

# PARLIAMENT OF KENYA

## THE SENATE

## THE HANSARD

**Tuesday, 17<sup>th</sup> March, 2015**

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

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

### PRAYERS

### COMMUNICATION FROM THE CHAIR

#### SUBMISSION OF DRAFT REGULATIONS OF THE PUBLIC FINANCE MANAGEMENT ACT BY THE PS TREASURY

**The Speaker** (Hon. Ethuro): Hon. Senators, I have a Communication to make on the submission of the Public Finance Management (National Government Regulations 2015), Public Finance Management (County Government Regulations 2015) and Legal Notice for Declaration of the National Government Entities (State Organs).

Hon. Senators, Section 205(1) of the Public Finance Management Act gives the Cabinet Secretary responsible for Finance powers to make regulations to give effect to some provisions of the Act. Section 205(4) of the Public Finance Management Act, further provides that such regulations made by the Cabinet Secretary must be approved by a resolution passed by Parliament.

Hon. Senators, pursuant to the above provisions and by a letter reference number. CONF.1/022/Vol.II/95, dated 13<sup>th</sup> March, 2015, addressed to the Clerk of the Senate, the Principal Secretary in the National Treasury submitted the following:-

- (i) Draft public finance management (national Government) regulations, 2015.
- (ii) Draft public finance management (county governments) regulations, 2015.
- (iii) Draft Legal Notice for declaration of the National Government Entities (State Organs).

Hon. Senators, I now direct the Chairperson of the Sessional Committee on Delegated Legislation to table the three draft Legal Notices and, further, that the draft Legal Notices be committed to the Sessional Committee on Delegated Legislation for consideration. The Committee should file its Report on or before Thursday 26<sup>th</sup> March, 2015 and this is significant for deliberation by the Senate pursuant to section 205(4) of the Public Finance Management Act.

Hon. Senators, I also wish to draw the attention of the Senate to the provisions of Section 205(6) of the Public Finance Management Act which states as follows:-

“If a House of Parliament does not make a resolution either by approving or rejecting any regulations within 15 sitting days after submission for its approval, the House shall be deemed to have approved those regulations.”

I thank you.

Next Order!

### PAPERS LAID

#### LEGAL NOTICES ON TRAFFIC RULES AND DRAFT PFMA REGULATIONS, 2015

**Sen. Sang:** Mr. Speaker, Sir, I beg to lay the following Papers on the Table:-

1. Legal Notice No.19 on Operation of Motor Cycles Regulations, 2015
2. Legal Notice No.19 on Operation of Tourist Service Vehicles
3. Legal Notice No.11 on the Traffic Amendment Rules, 2015
4. Draft Public Finance Management (National Government) Regulations, 2015
5. Draft Public Finance Management (County Governments) Regulations, 2015
6. Draft Legal Notice for Declaration of National Government Entities (State Organs)

Thank you, Mr. Speaker, Sir.

*(Sen. Sang laid the documents on the Table)*

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

### STATEMENTS

**The Speaker** (Hon. Ethuro): Where is the Chairperson of the Committee on Agriculture, Livestock and Fisheries?

#### CLOSURE OF LIVESTOCK MARKETS IN WEST POKOT COUNTY

**Sen. Ndiema:** Thank you, Mr. Speaker, Sir. At the Senate sitting held on 17<sup>th</sup> February, 2015, Sen. (Prof.) Lonyangapuo rose under Standing Order No.45 to request for a Statement from the Chairperson of the Committee on Agriculture, Livestock and Fisheries regarding the closure of livestock markets by the Director of Veterinary Services in West Pokot County on 15<sup>th</sup> January, 2015, because of an outbreak of foot and mouth disease affecting cows.

The Senator wanted to know; one, whether the Chairperson is aware that the closure has adversely affected parents, because they were unable to take their children to secondary schools, especially Form One. The response is that West Pokot County

Livestock Market was closed as a result of foot and mouth disease type “O” outbreak which was reported in the whole of West Pokot County, except West Pokot Central, where markets were not closed. About 300,000 cattle, 350,000 goats and 280,000 sheep were under threat. The disease spread from Nangei Ward, where the diseased was first detected, Torio Ward, Ortum, Sfina and other wards. Major markets which were closed include Chepareria, Ortum, Chepkobei, Kishaunet, Cheptwira, Rorwa, Konyau, Komoletiang, Kitelakapil, Kacheliba and Serewa. This adversely affected marketing and reduced the income of the community members who depend on cattle.

The second question was how long the ban will last. A ring vaccination covering 66,291 head of cattle has been carried out to limit the spread of the disease. The ban could, probably, be lifted by 18<sup>th</sup> of March, 2015 barring any further spread of the disease.

The third question was why this ban covers goats, sheep and chicken. Foot and mouth disease affects goats, sheep and cattle. The quarantine applies to cattle. However, the marketing of chicken has not been affected by the quarantine. Therefore, their marketing has not been prohibited. They are being sold freely in the country.

The fourth question was whether there are plans by the Ministry of Agriculture, Livestock and Fisheries together with the Ministry of Education, Science and Technology to intervene and provide school fees for the students who are affected. In ordinary times, the West Pokot Constituencies Development Fund (CDF) and County Bursary Committees offer school fees assistance to deserving cases. The children affected are such deserving cases. As a result of that disease, there will be more such cases expected. It is, therefore, expected that the respective committees will prioritize the most deserving cases for bursaries, including those affected by the ban.

Thank you, Mr. Speaker, Sir.

**Sen. (Prof.) Lonyangapuo:** Thank you, Mr. Speaker, Sir. I want to thank the Vice Chairperson for the detailed and comprehensive answer to the Statement I sought. But in as much as he has tried to give the facts and the details, he has not satisfied me. I am concerned that the people in my county have been unable to take their children to school for failure to sell their livestock. The people of West Pokot primarily depend on cows, sheep and goats for their day to day survival. It is now two months down the line and the Chairperson is still giving an answer which is not stating clearly when this ban will be lifted.

Secondly, he is not telling me when and how these children will be assisted to get school fees, yet he knows that this Government is able. Whenever we have a tragedy like floods, a department quickly releases money to assist the people who have been affected by these floods.

Thirdly, whenever we have an outbreak like Cholera, for example, like now in some parts of Migori, the Government takes measures very fast to assist the affected people. The same is true when we have disasters like landslides; the Government moves in very quickly to assist them. In this case, I wanted to hear him say that he is going to treat this problem that has come---

**The Speaker** (Hon. Ethuro): Order, Sen. (Prof.) Lonyangapuo! You need to seek clarifications and not state what you expected to hear.

**Sen. (Prof.) Lonyangapuo:** Yes, Mr. Speaker, Sir. This is exactly what he was supposed to tell me; how we can remedy the situation and ensure that the children go back to school. As it is now, it is not good news for anybody to hear that.

**Sen. Ndiema:** Thank you, Mr. Speaker, Sir. I appreciate the effects of the ban or the effects of the disease on the community. In the event that it has reached a disaster level, it can be addressed by both the county and national governments. This is because disasters are a function of both the county and national governments. I believe that the county government is in a position, through its budgetary process, to allocate adequate funds to meet such requirements in addition to what it provides as bursaries for the needy students. This is a matter for the county government to look at. If it feels that it is unable to do so, that matter can be handled, I believe, through the machinery and other consultative processes between the county and national governments.

We, as the Committee on Agriculture, Livestock and Fisheries, have handled the matter to the extent to which it matters to us. Perhaps the rest is for the relevant departments responsible for disaster management, finance and so on, and so forth.

Thank you.

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

**Sen. (Prof.) Lonyangapuo:** Thank you, Mr. Speaker, Sir. The Vice Chairperson is evading answering the question. Right now, he has no problem in Trans-Nzoia, because the Government has subsidized fertilizer from Kshs3,500 to Kshs1,800. So, he is so comfortable because he has been assisted, but I am not comfortable. Even my neighbours - Turkana and Baringo counties - are in the same scenario. Could he further clarify when the people of my county will be assisted with this subsidy of fees payment the way he has been assisted in terms of provision of cheap fertilizers?

**Sen. Ndiema:** Mr. Speaker, Sir, while I appreciate that West Pokot County has been affected by foot and mouth disease, I know Trans-Nzoia has been affected more than West Pokot County. There is a section in West Pokot County which has not been affected by this disease. The whole of Trans-Nzoia and many other counties have been affected by foot and mouth disease. So, the problem of foot and mouth disease is more widespread than it is. When we talk about fertilizer, West Pokot is also an agricultural county and got the subsidized fertilizer. In fact, they even got---

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

**Sen. Ndiema:** In fact, they even got Diammonium Phosphate (DAP) fertilizer. However, for the first time in history, Trans-Nzoia has been discriminated against and has not got any DAP fertilizer as I am talking today. It is unfortunate because rains are just around the corner.

Thank you, Mr. Speaker, Sir.

**The Speaker** (Hon. Ethuro): Order, Sen. Ndiema! I know that Sen. (Prof.) Lonyangapuo put you a bit on the defensive, but you should have recognized it for what it was. Yes, you are the Vice Chairperson of the Senate Committee on Agriculture, Livestock and Fisheries. However, just because you come from Trans-Nzoia County, you would not wish to see your county discriminated in any way. All counties must get the kind of subsidy that is applicable, whether in West Pokot or Trans-Nzoia County. So, let us conclude this and proceed.

Next Statement, the Chairperson on Education.

**Sen. Karaba:** Thank you very much, Mr. Speaker, Sir. I have already communicated with Sen. Bule. We have agreed that because I have received the Statement---

**The Speaker** (Hon. Ethuro): Order, Chairpersons and Members! If you have reached some agreement with a Senator, just approach me. Let us not waste valuable time on the Floor. We have a lot of Business to transact.

**Sen. Karaba:** Mr. Speaker, Sir, I have one Statement from my Ministry to deliver it to Sen. Adan.

*(Laughter)*

**An hon. Senator:** Where is she?

**Sen. Karaba:** She is called---

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

MANAGEMENT CRISIS, ALARMING DECLINING ACADEMIC  
PERFORMANCE AND RAMPANT THEFT OF SCHOOL PROPERTY IN  
GARBATULA HIGH SCHOOL, ISIOLO COUNTY

**Sen. Karaba:** Mr. Speaker, Sir, the Statement is here with me. Pursuant to Senate Standing Order No. 45(2), Sen. Adan requested for a Statement from the Chairperson of the Standing Committee on Education regarding the management crisis---

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

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

*(Sen. Hassan spoke off record)*

Sen. Hassan Omar, you should be satisfied that the system is working. I have seen your request; you do not have to verbalize your request.

Proceed, Sen. Haji.

**Sen. Haji:** On a point of order, Mr. Speaker, Sir. Could the Chairperson of the Committee on Education clarify whether we have such a Senator here or not?

**Hon. Senators:** Sen. Adan!

**Sen. Haji:** You did not say Sen. Adan.

**Sen. Karaba:** Have you not heard?

**The Speaker** (Hon. Ethuro): Proceed, Chairperson!

**Sen. Karaba:** Sen. Adan had---

*(Laughter)*

**The Speaker** (Hon. Ethuro): Order, Mr. Chairman!

**Sen. Karaba:** Sen. Dullo!

**The Speaker** (Hon. Ethuro): Order, Mr. Chairman! Sen. Haji is contesting who Sen. Adan is.

**Sen. Karaba:** She is here; are you not the one? She is Sen. Fatuma Dullo Adan.

*(Laughter)*

I am responding to her Statement regarding the mismanagement crisis, the alarming declining academic performance and the rampant theft of Garbatula High School property. The Senator requested the Chairperson of the Committee on Education to clarify:-

(a) Whether the Ministry of Education, Science and Technology and the Teachers Service Commission (TSC) have plans to overhaul the school's Board of Governors, which is also called the Board of Management.

(b) Explain why the current school principal is still in office despite having attained the retirement age.

(c) State and explain disciplinary measures the Ministry of Education, Science and Technology and TSC intend to take against the current and former school management boards for failure to secure school property.

(d) State and explain measures the Ministry of Education, Science and Technology plans to take to secure the school property and improve the performance, in view of the school's re-evaluation to national status.

Mr. Speaker, Sir, I wish to respond to the issues raised by the Senator as follows:-

(a) Yes, the Ministry has plans---

**The Speaker** (Hon. Ethuro): Order, Mr. Chairman! Let me assist you, you do not have more than five minutes. Proceed along those lines.

**Sen. Karaba:** Okay. Yes, the Ministry has plans to overhaul the Board and it is in the process. The last executive meeting held on 12<sup>th</sup> December, 2014, was held to discuss theft of computers and many other things in the school.

(b) Garbatula High School was closed in 1990 due to insecurity. Upon reopening, a local head teacher was deployed and so many other heads have been there until the current principal called Mr. Charles Kamau Mbithi, TSC No. 260069, was deployed in May, 2013. Therefore, the current principal is on a three year contract and has been tasked to build and restore the school to its past glory.

(c) Following the answer in "b", the issue of disciplinary measures against the current principal does not arise.

(d) To improve performance, the TSC has posted adequate teaching staff and deployed a competent head with a good performance background. Before Mr. Mbithi was posted to Garbatula High School, there had been a high turnover of principals in the school which has had five principals since 2007, denoting lack of stability in the management. However, the school has managed to achieve relative calm for the last two years since the new principal took over the management of the school. There have been no reports of a crisis witnessed in the school in the recent past.

Thank you.

**Sen. Khaniri:** On a point of order, Mr. Speaker, Sir. I am looking at the Order Paper for the day and the Statements that are expected to be delivered today are listed clearly. We expected three Statements from the Chairperson of the Committee on Education, and the Statement that he has just delivered is not one of those that are listed on the Order Paper. Is he in order? Otherwise, what will be the whole point of printing an Order Paper and then we do not follow the sequence on the Order Paper?

**Mr. Karaba:** Mr. Speaker, Sir, with all due respect, I had sought permission from the Speaker. We had an agreement since the other answers were not forthcoming. I had one which was delivered last week although the Questioner was not in. I wonder whether it is possible to deliver the statement today. The one which is listed is---

**The Speaker** (Hon. Ethuro): Order! That is correct. The statement was due last week. He requested that we allow him to deliver it today. However, you are right. We should deal with the ones which were due today. There are some which may not be prosecuted today. They will, therefore, overlap to subsequent days.

**Sen. Adan:** Mr. Speaker, Sir, first and foremost, I am grateful to the Chairman for giving the statement. However, it is a pity that he wants to portray a situation where there is no problem on the ground. Let me inform this House---

**The Speaker** (Hon. Ethuro): Order! Your task now is to seek clarifications. It was the Chairman's job to inform.

**Sen. Adan:** Mr. Speaker, Sir, I want to seek clarification because the response given by the Chairman was not adequate. This is so, because it does not reflect the position on the ground. Last year, the leadership of Isiolo went to carry out a fundraising for this particular school because its situation is pathetic. Up to now, the situation has not yet improved. The Chairman says the school was closed because of insecurity. That is not the true position. Garbatulla was the only school that was closed. The other schools were going on with studies. Why was Garbatulla the only school closed?

Secondly, the community has raised an issue about the Board of Governors (BOG). It is important to listen and involve communities when it comes to management of schools and even the alumni who have offered to support the school. The alumni are holding Kshs8 million that they want to pump into the school. In the current situation, they cannot pump that money.

The Ministry has failed to indicate why experienced and qualified local teachers were not posted there. The leadership of that county sat with the Teachers Service Commission (TSC) and the Ministry of Education, Science and Technology officials and decided to remove the headmaster whom the Chairman claims was improving the situation of the school. If you look at the response, you will see that there has been a drop from 3.26 points to 2.8 points. Will that situation improve with the current principal? That is not the position.

He also said that the current principal was a headmaster. I was informed by the Chairperson that the current Director of Education was sent to go and give a report. This is one of the managers who are running down the school. I request the Government to send independent auditors and investigators so that they come up with a proper report which should be tabled in this House.

Secondly---

**The Speaker** (Hon. Ethuro): You can direct the second point to the Chairman. Your time is up. You have taken more time than the Chairman.

**Sen. Hassan:** Mr. Speaker, Sir, Garbatulla has been one of the top schools in the region. It is one of the schools that have---

**The Speaker** (Hon. Ethuro): Order, Senators! For guidance, we have said that if you want to make a request, you do so during Statement Time. If you want to make an intervention, you will do it when it is time for interventions.

**Sen. Hassan:** Mr. Speaker, Sir, this school has continued to experience decline in academic standards. I want to know what the Ministry or the Cabinet Secretary has done to integrate the concerns of the leadership of Garbatulla. Secondly, why is it that there has not been adequate teaching staff causing the school to decline in terms of performance?

**Sen. Hargura:** Mr. Speaker, Sir, I would like to seek a clarification. The only national school in upper eastern has gone down completely. Why has the Government taken very long to address the issue? They have been declining even in national examinations. Why is it taking long to revive that kind of a school?

**Sen. (Dr.) Kuti:** Mr. Speaker, Sir, part of the reasons this school is failing and collapsing is because of posting non-locals who feel that the area is insecure and remote. Most of the time, these people are not even there. I would like the Chairman to clarify why a proposal done by leaders to the TSC to replace the current Director with Mr. Abdi Kosai Mulu as a Principal who is qualified and currently the head of Olonyiro Division in Isiolo County was denied.

**Mr. Karaba:** Thank you for those interventions. Number one, as far as the BOG is concerned, the Government does not consult the locals when it comes to appointments. There is a panel of selectors which comprises of different panelists and not the locals. However, if the locals feel that there is a problem, they have a representative through the Chief and the DEO who should provide leadership in terms of what they would like to have in the Board.

The second one is about the teacher. The teacher who is posted there as it has been stated, is on contract. The contract is three years. If the contract expires or someone else is deemed fit by the TSC which appoints, then the TSC will replace him. However, so far, the TSC has found it fit to continue having the one who is there until his time elapses.

**The Speaker** (Hon. Ethuro): Order, Mr. Chairman! You need to take your fellow Senators seriously. You have four Senators who have made interventions on this matter. They have raised all manner of issues. You have said that if they made the interventions, the TSC would have considered. However, they have told you that the interventions were made and the TSC did not consider. At the very minimum, just say that you have heard their requests although they are new issues to you and then to follow up the matter with the TSC, especially on the circumstance of Garbatula High school. We, as a House, are fortunate because you have been a principal and you know these things better.

**Sen. Karaba:** Mr. Speaker, Sir, I will follow it up with the TSC to make sure that the proper head is posted.



**Sen. Musila:** Mr. Speaker, Sir, in addition to what you have said, did you hear Mr. Chairman say that the contract is there and that the principal will stay which means, *wapende wasipende*? Is that the manner in which the Government is ruling this country?

*(Laughter)*

**Sen. Karaba:** Mr. Speaker, Sir, there is a lot about Garbatula and the school is known to have so many problems. One of them is headship which has been wanting for a very long time. We are scouting for a person to head that school. If the hon. Senators have anybody in mind who can head that school, they can bring the names forth through the TSC. I have no problem.

**The Speaker** (Hon. Ethuro): Order, Mr. Chairman! That matter is concluded. He will follow up with the appointing authority. I will not allow names to be mentioned on the Floor of this House for us to be an interviewing panel. That is not our business. We have sufficiently made it clear and you have admitted that the problem of the school is leadership. There is a structure through which that leadership is sourced and obtained and it will be used.

Let us go to item (c) on the Order Paper. I do not see the Chairman concerned with that item. For the sake of time let us proceed until he is available.

The Chairman of the Committee on Lands and Natural Resources, respond to item (d).

**Sen. Kivuti:** Mr. Speaker, Sir, I beg your indulgence. This was a continuation and clarification of the same Statement ---

**The Speaker** (Hon. Ethuro): Order, Mr. Chairman! The Members made presentations to my office and that is why I am saying that you just leave that one since we have other business to do.

LIFTING OF MORATORIUM ON TIMBER HARVESTING  
BY THE CS FOR ENVIRONMENT, WATER  
AND NATURAL RESOURCES

**Sen. Kivuti:** Thank you, Mr. Speaker, Sir. Let me go to item (d). At the sitting of the Senate on 12<sup>th</sup> February, 2015, Sen. Mutula Kilonzo Jnr. requested for a Ministerial Statement on the lifting of a moratorium on timber harvesting as stated in a press statement on the *Daily Nation* newspaper of 9<sup>th</sup> February, 2015. The Senator requested the Chairman to:-

1. State whether there exists regulations in the Forests Act on harvesting of mature plantation or thinning of forests.
2. State whether the Felling Plan of 2012/2017 was approved by the Cabinet.
3. State whether the county governments and National Water Towers Agency were consulted on the Felling Plan and whether they approved the same.
4. Explain whether the environmental impact assessment was carried out and whether the National Environmental and Management Authority (NEMA)

confirmed that the Felling Plan was consistent with the conservation of the environment or any other written law.

5. Explain whether the Cabinet Secretary (SC) is aware that the functions and management of forests was devolved to the county governments by the Senate.
6. Provide a data base on the number of mature trees in all forests in the country.
7. Explain the mechanisms, including budgetary allocations, that the national Government has put in place to increase allocation of depleted forests.

Mr. Speaker, Sir, on the first question, there exist regulations on harvesting of mature plantations and thinning of trees in State forests. These are contained in the Forest Harvesting Rules 2009, Legal Notice No. 185 of 24<sup>th</sup> December, 2009.

On the second question, the Felling Plan 2012/2017 was not approved by the Cabinet, but it was approved by the Kenya Forest Service Board (KFSB).

On the third question, the felling plans form part of the management plans and in preparation of management plans all stakeholders of the forest sector, including the county governments and the Kenya Water Towers Agency (KWTa), are involved.

As you may be aware, with regard to the issue of Environmental Impact Assessment (EIA), that is an expensive undertaking. NEMA and the KFS have agreed to have it done in phases on ecosystem basis. Already, the EIA for Mau and Mt. Kenya ecosystem have been finalized. That of Aberdare and Cherangany is ongoing. It is expected that the whole country will have been covered in the next three years. Those which have been finalized have been approved by NEMA, which indicates that the proposed activities include the implementation of felling plans consistent with the conservation of the environment.

Mr. Speaker, Sir, on the fifth question, I am aware that functions and management of some categories of forests have been devolved to county governments. However, forests on public land, including Government plantation forests, have not been devolved in line with Article 62(3) of the Constitution of Kenya.

On the question of data base, the number of mature trees in all the forests in the country is as listed in the Schedule which I have already submitted to Sen. Mutula Kilonzo Jnr. and they are listed on all forests.

On question 7, the national Government has put in place mechanisms to increase afforestation. They include:-

1. Preparation and implementation of the management plan for each forest in the country.
2. Encouragement of the practice of plantation establishment. This is called PERIS.
3. Promotion of partnerships between ministries through the KFS and communities living adjacent to forests.
4. Fifteen per cent of all revenue accruing from the sale of mature plantations is ploughed back for re-establishment of new plantations.

Mr. Speaker, Sir, there were supplementary questions from the Senate Minority Leader (Sen. Wetangula), Sen. (Dr.) Machage and Sen. (Dr.) Khalwale.

Sen. Wetangula sought to know about how to increase the current 1.7 per cent of forest cover to 10 per cent. The current cover is actually 6.99 per cent. There is already a plan on how to increase this to 10 per cent. The strategies being laid down are as follows:

Production and planting of high quality tree seedlings; school greening establishment and learning of farm forestry; development of community action plans and capacity development for charcoal producer association; commercial tree planting and bamboo growing; promotion of agro forestry; management of invasive tree species; promotion of non-wood forestry products; promotion of urban tree planting; development of community woodlands; efficient management and--

**The Speaker** (Hon. Ethuro): Order, Mr. Chairman! Just highlight the critical ones.

**Sen. Kivuti:** Mr. Speaker, Sir, as to whether the Government will allow logging of trees at the same rate, yes, the Government will allow logging as long as it is sustainable. People must plant trees before they log.

On whether the Government will adopt sultanate theory to cut one and plant three trees, the policy of Government is even to do better than that.

With regard to Sen. (Dr.) Khalwale's question whether the Government is aware that the people who were removed from the Mau Forest have gone back. I would like to inform him that they have not gone back. We are aware that there are other encroachments, but not from the same people.

The question by Sen. (Dr.) Machage to confirm whether the people who were paid Kshs400,000 each have gone back. The answer is the same; those people have not gone back. In fact, they have been resettled elsewhere.

**Sen. Mutula Kilonzo Jnr.:** Mr. Speaker, Sir, I am extremely disappointed by the response by the Ministry, particularly on consultation. In fact, by the time I requested for the Statement, the Nandi Governor had objected to the lifting of the moratorium. I want a clarification from the Cabinet Secretary (CS) as to when he consulted the county governments and if he could provide this Senate with records of those consultations.

Under Article 72 of the Constitution, Parliament is required to make legislation on the management of the environment under Articles 69 and 70. Therefore, the regulation cited by the CS is to a large extent unconstitutional.

Is the Cabinet Secretary aware that the forests that are referred to in the moratorium fall under Article 62 of the Constitution which is public land? Those forests are held by the national Government in trust for Kenyans and are supposed to be managed by the National Land Commission (NLC). Is the Cabinet Secretary aware that the purported approval of felling of trees in the national forests by the KFS is unconstitutional?

The felling plan 2012/2013 purports that in the answer that Environmental Impact Assessment (EIA) reports are too expensive and, therefore, the Cabinet is suggesting that they would fell the trees and then look for an EIA. Is the CS aware that under the law, the felling of trees is supposed to be done after the EIA report has been done? I would like the CS to provide this Senate with evidence that the consultations with Kenya Water Towers Agency and the county governments has been done and why the CS thinks that it

is much easier to fell trees in the Republic and it is more expensive to have the EIA reports done before she can do what is required by law.

**Sen. Kagwe:** On a point of order, Mr. Speaker, Sir. Whereas I completely support what Sen. Mutula Kilonzo Jnr. says, I am a bit at a loss because he wants to know what the CS is thinking and whether he is aware. How is the Chairman supposed to know what the CS is thinking? I am under the impression that the question is to the Chairman and, therefore, it is actually the question of what the Chairman is thinking rather than what the CS is thinking. The CS is not here.

**Sen. Hassan:** On a point of order, Mr. Speaker Sir. I am seeking a further clarification because the first clarification had been sought. Because of the weighty issues being raised by Sen. Mutula Kilonzo Jnr., and since there are other weighty issues that need clarity, maybe the Committee could consider inviting the CS so that they can interrogate her, one on one, so that we do not keep on seeking further clarifications.

**Sen. (Prof.) Anyang'-Nyong'o:** Mr. Speaker, Sir, arising from what the Chairman said about the settlement of IDPs, I would like him to clarify the following. He spoke of some people not having gone back. People are measured in terms of numbers. There are specific places where they were settled as IDPs. If you say that they have not gone back, how many are these people and from where?

Related to the same, there were IDPs from Nyanza, particularly Kisumu, Nyamira and Kisii counties. Their numbers were known. The provincial administration had their names and they were to be given some money as compensation like other IDPs. However, to this very day, they have not been given money as compensation. I do not know whether you are lumping them amongst the "some people". I would like to know specifically whether "some people" includes IDPs from those counties and what you are doing about them regarding compensating them and resettling them. When we were in the other House---

**The Speaker** (Hon. Ethuro); Order, Senator!

**Sen. (Prof.) Anyang'-Nyong'o:** Mr. Speaker, Sir, it is very important. When we were in the other House, the Deputy President was very vocal about the resettlement of IDPs. It is now two and half years since the Jubilee Coalition Government took power and they have not done anything. How comes he is no longer vocal about IDPs?

**The Senate Minority Leader** (Sen. Wetangula): Mr. Speaker, Sir, you heard the Chairman tell us, and you could see from his demeanor that he did not even appear to believe in what he was saying; that our forest cover is 6.9 per cent. This is a big joke. The forest cover in Kenya has never been 2 per cent in the last more than 20 years because of the destruction of forests. Could he tell us where these forests are, what acreage they are and how he has arrived at a percentage of 6.9 out of our 583,000 square kilometres land mass in this country? That means that our forest cover is 40,000 square kilometres which translates into 40 million acres. Where is this forest? Could he show us the Kenyan map and plot everywhere where we have the forests that amount to this acreage?

**Sen. (Dr). Khalwale:** Mr. Speaker, Sir, you heard the Chairman tell me that the people I complained that are now resettling back into the Mau Forest, are not the same ones who were evicted. I would like the following clarification; first, is it, therefore, acceptable that new people should come to resettle?

Secondly, is it the policy of the Jubilee Government, which comprises of two communities, that after they evicted the first batch and paid each one of them Ksh400,00, they have now brought others, so as to pay them a further Ksh400,000? They want to do this for 20 years that they dream that they will be in Government.

**Sen. (Prof.) Lesan:** Thank you, Mr. Speaker, Sir. I would the Chairman to tell the House what the KFS is doing as regards the fires in the forests. In the last seven days, fire has been raging in the Mau Forest and Siongiroi Forest in Bomet County.

**The Speaker** (Hon. Ethuro): Order, Senator! It is a clarification. In your own admission, you said; “in the last few days.”

**Sen. (Prof.) Lesan:** Mr. Speaker, Sir, I am aware that it is the reduction of the forest cover by the trees and logging is one of those ways that trees are lost. Fire is also one of the ways in which trees are lost. So, I am asking the Chairman to clarify how we could preserve the forests by controlling the fires that are raging in the forests, especially in the Mau Forest.

**The Speaker** (Hon. Ethuro): The Chairman may respond, but as he does so, I want to agree with Sen. Kagwe and Sen. Hassan. Sen. Mutula Kilonzo Jnr. should not be referring to the Chairman as the CS because he is not. He must refer to him as “Chairman.”

Secondly, the Chairman is at liberty to get information from all manner of sources, including the CS. So, he cannot also confine him to the CS. I am sure that what Sen. Hassan has suggested has been a fairly good practice when things are a little bit tough. That is still available to you, Chairman.

Proceed now for the specifics.

**Sen. Kivuti:** Thank you, Mr. Speaker, Sir. Before I proceed, I seek your indulgence. I am very disturbed that an hon. Member can stand and say: “Reading from my misdemeanor” I take it that the Member has some inherent hatred of my personality and not only for today. I will need your protection because the personal grudge being brought under the table in terms of misdemeanor---

*(Laughter)*

**The Speaker** (Hon. Ethuro): Order, Mr. Chairman! I am sure Sen. Wetangula has heard you. He wants to explain that, that was not the case.

**Sen. Kivuti:** Mr. Speaker, Sir, I mean misdemeanor.

**The Senate Minority Leader** (Sen. Wetangula): It is “demeanor” not “misdemeanor”.

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

**The Senate Minority Leader** (Sen. Wetangula): Mr. Speaker, Sir, I made no allusion to misdemeanor. The demeanor of the distinguished Senator for Embu, whom I have tremendous respect for and liking---For your information, we were at the university at the same time. He lived in Room 137, while I was in room 138 in Hall 10. He has been my friend ever since. I simply said that looking at his body language as he spoke, he did not even appear to believe in what he was saying. That was my impression.

**Sen. Kivuti:** Mr. Speaker, Sir, Sen. Wetangula has repeated that he does not think that he believes that I know what I do. In that case, I have no reason to answer him.

*(Laughter)*

Sen. Mutula Kilonzo Jnr. wanted to know the details of when the CS consulted with the county government. We did not find it necessary to annex the details of the consultations, but I will get them because they must be factual. On the issue of constitutionality, Article 62 of the Constitution correctly provides for forests to be administered by the NLC on behalf of the national Government. The administration referred to here is not the management of forests; but the management of land. I know that I am right when I say that the NLC may not have the knowledge and the resources to do all that pertains to forestry. If you read Article 62, it not only talks of forestry, but of minerals, oil, wildlife, forestry, water and so many other resources.

I do not believe that the NLC will have the management and environmental impact assessments for all those sectors as a land commission. However, in case the Senator may wish to engage more on this matter, the Chairman is ready to look further into that constitutional issue. I can confirm here that we have not had problems dealing with Sen. Mutula Kilonzo Jnr., the same way I am being told about my “misdemeanor” by another Member.

*(Laughter)*

**The Speaker** (Hon. Ethuro): Order, Chairman! You are the one referring to yourself as “misdemeanor”. That is not what Sen. Wetangula said.

**Sen. Kivuti:** Mr. Speaker, Sir, the key word here was “misdemeanor.”

*(Laughter)*

**The Speaker** (Hon. Ethuro): Order, Chairman! Let me clarify that that key word was not there.

**Sen. Kivuti:** Mr. Speaker, Sir, let me answer the rest of the questions. I explained in this document that you cannot carry out the Environmental Impact Assessments (EIAs) of all the forests which I read in the schedule which is already with Sen. Mutula Kilonzo Jnr. This means, if the EIAs are to be done, they will need time. I have explained which forests EIAs have already been done for. The EIAs conform with the felling plan which has been addressed by all forest agencies. So, it is actually a correct plan. If it needs to be changed, it is not a static plan. According to the Forests Act, it is supposed to be done every two years.

The Statement which was sought by Sen. (Prof.) Anyang’-Nyong’o, did not include the IDPs from other counties other than Mau Forest. So, my answer was restricted to IDPs from Mau Forest. However, in case he would like to add a supplementary Statement on this matter, I will be more than ready to give the answers on these other IDPs who are in his county.

**The Speaker** (Hon. Ethuro): What is it, Sen. (Prof.) Anyang'-Nyong'o?

**Sen. (Prof.) Anyang'-Nyong'o:** On a point of order, Mr. Speaker, Sir. Is the hon. Chair in order to assume that in the Mau Forest, there were no IDPs from those three counties? Mau Forest is in Kenya. These IDPs are from Kenya and these three counties are in Kenya. So, why make the assumption these people were not IDPs from Mau Forest?

**Sen. Kivuti:** Mr. Speaker, Sir, I have now understood him clearly. At first, I thought he meant IDPs from other areas of Kenya. However, I now understand he means IDPs who were actually in Mau Forest. In this particular case, the compensation did not go only to IDPs from a certain tribe. All IDPs who were found in Mau Forest were all classified as IDPs and were treated in the same manner.

Regarding the issue raised by Sen. (Dr.) Khalwale, as to whether it is acceptable for people to be told to go back simply because it is Jubilee Government, I would like to state here clearly that since the Senator mentioned the Deputy President and the issue of how he was keen on the resettlement of IDPs, I am very sure our Deputy President has been talking about how to finalize the resettlement of IDPs. This is in the public domain and not something from my mind.

**The Speaker** (Hon. Ethuro): Hon. Members, we have taken so much time on this Statement.

**Sen. Hassan:** On a point of order, Mr. Speaker, Sir. The Chairperson of the Committee on Land and Natural Resources, in his response, made an interpretation of what Sen. Wetangula might have said about him. He said that for that reason he shall not respond to Sen. Wetangula's question. That might be in contravention of the Standing Orders. Will that constitute a misdemeanor; not to answer a fellow Senator's question?

**The Speaker (Hon. Ethuro):** Hon. Senators, on the altercation over the word "misdemeanor" and "demeanor," since you have the answer I will look at it. I am equally persuaded along your thoughts, but for the benefit of doubt and since the Chair has insisted, let us look at it properly. In any case, it is not for the Chair to refuse to answer a particular question. If you felt Sen. Wetangula did not address you properly, you know what to do. Demand for an apology that he swallows his words and we proceed. If you continue, you offend me and I offend you then we have no business.

*(An hon. Senator consulted loudly)*

I do not share that view. Let me look at the HANSARD and give my considered opinion tomorrow.

**Sen. Mutula Kilonzo Jnr.:** Mr. Speaker, Sir, the Chairman has not made a commitment as to when he will give the confirmation of the consultations between the CS and the county governments on the purported felling plan.

I am also concerned that the Chairman purported to interpret the Constitution in terms of capacity of the NLC. I would suggest, because he does not have, in my own view, the capacity to say that the NLC does not have capacity as stated in the Constitution, to cause for the CS to come to the Senate so that we can interrogate him or her. The Constitution says that forests are supposed to be held in trust by the national

Government. However, the CS then says that the forest service department can make a decision about felling of trees in the country. This means there is something wrong with the understanding of the Constitution by the national Government. Therefore, I would like your direction on this issue because as we while away in the Senate, the national Government will ensure that the trees in Makueni disappear as we wait and we are not going to tolerate it.

**Sen. Kivuti:** Mr. Speaker, Sir, in the interest of time, as you look at the meaning of the word “misdemeanor”, I request that you also look at Article 62 of the Constitution based on what I submitted in this House. The items which are listed from (f) to (m) are supposed to be administered by the NLC. That includes so many items in Kenya, for example, Government forests, all minerals, all roads, all rivers and lakes, territorial seas, exclusive economic zones, continental shelf, land between high and low water marks and so on. We need to get that advisory from the Chair.

*(Loud consultations)*

**The Speaker** (Hon. Ethuro): Order, Senators! Let the Chairman conclude.

**Sen. Kivuti:** Mr. Speaker, Sir, I am requesting that because Sen. Mutula Kilonzo Jnr. is contesting that the jurisdiction of the NLC does not include administering all roads, waters---

*(Loud consultations)*

They are listed in Article 62. My answer is that Article 62(3) means that the NLC is meant to administer all the lands, but not the forests.

**The Speaker** (Hon. Ethuro): Mr. Chairman, let us conclude this matter. I will take your invitation to look at it alongside the HANSARD.

Sen. Mutula Kilonzo Jnr. also made some proposals to you. A matter of this nature seems to have a lot of interest. You may wish to invite the CS so that we can have a *Kamukunji*. Forest cover in this country is so crucial to sustainable development. Therefore, we cannot afford to have different figures. I was actually ruling, I do not need your assistance.

**Sen. Kivuti:** Mr. Speaker, Sir, I am obliged. I have no problem calling the CS. We have called them even last week. We have no problem as a Committee summoning the CS and even inviting all Members of the Senate.

**The Speaker** (Hon. Ethuro): Thank you, Mr. Chairman.

Hon. Senators, we will come to a close of this business, except for one Statement.

*(Sen. (Eng.) Muriuki stood up in his place)*

Sen. (Eng.) Muriuki, if you see me ignoring others, you should understand that I am not aware of yours. You need to approach me then I will grant you a chance. In the House, a word “ambush” is a foreign terminology. Approach the Chair, then I will see how to assist you.



I was not concluding, but I said we are about to conclude this session so you still have an opportunity to do so after approaching me.

We will have the last Statement, that is, part (g). However, all other Statements will be pushed forward to tomorrow. I will then make two Communications from the Chair. The Chairman of the Committee on Finance, Commerce and Budget will start with the request on the Motion of Adjournment, which we will agree on time, then he will go to part (g) before I can entertain Sen. Wetangula's point of order.

*(Sen. Hassan consulted loudly)*

Order, Sen. Hassan! You have a tendency to only listen to what is good to you and not what the Chair has directed. I proposed many other things before part (g), so let us proceed alongside those lines.

### COMMUNICATIONS FROM THE CHAIR

#### KAMUKUNJI ON GENERAL STATUS OF EDUCATION IN KENYA

**The Speaker** (Hon. Ethuro): Hon. Senators, there will be a *Kamukunji* tomorrow. I wish to remind you that there have been numerous requests for statements concerning the status of education in the country. On the 12<sup>th</sup> March, 2015, I directed that the Cabinet Secretary for Education, Science and Technology be invited by the Standing Committee on Education to appear and address the Senate on the general status of education in Kenya.

Hon. Senators, this consultative meeting has, therefore, been confirmed for tomorrow, Wednesday, 18<sup>th</sup> March, 2015, at 11.00 a.m. in this Chamber.

Kindly, plan to attend to deliberate on the important matters.

#### VISITING DELEGATION OF SPEAKERS, MCAs AND STAFF FROM VARIOUS COUNTY ASSEMBLIES

Hon. Members, I am pleased to acknowledge the presence and to welcome to the Senate this afternoon, a delegation of Speakers, Members of County Assemblies (MCAs) and staff from various County Assemblies who are seated at the Speaker's Gallery. I request the Speakers, MCAs and staff to stand when I call out their names so that they may be acknowledged in our usual tradition of the Senate.

1. Hon. (Dr.) Nuh Nassir Abdi - Speaker, Tana River County Assembly/Chairman of County Assemblies Forum;
2. Hon. Bishar Omar - Wajir County Assembly;
3. Hon. D.C. Chitwah - Vihiga County Assembly;
4. Hon. Ndegwa Wahome - Nyandarua County Assembly;
5. Hon. Joash Nyamoko- Speaker, Nyamira County Assembly;
6. Hon. Nduati Kariuki - Murangá County Assembly;
7. Hon. M. Hashim - Lamu County Assembly;

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8. Hon. Sammy Ruwa - Kwale County Assembly;
9. Hon. Anne Adul - Speaker, Kisumu County Assembly;
10. Hon. Jimmy Kahindi - Speaker, Kilifi County Assembly;
11. Hon. Johnson Osoi - Kajiado County Assembly;
12. Hon. Robert Katina - West Pokot County Assembly;
13. Hon. Geoffrey Kipngetich - Bomet County Assembly;
14. Hon. Peter Ngari- Deputy Speaker, Laikipia County Assembly;
15. Hon. Safari Ntalala - Representative, Meru County Assembly;
16. Hon. Alex Ole Magelo - Speaker, Nairobi County Assembly;
17. Hon. Kariuki Mate - Speaker, Embu County Assembly;
18. Hon. Maghanga - Speaker, Taita Taveta County Assembly;
19. Hon. Aresmus Mwarabu - Kilifi County Assembly;
20. Hon. Harun Masese - Kisii County Assembly;
21. Hon. Moses Ote - Deputy Speaker, Busia County Assembly;
22. Hon. Francis Mokoro - Deputy Speaker, Kisii County Assembly;
23. Hon. George Ndotto - Speaker, Kitui County Assembly;
24. Hon. John Makali - Speaker, Bungoma County Assembly;
25. Hon. Losilian - Deputy Speaker, West Pokot County Assembly; and,
26. Hon. Rajuay - Speaker, Mombasa County Assembly.

Hon. Senators, the Speakers are accompanied by the following staff:-

1. Mr. Jacob Ngwele – Clerk, Nairobi County Assembly;
2. Ms. Roselyn Mungai – Chief Executive Officer, County Assemblies Forum (CAF) Secretariat; and,
3. Ms. Sisini Gladys – CAF Secretariat.

Hon. Senators, I take this opportunity on behalf of the Senate and on my behalf, to wish the Speakers, MCAs and members of staff a happy and a fruitful visit to the Senate.

I thank you.

Next Order!

## POINT OF ORDER

### NOTICE OF MOTION OF ADJOURNMENT UNDER STANDING ORDER NO. 33

#### RIISING INCIDENTS OF INSECURITY IN MANDERA COUNTY

**Sen. Billow:** Mr. Speaker, Sir, I rise under Standing Order No. 33 to seek an adjournment of the House to discuss the terrorist threat, attacks and the security situation generally in Mandera County, on grounds that it is a matter of urgent national importance affecting the security and integrity of this nation.

*(Several Senators rose in their places)*

**The Speaker** (Hon. Ethuro): Order, Senators! You have the requisite numbers. The Motion will be at 5.30 p.m.

**Sen. Billow:** Mr. Speaker, Sir, in view of the interest, I request that we start the Motion at 5.00 p.m. because there are many Members who will want to contribute to this very important matter.

**The Speaker** (Hon. Ethuro): Order, hon. Senators! We are also doing a countdown to the recess. As the Rules and Business Committee (RBC), we took a decision that we must try to process as much Business as possible, this week and the next week. Therefore, 5.30 p.m. to 6.30 p.m. is good time. In fact, because of the given interest, I am sure Members will faithfully and loyally be waiting for that opportunity. Proceed, Chairman.

**Sen. Orenge:** On a point of order, Mr. Speaker, Sir. I plead that on the issue of Mandera, particularly since the loss of lives has been constant and persistent---. We have a situation where teachers who were assigned to teach in that county have, for very good reasons, refused to go back. They are now justified because if a whole Governor can be attacked in an ambush, how can an ordinary teacher survive in that county?

So, Mr. Speaker, Sir, I plead with you that one hour will not be sufficient to deal with this problem and for the Senate to be fully heard on this matter. Above everything else, if our people and our borders are not secure, we have no business sitting here. We better take up arms and help everybody else guard our borders. Therefore, I plead that we either start at 5.00 p.m. or extend the time up to 7.00 p.m.

**The Speaker** (Hon. Ethuro): Order, Senators! I am convinced. You know how to extend your time. Thirty minutes to 6.30 p.m., you will bring a Motion to extend your time to whatever time you wish. However, the Motion will begin at 5.30 p.m.

Proceed, Mr. Chairman.

## STATEMENT

### SETTING OF BUDGETARY CEILINGS FOR COUNTY ASSEMBLIES BY THE CRA

**Sen. Billow:** Mr. Speaker, Sir, with regards to Statement (g), on the county assemblies operations and the additional requests to this statement by the Senator for Mombasa County, there was also a letter from your Office that asked us to look at this issue in detail because of the concerns from the counties. We also had a sitting with officials of the County Assemblies Forum who also expressed concern on this matter and came to meet with our Committee on the same.

We, therefore, decided to handle this matter a bit more thoroughly because of the interest and impact. So, we decided to handle it as a Committee. We had a meeting with all the relevant institutions that were looking at the ceiling. Our Committee has decided to do a comprehensive report, which I seek the indulgence of the House that we table it in the House on Thursday.

We will be addressing three issues: first, on the ceilings for the current financial year and the budget ceilings process for the coming financial year. We are also looking at

the financial independence of county assemblies from the executive, the operational aspects and the compliance by the county executive to the ceilings. So, we have asked the relevant institutions to provide us with that information and we are looking at it.

I want to assure Members that it is the commitment of my Committee to ensure the financial independence of county assemblies as much as possible. The proposal for this year, to start with, will be subject to this House.

We have already given directions to that effect. We have also given directions to the Controller of Budget to the effect that they must within a month give us a report on how to implement financial independence. So, I want to seek the indulgence of the House to submit that report on Thursday.

**Sen. Hassan:** Mr. Speaker, Sir, part of the justification by the Senator for Mandera, the Chairperson of the Committee on Finance, Commerce and Budget, is persuasive. But I sought my Statement as a matter of urgency because the threat that county assemblies will ground to a halt is real. Today we have almost all the county assemblies' speakers here and I can tell you that in addition to sitting in this House, they are, probably, trying to negotiate how to best see that their county assemblies continue to operate.

The Chairperson has said that he wants, in a preliminary sense, a report to be given to them in a month's time. The issue is that there is a ceiling that is being enforced, which is an illegality, because it was not a resolution of this House. So, what we are doing is to aid and abet an illegality. That is why my question came in; to try and address that illegality, so that county assemblies are not threatened by the potentiality of closure or grounding. So, a report is, probably, a better way of presenting this because it has recommendations. But in the interim, when the Chairperson walks out after his Motion for Adjournment, could he write a letter to inform the Controller of Budget and the Commission on Revenue Allocation that, that ceiling is illegal? They should start to effect what has been approved in the appropriation acts of the county assemblies, as legally binding documents until that time when one month lapses, then we can do certain evaluations. Otherwise, we will ground these county assemblies to a halt.

**The Speaker** (Hon. Ethuro): The one month that the Chairman was talking about was about the direct crediting to the accounts and not on the ceilings.

**Sen. (Dr.) Machage:** Mr. Speaker, Sir, the operationalization of the Public Finance Management Act, as it is now, is a big problem and an impediment to the running of the county assemblies. There is, indeed, a stalemate in nearly all the counties between the Speakers and the Governors on what I would call "sibling" rivalry on financial management. Indeed, in my own county – Migori – there is a big problem now and it could land in this Senate for arbitration. Would I be in order to request that the Chairman organizes a mandatory retreat of the Governors and Speakers of all the 47 counties to arbitrate on this, so that we do not have a total failure in the management of the county assemblies of this country?

**Sen. Murkomen:** Mr. Speaker, Sir, whereas I appreciate the statement from the Chairman, he did not, in his demeanor, show me a person who understood the urgency of the time. This is because the county assemblies are not just in crisis, but have been in crisis for over two months. The explanation being given is an implementation of an

illegality. Is it in order for the Chairman to try to tell us that it will take another two or three days? Why can he not summon the Controller of Budget, the CRA and all the entities that are purporting to have a legal ceiling? When this House came up with the idea of ceilings, I spoke and said that ceilings are an illegality.

Even if we lost at that point in time, this House still safeguarded the county assemblies by saying that should there be any ceilings they will be approved by this House. I do not remember anytime this House has sat down to approve any ceilings of whatever nature. So, the purported ceilings that are being implemented in the counties are an illegality. Why is the Chairman buying more time for an illegality to continue without even telling us that he is going to summon these people to come and respond to this issue?

Mr. Speaker, Sir, I will continue saying even as we have our speakers in the Gallery, that the question of incapacity in the county assemblies, challenges that county assemblies have and the illegality and unconstitutionality of what is going to be passed by county assemblies is not an excuse for us to try to trample upon their rights and constitutional responsibilities.

If there is any incapacity in the counties, the Constitution says that the national Government – which includes the national Parliament – has a responsibility to build the capacity of the county assemblies. There is also the issue of unconstitutionality of Bills that were passed in this House. So, we must ensure that we protect the counties. That is our responsibility.

**The Speaker** (Hon. Ethuro): Point made! Each Senator will have about one minute to make their intervention.

**Sen. Obure:** Mr. Speaker, Sir, what I wanted to say has, in a way, been overtaken by what Sen. Murkomen has said. But essentially if you go by the Statement on the Order Paper, the budget ceilings are actually said to be imposed by the CRA. I would like the Chairman to address this issue and state categorically who should be imposing ceilings on the spending by assemblies.

**Sen. Mutula Kilonzo Jnr.:** Mr. Speaker, Sir, it is fair that as Senators, we speak from a point of information. The question of ceilings and budgets has been addressed by the courts. The courts found that the ceilings are actually legal. So, we cannot say what my brother said; that we, as the Senate, are abetting an illegality. It is an incorrect---

*(Loud consultations)*

Why do you not let me finish?

**The Speaker** (Hon. Ethuro): Order, Senators! Sen. Mutula Kilonzo Jnr. shall be heard.

**Sen. Mutula Kilonzo Jnr.:** Thank you, Mr. Speaker, Sir.

The court has made a finding on the legality of ceilings and the Speakers' forum which filed this matter in court has not appealed that decision. As far as I am concerned, we cannot say that the Senate is abetting an illegality.

Secondly, while people are complaining here, the Members of the County Assembly (MCAs) of Makueni have not received salaries for a period of four months.

Therefore, when the Chairman says that we have interrogated this matter and it is urgent, standing here I know that there are counties whose accounts of assemblies have been closed. Although, Sen. Murkomen is upset about the fact that the law is there, he was here when he lost the vote. Therefore, as far as I am concerned, the question of illegality does not arise, and the record---

**Sen. Murungi:** On a point of order!

**The Speaker** (Hon. Ethuro): Order, Senator! Everyone is on point of order!

*(Laughter)*

**Sen. Murungi:** Mr. Speaker, Sir, there are two issues.

*(Loud Consultations)*

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

**Sen. Murungi:** Mr. Speaker, Sir, as I was saying, there are two issues, the first one is on the ceilings. You recall sometime last year, they circulated leaflets on the Floor of the Senate purporting to set some ceilings to the county assemblies—

**The Speaker** (Hon. Ethuro): Order, Senator! Nobody circulates leaflets on the Floor.

**Sen. Murungi:** Mr. Speaker, Sir, they were and we rejected them on the basis that the Standing Orders of the Senate do not allow the Senate to be approached through leaflets. The next thing we heard was that there were, indeed, ceilings being imposed. The question is: when did those leaflets become law that they were to be obeyed by the county assemblies? This is a fundamental procedure flaw that must be addressed through our Committee, chaired by the great Senator for Mandera.

We need a proper report on the legality of those ceilings through our own processes. It is incumbent upon you to arrange for our Committee to make a proper study of all the issues surrounding these ceilings and bring a report to this House, for us to debate and finally make a decision as Parliament.

**The Speaker** (Hon. Ethuro): Hon. Senator, your time is up!

**Sen. Murungi:** Mr. Speaker, Sir, the second issue was the issue of the financial independence of the county assemblies. The county assemblies cannot properly exercise their oversight mandate over the county executive if they are queuing to be paid their salaries and other allowances by the same executive. Time has come for us to even amend the law so that we create financial independence for the county assemblies.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Speaker, Sir, Article 96(1) of the Constitution states that:-

“The Senate represents the counties, and serves to protect the interests of the counties and their governments.”

The county governments have two arms, the executive and the assembly. If we have to discharge this mandate, we should avoid any situation where we fall into a trap and be part of the connivance to capture county assemblies by the executive because he who pays the piper calls the tune. The county assemblies are the primary institutions of

accountability and oversight. If it is the governor who is trickling funds to them to function, it is unlikely that they will exercise sufficient and proper independence on oversight.

I want to urge the Chairman of my Committee, because I am a member of this Committee, and if he can stop giggling and listen, it will help. I want to encourage the Chairman of my Committee that this matter is so important, that the Committee under your leadership as our Speaker, should call the institutions of CRA and Controller of Budget to come to a full *Kamukunji* and listen to Members of this House in the discharge of their responsibility in protecting counties, their institutions and government. Otherwise, we will sit here and Sen. (Dr.) Khalwale and his Committee will continue doing secondary oversight when the primary oversight is dysfunctional and non-existent.

*(Loud Consultations)*

**The Speaker** (Hon. Ethuro): Order, Senators! The interest is so much and you are trying to get more time for that Motion of adjournment.

**Sen. Khaniri:** On a Point of order, Mr. Speaker, Sir.

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

**Sen. Khaniri:** Mr. Speaker, Sir, I am afraid that we could be breaching our Standing Order No.88, which is anticipation of debate. This matter was raised by the Senator for Makueni, the Chairman has been very eloquent that they have taken it seriously and they are coming with a report and recommendations. Therefore, the matter will be debated here, Members are delving into the same issues that we expect the Chairman to report on with recommendations. That is what the Members are discussing before the matter is tabled. Are we not breaching Standing Order No.88, whereby Members are now anticipating debate?

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

**The Speaker** (Hon. Ethuro): Order, Members! To some extent, Sen. Khaniri is right. Mark my words, “to some extent”. To another extent, there is an issue before the Floor where the Chair of the Committee on Finance, Commerce and Budget was giving an update. To that extent, Members are contributing to that particular update.

**Sen. Boy Juma Boy:** Hoja ya nidhamu, Bw. Spika!

**The Speaker** (Hon. Ethuro): Hoja yako ya nidhamu ni gani? Isiwe hoja yakunitisha. Endelea Seneta.

**Sen. Boy Juma Boy:** Bw. Spika, nakushukuru kwa kunipa wakati huu wa hoja ya nidhamu. Alichoomba Sen. Hassan ni taarifa, na jibu lililotoka kwa mwenyekiti ni kwamba, atatoa taarifa siku ya Alhamisi, lakini hakusema ni Alhamisi gani. Amesema tu Alhamisi lakini hatujui ni mwaka ujao au mwezi ujao. Alhamisi ni nyingi. Hakutupa tarehe maalum. Ni Alhamisi ya wiki hii, ya mwezi ujao au ya mwaka ujao? Hilo ndilo swali.

*(Laughter)*

**The Speaker**(Hon. Ethuro): Sen. Boy Juma Boy, lakini wewe mwenyewe ungetueleza; kwa maoni yako, ni Alhamisi gani?

**Sen. Boy Juma Boy:** Bw. Spika, sijui.

**Sen. Musila:** Mr. Speaker, Sir, my point of order is, first, to thank the Chairman for seeking the indulgence, but it is not by accident that these distinguished Speakers are here today. They are here because their services have been ground to a halt. The assemblies cannot perform the tasks that have been given to them by the Constitution. The House is asking that the Chair goes quickly not "*ile Alhamisi ambayo haijulikani*" and bring a Statement here. We want county assemblies to function because it appears to me at least that there are efforts to stifle the activities of county assemblies by the executive. We would like funds to be released quickly so that they can perform their functions and oversight the executive in counties. This is so vital.

Thank you, Mr. Speaker, Sir.

*(Applause)*

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): Thank you, Mr. Speaker, Sir. I want to join Sen. Murungi and the Senate Minority Leader and say two things. One, there was an attempt to make recommendations to this House on this matter. However, it was done clandestinely because it came through leaflets, or pamphlets or some fliers which were distributed in a *Kamukunji*. The issues of procedure were raised, but they were withdrawn. Then all of a sudden, those fliers and pamphlets ended up becoming law. So, this matter is so grave that without the involvement of the Senate, there is no way you can talk about ceilings or capping revenue or allocations for county assemblies.

Secondly, Mr. Speaker, Sir, the gentlemen – I do not know whether there is a lady; I know there are several – but the ladies and gentlemen that you see in the Speaker's Gallery have been reduced to beggars and people who have to go kneel before the county executive so that they can do their oversight. Let me just give one example - as I conclude making my remarks - of Tharaka-Nithi, which I represent. When you remove the overheads like salaries, they are left with Kshs20 million to do oversight and committee work. How on earth can a county assembly having 10 or more committees exercise oversight over a Governor using Kshs20 million?

Mr. Speaker, Sir, this matter is so grave and I want to join those who have said that we do not want to be given some "Thursdays" which is unknown---

**Sen. Boy Juma Boy:** Yes!

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): We want to be told exactly when the Statement will come before this House. We may, as well, want to interrogate the High Court decision that was given because I do not believe that those ceilings were lawful.

Finally, Mr. Speaker, Sir, I hope that the ladies and gentlemen in the Speaker's Gallery will stop going to court on these matters. This is because if they never went there, we would not have wasted a year. Their going to court prevented us from handling those matters earlier than now.



Thank you, Mr. Speaker, Sir.

*(Applause)*

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

**The Speaker** (Hon. Ethuro): Sen. Orengo, I do not see your name here; you know what needs to be done.

**An hon. Senator:** He is analogue!

**The Speaker** (Hon. Ethuro): When you revert to analogue, you should express that fact!

*(Laughter)*

**Sen. Orengo:** No, Mr. Speaker, Sir, it is now on.

Mr. Speaker, Sir, I agree with what the Senate Minority Leader and the Senate Majority Leader have said. However, I want to come out with a very critical constitutional principle that is lost in all this debate. Sometimes we are of the view that county governments are really the Governors and the executive wings. If you look at the wording of the Constitution in Article 176(1), you will realize the seriousness of this matter. It says:-

“There shall be a county government for each county, consisting of a county assembly and a county executive.”

Mr. Speaker, Sir, in the hierarchy of things, as it were, under this Constitution, the superior body is the county assembly rather than the county executive.

*(Applause)*

So, when you make those assemblies not to function, the fundamental principal established in the Constitution of having democratic institutions elected by the people and for the people; once they are not operating, then it means that you are killing democratic institutions that we have established, not only at the national level, but even at the county level.

Mr. Speaker, Sir, this is a grave constitutional issue and it should be handled as such. As we are waiting for this Statement on Thursday, I would rather the Chairperson of the relevant Committee – whichever Thursday he comes with this Statement; but at the earliest possible time, state these constitutional principles; the ceilings, irrespective of the orders which have been made by the court and which we have not interrogated. The spirit of the Constitution is that matters relating to revenue in so far as counties are concerned, the Senate is the one which plays the crucial role *vis-a-vis* the CRA and that should be understood.

Mr. Speaker, Sir, what am I saying? I am trying to say that any one day the county assemblies are not getting these funds, we are killing devolution. This matter should be handled as such and the Chairperson should be brave enough because we are the

protectors of county governments and the principal organ of a county government is the county assembly. We should be courageous enough to say here and today that as far as we are concerned, the ceilings are illegal. He is coming up with a full Statement on Thursday. I hope it will be the earliest Thursday possible *ili Bw. Boy Juma Boy ajue kwamba* the earliest possible Thursday is not next year, but this week.

*Asante sana, Bw. Spika.*

**The Speaker** (Hon. Ethuro): Order, Sen. Orengo! In appreciating Sen. Boy Juma Boy, you have also mixed the languages.

Let me take the last three Senators; we will have Sen. Madzayo, Sen. (Prof.) Anyang'-Nyong'o and Sen. Elachi. Sen. Sang, are you still interested?

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

**The Speaker** (Hon. Ethuro): Finally, we will have Sen. Sang and Sen. (Eng.) Muriuki.

Hon. Members, please, do so very briefly.

**Sen. Madzayo:** Asante sana, Bw. Spika, kwa kunipa nafasi hii. Kiungo cha muhimu sana katika serikali zetu za ugatuzi ni Bunge kule mashinani. Ni muhimu kusiwe na mapingano au mipaka katika utumiaji wa zile pesa kati ya Bunge zetu za ugatuzi. Nikisema hivi, natilia maanani ya kwamba hivi sasa tunavyozungumza, Kaunti ya Kilifi haiwezi kuwalipa wafanyakazi wake. Ni ukweli kabisa kwamba kuna shida huko mashinani. Kwa hivyo, ni muhimu Mwenyekiti wa Kamati ya Fedha, Biashara na Bajeti alete jibu kuhusu jambo hili Alhamisi hii inayokuja. Ni muhimu tupate jawabu maalum kesho ama kesho kutwa.

*Asante, Bw. Spika.*

**Sen. (Prof.) Anyang'-Nyong'o:** Mr. Speaker, Sir, mine is a piece of information, but in line what Sen. Orengo just said. I am sure my Chairman picked this up. There seems to be a contradiction between provisions in the Public Finance Management (PFM) Act and a section of the Constitution that Sen. Orengo just read out. In the PFM Act, it was provided that there will be only one treasury at the county level. That Act is usually cited by the authorities and it is the one that guides them to take the money of the assemblies to the treasury of the county, which is controlled by the Executive.

Mr. Speaker, Sir, would it be possible, before my Chairman presents this Statement, to make a solid recommendation of the unconstitutionality of the provisions of the PFM Act regarding the management of county finances, where the two arms of government in the county – the county assembly and the county executive – makes the assembly subordinate to the executive in financial management and, hence, contradict that section of the Constitution that Sen. Orengo has just referred to?

**Sen. Elachi:** Thank you, Mr. Speaker, Sir. When the proposal of the ceilings came into this House, it was meant to assist the executive and the county assembly. But I think what went wrong beyond that is that the CRA and the Controller of Budget have now continued to put the ceilings on one arm of government and to leave the executive. But then, also, it is three months to June and I think what we need to ask ourselves as the House is how do we assist the county assemblies from now to June, because they are in crisis? It will be important for the Chairperson to have a *Kamukunji* of all Senators, the CRA, the Controller of Budget and let each Senator know, for example, according to

Kakamega County, what are the ceilings of my county assembly? What was this budget? What is happening?

Even if we put whatever ceilings, we will say it here, but we need to assist the assemblies. The only way you can assist is to ask the Controller of Budget what ceiling and what formula he/she uses when putting the ceiling; that would be important. Then we move to the next financial year and the new Bill or the new amendments of the Public Finance Management (PFM) Act will assist them. We will then bring the whole thing in the House and you will approve it for them in a better way. However, it is very important to also look at all the budgets so that when they are saying that they are putting that ceiling, we know how they ensure no one goes into crisis.

**Sen. Sang:** Mr. Speaker, Sir, the reason some of us are very concerned is because you will remember that when we had discussions on the County Allocation of Revenue Bill, the Chairman, on behalf of the Committee, moved the Bill containing provisions that suggested that ceilings proposed by the CRA were to be final. I remember that Sen. (Dr.) Khalwale, myself and others proposed amendments that sailed through to say that CRA were only going to make recommendations to this House. This House would then sit down, consider the recommendations and make them final. As far as I am concerned, we never sat in this House - other than the leaflets that were mentioned by Sen. Murungi - to discuss budget ceilings.

It is important, therefore, that the Chairperson, knowing that he had made that kind of a proposal in the County Allocation of Revenue Bill, it could be that he is still working with the mentality that, actually, that provision passed and that the proposed ceilings by CRA are final. It is important to know that we did not discuss that.

**The Speaker** (Hon. Ethuro): Order, Senator! You cannot impute improper motives on another Senator.

**Sen. Sang:** Okay, Mr. Speaker, Sir. I am just making an observation that it is important for the Chairperson to know that we amended that Section of the County Allocation of Revenue Bill and before they bring to this House those proposed ceilings, we would have no ceilings as at now.

Mr. Speaker, Sir, as Sen. Mutula Kilonzo Jnr. mentioned, I have read the ruling by the court - the court said that ceilings are okay as long as they are approved by this Senate. We have not approved them and, therefore, there are no ceilings this year.

*(Applause)*

**Sen. (Eng.) Muriuki:** Mr. Speaker, Sir, any budget is a ceiling in itself; the items and sub-items in the budget are ceilings. So, there is no way we can run away from ceilings. If I got the Chairperson of the Committee on Finance, Commerce and Budget correctly, what he said is that the Committee has sat, considered the matter and the report will be tabled on Thursday. Other than confirming that the Thursday is this coming Thursday, I would go with the proposal that we wait for this report to come and then debate it. Even before we call the CRA or anybody else for the *Kamukunji*, we first of all take a position as the authority mandated to set ceilings; CRA's role is to recommend.

Mine would be that we go the way the Chairperson has said; let this report come and we shall look at it.

The only other issue, perhaps, is that the Senate should communicate officially with the Controller of Budget and say “for now, we do not have ceilings” so that they remove them and release the funds to the county assemblies. Otherwise, we expedite ourselves coming up with the ceilings, consult CRA, if need be, and come up with them quickly. But for now, release the funds to the county assemblies.

**The Speaker** (Hon. Ethuro): Finally, proceed, Mr. Chairman.

**Sen. Billow:** Thank you, Mr. Speaker, Sir. I want to thank the Members for their contribution on that matter. I will take only a couple of minutes to clarify two or three items which I think are important. The first is to understand what the ceiling is about and the context in which the ceilings were brought in.

The second is the status for the current financial year and the third is what we expect in the report of the Committee on Finance, Commerce and Budget, when we submit it this coming Thursday, which is the day after tomorrow; not next year.

Mr. Speaker, Sir, in the Budget Policy Statement (BPS) that was passed by this House - and I want the Senator for Meru County, who talked about those leaflets, to pay attention – the BPS talked about the amount of money that will be allocated to the counties; Kshs258 billion. It talked about how that figure is made up and it will appear in the Division of Revenue Bill when it comes to this House.

Part of that Division of Revenue Bill allocation to the counties is an amount that is actually set aside for new administrative structures in the county, both in the executive and assembly side. Last year, that amount was Kshs30 billion. The question then is, out of that Kshs30 billion for the new administrative structures, how much should go to the assembly and how much should go to the executive? This year that amount is over Kshs40 billion. So, what happened is that CRA, under Article 216 of the Constitution, where they have the powers to, among other things; make recommendations on financial managements---

*(An hon. Senator spoke off record)*

Yes, I am coming to that. Order, please!

*(Laughter)*

Mr. Speaker, Sir, they thought it necessary to come up with a structured way of sharing out that Kshs30 billion between the assemblies and the executive. This House - not the other House - in its wisdom, last year made an amendment to the PFM Act that the recommendations that the CRA will make on ceilings, will come to this House from this coming financial year in June and this House, with or without amendments will adopt whatever recommendations will come from the CRA. So, in the coming financial year, things will be different; it will be approved by this House. However, last year, it was merely based on the recommendations made by CRA.

Mr. Speaker, Sir, on the basis of that recommendation, the County Assemblies Forum challenged it in court and the ruling was made last month. In our report, among the things you will find is our Committee's position on the ruling of the court. We will also be making a direction because the Controller of Budget will act on the resolution of the House. It is my hope that the Committee on Finance, Commerce and Budget will make appropriate directions regarding the ceiling based on whatever the rulings are. It is that resolution that will be made by this House which will go to the Controller of Budget. So, the decision will ultimately be made by this House come Thursday this week.

Lastly, Mr. Speaker, Sir, I want to agree with what the Senate Minority Leader suggested earlier; that, even then, because there will be ceilings for the coming financial year, it is important that we have a *Kamukunji* to be addressed by both the Controller of Budget and the CRA on that matter so that Members are brought up to speed on the subject so that they can contribute actively.

Mr. Speaker, Sir, I want to seek the indulgence of the Members to wait until Thursday this week and we will give them a report that, hopefully, will empower among - other things which you did not ask for, Sen. Hassan; to create financial independence so that the money will hit the account of the county assemblies directly from the Central Bank rather than go to the County Revenue Fund, and then they have to queue, because that is the way it is now.

One of the challenges is because of Integrated Financial Management Information System (IFMIS) and so on, and so forth. So, we are addressing all that so that the money will go directly to them and it will not go to the County Revenue Fund.

Thank you.

**The Speaker** (Hon. Ethuro): Hon. Members, It is 4.40 p.m. and we cannot exhaust everything. There is still Thursday, Sen. Hassan.

*(Sen. Hassan spoke off record)*

Proceed, Sen. Hassan, you have 30 seconds.

**Sen. Hassan:** Mr. Speaker, Sir, is it then possible to do that, so that expeditious way we sometimes dispense of reports? We table it, then we debate and adopt it on Thursday. So that then the resolutions can be acted on urgently.

**The Speaker** (Hon. Ethuro): Order, Senator! You are completely out of order! That is not for the Chair to decide; direct it to where it should be directed.

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

Order! I am not inviting you now. That chapter is closed.

Let us now have Sen. Wetangula.

ARTICLE IN THE *SUNDAY NATION* ON ALLEGED  
TWO-MONTH ULTIMATUM TO THE SENATE TO PASS  
AND APPROVAL FOUR BILLS

**The Senate Minority Leader** (Sen. Wetangula): On a point of order, Mr. Speaker, Sir, I have a request that will require a response and clarification from you.

Over the weekend, there were screaming headlines about a statement attributed to the Speaker of the National Assembly. This statement purported to indicate that a letter conveying a warning to the Speaker of the Senate had been written by the Speaker of the National Assembly with regard to the provisions of Article 261(5) of the Constitution. The Speaker of the National Assembly seems to operate under an illusion that he can direct, warn, or intimate the Speaker of the Senate and the Senate at large.

I have read the Constitution over and over again and found nowhere that it confers powers to the Speaker of the National Assembly to either warn or direct the Speaker of the Senate. Indeed, this is strange because I have not heard you convey any message from the National Assembly forwarding Bills that are within the provisions of Article 261(5) to this House for debate, passage or rejection.

I, therefore, wonder how a warning is preceding the forwarding of the said Bills. In any event, Article 261(5) talks about “Parliament.” It does not talk about the “Senate.” Parliament means the National Assembly and the Senate. Was the Speaker of the National Assembly warning you as a Speaker of the Senate or warning you and him because the Constitution talks about the two Houses?

Mr. Speaker, Sir, finally, as the leader of our House, we want clear direction and we take exception to demeaning conduct and correspondence from a House that we consider lower to us in matters of legislation, especially when we have been battling up to the Supreme Court to demand that the Speaker of the National Assembly forwards Bills to this House. When he decides to forward them, he precedes with a warning. We will not take that as a kind gesture, conduct or behavior from an office that is equal to your office.

**Sen. Khalwale:** On a point of order, Mr. Speaker, Sir. When you will be making that communication and consideration with regard to what the Senate Minority Leader has said, I would like you to make this a bit clearer. I took one of the Bills that you communicated to us to be one of them. You will recall that you communicated to us about the Order of Precedence and Titles Bill (Senate Bill No.11 of 2014). I have since gone through the work that took place in the National Assembly regarding this. I also remembered that this House, in the year 2013, had a Bill here called the National Flags Emblems and Names (Amendment) Bill, of 2013. That Bill in the National Assembly is the exact replica of what we did here. That means that the Bill which I led this House through and was passed, was plagiarised. After that exercise, their Bill has now been brought here and yet they expect us to act on that Bill. Since they are worried that we may remember these things, you are being warned.

I notice that in the Order Paper, this very Bill that was an Act of “intellectual theft” is now a case of a First Reading. Will you allow a Bill that has already been debated in this House under a different name to go through the First Reading before you hold some consultative meetings with the Speaker of the Lower House?

I took this very personally because in our Bill, we addressed some of the concerns that were disturbing Members of County Assemblies (MCAs) by way of titles like “Honourable.” This House allowed MCAs to be referred to as Honourable Assembly men and women. The Members of the National Assembly have denied them that privilege. Therefore, I feel you should be clearer to the extent of stepping down Order No.8 until you make that communication.

Thank you.

**Sen. Hassan:** On a point of order, Mr. Speaker, Sir. On a similar point, I also want you to broadly ventilate on the relationship between the two Houses. As I sat here to debate some of the issues as we were conducting business this afternoon, I have reliable information that the National Assembly was having a debate about us based on the headlines that were seen this Sunday. They called us all sorts of names and vitriol about our House not deserving to be an upper House.

I suggest that you scrutinize the HANSARD of the National Assembly with regard to that discussion and give general direction with respect to the decorum of both Houses.

Many times, you as a person, have gagged some of us in a good way whenever we tried to make reference to the National Assembly in a manner that was derogatory and in way that did not necessarily fulfill the aspirations of having cordial relationships between the two Houses of Parliament.

I find it disturbing that any Speaker would sit in a House and allow a debate of such derogation regarding another House. This is particularly because the issues are broadcast on national media. These are the issues we have spoken about time and again. The two Houses should work in sync so that we deliver on the aspirations of the Kenyan people and to have the objective of Parliament achieved.

I want you to have a look at that and make a broad response. An impression is being created that this House, despite the fact that it claims not to have work, is allegedly lazy and yet our committees have not faced allegations of doing vulgar things. To that extent, I am requesting that we move this process forward and seek better relationship with the other House. It is not true to say that this House has been lax in any particular way.

**Sen. Murkomen:** On a point of order, Mr. Speaker, Sir. I also read the same headlines. I comforted myself and said that perhaps this was an issue of misinformation and that somebody had been misquoted. I cannot decipher a situation where a Speaker of any Parliament or even a county assembly has been quoted or attributed to such comments. I believe and hope that in your response this was a case of the media being misinformed. This is unfathomable. It cannot be imagined that anybody sitting in your position, whether as a Temporary Speaker or even in the National Assembly, one can give directions or orders to anybody.

It is also envisaged that the Bill that came from the National Assembly can be rejected in this House. It could also go through mediation or it can collapse or have its deadline pass. Someone can also petition the courts. In the same provision of Article 261, the court can extend some time so that we talk about issues. All those provisions are there. There is no one who can dictate to another person to accept any law in whatever

form. I have realised that in the other House; which I will not name, people do not read the law, scrutinise or make any amendments. In the committees of this House, we work so hard to even correct typos and, so, we have not accepted that situation of being a rubberstamp.

More important is the question of Sen. (Dr.) Khalwale. I still believe you should give a formal communication on that because we debated the question of titles so eloquently in this House and completed that Bill. Nobody has come to tell us whether that Bill failed in the National Assembly or whether we should go for mediation and, therefore, someone can introduce another Bill. I remember so well how Sen. (Prof.) Anyang'-Nyong'o made very wonderful contributions here. As a Member of this House, I would like to get formal communication on what happened to Sen. (Dr.) Khalwale's Bill before we can debate this other Bill.

Lastly, Mr. Speaker, Sir, I have said and I will continue to say that this House does not require endorsement, legitimacy or support of anybody to do its job or be known to be relevant to do its job. We do our job. We have been called names by all characters in this world but they finally come back to this House and say; "We want this Bill, assist us in this issue of Division of Revenue". My encouragement to my colleagues is that we do not need any encouragement from the "Lower House". Any House that debates another House in a derogatory manner can only serve to take its own entity or institution down, but it cannot be the "Upper House".

Wole Soyinka said that a tiger does not profess its tigritude; it just pounces. Just do what you do. As we continue doing what we do, our brotherly advice to the "Lower House" is that they better do their business differently. The Standing Orders warn us about discussing another House in a derogatory manner, unless you have a substantive Motion. They just need to read the Standing Orders and follow them. We have too many businesses to debate another House.

I rest my case but, please, give us a position on the Sen. (Dr.) Khalwale Bill.

**Sen. Mutula Kilonzo Jnr.:** Thank you, Mr. Speaker, Sir. The threat that we read in the newspaper is an empty one and none of us should give it any legal relevance. However, let me read an advisory opinion in your name. I think, in your directions, may be this is one of the ways forward. Under paragraph 145, the Supreme Court, stated as follows:-

"It is clear to us, from a broad purposive view of the Constitution, that the intent of the drafters, as regards the exercise of legislative powers, was that any disagreement as to the nature of a Bill should be harmoniously settled through mediation. An obligation is thus placed on the two Speakers, where they cannot agree between themselves, to engage the mediation mechanism. They would each be required to appoint an equal number of Members, who would deliberate upon the question, and file their report within a specified period of time. It is also possible for the two Chambers to establish a Standing Mediation Committee, to deliberate upon and to resolve any disputes regarding the path of legislation to be adopted for different subject-matters"

I urge you to come up with names of persons who will represent this House in terms of the advisory given to you by the Supreme Court.



One of the Bills that I saw in the newspapers is before the Committee on Legal Affairs and Human Rights and in your communication, it did not have a deadline. When you read that communication to the Committee, you did not inform us about this 27<sup>th</sup> March, deadline, dissolution and so on. As far as I am concerned---

**The Speaker** (Hon. Ethuro): Sorry Senator, I missed that one. Which one?

**Sen. Mutula Kilonzo Jnr.:** Mr. Speaker, Sir, the Bill that you have sent to the Committee on Legal Affairs and Human Rights from the National Assembly has gone through all the stages that are required by law under Article 232 of the Constitution; Principles and Values of Public Officers. In your communication to us, we did not have that deadline. Therefore, we should not give the communication we saw in the press the sort of attention we are giving it today. This is because we are granting somebody somewhere some element of ego. We are boosting his ego so that he can threaten you or us. We might as well ignore him and tell him to do what he feels like.

*(Laughter)*

**Sen. (Prof.) Anyang'-Nyong'o:** Mr. Speaker, Sir, mine will be very brief and it is just information to the House. As Sen. Mutula Kilonzo Jnr. has said, I will make it broader; let us live with the fact that there is some kind of infantile disorder in that House which will be there for the life of this House. It is something that we have to put up with. However much we debate, it will not change that disorder.

*(Laughter)*

Without debating the issue before you issue your communication, which will be going ahead of ourselves, let me say that when you go to some offices in Government especially where secretaries sit, you will see a sign on the boards which says: "Never argue with a fool, people will not know the difference." I think that is a good warning to this House. Please, heed what Sen. Mutula Kilonzo Jnr. has said and do not engage in an argument which you cannot win.

**Sen. Billow:** Thank you, Mr. Speaker, Sir. Let me also add my voice to this matter. First, the issue of consultation that is provided for in the Constitution is abundantly clear. It is not consultation when the Speaker for the National Assembly says that the matter has already been minuted in some House Business Committee minutes. I do not expect the Speaker of this august House to have judicial notice of the minutes of the "Lower House."

The issue of threatening this House with dissolution because they fail to meet the timelines of some Bills, when, in fact, if there is any House that is due for dissolution on account of their conduct and failure to meet deadlines, it is known. I do not think that that is an issue and I think we must be firm and go through on the Supreme Court pursuit that we had taken on some of those Bills.

Lastly – this is very important –given the concerns that Kenyans are expressing today about the quality of Bills, Motions, reports from the National Assembly and the need for quality control; because of the questions of integrity that have come up, this

House will act as quality control over the Bills that come from that House. It is important that we affirm our position on this matter; that there must be prior consultation on these Bills and they must come to this House.

**Sen. Orenge:** Mr. Speaker, Sir, whenever you leave your Chambers to come to this august Chamber, there is always a retinue and an announcement; “Mr. Speaker”. With the fact that I have been in this Parliament for decades, once I hear that call, I flee into the next room in the corridor to make sure that your retinue moves to the Chamber undisturbed. I am one of the few people you have sent away from this Chamber. When you said “Sen. Orenge, leave the Chamber”, I had no alternative but to leave. In some instances, normally, I am very hard headed. Even in a police station to be told to match out, they do it with a lot of difficulty. But when I receive your matching orders, I have no alternative. When somebody now gives you a directive and you obey that directive, the next time you order me to leave the House, I will not leave the House. I can assure you.

Mr. Speaker, Sir, we should not try to bend any rules; whatever the circumstances. History will absolve you from whatever you may be blamed for, but never bend the rules. The Standing Orders, both of the Senate and the National Assembly, state very clearly what should happen to a Bill once it is published. That is not a matter which anybody can be lectured about. I would urge you, now more than ever before, and since you are the one who led us in the march to the Supreme Court and sat there and the Supreme Court gave an advisory opinion on what should happen when a Bill is published and what type of consultations and concurrence should be made, on this issue, you owe it to Kenya and to the future generations, that the law must be obeyed and particularly the Constitution.

I agree with Sen. Billow because I went on a tour to France with the Committee on Implementation and they told us that when it comes to Bills which are complicated; with a lot of details that need proper scrutiny, even the Government of France would rather take that Bill to the Senate as a first reference point. Even if it goes to the National Assembly, they will make sure - even in circumstances it does not need to go there - they will make sure that it goes to the Senate. This is not for nothing. I would urge you as our leader in so far as this Parliament is concerned, that you stick there, you do not try to bend the rules and let nobody shake you because you are our Speaker. If anybody threatens you, that is a threat not only to you but to us, as Members of this Senate.

Mr. Speaker, Sir, I think together on this, there is no Jubilee or CORD; we will unite together to make sure that we perform our constitutional duties without fear or favour. I hope that in taking this stand, in those directives that are being given, in the long run, you will be guiding your brother in the National Assembly to follow the law. So, it is your duty as a senior Member of Parliament; in fact, when I look at the number of years you have been in this House, the leadership in the Senate is senior to the leadership in the National Assembly. We will turn to you, being the senior parliamentarian.

Thank you.

**Sen. (Prof.) Lonyangapuo:** Mr. Speaker, Sir, I was equally shocked when I read that pronouncement from somebody who is responsible and who is trying to incite Kenyans. Hon. Senators should have realized that any time that House has problems and black smoke begins to come out, they always divert attention by shouting “Senate”. Who

does not know that the whole of last week their Committee Members have been hanged and shamed by many Kenyans because of corruption issues that have been arising? In order to divert the attention of Kenyans, their leader shamelessly begins to demean the Senate. This is something that this House should not take lightly.

I concur with Hon. Members who said that we should completely drop this Bill from the Order Paper until the one that was taken to that House one-and-a-half years ago is brought forward. We are a House of dignity and it makes sense that we should not compete and try to set Kenyans against the elected leaders. I think it is time you reminded your colleague that if he is unable to control the National Assembly, he should tell the authority that he has given up. Those of us who sit on the Government side are ashamed to note that we have leaders who cannot even think beyond what is supposed to be done.

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

**Sen. (Prof.) Lonyangapuo:** Mr. Speaker, Sir, it is important that we lead Kenyans as per the mandate we were given. To mislead Kenyans is an offence and that person must take responsibility.

Thank you.

**Sen. Elachi:** Mr. Speaker, Sir, indeed when I read the newspapers on Sunday, I was saddened because I knew very well that if there is one thing the Rules and Business Committee of the Senate does is to look at all Bills and to prioritize them accordingly.

Plagiarism is a crime and I think one of the things that we should tell Members of the National Assembly, who we respect a lot is that, when you plagiarize, you take somebody's intellect. When they put the same Bill on the Order Paper, I think it is time we asked the Speaker of the National Assembly to tell Kenyans why the Senate Bill has been hanging in that House for one year. They did not see the Senate run to the newspapers because the Standing Orders tell us how we can work together, how we can dialogue and how we can deal with issues. Due to the challenges they have been facing for one week - and they will face others because of their own undoing - they decided to dwell on a non-issue. As Senate, we need to publish the two Bills in the newspaper so that Kenyans can know the truth.

Mr. Speaker, Sir, the Senate can also do a communication. I do not think that we need Kshs1billion. It is time for the Constituencies Development Fund (CDF) to go to the county governments where it belongs. I do not see why we should fight over a referendum. Let all of us be legislators with no funds. After the by-election in Kajiado Central Constituency, I realized that one needs Senators if they want to win. If you were Members of the "Lower House", you will lose all seats.

Thank you, Mr. Speaker, Sir.

*(Laughter)*

**The Speaker** (Hon. Ethuro): I will allow Sen. Haji to have the last intervention by virtue of his seniority and neighborhood.

**Sen. Haji:** Thank you, Mr. Speaker, Sir. I have not read the letter that most of my colleagues are talking about. However, going by what I have heard, the Speaker of the National Assembly saying, there could be an officiated plan of misunderstanding between

this House and the other one. I heard with my own ears what he spoke about over the radio. He said that they would bring all the Bills here for the Senate to consider.

Secondly, he told the Members of the National Assembly that there was no point in you and him writing each other letters because you are in the same building and you can walk over and talk about our issues. I do not see the reason why we should keep on quarrelling over issues that we can discuss and solve as brothers and sisters over the table. I do not know whether it is the Press that is trying to make us fight. So, if we go by what we hear and see with our own eyes, I think that there is need for us to tone down and make sure that we work in tandem with each other and serve this country in a manner which we are expected to.

Thank you, Mr. Speaker, Sir, for giving me this opportunity.

**The Speaker** (Hon. Ethuro): Hon. Members, this is a matter that I really did not want to talk about. I was equally surprised by what I saw in the media over the weekend. When I made a Communication on Thursday, it was with reference to various matters canvassed by the Senator for Kakamega County, Sen. (Dr.) Khalwale. One of the issues that my brother, the Speaker of the National Assembly, picked was the Public Audit Bill 2014. I actually said that I was not going to say much except as a matter of fact, because facts are facts; that I was not consulted.

I wanted to dismiss it with the contempt it deserves in terms of the newspaper reports because, to me, it was just trash. It was repeated on Monday again. From the front page of *The Standard*, it found its place on the back page of the *Nation*. Then I knew, there must be another design to deliberately bring some other conflict between the two Houses. You may wish to recall that, that was not a dialogue or correspondence. It was a monologue from a Speaker of one House. I have a conscience and I am very clear on the things that I say and do. I want to maintain that I was never consulted and I have a letter to confirm that.

Secondly, the letter that I received on Friday evening was a good letter, which is supposed to be the source document by the journalists. So, my first instance was that, maybe, the Speaker of the National Assembly has been misquoted, because when you read the letter itself, it confirms that the National Assembly and its leadership in entirety, as Sen. Billow alluded, for some reasons, assume that we participate in their proceedings and their House and Business Committee deliberations. So, they attached minutes. They also confirmed that they presumed that since it is a matter affecting counties, according to the memoranda of objects, it would come to us. However, I have a different experience, even when they say that a matter does not affect counties, sometimes it comes because some amendments were made. Sometimes, there is no desire to bring the Bills here until we ask for them.

So, I thought that the issue of concurrence on Article 110(3) is a matter that has been determined with finality. It should have been concluded by the end of the year 2014. There is no amount of provocation that will open that. That will remain. This House has in the past gone to the Supreme Court, we had a resolution that any other Bills before and subsequently – at that time we were at the count of 46 – will meet the same fate. This is a country of governance and with institutions. If one state organ does not appreciate it, there are other state organs that will enforce compliance. So, I am not worried.

According to Article 2, we have a responsibility to defend the Constitution. Article 1 gives Parliament and legislators the powers to conduct business according to the Constitution. Therefore, to operate otherwise is outside this Constitution. I have heard you, and will definitely make a proper Communication because I think that sometimes, if people want something, we give it. It is provocative, deliberate, diversionary, disrespectful and a red herring which we will treat accordingly.

However, I really want to make an appeal to both Houses; that this country is more important than us. We occupy our positions in terms of public trust. Until we make that kind of appreciation, then we will be groping in the dark for everybody to blame without looking at ourselves. Usually, when I am confronted with those situations, my first responsibility is to examine my soul, as the good song tells us; "Search my soul, oh Lord". Before we blame others, I hope all of us will search our souls. When we do that, it does not take much to know whether you have the same problem. We tend to see in others the devil that is inside us. I will communicate.

Thank you.

What is it Sen. Murungi?

**Sen. Murungi:** Thank you, Mr. Speaker, Sir. I just want to congratulate you especially on the final note, about people searching their souls. In the same spirit, could we request you to walk an extra mile and forgive your brother for maybe he knows not what he has done?

**The Speaker** (Hon. Ethuro): Forgiveness is a virtue and it will always be given. However, the same good Bible, which I am sure that you subscribe to, says that there is no repentance without confession. You remember the last time the Senator for Makueni was trying to challenge me about confessions; I was very clear on those things. The words I had used could not amount to confession. I know confession is to repentance. I had nothing to repent

What is it Sen. (Dr.) Khalwale?

**Sen. (Dr.) Khalwale:** Mr. Speaker, Sir, I would like you to consider standing down Order No.8

**The Speaker** (Hon. Ethuro): I think that matter has been canvassed ably. Until I get to know, formally, the fate of a Bill similar to this one, we are not proceeding; so that Order is stood down.

Since the next Order was to come in the next ten minutes, there is a Motion of extension by Sen. Orengo, maybe we could use the ten minutes available.

## BILL

THE ORDER OF PRECEDENCE AND TITLES BILL  
(NATIONAL ASSEMBLY BILL NO. 11 OF 2014)

*(Bill deferred)*

**PROCEDURAL MOTION**

## EXTENSION OF SITTING TIME TO 7.00 P.M.

**Sen. Orengo:** Mr. Speaker, Sir, with your permission, I beg to move the following Motion in an amended form.

THAT, notwithstanding the provisions of Standing Order No.30(2) and pursuant to the provisions of Standing Order No.33, the Senate resolves to extend its sitting time today, Tuesday, 17<sup>th</sup> March, 2015, to 7.00 p.m.

Mr. Speaker, Sir, the reasons for this extension are obvious and I had alluded to them. So, I will not take any more time because it is important that Sen. Billow has his time for moving this Motion.

I beg to move.

**The Speaker** (Hon. Ethuro): Who is seconding?

**Sen. Leshore:** Mr. Speaker, Sir, I want to second the Motion because it is very important. As a country, we are threatened by terrorists and many other criminals or gangs.

I beg to second.

*(Question proposed)*

*(Question put and agreed to)*

**The Speaker** (Hon. Ethuro): Hon. Members, we will proceed with the Motion of Adjournment.

**MOTION OF ADJOURNMENT UNDER  
STANDING ORDER NO.33**RISING INCIDENTS OF INSECURITY IN  
MANDERA COUNTY

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

THAT, the House do now adjourn.

Mr. Speaker, Sir, I am moving this Motion because of a very important and urgent matter regarding insecurity in Mandera County. I am sure all of us are aware of the rising insecurity due to terrorist attacks in Mandera Town and on the road linking Mandera to Lafey Constituency on the border with Somalia. On Friday, 13<sup>th</sup> March, 2015 at around 10.00 a.m. in the morning, there was an attack on a convoy of the Governor for Mandera. A convoy of five vehicles was attacked in broad-daylight in which three people were killed, one vehicle burnt, one vehicle taken away and driven to Somalia by the terrorists and several people were injured.

Then 24 hours later, in Mandera Town itself, on Sunday night, four people from upcountry were shot as they were from shopping; two of them died and two others were

injured. As late as this morning, there was an explosion on the border where the police normally keep vigil on the border between Somalia and Mandera. No one was injured. The second bomb was detonated by the police. From early December when many Kenyans were massacred at the quarry, there has been not less six incidents of terrorist attacks in which several Kenyans were killed and many people injured.

Mr. Speaker, Sir, the situation is getting worse. You will appreciate that this matter started well before the day of elections on 4<sup>th</sup> March. In Mandera Town where I voted, there were five blasts from Improvised Explosive Devices (IEDs). This is a serious matter; despite all the efforts, within the town and on the road that links Mandera to Lafey which is just a few kilometres on the border, terrorists have targeted motor vehicles including buses, private cars and Government convoys. They have also targeted offices belonging to the national Government and county government offices. They have hit the houses of the Governor and the Deputy Governor. They have thrown explosive devices at hotels and restaurants. Therefore, this is a matter that is causing concern due to the fact that the town is split into two; one side is in Somalia and the other side is in Kenya. This means that there is no effective border at this point.

Mr. Speaker, Sir, despite the arrests that have been made, the situation is not getting any better. The quality of investigations raises a lot of questions. In spite of all these killings and the arrests that have been made, to date, there are no conclusive convictions made of the people who are involved in these attacks. On 15<sup>th</sup> January, 2015, we were told that Mr. Salim Gitonga was arrested because they said he was the mastermind of the quarry attack and also involved in recruiting Ugandans and Tanzanians who are taken across the border to join terrorist groups. On 5<sup>th</sup> February, 2015, we were informed that one gentleman from Norway was arrested by police. They said he was the mastermind of the massacre of the bus and quarry attacks. Since then two others from Tanzania were also arrested.

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

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

Mr. Temporary Speaker, Sir, early this month when there was an attack of a grenade on a kiosk in Mandera Town, they arrested one other person, Philip Omondi. We hear of all these arrests and cases in court but regrettably, the level and quality of intelligence is lacking in all these. We need pre-emptive action to save lives. We are in a situation where after 6.00 p.m. Mandera Town is under curfew; not an official one but people fear to get out of their homes. We have a situation where the County Governor and his officers cannot move freely in the town. Today, in Kenya with all our public institutions, the governor of a county can ask for an armored vehicle. We are not in Mogadishu. It is only in Mogadishu that I know people use armoured cars. Last year, all the respective agencies were given Kshs175 billion for security.

Mr. Temporary Speaker, Sir, another point is the issue of the Kenya Defence Forces (KDF). Mandera Town is on the border. All the attacks are caused by infiltrations across the border. The whole area; 200 kilometres between Damas and Mandera Town, is

an area that is still on the other side of the border and still under the control of Al-Shabaab. However, we are told that within the African Union Mission in Somalia (AMISOM) arrangement, that zone is under the control of the Ethiopian Government but not the Kenyan Government. The KDF operate from the area from Wajir all the way to Lamu on that side. So, they are in Kismayu and all those places. I do not understand how this Government, despite the fact that its own country is being attacked daily, cannot tell or convince the AMISOM to take over that zone. Why does the Government need permission from anybody in this world to safeguard its borders? This is something that we cannot understand.

Mr. Temporary Speaker, Sir, there are less than 200 KDF in the whole of Mandera County to guard the border. However, in this town, how many camps do we have? There is Kahawa, Langa'ta, Nanyuki and Nyali. We did not recruit the KDF in their tens of thousands so that they could stay comfortably in Nairobi. We recruited them and as taxpayers, we are paying them so that they guard the lives of people on the border areas.

Mr. Temporary Speaker, Sir, it is the failure of the Government that today, with the KDF being a highly respected institution, we do not have them on our borders. When the Governor of Mandera County, with his convoy, was attacked last Friday, the earliest response came after five hours yet they are not more than 50 or 60 kilometres away. The nearest camp is actually less than 50 or 60 kilometres away from where the incidence happened. Nonetheless, where is our Air Force? They are stationed in Wajir. Why were they not mobilised immediately? Where is the communication and network that we are told will be triggered immediately these kinds of things happen?

Mr. Temporary Speaker, Sir, when massacres happened two months ago, we told the Government that, that one of the challenges we have is lack of local security officers who understand the terrain and who can get intelligence information on what is going on with the people. I do not understand why the Government, for whatever reason, mistrusts its own officers who would have given it intelligence information, who can move even at night and who can move off the main roads to try and get hold of these people. Half of the security forces who are in that area should come from the local communities. They understand that area and have the interest to pursue those people even across the border.

Mr. Temporary Speaker, Sir, it is strange that we are told that on the border, in a place called Khadija Haji, just a few kilometres from the border which is less than three or four kilometres away from them, is an Al-Shabaab camp. We do not understand how you can have a KDF camp two, three or four kilometres away yet there is no action by the Government. We are told that this is the same situation in Godondo. Three kilometres outside the town there are the KDF but the Al-Shabaab are inside the town yet there is no action. We are meant to think, as residents of Mandera, that there is some kind of a relationship between some officers in the forces and the people. We do not understand why the KDF cannot go across the border to attack the Al-Shabaab.

Mr. Temporary Speaker, Sir, about the issue of the security team in the county, we raised a concern with His Excellency the President when the quarry attacks happened. If the leadership of security including the County Commissioner has failed to secure that area, the least you can do is what was done in Mpeketoni, Lamu; to get rid of that team.



We do not understand why the County Commissioner, whom we have announced publicly that we have zero working relationship with---, because he does not share with anyone security intelligence information with the team that he is working with.

That gentleman was transferred a couple of weeks ago when county commissioners were transferred routinely by none other than the Office of the President which is in charge of transferring County Commissioners. Instructions came later from State House to cancel that transfer. After the new officer reported, three or four days later, he was recalled and the commissioner is still in that place. This is a Commissioner whom many of us, I and the Governor included, believe is part of the problems we have in that county.

Mr. Temporary Speaker, Sir, the Senate Committee on National Security and Foreign Relations was there and they will tell you some of these things. How do you explain when an OCS who had just stayed there two months, simply because he is working hard, patrolling at night to get hold of those guys who blow Improvised Explosive Devices (IEDs) and so forth - because of complaints from the Al-Shabaab and their sympathizers - was moved without the knowledge of the Inspector-General by a telephone call from the office to the Vigilance House? The transfer was cancelled after we intervened. Three months later, the same person was also moved. How do you explain that? There are a lot of things which we cannot explain regarding the actions of some of the leaders who run security in that area. The Government also needs to take that matter seriously.

I appreciate the Senate Committee on National Security and Foreign Relations headed by Sen. Haji. The Committee was in Mandera to investigate the matter following a Motion that I brought to the House. They have first-hand information on what is going on. One of the challenges that the public told them about is that if the public know what is going on, people who sympathise with the Al-Shabaab and when they give information, the failure to act on that information discourages them from sharing it again. Immediately the information is given, they are brought out. People are arrested and released. We have a serious problem.

The Government should provide security to Mandera which is part of this country. Mandera is neither in Somalia nor Ethiopia. It is in Kenya. If the Government is unable to provide security, let it tell the people of Mandera that it is unable to provide security against the Al-Shabaab or against the terrorists. Can you look after yourselves? Otherwise, what shall we do to a county where in the headquarters, a governor cannot move from his house to his office and members of the public cannot leave their houses after 6.00 p.m. yet there are hundreds of security forces in the town? We have the Administration Police (AP), the Regular Police, the Rapid Deployment Unit (RDU) and the KDF but nobody is secure there. The levels of patrols at night are literally nil.

Offices of the Governor of Mandera County are guarded by the Kenya Police Reservists (KPR). Why should you ask for KPR when you have over 500 or 600 policemen, the Army and the General Service Unit (GSU) and everyone inside the town? So, that is a serious matter. There is lack of seriousness in handling the situation. That will explode and we are worried that parts of this country will be like the north-eastern part of Nigeria. Terrorists will take over.

Today, the latest information that we have in this town is that the terrorists have masked hundreds of their people. Their threat is to make sure that this town is cut off completely and to make it ungovernable. As we speak, that is why there was an explosion this morning. There were attacks just two nights ago and there was another one on Friday. As we speak, we do not know what will happen tonight. Last night, many people in - and Sen. Haji knows the area - called Harabii and Fino, were evacuated. This is about 40 or 50 kilometres on the border with Somalia.

Therefore, Mr. Temporary Speaker, Sir, this is a serious matter. We do not understand how the Inspector-General of Police, who was appointed one week ago, can call this banditry but not terrorism. Three, four or five years after these things started, the Government does not know whether they are terrorists or bandits. The Government is not serious.

Mr. Temporary Speaker, Sir, I beg to move the Motion and call upon Sen. Hassan to second it.

**The Temporary Speaker** (Sen. Murkomen): It does not need secondment.

**Sen. Oremo:** Mr. Temporary Speaker, Sir, I thank the Senator for Mandera for his persistence in trying to protect life and property not only in Mandera but Kenya as a whole.

Mr. Temporary Speaker, Sir, I am in the Committee on National Security and Foreign Affairs and we recently visited Mandera. We are told that the border in Mandera is closed, but while there, you will realize that it is closed to Kenyans who want to go to Somalia but it is open to the elements on the other side to come into Mandera. In fact, it is an activity that we saw when we went there. When you go to the border post you will see vehicles coming from the Kenyan side or even from the Somali side and people going on with questionable business. This is something that has to be dealt with by the Jubilee Government. This is because an attack on Mandera or Lamu is an attack on the entire territory of Kenya. We have only one country called Kenya.

Just as my friend has pointed out, towns in north-eastern Nigeria are empty and in ruins. You will go into towns where there are no people, because they have been either evicted and their property burnt or they have elected on their own not to stay in those towns. If something is not done quickly and now, we will begin to see people leaving towns in Mandera, Wajir, Garissa and other towns in the northern part of Kenya. The only way you can make a Kenyan feel like a Kenyan is to secure his life and property. When you talk to the people in Mandera, you will get the feeling that they are not confident that they are being given the security that they need, like other people in Kenya.

Unless exceptional measures are taken to ensure that the life and property of people are safe, insecurity will continue. Now we are becoming a bit of a laughing stock if the Al Shabaab could attack Lamu and film what they did. We are beginning to enter into a time when you may even believe that war is business by other means. Sen. Billow did not say it but in his first statement, he said that the connections of those who are promoting these activities exist at the highest level. When you hear the people in Mandera themselves talking about what is happening to them, then you are left with the sense that somebody somewhere is not doing his work. I was imagining that my friend

and Chairman, Sen. Yusuf Haji, knew what was wrong. If he had officers who were dealing with these matters professionally, in order to defend the lives and property of the people in Mandera, the situation would be much different. It looks like for people in Mandera, the Government only exists in name. I was not surprised when I read a statement from the Members of Parliament from Mandera saying that if something is not done in Mandera quickly, then they are going to quit Jubilee Coalition. I would advise them that, that is the right way to go.

Thank you.

**Sen. Elachi:** Thank you, Mr. Temporary Speaker, Sir. I also want to send my condolences to the people of Mandera.

One of the challenges that we face in our country today is that even orders from the President himself are not implemented. Some people are so comfortable in the positions that they were given by Kenyans to work that they do not care. I remember very well that in August last year, the President ordered the Chief of the Kenya Defence Forces to ensure that border between Mandera and Somali is clearly marked so that it can be protected. But the issue was taken to the technocrats in the Government and they have decided to keep quiet.

We hear about the activities of the Boko Haram and ISIS and think that, that network will not come into our country. We are waiting for that network to enter through Mandera and move down before we start fighting. If, indeed, the Kenya Defence Forces are in Mandera, as the hon. Senator said, then what are they doing there? They have no business being in Mandera when there are still attacks there. It seems the issue is even beyond the Kenya Police. All the security forces must sit together and agree on how to deal with the insecurity. This is almost similar to what Nigeria is experiencing with the Boko Haram. The Government of Nigeria decided to ignore when the Boko Haram started. They thought that they were bandits, as we are saying about the situation in Mandera. The Boko Haram terrorist activities have now spread across West Africa. This can happen in Kenya.

Today, I saw a clip of young people from Nyeri who have gone back to quarries in Mandera. They are trying to build their lives. Maybe sooner or later, they will be killed. Besides the Motions for Adjournment, how can the Senate ensure that the security agencies in this country address the issue of insecurity in Mandera in the next few months to come and ensure there is security for our people? How can we ensure the safety of the Governor, county government and Kenyans who are not from that region? They should be able to travel safely to and from Mandera. Right now, we seem to be ignoring the people of Mandera because they are just a few Kenyans.

We have people in this Government who still have the attitude of 50 years ago. There are some offices in the Government where very little is done, especially the human resource development, audit and procurement teams. Some people have been in their positions for 30 years and do not care even when the President gives orders. The Government must change this system now and ensure that employees in the managerial cadre work under performance contracts. They should only be retained because of their performance. If they do not perform, they should leave service. We have some people

who are not performing, but very comfortable working in the Government, because they are assured of their salary. It is business as usual.

Mr. Temporary Speaker, Sir, I support.

**Sen. Hassan:** Thank you, Mr. Temporary Speaker, Sir, for this opportunity. I also join my fellow colleagues in passing my condolences to the people of Mandera County. I also appreciate this Motion of Adjournment by the Senator for Mandera.

Mr. Temporary Speaker, Sir, there is a maxim that I have read that madness is doing the same thing the same way and expecting different results. I remember when I was at the Kenya National Commission for Human Rights (KNCHR) matters of radicalization of young people were still nascent. I know that Sen. Dullo will recall that sometimes Aboud Rogo and Sheikh Makaburi would be arrested and would come to the KNCHR for legal assistance, because that was a place that was open to everybody. We realized that there was such an inbuilt belief or doctrine. Therefore, we set out on a mission to explore how best to deal with these evolving challenges and insecurity.

People have decided to align their strategy with respect to the reality of terrorism and radicalization. It is only Kenya that assumes that it can do the same thing the same way and achieve different results. We have bravado in our political offices and in the house on the hill and yet Al-Shabaab ridicules us every day.

Mr. Temporary Speaker, Sir, Sen. Orendo alluded to a video that has been posted by Al-Shabaab, clearly demonstrating how the Mpeketoni attacks were executed and in that, they mocked the President a couple of times. We invite some of these problems ourselves. Today, western countries and other counties have decided not to support our quest to fight terror because of irresponsible political statements that have been made by our leaders. We have met representatives of some of these governments and we have asked them how come you have decided to alienate Kenya yet terrorism is a global phenomenon. They said that it is our own political leaders who say that this is not a crime of terrorism. Again, an Inspector-General, appointed hardly a few days ago, said that this is not a crime of terrorism.

Therefore, when these countries are of the view if a local political network can have this capacity, then which citizenry of ours is safe? Therefore, it is about re-aligning our strategy and having a comprehensive strategy, being realistic and stop these theatrics and bravado which we exercise in Nairobi in our comfort zones. We must de-radicalize the young people and challenge the narrative of radicalization. We must challenge these ideologies and disengage our troops from Somalia and capacitate the Somali National Army. Countries like the United States of America (USA) have pulled out of war fronts so that they can make their borders safer. This is a country with a military of almost 60,000-70,000 of hardly sophisticated military, telling us that they can sustain an indefinite occupation of another country.

We also have to reach out to constituencies that are important in terms of the war on terror. President Obama, on assuming office, reached out to the Muslim community and not just through rhetoric but through real action; through the respect of the Constitution. I was extremely keen on the outcome of a pre-dominantly Somali Muslims polling station in Kajiado because Muslim leaders from the Jubilee Coalition had gone severally to speak to them. In fact, leaders from the Coalition for Reforms and

Democracy (CORD) were contemplating that we go and speak to them too, none of us went but all of them in their majority voted for the CORD candidate. This shows you that those people who are most important to counter these narratives feel alienated. You lock up Somalis in refugee camps in Kasarani, just because their political leaders are not saying it, the ground is shifting and you are lacking the critical support that is necessary to combat terrorism.

We continue to insist on strategies that are archaic and obsolete and we expect that we will get results but this is what is happening in Mandera. That is why when those political leaders said they will join CORD; they had no business in the first place being in Jubilee Coalition. I am saying this because they have continued to perpetrate the strategy of marginalization. What President Uhuru Kenyatta is implementing is Sessional Paper No. 10 of 1965; that is why there is no security there; security comes and guards peak property in Nairobi and other cities in the country and nobody cares about Mandera.

With those few remarks, I support.

**The Temporary Speaker** (Sen. Murkomen): The Senate Minority Leader, you have ten minutes by virtue of your position.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Temporary Speaker, Sir, I want to thank Sen. Billow for bringing this Motion of Adjournment. I recall that this is not the first time he has brought this Motion. Mandera is bleeding and ailing. When I was a young lawyer in 1993, I went to Mandera to defend somebody falsely accused and the magistrate was a District Commissioner (DC). This man told the DC that “we in Mandera are not in Kenya, we are not Kenyans and we are not treated as such”. Being a young inexperienced lawyer, the DC ignored all my pleas and jailed the man with no evidence and later, he told me that “*hao watu ni pumbavu*”.

Mr. Temporary Speaker, Sir, the pain that Mandera is going through – the pain we saw in Lamu and Kapedo; the pain rotating around the Turkana/Pokot boundaries, Baringo and Mombasa; it has happened in Bungoma – leaves us with serious questions. Have we abdicated our responsibility to protect Kenyans? In a country where we have no visible military threat from any of our external neighbours, it makes little sense to continue pumping billions and billions of shillings into the hands of the army and giving less and less money and equipment to the police, who are responsible for internal and homeland security.

Today, a policeman sits in Garissa, commanding the former North Eastern Province, including Mandera, and his tool of operation is a Land Rover yet we have the Deputy President and his team flying all over the country, donating millions of shillings – corruptly acquired – in harambees when people are dying like flies. This is the country where we are; why is the Commandant of Police in Mandera – leave along Garissa – not given a helicopter and equipment to defend the people of Mandera?

Today, Mr. Temporary Speaker, Sir, our army is a trading army; it is like the Nigerian Army. Boko Haram can go, dismember a battalion of Nigerian Army, kill them and walk away. But when they try to enter Cameroon, a platoon of 50 Cameroonian military wiped out the entire 200 Boko Haram invaders because Cameroon has an army and Nigeria has a trading army. These are people who are in the army to do business, to make money, to live comfortably and to do nothing; and that is what we have in Kenya.

We must understand that when George Bush senior went to Somalia with “Operation Restore Hope” and found it was not working, he did not look embarrassed; he simply said “this is not a cup of tea for America; let us go back.” Kenya may have gone to Somalia on a noble cause, but when it is not working, we should not be embarrassed about it; we should come out of Somalia. We owe no duty to our neighbour called Somalia; to keep our army there when their nationals are walking into our territory, slaughtering people like flies and getting away with it.

Mr. Temporary Speaker, Sir, it has just become a ritual, like I have said earlier; with the President giving warnings, the Inspector-General (IG) flying to see what has happened there like curious children running to see a naked man, laughing and walking away. It has become a ritual, like dogs barking at a new moon at the beginning of every month. They keep on saying “no stones will be left unturned; those found responsible will be punished; those who have done this will be---” but after the end of the week, the news flashes are over; there are no more headlines and it is business as usual. The County Commissioner will still be there, enjoying and living comfortably because he is guarded heavily while people are being killed.

Today, Mr. Temporary Speaker, Sir, I am sure you know that the children in schools in Mandera have no teachers. Why? Because the Government cannot give security to these teachers. At the end of the year, the children of Mandera are going to sit for examinations with our children in schools where they have protection, security and everything. Do we have two countries in one? Do we have three countries in one? This is totally unacceptable and we feel the pain; we feel the sense of loss; we feel the sense of neglect and marginalization by the people of Mandera. This cuts across other counties where we have had these problems.

Mr. Temporary Speaker, Sir, I want to see the new IG – we did not support him from this side, but he got the job – coming up with a blueprint. The fact that he was approved by both Houses, he becomes the IG of this country. We want to see him not just sitting in Vigilance House or Jogoo House or wherever he sits, dishing out warnings and more warnings. We want him to go, sit down with leaders of the affected regions, listen to them and ask them what is happening.

We know what they have done; if they can walk into a hotel in Lamu, kidnap a French woman, stay with her and kill the husband, that is how courageous they are and how weak we are. Why are we weak? Kenya is the powerhouse of this region; we have 60 per cent of the Gross Domestic Product (GDP) of this region. We have sent troops to East Timor, Yugoslavia, the entire West Africa and everywhere. Why should we pride ourselves in sending troops to go and help arrest Foday Sankoh in Sierra Leone when we cannot protect people in Mandera? Why are we not recruiting and equipping enough policemen? Even when we try to recruit policemen, the usual nightmare of corruption comes in and today, we cannot get those policemen on duty.

One would have expected that when this happened, the Inspector General (IG) of Police, the Commander of the Kenya Defence Forces (KDF) and the Director of the National Intelligence Service (NIS) are called and flogged before the President and his security team to account but you do not see this. I am sure what they do is that they sit, laugh and say “*ilifanyika namna gani mazee?*” and they laugh about it yet people are

dying. We feel the pain; insecurity in Mandera is insecurity everywhere; a death in Lamu is a death everywhere. We may sit here and be comfortable.

Look at Nigeria; now you are not comfortable even in a hotel in Abuja. I was recently invited by an international organization to go to Nigeria to observe elections and I turned it down. I said that I was not going to expose myself to unhelpful and unnecessary risks brought to a country by itself; corruption, nepotism and all manner of ills such that those who are rich are just growing richer and richer. How do you explain a situation where our leaders are going to harambees every weekend, donating Kshs.2million or Kshs.3million, Kshs.2million or Kshs.3million on Friday, Saturday, and Sundays and on Monday, they are back in the office, presiding over corruption to raise more money to go to harambees on Friday and Saturday again yet people are dying?

These are issues that we have to ask and speak about as the alternative government. We stand with the Senator of Mandera and we empathize with the people of Mandera. What this House can do - and I urge my Chairman of the Committee on National Security and Foreign Relations - for us to express our solidarity with the people of Mandera and the Senators from the northern parts of the country; get the Senate to give us the means; let us go to Mandera, let us go to the *situ*. Let us meet the Governor of Mandera, sit and listen to him.

Lastly, Mr. Temporary, Speaker, Sir, as long as we have county governments delinked from security operations in their areas, we will still have these problems. We have said, over and over again, let the governors be the chairmen of the security committees; let the county commander of police report to the Governor because it is a government. But somebody called County Commissioner, Police County Commander are sitting in Mandera and are reporting to Nairobi yet the Governor elected by the people is there. So, the Governor is also a stranger; they are spying and reporting on the Governor instead of working with him.

That is why the Governor of Mandera has had five attempts on his life. This is a man - if you go to America, who rises to become president. We must style up and get our act together. If we do not do this, yesterday it was Mandera, tomorrow it will be Garissa, the next day it will be Laikipia, Kakamega, Samburu and Isiolo. You have it coming and when you see it happening to another, know that the next turn is yours. When the Senator for Laikipia, Sen. G.G Kariuki, and Sen. Haji were the Cabinet Minister for Internal Security, we used to see them work. By now, things would be working.

**An hon. Senator:** They worked!

**The Senate Minority Leader** (Sen. Wetangula): But now, we have people in offices who are just there; men in suits doing nothing!

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

**The Senate Minority Leader** (Sen. Wetangula): Mr. Temporary Speaker, Sir, I support the feelings and the situation of Mandera.

**Sen. Haji:** Thank you, Mr. Temporary Speaker, Sir. As the Chairman of the Committee on National Security and Foreign Relations, I do not want to pre-empt the Report that we will lay before this House very soon. However, allow me to add my voice to the sentiments of this Motion.

I join my colleagues in saying that the Government must come up with a comprehensive strategy to address the security situation in this country. The *Al Shabaab* has been causing havoc in Mandera for a very long time. People with illegal arms are also causing havoc in the Rift Valley as well as in Laikipia. All this is as a result of failure of the system to address the security situation that is threatening this nation.

All that has been said by the Mover of this Motion will be reflected in our Report. Members of the public told us everything that he has said here. There have been attacks on Governor Roba and this should not be taken lightly. The way things are moving, nothing will stop the *Al Shabaab* from taking over Mandera because they have made several successful attempts. We have been told about security forces which are stationed in Mandera. The question that everybody is asking is; how come the *Al Shabaab* can enter this country at will from any angle that they wish?

We have been told that our disciplined forces are only active like chicken during the day. At 6.00 p.m, everybody goes back to their tent or home. That is why the *Al Shabaab* has studied the situation and can do whatever they want. Unless the Government wakes up to ensure that security forces are held responsible, nothing will happen.

The poor man, Mr. ole Lenku, was removed from office. However, he was not responsible for what was happening since he was not on the ground. The officers who are on the ground and the leaders of the security forces should be held responsible. We were also told that the *Al Shabaab* is not fighting only because the Kenya Defence Forces (KDF) is in Somalia. The District Commissioner for Bula Hawa, which is on Somalia side spoke on the British Broadcasting Corporation (BBC) and said that the KDF, instead of going to kill the *Al Shabaab* have instead been bombing their villages and killing their camels. He added that they will, therefore, revenge. That statement was followed immediately with the murder of the people at the quarry.

What does that mean? Does it not mean that someone somewhere is sleeping on their job? Instead of them protecting our people, they are inciting people in Somalia to come and kill our innocent people. When we talk in this manner, we do not have any motive. We are talking in good faith because we are interested in the security and well-being of this country and we do not have any other country to go to.

They told us that these things are happening within 50 kilometres from Mandera town. If the security forces can take the pain to ambush these people even at night at random, they will catch up with them by hand but that is not happening. The Governor and the people of Mandera need the protection of the Government. The Government must address this issue without any further delay.

**Sen. G.G. Kariuki:** Thank you Mr. Temporary Speaker, Sir. This matter is not confined to Mandera. I am happy that the Senator for Mandera found it wise to move this Motion for us to have an opportunity to say something about the security of our country.

This is not a local war but an international one. I think those criminals, the *Al-Shabaab*, will be the happiest people tonight because they know we are talking about them and that we are shaken. That is all they want. They are not willing to take over this country and make it their colony; they want to infiltrate this country and sell their doctrine. The Muslim fundamentalists started this war many years ago. Even during the colonial days, these people slaughtered top civil servants in former Northern Province



and it continues up to now. They do not get tired in any international war but continue until they win the war in their own way. When we visited Mandera, I think I personally found that these people wish they were somewhere else where they can really have at least one good night and not Kenya or Somalia. I hope we are not going to talk about the Motion which has not yet come.

Mr. Temporary Speaker, Sir, terrorists are taking over this country. If you look at the whole of the northern part of Kenya; Mandera, Garissa, Wajir, Isiolo, Samburu, Laikipia, Baringo and part of West Pokot, you will see that that is the biggest area in this country which is ready for take over by anyone who can declare himself a leader. This is because the Government has failed and the priorities are wrong. When priorities are wrong, what do you expect? This is the price of corruption. The top officers that we are condemning for not doing their work are gentlemen and ladies of honour and we must support them. In some instances they are left there to die. They have no power at all. The power which they used to have has been withdrawn.

The GSU used to have firepower, but during the attempted *coup* of 1982, the army forced the Government to remove those powers from them. That is why they wait for orders and equipment from the headquarters. For example, if you are a senior superintendent police officer in Wajir, you will hate to stay there unless you have a source for receiving bribes. Corruption is a deep rooted culture in Kenya and that is why all these things are happening. How can you go to another country to create peace there when your own country is burning? There is something wrong.

Thank you.

**Sen. (Dr.) Khalwale:** Mr. Temporary Speaker, Sir, I wish to associate myself with the pain the County Government of Mandera is going through, especially the Governor and the Senator. Maj. (Rtd) Nkaissey and Mr. Boinett have been given jobs; so what? The issue is corruption in the armed forces; the military, the police and NIS. That is the reason lives are being lost in Mandera and other parts of the country. Corruption is leading to the destruction of a community called the Somali in this country. If people do not know, corruption is going to make sure that Somalis will be begging to call themselves Kenyans. Every Kenyan will be saying; *hawa watu ndio wanatuuwa*.

Corruption is destroying the institution in Mandera called the government. So, far, there have been five attempts on Governor Roba's life. How many more attempts does the Jubilee Government want to see on Roba before they realize that the guy is under threat? This is because the Governor is bringing organization in Mandera and, therefore, interfering with corruption networks. There are sugar barons in Mandera and Wajir. Trucks carrying sugar from Kismayu are arrested in the morning, paraded before a magistrate, the case is heard very quickly and the declaration is that the sugar be destroyed. After a few days, there is no burning of the sugar, it is allowed into the market and people are in business. This is corruption which is at play.

Mr. Temporary Speaker, Sir, it should not be lost on Senators that in Mandera we have NIS officers; what do they report? We have the Anti-Terrorist Police Unit in Mandera, what do they do? They simply look the other side as terrorists come in. Purely by happenstance, hon. Duale happens to come from the same community, if only a senior

friend of his can tell him to stop his reckless talk. He recklessly says on BBC Somalia that: “We are planning to talk to *Al Shaabab*; we are going to send elders and negotiate”.

**An hon. Senator:** He withdrew!

**Sen. (Dr.) Khalwale:** He did not withdraw it the way he said it.

Mr. Temporary Speaker, Sir, he knows who they are because he wants to send elders to talk to them. We are not going to allow Kenyans, even if they are not from our communities, to be exposed to danger because of the utterances of reckless politicians.

**Sen. Haji:** On a point of order, Mr. Temporary Speaker, Sir. I hate to interrupt my friend. By Hon. Duale saying that, it does not necessarily mean that he knows them. We are all talking about *Al-Shabaab*, but have we seen them ourselves? Nobody has seen them but everyone knows that they are there.

**Sen. (Dr.) Khalwale:** Mr. Temporary Speaker, Sir, because my time is running, the final point is that the highly ranked advisor of the President on matters of security, is the Chief of Kenya Defence Forces (KDF), Gen. Karangi. The question that I keep on asking myself is; this is a highly trained, experienced and patriotic Kenyan, what advice does he give the President? Why is he not telling the President that having succeeded the way they did when they entered into Somalia, they have to rethink it? The core business of the KDF is not to go and protect Somalis in Somalia. Their core business is to ensure that whatever threat comes from outside does not reach us.

Thank God that Gen. Karangi is retiring in a months’ time. We hope that he will go away completely and that the President will get somebody competent who is going to give him proper advice; that the soldiers should now move out of Somalia, come to the Kenyan border and make sure that no threat reaches us.

I support.

**Sen. Adan:** Thank you, Mr. Temporary Speaker, Sir. I wish to give my *pole* to the people of Mandera County. I am a Member of this Committee and part of the team that went to Mandera.

The situation in Mandera is really pathetic in terms of insecurity. On the ground, we saw a lot of development that is taking place; a lot of structures are coming up and business is booming. Citizens living in the diaspora are really investing in Mandera. So, if there is insecurity, are they really going to keep investing? We are killing these counties that have come through marginalization over the years. I think that the Government should address insecurity very seriously.

As a preemptive measure, the Committee called security agencies as we wait for our report to be tabled before the House, and we had discussions with them and pointed out the areas that need intervention. They promised us that they were going to work on what we discussed with them. Hardly two weeks down the line, people in Mandera County were attacked. Does it mean that these people do not get advice or know what is happening?

One of the concerns that we found on the ground is the policy of procurement in the police department; where a police Land Cruiser has to travel all the way from Mandera to Mwingi to draw 15 litres of fuel. By the time he goes back to Mandera, the vehicle has no fuel. This is a contract agreement that the police department has entered with suppliers. I think we have a big problem. If the life of the Governor is at threat, what

about the poor citizens? There is lack of confidence even between the locals and the security agencies because there is fear. Even the locals do not trust the security agencies and fear for their lives. When are we going to stop this culture of “I do not care?” We need to hold these people accountable.

Finally, as a country, we need to look into the welfare of police officers. They are living in pathetic situations; poor housing conditions and meagre allowances. Some of them are killed in the line of duty in areas worst hit by insecurity and no one is left to take care of their families. We need an overhaul in our security agencies.

Thank you, Mr. Temporary Speaker, Sir, I support.

**Sen. Obure:** Mr. Temporary Speaker, Sir, first, I want to thank the Senator for Mandera and I want to associate myself fully with the sentiments he has expressed on the security situation in his county. Situations of insecurity are far too many and far too frequent. In all these situations, innocent Kenyans, human beings, God’s creations lose their lives without any justification whatsoever. They also lose large amounts of property. We have seen this in Tana River, Kitui, Bungoma, Westgate in Nairobi, Mombasa, Wajir, Garissa and Mandera.

You will recall in an earlier incident in Mandera, Kenyans were lined up and executed in an organized and systematic manner. Some of the people who lost their lives were civil servants, teachers, doctors, nurses and people working in public institutions in Mandera County. Eight of this came from my own county in Kisii. We are still mourning their deaths but in the process, they left behind widows, children and aging parents who now face a bleak and hopeless future.

The principal target of the attack in Mandera was actually the Governor himself, who is the chief executive officer of the County Government of Mandera. Right now, I am sure the Governor feels vulnerable. If the chief executive officer feels vulnerable, what about the ordinary citizen? The state of insecurity has serious implications on the social life of Kenyans. It has created fear and despondence. It has serious ramifications on the performance of the economy of Mandera County and indeed on the economy of the country as a whole. It has a negative impact on the livelihoods of the people both in Mandera and elsewhere.

We all agree that the first responsibility of the national Government is to protect lives and property of the people. The question we ask is; do we have the political will and resolve to deal with this situation? Do we have the capacity to protect the lives and property of the people? If indeed we do or we feel we do, there is then an urgent need for the national Government to commit itself to guarantee security to Kenyans in Mandera County and everywhere in the Republic.

With those few remarks, I beg to support.

**Sen. Leshore:** Mr. Temporary Speaker, Sir, from the outset, I would like to support this Motion. I have worked in Mandera and I know it and I know the people of Mandera. The people of Mandera believe in Kenya. They have believed in Kenya since Independence. The people of Mandera are hardworking people. They love development and peace.

I am shocked that the county is under siege. This is the first county in Kenya to have a curfew brought about by some gangs or some terrorists. I am ashamed that the

Inspector-General of Police visited Mandera and then came back. He should have sent the military or the air force there to sweep even 50 kilometres inside Somalia. Why do we have to wait to get permission from the African Union to send the Kenya Defence Forces from Kismayu or Wajir to clear that border which is only 200 kilometres?

Mr. Temporary Speaker, Sir, I am ashamed that today we do not get the intelligence information that we used to get. When I was in Mandera, we could get the raw intelligence information by the door about anything that was happening in Mogadishu. The Somalis, especially the Gurreh, the Murulle and the Degodia who live there are very good at giving verbal intelligence information. We do not understand what is happening now. Maybe there is corruption and they fear that when they tell the National Intelligence Service (NIS) officers, a policeman or the Kenya Defence Forces (KDF) officers, that gangsters, terrorist militias or thugs will go after them.

Mr. Temporary Speaker, Sir, we should stand with our President and seek a lasting solution before Kenya becomes a Boko Haram area. Specific areas include: Mandera, Wajir, Garissa, Isiolo, Laikipia, Samburu, Turkana, West Pokot and parts of Baringo. We have heard about massacres like the one in Baragoi and Kapedo. Our KDF leaders rush there and after two days, you do not hear any information in the media. The information is kept in the lockers. What are we doing as a nation or as a Senate? We must stand up with our President and the people of Mandera.

I sympathise with Governor Ali Roba. He is a young person who wants to bring change in Mandera. He has created harmony between the leadership of that county. He is devoted to seeing devolution working down to the grassroots.

Mr. Temporary Speaker, Sir, I plead with the House that we summon all the defence forces urgently as a Senate. If need be, we should even invite the President so that we support him in the presence of the officers. We can tell him to assert the officers. I met Cabinet Secretary, Maj. Nkaissery, the other day and I admired what he told county commissioners. He gave orders like a general. However, I do not know whether officers who are below him are serious to work with him or he will be left there like Mr. ole Lenku to give a hundred and one misleading statements.

Mr. Temporary Speaker, Sir, we should be serious as Kenyans. Let us not allow Mandera to become another Boko Haram area.

I beg to support the Motion.

**Sen. (Dr.) Kuti:** Mr. Temporary Speaker, Sir, I join my colleagues in sending condolences to people who died in all the attacks and especially the last one. I also want to express concern about the unfortunate security situation in Mandera. These are now repeated attacks and deaths in large numbers. The life of the Governor is at risk. It is as if Mandera County is, as people there usually claim, not in Kenya.

The people of the former Northern Frontier District (NFD) have over the years claimed that they are not in Kenya. But with the new Constitution and devolution, for the first time they have started feeling that they are Kenyans. This is because they are governed by their own people and resources are now trickling down to those areas. So, for Mandera, it is a new hope. But this new hope is being dashed by some militia which we cannot compare with our forces. They have become so powerful that now the whole county is under a curfew not because of an order of the President or Parliament, but by

the order of maybe a militia leader. I think this is a wake-up call. We must now focus on Mandera.

I do not know why we have taken so long to deploy the Kenya Defence Forces (KDF) to Mandera. Most of the time when security situations get out of hand and the KDF are deployed, of course, the local people are also messed up, but eventually calm is restored. I strongly recommend that the KDF be sent to Mandera with immediate effect. Let them camp there and clean the whole area, including some kilometres into Somalia. They need to wipe out those camps that the Senator for Mandera has talked about.

The other issue is the deployment of the local security personnel. The people in Mandera are saying that if the Government is not acting, they will act. This means that the citizens will now take arms. Instead of waiting for that to happen, the Government should post people from the local area to work there. When Garissa had similar problems, a District Commissioner (DC) was posted there. In fact, that is the last time that Garissa had a major insecurity issue. That DC wiped out insecurity and Garissa has experienced calm up to date, other than the few grenades that were thrown last year by the *Al Shabaab*. Now, Garissa is a thriving municipality. Therefore, the people who can gather intelligence fast and understand what is going on are the locals.

Secondly, the local people will not have the attitude; that *“hii ni kawaida ya hawa watu. Kupigana ni kawaida yao.”* That is an attitude among even the security officers. They say: *“Kwani sisi ndio tunaweza kuleta amani. Wananchi washikane na viongozi ili walete amani.”* This is the kind of information that we are given by the security forces on the ground. So, there is apathy.

Mr. Temporary Speaker, Sir, I support this Motion and we need to act very fast.

**Sen. Omondi:** Thank you, Mr. Temporary Speaker, Sir, for giving me a chance to contribute to this Motion of Adjournment.

Insecurity in this country is a concern to every Kenyan. Kenyans are, therefore, looking up to leaders to give solutions to insecurity. We are tired of waiting until something happens and then we are told that investigations have been launched. At the end of the day, after the victims have been buried, that is the end of the story. Prevention is better than cure. We need to protect Kenyans. I want to remind the Jubilee Government that as per the Constitution, they have a duty to protect the citizens of this country. They have a duty and a responsibility to use all means to ensure that the lives of Kenyans are secured. If people who are protected are under threat, what about common *mwanaanchi*?

There are a series of cases that go unreported simply because there is laxity and we cannot allow this, we must stand firm and say no to insecurity in this country. Without security, we cannot develop, we cannot get investors and people cannot plan well in this country. The issue of insecurity is something that we cannot sit back and blame one another but we have a duty and a responsibility.

I want to mention something about the way we shift blame and this has made even the security personnel not to know which way to go or which is the best way for them to perform their duties because if they kill, they are blamed and if they sit back, they are blamed too. We must look at both sides because even the security people and the police officers are Kenyans. If they are attacked and die, it is again a loss to this country.

They also need to be protected by having proper structures that are going to help them perform their duties.

With those few remarks, I beg to support this Motion

**Sen. Hargura:** Mr. Temporary Speaker, Sir, thank you for giving me this opportunity to contribute to this Motion. I would like to send my condolences to the relatives of the victims of various attacks in Mandera and parts of this country and also to empathize with the Senator for Mandera and the residents of Mandera for all they are going through.

I had the opportunity of working in Mandera since the year 2006. I was there as a roads engineer and by virtue of my job, I had to travel a lot. I know what the people of Mandera are going through. It is only now because of the county government and trying to take issues into their own hands in terms of development, we are getting this information. Unfortunately, to a larger extent, that area - that is the former North Eastern Province and the former Northern Frontier District (NFD) - has been left to fend and to secure itself. For the case of Mandera, they have, for a long time gone through very difficult times. In fact, when I was there, those of us who come from outside the area could not sleep. There were times when from evening to 3.00 a.m., there was a lot of gun fire in Mandera. That time it was the Somali system against the Ethiopian system.

Mandera is at the tip of Kenya; to the north, we have Ethiopia and to the east, we have Somalia. Sometimes, they even fight through the Mandera Airspace and the bullets land in Mandera Town. There is a petrol station where somebody was fueling his vehicle when he was hit by a big calibre bullet from Somalia while they were firing at Ethiopia and all this time, we have a Government there. So, Kenyans have been left on their own for a long time. Now, when they have to develop or make use of devolution, you can see the kind of obstacles they are facing.

Mr. Temporary Speaker, Sir, I blame the Kenyan Government squarely for all this because Mandera is part of Kenya and the residents of Mandera have all the right to be protected by their Government; but that has not been forthcoming. I know that there is a military camp at the airstrip there and there are many police officers there; but the practice is that you only see them during the day. How you will go through the 12 hours of the night is up to you; you will meet them in the morning. You only see the police officers in the morning and at night, you are on your own. Of course, the people from Somalia - the terrorists - will take advantage of that situation; that is why they can hit whenever and wherever they want. This is the situation as it is and it has been so in the past, but we have to change it. The Kenyan Government has to take responsibility.

The other day, I was in a Committee meeting, talking to some senior security officers and they told us that the intelligence that the Kenyan Government has is that there is a plan to create a caliphate from the Coast up to Mandera. They were trying to justify why these people are coming in. We have our military all the way to Kismayu, but when you ask them where our military is along the Mandera border, they tell you that is Gedo Region, which is under Ethiopia according to the African Union (AU). How do you give a foreign country authority to control or protect your border for you yet you have sent your military all the way across Somalia to the Port of Kismayu?

Mr. Temporary Speaker, Sir, I would like the Kenyan Government and the military to take the security of her people seriously. They should withdraw our forces from Kismayu and redeploy them along the border from Mandera all the way down to Lamu. We should secure ourselves first. If the reason we went into Somalia is to protect our people from *Al-Shabaab* and yet they are coming in through Mandera, then there is no need of them staying behind. Come back and cover the border completely; give them proper equipment; integrate the police and the army so that they assist each other because right now, we have many police officers there and the situation is the same.

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

**Sen. Melly:** Thank you, Mr. Temporary Speaker, Sir, for this opportunity to contribute to this Motion. From the outset, if you are to consider what is currently happening in Mandera County, it is actually a high time the leadership of this country, including the Senate, agreed on how we are going to have security in this county. On issues of education, as we talk today, there are no teachers in Mandera schools. Teachers fear for their lives and a number of them have not returned to school as we talk today. There are no children in school and there are also no workers. Two, on issues to do with health, a number of doctors and nurses are no longer in hospitals there because everybody fears for their lives.

Mr. Temporary Speaker, Sir, it has reached a point where even our police stations and police camps are not safe anymore. If these people are even attacking police stations, where they know very well that there are police officers who have the right equipment, how safe is the local *mwanaanchi*? It is high time we rethink the whole issue of insecurity. If there is something we can do, as the Senate, to ensure that the people of Mandera County have security, this is the time.

I have been asking myself where the entry point of these militants - the *Al-Shabaab* - is and from our understanding, one of the entry points is Mandera County. The Senate Minority Leader pointed out an issue which I also want to point out about the role of our Kenya Defence Forces (KDF). Why are they not taking care of our borders? It is better if we fight these enemies at the border rather than wait for them to come to Nairobi to finish our people in malls and big buildings.

Mr. Temporary Speaker, Sir, when we enacted the new Constitution, the people of this country were so happy and one of the reasons why they were happy is because of devolution. Until today, the people of Mandera County do not understand why devolution exists. They have not seen any fruits of devolution because of constant insecurity in the county. Investors are not free again to invest in Mandera County.

Teachers from other parts of the country who used to work in Mandera County today cannot go there because of insecurity. The children of Mandera County will sit the same Kenya Certificate of Primary Education (KCPE) and Kenya Certificate of Secondary Education (KCSE) exams at the end of this year with children from the rest of the country. Under those circumstances in which they are operating, as we talk today, there are no teachers and children in school, do we expect them to sit for the same KCPE exams with other children from other parts of the country? How are we going to develop the rest of the country and leave a part of this country?

Mandera County is in Kenya and I believe that the present Government, which I belong to, has got what it takes to restore the security of this country. It is high time, with the new leadership of security in this country, that we did our part. If there is need for any amendment of the law so that we allow our KDF officers to take charge of our borders, then it is high time we did so.

Mr. Temporary Speaker, Sir, a number of leaders have spoken about the issue of withdrawing workers, especially teachers from Mandera; this is not the solution. Withdrawing our workers from Mandera County means that we are yielding to the *Al-Shabaab*. It has taken this Government a lot of effort to create employment in Mandera County and other parts of this country and they should put in some effort to protect these jobs by beefing up security in Mandera County---

**Mr. Temporary Speaker** (Sen. Murkomen): Order, Senator. Your time is up. I suggest that the three other Senators who want to contribute to take three minutes each because the time is over so that everyone can have a chance to contribute.

Proceed, Sen. Moses Kajwang; you have two minutes.

**Sen. M. Kajwang:** Thank you, Mr. Temporary Speaker, Sir. I come from Homa Bay County which is quite a distance from Mandera County. But insecurity anywhere in this country affects all parts of this nation. I am amazed that a whole Governor can be attacked by a rocket propelled grenade. Where I come from, the fastest thing that travels is a stone that has been hurled using a sling. The story in Mandera is like a horror story; rocket propelled grenades hurled at Governors? We have heard of 36 quarry workers who were killed in one instance in the past; 28 people killed and 11 teachers were killed sometimes in 2014. These are the kind of things that prompt citizens to start saying "*Mandera si Kenya*."

Previous speakers have talked about high seas and breeding of Boko Haram, but where should the buck stop? I know that the Jubilee Government borrowed a Cabinet Secretary in charge of security from the Opposition and we had an Inspector-General (IG) of Police appointed just the other day. I believe that the buck stops squarely in the hands of the Chief Executive Officer (CEO) of this nation, because the primary responsibility of any government or authority is the security, safety and wellbeing of its citizens. That should be paramount and the first thing.

We anticipate more chaos as we approach the next election. Some of these things are cyclic. As much as we talk about the *Al Shabaab* and clan conflict, we should be a bit more vigilant as we approach the next elections. Unfortunately, our Government has resorted to public relations. That is why we are seeing the likes of Tony Blair coming into the country so that we cover up the things which are happening here so that it is only positive things that happen which will be reported for purposes of next election.

I urge all Senators here to take a non-partisan approach on this matter. This is an area where we, as the opposition, cannot allow the Government to fail.

I support.

**Sen. (Prof.) Lonyangapuo:** Thank you, Mr. Temporary Speaker, Sir. It is strange that we are discussing about Mandera again when we talked about it last year. I was told that from Lamu to El Wak, we are covered by our KDF who are in Somalia. However, between El Wak and Mandera, this is a porous area. This is an area where we are being



assisted by the Ethiopian Army. That is where the problem is erupting from. The national Government has failed in their duty to construct the road from Mandera all the way through Garissa to Nairobi to the extent that we are using the county road that is parallel to the border.

The national Government is asleep. Why put a lot of money here in Nairobi and in other towns and yet we can save our face by constructing that road? Any time Mandera is hit, they say that Kenya is unsafe. Between Mandera and Katapa, which is between Kenya and Ethiopia, there are no incidents. Why is this? This is because the Ethiopians are disciplined. In Uganda and Rwanda, all army barracks in the interior of the country are completely closed. Ours should be closed and be safeguarded at the border points.

Mr. Temporary Speaker, Sir, the people living around West Pokot and Elgeyo-Marakwet know where the border is. The border should be fenced so that somebody's goats and sheep do not trespass. The national Government is completely asleep. They will continue to change the Kimaiyos, ole Lenku and others unless we deal with it, there is no other solution.

**Sen. Kisasa:** Asante Bw. Spika wa Muda. Naomba hata mimi nichangie Hoja hii. Bwana Kerrow ana kero nyingi tangu jana kulingana na vile nilivyomuona kwenye runinga. Swala la usalama ni la muhimu sana. Saa hizi, mimi kama mama nashangaa vile kulivyo huko Mandera. Shule zilifungwa huko Mandera na itakapofika mwezi wa nane, watoto wa Mandera wahitajika kufanya mitihani kama wengine. Lazima tutie nywele maji kabla ya *Boko Haram* kuja hapa.

**Sen. Karaba:** Thank you, Mr. Temporary Speaker, Sir. I support this Motion which is well intended. This Motion was discussed last year. From last year up to now, nothing much has happened. We should learn from China. One time, India wanted to attack China; the Chinese told Indians that they would parade along the border. They marched towards India killing everything that was alive including cockroaches. That is what we should do now. Let us mobilize our people to move to the border and clear everything that is causing us all these problems. We should also create a buffer zone. That is what we need to do.

I support.

### ADJOURNMENT

**The Temporary Speaker** (Sen. Murkomen): Order, hon. Senators. It is now 7 o'clock. The Senate stands adjourned until tomorrow, Wednesday, 18<sup>th</sup> March, 2015 at 2.30 p.m.

The Senate rose at 7.00 p.m.