organized benchmarking events. I am aware of, at least, two or three Committees which have decided to go around the country; county by county, so that we can, among other things, establish the level of preparedness of our counties to the issue of transfer of functions and devolution. So, it is a good opportunity for those of you who have planned to do so. I think that this will give the Senate a new dimension of legitimacy, so that we do not just always talk from Nairobi. We will go where the action is. This being the House of devolution and the people's House, I think that the work around counties has a clear and absolute legitimization effect on the work of this Senate.

Madam Temporary Speaker, for this and many other reasons, I think that this Senate deserves to take recess. We are informed, at least, from the Rules and Business Committee where I sit that this House has also been updated one way or the other. This is



the last time that we are supposed to be meeting in this makeshift garage which we have persevered in the national interest.

Madam Temporary Speaker, even as I end my remarks, I want to congratulate the Senators of this country for being patriotic and tolerant. If some other cadres of leadership, whom I cannot name here because I am prevented by law and the Standing Orders, were the ones living in squalid conditions, like we have been doing in the last few months, they would have staged demos in town. So, I want to congratulate the Senators of this country and assure the people of Kenya that the Senate will remain the true servants of the public. We are humble enough to appreciate that, perhaps, we do not get everything that we want. In any case, we also want to say, as the Upper House, that it is only the right thing that is expected of us. I want to believe that when we resume, we will be sitting in a more comfortable Chamber and hope that all the other outstanding issues around the facilities for Senators will be resolved by then. This way the business of the Senate will be better performed.

Madam Temporary Speaker, with those few remarks, I beg to move and request the leader of a few people, also known as the Senate Minority Leader, my brother and friend, Sen. Moses Wetangula of Bungoma County to second this Motion.

**The Senate Minority Leader** (Sen. Wetangula): Thank you, Madam Temporary Speaker. I want to thank my very learned junior for moving ably the Motion for Adjournment.

Madam Temporary Speaker, we have had a very productive session. We have also had very vibrant and lively debate on very positive and far-reaching Motions. It is now time not to go on holiday, but to go and address other issues. You can even see that on your phones, you are already being invited to a meeting on Monday to discuss the transfer of functions from the national Government to the county governments. So, we are going into what used to be described as a busy working holiday.

Madam Temporary Speaker, I want to encourage Senators and Heads of Delegations that within this time, please, take a moment, like I will do, and go to your county assemblies and address them. Fraternize with them and given them a few ideas on how we run the Senate. A few delegations from the county assemblies have visited here. But we can still go and talk to them on legislative programmes, debating issues, how to oversight and so on. You are a key resource to your counties. It will be a wonderful idea if we can use our time that way.

Mr. Temporary Speaker, I am also aware that many Committees will be meeting. They can now meet without Members being anxious about whether they should be in plenary in the Chamber or Committees. Some will visit the counties in the countryside. I heard the distinguished Senator for Nyeri announcing to some of our colleagues that he will be visiting, I think Kisii or somewhere. That is encouraged, so that we can have firsthand information and experience on how devolution is taking shape and root in the country.

Madam Temporary Speaker, equally important is the fact that we have truly endured sitting in this garage for the last four months. A place where, unlike the other Chambers, even you, as the Chair, cannot even recess for five minutes, sit in some room and have a cup of tea. You cannot even recess to take a phone call. You see Members

running out all the time to just go and receive calls. I have had an opportunity to visit the Chamber, under renovation at County Hall, and the progress is very good. It looks like a Chamber. Of course, that again will be a transition to the Old Chamber which was the Chamber for the Senate in the 1960s before the abolition of the Senate. I am sure, from what the Rules and Business Committee has been told, that Chamber will be ready in about 12 months from now, by which time we will have had our good time, perhaps, at the County Hall.

Madam Temporary Speaker, I want to take this opportunity to state a few quick remarks. First, I would like to welcome our newest Senator, Sen. Mutula Kilonzo Junior and thank the people of Makueni County for rising to vote for the young Senator. He got 91 per cent of the popular vote and shamed the forces of darkness that descended on Makueni County.

*(Laughter)*

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): Which forces?

**The Senate Minority Leader** (Sen. Wetangula): Madam Temporary Speaker, I have not mentioned anybody. I have just said “forces of darkness” which---

**The Temporary Speaker** (Sen. Ongoro): Order, Sen. Wetangula! Are you implying that you represent the “forces of darkness”? Forces of darkness are just forces of darkness.

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): Madam Temporary Speaker, Sir, my worry is greater than that. I am not dark or a force.

*(Laughter)*

However, Madam Temporary Speaker, my worry and the reason I rise is because I think the Senate Minority Leader or the leader of the few is completely out of order by using unparliamentary language. He is talking about “forces of darkness descending on Makueni County” So, unless he substantiates, he should withdraw those remarks.

Thank you, Madam Temporary Speaker.

*(Applause)*

**The Senate Minority Leader** (Sen. Wetangula): Madam Temporary Speaker, this is plain English which my very distinguished learned junior can understand. Am sure he understands words such as “force”, “darkness” and “descend”. Surely what else does he want me to clarify? A force of darkness descended on Makueni County; it is as simple as that!

Madam Temporary Speaker, the second point I want to---

**The Temporary Speaker** (Sen. Ongoro): Senator, I want you to proceed because in the Speaker’s opinion, the scriptural use of the words “forces of darkness” does not really imply it is any human being or group.

**The Senate Minority Leader** (Sen. Wetangula): Absolutely, Madam Temporary Speaker, Sir.

**The Temporary Speaker** (Sen. Ongoro): It is actually the devil and his forces.

**The Senate Minority Leader** (Sen. Wetangula): Madam Temporary Speaker, the second point, and, perhaps, my last, is in furtherance of my congratulations to Sen. Mutula Kilonzo Junior. I want to thank the distinguished Senator for Siaya County, Sen. Orendo, who, on my instructions, promptly resigned his position in the Committee of Legal Affairs and Human Rights to pave way for Senator Mutula Kilonzo Junior to join the Committee, which he will be nominated to join on the resumption of our duties on 17<sup>th</sup> September, 2013.

*(Applause)*

Madam Temporary Speaker, I want to wish all hon. Senators a good recess; I want to wish all Senators productive activities with their constituents and their county representatives. We hope to see each other either in committees or as and when the recess is over and we are back here.

Thank you, Madam Temporary Speaker. I beg to second.

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

**The Senate Minority Leader** (Sen. Wetangula): The question has to be proposed!

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

**The Temporary Speaker** (Sen. Ongoro): Order, hon. Senators! I have to propose the Question first.

*(Question proposed)*

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

**The Temporary Speaker** (Sen. Ongoro): There is already something out of order?

*(Laughter)*

Okay. Proceed, Sen. Muthama.

**Sen. Muthama:** Madam Temporary Speaker, I stand on this point of order just to try and save time. Looking at the clock, we have about 15 minutes and several hon. Senators want to contribute to this Motion. As a Whip, I have counted and I know the number of hon. Senators present. So, if we could share and allow ourselves to take two minutes each, we will allow every hon. Senator here to contribute.

**The Temporary Speaker** (Sen. Ongoro): Very well. I concur with you. Let us start with Sen. Mugo.

**Sen. Mugo:** Thank you, Madam Temporary Speaker for the opportunity. I rise to support the Motion. I wish all hon. Senators a good recess. I hope they will interact with the people we represent, especially in the counties. I also wish to take this opportunity to

welcome the newest Senator for Makueni County. I wish to congratulate him. We expect that he will bring in new ideas. I hope he will not follow the example of those who do not appreciate good democracy. Democracy is about competition and devolution. There are no dark forces.

Madam Temporary Speaker, also let me take this opportunity to brief hon. Senators about the actions that have been taken by the Parliamentary Service Commission (PSC). When we resume on 17<sup>th</sup> September, 2013, we hope to move to the new temporary Chamber, which will be ready. Unfortunately, there might not be enough room where we can have some coffee, but the Chamber will certainly be better than where we are at the moment. The PSC is trying very hard to make sure that offices are ready and available for use. I congratulate you hon. Senators, for your perseverance. We have really displayed maturity as a Senate and as the Upper House. We will continue doing that, so that the public out there, can see the difference. Well done and see you when we resume.

Madam Temporary Speaker, I beg to support.

**Sen. Murkomen:** Thank you, Madam Temporary Speaker. First, I would like to reiterate the statements that have been made here by the Senate Majority and Minority leaders, as well as the other Senators. The period we have been here together has been very fruitful. We have had a wonderful opportunity to ventilate on many issues, the best of which is that we passed the County Allocation of Revenue Bill. I think the future will be brighter and I am very optimistic that, upon our return, we would have found clear interpretation of the issues that are still clouding our mandate in this House so that then we can proceed and continue performing our functions.

Madam Temporary Speaker, when we resume, I look forward to a number of hon. Senators coming up with Bills. Already, some Bills are in the pipeline like the ones by Sen. Sang and Sen.(Dr.) Khalwale respectively, among others. When we come back next time, we will be able to do a better job. I believe that this break is necessary for us to interact with our constituents and also attend to other office related matters that we usually do not have time to attend to because we are engaged here.

As one of the new legislators who have never been in Parliament before, I note that there is a lot of misconception out there that we, hon. Members, just sit for a few hours and we have nothing to do. But we have enormous work. I believe this break is necessary for us to attend to other issues that are within the constituencies and offices which we represent.

Madam Temporary Speaker, I want to welcome my friend and brother, Sen. Mutula Kilonzo Junior, to this House. Initially I was looking forward to having the first elected female Senator to this House, but it never happened. But the Lord was more gracious that Sen. Mutula Kilonzo Junior got a chance to come to this House. Now that it is on record that there is a young Senator here, for us, younger Senators, we are very proud to have Sen. Mutula Kilonzo Junior in this House. He is now part and parcel of the Committee on Legal Affairs and Human Rights. I would like to tell him that he will be facing baptism with fire. We want to see you in court on Tuesday when we will get directions about our case that is going on. This is the best way in which we can contribute in reforming the Senate and making it stronger. If need be, if we will need any

amendments, whether constitutional or legal, we will look upon the new Senator's legal mind to contribute. This House is wonderful because we are bi-partisan. I believe we will deal with these issues.

**The Temporary Speaker** (Sen. Ongoro): Sen. Murkomen, the two minutes are over!

**Sen. Murkomen:** Thank you, Madam Temporary Speaker. I beg to support.

**The Temporary Speaker** (Sen. Ongoro): Sen. Kagwe!

**Sen. Kagwe:** Madam Temporary Speaker, first, I want to join my colleagues in congratulating Sen. Mutula Kilonzo Junior. Sen. Mutula Kilonzo Junior, it is great to have you here. Never mind the process that brought you here. You are here now.

*(Applause and Laughter)*

Madam Temporary Speaker, having said that, I want to congratulate my colleagues because we have shown maturity in the way we have conducted business here. I also want to congratulate them for remaining high-minded in spite of provocation. As we proceed on recess, let us go with a few missions that are nationalistic in nature. Let us, for instance, go with the mission of informally engaging our colleagues in the Lower House, with a view of trying to unify and build a nation, and not just protecting turfs.

Let us send, for example, Sen. Wetangula and Sen. (Prof.) Kindiki to go and engage with hon. Duale and hon. Muturi in the Lower House so that we can have a better working relationship. Let us also, as Senators, go out there and preach peace in our counties. There is a lot of infighting between county executives and county legislators. Let us go there and be the peace makers. Let us educate our nation that the challenges of building a nation are many and that we are going to be in a process of walking four steps forward and, probably, two backwards but we will still be two ahead. So, let us be patient. With the state of affairs that we are in, we are moving into an area that is an, unknown territory, charting waters that we have not been in, in terms of a new Constitution. Let us not be people of just assigning blame here and there, assigning blame to the opposition, and assigning blame to the President or the Government. Let us be people who, can together united, realise that each one of us is smaller than the nation put together. If we do so, there is no doubt that we will forge ahead.

Madam Temporary Speaker, I also want to take this opportunity to thank the executive, particularly, President Uhuru Kenyatta and Deputy President William Ruto for the effort that they continue to make to unify our nation in spite of the many challenges that are ahead of us. We want to tell them, just like us, to have the patience of Solomon.

I wish my colleagues a good holiday.

**Sen. Muthama:** Asante sana, Bi Spika wa Muda, kwa kunipa nafasi hii.

Ningependa kuchukua fursa hii kumkaribisha Sen. Kilonzo Junior katika Bunge la Seneti. Ninamkaribisha ili tupambane na dunia pamoja. Mimi nina furaha sana kuona wenzangu wote tumeweka heshima ya Seneti mbele. Sisi hatubishani kama wale wa Bunge la Kitaifa. Wakenya wanafurahishwa sana na kazi yetu.

Jambo ambalo linatoa machozi ndani ya moyo wangu ni kwamba hata kama tunaenda likizo hakuna miradi kama ya ujenzi wa hospitali, barabara, shule na kadhalika

ambayo inasimamiwa na Maseneta katika kaunti zetu. Sisi tunakwenda tu kuwasalimia wananchi wetu. Kweli tumefanya kazi nzuri. Lakini ni nini tunawapelekea watu wetu? Jambo hili linanikera sana. Haifa kujisifu tumefanya hili na lile, na huku tunakwenda nyumbani mikono mitupu. Hii ni aibu kubwa kwa watu wetu. Ukweli ni kwamba tunarudi nyumbani bila pesa hata za kufungua ofisi ya kaunti.

Nimesema kwamba utaenda kulia kwa sababu hautakuwa na pesa za kujenga shule au zahanati. Kwa hivyo, likizo yetu itakuwa ni kilio na kusaga meno.

Kaunti zetu hazina ofisi. Hatuna pesa za kuanzisha ofisi mashinani. Ni jambo la huzuni sana kuona tulifanyia kampeini kutoka kwa nyumba zetu na tutakwenda kufanyia kazi huko tena tutakapokuwa katika likizo. Hii ni aibu kubwa na ni jambo ambalo tunataka liwe na suluhisho kwa haraka.

Hata kama tunasema tumefanya mengi, mimi ninaona tumefanya machache ambayo ni faida kwa wananchi wetu.

Bi Spika wa Muda, kwa hayo machache, ninaunga mkono Hoja hii.

**The Temporary Speaker** (Sen. Ongoro): Sen. Elachi, Majority Whip.

**Sen. Elachi:** Madam Temporary Speaker, I want to join my colleagues in congratulating the new Senator for Makueni and welcoming him to this House. This is a House where we do business in a bipartisan manner. We agree that devolution is a new area. I believe that as we go back, we should pat ourselves on the back because we have done a good job. Well done!

I know that the Government has given us more than 38 per cent of what was agreed upon in the Constitution. Therefore, we have still surpassed our projections. We knew very well that the first budget would have a lot of challenges. However, we, as the Senate, will have the best budget in 2014. By then, we will have operated within the process. Therefore, we need to thank the President for that.

I urge the Senate to remain the Upper House. We were recently in Namibia and Ghanaians congratulated the Kenyan Senate for being the one that brings the country together. We have been working together. They have seen that we can develop this country and be an example to other countries that may want to adopt devolution in Africa.

As we go on recess, I know that we have a lot of work in the Committees. However, I pray that Senators will go to their counties to see what is happening there and to assist the whole system, especially the county assemblies in understanding the next move with regard to coming up with legislation to deal with the systems that have been devolved.

**Sen. Karaba:** Thank you, Madam Temporary Speaker, for giving me this chance. I want to thank our newly elected Senator from Makueni County. Welcome to this august House and feel free like any other Senator. It is important that we saw how the Independent Electoral and Boundaries Commission (IEBC) conducted those by-elections contrary to the criticism that had been leveled against them previously.

The IEBC proved that it can conduct proper elections. It also proved that it conducted the last general election well. Therefore, the IEBC did what it was supposed to do and we appreciate the good work. It is important to realise that there are people who always say that they would have achieved something even when they know that they

would not have achieved anything. They say that they scored a goal when they did not score and blame the referee. Let us not blame the IEBC. We know that it is a credible body. They did good work just as they did last time.

As we go on recess, let us preach peace. That will be my work. I salute you all.

**Sen. G.G. Kariuki:** Madam Temporary Speaker, since we do not have enough time, I will just say a few words regarding this Motion. First of all, we must congratulate ourselves for being here for the last few months. We have attempted to execute our mandate as provided for in the Constitution. I do not think anybody will complain that we did not do our best. We have exhibited maturity in this House. Considering that we are new; given time, I believe that we will turn out to be a responsible House.

The other thing is that we must realise that Rome was not built in a day. There will be many hurdles as we move on. As we continue being here, we should expect many more problems and challenges that we must deal with.

As I end, one hon. Senator said that we may not have anything much to tell people when we go back home. However, I think we are going back with Kshs210 billion to our counties. That is something to be proud of. Some counties, without this money, would collapse. Therefore, we have done our best.

### ADJOURNMENT

**The Temporary Speaker** (Sen. Ongoro): Hon. Senators, I am sorry but we must come to the end of that contribution. It is now 6.30 p.m. The Senate, therefore, stands adjourned until Tuesday, 17<sup>th</sup> September, 2013, at 2.30 p.m.

The Senate rose at 6.30 p.m.