

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Thursday, 22nd October, 2015

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

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

PRAYERS

The Deputy Speaker (Sen. Kembi-Gitura): Hon. Senators, who is presenting the Paper on the National Authority for Campaign against Alcohol and Drug Abuse (NACADA) to the House? Is it the Committee on Health? Sen. Kittony, do you have any Paper to lay on the Table? There appears to be nobody from the Committee on National Security and Foreign Relations.

Let us move on to the next Order.

COMMUNICATIONS FROM THE CHAIR

VISITING DELEGATION OF MEMBERS AND STAFF FROM KISII COUNTY ASSEMBLY BROADCASTING COMMITTEE

Hon. Senators, this afternoon, I would like to acknowledge the presence in the Speaker's Gallery of visiting Members and staff from Kisii County Assembly Broadcasting Committee.

The Members and staff are here on a two day benchmarking visit to the Joint Committee on Parliamentary Broadcasting and Library.

I request each member of the delegation to stand when called out so that they may be acknowledged in the Senate tradition. They are:-

Hon. Alfred Onguti Chairperson

Hon. Jane Kinanga Vice Chair

Hon. Philip Motonu Member

I hope that they have a fruitful programme. On my own behalf and that of the Senate, I welcome them to the Senate and wish them well for the remainder of their stay.

(Applause)

COMMITTAL OF THE PETITION TO THE SENATE BY THE JUSTICE
AND LEGAL AFFAIRS COMMITTEE OF VIHIGA COUNTY ASSEMBLY

Hon. Senators, you may recall that yesterday, the Senator for Vihiga County, Sen. George Khaniri presented a Petition to the Senate on behalf of the Justice and Legal Affairs Committee of the Vihiga County Assembly. The Petition is on the alleged violation by the National Registration Bureau of the right of residents of Vihiga County to registration and issuance of national identity cards.

You may recall further that pursuant to Standing Order No.227(1), I directed that the petition be committed to the relevant Standing Committee, that is the Standing Committee on National Security and Foreign Relations.

Upon conclusion of my direction, you will recall that the Chairperson of the Standing Committee on Legal Affairs and Human Rights sought to have his Committee work together with the Standing Committee on National Security and Foreign Relations in considering the Petition, citing the reason that the Petition was from the counterpart Committee of the Vihiga County Assembly.

Upon further perusal of the Petition, I have established that, indeed, there are a number of areas in it that touch on the mandate of the Standing Committee on Legal Affairs and Human Rights although on the overall, the Petition still falls under the Standing Committee on National Security and Foreign Relations.

Consequently, I now further direct that, in considering the Petition, the Standing Committee on National Security and Foreign Relations works jointly with the Standing Committee on Legal Affairs and Human Rights. However, in terms of submission of a report to the Senate in accordance with Standing Order No.227(1), the Standing Committee on National Security and Foreign Relations will be required to submit the report.

I thank you.

Sen. Okong'o: Thank you, Mr. Deputy Speaker, Sir, for welcoming the delegation from the County Assembly of Nyamira. Let me also reiterate the contents of what you have said. I hope their coming---

The Deputy Speaker (Sen. Kembi-Gitura): Order! Have I welcomed staff and Members from Nyamira?

Sen. Okong'o: Kisii County delegation, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. Kembi-Gitura): But I thought you said Nyamira.

Sen. Okong'o: Yes, it was a slip of the tongue.

The Deputy Speaker (Sen. Kembi-Gitura): Okay, go on.

Sen. Okong'o: Mr. Deputy Speaker, Sir, on behalf of the Kisii delegation and the Gusii Community in general, I hope their meeting will be fruitful and they will learn a lot which they can take back to their county assembly.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Kittony, are you on a point of order?

Sen. Kittony: Mr. Deputy Speaker, Sir, maybe I am out of order, but I want to join you in welcoming the delegation from Kisii County Assembly. When we visited

Kisii as the Committee on Health, we saw a lot of development. I would like to commend and thank them for the work they are doing in Kisii County.

The Deputy Speaker (Sen. Kembi-Gitura): You are definitely not out of order. You are quite in order.

Sen. Billow: Mr. Deputy Speaker, Sir, I also want to add my voice to your communication to welcome the Members from Kisii County Assembly. I am particularly delighted to see the Broadcasting Committee. Many of the county assemblies are not heard in our counties because they are not on radio or television. Communication has become a major problem. So, it is encouraging to see a committee that has come out to see how broadcasting of this House is done. I want to encourage them to work on a policy to communicate with the residents of their county because it is very important. Otherwise, Kenyans will not appreciate what the county assemblies are doing in providing oversight role. Therefore, it is really comforting to see them here and encourage them to continue that way.

The Deputy Speaker (Sen. Kembi-Gitura): Thank you, Sen. Billow.
Next Order!

STATEMENTS

The Deputy Speaker (Sen. Kembi-Gitura): Hon. Senators, there are a number of statements as listed on the Order Paper. Are there any Senators asking for statements so that we can start with them?

DETENTION OF MR. DON BOSCO OOGA GICHANA IN ARUSHA, TANZANIA

Sen. Okong'o: Mr. Deputy Speaker, Sir, yesterday, during Statements Hour, you directed that we get a position on a statement I had requested from the Committee on National Security and Foreign Relations in regard to a Kenyan who is in detention in Tanzania. You directed that today, the Committee gives direction if they are in a position to answer the statement by Tuesday, next week, as they had requested.

The Deputy Speaker (Sen. Kembi-Gitura): What do you have to say, Sen. Dullo?

Sen. Adan: Mr. Deputy Speaker, Sir, I wish to confirm to this House that I do not have the statement with me right now. I tried reaching the Cabinet Secretary and the Principal Secretary yesterday. Apparently I am told the Cabinet Secretary will be back in the country this evening or next week. I will try my best to see to it that I have the statement next week, preferably, on Thursday if Sen. Okong'o will agree with me.

Sen. Okong'o: Mr. Deputy Speaker, Sir, it seems the Vice Chairperson was not in yesterday. One of the Committee Members who was present yesterday committed that they would issue this statement on Tuesday, next week. It seems that the Vice Chairperson is shifting goal posts. This statement has been lying with the committee for over one month. It affects a Kenyan who is languishing in detention in Tanzania. For the Vice Chairperson to tell this House that the Principal Secretary is not in the country, they are not taking this matter seriously. I need more commitment than that.

Sen. Omondi: On a point of order, Mr. Deputy Speaker, Sir. I want to join the Senator from Nyamira County over the same statement. The issue that touches on humanity should not be given a long duration to give a response. I am sure when the Cabinet Secretary is out of the country, his office is still functioning. Therefore, this matter should be taken seriously and urgently.

Sen. Sang: Mr. Deputy Speaker, Sir, the Vice Chairperson of this Committee and a number of us in this House, have requested statements from this Committee, but they take time to respond. When we ask the reason why they delay in responding to these issues, we are told it is because the Cabinet Secretary is out of the country. His docket is Interior and Coordination of National Government. What is an interior Cabinet Secretary doing out of the country most of the time? We should be able to get a better explanation. We are not asking for questions from the Cabinet Secretary for Foreign Affairs, it is the Ministry of Interior and Coordination of National Government. You do not do that out of the country.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Sang, that is not entirely correct, that the assumption that since it is the Cabinet Secretary for Interior and Coordination of National Government, he has to be within the country. I know that, as well as everybody else. Your interpretation about the Cabinet Secretary for Interior and Coordination of National Government is too narrow. It is not possibly acceptable.

Having said that, Sen. Adan, yesterday, like Sen. Okong'o has said, I gave direction on that issue because it has taken too long. It cannot be sufficient reason that the Cabinet Secretary is out of the country or is not available. The position of the Cabinet Secretary is institutional. I am sure he does not make the statements himself; they are done by officers in the Ministry or in the office. You were not here yesterday when this issue was canvassed with some other issues to do with your Committee. The feeling of the Members is that the same reason is being given too often and that the Members do not feel satisfied with it.

If I may tell you because you were not here yesterday, Members canvassed at some length about the provisions of Article 153 and Article 125 of the Constitution. It is not good for a Chairperson of a Committee in the Senate to appear to be frustrated by not getting answers when they ought to get answers. I understand where Sen. Okong'o is coming from. I hear you as the Vice Chair of the Committee, but I think much more commitment needs to be shown in this regard. Hon. Senators do not ask for these statements for their own sake. It is because there are issues of concern and they need to get satisfaction that something is being done about them. I had said that you must indicate to us today when the answer will be given. A Member of your Committee had indicated that he will be able to give the answer on Tuesday, next week. However, we thought that it was good that you stood in the House today and gave us an indication yourself. I do not think that Thursday is acceptable. You must be able to give the response to us by Tuesday, next week. At least, you may tell us that you have not been able to get it. Tell us whether or not you propose to proceed according to the other provisions of the Constitution. I hope that is clear.

Sen. Billow: On a point of order, Mr. Deputy Speaker, Sir. On the same matter, we need guidance as Senators, especially Chairpersons of Committees, from the Chair on

this issue. Article 125 of the Constitution provides for summons. What should trigger the issue of formal summons to the Cabinet Secretaries (CSs)? We get frustrated writing three or more invitations and nobody bothers with us. Unless we stop using invitations very liberally, this House will not have impact. Our decisions will not have effect.

Mr. Deputy Speaker, Sir, we have challenges and I want the Chair to give us directions. We have to be allowed to liberally use Article 125 of the Constitution on issuance of summons because any other alternative will be a waste of time.

Sen. Kagwe: Mr. Deputy Speaker, Sir, I sympathise with Sen. Dullo because as a Chairman of a Committee myself, I appreciate the difficulties that the Chairpersons are having with CSs. Most CSs do not take seriously the questions that are sent to them by Chairpersons of committees. They try and use delaying tactics. Over and above that, there is genuine absence of the CSs.

There has to be some change in our Standing Orders. For example, if a CS is unavailable on two occasions, ask them to present themselves to the House, as we have done in various instances. That way, they can respond to questions from all Members. There is a limit to how much we are willing to keep on pushing and harassing Chairpersons of Committees, as if, they are the CSs themselves. Therefore, the House should think of some sections of our Standing Orders so that we can organize ourselves in a manner that we do not just summon the CSs for the sake of the Committee, but summon them to present themselves to the House in a *Kamukunji*, perhaps, to address various cases being asked for.

The Deputy Speaker (Sen. Kembi-Gitura): In what context did you use the word, ‘harassing’?

Sen. Kagwe: Mr. Deputy Speaker, Sir, “harassing the Chairpersons of Committees” refers to that situation when a Committee Chairperson has been asked a question here and is being taken to task on this side while at the same time he is asking for answers from the CSs, but getting none. The only definition in an English word that you could describe that status of the Chairperson is ‘harassment’. Now, who is harassing who, is a matter of debate and conjecture. However, we know that the Chairpersons are harassed per se.

The Deputy Speaker (Sen. Kembi-Gitura): I can see some requests, but I do not want to protract this issue because we canvassed it at great length yesterday afternoon. However, I do not agree with Sen. Kagwe that Sen. Okong’o is harassing Sen. Dullo.

Sen. Okong’o or any other Senator seeking a statement does not look behind the chairperson to know why it is not coming. The correct position is that, in my view and in answering to what Sen. Billow has asked, Article 125 of the Constitution talks about a committee. So, you can express your frustration in the House like Sen. Dullo is doing, or the Committee itself, in its own session, must decide whether or not the moment has arisen for it to use Article 125 of the Constitution.

That is a decision only the Committee can make in their session, and not in the House. Thereafter, it can trigger the provisions of the Article 125 of the Constitution which are administrative because you might require the services of the Clerk of the Senate, for you to issue summons. That is an administrative matter. I cannot sit here and

direct you to issue summons. That is a decision that must come from the Committee itself. That settles the issue What is it, Sen. Dullo?

Sen. Adan: Mr. Deputy Speaker, Sir, in addition to the discussion that is on the Floor of the House, it is important for the Senate to reconsider some of the rulings that we have made in this House in the past. Yesterday, when I left this House, I went to look for the CS for Interior and Coordination of National Government all the way to his office. That is not my responsibility. I go out of my way and run around to get a statement, come to the House and then I am harassed or frustrated because people think that the Committee is not doing its work.

The Deputy Speaker (Sen. Kembi-Gitura): Order, Sen. Dullo! You cannot say that it is not your responsibility. You are the Chairperson of the Committee. A question or a statement has been sought. Therefore, the people who have sought it expect an answer. What you do to get it is not the business of the House. You must give a statement when it is sought.

You can explain the way you have done now, but you cannot shift the responsibility to someone else. The Standing Orders and the Constitution give you the powers to deal with such situations. That is all I can say. I want us to close that issue. Sen. Dullo, will you be able to give the answer or an indication on a way forward, on Tuesday?

Sen. Adan: Mr. Deputy Speaker, Sir, I can only give a statement on Tuesday, next week, if the CS will be back. There is a ruling in this House that they can only accept a statement that has been signed by the CS. We have to reconsider that position because if the CS is not in the country, then the Principal Secretary (PS) or an alternate, can sign the statement. Those are the things we need to reconsider as the Senate.

The Deputy Speaker (Sen. Kembi-Gitura): You are quoting us out of context. The ruling I made about a week ago at the behest of Sen. (Dr.) Khalwale, was that there is nothing against the law or the regulations, for a statement to be signed for or on behalf of a CS. There is nothing that says that it must bear the signature of the CSs themselves. Incidentally, in the Presidential system that we are using, it is actually the statement from you, as the Chairperson of the Committee, not anybody else.

Unless somebody wants to look behind the statement, it is the statement of the chairperson of the committee that matters. That is the procedure and position as I understand it in the current constitutional dispensation that we have. So, Tuesday, next week, should be okay with you.

Sen. Adan: Mr. Deputy Speaker, Sir, Tuesday, next week, is okay with me.

ONGOING PROPERTY DEVELOPMENT ON LORESHO RIDGE

The Deputy Speaker (Sen. Kembi-Gitura): Thank you, Sen. Dullo. There are some statements that need to be issued. The first one is 3(a) if from the Sen. of Murang'a. However, I do not see the person who is supposed to issue it. It will be stood over to Tuesday, next week. Sen. Khaniri, that is for you to issue.

Sen. Khaniri: Mr. Deputy Speaker, Sir, it can be put on Tuesday. However, I must report to the House that we do not have the statement yet. We wrote to the CS on the 29th of August, did a reminder two weeks ago, and up to now we have not received any communication from the CS. We have now invited the CS to come to the Committee. So, if it is put any time next week, we will be able to report progress on the same.

The Deputy Speaker (Sen. Kembi-Gitura): So, let us make it on Tuesday, next week.

Sen. Khaniri: Most obliged, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. Kembi-Gitura): The Chairperson of the Standing Committee on National Security and Foreign Relations. A statement sought by Sen. Ndiema.

KILLING OF MR. JOSHUA MWANGI, A FIRST YEAR
STUDENT AT MASENO UNIVERSITY

Sen. Adan: Mr. Deputy Speaker, Sir, I do not have this statement with me, but we had discussed with Sen. Ndiema to give me until Wednesday, next week, to be able to issue.

The Deputy Speaker (Sen. Kembi-Gitura): The Chairperson of Sessional Committee on Devolved Government to issue a statement for Sen. Dan Mwanzo.

RECENT FLOODS IN NAIROBI AND
ACROSS THE COUNTY

Sen. Murkomen: Mr. Deputy Speaker, Sir, I am ready to issue the statement, but I cannot see Sen. Dan Mwanzo. It is a very important statement because it relates to floods. I will wait for your direction, but I am ready to issue it.

In the alternative, since Sen. Mwanzo is absent, I have another statement that has been pending. Could I go ahead and issue it?

The Deputy Speaker (Sen. Kembi-Gitura): Let us deal with the first statement, please. Let us wait a little bit until Sen. Mwanzo is here.

There is a statement from the Standing Committee on Roads and Transport for Sen. Ndiema.

STATUS OF ROAD CONSTRUCTION PROJECTS
IN URBAN AREAS BY KURA

Sen. Kajwang: Mr. Deputy Speaker, Sir, the Committee has the response to the statement. However, it has very detailed appendices that run up to 40 pages. Since this statement just got ready this afternoon, I have discussed with Sen. Ndiema. I request that we first furnish him with copies of the appendices, and then we can respond to this on Wednesday, next week. I seek your indulgence.

The Deputy Speaker (Sen. Kembi-Gitura): That statement is not just for Trans-Nzoia, but for the whole country. So, make sure it goes to the dispatch or Clerk's office

so that every member can get a copy. I noticed that it is talking about status of roads in all urban areas in Kenya. Please, make it available on Tuesday. Sen. Ndiema, what had you agreed on?

Sen. Ndiema: Mr. Deputy Speaker, Sir, we had discussed that Wednesday, next week, would be appropriate.

The Deputy Speaker (Sen. Kembi-Gitura): So be it. That seems to be the end of all statements. Sen. Khaniri, what is your point of order?

CIRCUMSTANCES SURROUNDING THE DEATH OF
MR. ALEX MADAGA

Sen. Khaniri: On a point of order, Mr. Deputy Speaker, Sir. Last week I sought a statement from the Standing Committee on Health. That is the time that the chairperson had just arrived from a long absence. The statement was in regard to the circumstances surrounding the death of Mr. Alex Madaga, the young man who was kept in an ambulance for 18 hours before he was admitted. He eventually passed on.

The Chair ruled that the Chairperson of the Committee should give some provisional statement today, Thursday 22nd October, 2015. We are burying this young man on Saturday. The family, the whole community and I believe the whole country, is very anxious to know exactly what happened to Alex Madaga. He comes from my county. The Chairperson of the Committee is not here, but I can see the Vice Chairperson. However, she is not rising up to give the statement.

Mr. Deputy Speaker, Sir, I seek your guidance on this matter.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Kittony, what is the position of the Committee on this matter?

Sen. Kittony: Mr. Deputy Speaker, Sir, we had a meeting this morning, but the issue did not come up. Therefore, I do not have a statement or anything more to say on this issue.

The Deputy Speaker (Sen. Kembi-Gitura): At least, you are honest that the issue did not come up in your Committee meeting. All in all, how do we proceed? The Chairperson is not here. You are the Vice Chairperson, but you do not have the statement.

Sen. Kittony: Mr. Deputy Speaker, Sir, we will bring the statement on Wednesday, next week.

(Sen. Khaniri consulted with other Senators)

The Deputy Speaker (Sen. Kembi-Gitura): I can see that Sen. Khaniri has lost interest in that matter. He is now concentrating on other issues.

Sen. Khaniri: Mr. Deputy Speaker, Sir, what has she said?

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Kittony has proposed to give the statement on Wednesday, next week. Is that okay with you?

Sen. Khaniri: Mr. Deputy Speaker, Sir, I was consulting my two colleagues; Sen. (Dr.) Khalwale and Sen. Wako on the same matter. I did not hear the proposal. However, it was our expectation and hope that we would get some provisional statement before we

bury the young man on Saturday. However, the Speaker had asked the Committee to issue a comprehensive statement because there are so many Members who rode on that statement and sought for very many other issues. However, I expected some pronouncement from the Government on the Floor of this House today.

Sen. (Dr.) Khalwale: On a point of order, Mr. Deputy Speaker, Sir. Whereas as leaders from that region we might allow the Chair to give us an answer later, could she convey the condolences of the Government to the family because the young man died due to the rot in the Ministry of Health?

If that death had occurred in certain corners in this country, condolences would have been overflowing and the Government would have undertaken to underwrite the funeral expenses. I would like it to be known that just like all taxpayers, we deserve an apology for the death of this young man. If the money is there, they should also underwrite the expenses the same way they do in other disasters in this country.

Sen. Murkomen: Mr. Deputy Speaker, Sir, is it in order for Sen. (Dr.) Khalwale to tribalize a very serious national disaster in the death of a young man who died inside an ambulance? The fact that the person is a Luhya and died in Nairobi, is it right for this House to reduce such a serious matter which could have happened to anybody even from the Njemps Community or any other small community in country? Is it right for a Senator, just because he is from western region to speak to that issue from the perspective of his tribe instead of seeking answers as a serious matter that affects this nation?

Sen. Omondi: On a point of order, Mr. Deputy Speaker, Sir. Is Sen. Murkomen in order to classify disaster? What means does he use to measure and classify incidents as disasters? Everybody's life is very precious. Is he, therefore, in order to say that the person who lost his life was not important in the development of this country?

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Murkomen did not say that.

Please, proceed, Sen. Billow.

Sen. Billow: Mr. Deputy Speaker, Sir, I thought that when such things happen as a matter of procedure, the Ministry responsible would ideally, even without prompting by the House, have a statement ready. When something of professional negligence to that scale happens, normally they would have a statement ready. Therefore, I am surprised that a week after the incident, a statement from the Ministry of Health is not forthcoming unless they are trivializing the matter because normally they would have a statement by now on what actions they intend to take.

Sen. (Prof.) Anyang'-Nyong'o: Mr. Deputy Speaker, Sir, I would like to add my voice to Sen. Billow's proposal that under such circumstances, in normal Government, there would have been an immediate committee established to look into what could have happened in that ambulance. Ambulances are meant to save lives, but not to detain people until death. This is a very important matter for the Ministry of Health. There should have been an inquiry established immediately both by the Ministry and regulatory authorities that manage health delivery systems in this country. There is a big lapse in Government somewhere over this particular issue.

The Deputy Speaker (Sen. Kembi-Gitura): Hon. Senators, the issue is extremely important.

What is it, Sen. Kittony?

Sen. Kittony: Mr. Deputy Speaker, Sir, allow me to contribute to this issue because I cannot be forced to give my personal condolences when I do not even know the person. However, I sympathize with the whole situation. However, condolences can only be received from the Committee where I am the Vice Chairperson. As I said, the report will be issued on Wednesday, next week. The Chairperson did not tell us that he had committed himself to bring a report this week. I also do not think that the Committee has money that can be used to write off the expenses.

The Deputy Speaker (Sen. Kembi-Gitura): This is an extremely important issue that has been raised by Sen. Khaniri and it has been raised here three times, but no answer has been given. If I recall, one of the reasons Sen. Khaniri wanted a provisional answer is because the Cabinet Secretary had indicated there is a committee set up to inquire into the issue and that an answer would be given within a short time.

Sitting here, I sympathize with the situation, but there is nothing more that I can do if there is no statement, except to look at what Sen. Murkomen has alluded to. Sen. (Dr.) Khalwale is out of order because while considering the issue as the Senate, it is not an issue that needs to be tribalised or put in a certain context. It is an issue we take seriously as a House. I, as the Senator for Muranga County and the Deputy Speaker, I take it very seriously. We all need a statement on this issue because just like Sen. Murkomen said, it could have happened to anyone and it is so unfortunate. That is why we are keen to know what exactly transpired and what your Committee is doing to assure the House and the nation that it is not something that we expect to come up again. Therefore, it is important that you deal with it as soon as possible.

Sen. (Dr.) Khalwale, the reason I will not allow you to make another point of order is because we have gone through this issue for too long. If we continue with that, then it appears that no statement will be forthcoming this afternoon.

Sen. (Dr.) Khalwale: On a point of order, Mr. Deputy Speaker, Sir. I would not want to challenge you. However, because you are riding on the remarks by the Senator for Elgeyo-Marakwet---

The Deputy Speaker (Sen. Kembi-Gitura): The reason I am sitting here is because I have to listen to what everybody says and I heard what you said.

Sen. (Dr.) Khalwale: Yes, Mr. Deputy Speaker, Sir. Indeed, by right every Senator in this House is free to ask a question either concerning his region, county, community or the country at large. The Senator raised this matter because the young man comes from Vihiga, and I happen to come from the region and community.

The point I was making which is very important – which the Senator was trying to cleverly burry – was that the Government responds selectively depending on where disaster has fallen. It is not too long ago, Sen. Murkomen knows that when teachers lost their lives in Mandera, the Government never responded to those who principally came from our counties. It never gave any apology or assistance. When the same thing happened elsewhere, none other than the President himself gave an apology. You cannot--

(Sen. (Dr.) Khalwale's microphone went off)

The Deputy Speaker (Sen. Kembi-Gitura): Order, Sen. (Dr.) Khalwale. The fact that Sen. Khaniri sought that statement because the young man who, unfortunately, lost his life is from his region does not mean, at least not in my understanding of the issue, that another Senator would not have asked the same question although the person may not be from the county. I will not allow such an important issue to appear to be trivialised. That is why I agree with Sen. Khaniri that, that is an important statement that has to be issued. However, it will not be issued because of the sentiments that you are raising concerning the issue. We must be very clear about that. That is the point at which I thought you are out of order on that specific issue.

(Sen. (Dr.) Khalwale spoke off record)

Order! Sen. (Dr.) Khalwale.

Sen. Khaniri, unfortunately, it appears you will be given that statement next week.

Sen. Kittony, you should prevail upon your Committee to give us a statement by Tuesday, next week. Is that okay?

Sen. Kittony: I am most obliged, Mr. Deputy Speaker, Sir. Our Committee treats all Kenyans equally. We care and it is their right---

The Deputy Speaker (Sen. Kembi-Gitura): Order, Sen. Kittony! We have finished that issue. I ordered that you issue a statement on Tuesday, next week.

(Interruption of Statements)

Hon. Senators, I have a short communication to make.

COMMUNICATION FROM THE CHAIR

VISITING DELEGATIONS FROM NYAMIRA, TURKANA, WEST POKOT AND VIHIGA COUNTY ASSEMBLIES

Hon. Senators, I am pleased to acknowledge and welcome to the Senate this afternoon visiting delegations from Nyamira, Turkana, West Pokot and Vihiga County Assemblies who are seated in the Speaker's Gallery. The Delegations were attending the Senate Committee Meeting on Delegated Legislation chaired by Sen. Sang. I request that when your name is called – I notice that most of them are not here – you should stand up so that you may be acknowledged in the usual Senate tradition.

From Nyamira County, we have:-

- (1) Hon. Joash Nyamoko, the Speaker;
- (2) Hon. Thaddues Nyaboro, Chairperson;
- (3) Hon. Rebecca Matara, Member;
- (4) Hon. James Matinga, Member;
- (5) Hon. Benson Sironga, Member;
- (6) Hon. Samuel Nyanchama, Member;

- (7) Hon. Robinson Mocheche, Member;
- (8) Hon. Julius Nyangana, Member;
- (9) Hon. Wilkista Onsando, Member;
- (10) Hon. Naomi Ondiek, Member;
- (11) Hon. William Atati, Member;
- (12) Hon. Jane Nyamache, Member;
- (13) Hon. Richard Mokoya, Member;
- (14) Hon. Lucy Osusu, Member;
- (15) Hon. Fred Menge, Member;
- (16) Truphena Nyakeri, Secretariat; and,
- (17) Janet Onchagwa, Secretariat.

From West Pokot County, we have:-

- (1) Hon. Losilan Johnson, Deputy Speaker;
- (2) Hon. Takaramoi Wilson, Chairperson;
- (3) Hon. Chumakemer Simon, Vice Chairperson;
- (4) Hon. Joshua Chumel, Member;
- (5) Hon. Thomas Tuliakin, Member;
- (6) Hon. Nancy Juma, Member;
- (7) Hon. Eliza Sotam, Member;
- (8) Hon. Milka Cheprum, Member;
- (9) Hon. Samuel Limale, Member;
- (10) Hon. Samuel Ngolesia, Member;
- (11) Hon. Josephine Cheprum, Member; and,
- (12) Mr. Leonard Kiptoo, Secretariat.

From Vihiga County, we have:-

- (1) Hon. Reuben Ombima, Chairperson;
- (2) Hon. Nathan Kamidi, Vice Chairperson;
- (3) Hon. Rhoda Omufumu, Member;
- (4) Hon. Noah Mmbwanga, Member;
- (5) Hon. Jackson Musoga, Member;
- (6) Hon. Venna Kaisha, Member;
- (7) Hon. Nickson Butiya, Member;
- (8) Hon. Jennifer Ekhuya, Member;
- (9) Hon. Joshua Olao, Member;
- (10) Mr. Nahashon Kusina, Deputy Speaker
- (11) Mr. James Mukabi, Principal Legal Counsel; and,
- (12) Mr. Victor Chadiva, Committee Clerk.

From Turkana County, we have:-

- (1) Hon. Nicholas Ewoi, Chairperson;
- (2) Hon. Margeret Loduk, Vice Chairperson;
- (3) Hon. Elizabeth Korikel, Member;
- (4) Hon. Bethwel Kobongin, Member;
- (5) Hon. Emmanuel Lomorkai, Member;

- (6) Hon. Leah Nachere, Member;
- (7) Hon. James Abei, Member;
- (8) Hon. Jacob Nakuwa, Member;
- (9) Hon. Joseph Tioko, Member;
- (10) Kelvin Akeru, Secretariat;
- (11) Lokwee Jacob, Secretariat;
- (12) Kuya James, Secretariat;
- (13) Meldina Ekomwa, Secretariat;
- (14) Mr. Patrick Losuru, Secretariat; and,
- (15) Mr. Francis Ekunoit, Secretariat.

(Applause)

I take this opportunity, on behalf of the Senate and on my own behalf, to wish the delegations a happy and fruitful visit to the Senate. I hope that the benchmarking that we are doing between our county assemblies and the Senate is bearing fruits for the sake and betterment of devolution.

I thank you.

Sen. Sang: Mr. Deputy Speaker, Sir, I join you in welcoming to the Senate members from our counterpart committees from counties. I also thank you because you have always been there to grace the occasion every other time we have had an opportunity to invite our counterpart committees from counties. I want to mention to the House that we have met our counterpart committees from over 35 counties. This is one of the responsibilities of the Senate; to mentor our counterpart committees in counties.

I thank the team that is here today. I invite other committees from other counties that have not had an opportunity to interact with.

Sen. Karaba: Mr. Deputy Speaker, Sir, I also take this opportunity to welcome the delegations from Turkana, Vihiga, West Pokot and Nyamira counties. I am sure that we did a lot of induction to them. I can assure you that they are now qualified to do what they have learnt from the Senate Committee on Delegated Legislation. I thank you.

Sen. Khaniri: Mr. Deputy Speaker, Sir, allow me to join you in welcoming the distinguished members from various county assemblies; Vihiga being one of them; the county that I proudly represent in this august House.

Mr. Deputy Speaker, Sir, you will realise that this is the second delegation in a period of one month from Vihiga County Assembly visiting our Senate. This demonstrates clearly that this is one Assembly that believes in the institution of Senate. I have always told them that we are partners in ensuring that devolution works. Therefore, they must always look at the Senate as the “big brother” and be ready to learn from it.

It is only yesterday that I presented to this august House a petition from the very Vihiga County Assembly with regard to the registration of persons; the issue of Identity (ID) cards which was a stormy issue. It is an issue that emanated from the county assembly. I wish them well and a fruitful stay in Nairobi.

Sen. Kittony: Mr. Deputy Speaker, Sir, I join you in welcoming the delegations to the Senate because it has been realised that the Senate is the right place for them. I also

welcome the West Pokot delegations who are my neighbours and members of my party, the Kenya African National Union (KANU). I wish them a good stay in Nairobi. We are proud of what they are doing in their counties. We, as the Senate, will give you the necessary support.

Sen. Musila: Thank you, Mr. Deputy Speaker, Sir. I am assuming that you have finished the issue of welcoming. I also join my colleagues on behalf of the great County of Kitui to welcome the hon. Members from the various counties. Having said that, yesterday, you asked me to raise the issue---

The Deputy Speaker (Sen. Kembi-Gitura): Order, Sen. Musila! I see a few requests and I think they have to do with the---

Sen. Musila: Mr. Deputy Speaker, Sir, okay.

The Deputy Speaker (Sen. Kembi-Gitura): Please, insert your card. Do not remove your card so that I can call you.

(Sen. Kagwe stood up in his place)

Sen. Kagwe, is it on this issue?

Sen. Kagwe: Mr. Deputy Speaker, Sir, yes.

The Deputy Speaker (Sen. Kembi-Gitura): Proceed.

Sen. Kagwe: Mr. Deputy Speaker, Sir, if you can protect me from Sen. Adan who is standing in front of me, as I speak. However, I excuse her because the harasser is Sen. Billow.

Mr. Deputy Speaker, Sir, I join you in welcoming the delegations that are here. We have visited most of the areas they come from, including Vihiga County. As we learn to do what we are supposed to do in these Assemblies, I urge them that we maintain high standards of debates and proceedings in our county assemblies so that devolution cannot only be in name, but also in the kind of standards that we keep in those Houses. I also urge the Senators to support the county assemblies when they are looking for money to construct chambers so that they sit in a kind of Chamber they are in now.

Thank you and I wish them well.

Sen. Sijeny: Thank you, Mr. Deputy Speaker, Sir. I join you in welcoming our counterparts of the Committee on Delegated Legislation from the county assemblies. We met and we had a very fruitful deliberation. They have learnt a lot from us. We too have learnt from them. I can assure the Senate that this is a very competent and hardworking lot. We stand to gain a lot. I am sure the people they represent are happy with their work. What we have learnt mostly is that we need to collaborate and meet more often. We should also look for resources to give them for development and other uses for further interactions and make this country better and devolution to work.

Sen. Murkomen: Mr. Deputy Speaker, Sir, on behalf of myself and the people of Elgeyo-Marakwet County and the Committee on Devolution, I welcome our colleagues from the county assemblies to this House and to tell them that this is home. I remind them that they are our close partners on devolution. Having been the Member who chaired the Select Committee on Constitution Review, I assure them that our draft Report which is in circulation captures their interests and the independence of the county assemblies. It is

important that we work together. These are the key stakeholders for this House in ensuring that we have stronger reforms in so far as matters of devolution are concerned.

I also welcome the members of the County Assembly of West Pokot. My county is a neighbour to West Pokot County. On behalf of Sen. (Prof.) Lonyangapuo who is away on official responsibility, I welcome them. I also have relations with West Pokot County.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Murkomen, do you want to make any disclosure?

Sen. Murkomen: Mr. Deputy Speaker, Sir, in conclusion, I hope that the counties from Kerio Valley, that is Turkana and West Pokot Counties, as they sit together in the Speaker's Gallery, leaders of the county assemblies continue to converse on how we can ensure Kerio Valley is safe. Yesterday, I watched news about conflicts between the Pokot and Turkana. The Kerio Valley from Elgeyo-Marakwet to Turkana is the future of this nation. I ask them to continue working together for peace and bonding to ensure that their counties remain peaceful.

I wish them the best as they visit this House.

Sen. Chelule: Thank you, Mr. Deputy Speaker, Sir. I also add my voice to those of my fellow Senators who have contributed in welcoming the members of the county assemblies from various counties. We are so happy to have them. I am a Member of the Senate Committee on delegated legislation and we were so happy to have a session with them. I know they got, especially from you, a very strong presentation this morning.

I am happy the Committee is well represented and the women are represented, especially in this visit and other Committees. I hope they are all aware that there are devolved funds which are supposed to assist the women, youth and the people with disabilities. I request them to do serious sensitisation about these devolved funds. We wish you good stay here and we are happy to see you. We need to work together.

Thank you so much.

Sen. Wako: Mr. Deputy Speaker, Sir, I join my colleagues in welcoming our partners in county assemblies. They must be aware that they play an important role in the implementation of our Constitution. Article 1(3) of the Constitution provides that:-

“Sovereign power under this Constitution is delegated to the following State organs, which shall perform their functions in accordance with this Constitution-”

Mr. Deputy Speaker, Sir, the first State organ mentioned is not the executive or the judiciary. The first organ mentioned is Parliament and the legislative assemblies of the county governments. I emphasise on that so that you are aware of the important role that you are playing in the implementation of this Constitution. Yesterday, I was pleased the Committee on Justice of the County of Vihiga - Busia is not very far from Vihiga - petitioned the Senate on an issue that concerns the county, but which is cross-cutting and of national importance.

Mr. Deputy Speaker, Sir, I would like other county assemblies to come up with issues which may be experienced in the county, but which are also cross-cutting so that the Senate can come up with recommendations, policies and legislations that cover those issues nationally. I want you to encourage the others.

The other one is the oversight role. You have seen how the devolved governments have a heart attack on the issues of misuse of money and corruption. Even at a national level, those issues are there. Although issues of corruption have been there for a long time at a national level, we do not want that to be devolved to the county governments because you are just starting. It is very important that you undertake your oversight role very seriously. In the Senate, there is the County Public Accounts and Investments Committee (CPAIC) which is willing to assist you to undertake that kind of work.

Otherwise, we welcome you all and continue coming. Tell others to also come and see what we are doing here.

The Deputy Speaker (Sen. Kembi-Gitura): That is it. I am sure the delegations have heard the sentiments and I am sure they also feel welcome. We also know that we have a job to do together. That brings a close to that.

(Resumption of Statements)

KILLINGS IN KITUI COUNTY

Sen. Musila: Mr. Deputy Speaker, Sir, I apologise for the earlier intervention when the hon. Members were being congratulated for being here. As I said earlier, I join my colleagues in welcoming them.

Yesterday, the issue of security of Kitui-Tana border arose and the very able Vice Chairperson, Sen. Dullo, promised to come today and tell us when the Cabinet Secretary for Internal and Coordination of National Government is coming to brief the whole House about the security situation in Kitui-Tana River border and other areas that have been affected, so far. Therefore, I am standing to remind the Chair and the House that today is the day we have to get the date that the Cabinet Secretary will visit the Senate Chamber.

Sen. Adan: Mr. Deputy Chairman, Sir, as I said earlier before Sen. Musila came to the House, the Cabinet Secretary is not in the country and he might be coming back today. Therefore, we will confirm by Tuesday the date when he will be coming to the House.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Musila, Sen. Dullo had stated that the Cabinet Secretary is out of the country and that she is pursuing the issue and he might be coming to the House next week.

Sen. Musila: I am much obliged, Mr. Deputy Speaker, Sir.

RIISING INSECURITY IN NANDI COUNTY

Sen. Sang: Mr. Deputy Speaker, Sir, you will remember that about two months ago, I sought a statement on the rising insecurity in Nandi County. That was to be responded to in two weeks. It is now two months, but I have not heard from the Vice Chairperson as to when she will be ready with the answer.

Sen. Adan: Mr. Deputy Speaker, Sir, we have the statement and we will issue it on Tuesday, next week.

The Deputy Speaker (Sen. Kembi-Gitura): Why can you not issue it today?

Sen. Adan: Mr. Deputy Speaker, Sir, I do not have it with me here. I have just received a message from the Clerk that he will bring it to me.

The Deputy Speaker (Sen. Kembi-Gitura): Tuesday, next week. It is so ordered.

Sen. Murkomen, you have a statement that you want to issue at the behest of Sen. Khaniri.

Sen. Murkomen: Yes, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. Kembi-Gitura): Is it long?

Sen. Murkomen: Yes, it is long, but I will summarise it.

TERMS OF OPERATION/ENGAGEMENT FOR COUNTY
SECURITY AND ENFORCEMENT OFFICIALS

Sen. Murkomen: This is a very important issue. Sen. Khaniri requested for a statement regarding the terms of operation and engagement of county security and enforcement officials, commonly referred to by Senators as “county mamluki”.

(Laughter)

Mr. Deputy Speaker, Sir, a statement was issued by the Vice Chair while I was away, but it was declared unsatisfactory. Thereafter, another statement was given by the Council of Governors which may cover the issue fairly satisfactorily. I may read the response of the Council of Governors and two paragraphs of the Attorney-General’s opinion.

Mr. Deputy Speaker, Sir, the Council responds as follows:-

(b)The Council is cognizant that the security function is constitutionally assigned to the national government.

The Council is further aware of and continues to respect Article 239 of the Constitution which establishes the three national security organs. We recognize that the role of the county government in security is limited by legislation, that is, County Governments Act, Section 54(6) and the National Police Act which creates the County Policing Authorities (CPAs) and Community Policing Forums (CPFs). The roles of the CPAs and CPFs are more of advisory and oversight in nature and not a police force.

The Council notes that during the Senate discussion on the subject matter, the term militia was recurrent – and you have heard me saying “*mamluki*” which was also used – The Council takes great exception to the allegations lodged that the county governments are recruiting and training militia. These are serious statements that must be substantiated with evidence.

County governments are fully aware of their role in security as illuminated above. Moreover, we recognize that pursuant to Article 239(4) of the Constitution, counties cannot establish a military, paramilitary or similar organization that purports to promote and guarantee national security, except as provided for in the Constitution, or an Act of Parliament.

(b) County governments have legislative authority under the Constitution. Premised on that fact, these counties have established, through law, inspectorate departments for enforcement of their legislation. These units are legally established and they perform defined functions. The personnel who work in the inspectorate departments are considered public officers.

(c) The Council is apprised of the fact that there have been discussions between certain national government entities and county governments with respect to co-operation between the two levels in delivery of security services. We recognize that county governments have been accorded a restricted role in security. Further, recognizing that emerging trends like radicalization, terrorism and inter-communal violence require the attention of both levels of government, the council initiated discussions with the Ministry of Interior and National Government Coordination, the office of the Attorney-General and other key stakeholders to interrogate opportunities for collaboration.

The Senate was represented in the first consultative meeting on 20th May, 2015 by the Chairman of the Senate Committee on National Security and Foreign Relations, Sen. Haji Mohamed Yusuf. Additionally, county governments have raised the issue of the county security units and this was discussed on 23rd March, 2015 meeting of the national security advisory committee. We are aware of the advisory tendered by the Attorney-General on the establishment of county security units and the county governments concur with the same, particularly to the extent that the two levels can co-operate in security through legislation and agreement, whether implementation, capacity building or human resource provision. The council also responded to the letter from the Ministry of Devolution and Planning vide letter dated 22nd September, 2015.

Do find in the annex the advisory letter for your perusal and record. The council reiterates that discussions for the establishment and capacity building of county security units are already underway and any framework, whether legislative or administrative, will comply with the Constitution.

In light of the above, the Council maintains that there is no county that has set up militia or a police force. The Senate, as the House mandated to protect the interest of the counties can provide leadership as we all explore mechanisms for collaboration between the two levels of government with the ultimate goal of securing the lives and property of Kenyans.

It is signed by Jackline Mogeni, for Council of Governors and it is copied to all governors who are calling themselves illegally as “Excellency.”

Mr. Deputy Speaker, Sir, as I said, I will also read two paragraphs of the advisory of the Attorney-General.

Article 239(4) provides a mandatory prohibition that a person shall not establish a military, paramilitary or similar organization that purports to promote and guarantee national security, except as provided for by this Constitution or an Act of Parliament.

Consequently, no person or county government can establish a structure or operational unit to provide security, except as provided for under the Constitution and an Act of Parliament. Article 247 grants Parliament power to enact legislation establishing other police services. However, this must still be under supervision of the National Police Service (NPS) and the command of the Inspector-General of Police. As at this point in

time, there is no legislation in place establishing exclusive police service other than the service established in the Constitution.

Some legislation established disciplined forces and service with powers of similar nature to the powers of national security organs within the ambit of Article 247, and these are; the Kenya Forest Act, the Wildlife Conservation Management Act, the Prisons Act and the National Youth Service Act; the Attorney General has detailed the provisions.

Mr. Deputy Speaker, finally, the Attorney General says it is their conclusion that national security is a national Government function. However, some elements of the same can be transferred to county governments on agreement or via legislation. In this case, it is the responsibility of the national Government to determine to what extent it would wish to retain or transfer the function, in whole or part, on what terms and conditions or as it remains constitutionally responsible for the function's implementation.

In our opinion, and in the spirit of cooperative government, the national Government should initially seek to engage the target county governments in communication and consultation to determine the reasons for these county security units' interventions. Where these are deemed to be legitimate, gap-based reactions to their perceived security needs, measures should be undertaken to provide or boost the necessary security resources and disband security units where established. Where it is determined that the purpose of the establishment of county units is ulterior, the national Government should follow any failure to adhere to the advisory and to take the necessary judicial arbitration to affirm the constitutional position and where necessary, take criminal action against persons purporting to act as security agents in line with the relevant provisions of the penal code.

Mr. Deputy Speaker, Sir, having said this, I want to add two things. First, I agree with the Council of Governors' response and with the Attorney General's advice. However, I have a problem in practice. Sen. Khaniri has raised a very important issue because the practice is not what the law says and what the response Council of Governors has given. I am a witness. In the past, we have been in a meeting in a certain county with the Senate Deputy Majority Leader, Sen. Keter where some "county police" were lined up. Therefore, when we will be required to substantiate, we can do so.

Their work was to shout down anybody who does not like the governor and anyone who is perceived to be the enemy of the governor. They frog-marched people for meetings despite the fact that the Council of Governors says that they are inspectorates, whether it is city council *askaris* for the purpose of collection of taxes or enforcement of issues related to where all these other people are supposed to sell their goods. The practice in the villages and rural areas is that county governments have *askaris* in uniforms whose responsibility exceeds that of enforcement of any county related functions.

Whereas I acknowledge what they have written and the fact that the county governments have acknowledged the law - I have conversed with Sen. Khaniri and this is what we discussed also in the Committee. We noted that it is only until we get specific complaints either by citizens, by way of a petition or a complaint of a citizen who has been harassed, villagers are being harassed left, right and centre in small village markets in different places. Old grandmothers are being harassed by *askaris* of the governor. This

must come to an end. Therefore, we will only act as a Senate through petitions. We encourage members of the public to make specific complaints to this House so that action can be taken against those who are misusing devolution for the purpose of running their own militia or *mamluki*.

Sen. Keter: On a point of order---

The Deputy Speaker (Sen. Kembi-Gitura): Are you interrogating the statement? What is your point of order, Sen. Keter?

Sen. Keter: Mr. Deputy Speaker, Sir, I had pressed this long time ago before he completed what he was responding to. However, he mentioned that we happened to be in a county which he did not name and where there were *askaris* lined up and they were shouting down whoever was not for the governor. Could he substantiate that so that we know, because I do not remember?

The Deputy Speaker (Sen. Kembi-Gitura): Did you mention, Sen. Keter's name?

Sen. Murkomen: Mr. Deputy Speaker, Sir, we were with Sen. Keter somewhere in a constituency.

The Deputy Speaker (Sen. Kembi-Gitura): But he says he cannot remember.

Sen. Murkomen: Mr. Deputy Speaker, Sir, it was in Konoin. As we wanted to address the public, there was a group of county *askaris* in uniform who shouted at us. I was wondering which of these functions was devolved.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Billow, is it a point of order on that issue?

Sen. Billow: On a point of order, Mr. Deputy Speaker, Sir. I will be brief. The Chairperson read out a very good response. However, in the end he used the term "militia." The meaning of "militia" invokes people who are armed and out to kill. He needs to substantiate because he is the Chairperson and this is a House of records. If he refers to it yet it is not contained in his statement, it would be risky. Could he clarify?

The Deputy Speaker (Sen. Kembi-Gitura): Is it in the statement?

Sen. Billow: Mr. Deputy Speaker, Sir, no, he said it after he finished reading the statement. He referred to them to as militia.

The Deputy Speaker (Sen. Kembi-Gitura): I was not looking at him, but was the "militia" part in your statement?

Sen. Murkomen: Mr. Deputy Speaker, Sir, I said there is a difference between the practice, the statement and the law. The Council of Governors acknowledged the law. However, when it comes to practice, for example, a group of so called county *askaris* in Kitale used to clobber members of the public who were protesting using *rungus* and *jembe* pins. The same happened in Nandi County where a group of persons acting on behalf of the county, purportedly defending the county government, used *rungus* to beat people. It is a characteristic of a growing--- in my honest definition, it is in the manner closer to a militia. If that continues, every county will have a group of people carrying *rungus* and machetes. I have not seen machetes, but I have seen people using *rungus* to fight people who were protesting and exercising their constitutional rights. There is a growing trend that must be nipped in the bud before it grows to be a serious cancer in this country. Therefore, the use of the word "militia" in the context of what they were doing is correct.

Sen. (Dr.) Khalwale: On a point of order, Mr. Deputy Speaker, Sir. According to the English dictionary, Sen. Murkomen is absolutely in order to use the word “militia.” Is Sen. Billow in order to mislead the House?

The Deputy Speaker (Sen. Kembi-Gitura): Order! Give us the definition of the word “militia”, but you cannot rule whether or not, he is in order. That is not in your competence.

Sen. (Dr.) Khalwale: Mr. Deputy Speaker, Sir, the word “militia” has four definitions, two of which are relevant here. One of them defines it as follows:-

“A militia is a body of citizen soldiers as distinguished from professional soldiers.”

Mr. Deputy Speaker, Sir, these are the characters that we are talking about on the ground. By way of their function; it states as follows:

“It is a body of citizens organized in a paramilitary group and typically regarding themselves as defenders of individual rights against a perceived interference with a Government.”

This is exactly what they are doing in the counties. They are militias.

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

Sen. (Dr.) Khalwale: He is completely out of order to defend Gov. Kidero ---

The Deputy Speaker (Sen. Kembi-Gitura): Sen. (Dr.) Khalwale, procedure and doing things in order are very important. You do not have the capacity from where you sit to say, whether or not, Sen. Murkomen is out of order. That is the competence of the Chair. You can make your comments and observations but you cannot make a ruling as you now purport to do. Are we together? That is a quiet position, Sen. (Dr.) Khalwale. You cannot purport to have that authority.

Sen. Billow, I hope it is not on the same issue.

Sen. Billow: Mr. Deputy Speaker, Sir, no. I just want the same definition of the English version; whether by that definition the group that accompanied the Hon. Senator to the Milimani Law Courts, was a militia or not.

(Laughter)

The Deputy Speaker (Sen. Kembi-Gitura): The trouble we have here is that Sen. (Dr.) Khalwale read the definition but he did not tell us from which dictionary. Having said that, I now close the issue because I think we are through with it. Sen. Murkomen, you should use the word militia more correctly in future, so that you do not call for the wrath of your colleagues.

Sen. Khaniri, let us take a very short time to interrogate the Statement.

Sen. Khaniri: Mr. Deputy Speaker, Sir, first of all, I appreciate the distinguished Senator for Elgeyo-Marakwet County who is the Chairperson of the Committee on Devolved Government for the very elaborate Statement that he has delivered to the House.

At the very outset, let me state that I am not against county governments recruiting enforcement officers to help them enforce the by-laws that are enacted in the county. However, the basis of requesting this Statement was to find out whether there is a

legal framework. I think from the advisory that the Chairperson read from the Attorney-General (AG), clearly, there is no legal framework. Therefore, what is happening in counties is illegal.

Secondly, there was the issue of training. Even if they are recruiting this militia or whatever you want to call them, my question was: What are the national Government and county governments doing in order to have uniform training for these officers? It is absolutely important that they get training even if they have to be recruited.

Mr. Deputy Speaker, Sir, there have been many reports of these officers mishandling the general public in various counties. What measures are county governments putting in place where the general public can seek redress when they are aggrieved? That question has not been answered. I would like the Chairperson to respond to these particular issues that I have raised that I think are very pertinent. As a Senate, we have a responsibility.

I am glad that you quoted Article 247 that gives Parliament only – not even the President – the powers to establish any other police forces. I think we must come up with a solution to that matter.

The Deputy Speaker (Sen. Kembi-Gitura): Okay. Now, the others have to be very brief.

Sen. Billow: Mr. Deputy Speaker, Sir, long before counties came into being, the famous Nairobi City Council *askaris* had actually been engaged in the same thing for many years. They maimed, injured and in some cases even stabbed to death innocent Kenyans or hawkers in the streets of Nairobi. It is very inhumane and reports have been written about it. There is a problem.

Could the Chairperson tell us what action the Government will take to come up with appropriate policies and measures to prevent this inspectorate, enforcement officers or whatever they are called, in counties from descending into the kind of city council *askaris* who are really nothing but people whom I described earlier?

Sen. (Prof.) Anyang'-Nyong'o: Mr. Deputy Speaker, Sir, I would like to add my voice to the concern that Senators have expressed about security at the county level. I also underscore Sen. Khaniri's concern that, while this security is needed at the county level, it should be done within the order of law. In other words, there should be a proper legal framework that governs security at the local level under devolved government.

You will realise that a society where devolution works, county authorities have control over local security and this is still a crisis in this country. We seem to pretend that we have two levels of government but there is one level of Government where the security apparatus are alienated from the county. This is the mischief that must be dealt with. So, we may skirt around the issue or *mamluki* - some militia - but unless we hit the nail on the head, this problem is likely to stay with us for a very long time.

Sen. Keter: Mr. Deputy Speaker, Sir, I wish to add my voice to this issue because it happened about three months ago in my county of Kericho. The so-called county *askaris* "*kanjo*", under the supervision of armed police, did something terrible. They went after a matatu, threw in their spikes and the matatu rolled killing a woman on the spot. The *askaris* disappeared but were arrested later.

This is a very serious issue because these are people who are not trained. They take the law into their hands and believe they are the ultimate people with the responsibility. Therefore, there must be proper guidelines on how to even manage those so called “*kanjo*”.

Sen. (Dr.) Khalwale: Mr. Deputy Speaker, Sir, this is a very serious problem. In Narok County, Julius Tapuro Dikir, an *askari* of the Narok County government is alleged to have shot and killed Mr. Sigona Ole Montet on 26th January, 2015. In Kakamega County, these people go to *boda boda* drop-off and pick-up points, pick *boda boda* riders, arrest and put them on a pick-up and drive away. There have been incidents where the *boda boda* boys have responded leading to total breakdown of order and security in the town.

Could the Chairperson undertake to come back to the House next week, with an order issued by the Ministry of Interior and Coordination of National Government to all county governors, to disband this militia until a legal framework is put in place by this Senate or the National Assembly?

The Deputy Speaker (Sen. Kembi-Gitura): Do you want to deal with these ones? There are quite a few more coming. You may be able to deal with all of them.

Sen. (Eng.) Muriuki.

Sen. (Eng.) Muriuki: Thank you Mr. Deputy Speaker, Sir. Allow me to add my voice on this one. It would appear that what the Chairman is calling militias, notwithstanding the definition by Sen. (Dr.) Khalwale, the fact, is that the militias are everywhere. It does not matter what they are called or whether they are uniformed or not. In fact, the citizens in the county are better off when the governor has the *askaris* in uniform.

What is happening is that - I do not wish to bring the agenda of my county here - when the governor has something to do, he comes up with a militia of up to 300 in number and at a fee. It would appear that the governors seem to have a lot of free money; I think it is the duty of this House to somehow curb the usage of this money through legislation.

Mr. Deputy Speaker, Sir, I think it is fair to go according to Sen. Khaniri's suggestion. I think the formation of the enforcement *askaris* should be formalized and the place to formalize is this House, so that we do not have individual training here and there. We should have a Kiganjo somewhere where every governor or a county government which wants to establish this enforcement, is under some legal framework and some common training where what they are supposed to do and how, is common.

Mr. Deputy Speaker, Sir, there should be legislation to state clearly that they are not a militia for the governor but for doing certain functions so that when the governor does not do so, maybe he would be breaking the law. At the moment, the whole thing is illegal and he is not breaking any law because there is no system under which they are operating.

Sen. Ndiema: Thank you Mr. Deputy Speaker, Sir. From what we have heard this afternoon, there is a tendency now in the counties for some form of enforcement groups to be established by governors, and there is need for something to be done. What also comes out is that there is a vacuum somewhere where there is a government which is

legislating but it cannot enforce whatever it has legislated because it does not have the enforcement arm.

Mr. Deputy Speaker, Sir, we may talk about the Narok *askaris* and so forth. We should remember that in Narok, Maasai Mara Game Reserve is actually manned and managed by armed *askaris* of the former County Council of Narok, and not the Kenya Wildlife Service *per se*, and even in Samburu. So, there is urgent need for both levels of government to engage and ensure that there is no vacuum. In the meantime, the Administration Police who seem to be duplicating what the other police are doing, the two levels of government can agree under Section 187 of the Constitution and assign or second some of the Administration Police to work under the county governments for the time being until the county governments have some form of enforcement arm, and this Senate, I believe, has a responsibility to enact a legislation that brings about an inspectorate arm of government at the county level.

Mr. Deputy Speaker, Sir, as we talk today, many urban centres are disorganized. Even in Nairobi, without the so called “*Kanjo*”, there would be chaos. We cannot run away from this fact. A few fellows may mess here and there but certainly, there is need for some enforcement arm of the county governments.

Thank you.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Ndiema, you know there is something called HANSARD. There is a word I heard you use about four times which I do not know; a word like “*Kanjo*” or something like that. Is it a word that has gained notoriety that it can go to the HANSARD and be accepted as such?

Sen. Ndiema: Mr. Deputy Speaker, Sir, the English language or any other language has a way of borrowing words and metamorphosising and bringing about new words. The “*Kanjo*” means those council *askaris* because they are not *askaris per se*. So, I cannot call them *askaris* because they are not legally *askaris*. So I do not know which word to use. But I would say that they were the enforcement officers.

The Deputy Speaker (Sen. Kembi-Gitura): I did not ask you to withdraw that word. I just wanted to know, because all these words go on HANSARD and somebody reading it 20 years down the line, doing a research for their Doctor of Philosophy (PhD) and looking at the word “*Kanjo*” may not understand what that word means.

So, it is always good to precede it with what you have now said that it is city council *askaris* so that it is understood, until it gains notoriety in the English language and is accepted in the Oxford English Dictionary, as it may, some day.

Sen. Kagwe.

Sen. Kagwe: Thank you Mr. Deputy Speaker, Sir. I hear what Sen. Murkomen is saying. This is a lot more dangerous than we are seeing. In the United States and other places where they have devolved security, the sheriff at the village level is actually elected by the people. In this particular case, the enforcers are actually appointees of the governors. In other words, it is as if the governor has a private army.

This is an extremely dangerous situation because even those Senators who are sitting in this House who are planning to run against governors have a very serious challenge in their hands including a military that is going to be operating against them

even as they walk in the villages. I would persuade those of you without militaries to think of coming back to this House.

Mr. Deputy Speaker, Sir, if you do not have a military, you are well advised to think seriously about your future in the political arena, if you are thinking about governorship. The purpose of a Bill that should be brought as quickly as possible to this House is essentially to control runaway situations, because what we have at the moment is small individuals, small units, some of them doing a fairly good job as in the market places, for example, in Karatina and other places that I noticed in my county.

The problem is that this can have a runaway effect where people begin to arm them like we have heard from Sen. Ndiema, and once we go towards the path of people having guns, and having not come from disciplined forces, you have no control over what those people with guns can do.

Mr. Deputy Speaker, Sir, I think we need to do two things as a matter of urgency. The first one is to stop and put an end to all these enforcement agencies that are not operating under a law. I think that should be immediate. The Cabinet Secretary concerned, should make an immediate Statement that this should not happen at all anywhere.

Secondly, is to amend the law so that we can introduce the Enforcement Officers Bill, so that it can be controlled in a manner that is well spelt out. In Uganda, a watchman goes to his job with a rifle. The culture in that country is such that even a person riding a bicycle can go with an AK 47 to guard a house without any problem at all. I do not know under what law they are operating in Uganda, but I do know that in this country, the culture that we have is such that if you allow people to take AK 47 rifles to guard people, you will find half of them attacking those they are supposed to be guarding.

Mr. Deputy Speaker, Sir, we ought to move swiftly to ensure that we have laws to govern anybody who is enforcing anything, with or without a weapon.

The Deputy Speaker (Sen. Kembi-Gitura): I see that we still have a lot of interest in this matter.

Please, proceed, Sen. Karaba.

Sen. Karaba: Mr. Deputy Speaker, Sir, what is being said here is that there are governors who have come up with their own armies.

The Deputy Speaker (Sen. Kembi-Gitura): What is it Sen. Adan?

Sen. Adan: On a point of information, Mr. Deputy Speaker, Sir. I wish to inform the House that from the discussion we had with the Cabinet Secretary in charge of the Ministry of Interior and Coordination of National Government, the Ministry is developing rules and regulations to govern the guards who are being hired by the county government. I am sure that they are almost finalizing on it.

Furthermore, there is a lot of violation that is happening at the hands of these guards or rangers under the county governments. They have requested the Ministry to train them, but unfortunately, the Ministry has refused until they have a framework that will govern how they are going to be formalized. I, therefore, think that there is something in the offing and we will follow up. That is in the process and we will follow up and ensure that it has been finalized as quickly as possible.

Mr. Deputy Speaker, Sir, regarding the oversight of this group of security officers; from my interaction with the Kenya Wildlife Service, I am trying to amend the Independent Policing Oversight Authority (IPOA) Act, so that they can also have the ability to oversight rangers working under the county government and the councils.

The Deputy Speaker (Sen. Kembi-Gitura): I hope that information has shed light so that we are clear on that.

Sen. Karaba: Mr. Deputy Speaker, Sir, Sen. Adan is advising what is supposed to be done in a normal situation. However, there are some governors in this country who have their own guards for their own protection. No one else can hire them even if you are a Member of Parliament. It will be very hard for anybody else to use those guards. In fact, we refer to them as gangs that have been recruited mysteriously. We want to get rid of those gangs in our counties. Otherwise, we might find ourselves in a lot of problems when the campaigns start. These gangs might be used against us. Therefore, let us play by the rules of the game.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Wako, you have one minute.

Sen. Wako: Mr. Deputy Speaker, Sir, I thank Sen. Adan for the information she has given us. It is precisely because of that information that I support Sen. Kagwe that this must be brought to a stop now until we have proper legislation in place. Initially, I was of the view that maybe the legislation may time out. However, because we have been told that it is around the corner, it has to be stopped now. Security issues are very delicate even for those operating under legislation; they still create problems. How much more problems can be caused by those operating under no legislation whatsoever?

Mr. Deputy Speaker, Sir, as we move towards elections, these are the groups that will be active in the field, fighting the lawful groups of security like the police officers. About a month ago, Sen. (Prof.) Anyang'-Nyong'o and I, were going to a funeral. On our way there, we were stopped by people who appeared to be policemen. After we stopped, vehicles passed us in an entourage and I thought that was the Vice President or somebody of that nature, only to discover that it was the governor. That was at a time when Maj. (Rtd.) Nkaissery had said that there should be no---

The Deputy Speaker (Sen. Kembi-Gitura): Order, Sen. Wako! You are not supposed to be debating now, but seeking clarification.

Sen. Wako: Mr. Deputy Speaker, Sir, what I want to clarify and recommend is that---

The Deputy Speaker (Sen. Kembi-Gitura): Order Sen. Wako. This is Statement Hour. What you should be doing now is seeking clarification on the statement that was issued.

Sen. Wako: Mr. Deputy Speaker, Sir, could all the groups that have been formed in our counties be stopped forthwith? Secondly, could a Bill be brought within a month so that we enact it? Thirdly, could the Inspector-General of Police take up the issue because the Constitution is very clear that they must operate under the supervision of the National Police Service (NPS) and the command of the Inspector-General of Police?

In the interim before the legislation is even brought, could they be brought under the supervision of the Inspector-General of Police? I say this because---

The Deputy Speaker (Sen. Kembi-Gitura): Order, Sen. Wako! You have made your point. You are seeking a clarification. You are the Chairperson of the Committee on Legal Affairs and Human Rights. If legislation has to be brought, it would most likely come from your Committee or through your Committee.

The reason I have given you so much leeway is because I appreciate you as the Chairperson of the Committee on Legal Affairs and Human Rights.

Sen. Wako: Mr. Deputy Speaker, Sir, We know that the police structure operates at the county level. Could there be a directive that all the structures operate under the Officer Commanding Police Division (OCPD) so that they know that they are not operating under the directive of the governor, but that of the OCPD? They should only operate on issues concerning the enforcement of bylaws and such other issues rather than as security for the governor.

Sen. Kittony: Mr. Deputy Speaker, Sir, this is a serious issue that we are handling here. It is like giving a child a knife or letting them play with fire. We are creating monsters with such groups and this House is the right place to effect that. I support Sen. Kagwe for saying that we should have a Bill immediately so that this issue can be put to a stop once and for all.

Sen. Murkomen: Mr. Deputy Speaker, Sir, I can summarize what the Members have said into this one sentence: There is absence of legal framework and we need the law. As the Statement indicated, there are ongoing consultations. Sen. Haji has attended one of the consultation meetings. I hope that the Committee on National Security and Foreign Relations can work together with our Committee on Devolved Government and the Committee on Legal Affairs and Human Rights to expedite the process so that we have a legal framework.

While reading the Constitution, I did not see an Article that says the Nairobi City County has the constitutional authority to continue maintaining the *askaris*. It is good for them to be maintained for the purpose of the service they are doing and because we are used to them. However, in the absence of the Fourth Schedule, Part 2, providing for the permission of county governments to have *askaris*, I think that the legal framework is missing so that we have to fall back to Article 249 which permits the creation of an enforcement agency.

Therefore, we have to fall back to Article 249 which permits creation of an enforcement entity. That is why we really need a legal framework. Even if we were to give advice as a House, that the recruitment of these officers be stopped everywhere immediately, there would be chaos because it would be impossible, for example, for the Nairobi County government to collect revenue and enforce certain things.

Therefore, a middle ground must be achieved. Counties that already had *askaris* before the Constitution came to place can continue with the system. For example, in Uasin Gishu County, it was only in Eldoret Town. However – with the advent of all this – every county wants to take it to every place in the village. Bomet County, for example, never had any *askaris* for whatever reasons because they did not have a town of serious magnitude to warrant that kind of thing. Kericho County had it in Kericho Town alone. I do not think Elgeyo-Marakwet had and I do not think they have that at the moment. Therefore, the legal framework is very important.

Secondly, we should ask ourselves whether those people are properly employed through the County Public Service Boards (CPSB). That is where the problem is because you will find that most of them are involved in what most counties referred to as “confidential account of the Governor.” We have dealt with the issue of confidential account before where Machakos County governor had a confidential account and that was brought to this House. Those people are being paid from time to time without, in some cases, a clear structure.

If you look at the numbers and the wage bill, I do not think it is necessary that a county like Elgeyo-Marakwet should have *askaris* everywhere. That should only be in Iten Town alone because other towns are too small. Officers who collect revenue can do so and if they need enforcement of the law, they could approach the police for purposes of doing that. However, towns such as Kitale, Eldoret, Kisumu, Mombasa and Nairobi may need that.

The third issue is that a directive should come from the Ministry of Interior and Coordination of National Government and the Inspector-General of Police (IGP) on whether or not the county inspectorate officers can arrest and charge people. Where do they get that power? Even the inspectors; whether under the Kenya Bureau of Standards Act, the Counterfeit Act or other Acts provided in law have been given specific powers for prosecution and enforcement. However, where do other officers get power from?

Do county assemblies have the authority because they claim that they have enacted laws in the counties for purposes of creating those inspectorates? Do they have power to enact legislation on a function that is not in Part Two of the Fourth Schedule? I do not think that is allowed. Therefore, a directive must be sought or perhaps, an advisory opinion must be given to the counties informing them that all the legislations are illegal and unconstitutional and, therefore, continuation of that process is not allowed.

Sen. Adan and her Committee on National Security and Foreign Relations should take this issue seriously. The Committee should follow up the matter to ensure that all the steps, advisories and oversight is given so that we avoid situations like the one Sen. (Dr.) Khalwale raised about Narok and his county, like what Sen. Keter raised about Kericho or what I witnessed in Bomet County, among others.

Mr. Deputy Speaker, Sir, I thank Sen. Khaniri for coming up with the Statement which, I think, is weighty. We need the law to come very soon. This is one of the contributions that we can give so that we stop two things; the growth of some kind of a militia and an unnecessary wage bill that will be expended in the counties at the behest of an individual called the governor trying to reward certain people for political benefits.

Thank you.

The Deputy Speaker (Sen. Kembi-Gitura): Did you deal with the situation of how they are recruited or trained?

Sen. Murkomen: Yes, Mr. Deputy Speaker, Sir. In the Statement, the Council of Governors (CoG) argued that they were recruited and established based on county legislation. That is why I said that I do not believe that the legislation is constitutional because they have no authority to legislate---

The Deputy Speaker (Sen. Kembi-Gitura): Order. I am not interrogating you. However, did you check what legislation that they purport to proceed under is?

Sen. Murkomen: Mr. Deputy Speaker, Sir, I did not check the counties which have not done that. Those are issues to follow-up.

The Deputy Speaker (Sen. Kembi-Gitura): Did you manage to check whether or not they are trained, in any form, on how to handle, deal with crowd or arms or other issues?

Sen. Murkomen: As Sen. Adan informed the House, counties were making requests for preparation of training but the Ministry of Interior and Coordination of National Government stopped them from doing that. However, I did not check that.

The Deputy Speaker (Sen. Kembi-Gitura): I am talking about the ones on the ground as currently constituted.

Sen. Murkomen: Mr. Deputy Speaker, Sir, they are not trained except for those who were council *askaris* and have been there for a long time. They are found in cities like Nairobi, Mombasa and Kisumu because the training process has been there for a long time. There are people who have worked in such cities for over 20 or even 30 years. I am not aware that there is any proper training in most of the counties which are being established.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Khaniri, that brings us to the end of that Statement for now.

Hon Senators, I have a short communication here to make.

COMMUNICATION FROM THE CHAIR

STATUS OF CASH TRANSFER PROGRAMMES

The Deputy Speaker (Sen. Kembi-Gitura): Hon. Senators, as you may recall, the issue of cash transfer programmes for vulnerable groups has generated a lot of interest in this House with numerous concerns being raised on the status of its implementation. Consequently, the Standing Committee on Labour and Social Welfare has invited the acting Cabinet Secretary (CS) for Labour, Social Security and Services to a meeting of the Committee to deliberate on the matter. The meeting is aimed at seeking clarification on a number of pertinent issues, among them:-

(1) The formula used to divide and allocate the national resources allocated towards cash transfer programmes per county and constituency.

(2) The claim that there are persons who are benefited from cash transfer programmes yet they do not meet the set criteria.

(3) The mode of transfer of the monies to beneficiaries and what mechanisms the Ministry has put in place to ensure that the rightful beneficiaries receive the money.

(4) To provide audit reports for the cash transfer programmes for vulnerable groups.

The meeting is scheduled for Tuesday, 27th October, 2015, at 10.00 a.m., in this Chamber. All Senators are invited to the meeting. I urge all of us to attend and participate in the deliberations on this very important matter.

I thank you.

Sen. Chelule: On a point of order, Mr. Deputy Speaker, Sir. I have a concern about what you have just mentioned; the status of cash transfer programmes. I do not know whether the issues should only be limited to the transfer of funds or could we include devolved funds?

The Deputy Speaker (Sen. Kembi-Gitura): This one has to do with a specific matter of the Committee regarding the cash transfer programmes for vulnerable groups.

Sen. Chelule: Mr. Speaker, Sir, I am asking that because devolved funds still fall under the same Ministry.

The Deputy Speaker (Sen. Kembi-Gitura): The good thing about us meeting the acting CS in a Committee of the Whole where every Member can come is because we can raise any issue we have with the Ministry on any matter that pertains to its mandate.

(Sen. Chelule resumed her place)

Sen. Chelule, you rose on a point of order and asked a question. I am sure that you do not know the answer I gave to your point of order because you were not concentrating. I even wonder why you raised a point of order. Do you get my point?

(Sen. Chelule spoke off record)

You raised a point of order but you did not concentrate on the response to it. That should be the end of Statements.

*(The Deputy Speaker (Sen. Kembi-Gitura)
consulted with the Clerk-at-the-Table)*

The Deputy Speaker (Sen. Kembi-Gitura): One final Statement from Sen. Kiraitu.

BUSINESS FOR THE WEEK COMMENCING
TUESDAY, 27TH OCTOBER, 2015

Sen. Murungi: Thank you, Mr. Deputy Speaker, Sir. I make the following Statement on behalf of the Senate Majority Leader concerning the Business of the Senate for the week commencing 27th October, 2015 pursuant to provisions of Standing Order No. 45.

Mr. Deputy Speaker, Sir, pursuant to the provisions of Standing Order No. 45, this is to present the Senate Business for the coming week. On Tuesday, 27th October, 2015 the Rules and Business Committee (RBC) will meet at 12.00 noon to schedule Business of the Senate for the week. Subject to further directions by the RBC, the Senate will continue with Business that was not concluded this week focusing on the Committee of the Whole on the following Bills:-

(1) The Climate Change Bill (National Assembly Bill No. 1 of 2014).

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- (2) The Public Appointments (County Assembly Approval Bill) (Senate Bill No. 20 of 2014).
- (3) The County Early Childhood Education Bill (Senate Bill No. 32 of 2014).
- (4) The County Assemblies Service Bill (Senate Bill No. 27 of 2014).
- (5) The Universities (Amendment) Bill (Senate Bill No. 31 of 2014).
- (6) The Parliamentary Powers and Privileges Bill (Senate Bill No. 15 of 2014).

Mr. Deputy Speaker, Sir, the following Bills will be scheduled for Second Reading:-

- (1) County Governments Disaster Management Bill (Senate Bill No. 40 of 2014).
- (2) The Office of the County Attorney Bill (Senate Bill No. 37 of 2014).
- (3) The Kenya National Examinations Council (Amendment) Bill (Senate Bill No. 7 Of 2015).
- (4) The Preservation of Human Dignity and Enforcement of Economic and Social Rights Bill (Senate Bill No. 8 Of 2015).

Mr. Deputy Speaker, Sir, on Wednesday 28th October, 2015 the Senate will consider Business that would not have been concluded on Tuesday with a specific focus on Bills at the Committee of the Whole and further consider any other Business scheduled by the Rules and Business Committee.

On Thursday, 29th October, 2015 the Senate will consider Bills at the Second Reading, deliberate on Motions and any other Business scheduled by the Rules and Business Committee.

Mr. Deputy Speaker, Sir, I take this opportunity to appeal to all Senators to attend to dispense the pending Business before the Senate especially the Bills at the Committee of the Whole Stage.

I thank you and hereby lay the Statement on the Table: Signed by the Senate Majority Leader on this day.

(Sen. Murungi laid the document on the Table)

Sen. (Eng.) Muriuki: Thank you, Mr. Deputy Speaker, Sir. Following the Statement by Sen. Murungi on behalf of the Senate Majority Leader, I have an issue with regard to the Bills he has listed which are coming at earlier stages. We have a situation where the Bill is read for the Second Time then it takes a long time to come to the Committee Stage because of the procedures of the Committee. For it to come to the Committee Stage, we need the Committee itself to give their report pertaining to the amendments if any which they have.

Mr. Deputy Speaker, Sir, I have a case in point on the County Development Industrial Bill which has taken a very long time and every time I check with the Chair of the Committee on Commerce, Finance and Budget, the explanation is that they have not had it before the Committee. When he calls for a Committee meeting, they always lack quorum to proceed. The result is that the Business of the House delays.

It is now over a month and I am wondering whether we should not have a procedure where if the Committee is taking long, the Members will move the amendments irrespective of whether the Committee has brought their Report or not. The most important thing was the Report before the Second Reading.

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

The Deputy Speaker (Sen. Kembi-Gitura): Sen. (Dr.) Khalwale is it on the same issue?

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

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Murungi do you want to dispose of Sen. (Eng.) Muriuki's issue first? Although that is not a point of order but a Statement, do you have an answer?

Sen. Murungi: Mr. Deputy Speaker, Sir, I can only undertake to bring Sen. (Eng.) Muriuki's concern to the attention of the Rules and Business Committee and they can issue their guidance.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. (Eng.) Muriuki I think you have to do with that.

Sen. (Eng.) Muriuki: Mr. Deputy Speaker, Sir, I think the position taken by Sen. Murungi on behalf of the Senate Majority Leader is correct. I know it is a matter of procedure and we may end up grounding ourselves mainly because either the Members are busy or generally not available for some reason and business which would have come in gets held up for a long time.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Murungi sits in the Rules and Business Committee and he should deliver your message effectively because it is an important issue.

Sen. (Dr.) Khalwale: On a point of order Mr. Deputy Speaker, Sir. I thank Sen. Murungi for that Statement but given that he rose under Standing Order No. 45 (2) (c), which makes it mandatory for the Senate Majority Leader or the Senate Minority Leader or in their absence a Member of the Rules and Business Committee to make such a Statement, could he tell this House what informed the Senate Majority Leader or the Senate Minority Leader or the Rules and Business Committee not to issue this Statement last week?

The Deputy Speaker (Sen. Kembi-Gitura): I do not expect Sen. Murungi to answer that. Is it throughout last week?

Sen. (Dr.) Khalwale: Mr. Deputy Speaker, Sir, it was Thursday last week.

The Deputy Speaker (Sen. Kembi-Gitura): A similar Statement was not given?

Sen. (Dr.) Khalwale: Mr. Deputy Speaker, Sir, no.

The Deputy Speaker (Sen. Kembi-Gitura): But that must have been a breach. What can Sen. Murungi do about it now? He cannot give you any answer.

Sen. (Dr.) Khalwale: Mr. Deputy Speaker, Sir, the Senate Majority Leader or the Senate Minority Leader and the Rules and Business Committee Members whom we would have directed the inquiry to were absent. I was waiting for them today to tell us

whether they have made it optional. The Chair can take the advantage and guide the House whether it is optional.

The Deputy Speaker (Sen. Kembi-Gitura): It cannot be optional. The trouble is that I cannot answer that because I cannot recall what happened last week in the absence of the benefit of the HANSARD. I do not expect Sen. Murungi to deal with it.

Sen. (Dr.) Khalwale: On a point of order Mr. Deputy Speaker, Sir. For purposes of the dignity of this House which cannot be belittled at all, allow him to make an undertaking that he will cause the Senate Majority Leader to explain why he chose that this becomes optional. It is mandatory.

The Deputy Speaker (Sen. Kembi-Gitura): What is the trouble Sen. (Dr.) Khalwale? I have already mentioned this to you. I cannot recall whether what you are saying it is correct or not. I do not have the benefit of a HANSARD and I do not want to say it is an ambush. We are talking about last week and not today. Sen. Murungi will deal with what is here today only. If you have an issue regarding last Thursday when a normal Statement like that one is issued, then you can raise it as a point of order on any of the Business days next week. With the benefit of a HANSARD you will raise it with the Senate Majority Leader when he is here. That would be my direction on that issue.

Sen. (Dr.) Khalwale: On a point of order, Mr. Deputy Speaker, Sir. I want to thank you for giving me that latitude but as you prepare for the next Order, could you please prepare for the sanctions that you are going to impose on the Leader of the Majority, the Leader of the Minority and Members of the Rules and Business Committee?

The Deputy Speaker (Sen. Kembi-Gitura): I am not going to anticipate. I do not know the sanctions. You can only know the sanctions after you have sought them and if you have any powers to do so.

Sen. Musila: On a point of order, Mr. Deputy Speaker, Sir. I was going to allude to what Sen. (Eng.) Muriuki said earlier in relation to the Bill called the Kenya National Examinations Council (Amendment) Bill, (Senate Bill No.7 of 2015). As you would appreciate, this is Bill No.7 and we have already reached No.37. I want to go on record that this Bill was drafted and presented to the Committee in December last year. It is still on the Order Paper and it is nowhere near being debated. I think the Rules and Business Committee ought to consider Bills which stay so long before being debated. I have in mind the Bill I did in December last year and it has been moving around until you personally intervened. Finally, it was done but as of now, it is still very far from being read for the second time.

The point I am making is that we are taking too long to process Bills. I want to plead to the Rules and Business Committee to ensure that Bills do not stay too long on the Order Paper.

Sen. Ndiema: On a point of order, Mr. Deputy Speaker, Sir. The issue of delays, if not checked, will hamper the business of this House. The issue of quorums in our Committees is becoming a problem. Is it in order, therefore, that we continue forming other committees while those already existing are not performing? Is it in order that we continue sanctioning ad hoc select committees on issues that can be handled by the Standing Committees?

I am seeing some Motions sponsored by Members and leadership in those Committees on subjects that they are supposed to handle. Select Committees used to be formed, from what I know, on very special exceptional cases. What we are now seeing is that for every issue there is a select committee and invariably, we are allowing them. Therefore, when the committees are supposed to meet, select committees are also meeting thus disrupting quorum.

The Deputy Speaker (Sen. Kembi-Gitura): Why is this creating so much interest? It is not usual, Sen. Karaba.

Sen. Karaba: Mr. Deputy Speaker, Sir, the reason is that we are all concerned about these Bills. As the Chairman of the Committee on Education, I have heard the same kind of mistreatment in the name of presentation of Bills in this House. You realize that when a Bill is read the First Time, it might take about two or three months before it is read a Second Time. When we are all here and ready to vote on county matters, people just walk leisurely out of the Chamber.

I do not know whether we have Standing Orders which can prevent people from going out when there is a serious matter to be discussed. We need to dispense with some of these Bills on time so that we can continue functioning. Some of the Bills are very urgent, particularly, that one brought by Sen. Musila. Exams are now on and if the Bill had been passed earlier, we would have eased some of the problems encountered.

Sen. Wako: Mr. Deputy Speaker, Sir, the issue of legislation and the business of the House should be organized in such a way as to give utmost priority to legislation because that is our core function. These Motions, important as they are, should take second place and I am not belittling them. I am saying this because after a long struggle, my Bill on County Attorneys, has seen the light of day although it meant sitting here up to 6.30 p.m. for two weeks.

I would urge the Rules and Business Committee, now that we are coming to the end of the year, to organize and give priority to passing of legislation. There is a time the Rules and Business Committee was complaining that we do not have enough draft Bills but we now have quite a number and people are complaining that we are not legislating. Could we now give priority to enacting those legislations?

The other issue is timing. I remember in the Eleventh and Eighth Parliament, Question Time was limited to one hour; by 3.30 p.m. the House went into other business and if there are Questions remaining, they were postponed to another day. Any Question on the Floor of the House would not take more than five minutes. The Speaker would enforce that rule very strictly. What I have discovered here is that Question Time and Statements normally end at about 5.00 p.m. Therefore, we only have one and a half hours of business.

Sen. Musila: On a point of information, Mr. Deputy Speaker, Sir. I want to inform my friend, not only as a former Provincial Commissioner (PC) but also as a former Deputy Speaker; that we used to process 15 Questions in one hour but now we do process seven Statements in two and a half hours. That is my information.

Sen. Wako: Mr. Deputy Speaker, Sir, that is the impression I had but he has now put there statistics which has enriched that point. Therefore, the Rules and Business Committee should consider a strict enforcement of the Statement Hour, because every

day, we take over one and a half to two hours thus eating into the debate on legislation, which is our primary function. In fact, we can do more than that, when I came to the House to answer Questions, I had authority and could do something, but chairmen of Committees are not in charge. They cannot give an answer with finality. They cannot even say something will happen. I think we are wasting too much time on Statement House. Let us give priority to legislation between now and the end of the year so that we begin next year properly. Let us enforce strictness of time on Statements.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. G.G. Kariuki, do you have a point of order? Are you seeking the Floor?

Proceed, Sen. Orengo, then finally Sen. G.G. Kariuki.

Sen. Orengo: Mr. Deputy Speaker, Sir, I will do it very briefly. I appreciate because I have just come in and normally one would not really want to intervene when he or she has been away.

However, I remember in the “old House” Question Time was known as show time. It was not part of serious business. What bothers me is that even the Statements that are given do not come directly from the Cabinet Secretaries as Sen. Wako has said. It is second hand information. In any case, even by dint of the Standing Orders, the Statements should be from Chairpersons.

Therefore, in those circumstances, where there is separation of powers, our duty is oversight and legislation. We should think seriously about reducing the time we take on Statements. I have raised this in the Rules and Business Committee (RBC). We are taking too much time on Statements. The effect of it is that when you have real business like legislation - when people find that most of the time goes to Statements, when it comes to legislation, nobody is interested.

In fact, yesterday, as soon as Sen. Wako moved a Bill which is very important, everybody including myself was moving out. There is nobody to listen to what is the business of the House. Similarly, even the serious Motion that was being moved by Sen. Murkomen yesterday, nobody was paying a lot of interest because we have put too much premium on Statements. Statements come from people who do not come here. Sen. Murungi was crying about his Statement which has been pending for so long; coming from people who are not interested in the Legislature because they are a distinct arm of the Government.

So, I would also want to add my voice. I am in the RBC and we will try to change the order of things so that the core business of the House does not suffer.

The Deputy Speaker (Sen. Kembi-Gitura): What is the point of order, Sen. G.G. Kariuki?

Sen. G.G. Kariuki: Mr. Deputy Speaker, Sir, we are in charge of this House because we elected the Speaker and appointed the RBC. Are they doing the job that they are supposed to do? If a point of order can take 45 minutes or one hour, what do you expect? Maybe a Statement can take a longer time but just a point of order should take a shorter time. For example, I raise a point of order; somebody else repeats the same or picks other things to discuss within the Standing Orders. There is something wrong. I hope what I am saying will not amount to challenging the Chair but I think there is something drastically wrong, contrary to the way we understand the procedure and the

rules of the House for some of us who have been here for a longer time and even yourself.

Mr. Deputy Speaker, Sir, we have to be mean - especially the Speaker should be mean with what he thinks is not very important. He should cut down all these points of order. For example, if you allow me to stand on a point of order like this one and then I start talking about Kitui yet nobody is telling me that I am making a mistake; you just let me talk.

I must admit that I got disappointed.

The Deputy Speaker (Sen. Kembi-Gitura): Like now you are on a point of order, are you not?

Sen. G.G. Kariuki: Yes, Mr. Deputy Speaker, Sir.

(Laughter)

The Deputy Speaker (Sen. Kembi-Gitura): And you are debating.

Sen. G. G. Kariuki: Mr. Deputy Speaker, Sir, I am on a point of order because everybody is behaving in a similar manner.

There is need for the RBC, the Chair and the Clerk of this House to discuss and see whether they are doing the right thing.

The Deputy Speaker (Sen. Kembi-Gitura): Thank you.

Hon. Senators, I do not know whether Sen. Murungi wants to answer this but let me say this---

(Sen. Wako consulted Sen. Sijeny)

Order, Sen. Wako! You cannot ask for direction or finding then you walk out. It is important that we must have a meeting of minds.

Before Sen. Murungi says anything on this issue - if he wants to because I do not think he needs to - I find it interesting that most of you have risen on points of order pursuant to the Statement issued by Chairpersons of Committees. You are Chairpersons of Committees, and, therefore belong to a Committee called the Liaison Committee of the Senate and meet often. In my opinion, it is futile to raise those issues in the House because, for example, Sen. Wako talks about the seventh, eighth or the ninth Parliaments when question time was one hour. It must have been by a decision of the House Business Committee in that case, that question time went on for a particular time but until that happens, it is very unlikely that when either the Speaker or I are presiding, we would be able to say that now this is the cut off time because the RBC has not made that decision.

Therefore, the challenge is back to you. You are the Chairpersons of several Committees; there is the Liaison Committee which is supposed to advise and talk to the Speaker about issues. Also, almost all of you are Members of the RBC. So, until you give direction to this House and say; this is how we expect things to be done, when you raise a point of order, I find it very difficult to stop you because I cannot anticipate what you want to say until you have started speaking on it and then many times we must try as much as possible to be fair and reasonable. The ball goes back to the RBC and the

Liaison Committee. We need to have direction on these issues. That would be my direction as I sit here at this moment.

Sen. Murungi, do you have anything to add? You have undertaken to inform the RBC on several issues that have arisen this afternoon which are important.

Sen. Murungi: Mr. Deputy Speaker, Sir, I concur with everything that you have said and have nothing useful to add. I will communicate to the RBC. I am happy that Sen. Orendo, who is also a Member, is here; he will assist me in communicating the urgency and importance of this matter to the Committee.

The Deputy Speaker (Sen. Kembi-Gitura): Thank you very much.
Next Order!

MOTIONS

ESTABLISHMENT OF SELECT COMMITTEE TO INQUIRE INTO POLICY AND LEGISLATION ON THE TREATMENT OF DETAINED PERSONS IN CORRECTIONAL FACILITIES

WHEREAS Article 51 of the Constitution of Kenya protects the rights of detained persons, persons held in custody and other imprisoned persons under the law, and requires Parliament to enact legislation to provide for the humane treatment of such persons with due regard to the relevant international human rights instruments;

OBSERVING that international instruments, including the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment and the United Nations Basic Principles for the Treatment of Prisoners set standards on the treatment of persons, including the right to be treated with respect; protection from discrimination on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status;

AWARE of the deplorable state of correctional services throughout the country including poor living conditions in the institutions of both officers and prisoners, the poor state of sanitation and nutrition, overcrowding, lack of proper medical attention, frequent outbreak of communicable diseases and frequent reports of deaths of inmates leading to a high rate of recidivism and the inability of former inmates to reintegrate into society;

APPRECIATING the urgent need to align the Prisons Act and Borstal Institutions Act with the Constitution of Kenya and the international instruments on the rights of detained persons;

NOW THEREFORE, the Senate resolves to establish a Select Committee to undertake an inquiry into the policy and legislation

pertaining to the treatment of detained persons as well as the state of correctional institutions in Kenya, including prisons and Borstal institutions, and to submit a Report to the Senate within three months, with recommendations on such policy and legislative interventions as may be necessary to align the existing legislation on correctional services with the Constitution of Kenya and in compliance with international standards on the rights of detained persons and such other recommendations as may be necessary;

AND FURTHER, that the Members of the Select Committee are-

1. Sen. Fatuma Dullo
2. Sen. (Dr.) Zipporah Kittony
3. Sen. (Dr.) Boni Khalwale
4. Sen. (Prof.) John Lonyangapuo
5. Sen. Stewart Madzayo
6. Sen. Liza Chelule
7. Sen. Judith Sijeny
8. Sen. Mutula Kilonzo Jr.
9. Sen. Stephen Sang'
10. Sen. Joy Gwendu
11. Sen. Moses Kajwang'

(Sen. Adan on 8.10.2015)

(Resumption of Debate interrupted on 8.10.2015)

The Deputy Speaker (Sen. Kembi-Gitura): Now, this is resumed debate. The balance is one hour and 16 minutes. I do not know who was on the Floor. I have a few requests for the Floor.

Sen. (Eng.) Muriuki: Mr. Deputy Speaker, Sir, thank you, for giving me this chance to contribute to this important Motion. I stand to support this Motion moved by the distinguished Senator, Sen. Adan. I did not have the benefit of listening to the Mover when she moved the Motion, nonetheless, it is spelt out clearly and it is to do with the status of persons who, for one reason or another, are imprisoned or detained by the state.

One of the things that one notices around correctional facilities – we call them correctional facilities, a soft word away from the word “prison” which I preferred – is overcrowding, which has gone out of hand. If the reports that we are getting from the media every so often are anything to go by, the overcrowding in our detention facilities is just too much. However, in this case, we have to deal with the persons who are detained and the warders. Some years back, I happened to be part of a team which was looking at the possible improvement of facilities at an institution called Nairobi Remand and Allocation Prison in the Industrial Area. We found many facilities – not for the prisoners but the warders – were such that most of them were built sometime before Independence; 40 or 50 years ago. Others, though built later, are still decades old. Most of them are round huts made of iron sheets, the elements have already taken toll and the iron sheets have rusted such that if you bend down enough, you will see officers in the houses.

Each one of those houses which were meant for one officer is divided into two to accommodate two warders because of shortage of space. We should remember each of those warders has a family or is a young person with a girlfriend or boyfriend. The poor facilities of the warders are such that by the time they are put in charge of prisoners, he or she is so frustrated and lets out his frustration on the poor prisoners. This is because of the way they themselves are facilitated to live as Government officials.

Mr. Deputy Speaker, Sir, I support the formation of this Committee, by supporting the Motion. Among the things they have to look at is not just the prisoners but also the warders. We also need a very serious debriefing of the warders because it is like they have been trained to be brutal to the people that they are supposed to look after. I hope once the Committee is formed and does its job, they will also come up with legislation of retraining warders – the one I am calling debriefing – over the years of the way to handle prisoners.

That has to do with the persons who have already either been taken to court or remanded. That particular prison in the Industrial Area also takes up allocation, meaning, one has been sentenced to two or 20 years and the period between which they are sentenced and when they are taken to prison where they will serve their sentence, they stay in Industrial Area for some few months or years.

However, there is also the issue of police cells, where suspects are detained for one reason or another. Again, we have a very serious situation where most of these police cells were built to contain perhaps 10 to 20 people – the ones for women are normally smaller – but you will find that they accommodate, maybe, five or 10 times more. It is an issue that the Committee should also come up with proper recommendations so that these facilities are taken seriously. They are part of the law enforcement and they should be expanded.

Mr. Deputy Speaker, Sir, the Committee should also look at the records. Very often, we have heard of people who have been arrested and taken to police stations but their relatives cannot trace them there. There should be a system of recording in the Occurrence Book (OB) where none of the 42 million Kenyans goes missing after he or she was arrested by the police. In this age of digitizing everything, we should have a central record of the OB for all the police stations. That way, any person who is detained for one reason or another can be found by their relatives and friends. If that person has been arrested by police because he or she is suspected for doing wrong, so be it. However, his or her relatives, friends and others who are concerned ought to reach an OB in any station and a central OB in order to know where their person has been detained.

My last comment is on one Member who suggested that perhaps forming an *ad hoc* Committee which was wrongly called a Select Committee. All these Committees are select but not all are *ad hoc* committee. I would like to inform the Member that, sometimes we have some of these *ad hoc* Committees becoming necessary because we have a need for very intense interrogation for a relatively short period of time. If you allocate it to a regular Committee and they are willing to accommodate it within their normal business, it will take a very long time and we want this to be done quickly so that the House or the Mover can come up with a Bill or regulation to sort out a problem which has been noticed.

With those few words, I beg to support.

Sen. Wako: Mr. Deputy Speaker, Sir, thank you for giving me this opportunity to speak to this very important Motion by Sen. Adan. I have every confidence in the proposed Members of the Committee.

Mr. Deputy Speaker, Sir, this topic reminds me of what Justice O’Kubasu said about prisons. He said to be in prison is like being sentenced to death because of the deplorable state of affairs that are there in the prison. It reminds me of one Stanley Oloitiptip who was the Minister for Home Affairs and in charge of prisons. When he was the Minister, he moved around, he was a giant. He moved about with flashy cars and so on, but it came a time when he had also to go to prison for a few days and when he came out, his weight had been reduced to almost half, his hair had been cut, the shoes that he was wearing were now very buggy and so on. He said he wished he knew, he could have done something when he was the Minister for Home Affairs in charge of prisons.

Mr. Deputy Speaker, Sir, it reminds me of one former Vice President who hailed from Busia County - he had those qualities for reforms - one, Moody Awori was in charge of prisons, and we can all recall that he undertook a number of reforms to such an extent that what he did there was recognized worldwide and he was awarded a Doctorate by Boston University.

Mr. Deputy Speaker, Sir, since the days of Moody Awori, we have not heard very much of what is going on in prisons, they appear to have gone back to what they were before. The Motion as it reads talks about resolving to establish a Select Committee to undertake an inquiry into policy and legislation. If you just take the part of legislation, to me, that may be the easiest because it states here that:-

“A legislation that takes into account the various international standards.”

Mr. Deputy Speaker, Sir, we have a plethora of international standards on this matter. It will be quite not really much of a big task to get hold of those international standards and ensure that our laws are tied in. If they have to complete within three months, they should just employ some experts, and here the former Minister for Justice and Constitutional Affairs used to have a Non-Governmental Organization called Good Governance and something, which was very good at drafting legislations, to tie in with the international standards to which Kenya is a party; they could get that particular service.

Mr. Deputy Speaker, Sir, such international standards are found in the International Covenant on Civil and Political Rights, and in particular, Article 10 which says:-

“Anyone deprived of their liberty shall be treated with respect for their inherent dignity as human persons.”

Mr. Deputy Speaker, Sir, that section talks about the separation of the accused and the convicted persons when they are in custody. That particular article talks about the penitentiary. The aim and focus of the penitentiary system must aim at reforming and

rehabilitating the offenders. So, the whole aim is that particular one. It also talks about juvenile offenders not being put in custody with adult persons and so on.

Mr. Deputy Speaker, Sir, we have the standard rules on this issue which this Committee is going to deal with. I would ask them to look carefully at the various provisions of the standard minimum rules for the treatment of prisoners. There, they will find very many rules, more than 70 rules but each rule may have 10 sub-rules and so on. Rules which deal with different categories of prisoners, which deal with the requirement of health, which the buildings must take into account, the climatic conditions, the cubic content of air, the minimum floor space, ventilation and *et cetera*. It talks about providing adequate bathing and shower; sanitary installation, clothing which must be clean. It also talks about each prisoner having a separate bed, not just lying on the floor on a mattress, having a separate bed with proper blankets which are clean and so on. It talks about providing exercise, regular visits by medical officers. It also talks about library and just like the international covenant on civil and political rights, it talks about treatment of prisoners which falls under Article 66 of those minimum rules, which states:-

“Treatment of prisoners shall have its purpose to establish in them, the will to lead law abiding, self supporting lives after their release.”

Mr. Deputy Speaker, Sir, that is where I would recommend that the Committee may think of reviving what used to be called Ex-prisoners Welfare Association. It used to be very active, looking after the ex-prisoners if they have settled in, how they are getting on, and what their welfare is and so on. Nowadays, nobody hears of the activities of such an association, if ever there is such an activity. That is why I would recommend that either that association is revived or the Government puts in place a department which will look after the welfare of ex-prisoners. When I talk about “welfare”, this means to ensure that they are rehabilitated in the society, to ensure that they have some minimum ways of earning a living so that they do not go back to what they were before.

Mr. Deputy Speaker, Sir, the way the system is now, in fact, when you send a young person into prison, he will come out a more hardened prisoner and a hard core prisoner. That is not the aim. The aim should be that when he comes out, he is able to fit in the society and he has the will to live a decent law abiding life.

Mr. Deputy Speaker, Sir, various speakers have mentioned the alignment of the law in accordance with the international standards. That is not a very difficult task. To me, the bigger task of this Committee is going to be policy. In fact, it is going to be how to raise money in order to meet those standards. Governments all over the world, because of the competing needs in the society will obviously focus on the needs of those law abiding citizens; the need for education and others, so much so that as far as prison is concerned, there is a very low priority on budgeting for prisons. In fact, somebody will tell you; why should we budget a lot for criminals? Somebody would tell you a prison is not a five star hotel.

I recollect when you talk about hotels that in 1996, I was invited by the French Government to go to France and I did visit their latest prisons, and I can tell you their latest prisons in terms of accommodation, facilities and food were far much better than a four star hotel in France where I was staying. When we talk about international standards,

that is the aim, and that means money. Unless you have money, all these will just be amendments, laws are passed and so on, but they are not implemented. I am glad it is chaired by a Member of my Standing Committee on Legal Affairs and Human Rights and four Members of the Committee, one third of the Members are from my Committee. I therefore, expect of them to focus on the major effort of how money can be raised to meet those standards. The Government can only budget up to a particular level.

Mr. Deputy Speaker, Sir, Kenyan Prisons used to have very big farms attached to them. I do not know whether we have an inventory of what has remained of those farms or they have been allocated to individuals to commercialize them. How can the farms that were attached to the prisons be used in a very commercial way to raise many to meet some of the expenses of prisoners and enable them to meet the international standards that we are talking about as the aim of this Committee?

Personally, I have some of my furniture made by prisoners. How can we develop them into an industry and generate more money for the prison department so that they can meet the international standards required? That is the greatest challenge according to me. I look forward to receiving this report and in particular the focus on how money can be raised to meet the standards that are required internationally. The Standards and minimum rules have been set out together with international conventions on human rights. Alignment is easy but this is where the challenge is. However, I am quite sure that the challenge will be solved by the Committee, and I wish them good luck.

Thank you, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Murungi, do you have a point of order?

PROCEDURAL MOTION

ELECTION OF SENATOR TO PRESIDE OVER SITTING PURSUANT TO STANDING ORDER NO. 18 AND ARTICLE 107(1) OF THE CONSTITUTION

Sen. Murungi: Mr. Deputy Speaker, Sir, I beg to move the following Motion:-

THAT, pursuant to Article 107(c) of the Constitution and Standing Orders No.18, the Senate resolves to elect Sen. (Dr.) Khalwale to preside over the business of the Senate for the remainder of the sitting today, Thursday, 22nd October, 2015.

Mr. Deputy Speaker, Sir, the reason I move this Motion is because I have observed you sit there for a long time and I know that you are a human being like the rest of us. I think that there is need for you to take a short break and allow a very experienced Sen. (Dr.) Khalwale, who is also a very active Member of this House to sit there for a while. I believe that he will be fair in recognizing all the people who want to contribute. Sen. G.G. Kariuki has kindly agreed to second the Motion.

Sen. G. G. Kariuki seconded

(Question proposed)

The Deputy Speaker (Sen. Kembi-Gitura): I see that there is nobody interested in contributing to the Motion. Let me put the Question.

(Question put and agreed to)

Let us proceed with the debate. It is your time to speak, Sen. Murungi.

(Resumption of debate on Motion)

Sen. Murungi: Mr. Deputy Speaker, Sir, in view of what the House has just done, I thought that Sen. (Dr.) Khalwale would have taken the Chair by now.

(Laughter)

Mr. Deputy Speaker, Sir, I thank you for giving me the opportunity to contribute to this Motion. From the outset, let me state that I have great respect for Sen. Wako and the Mover of this Motion, Sen. Adan. All of us are Members of the departmental Committee on Legal Affairs and Human Rights.

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

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

Mr. Temporary Speaker, Sir, the deplorable conditions of our prisons and other places of detention in our country are known worldwide. Many reports have been written and Sen. Wako forgot to mention the tremendous steps that we took when I was the Minister for Justice and Constitutional Affairs in trying to alleviate the conditions in our prisons. Although I did not get a doctorate like the then Vice President, we worked together with Uncle Moody Awori and raised a lot of money through the project that we created with Sen. Wako called Governance, Justice, Law and Order Sector (GJLOS). It is through that project that we raised money to buy buses for prisoners in this country.

We supported this department and understood the great challenges that the prison department was facing largely because congestion in prisons was not being created by the prisons themselves, but the police. Over the weekend, they would go and sweep all the drunkards and bring them to court on Monday and the magistrate who remands them was not in communication with the prison officers to know whether there was space in the remands where they were being sent to.

Mr. Temporary Speaker, Sir, there is need for intervention in the entire justice chain. The spirit of the Motion is good because if I understand it correctly, Sen. Adan wants to get the Prisons and the Borstal Institutions Act to be amended and brought in line with the new Constitution of Kenya and the international instruments on human rights of the detained persons. This is a matter which concerns the implementation of human rights, constitutional provisions on human rights and implementation of Kenya's international obligations on human rights.

I oppose this Motion not on the basis of the subject matter or content. In my view, we do not need to create a new Committee as it is not necessary. Sen. Adan is a Member of the Committee which should be dealing with these issues. If I could just refer you to the mandate of the Committee on Legal Affairs and Human Rights, it reads that it is to consider all matters related to constitutional affairs, the organization and administration of law and justice, elections, promotion of principles of leadership, ethics and integrity and implementation of the provision of the Constitution on human rights. I emphasize the part on “implementation of the provisions of the Constitution on human rights”.

The Constitution also talks about international treaties as part of the law of Kenya. It also has a very elaborate Bill of Rights. Therefore, the mandate of the Committee is so wide as to be sufficient to do what the Select Committee is supposed to be doing. Therefore, our Chairman, Sen. Wako, should not abdicate his responsibilities and hand them over to a select committee.

Mr. Temporary Speaker, Sir, in my view, this matter should be referred to the departmental committee of the House on Legal Affairs and Human Rights. The Senate is facing budgetary constraints. Somebody else mentioned that we even have challenges of raising quorum for various committees. I oppose this Motion on the basis of promoting efficiency and economy of the Senate. I recommend that you advise that the issues to be dealt with by the Select Committee be dealt with by the Committee on Legal Affairs and Human Rights.

Mr. Temporary Speaker, Sir, I beg to oppose the Motion.

The Temporary Speaker (Sen. (Dr.) Khalwale): Thank you, Sen. Murungi.

Nominated Senator and Member of the Delegation from Trans Nzoia, Sen. Kittony, it is your time to speak.

Sen. Kittony: Thank you, Mr. Temporary Speaker, Sir, for giving me this opportunity to add my voice and congratulate the Mover of this Motion, Sen. Adan, for a very well researched Motion. I would like to add some amendments because the Motion is very clear that conditions of people in prisons are deplorable. I would like the Motion to include an amendment about people who are remanded in police cells. I do not know if you are aware of what is going on in police cells. What I witnessed in police cells is the most deplorable situation I have ever seen. Police officers mix, for example, murderers and innocent people. They lump them in one place with one bucket used as a toilet. Therefore, this amendment should be incorporated.

Mr. Temporary Speaker, Sir, this is a very good Motion and it needs a lot of support because the Mover thought about it keenly. I was planning to move a Motion of this nature because of my discovery of what happens in prisons. However, when I heard that this had come to the House, I thought it is important that we add some amendments to it. What goes on in prisons is not good yet people who have been detained have a lot to be desired. Therefore, something has to be done. It is time this august House looked at the situation. We should also look at what has been stated here in order to save our people from suffering because some of them end up dying in prisons as a result of wrongful detentions.

Mr. Temporary Speaker, Sir, I beg to support this Motion. I urge the House to also give it the necessary support. Once again, I thank the Mover of the Motion.

The Temporary Speaker (Sen. (Dr.) Khalwale): Welcome, Sen. Kittony. Please, remember to move an amendment at the appropriate time.

Sen. M. Kajwang: Mr. Temporary Speaker, Sir, I must admit that sometimes, it is difficult to conceive you sitting on the Speaker's Chair. However, because the Motion has been moved and seconded, I accept that one of the greatest debaters is, today, confined to the Speaker's Chair.

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

The Temporary Speaker (Sen. (Dr.) Khalwale): Sen. M. Kajwang, could you continue?

Sen. M. Kajwang: Mr. Temporary Speaker, Sir, allow me to get to substance of the Motion because I suspect Sen. Hassan has got something mischievous up his sleeve. I support this Motion for its content and essence. Our Constitution is very clear. Article 51 of the Constitution talks about rights of persons detained, held in custody or imprisoned. It states very clearly that anyone who is detained, held in custody or imprisoned retains all the rights and fundamental freedoms in the Bill of Rights except to the extent that any particular right or fundamental freedom is clearly incompatible---

The Temporary Speaker (Sen. (Dr.) Khalwale): Order, Sen. M. Kajwang.

What is the problem, Sen. Hassan?

Sen. Hassan: On a point of order, Mr. Temporary Speaker, Sir. I regard you as one of the highest ranking legislators in this Republic. The Senator for Homa Bay said that it is inconceivable that you are sitting on that Chair. I wanted to bring that to your attention. In what way is it inconceivable for the Chairman of the County Public Accounts and Investments Committee (CPAIC) and also one of Kenya's highest ranking legislators to have no conception that he can sit on that Chair? In fact, that is one of the chairs that you can easily dispense with ease.

The Temporary Speaker (Sen. (Dr.) Khalwale): Sen. M. Kajwang, did you say that?

Sen. M. Kajwang: Mr. Temporary Speaker, Sir, I regard you as a brilliant and excellent debater in this House. You are like a great footballer who sometimes is difficult to imagine being a referee. It is in that context that I used that phrase.

(Laughter)

The Temporary Speaker (Sen. (Dr.) Khalwale): Sen. M. Kajwang, I take it that you said all that with a light touch and so, it is not a big deal. For your information, this is not the first time for me to sit on this Chair. I chaired the House many times in the 11th Parliament.

You may continue.

Sen. M. Kajwang: Getting into the substance of this Motion, I have just quoted Article 51 that talks about rights of persons detained, held in custody or imprisoned. It is obvious that the Prisons Act that was initially enacted in 1977 and the Borstal Institutions Act that was done in 1991 are clearly out of date and touch with the requirements of the new Constitution.

Mr. Temporary Speaker, Sir, we have talked about the mainstream prisons. I have not had the privilege or pleasure of the disadvantage of being a guest in any of the mainstream prisons. I know that there are Members of this Senate who have been guests in the prisons not for criminal matters but because of fighting for the rights of Kenyans; being part of the liberation struggle. We should be proud of these people and hold them in high esteem.

Mr. Temporary Speaker, Sir, during the darker days in the history of this nation – I want to believe that at that time before the Governance, Justice, Law and Order Sector (GJLOS) Programme that Sen. Murungi has talked about – the prisons were almost a deathbed. Those who ended up in prisons spent many years. There are some of them who spent many years such that by the time they were coming out, the children they had left at home had already gone to school and completed their schooling. These are the true heroes of this nation. We need to always recognise and remember them for that. When they ask us to give them an opportunity to run the affairs of this nation, we should give them a keener attention. Borstal institutions have not received a lot of attention.

Those are the institutions that take care of young criminal offenders between the age of 15 and 17 years. There are only three such institutions in Kenya, namely, Shimo la Tewa, Shikusa Borstal Institution and the Kamiti Youth Corrective Training Centre. There is no facility that caters for young female criminal offenders. This means that young girls who find themselves in trouble for one reason or the other, end up in mainstream prisons where they are mixed up with adults. This is a very unfortunate situation.

Mr. Temporary Speaker, Sir, in these three Borstal institutions, it is almost a death sentence for these young criminal offenders. It is not a correctional endeavour. When you look at the conditions at these institutions and look at the Bill of Rights in the Constitution, there is a huge incompatibility. There are some things that we take for granted must be present in every prison but we have a new Constitution. That is one thing that people tend to forget.

Mr. Temporary Speaker, Sir, we ended up at the Criminal Investigations Department (CID) about a month ago and I was privileged to be in your company in your capacity as a national leader. It was evident that the Criminal Investigations Department and very senior officers within that department were not conscious of the progressive provisions in our Constitution. They still hold on to things of the past and think of CID or Police Headquarters being an enemy of the people rather than being a friend of the people to ensure justice, law and order.

In these Borstal institutions, you find they do not have adequate capacity and the young criminal offenders who we should be correcting are sleeping on the floor or sharing beds. They are still flogged and suffer corporal punishment. We assume corporal punishment should be meted out in prison. It is inconsistent with the Constitution. I do not think there is a provision where it provides that corporal punishment is banned but in prisons it is allowed. These are things that go on there. Boys aged 15 to 17 years still spend days labouring under the hot sun. To us Senators, these may be our grandchildren or our children whom we dot on so much but they may break the law and end up in these institutions. They are still subjected to hard labour and they do not receive proper

opportunities for education. At that stage, that generation is lost. Even if you correct them, academically they will come out with zero.

Mr. Temporary Speaker, Sir, there is still sexual blackmailing in these institutions. The food is little and some of the boys have to provide sexual favours so that they can get food. There is also limited access to legal aid.

I support this motion because it allows us to look at the Borstal Institutions Act and come up with a policy and legislative proposals that will align these institutions to the Constitution. I am quite passionate about this because if we are not careful, these young men who have been committed to these institutions shall be consigned to a vicious circle of crime. It appears we sent them there to punish, kill and to brand them as criminals. When they come out they can do nothing better than that. This Select Committee will come up with actionable proposals that will help us to rescue that generation. I expect that they will also come up as a team and recommend a Borstal institution that caters for the interests of female young offenders. It is unacceptable that we do not have a designated institution for young female offenders.

Mr. Temporary Speaker, Sir, it is important that this nation provides a copy of the Constitution to everyone who is providing public service. Maybe, we should find a way of testing whether people understand this Constitution. There are people who grew up in the difficult days of colonialism and who understood the world from a different perspective. They grew up into the first administration where we were just opening up. They matured in the second administration where there were concerns about the limitation of rights. They are ageing at the time when the new Constitution has come in place.

It is important that we make sure that police officers, prison warders and anyone providing a public service is aware of this new Constitution and can almost recite it and particularly the provisions on the Bill of Rights and Integrity. We must also deal with corruption and bureaucracy. An example of what happens every other weekend in Nairobi is that many motorists are flagged down after taking a glass of wine and that becomes a very complicated matter where someone ends up in remand or even jail simply because he had a glass of wine. The law prohibits driving under the influence of alcohol but we must make our legal justice system friendly, less prone to corruption, less bureaucratic such that if you are arrested in that particular state, the first option is not to go to a police cell. Many times people are sent to the cells because when that happens, there is a lot of commotion and then the size of the bribe grows big.

Mr. Temporary Speaker, Sir, traffic offences are not criminal and we should come up with a system of treating traffic offenders humanely so that we do not clog our cells or jails.

In conclusion, there could be areas where we need to ask ourselves if we have money to invest if we have to put up another Borstal institution for female offenders. If we have to deal with these 284 per cent occupancy rate in our prisons, that is where we need to ask ourselves whether the Senate will have the mandate to come up with certain proposals that will have an implication on the Exchequer or an implication on the financial support.

I support.

The Temporary Speaker (Sen. (Dr.) Khalwale): Thank you, Sen. M Kajwang, for that nice presentation. Today there is a communiqué from the Chief Justice and the Inspector General of Police that the traffic offenders attracting a jail term of less than six months will get instant fines as an option.

Sen. Billow: Temporary Speaker, Sir, indeed the leader of the delegation from Mandera County will speak to support this Motion. The essence of prison is correction. In the United States of America (USA), a prison is referred to as a correction institution. The idea is to change an offender in prison so that when he is released, he is reformed. Unfortunately, our institutions, historically, have achieved the opposite objective; that after coming out of those institutions, one comes out a more hardened criminal than before. The obvious reason is about the prison environment.

However, over the years, attempts have been made to reform our prisons and other correctional facilities. I remember when the former Vice President Moody Awori was in charge of this docket. He introduced reforms and, in fact, he made the lives of people there a bit comfortable. He brought reforms that were necessary. However, if you go across this country, you will find that the level of investment by the Government in the institution of prison is extremely low.

It is not a place to rehabilitate people. Therefore, the Government in terms of allocating resources and investing in that institution looks at it as a waste of resources. They are all in a dilapidated condition. Prisons are an eye sore in most parts of this country. That is the mindset that needs to change.

Mr. Temporary Speaker, Sir, in the rest of the world, people have moved on. Prisons have been modified and modernized to the extent that they have now been outsourced to the private sector in some countries where you literally go into a hotel-kind of room run by the private sector, not by the Government. If people are heading there, they are actualizing the objective of a prison which is to rehabilitate. It is not a place to punish or make one a worse criminal than he or she is.

Unfortunately, in parts of this world, there are still situations where certain governments, for example, the United States of America (USA) has not lived up to the expectations. It is creating the kind of prisons that the British created in the 16th, 17th and 18th centuries which resulted in some of the countries in this world today; where an island is taken as a detention camp or prison like what we have in Guantanamo Bay and so on. People are held in situations where the objective is not to rehabilitate but to punish. That is the mindset that we still have in our country. That needs to change. The objective of this Motion should be to create that change whether through legislation as envisaged in this Motion or otherwise but the objective of this Committee should be to bring that change.

Mr. Temporary Speaker, Sir, a lot has been said about the fact that we seem to be dumping everyone in prison; from those who have been arrested on small misdemeanors here and there, from traffic offences, to anything; people have been dumped together. If you go to Central Police Station now – and I agree with the proposal by Sen. Kittony that we should amend to include even the remand prisons because they still form part of the prison - you find anyone, if today you were arrested for anything here, you will be dumped together. That situation has created a very bad image of our prisons. We have a

place where people feel extremely threatened. This contributes to the corruption which we have today because people are trying to avoid prisons at all costs because of the image they have of what the prison will be. If you are confined, you are in a situation where you can be subjected, not just to harassment inside the cell, but to other indignified and things we cannot talk about in this House. What happens in some of the prisons is terrible.

Mr. Temporary Speaker, Sir, the proposed Committee of the Motion should also look at the status of prison warders. They need to be people who are sufficiently not rewarded but given an environment in which they can carry out their mandate more effectively. Sometimes you go to prisons and you find the warder and the prisoner in the same situation especially when they are transporting prisoners to the courts. Even in Nairobi when they are transporting them to the courts, you find them locked up in the same vehicle with them. There is need to change this so that even those who want to serve in that profession can feel sufficiently encouraged to do so.

The Government, even as late as December last year, when the amendments to the security laws were passed, they introduced solitary confinement for some offences. It is enough punishment for one to be in prison but to confine one in the kind of solitary confinement that people were subjected to during those days of the single party in this country in which many people suffered---. For instance, the late Martin Shikuku; you know what happened to him when he came out of prison. He was literally indisposed and had to be taken abroad for treatment. Another example is what happened to prominent people of FORD in the early 1990s; some of them are still carrying the scars of the punishment they suffered in prison yet as Parliament, we are still enacting laws that encourage those kind of solitary punishment that make a person suffer for life.

Mr. Temporary Speaker, Sir, I would like to encourage this Committee in terms of legislation, first and foremost to address the budgetary requirements and the place of that department within the Office of the President. Always, these correctional institutions or the prison department are lumped up with the police, Administration Police and within the Ministry of Interior and Coordination of National Government. Invariably what happens then in terms of resource allocation, they always get edged out. This needs to be looked at by this Committee. If you do not get sufficient resources, then you will not change the situation of the prison and the people who are in prisons in this country.

Prisons have a potential. In the rest of the world, the prisoners develop skills and benefit the country. They do serious work, for instance, construction, industry and agriculture. They can benefit communities around that prison. At the same time they also build their capacity and skills so that when they leave they become beneficial. Those skills can be developed. It does not make sense holding somebody in a cage; you are confining him for 24 hours doing nothing. There is need to build the capacity. Some of these people are those who steal chicken and a pen, for example. They always get locked up. Nobody locks up a Senator very easily. There are very few guys who have skills who end up in prisons for a very a long time. The people you find in their hundreds of thousands whether it is in the USA, Kenya or elsewhere, are always the petty offenders because the law is never for the rich. As we all know, it has always been in practice for the poor. That is the fact. Therefore, those are the people who are in that place and need skills.

Mr. Temporary Speaker, Sir, I appreciate the changes that have been made in the last 10 years. For example, in Langata Women's Prison, you find them studying for O level exams and so on. However, it is not enough. We need to do it as a matter of policy across the board and the country.

Mr. Temporary Speaker, Sir, in conclusion, the reforms, in these institutions are long overdue. We must address the issue of the courts and the criminal justice system in a manner that excludes people from prisons for petty offences that you have mentioned earlier so that people do those community things and they are punished or fined.

Secondly, is about building capacities and making sure they have adequate finances; build the institutions, prisons for the prisoner and also build the housing – if you see the kind of houses prison people stay in – you talk about the police but you go and see where prisons warders stay in some places even here in Nairobi, you will be shocked. They literally live in a very squalid condition because the Government does not seem to favour them, under the Office of the President (OP), which is the headquarters of corruption. When you put prisons under the Office of the President, the little money that comes goes to the police and may be little trickles to the Administration Police but nothing trickles down to prison warders. It is important that they need to look at the entire structure legislatively and administratively and see how we can improve.

With those few remarks, I support.

The Temporary Speaker (Sen. (Dr.) Khalwale): Members, I notice that I have two requests here; one is from Sen. Ndiema and the other from Sen. Sijeny. However, it is now time for the Mover to respond.

I invite you to respond but you have an option. Since you want to carry as many people as possible to support your Motion, you might want to use your 15 minutes partly to donate a bit of talking time to the two senators who wanted to speak to your Motion. If you want to, please, note that the rule will be that you will indicate the number of minutes that you are donating to each Member and that they will speak before you. However, it is not mandatory. You may proceed.

Sen. Adan: Thank you, Mr. Temporary Speaker, Sir. I will donate five minutes to each of my colleagues who want to contribute to this Motion and then take five minutes.

Sen. Ndiema: Thank you, Mr. Temporary Speaker, Sir, for allowing me to contribute to this very important Motion. I also want to thank Sen. Adan for donating the time to me, because I have been here this afternoon waiting to contribute. It would have been very disappointing if I left without contributing.

Our prisons, as we know them, are supposed to be places where offenders go for correction so that when they come back to the community, they are useful and law abiding citizens. It is unfortunate that that is not the case. Our prisons are no longer correctional institutions but institutions where punishment is meted, sometimes causing permanent damage to the individuals such that even after release, they will not fit into society. We all know that the trend now is for the prisoners who have been released to seek the earliest opportunity – even for those who have been given amnesty – to go back there. It is not because the conditions in prison are better than outside, but because they have not been prepared to integrate back to society.

Mr. Temporary Speaker, Sir, the Constitution guarantees dignity and by the mere fact that one is imprisoned, he or she does not cease being a Kenyan. He or she is entitled to every right that any other Kenyan enjoys under the Constitution. That is why even when a prisoner has left prison, they cannot be employed because they were once imprisoned. This issue of good conduct should be dealt with starting with the public service. There is no reason why somebody who has completed his term should not be employed.

The facilities are very poor and unhygienic. I had the opportunity to tour prison facilities as an officer working in the Ministry of Home Affairs under the then Vice President, Moody Awori. We were very encouraged when we started prison reforms. It is very disappointing that today, we are still not moving. As soon as he left office, it seems things went to a lull and the situation is getting worse.

The prisoners have an opportunity to contribute to the country even as they are there. The prison industry used to be booming business and earned the department enough money even to run the prisons. Unfortunately, prison industries have died and we are no longer seeing their technology.

Mr. Temporary Speaker, Sir, the houses for warders are in deplorable conditions and yet they have a lot of labour. All they need is a bit of finance to buy cement and technical know-how to be procured so that the prisoners themselves can construct houses for warders.

Let me also comment on remandees. They are people who are waiting for their cases to be heard and are not guilty. Yet, the moment you land in prison, you are categorized as any other prisoner and some cases take too long to be determined; sometimes 10 years. Surely, that person has been imprisoned unfairly because the justice system is not working, right from the police to the courts who delay the cases and the prison authorities themselves.

To make the prisoners productive citizens, if they are doing good work and generating money, it is important that they are given some stipend to support their families.

I support.

The Temporary Speaker (Sen. (Dr.) Khalwale): Order, Senator! Your time is up.

Sen. Sijeny: Thank you, Mr. Temporary Speaker, Sir, for giving me the opportunity and Sen. Adan for donating your precious time to me and more so, for bringing this Motion. This is well thought and thank God it had to come from a woman. This means you have really thought and emphathised with the situation of our fellow citizens who find themselves on the wrong side of the law and some quarters which are probably unfamiliar.

I have had the opportunity to visit a few prisons especially when the Vice President and our party leader, Kalonzo Musyoka, was in charge of prisons in the then Ministry of Home affairs. We have seen that despite the efforts of the former Vice President Moody Awori and his successor-- Moody Awori really tried to implement some of those recommendations. However, as the situation is, things still deteriorated later and it is truly an area that, we, legislators, need to do something about. These are common

problems all over the world and that is why there are several international instruments which have been enacted and ratified by various countries to ensure human dignity and the welfare of prisoners and the people who are in custody is well taken care of. This is because we know it is a human rights issue which is also enshrined in our Constitution.

Mr. Temporary Speaker, Sir, I once went to the Lang'ata Women's Prison and found that there was dire need of women to get legal representation. This is still lacking because of the low exposure and awareness creation. With this Committee and enforcement of many legislations and regulations to come, I am sure that these people will have access to legal representation to take care of their interests. This is because when you are inside there, whether as a woman or a man, there is a life outside. Many things go wrong where you need protection. You will find a woman is there with a little baby, her other children are violated, property is taken away and many other issues. So, we need to take care of all these issues and make sure that all the facilities are supplied, whether it is legal, psychological, welfare, medical, we need all these things.

Mr. Temporary Speaker, Sir, with the overcrowding of the prisons, a lot has still to be done. Now with devolution, we may think of devolving some of these facilities or at least cost sharing or coming up with ideas so that, as we are building other structures, these are the issues where the land is available. Security is paramount also.

Mr. Temporary Speaker, Sir, a lot has happened. I remember when we were growing up, in Lang'ata where we have Southlands Estates, there were large farms of prisons and they would cultivate a lot of food and do many things. They would have merchandise to sell. I know they still do some furniture but we do not hear much of it. We do not know the supplements which were given when all this land was taken and other estates were built. We need to see that all the assets are well protected. Prisoners should also help build the nation, improve the economy, and when they come out, they can fit in society as they should and other people should learn from them.

Mr. Temporary Speaker, Sir, we should be careful not to make them too comfortable. Because, at one time I was in Kibera Law Courts, and the State entered a *nolle prosequi* on some lady prisoners especially when Lang'ata Prison was revamped. The ladies refused and the court was shocked why they were refusing to be set free. They said they wanted to go back to the prison. We should ensure that it is not too comfortable but at least to serve the purpose.

I beg to support.

The Temporary Speaker (Se. (Dr.) Khalwale): Order, Sen. Sijeny. Can you conclude the good story? What then was the decision of the court after the women refused to go home?

Sen. Sijeny: Mr. Temporary Speaker, Sir, the court cannot rule then, a date was given where they were going to be given a hearing. I did not follow up, the court needed to interrogate why they did not want to go free. At times, prisoners will always say that they are not sure of their security and *et cetera*.

The Temporary Speaker (Se. (Dr.) Khalwale): In your experience - because members of the public are following this very important debate - if a prisoner refuses to go home and requests that he or she be heard, what is the mind of the court about a prisoner who does not want to go home?

Sen. Sijeny: Mr. Temporary Speaker, Sir, as I have said, you have to interrogate because some concerns are genuine. You will go home and you will be killed if it is a domestic dispute and you have not been removed from that hostile environment. If it is something you witnessed, people find themselves in the wrong side of the coin for one reason or the other. So, it needs to be interrogated; your safety must be guaranteed, but if the court finds that you are just being too comfortable for nothing in prison, then it will rule and say that you be set free.

The Temporary Speaker (Se. (Dr.) Khalwale): I hear you. Sen. Dullo.

Sen. Adan: Thank you Mr. Temporary Speaker, Sir. I wish to take this opportunity to thank Members who have contributed to this particular Motion. Let me say that this Motion is long overdue. I remember one time I went to Ghana for a prisons conference when I was with the Kenya National Commission on Human Rights. One of the presenters was a former Minister for Home Affairs who worked under the prisons department when he was in the office. After he retired, he ended up in prison, and he actually said that he wished he knew that he was going to end up in prison, he would have reformed prisons. So, this clearly shows that for those of us who are leaders, it is important to look at all these institutions and really think about them in future because we are also prone to getting into trouble and ending up in those areas.

Mr. Temporary Speaker, Sir, a lot has been said and I am sure this is an area that we critically need to look into. One of the things that we need to look at as a Committee is budgetary allocation. This is where the constraint is. The money allocated is not enough to run those institutions, and again the issues of pending bills that are too much. So, we really need to see how we can be able to increase the budgetary allocation to be able to reform this institution. Again, minor offences where people end up in prison instead of going under community service order, because there are several places where these prisoners can be given a better place where they can be able to operate.

Mr. Temporary Speaker, Sir, the welfare of staff is very critical because that is why we are having the problem of contrabands in prisons, where the officers are colluding with inmates to bring in contrabands. Congestion is a big problem. Again, I have also visited Norway. The experience in Norway is that, because of the family unity and relationship, towards the end of their term of sentence, they are normally given leave, of course, they have better technology but they are given leave where they can go and stay with their families for a certain time so that that link of the family is not disconnected. I think those are the things that may be, internationally, we need to borrow. If the budget allows, it is good to have an experience of an international correctional services and see how we can be able to borrow some of the experiences from there to our country.

Mr. Temporary Speaker, Sir, with regard to issues of policy, I remember there was a policy sometimes back where Government institutions could buy furniture and other things from the prisons department. Of late, county governments have been buying furniture from private investors. So, it is important to come up with a policy where furniture from prisons can be bought by Government institutions so that the same money can be ploughed back to the Exchequer.

Mr. Temporary Speaker, Sir, I would wish to take this opportunity to thank all those who have contributed to this Motion, and I will assure you that the Committee will come up with better recommendations and also in terms of policy and legislation that will be able to reform this institution, so that we can be able to look at this particular institution with the best facilities that we deserve and the correction that is required within these institutions.

Thank you.

The Temporary Speaker (Se. (Dr.) Khalwale): Thank you, Senator. Before you sit, may be you want to respond to the concerns of Sen. Kittony who was worried that your Motion was leaving out people who are detained at police cells. May be you want to reassure her because I think it is clear.

Sen. Adan: Mr. Temporary Speaker, Sir, from my experience, remand prison falls within the Prisons Act. So, we can be able to look at that, but what we might not be able to look at is the police cells, although they are also in a horrible condition. I believe it is past the amendment time and so it depends on whether the House will instruct us to proceed. I do not know whether the procedure allows that. So, if we are supposed to do that, then an amendment should have been carried, but I think personally, I was looking at the Prisons Act and the Borstal Institution Act.

Thank you.

The Temporary Speaker (Se. (Dr.) Khalwale): Very well. Looking at your Motion, Senator, just look at Paragraph 1 where you say:-

“ WHEREAS Article 51 of the Constitution of Kenya protects the rights of detained persons, persons held in custody and other imprisoned persons under the law, and requires Parliament to enact legislation to provide for the humane treatment of such persons with due regard to the relevant international human rights instruments.”

To me, the people who are falling under the category, “Persons held in custody” whether it is at a police cell, is it not custody; so, it covers them. I thought this covers them.

Sen. Billow: Mr. Temporary Speaker, Sir, I am happy that you brought up that point. I want to include people who nowadays are being held in the usual detention by either the armies, intelligence or many others. It all falls under that word, ‘persons held in custody’.

The Constitution is very clear. It says:- Anyone held by any institution, say, Kenya Wildlife Services, the Armed Forces, Kenya Police, the Prisons Department, the following should happen. It is covered and needs to be looked at in a broader sense.

Temporary Speaker (Sen. (Dr.) Khalwale): Sen. Dullo, do you agree with Sen. Billow?

Sen. Adan: Mr. Temporary Speaker, Sir, I realize that there is so much interest in that area. As Sen. (Prof.) Anyang’ Nyong’o was proposing, if time allows, we can look at that particular area even if it means one or two institutions of detention.

Temporary Speaker (Sen. (Dr.) Khalwale): You are welcome.

Hon. Members, it is now time to vote. I draw your attention to Standing Order No.72(1),(2) and (3). It allows the Speaker to make a determination on whether the matter in question concerns counties or not.

I have considered, and I am properly advised that this Motion does not concern counties. In that case, I want to put the question and we shall vote by acclamation.

(Question put and agreed to)

Next order!

POLICY INTERVENTIONS TO MITIGATE TRAFFIC CONGESTION
IN NAIROBI METROPOLITAN REGION

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

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

APPRECIATING the government's effort in mitigating the problem by expanding infrastructure and initiating other interventions such as installation of trafficlighs in the Central Business District; The Senate now calls upon the Government to consider formulating additional policy interventions to mitigate the problem by:-

1. Enacting legislation to allow only high capacity public transport to operate in the city; and

2. Creating regulations to:-

- a) Require all deliveries to business premises to be done at night;
- b) Require construction on roads that are in use to be done at night; and
- c) Reroute heavy commercial vehicles to use the bypasses.

(Sen. Kittony on 17.9.2015)

(Resumption of Debate interrupted on 17.9.2015)

Temporary Speaker (Sen. (Dr.) Khalwale): This is the Motion which had already been moved and six Members had spoken to it. The last Senator speaking to it was Sen. (Prof.) Lonyangapuo. Fortunately, he had finished his time. So, is there anybody interested in this matter?

Hon. Members, I will defer this Motion. Even if there was interest, time is up.

(Motion deferred)

ADJOURNMENT

Hon. Senators, it is now 6.30 p.m., time to adjourn the Senate. The Senate now stands adjourned until Tuesday, 27th October, 2015 at 2.30 p.m.

The Senate Rose at 6.30 p.m.