

# PARLIAMENT OF KENYA

## THE SENATE

## THE HANSARD

**Tuesday, 2<sup>nd</sup> December, 2014**

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

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

### PRAYERS

### MESSAGE FROM THE NATIONAL ASSEMBLY

#### CONCURRENCE OF THE SENATE ON THE NATIONAL DROUGHT MANAGEMENT AUTHORITY BILL (NATIONAL ASSEMBLY BILL NO.42 OF 2013)

**The Speaker** (Hon. Ethuro): Order, Senators! I have a Message from the National Assembly on the National Drought Management Authority Bill (National Assembly Bill No.42 of 2013).

Hon. Senators, I wish to bring to the attention of the Senate that pursuant to Standing Order No. 40 (3) and (4), the Clerk has delivered to me a Message from the National Assembly regarding the National Drought Management Authority Bill (National Assembly Bill No.42 of 2013). The Message is dated 27<sup>th</sup> November, 2014. It states as follows, and I quote:-

“Pursuant to the provisions of Standing Order No.41 and No.142 of the National Assembly Standing Orders, I hereby convey the following Message from the National Assembly:-

Whereas the National Drought Management Authority Bill (National Assembly Bill No.42 of 2013) was published as a Bill not concerning county governments by the Kenya Gazette Supplement No.160 of 15<sup>th</sup> November, 2013 and whereas during the consideration of the Bill on 12<sup>th</sup> November, 2014, the National Assembly introduced and passed amendments the effect of which made the Bill to be a Bill concerning county governments in terms of Article 110(1)(c) and Part II of the Fourth Schedule to the Constitution.

Now therefore, in accordance with the provisions of Article 110(4) of the Constitution and Standing Order No.142 of the National Assembly Standing Orders, I hereby forward the said Bill to the Senate, the effect of which is to seek the concurrence of the Senate to the said Bill as passed by the National Assembly.”

Hon. Senators, Standing Order No.148 requires that a Bill which originates in the National Assembly be proceeded with by the Senate in the same manner as a Bill introduced in the Senate by way of First Reading in accordance with Standing Order No.129. Consequently, I now direct that the Bill be listed for First Reading tomorrow, Wednesday, 3<sup>rd</sup> December, 2014 following which it shall stand committed to the Standing Committee on Land and Natural Resources pursuant to Senate Standing Order No.130(1).

I thank you.

### PAPERS LAID

**The Speaker** (Hon. Ethuro): Who has any documents to lay on the Table? Sen. (Dr.) Kuti, you know what to do. Proceed.

#### REPORT ON THE LEVEL OF PREPAREDNESS OF THE BUSIA AND MALABA BORDER POINTS IN RESPONSE TO THE GLOBAL EBOLA CRISIS

**Sen. (Dr.) Kuti:** Mr. Mr. Speaker, Sir, I beg to lay the following Paper on the Table of the House today, Tuesday, 2<sup>nd</sup> December, 2014:-

The Report of the Standing Committee on Health on the Level of Preparedness of the Busia and Malaba Border Points in response to the global Ebola crisis.

*(Sen. (Dr.) Kuti laid the document on the Table)*

### NOTICES OF MOTIONS

#### ADOPTION OF REPORT ON THE LEVEL OF PREPAREDNESS OF BUSIA AND MALABA BORDER POINTS IN RESPONSE TO GLOBAL EBOLA CRISIS

**Sen. (Dr.) Kuti:** I beg to give notice of the following Motion:-

THAT, this House adopts the Report of the Standing Committee on Health on the Level of Preparedness of the Busia and Malaba Border Points in response to the global Ebola crisis.

#### RESOLUTION TO HOLD A MORNING SITTING ON WEDNESDAY, 3<sup>RD</sup> DECEMBER, 2014, PURSUANT TO STANDING ORDER No.30 (3) (B)

**Sen. Kivuti:** Mr. Speaker, Sir, on behalf of the Senate Majority Leader, I beg to give notice of the following Motion:-

THAT, pursuant to Standing Order No.30 (3) (b), the Senate resolves to meet on Wednesday, 3<sup>rd</sup> December, 2014 at 9.30 a.m. to transact business.

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

## STATEMENTS

### CLOSURE OF NATIONAL CEREALS AND PRODUCE BOARD SILOS IN UASIN GISHU AND MIGORI COUNTIES

**Sen. Ndiema:** Mr. Speaker, Sir, I rise to make a Statement on a matter raised by the Senator for Uasin Gishu County, Sen. Melly. I do not see him here. I seek your guidance.

**The Speaker** (Hon. Ethuro): Sen. Ndiema, you can resume your seat.

**Sen. Ndiema:** Mr. Speaker, Sir, I have another Statement.

**The Speaker** (Hon. Ethuro): Okay, proceed.

### NATIONAL POLICY ON GMOs

**Sen. Ndiema:** I have a statement that was sought by Sen.(Prof.) Lesan regarding Genetically Modified Organisms (GMOs)---

**The Speaker** (Hon. Ethuro): Order, Sen. Ndiema. I appreciate your enthusiasm to respond, but Sen.(Prof.) Lesan is not in the House yet. So the same fate applies.

**Sen. Ndiema:** Okay, Mr. Speaker, Sir. Actually, I had three Statements to issue. The other one is for Sen. (Prof.) Lonyangapuo. He is not also here, but I will do it when they come.

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

**Sen. (Dr.) Kuti:** Mr. Speaker, Sir, I have about four statements to make but none of the people who sought those questions are present in the House. I wonder whether I should wait.

**The Speaker** (Hon. Ethuro): Order. You are not spending quality time of the House. If they are not there, they are not there. You will realise that we have a lot of business. That is good for us.

## PERSONAL STATEMENT

### APPRECIATION TO THE SENATE FOLLOWING THE DEMISE OF SEN. OTIENO KAJWANG

**Sen. Orengo:** Mr. Speaker, Sir, with your permission, I want to take this opportunity to thank you and the Senate. I am doing this in my capacity as the Chairman of the National Committee for the Funeral for the late Senator for Homa Bay County, Sen. Otieno Kajwang. I really want to register our appreciation as a Committee and on

behalf of the people of Homa Bay County. I seize this opportunity to thank all the Members of the Senate for their generous contributions and expression of solidarity when this happened.

Indeed, I think the death of the Senator for Homa Bay County brought the House together in a manner that I have not seen for a long time. I was hoping that, that spirit would continue to determine not only the way we relate to each other, but the way we do our business, particularly you, Mr. Speaker, because your office at all times round the clock enabled the Committee to beat deadlines. Mr. Mohammed in your office and the Clerk helped the Committee throughout. The Members of that funeral committee from both the Senate and the National Assembly helped us tremendously. I would also like to mention the generous contributions made; that for the first time, Members of the Senate gave a contribution not on the basis of our individual voluntary contribution but in terms of a resolution of a payment of Kshs30,000 each. I do not think it has ever happened in the Senate or in the previous Parliaments.

Mr. Speaker, Sir, for you particularly, and I know sometimes this is very difficult, but against all odds, you came to Uhuru Park and to Waondo in Homa Bay County and it was an exemplification that Kenya is, indeed, one nation. Whatever happens to any one of us, we can count on the Senate and the Speaker. The contributions were not just in terms of the money that each Senator gave, but even when we held a Harambee, the Senators still came and gave very generous contributions towards this worthy cause. The same goes for the National Assembly and its leadership – the Speaker, the Leader of the Majority, the Leader of the Minority, just like in this House, the Senate Majority and Minority Leaders were part and parcel of the parliamentary committee. All of them gave very generous contributions.

Mr. Speaker, Sir, for the record, the coffin, hearse and the infrastructure for the entire journey from here to Waondo was footed by Parliament. The staff of Parliament led by the Clerk were also was present in Waondo.

I also want to take this opportunity to congratulate or appreciate the contribution of the national Government led by the President because he, indeed, made available two fixed wing police aircraft which carried the body and the family up to Waondo. Also, there were contributions on the ground in terms of security and many other logistical requirements on the day of the funeral. I also want to appreciate the National Youth Service (NYS) and also the County Government, not only of Homa Bay, but also the county governments that surround Homa Bay.

I am saying this not only as the Chairman of that Committee but also on behalf of the family; that they really appreciated what the Senate and the National Assembly did towards this worthy cause. I hope that in future, without discrimination, we will get together whenever we are hit by such a tragedy. It is good to have friendship of both sides of the House in the sense that it makes the load much easier. I am sure in the eyes of those who loved Sen. Kajwang, they truly appreciate that his colleagues were together with the family at the time when they really needed that assistance.

I thank you very much, Mr. Speaker, Sir.

(Applause)

**The Speaker** (Hon. Ethuro): Sen. (Dr.) Zani, you may proceed.

**Sen. (Dr.) Zani:** Mr. Speaker, Sir, on behalf of the Chairman of the Committee on Education, I have statements that are ready. One had been requested by Sen. (Eng.) Muriuki on engineering degree courses. I see him in the House. With your permission, I can proceed with that statement. There are others from Sen. Chelule and Sen. Mositet.

I am ready to proceed with the Statement from Sen. (Eng.) Muriuki.

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

NON-ACCREDITATION OF THE TECHNICAL UNIVERSITY OF  
MOMBASA BY ENGINEERS BOARD OF KENYA

**Sen. (Dr.) Zani:** Mr. Speaker, Sir, this is a brief on a statement regarding accreditation of Technical University of Mombasa Engineering programmes as requested by Sen. (Eng.) Muriuki of Nyandarua County.

Mr. Speaker, Sir, pursuant to Standing Order No. 45(2)(b) of the Senate, I wish to table the Statement requested by Sen. (Eng.) Muriuki on accreditation of Technical University of Mombasa Engineering programmes. I wish to state as follows;

Mr. Speaker, Sir, the Standing Committee on Education convened a meeting with the Commission for University Education on 4<sup>th</sup> September, 2014, to deliberate on matters concerning accreditation of universities and engineering programmes in Kenya.

**The Speaker** (Hon. Ethuro): Order, Senator. We do not want those details of your meetings. Tell us the issues and what was agreed.

(Laughter)

**Sen. (Dr.) Zani:** I can summarise the issues.

**The Speaker** (Hon. Ethuro): Yes, do so.

**Sen. (Dr.) Zani:** We managed to talk to both the members of the Commission for University Education and members of the Engineering Board. The issue was that there were students who, despite having taken engineering courses at the Technical University of Mombasa, could not be absorbed. This is because the professional body, which is the Engineering Board, said that they had not gone through the specific process. One of the issues was the courses that they had taken. Another issue was that, when the university was accredited, that was done by a mother university. By that time, the Technical University of Mombasa was standing on its own. The issue was, what do we do with these students who already professionally have the paper work but they cannot be accepted within the professionals? At that meeting, we found a way forward, specifically, what the Board will do in due course;

First, they told us that they had informed all the universities that they should not offer any university courses for which they have not received specific accreditation for, and they need to engage with the Commission on University Education to ensure that information is given about which courses they can proceed to teach.

Secondly, communication should go out so that parents and students know which universities have been accredited for specific courses so that they can offer those specific courses to the students.

Mr. Speaker, Sir, we had a problem because we have over 2,000 students who should get to the sector to work but they are not able to do so. The question we asked was, what do we do with these specific students who already have their degrees but they cannot go into the specific work-oriented field? This was specifically for certain courses like engineering and medicine. It will be very dangerous to have them go out if they have not been cross-checked and re-examined by the Engineering Board of Kenya to ensure that they have actually qualified for what they are meant to do, and they can actually do it out there in the market.

As a way-forward, an agreement was made that some process would be engaged in, especially targeting the Engineering Board of Kenya. We resolved that the Engineering Board will offer some make-up courses that will allow these students to take bridging courses. After that, they can be recognized by the Engineering Board and then join the market.

Mr. Speaker, Sir, what came across in all these meetings is that this was a technical problem and these students had been caught up in a situation that they had not created on their own. However, we found, at the Committee level, that we need to find a way that we can proceed and move forward. Also, the Commission on University Education indicated that they are going to be very strict. A cross-check and communication process needs to be engaged in so that all the sectors are aware about the courses that are being offered and the universities that are not allowed to offer courses that they have not been accredited for.

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

**Sen. (Dr.) Zani:** I have concluded. Thank you Mr. Speaker, Sir.

**The Speaker** (Hon. Ethuro): Whose Statement was it? Proceed Senator.

**Sen. (Eng.) Muriuki:** Mr. Speaker, Sir, first of all, I thank the Committee on Education although they have taken quite a long time. Nonetheless, thank you very much for delving into the issue.

Mr. Speaker, Sir, maybe the Vice Chairperson can tell the House; the dilemma we have is that we have those students and it is good to say some arrangements will be done. Perhaps, the Vice Chairperson can tell us, what are those specific arrangements? Can you table either a document or something which shows that the students who have now graduated in engineering as well as other courses - but my concern was engineering - what are those particular interventions? If they are courses, are they happening at a particular university?

Mr. Speaker, Sir, I had also asked the Vice Chairperson to give us a list or a schedule of the various universities and the courses which are not accredited as of now.

**The Speaker** (Hon. Ethuro): Chair.

**Sen. (Dr.) Zani:** Mr. Speaker, Sir, I thank Sen. (Eng.) Muriuki for that question. What we decided is that we need to have both long-term and short-term measures to ensure that this problem does not recur. One of the long-term measures is that there will be direct engagement from the Commission for University Education and the specific

universities to ensure that they have clearly stated the courses that they are meant to teach. Specifically, for engineering courses, the Commission should be able to vet and ensure that the question of manpower and equipment, especially teaching expertise that was a critical issue, is addressed. For engineering courses, they say that these particular courses have to be well equipped. Therefore, the issues of personnel and equipment have to be tackled. They will ensure that in each of these universities, if they have not been given accreditation, then they will not proceed.

Mr. Speaker, Sir, the Commission for University Education has, as well, given us a report. With your permission, I request to table it. This is a report to the Senate Standing Committee on Accreditation of Engineering Programmes. It has more details about the specific process for engagement and the specific courses where the make-up courses need to be done. We acknowledged that this was a serious problem. It should not have occurred and because of that technical aspect, the Commission for University Education and the Engineering Board of Kenya were able to discuss and find an amicable way-forward for the 2,000 students who have been affected by this problem.

Thank you, Mr. Speaker, Sir.

*(Sen. (Dr.) Zani laid the document on the Table)*

**The Speaker** (Hon. Ethuro): Sen. (Eng.) Muriuki.

**Sen. (Eng.) Muriuki:** Mr. Speaker, Sir, maybe after I peruse through that document, I may come up with one or two issues. However, there is still one issue that the Vice Chairperson is not answering about the various courses which are being offered now. If I got her correctly, that is what will happen in future. We are saying that there are students, and this question is on students who have already graduated and they are out there. What are we doing about them? If it is a course, what is the exact arrangement? Are they going to a particular university? What are you doing because they have already graduated but they cannot be registered and cannot work because of that hitch. What are you doing about those who have already left?

**Sen. (Dr.) Zani:** Mr. Speaker, Sir, the specific way forward for those who had already graduated is a process which will require engaging to find out exactly where the gap was. The gap is not uniform across the board. What the Engineering Board said is that they are going to do investigations. At least, they decided that these students will do bridging courses to top-up and fill the specific areas where there was a shortage. Therefore, investigations are going on to find out where the gap is and then, specific courses will be offered.

They have given us a duration of about six months to engage in that process. They will then advise about the specific place where the affected students should go. Probably, it will be to the mother university which, for the Technical University of Mombasa, was Jomo Kenyatta University of Agriculture and Technology (JKUAT) so they can have a process to fill in the gaps there so that they are not completely locked away from the market due to the fact that they have degrees which they cannot utilize. Therefore, they will do bridging courses so that they can be registered by their professional body and practise as engineers.

Thank you Mr. Speaker, Sir.

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

**Sen. Kivuti:** Thank you, Mr. Speaker, Sir. There are issues listed on the Order Paper for me to respond to. To save the time of the House, three of them do not require an immediate answer. The first one on IDPs in Nyandarua, we checked our records and do not seem to have any question from Sen. (Eng.) Muriuki Karue which touches on our Committees.

**The Speaker** (Hon. Ethuro): Order, hon. Senator. I only allowed you to talk about the statement by Sen. Musila. Respond on that one and forget the rest.

PROPOSED ALLOCATION OF LAND AT KANYANYOONI TO  
THE NATIONAL INTELLIGENCE SERVICE IN KITUI COUNTY

**Sen. Kivuti:** On the statement by Sen. Musila, so as to save time, instead of reading the entire document, I will go to the observations that were made by the Committee. I would like to report to the House that following the question by Sen. Musila, we had a sitting which was attended by the Senator, the Governor for Kitui County with his officers and the National Intelligence Service (NIS). The only people who did not come were the National Land Commission (NLC) who later sent their observations.

After listening to all submissions from all the sides, the Committee decided to seek a legal opinion on the legal matters that are contained in law, particularly on the position of who is entitled to bring matters relating to trust land and we got a summary of all the opinions that we had. These are contained in our Report on page 14.

The observations we got which are in two pages are that; despite the new Constitution coming into force in August 2010, the County Council of Kitui and other local authorities continued to exist by virtue of Section 18 of the Sixth Schedule of the Constitution which provides that all local authorities established under the Local Government Act Cap 265 existing immediately before the effective date shall continue to exist subject to any law that must be enacted.

(b) The NIS applied for the allocation of land at Kanyonyooni in the year 2011.

(c) The County Council of Kitui approved the requests during a meeting of Education, Housing and Social Services Committee on 15<sup>th</sup> November, 2011 and confirmed the same in a full council meeting held on 24<sup>th</sup> November, 2011.

(d) When allocating trust land to the NIS, in 2011, the County Council of Kitui was under obligation to comply with Article 63(4) of the Constitution of Kenya which provides that community land shall not be disposed of or otherwise used except in terms of legislation specifying the nature and extent of the rights of members of each community individually and collectively.

(e) Parliament not having enacted the registration envisaged in Article 63(4) of the Constitution, the law applicable to the setting aside part of the trust land is the Trust Lands Act, Cap 288 of the Laws of Kenya.



(f) It is apparent that the County Council of Kitui did not comply with the procedure of setting aside part of the trust land as set out in Section 7(3) of the Act which states that it should be published in the Gazette.

(g) It is apparent that the County Council of Kitui did not comply with the procedure of setting a part of the trust land as set out in Section 8 of the Trust Land Act which provides that the Government shall pay prompt compensation to the residents of the area of land set apart.

(h) When allocating the trust land to the NIS in 2011, the County Council of Kitui did not comply with the procedure for setting apart of Trust Land set out in Section 13(2) of the Trust Land Act which requires that the county council to consult the Division Land Board before setting aside the trust land.

(i) It is apparent that the County Council of Kitui did not comply with the procedure for setting apart of trust land set out in Section 13(3) of the Trust Land Act which requires the County Council to publish a notice of the setting aside part of the trust land in the Gazette.

(j) In conclusion, the allocation of Kanyoonyoni Land by the Kitui County Council to the National Intelligence Service was unprocedural as regards the provisions of the Trust Land Act, Cap 288, and Laws of Kenya.

The committee therefore, came up with three recommendations and requests the Senate to adopt them.

**The Speaker** (Hon. Ethuro): Order, Chairperson. Move fast.

**Sen. Kivuti:** The Committee requests the Senate;

(a) to adopt the observations which I have just read; and,

(b) to fast track the enactment of the Community Land Bill, 2014 so as to give effect to Article 63 of the Constitution which requires Parliament to enact legislation specifying the nature and extent of the rights of members of each community to community land. The Community Land Bill is already in this House at Second Reading.

(c) We should resolve that no further transactions should be undertaken by the NIS on the proposed allocation of 400 acres of land at Kanyonyooni, Kitui County until the matter is resolved.

I thank you.

**The Speaker** (Hon. Ethuro): Senator Musila, I will ask for your indulgence. We will proceed with this matter after voting. Just check your notes.

Order, hon. Senators, I hope you have your Supplementary Order Paper. We will now go to Order No.10.

Are you following, hon. Members?

We will go to Order No.10 and then we move to Order No.9, 8 and then 15. Order, hon. Senators, I will repeat. We will go to Order No.10, 9, 8 and then 15 and the rest will follow.

Order No.10 is on Division.

Hon. Senators, I have just remembered I did not put the question but it does not negate the vote because I had already said that we are voting on Order No.10.

**BILL***Second Reading*

THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) (NO. 2) BILL  
(NATIONAL ASSEMBLY BILL NO. 33 OF 2013)

*(Sen. (Prof.) Kindiki on 27.11.2014)*

*(Resumption of Debate interrupted on 27.11.2014)*

**DIVISION**

## ELECTRONIC VOTING

*(Question, that the Statute Law (Miscellaneous Amendments)  
(No.2) Bill be now read a Second Time put and  
the Senate proceeded to vote by County Delegations)*

**AYES:** Sen. (Prof.) Anyang'-Nyong'o, Kisumu County; Sen. Chelule, Nakuru County; Sen. Hargura, Marsabit County; Sen. Hassan, Mombasa County; Sen. Kagwe, Nyeri County; Sen. (Dr.) Khalwale, Kakamega County; Sen. Kivuti, Embu County; Sen. (Dr.) Kuti, Isiolo County; Sen. (Prof.) Lesan, Bomet County; Sen. (Prof.) Lonyangapuo, West Pokot County; Sen. (Dr.) Machage, Migori County; Sen. Madzayo, Kilifi County; Sen. Mositet, Kajiado County; Sen. Mugo, Nairobi County; Sen. (Eng.) Muriuki, Nyandarua County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Murungi, Meru County; Sen. Musila, Kitui County; Sen. Mutula Kilonzo Jnr., Makueni County; Sen. Ndiema, Trans Nzoia County; Sen. Ntutu, Narok County; Sen. Obure, Kisii County; Sen. Okong'o, Nyamira County; Sen. Orendo, Siaya County; Sen. Sang, Nandi County; Sen. Wako, Busia County; Sen. Wamatangi, Kiambu County; Sen. Wetangula, Bungoma County; and Sen. (Dr.) Zani, Kwale County.

**NOES:** Nil

**The Speaker** (Hon. Ethuro): Order, Senators! The results of the vote are as follows:-

**AYES:** 31

**NOES:** 0

**ABSTENTIONS:** Nil

The "Ayes" have it.

*(Question carried by 31 votes to 0)*

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

**The Speaker:** Next Order!

**COMMITTEE OF THE WHOLE**

*(Order for Committee read)*

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

**IN THE COMMITTEE**

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

**THE GOVERNMENT PROCEEDINGS (AMENDMENT) BILL  
SENATE BILL NO.10 OF 2014**

**The Temporary Chairperson** (Sen. Ongoro): Hon. Senators, I am of the opinion that instead of putting the question after every Bill, we can consider the two and then take the question together. If there is no opposition to the proposal, we can go to the next Bill. We are going to take the two questions together. Can the Division Bell be rung for a half a minute? I think we have the numbers.

*(The Division Bell was rung)*

Can the doors be locked and the bars drawn?

*(The doors were locked and the bars drawn)*

You can now log-in. Any assisted voters should approach the Temporary Chairperson. We will start the voting with the Government Proceedings (Amendment) Bill (Senate Bill No.10 of 2014).

*Clause 2, Title, Clause 1*

**The Temporary Chairperson** (Sen. Ongoro): I will now put the question that Clause 2, Title and Clause 1 be part of the Bill. You have 30 seconds to vote starting now.

Hon. Senators, the voting time is over. This is now time for assisted voters.

**DIVISION**

**ELECTRONIC VOTING**

*(Question, that Clause 2, Title and Clause 1 be part of the*

*Bill, put and the Senate proceeded to vote by County Delegations)*

**AYES:** Sen. (Prof) Anyang'-Nyong'o, Kisumu County; Sen. Billow, Mandera County; Sen. Chelule, Nakuru County; Sen. Haji, Garissa County; Sen. Hassan, Mombasa County; Sen. Kagwe, Nyeri County; Sen. Keter, Kericho County; Sen. (Dr.) Khalwale, Kakamega County; Sen. Kivuti, Embu County; Sen.(Dr) Kuti, Isiolo County; Sen. (Prof) Lesan, Bomet County; Sen. (Prof) Lonyangapou, West Pokot County; Sen. (Dr.) Machage, Migori County; Sen. Madzayo, Kilifi County; Sen. Mositet, Kajiado County; Sen. (Eng.) Muriuki, Nyandarua County; Sen. Murkomen, Elgeyo Marakwet County; Sen. Murungi, Meru County; Sen. Musila, Kitui County; Sen. Mutula Kilonzo Jnr., Makueni County; Sen. Ndiema, Trans Nzoia County; Sen. Ntutu, Narok County; Sen. Obure, Kisii County; Sen. Okong'o, Nyamira County; Sen. Orengo, Siaya County; Sen. Sang, Nandi County; Sen. Sijeny, Nairobi County; Sen. Wako, Busia County; Sen. Wamatangi, Kiambu County; Sen. Wetangula, Bungoma County and Sen.(Dr.) Zani, Kwale County.

**NOES:** Nil

**The Temporary Chairperson** (Sen. Ongoro): The results of the vote are as follows:-

**AYES:** 31

**NOES:** 0

**ABSTENTIONS:** Nil

The "Ayes" have it.

*(Question carried by 31 votes to 0)*

*(Clause 2 agreed to)*

*(Title agreed to)*

*(Clause 1 agreed to)*

THE PERSONS WITH DISABILITIES (AMENDMENT) BILL  
(SENATE BILL NO.14 OF 2014)

**The Temporary Chairperson** (Sen. Ongoro): Hon. Senators, we will proceed immediately to vote on the Persons with Disabilities (Amendment) Bill (Senate Bill No.24 of 2014).

*Clauses 2, 3, 4, Title and Clause 1*

**The Temporary Chairperson** (Sen. Ongoro): I now put the question that Clauses 2, 3, 4, Title and Clause 1 be part of the Bill. You have 30 seconds to vote. You can now log-in and start voting.

**DIVISION****ELECTRONIC VOTING**

*(Question, that Clauses 2, 3, 4, Title and Clause 1 be part of the Bill put and the Senate proceeded to vote by County Delegations)*

**AYES:** Sen. Billow, Mandera County; Sen. Chelule, Nakuru County; Sen. Haji, Garissa County; Sen. Hassan, Mombasa County; Sen. Kagwe, Nyeri County; Sen. Keter, Kericho County; Sen. (Dr.) Khalwale, Kakamega County; Sen. Kivuti, Embu County; Sen.(Dr) Kuti, Isiolo County; Sen. (Prof) Lesan, Bomet County; Sen. (Prof) Lonyangapou, West Pokot County; Sen. (Dr.) Machage, Migori County; Sen. Madzayo, Kilifi County; Sen. Mositet, Kajiado County; Sen. (Eng.) Muriuki, Nyandarua County; Sen. Murkomen, Elgeyo Marakwet County; Sen. Murungi, Meru County; Sen. Musila, Kitui County; Sen. Mutula Kilonzo Jnr., Makueni County; Sen. Ntutu, Narok County; Sen. Okong'o, Nyamira County; Sen. Orengo, Siaya County; Sen. Sang, Nandi County; Sen. Sijeny, Nairobi County; Sen. Wako, Busia County; Sen. Wamatangi, Kiambu County; Sen. Wetangula, Bungoma County and Sen.(Dr.) Zani, Kwale County.

**NOES:** Nil

**The Temporary Chairperson** (Sen. Ogoro): The results of the vote are as follows:-

**AYES:** 28

**NOES:** Nil

**ABSTENTIONS:** Nil

The "Ayes" have it.

*(Question carried by 28 votes to 0)*

*(Clause 2, 3 and 4 agreed to)*

*(Title agreed to)*

*(Clause 1 agreed to)*

**The Temporary Chairperson** (Sen. Ogoro): At this point, we revert to the House before we take the next amendment which is quite long. We shall first report to the House.

*(The Temporary Chairperson (Sen. Ogoro) consulted  
With the Clerk-at-the-Table)*

We have consulted and decided that we just proceed to the next Bill. Therefore, the mover of the Government Proceedings (Amendment) Bill, Senate Bill No.10 2014), Sen. Mutula Kilonzo Jnr., you can proceed.

THE GOVERNMENT PROCEEDINGS (AMENDMENT) BILL,  
(SENATE BILL NO.10 OF 2014)

**Sen. Mutula Kilonzo Jnr.:** Thank you, Madam Temporary Chairperson. I beg to move that the Committee do report to the Senate its consideration of the Government Proceedings (Amendment) Bill (Senate Bill No.10 of 2014) and its approval thereof without amendments.

**Sen. Sang** seconded.

*(Question proposed)*

*(Question put and agreed to)*

THE PERSONS WITH DISABILITIES (AMENDMENT) BILL,  
(SENATE BILL NO.14 OF 2014)

**The Temporary Chairperson** (Sen. Ongoro): Sen. Sang, I think you were moving the Bill.

**Sen. Sang:** Madam Temporary Chairperson, I beg to move that the Committee do report to the Senate its consideration on the Persons with Disabilities (Amendment) Bill (Senate Bill No.24 of 2014) and its approval thereof without amendments.

*(Question proposed)*

*(Question put and agreed to)*

THE COUNTY ASSEMBLIES POWERS AND PRIVILEGES BILL,  
(SENATE BILL NO.14 OF 2014)

**The Temporary Chairperson** (Sen. Ongoro): Hon. Senators, we are still in the Committee of the Whole to consider The County Assemblies Powers and Privileges Bill (Senate Bill No.14 of 2014).

Yes, Sen. Chelule. You are requesting. Is that a mistake?

**Sen. Chelule:** Yes, it is a mistake.

**The Temporary Chairperson** (Sen. Ongoro): Yes, Sen. Musila.

**Sen. Musila:** Madam Temporary Chairperson, I think there is some problem with the system. I did not ask for the Floor.

**The Temporary Chairperson** (Sen. Ongoro): It was reflecting. If the two of you then logged in by mistake, there are no further requests.

We will proceed.

*(Loud consultations)*

**The Temporary Chairperson** (Sen. Ongoro): Order, Members! Sen. Wamatangi. Let us listen to the proposed amendment.  
Proceed, Senator.

*Clause 26*

**Sen. Wako:** Madam Temporary Chairperson, I beg to move:-

THAT, Clause 26 of the Bill be amended in paragraph (b) of sub-clause (1) by inserting the words “threaten, use abusive language” immediately after the word “assault” appearing at the beginning of the paragraph.

Madam Temporary Chairperson, under paragraph (b), the Committee, after doing the public hearings, felt that the acts mentioned there are not comprehensive enough. So, the words that we are adding are “threaten and use of abusive language” as one of those prohibited acts.

I beg to move the amendment.

*(Question of the amendment proposed)*

**Sen. (Prof.) Anyang’-Nyong’o:** Madam Temporary Chairperson, I want to add my voice on the amendment proposed by Sen. Wako. I hope that with this law, we shall stop the anarchy in the county assemblies. This is because I have seen many instances where decorum and proper etiquette, befitting members of a legislative institution, is not observed in county assemblies. Quite often, disagreements on the basis of arguments are settled rather inappropriately; in manners which are not civil and do not become of members who should deserve the title “honourable.” I hope that this law, once it takes effect, will be strictly applied to make sure that county assemblies become *bona fide* legislatures at the county levels and members of these assemblies realize that there is a culture and etiquette associated with debating in such assemblies.

I beg to support.

**The Temporary Chairperson** (Sen. Ongoro): I see two other requests.

Sen. Musila, you have logged in again. Is it a mistake?

**Sen. Musila:** Madam Temporary Chairperson, I have logged in because I like the proposed amendment.

You are aware of the notorious behaviour of civic leaders, particularly when they are fighting or threatening. Therefore, I want to urge my colleagues to support this amendment, so that even a threat will constitute an offence.

Thank you, Madam Temporary Chairperson.

**Sen. Mutula Kilonzo Jnr.:** Madam Temporary Chairperson, I support the amendment.

This amendment was actually proposed by a Committee of Clerks all over the country, to the extent that the work of members of staff of the county assemblies has been threatened by persons holding the positions of Members of County Assemblies and other members, including speakers. They are threatening members of staff and using abusive language against them.

In order to synchronize other clauses that affect Members of the County Assemblies, it was felt by the Committee on Legal Affairs and Human Rights that the members of staff working in the county assembly should enjoy the same privilege and protection that is given to the Members of the County Assemblies. So, if any member of staff is threatened or abusive language used against them by any person, including their superiors, they have a right to report the threat and use of abusive language through the clerks of their respective county assemblies.

Madam Temporary Chairperson, similarly in Clause 34, a similar clause exists where a Member of the County Assembly is threatened by any person, we have---

**The Temporary Chairperson** (Sen. Ongoro): Order, Senator! You cannot start deliberating on Clause 34 before it is moved.

**Sen. Mutula Kilonzo Jnr.:** Madam Temporary Chairperson, I beg to support.

**The Temporary Chairperson** (Sen. Ongoro): I do not see any further requests. I will now put the question that Clause 26 be amended as proposed by the Chairperson of the Standing Committee on Legal Affairs and Human Rights.

We will not do a division now. Let us proceed to Clause 34 and then we will take them together.

#### *Clause 34*

**Sen. Wako:** Madam Temporary Chairperson, I beg to move:-

THAT, the Bill be amended in Clause 34 by inserting the following new sub-clause immediately after sub-clause (1)-

(1A) Where an offence is suspected to have been committed under section 26(1)(b), the Clerk shall make a request to the Director of Public Prosecutions to take such action as may be appropriate.

Madam Temporary Chairperson, I think the amendment is self-explanatory.

*(Question of the amendment proposed)*

**The Temporary Chairperson** (Sen. Ongoro): There is a late request by Sen. Mutula Kilonzo Jnr., but I will grant it.

**Sen. Mutula Kilonzo Jnr.:** Thank you, Madam Temporary Chairperson. In order to enforce the amendment to Clause 26, it was felt that it was important to ensure that there is a mechanism for reporting abuse or any threat against a member of staff in the county assemblies, through their clerk, to the Director of Public Prosecutions. This is because protection is also enjoyed in the Bill by Members of the County Assemblies (MCAs)

I beg to support.

**The Temporary Chairperson** (Sen. Ongoro): I will put the question; that Clause 34 be amended as proposed by the Chairperson of the Standing Committee on Legal Affairs and Human Rights.

Again, I request that we do not take the vote. In the interest of time, let us proceed to the First and Second Schedule.



*First Schedule and Second Schedule*

**The Temporary Chairperson** (Sen. Ongoro): Since there are no requests, we will now move back to take the vote on all of them; Clause 26, Clause 34, First Schedule and Second Schedule; and Clauses 3 to 39, excluding 26 and 34. In the interest of time, we will vote on all of them together. Let the Whips tell us whether we have the requisite number. Ring the Division Bell for one minute.

*Clause 26*

*(Division Bell was rung)*

*(The doors were closed and the Bar drawn)*

**DIVISION****ELECTRONIC VOTING**

*(Question, that Clause 26 be amended as proposed by the Chairperson of the Standing Committee on Legal Affairs and Human Rights, put and the Senate proceeded to vote by County Delegations)*

**AYES:** Sen. (Prof.) Anyang'-Nyong'o, Kisumu County; Sen. Billow, Mandera County; Sen. Chelule, Nakuru County; Sen. Haji, Garissa County; Sen. Hargura, Marsabit County; Sen. Kagwe, Nyeri County; Sen. (Dr.) Khalwale, Kakamega County; Sen. Kivuti, Embu County; Sen. (Dr.) Kutu, Isiolo County; Sen. (Dr.) Khalwale, Kakamega County; Sen. (Prof.) Lesan, Bomet County; Sen. (Prof.) Lonyangapuo, Pokot County; Sen. (Dr.) Machage, Migori County; Sen. Mositet, Kajiado County; Sen. (Eng.) Muriuki, Nyandarua County; Sen. Murungi, Meru County; Sen. Musila, Kitui County; Sen. Mutula Kilonzo Jnr., Makueni County; Sen. Ndiema, Trans Nzoia County; Sen. Obure, Kisii County; Sen. Okong'o, Nyamira County; Sen. Orengo, Siaya County; Sen. Sang, Nandi County; Sen. Sijeny, Nairobi County; Sen. Wako, Busia County; Sen. Wetangula, Bungoma County; and, Sen. (Dr.) Zani, Kwale County.

**NOES:** Nil

**The Temporary Chairperson** (Sen. Ongoro): I now wish to announce the results of the Division.

**AYES:** 26

**NOES:** Nil

**ABSTENTIONS:** Nil

So, the "Ayes" have it.

*(Question carried by 26 Votes to Nil)*

*(Question, that the words to be inserted  
be inserted, put and agreed to)*

*(Clause 26 as amended agreed to)*

**The Temporary Chairperson** (Sen. Ongoro): We will proceed immediately to vote on Clause 34. You can log in and start voting.

*Clause 34*

## DIVISION

### ELECTRONIC VOTING

*(Question, that Clause 34 be amended as proposed by the  
Chairperson of the Standing Committee on Legal Affairs and  
Human Right, put and the Senate proceeded to vote  
by County Delegations)*

**AYES:** Sen. (Prof.) Anyang'-Nyong'o, Kisumu County; Sen. Billow, Mandera County; Sen. Chelule, Nakuru County; Sen. Haji, Garissa County; Sen. Hargura, Marsabit County; Sen. Kagwe, Nyeri County; Sen. Keter, Kericho County; Sen. Kivuti, Embu County; Sen. (Dr.) Kuti, Isiolo County; Sen. (Dr.) Khalwale, Kakamega County; Sen. (Prof.) Lesan, Bomet County; Sen. (Dr.) Machage, Migori County; Sen. Mositet, Kajiado County; Sen. (Eng.) Muriuki, Nyandarua County; Sen. Murungi, Meru County; Sen. Musila, Kitui County; Sen. Mutula Kilonzo Jnr., Makueni County; Sen. Ndiema, Trans Nzoia County; Sen. Obure, Kisii County; Sen. Okongo, Nyamira County; Sen. Orengo, Siaya County; Sen. Sang, Nandi County; Sen. Sijeny, Nairobi County; Sen. Wako, Busia County; Sen. Wetangula, Bungoma County; and, Sen. Zani, Kilifi County.

**NOES:** Nil

**The Temporary Chairperson** (Sen. Ongoro): I now wish to announce the results of the Division.

**AYES:** 26

**NOES:** Nil

**ABSTENTIONS:** Nil

So, the "Ayes" have it.

*(Question carried by 26 Votes to Nil)*

*(Question, that the words to be inserted be inserted,  
Put and agreed to)*

*(Clause 34 as amended agreed to)*

**The Temporary Speaker** (Sen. Ongoro): We will now proceed to vote.

*Clauses 3 – 39, First Schedule, Second Schedule, Clause 2, Title and Clause 1*

## DIVISION

### ELECTRONIC VOTING

*(Question, that Clauses 3 – 39, First Schedule, Second Schedule, Clause 2, Title and Clause 1 be part of the Bill put and the Senate proceeded to vote by County Delegations)*

**AYES:** Sen. (Prof.) Anyang'-Nyong'o, Kisumu County; Sen. Billow, Mandera County; Sen. Chelule, Nakuru County; Sen. Haji, Garissa County; Sen. Hargura, Marsabit County; Sen. Kagwe, Nyeri County; Sen. Keter, Kericho County; Sen. Kivuti, Embu County; Sen. (Dr.) Kuti, Isiolo County; Sen. (Dr.) Khalwale, Kakamega County; Sen. (Prof.) Lesan, Bomet County; Sen. (Dr.) Machage, Migori County; Sen. Mositet, Kajiado County; Sen. (Eng.) Muriuki, Nyandarua County; Sen. Murungi, Meru County; Sen. Musila, Kitui County; Sen. Mutula Kilonzo Jnr., Makueni County; Sen. Ndiema, Trans Nzoia County; Sen. Obure, Kisii County; Sen. Okongo, Nyamira County; Sen. Orengo, Siaya County; Sen. Sang, Nandi County; Sen. Sijeny, Nairobi County; Sen. Wetangula, Bungoma County; and, Sen. Zani, Kilifi County.

**The Temporary Chairperson** (Sen. Ongoro): I now wish to announce the results of the Division.

**AYES:** 25

**NOES:** Nil

**ABSTENTIONS:** Nil

So, the "Ayes" have it.

*(Question carried by 25 Votes to Nil)*

*(Clauses 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 25, 26, 27, 28, 29, 30, 31, 32, 33, 35, 36, 37, 38 and 39 agreed to)*

*(First Schedule agreed to)*

*(Second Schedule agreed to)*

*(Clause 2 agreed to)*

*(Title agreed to)*

*(Clause I agreed to)*

**Sen. Sang:** Madam Temporary Chairperson, I beg to move that the Committee do report to the Senate its consideration of the County Assemblies Powers and Privileges Bill (Senate Bill No.14 of 2014) and its approval thereof with amendments.

*(Question proposed)*

*(Question put and agreed to)*

*(The House resumed)*

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

### **REPORTS, CONSIDERATION OF REPORTS AND THIRD READINGS**

#### **THE GOVERNMENT PROCEEDINGS (AMENDMENT) BILL (SENATE BILL NO. 10 OF 2014)**

**Sen. Ongoro:** Mr. Temporary Speaker, Sir, I beg to report that a Committee of the Whole has considered the Government Proceedings (Amendment) Bill (Senate Bill No. 10 of 2014) and its approval thereof without amendments.

**Sen. Mutula Kilonzo Jnr.:** Mr. Temporary Speaker, Sir, I beg to move that the House do agree with the Committee in the said Report.

**Sen. Ong'era** seconded.

*(Question proposed)*

**The Temporary Speaker** (Sen. (Dr.) Machage): I will put the question since this is not a county matter.

*(Question put and agreed to)*

**Sen. Mutula Kilonzo Jnr.:** Mr. Temporary Speaker, Sir, I now beg to move that the Government Proceedings (Amendment) Bill (Senate Bill No. 10 of 2014) be now read a Third Time

**Sen. Ong'era** seconded.

*(Question proposed)*

**The Temporary Speaker** (Sen. (Dr.) Machage): I will now put the Question. Let the Division Bell be rung for 30 seconds.

*(The Division Bell was rung)*

**The Temporary Speaker** (Sen. (Dr.) Machage): Hon. Senators, I order that the doors be closed and the bars drawn.

You can now proceed to vote.

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

**The Temporary Speaker** (Sen. (Dr.) Machage): Yes, what is it?

**The Senate Minority Leader** (Sen. Wetangula): Mr. Temporary Speaker, Sir, voting in Parliament and voting in the Senate is a serious and sacred matter. When we go to vote from time immemorial - Victorian Times - once the bar is drawn all the doors are locked. Whoever is not in the Chamber has excluded themselves from voting. Did you see the bar was drawn, the door swung open and colleagues walked right in? That is highly irregular, unprocedural and you may wish to look at Erskine May on what they say about voting and the meaning of drawing the bar.

**The Temporary Speaker** (Sen. (Dr.) Machage): Indeed, that is a big anomaly and this is an issue that should require disciplinary action on the Serjeant-at-Arms. However, since this is the first observation, I beg that you be warned never to repeat.

Assisted voters, please move.

## DIVISION

### ELECTRONIC VOTING

*(Question, that the Government Proceedings (Amendment) Bill (Senate Bill No. 10 of 2014) be read a Third Time, put and the Senate proceeded to vote by County Delegations)*

**AYES:** Sen. Billow, Mandera County; Sen. Boy Juma Boy, Kwale County; Sen. Chelule, Nakuru; Sen. Haji, Garissa County; Sen. Hargura, Marsabit County; Sen. Kagwe, Nyeri County; Sen. Keter, Kericho County; Sen. (Dr.) Khalwale, Kakamega County; Sen. Kilonzo, Makueni County; Sen. Kivuti, Embu County; Sen. (Dr.) Kutu, Isiolo County; Sen. (Prof.) Lesan, Bomet County; Sen. (Prof.) Lonyangapuo, West Pokot County; Sen. (Dr.) Machage, Migori County; Sen. Mositet, Kajiado County; Sen. (Eng.) Muriuki, Nyandarua County; Sen. Murungi, Meru County; Sen. Ndiema, Trans Nzoia County; Sen. (Prof.) Nyong'o, Kisumu County; Sen. Obure, Kisii County; Sen. Okong'o, Nyamira County; Sen. Orengo, Siaya County; Sen. Sang, Nandi County; Sen. Sijeny, Nairobi County; Sen. Wako, Busia County; and Sen. Wetangula, Bungoma County.

**NOES:** Nil

**The Temporary Speaker** (Sen. (Dr.) Machage): Order! Hon. Senators. The results are as follows:-

**AYES:** 26

**NOES:** Nil

**ABSENTIONS:** Nil

The “Ayes” have it.

*(Question carried by 26 votes to nil)*

*(The Bill was accordingly read the Third Time and passed)*

THE PERSONS WITH DISABILITIES (AMENDMENT) BILL  
(SENATE BILL NO. 14 OF 2014)

**Sen. Ongoro:** Mr. Temporary Speaker, Sir, I beg to report that a Committee of the Whole has considered the Persons with Disabilities Amendments Bill (Senate Bill No.24 of 2014) and its approval thereof without amendments.

**Sen. Sang:** Mr. Speaker, Sir I beg to move that the House do agree with the Committee in the said Report.

**Sen. Njoroge** seconded.

*(Question proposed)*

**The Temporary Speaker** (Sen. (Dr. Machage): I see no interest. Therefore, I put the question.

*(Question put and agreed to)*

**Sen. Sang:** Mr. Temporary Speaker, Sir, I beg to move that The Persons with Disabilities Amendment Bill (Senate Bill No.24 of 2014) be now read a Third Time.

**Sen. Njoroge** Seconded.

**The Temporary Speaker** (Sen. (Dr.) Machage): Let the Division Bell be rung for 30 seconds. Draw the bars and close the doors.

## DIVISION

### ELECTRONIC VOTING

*(Question that the Persons with Disabilities (Amendment) Bill  
(Senate Bill No. 14 of 2014) be read a Third Time  
put and the Senate proceeded to vote by County Delegations)*

**AYES:** Sen. (Prof.) Anyang’-Nyong’o, Kisumu County; Sen. Billow, Mandera County; Sen. Boy Juma Boy, Kwale County; Sen. Chelule, Nakuru County; Sen. Haji, Garissa County; Sen. Hargura, Marsabit County; Sen. Kagwe, Nyeri County; Sen. Keter, Kericho County; Sen. (Dr.) Khalwale, Kakamega County; Sen. Kivuti, Embu County; Sen. (Dr.) Kuti, Isiolo County, Sen. (Prof.) Lesan, Bomet County; Sen. (Dr.) Machage,

---

**Disclaimer:** The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor, Senate

Migori County; Sen. Melly, Uasin Gishu County; Sen. Mositet, Kajiado County; Sen. Muriuki, Nyandarua County; Sen. Murungi, Meru County; Sen. Musila, Kitui County; Sen. Mutula Kilonzo Jnr., Makueni County; Sen. Ndiema, Trans-Nzoia County; Sen. Obure, Kisii County; Sen. Okong'o, Nyamira County; Sen. Orengo, Siaya County; Sen. Sang, Nandi County; Sen. Sijeny, Nairobi County; Sen. Wako, Busia County; Sen. Wetangula, Bungoma County.

**NOES:** Nil

**The Temporary Speaker** (Sen. (Dr.) Machage): I wish to announce the results of the Division as follows:-

**AYES:** 27

**NOES:** Nil

**ABSTENTIONS:** Nil

The "Ayes" have it.

*(Question carried by 27 votes to Nil)*

*(The Bill was accordingly read the Third Time and passed)*

THE COUNTY ASSEMBLIES POWERS AND PRIVILEGES BILL  
(SENATE BILL NO.14 OF 2014)

**Sen. Ongoro:** Mr. Temporary Speaker, I beg to report that a Committee of the Whole has considered the County Assemblies Powers and Privileges Bill (Senate Bill No.14 of 2014) and its approval thereof with amendments.

**Sen. Sang:** Mr. Speaker, Sir I beg to move that the House do agree with the Committee in the said Report.

**Sen. Njoroge** I second.

*(Question proposed)*

**The Temporary Speaker** (Sen. (Dr.) Machage): I see no interest. Therefore, I put the question.

*(Question put and agreed to)*

**Sen. Sang:** Mr. Temporary Speaker, Sir, I beg to move that The County Assemblies Powers and Privileges Bill (Senate Bill No. 14 of 2014) be now read a Third Time.

**Sen. Mutula Kilonzo Jnr.** seconded.

*(Question proposed)*

**The Temporary Speaker** (Sen. (Dr.) Machage): Let the Division Bell be rung. You have 30 seconds. Vote now.

**DIVISION****ELECTRONIC VOTING**

*(Question, that the County Assemblies Powers and Privileges Bill,  
(Senate Bill No. 14 of 2014) be now read a Third Time put and the Senate  
Proceeded to vote by County Delegations)*

**AYES:** Sen. (Prof.) Anyang'-Nyong'o, Kisumu County; Sen. Billow, Mandera County; Sen. Boy Juma Boy, Kwale County; Sen. Chelule, Nakuru County; Sen. Haji, Garissa County; Sen. Hargura, Marsabit County; Sen. Kagwe, Nyeri County; Sen. Keter, Kericho County; Sen. (Dr.) Khalwale, Kakamega County; Sen. Kisasa, Kilifi County; Sen. Kivuti, Embu County; Sen. (Dr.) Kuti, Isiolo County; Sen. (Prof.) Lesan, Bomet County; Sen. (Prof.) Lonyangapuo, West Pokot County; Sen. (Dr.) Machage, Migori County; Sen. Melly, Uasin Gishu County; Sen. Mositet, Kajiado County; Sen. (Eng.) Muriuki, Nyandarua County; Sen. Murungi, Meru County; Sen. Mutula Kilonzo Jnr., Makueni County; Sen. Ndiema, Trans Nzoia County; Sen. Obure, Kisii County; Sen. Okong'o, Nyamira County; Sen. Orengo, Siaya County; Sen. Sang, Nandi County; Sen. Sijeny, Nairobi County and; Sen. Wetangula, Bungoma County.

**NOES:** Nil

**The Temporary Speaker** (Sen. (Dr.) Machage): I would like to announce the results of the Division. The results are as follows:-

**AYES:** 27

**NOES:** Nil

**ABSENTIONS:** Nil

The Ayes have it.

*(Question carried by 27 votes to nil)*

*(The Bill was accordingly read the Third Time and passed)*

**The Temporary Speaker** (Sen. (Dr.) Machage): Sen. Chelule, I see your request for a point of order. No?

Order, open the doors and withdraw the bars.

Next order!

**MOTIONS**

RESOLUTION TO HOLD A MORNING SITTING ON  
WEDNESDAY, 3<sup>RD</sup> DECEMBER, 2014, PURSUANT TO  
STANDING ORDER No.30 (3) (B)

*(By Leave of the House)*



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

THAT, pursuant to Standing Order 30 (3) (b) the Senate resolves to meet on Wednesday 3<sup>rd</sup> December, 2014 at 9.30 a.m. to transact business.

*(By Leave of the Senate)*

Mr. Temporary Speaker, Sir, I gave a notice of Motion earlier today on behalf of the Senate Majority Leader. As we are all aware, Christmas is coming very soon. The tradition of this House is that, the week preceding the national day of 12<sup>th</sup> December, the Senate and the National Assembly go on recess for Christmas. However, this House has a lot of business to transact. The Members will agree with me that we have recently been having a challenge of the number of Motions which have been passed by this House. I am a bit relieved today that we have passed a record three Bills as opposed to the previous year, where we were very busy urging the Government to do certain---

**The Temporary Speaker** (Sen. (Dr.) Machage): Order, Senator. We have previously passed even more than that. What bad repute are you trying to project to the Senate?

**Sen. Kivuti:** What I am trying to say is that we are doing better today.

**The Temporary Speaker** (Sen. (Dr.) Machage): Then say it that way.

**Sen. Kivuti:** I have said that I am relieved because today, we have done three Bills as opposed to Motions which we used to have previously.

**The Temporary Speaker** (Sen. (Dr.) Machage): Nobody chases around the Jubilee Government. The Opposition just does its work.

**Sen. Kivuti:** Mr. Temporary Speaker, Sir, I will take note of that. However, the reason why I moved this Motion is because whereas we may wish to proceed on Christmas vacation, it is very necessary that we finish at least certain businesses. As Members will appreciate the listing which was in today's Order Paper, it was a tall order for each and every committee and we are not likely to finish all of it---

**The Temporary Speaker** (Sen. (Dr.) Machage): What is it, Sen. (Dr.) Khalwale?

**Sen. (Dr.) Khalwale:** On a point of order, Mr. Temporary Speaker, Sir. The Senator for Embu County is a very experienced politician. It is amazing that he talking his own things. We believe that he is referring to Motion No.8. He has not moved it.

**The Temporary Speaker** (Sen. (Dr.) Machage): Order, Sen. (Dr.) Khalwale. Do you expect Sen. Kivuti to say what is in your mind? Say what you want to say. Continue.

**Sen. (Dr.) Khalwale:** Mr. Temporary Speaker, Sir, he has not moved the Motion. He is just talking his own things. He should move the Motion. After moving the Motion, he can then talk his things.

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

**Sen. Kivuti:** Mr. Speaker, Sir, I beg to move the following Motion.

THAT, pursuant to Standing Order 30 (3) (b) the Senate resolves to meet on Wednesday 3<sup>rd</sup> December, 2014 at 9.30 a.m. to transact business.

*(By Leave of the Senate)*

*(Laughter)*

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

*(Sen. Kivuti and Sen. Wetangula stood up in their places)*

**The Temporary Speaker** (Sen. (Dr.) Machage): Sen. Kivuti, sit down. Two of you cannot stand at the same time.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Temporary Speaker, Sir, you may have overlooked the fact that there was a Statement which was issued by the distinguished Senator on the Floor and it was put aside. The Speaker informed the House that when we finish the voting that we have just finished, we will go back to that Statement of Sen. Musila which was issued by the distinguished Senator for Embu County. We had issues to take on that Statement. I do not know if you have set it aside altogether or you will come back to it because it was to come immediately after the voting.

**The Temporary Speaker** (Sen. (Dr.) Machage): I am privy to that and the decision of the Chair is that, that will be the first item tomorrow morning if you pass this Motion.

Continue Sen. Kivuti.

**Sen. Kivuti:** Thank you, Mr. Temporary Speaker, Sir. I beg to move that pursuant to Standing Order No.33 (b), the Senate resolves to meet on Wednesday 3<sup>rd</sup> December, 2014 at 9.30 a.m. to transact business.

I will request the Senate Minority Leader to support.

*(Laughter)*

**The Senate Minority Leader** (Sen. Wetangula): Mr. Temporary Speaker, Sir, the distinguished Senator for Embu is mixed up, but we forgive him since for the last two weeks, I have not been seeing him in the House.

Mr. Temporary Speaker, Sir, this Motion is a product of the Rules and Business Committee (RBC) in which I and other Senators sit. It was informed by the fact that we have a backlog of work that we need to dispose of before we go for the mandatory Adjournment for the Christmas recess. We have, in fact, intended in the RBC that we sit tomorrow morning and afternoon. In the event that we do not reduce the backlog, we will move another Motion to sit on Thursday morning and Thursday afternoon. But in view of the unfolding events and the miserable failure by the Jubilee Regime to handle the security situation in the country and the massacres that are going on and so on and so forth, and their propensity to probably engage in more unconstitutional things if the House is not sitting, we may very well by Thursday move that we extend our sittings for another week, but that will come at that time.

For now, I support the Motion and urge the House to agree that we sit tomorrow morning at 9.30 a.m. then in the afternoon and possibly on Thursday morning and afternoon and to put the Jubilee Regime that has totally lost direction on check, we may wish to sit---

**Sen. Kivuti:** On a point of order, Mr. Temporary Speaker, Sir. Whereas the Senate Minority Leader is purported to be seconding me, he is using derogatory words on the Mover of the Motion.

**The Temporary Speaker** (Sen. (Dr.) Machage): Order! I did not hear the Seconder mention your name at all.

**Sen. Kivuti:** Mr. Temporary Speaker, Sir, I belong to the Jubilee Regime and I moved this Motion on behalf of the Senate Majority Leader of the Jubilee Government, and the Jubilee Government has not failed. Today, we have even nominated an ODM Member for appointment as a Cabinet Secretary.

**The Temporary Speaker** (Sen. (Dr.) Machage): As I listened to the point of order that was being raised by the Sen. Kivuti, I heard him talk of a Jubilee Regime. I order that this evening you look at the definition of the word “regime” and if that is what it means, then the Senate Minority Leader was very right to talk the way he talked. You are out of order.

*(Question proposed)*

**Sen. Orengo:** Mr. Temporary Speaker, Sir, I am a Member of the RBC and, indeed, I agree with the Senate Minority Leader that this Motion is predicated on the fact that we are about to go on recess. But now knowing the developments that have taken place in the country and what the Government has done in reaction, the country is in a state of crisis. The people in Mandera cannot contemplate the Senate or the National Assembly going on recess when there is a crisis.

In view of what has happened by the national Government nominating a Member of the National Assembly to be a Cabinet Secretary, there is going to be a process and that process is going to take place in circumstances in which I would want hon. Members to consider Articles 240 and 241 of the Constitution which state that in circumstances when there is a crisis in the country and there is need to deploy the armed forces in Kenya in any way, the authority of Parliament is required.

Whereas I would have not contemplated opposing this Motion, but for it to be heard that this Senate contemplated going on recess---

**The Temporary Speaker** (Sen. (Dr.) Machage): Order, Sen. Orengo. What you are talking about is not on the Floor of this House. The Motion before us is very straightforward. This Chair is not privy to any Motion in this House about recess.

**Sen. Orengo:** Mr. Temporary Speaker, Sir, you have absolutely misunderstood me. This Motion is predicated on the fact that we are going on a mandatory recess on Thursday and both the Mover and Seconder have alluded to that fact in support of this Motion. I am trying to plead with you that it would be a tragedy for this Parliament to contemplate going on recess on account of what is happening. I am trying to persuade the

House and I think the hon. Senator will agree with me because a lot of times we agree on matters of this nature when the country is in a crisis or something goes wrong.

**The Temporary Speaker** (Sen. (Dr.) Machage): There is a point of information. Do you want to be informed?

**The Senate Minority Leader** (Sen. Wetangula): Mr. Temporary Speaker, Sir, I would like to inform Sen. Orengo – I fully agree with what he is saying – is that this Motion is without prejudice to any intended adjournment on Thursday. It is only limited to sitting tomorrow morning and in my seconding, I also said what he is saying; that we may rethink the mandatory recess on Thursday in view of what is happening.

**The Temporary Speaker** (Sen. (Dr.) Machage): I could not have put it better. Proceed.

**Sen. Orengo:** Mr. Temporary Speaker, Sir, in reaction to that information which I welcome, unfortunately when somebody is giving you information to make a case against the case you are trying to make, then it is not very useful information despite the fact that he is my leader.

It cannot be gainsaid why we want this House to sit tomorrow morning and yet tomorrow morning, we are supposed to have committee meetings. For example, I sit with the Senate Minority Leader in a very important committee. It means that that committee cannot meet tomorrow because of the way we have organized the business of the House. There are so many other relevant committees that I think are also important and intend to sit tomorrow. There is also a Motion which is coming in relation to the things which are happening in Mandera.

I was talking about the Senator for Nyeri, Sen. Kagwe. In his observation of what was happening in the country two weeks ago, he said that it could be sabotage from within and I heard it very loud. Now what he predicted seems to be true because people are taking responsibility now. It is not somebody in the opposition who is being taken to court for creating war like activities or anything; it is from within that we are having a crisis. It should not be seen that we are sitting an extra morning or day because we want to go on recess. It should come out very clearly that now, things being what they are, this House will remain sitting until we think that the national Government is handling matters of security in a manner that will ensure that the lives and property of every Kenyan from wherever they live or operate, is fully protected.

Mr. Temporary Speaker, Sir, with those many words, I beg to oppose.

**Sen. Billow:** On a point of order, Mr. Temporary Speaker, Sir. Following the point of order by Sen. Orengo, I would seek your guidance if, indeed, what Sen. Wetangula said that the RBC might be considering deferring the adjournment. If that is on the cards, then it may not be necessary to have the morning meetings because we will have other sessions. Could he clarify that, that is, indeed, what they want to do?

**The Temporary Speaker** (Sen. (Dr.) Machage): Although that point of order has come late, it is important. I will ensure that some light is shed on that because that will inform the decisions by Members in this House on whichever side they vote.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Temporary Speaker, Sir, the views I gave when seconding the Motion were purely personal. However, as a leader in this House when I make such views, they carry a lot of weight. That we on this side,

and I believe that the distinguished Senator for Mandera County to whom we send our very sincere condolences for the massive loss of lives in his constituency and county within the last 10 days, and I have no doubt the distinguished Senators facing me, probably apart from Sen. Njoroge, share the same views.

**The Temporary Speaker** (Sen. (Dr.) Machage): Order, Sen. Wetangula!

*(Laughter)*

With all due respect to the Senate Minority Leader, I do not think that you have in your many certificates, psychology being one of them; the ability to read somebody's mind.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Temporary Speaker, Sir, you may have noticed that the distinguished Sen. Njoroge was smiling approvingly to what I was saying.

As I said, the views were mine. On a serious note even if we sit tomorrow in the morning at 9.30a.m, which does not bother me in either way, the adjournment on Thursday should not be on the cards in view of what is happening in the country; the security challenges we are facing and the panic mode in which we see the Jubilee regime now in.

**The Temporary Speaker** (Sen. (Dr.) Machage): Sen. Wetangula, it is your Committee that will make sure that such a Motion is on the Order Paper. I do not see why you are preempting that here. As far as this Chair is concerned, we are discussing a matter of either sitting tomorrow from 9.30a.m or not. I pray that you limit yourselves to that because the calendar of this Senate is well known to everybody. However, we have the powers to change it if we think it is necessary. Let us not go into that. If that will be necessitated by the events that have occurred, it is common sense. The unfortunate thing is that common sense has never been common.

**Sen. (Dr.) Khalwale**: Thank you, Mr. Temporary Speaker, Sir. I rise to strongly oppose this Motion for two reasons. That we are going through an unprecedented situation in this country. Not during the eras of Presidents Kenyatta *Mzee* or Kenyatta 1, Moi and Kibaki has this country ever seen this kind of insecurity.

I expect that anytime from now, therefore, the President might choose to exercise the powers in the Constitution which provides for him to declare a state of emergency in Mandera or any other part of the country. However, he cannot do so, without the approval of Parliament. Therefore, if we start entertaining Motions which are premised on the assumption that we are likely to go on recess, we are saying that we will deny the President the opportunity to exercise that very important role in the Constitution.

The second reason I oppose this Motion is because of the provisions of Article 145 of the Constitution. So that my contribution flows, may I refer to Article 145(1)? It says:-

“A Member of the National Assembly, supported by at least a third of all the Members, may move a Motion for the impeachment of the President-

(a) On the ground of a gross violation of a provision of this Constitution or of any other law.”

Having said that, it then also enjoins the Senate in Article 145(3) on what the Senate would then be expected to do should a Member of Parliament in the National Assembly successfully move a Motion in the National Assembly on impeachment. Because of what is going on, I know that there are many Members of the National Assembly who are unhappy with the way the President is breaching the Constitution of Kenya in so far as provision of security is concerned as stipulated in Article 238 of the Constitution.

Therefore, if we go away and the National Assembly then moves a Motion of impeachment of the President and sends this matter to us, we will end up frustrating the enforcement of the Constitution because this issue has got timelines. We must be here and wait and hope that the President will be ---

**Sen. Billow:** On a point of order, Mr. Temporary Speaker, Sir. The issue of security is a very serious matter. As leaders in this country and Senators, foremost as political leaders in this country, it behooves us at this time when there is a crisis - whoever is the President is not the issue. It is time to lead the way. That is what it calls for. It does not call for us to talk of some of those things that Sen. Khalwale is talking about.

Is he in order to mislead the House that once we go on recess, this House cannot be recalled any time by the Speaker if there is a matter? We have done that so many times, one of them is when he was involved in the impeachment of a governor. That is not a reason for opposing this Motion.

**The Temporary Speaker** (Sen. (Dr.) Machage): Order, you are now spoiling. He was out of order before you made your last statement. Indeed, dear Senators, the reason why the RBC came up with this Motion was to create more time to debate and dispose of many of the Bills and Motions that we have. We are now spending so much time that we intended to have discussing this very straight forward Motion. I now see eight Members who want to contribute on this. I will call for a vote on this. Do we have to discuss it really and spend all this time?

Anyway, I am tied also by the rules of this House that as much as Members would want to discuss this, I have no obligation, but to accept. If Members can withdraw, I will be happy. However, for the time being, let us listen to Sen. Mutula Kilonzo Jnr.

**Sen. Mutula Kilonzo Jnr.:** Mr. Temporary Speaker, Sir, I am a little concerned, as we are discussing whether we should sit tomorrow morning, the hon. Senators are busy walking out. Likewise, as we were voting, Members were busy walking. Would I, therefore, be in order to suggest that if we are going to discuss this Motion, we dispose it off immediately and find a method of informing the Members whether or not we will meet sitting tomorrow morning?

**The Temporary Speaker** (Sen. (Dr.) Machage): Very well. Could you move that? It is also your right to move if you want that to be done. Do you want to move?

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

Sorry, Sen. Khalwale had not yet finished. I beg your pardon. After Sen. Khalwale, I will limit this contribution to two minutes.

**Sen. (Dr.) Khalwale:** Thank you, Mr. Temporary Speaker, Sir. Because of the seriousness of the organs of the State, it is, therefore, important for us to send the right message that we are sensitive to the state of insecurity that our country is going through, by being here even during Christmas time, so that we manage this country.

Mr. Temporary Speaker, Sir, I oppose.

**Sen. Billow:** On a point of order, Mr. Temporary Speaker, Sir. In view of the fact that this is Procedural Motion, would I be in order to request you to put the Question, so that we make a decision on the matter, because there are more critical issues to be discussed?

**The Temporary Speaker** (Sen. (Dr.) Machage): I will now put the question.

*(Question put and negatived)*

### MOTION

#### MEASURES TO COUNTER TERRORIST ACTIVITIES, OVERHAUL AND STREAMLINE FRAMEWORK AND OPERATIONS OF NATIONAL SECURITY

THAT, noting that there have been numerous incidents of terrorist attacks across the country in the last three years, including the most recent at Arabiya Town on Saturday, 22<sup>nd</sup> November, 2014, in Mandera County which have resulted in the loss of hundreds of innocent lives, injuries and massive destruction of property contrary to the principles and objects set out in Articles 238 and 239 of the Constitution; aware that Pursuant to Article 239 (1) of the constitution, the national security organs are the Kenya Defence Forces, the National Intelligence Service and the National Police Service whose primary object is to promote and guarantee national security; recognizing that most of the attacks could have been averted with proper co-ordination between and among the security organs; concerned that the multiple attacks are signs of leadership, institutional and structural flaws within the organs hampering their capacity to effectively deal with threats and cases of terrorism and other criminal activities; the Senate calls upon H.E the President to institute legislative and other measures to counter terrorist activities and overhaul and streamline the framework and operations of national security organs in the country including initiating where necessary, the process of removal of the respective head of an organ and further that the Standing Committees on National Security and Foreign Relations and Legal Affairs and Human Rights to-

(a) investigate the circumstances under which the Mandera bus attack and Kapedo massacre occurred;

(b) establish whether there were failures in institutional command or operational structure that led to the attacks; and

(c) determine who is culpable for the increased incidents of terror and major attacks in the country and report to the Senate within ninety days.

*(By Sen. Billow on 26.11.2014)*

*(Resumption of Debate interrupted on 26.11.2014)*

**The Temporary Speaker** (Sen. (Dr.) Machage): Sen. G.G. Kariuki was on the Floor, but he is not here.

Sen. Wako, do you want to contribute?

**Sen. Wako:** I am on a point of order, Mr. Temporary Speaker, Sir.

**The Temporary Speaker** (Sen. (Dr.) Machage): Be careful as you execute that point of order.

**Sen. Wako:** Mr. Temporary Speaker, Sir, I rise under Standing Order 39(2) which says:-

“Business shall be disposed of in the sequence in which it appears in the Order Paper or in such other sequence as the Speaker may, for the convenience of the Senate, direct.”

**The Temporary Speaker** (Sen. (Dr.) Machage): What is not in order?

**Sen. Wako:** Mr. Temporary Speaker, Sir, under the Supplementary Order Paper, there is a Motion by Sen. Billow. Are we on that one?

**Hon. Senators:** Yes!

**Sen. Wako:** I want to move---

**The Temporary Speaker** (Sen. (Dr.) Machage): Order! Order, Sen. Wako! I may not force you to follow the proceedings of the House. But we will not be pulled back because of your inattentive behaviour. So, you are out of order, unless you have a different point of order.

We are on Sen. Billow's Motion.

**Sen. Wako:** I am sorry. I heard that you---

**The Temporary Speaker** (Sen. (Dr.) Machage): Order!

**Sen. Wako:** I think the HANSARD will bear me out. You said Order---

**The Temporary Speaker** (Sen. (Dr.) Machage): Order! Order!

Who would wish to contribute?

Sen. Mutula Kilonzo Jnr.

**Sen. Mutula Kilonzo Jnr.:** Mr. Temporary Speaker, Sir, I think there is a mistake because I am the one who seconded the Motion.

**The Temporary Speaker** (Sen. (Dr.) Machage): Very well.

Sen. Yusuf Haji.

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

What is it again, Sen. Billow?



**Sen. Billow:** Mr. Temporary Speaker, Sir, the Motion now on the Order Paper is an amended Motion of the original one that I moved. Could you give guidance whether those of us who contributed to the Motion before the amendment can actually contribute now to this amended Motion?

**The Temporary Speaker** (Sen. (Dr.) Machage): That is quite in order.

**Sen. Billow:** Excellent. Could I be given a chance to contribute?

**The Temporary Speaker** (Sen. (Dr.) Machage): I have already appointed Sen. Yusuf Haji.

**Sen. Haji:** Mr. Temporary Speaker, Sir, I wish to support the amended Motion.

This afternoon, there has been some change in the leadership of the national security organs. However, I do not think that those changes will resolve the issues of security which are facing this country. First, I want to congratulate hon. Nkaijerry for being nominated to the docket of Internal Security. We have been together in Parliament for the last 15 years. He was also my Assistant Minister for five years. He is a very well experienced and versed in security issues. As a military man, he was involved in the South Sudan negotiations before Gen. Sumbeywo came into the scene. Also, he has been very active in the Amani Forum. This shows how concerned he is about the security of this country.

I wish him well in his new position. But it is my view that the removal of one or two officers from positions will not help this country at all.

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

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

Mr. Temporary Speaker, Sir, we know what happened on 28<sup>th</sup> November, 2014: 28 Kenyans were butchered mercilessly by the *Al Shabaab* in Mandera. The officers on the ground should have been more cautious about the security of the Kenyans who are in that area. It is saddening to know that these recent 36 people were only two kilometres away from the military barracks, the police and Administration Police in that area. Did they not think that the 36 people who were killed could have been targeted because of being either Christians or from upcountry? Could they not have posted officers to provide security to these people at the quarries? Why should they not re-locate them to their town and give them security? These people have caused murder.

All the senior officers in Mandera, whether they are in the army, or in the county government, they should be held responsible for last night. All of them should be sacked, with the loss of all their benefits. These are the people who are on the ground and should have been conscious of what is likely to happen. If they have done that in Mandera, it can happen anywhere in this country. It has happened in Kapedo, Lamu and other places. The officers who were supposed to manage the security of the areas for which they are responsible should not be spared.

The Government should now wake up to its mandate and responsibility of ensuring that no more life is lost in the manner in which lives have been lost. We can understand if many people died in road accident. We cannot blame anybody, but we can

only, perhaps blame the driver who was driving that vehicle. Enough is enough, we, as a Government, must pull up our socks and make sure that the security of Kenyans is taken care of, both their lives and property.

Changing of guard is not the solution because these officers who are coming in, if they do not get the necessary support from the officers appointed in various districts and counties, then, they will not be able to perform. We can only hope that my brother, hon. Nkaisserry, when he comes to that docket, he will whip those who are failing this Government and this country.

With those remarks, I beg to support.

**Sen. Wako:** Thank you, Mr. Temporary Speaker, Sir, for giving me this opportunity to speak to this very important debate. This is a Motion that we have been debating for the last week. I want to take this opportunity to, first of all, thank Sen. Billow Kerrow for bringing it. It appears to have been a foresight on his part because events that have taken have happened again. What caused this Motion to be brought here has happened again. I was in the Government when we decided to send our armed forces across the border into Sudan. I believe Yusuf Haji and I, were together,

**Sen. Haji:** Mr. Temporary Speaker, Sir, it is Somalia not Sudan.

**Sen. Wako:** Sorry, into Somalia. The purpose of that was to hit the snake on the head because at that time the *Al Shabaab* had already begun infiltrating Kenya, causing damage to churches, malls and everywhere else. We felt that if we went across the border into Somalia, we would be hitting the snake on the head and, therefore, these incursions would be reduced. However, it appears that we have not quite succeeded there. In fact, as you can see, incursions and incidences have increased rather than reduced. I am supporting this Motion because this is part of the reason this continues to occur again and again. When an incident has happened, let us stop, analyze, take a post mortem and know what has caused it to happen and know what the failures in the security system have been. This is the only way we can take corrective measures.

Mr. Temporary Speaker, Sir, I was personally very happy when his Excellency the President announced after the Westgate attack, that he would form a commission of inquiry to look into it and take corrective measures. As we know, that never happened. America is what it is today on issues of security because of the action that President Bush took when there was an attack on the 11<sup>th</sup> of September 2001. President Bush formed an equivalent of a commission which went into it and made very sweeping recommendations to overhaul the entire security system. They came up with homeland security which now brought together more than almost 200 different agencies in the law enforcement and intelligence gathering. Prior to that, each of these 200 agencies did not know what each was doing. Although there was some information somewhere about that attack, it was never shared with other agencies. Therefore, no corrective action was taken. The homeland security was constituted to look into that and to make sure that there is an effective mechanism against terrorism attack.

This House has passed a Motion by the Senate Majority Leader on issues of security. The Motion more or less called for creation of a metropolitan police for Nairobi. I believe in that Motion a number of contributions again were made, that maybe part of the weaknesses in the security system is lack of a clear command authority. It was

blamed on the devolution or the Constitution which places the national security issues on the national Government as it ought. The national Government ought to be responsible for national security.

What we are saying is that there is a place for the county governments to be involved in that process. What we heard in Mandera was that the Governor of Mandera who has been attacked twice, actually, informed the authorities that there have been serious incursions by *Al Shabaab* terrorists. However, that information was never acted upon. The Governor of Mandera, being the governor of the county, knew the security situation in Mandera. He was, therefore, bringing it to the attention of the authorities. It appears to me that there has to be a structured involvement of the county governments in this whole security system, so that we have one chain of command.

There is also the issue of police and Administrative Police (APs). In most counties, the police side and the AP side are not seeing eye to eye. In fact, they are fighting, they are not sharing information and they act as enemies. When I wanted to start the AP station in my area, in fact, *wananchi* contributed money. We put up a station for the police, but I was denied to do so. When I sought out the permission, they came, they inspected and they saw that the police station actually met the standard of a police station. That station was built by *wananchi* themselves, but they said that they were refusing because that police station was very close to the AP station. Therefore, they could not be that close within a hundred metres.

There are many issues which we have to address. That is why I support this Motion because it is putting together the Committee on National Security and Foreign Relations and the Standing Committee of Legal Affairs and Human Rights to investigate the circumstances under which the Mandera attack and Kapedo massacre occurred. We will be adding this one which occurred yesterday to establish whether there were failures in institutional command or operational structures that led to the attacks and to determine who is culpable for the increased incidences.

Mr. Temporary Speaker, Sir, this is the way to go. We may shout, change guards at the top as we have done, but nothing much will happen on the ground. I know hon. Maj-Gen. Nkaisserry and I agree with the sentiments of Sen. Haji because we have worked together and I wish him well. He is inheriting a very big task if he is approved to be appointed in that important position by the National Assembly, but he cannot act on his own. He has to do what we are now trying to do. He has to do what this Motion is telling us to do.

Mr. Temporary Speaker, Sir, as we endorse this Motion, I have heard that there are similar moves in the National Assembly to form a similar Committee to investigate these issues. The Motion is not yet before the National Assembly, but I have heard about it on radio. As we pass this Motion, I think we should be prepared because this is a national crisis. Parliament consists of both the National Assembly and the Senate. I believe that the Constitution gives us a very important mandate. The point I want to make is that this is now the time that the Senate and the National Assembly can have a joint Committee. Let us have a joint Committee with the same mandate. This is a national issue. It will be better for this country if Parliament as an institution is seen to be working together. In Europe, when we have a national emergency people work together.

The Article of the Constitution that I wanted to quote is Article 94(4) which states:-

“Parliament shall protect this Constitution and promote the democratic governance of the Republic.”

**The Temporary Speaker** (Sen. Mositet): Order, Senator! Sen. Mutula Kilonzo Jnr. has an intervention.

**Sen. Mutula Kilonzo Jnr.:** Mr. Temporary Speaker, Sir, at the risk of interrupting the Chairperson of the Committee on Legal Affairs and Human Rights, Sen. Wako has proposed that this Motion, includes a joint committee of the Senate and the National Assembly, but that is not part of the Motion. Is he in order to make those assertions unless he is proposing we amend the Motion?

**Sen. Wako:** Mr. Temporary Speaker, Sir, I am not proposing to amend the Motion and I am not saying that we are now having it. I am saying that once we endorse this Motion and when it is presented before the National Assembly in the near future on this very issue, ways should be found in which both committees can come together so that we have one committee of Parliament looking into this important national issue.

Mr. Temporary Speaker, Sir, Sen. Mutula Kilonzo Jnr. should be a bit more careful because his ears are better than mine. This is what I was saying. I believe Sen. Mutula Kilonzo Jnr. will support in this sentiments that on this important issues, we should avoid quarrels between the National Assembly and have confidence building measures. That would be us the Senate Committee together with the National Assembly Committee to come together and conduct this particular investigation.

It is, indeed, a very sad day that this has happened. With those few remarks, I beg to support.

**Sen. Kittony:** Mr. Temporary Speaker, Sir, I also stand to support this Motion concerning matters of security in our country. This country is bigger than all of us. It is time that Kenyans take time and seriously find the cause of all these happenings. It has happened in Mandera within a short time. It is painful. We cannot afford to witness such incidences any more. It is a responsibility of all of us leaders in this country to seriously find the root cause of these happenings.

It is time that a commission is established to look at our territorial borders. Could there be a dispute with our neighbours? What is happening is very disturbing. We cannot afford to lose people in this manner any more. The women of Kenya suffer labour pain. When they want to enjoy the prime age of their children, somebody comes to massacre them. This is very painful. We cannot afford to be joking around with this issue. It is not a laughing matter because it is affecting our economy and also our relationship with our neighbours. It is our responsibility and it is a challenge to every leader in every country.

I want to take this opportunity to congratulate the President for the appointment of hon. Maj-Gen. Nkaisserry to this docket. I also regret that Mr. Kimaiyo has gone home. He is not the cause. We should find out where the problem is. We should not joke with this issue. There must be a plan which we do not know, but we will find out what it is.

Sen. Billow has asked three questions and they should be addressed seriously. We cannot live like this. It is becoming scary and yet we have to develop this nation. However, when we are going through this day in, day out, it will not be possible. We are

endangering the future of this country. It is time to take this matter seriously. I am asking the President of this country to go to Mandera to see what is happening on the ground. Maybe he is not receiving the right reports.

Mr. Temporary Speaker, Sir, while I support this Motion, it is a challenge to all of us. We need to embrace our unity and love, so that this nation can go forward regardless of what parties we belong to.

With those few remarks, I support this Motion.

**Sen. (Prof.) Anyang'-Nyong'o:** Thank you, Mr. Temporary Speaker, Sir. I rise to support the Motion. Sen. Wako said something very important regarding what we are experiencing. He said that in order for the security forces to perform their activities properly, there must be a proper chain of command. As Sen. Haji said, there must be a proper authority which inspires good morale in the security forces.

The security apparatus of a capitalist state is a disciplined, professional organisation where they look after the security affairs of the state; that means the security of the people and their properties and they leave the business of making money or wealth to capitalists. Capitalists are prepared to pay for this professionalism. When you mix up the two, where professionalism is now mixed with business and speculation, you immediately break down the authority and command system in the security apparatus of the state.

When you get the security apparatus mingled in politics, like we started in 2007; the Administration Police (APs) getting mixed up in elections and in 2013; the military getting mixed up in elections, the capitalist state fails. That is when you begin having what we call a failed state. I want to call a spade a spade and not a big spoon. This is the beginning of a failed state. Where the command system is failing, there is no authority and professionalism by the law. People are now using the apparatus of the state for businesses rather than professionalism. You cannot give orders. How is a soldier going to chase after *Al Shabaab* and lose life when they know that the man sitting in authority is making money and burning charcoal in Somalia?

Let us not beat around the bush. Let us see where the problem is. I was one of the first people very early on, last year, to call for pulling out of the KDF from Somalia. We had gone there on an emergency basis to make sure that we hit these people at their base and come back, but we overstayed. After going to Somalia, we were reading in the news about Kismayu and so on. They kept on staying and getting our soldiers mixed up with local affairs. This has now come to visit us. Unless we look at these things squarely on the face and say that this is where the problem is, we shall be dealing with the symptoms and not causes. In social sciences, we are told that if you are going to solve a problem, look for the causes and not just the symptoms. That happens in all the branches of sciences.

Mr. Temporary Speaker, Sir, recently we saw in the hiring of the police and military a complete confusion. How do we expect ordinary soldiers who know that the people have been recruited on basis of nepotism and not professionalism, to respect their seniors? Do you think that a man who has been recruited because he is the uncle or son of so-and-so is going to fight? He could just be coming for a sinecure. If you then take a few people to Kiganjo and train them for six months, bring them back and say that after

sometime they will go the police force or the National Youth Service (NYS), the whole thing is becoming confused. That is why we are seeing confusion. Unless Kenyans say that; let us go back to where we started.

There was once a man called Gen. Tonge, who professionalized the army, he established a chain of command. He said: “When you reach this age you retire”. He gave an example of himself. He retired leaving behind a professional army. Those Tonge laws have completely been messed up. Here was a man who wanted a professional army running a capitalist state. However, when you come in wanting a capitalist army to run a capitalist state; you cannot do it. It does not happen anywhere. It has seen failure of State in Afghanistan and Sierra Leone.

The problem was in Latin America for many years because army men were involved in business and, therefore, they could not be professional. In Colombia, why do you think that the drug lords took over? It is because people in the army were also drug lords. There was nobody to chase the drug lords. You cannot have drug lords in the army chasing drug lords in the bushes. It cannot happen. So, this is Kenya, taking the route of Latin America; becoming another Columbia. Unless we stop this nonsense of guessing what is happening, we are not going to get anywhere. It is very painful that we can see our people being killed day in, day out, and the people who should be in charge are not seeing the problem. They are continuing as if it is business as usual.

Mr. Temporary Speaker, Sir, I feel very strongly that in the army, unless we restore the Gen. Tonge culture, we are not going anywhere. In the police; unless the police force becomes professional as it has always been in the past, we are not going anywhere. If you begin building personal forces; the Tonton Macoutes in the NYS; the police and the APs are not going to be happy and, therefore, they are not going to fight and defend this nation. All these games that we are playing from the top will only show that the fish is rotting from the top. There is no way fish rotting from the top is going to be able to swim in Lake Victoria. I feel very strongly that this Motion has come at the right time. The National Assembly and the Senate Committee that is going to be set up should go to the root causes of these problems and call a spade a spade and not a big spoon.

The other thing that I want to say today is that there is a charm offensive being employed by the Government. This charm offensive is that every time a thing like this happens you take token moves. We saw it when the Westgate attack happened. There was a charm offensive. Leaders appeared there, they were on television, great statements were made, promises were made, a commission on inquiry was going to be set up, everything to be revealed in a short time and action would be taken. That charm offensive ended there. When the Mpeketoni attack occurred, another charm offensive was taken. Leaders flew there, the President was there. All kinds of things were said, and he came back and made statements. Of course, some people said those statements are much more personal than professional or statesmanlike. That charm offensive also ended there.

Mr. Temporary Speaker, Sir, the other day, we saw a County Commissioner from the Coast and Mr. ole Lenku himself, making another charm offensive. They said: “Throw this mess to the Opposition, we shall solve the issue.” That charm offensive ended there. The latest charm offensive is hiring public relations (PR) persons at millions

of shillings and they begin the spin in the social media saying: “If this issue is explained as something local, being done by the opposition and the incident in Mandera could not have occurred without some kind of local involvement.” That charm offensive just produced another Mandera attack. How are we going to continue running Government with charm offensives? The latest Charm offensive is now this one.

Although in any system of Government when something happens which is a failure of Government, the person at the head of that particular institution – this is a normal practice in democratic societies – takes responsibility. How many failures have we had in security over the last couple of months or in the last two years? These same people were there. If their resignation were to occur, they should have occurred then. If it does not occur and these issues keep on accumulating, then I am sorry. We go back to J. Edgar Hoover who said that the buck must stop somewhere.

If these things have been accumulating over time, then the buck must stop with the Commander-in-Chief of all the Defence Forces. This is because if these same people were responsible, then they should have resigned when those first tragedies occurred. You do not accumulate them to the extent that they become almost destructive and then you tell them to go away. He will tell you: “Mr. Commander, I was right here with you when those things occurred. Why did you not ask me to resign?” We must be honest with ourselves.

I am sorry that it is a great responsibility to be a Head of State. I do not envy those people who have the ambition to be Heads of States. However, once you are there, you must face the reality. You must realise that the kitchen is very hot.

**Sen. (Dr.) Khalwale:** Thank you, Mr. Temporary Speaker, Sir. I want to start by sending my heartfelt condolences to friends and Members of the families of the 39 victims of the second Mandera massacre.

I also want to, at this early stage, congratulate our President for sacking ole Lenku and Kimaiyo. To him, I say, this is too little, too late.

Mr. President, did you have to wait for hundreds of Kenyans to be killed right from Bungoma, Likoni, Gikomba, Westgate, Mpeketoni, Kapedo, Mandera I, Moyale, Wajir and Mandera II? This is too little too late. We expected that today, Karangi, the Chief of Kenya Defence Forces should have gone. Karangi must go. Why should he not go? Karangi is the same person whose soldiers are partying everyday in Kismayu. They have abandoned the primary reason that took them there. They are selling charcoal and sugar and, in the process, killing the sugar industry in Kenya and the President sees nothing wrong with that.

We expected the Director of Criminal Investigations Department, CID, Ndegwa Muhoro to go. Today, I want to proudly apologise to the President for having faced him in a function in Bungoma when I told him to see what he saw this morning. I am not sure whether I should apologise or request him to invite me for a cup of tea, so that I occasionally give him advice. That was good advice. Had he acted that time, the 39 youth who have died – you have pictures – are children of the less privileged, those who work in the quarry. These are not children of Ministers, Presidents, Deputy Presidents, Senators and what have you.

I want to give you some advice. Be aware of advice from some people, including Mutahi Ngunyi. Mutahi Ngunyi today has told people on his Twitter handle that the Manderu Massacres I and II are staged for purposes of getting a successful impeachment of the President. He tweeted further to say that if you want to know the beneficiary, read the Constitution. Mutahi Ngunyi should stop being a clever man. If he is attacking the President because in the absence of the President, the Deputy President will be the beneficiary, let him say it in black and white that Ruto is the one who has caused the massacre. Shame on him!

Mr. Temporary Speaker, Sir, those of us who fought former President Moi's regime, my brother Haji was a Minister, he told us; you are saying Moi must go, but one day you will say, Moi must come. When Moi was the President of Kenya, he dismantled tribalism in the forces. The Commissioner of Police was a Luo. The Chief of Intelligence was a Kikuyu and the Chief of Criminal Investigation Department (CID) was a Kalenjin. The Chief of Military was a Somali and the Director of the National Youth Service was a Pokot. That was Moi's time.

Today, the just departed head of Police, the Inspector General was the only Kenyan in the security structure who was not coming from one community. The Head of the NIS comes from the community of the Commander in Chief. The Head of the KDF comes from the community of the Commander in Chief of the KDF. The Head of the CID comes from the community of the Commander in Chief and even the Head of National Youth Service which is now a military force is from the same community of the President. The President must dismantle tribalism if he wants officers working under those senior officers not to be demoralized.

When I was a young dashing doctor, I used to dream that I would one day grow to become the Director of Medical Services. However, right now, an officer will work, but knows that however hard he works; he will never be the head of the military because he must come from a particular community. We are the representatives of the people. When we say some of these things outside this House, we are accused and taken before courts of law in this country. We have cases of hate speech pending.

**Sen. (Prof.) Lonyangapuo:** On a point of order, Mr. Temporary Speaker, Sir. Did you hear Sen. Khalwale saying that the NYS is now a military institution? Could he substantiate that? I thought we knew the different functions of the NYS? Does he have the latest information concerning the functions of the NYS?

**Sen. (Dr.) Khalwale:** Mr. Temporary Speaker, Sir, with all due respect to Professor, we were told at medical school that when you become a professor, you become learned in such a small area that you forget everything else. Please, when you are a politician, know the world and live in this country.

I want to congratulate the young activist---

**Sen. (Prof.) Lonyangapuo:** On a point of order, Mr. Temporary Speaker, Sir. Is Sen. Khalwale, the doctor, in order to evade responding to my earlier point of order? He needs to substantiate this because most Kenyans, including myself, may not know this. He said that the NYS, where many of our youth have gone for some training so



that they build Kenya, is a militarised institution. Is he saying that this is a militarised institution now? You must tell us.

**Sen. (Dr.) Khalwale:** Mr. Temporary Speaker, Sir, the distinguished Senator from Baringo should read the dictionary meaning of the word “paramilitary.”

I want to use this opportunity to congratulate the young activists who on Tuesday last week occupied Harambee Avenue. We created pressure and the same cowards said that we had been paid by foreigners to occupy the avenue. We occupied Harambee Avenue because of the children who had died in Mandera. We occupied the avenue because of the police officers who had died in Kapedo. That was an act of patriotism. If anything, the only thing it cost me, now I can reveal is that I spend Kshs15,000 to buy coffins which were blocked before they arrived there. I wanted to make a big statement that we had coffins that we would use to bury people. There was no foreign money.

The issue of politicising the war on terror is something for which the President should also bear blame. The President was in Mpeketoni and politicized the war on terror by saying that it was being attributed to local political networks and ole Lenku followed it very closely saying that CORD was recruiting *Mungiki* and members of the Mombasa Republican Council (MRC), so as to cause instability and *Al Shabaab* were laughing all the way to the bank.

Mr. Temporary Speaker, Sir, I thank you and I say Kenya must move out of Somalia because even the US moved out of Iraq, Vietnam and Somalia. This will not be an act of cowardice. Move out, you have finished your work.

With those few remarks, I support.

**The Temporary Speaker** (Sen. Mositet): There is quite a lot of interest from other Senators. This is a timed Motion where we were supposed to finish by 6:08 p.m. However, considering that almost all Senators who have not spoken want to speak and again, I will want to give the Mover some time to speak, I feel we should reduce the time to five minutes. We can give each and every Senator a chance to speak.

**Hon. Members:** Yes! Yes!

**Sen. Hassan:** Mr. Temporary Speaker, Sir, how many Senators do we have?

**The Temporary Speaker** (Sen. Mositet): Quite a number. We are talking of about nine.

Maybe using the Chair we can do it up to 6.30 p.m. so that each and every person can get a chance. Let us do five minutes.

**Sen. (Eng.) Muriuki:** Thank you, Mr. Temporary Speaker, Sir. Most of us are not very endowed or knowledgeable about matters or intricacies of security. Right now, we, as Kenyans, are lost. Sometimes, it is easy for us to speak as Jubilee or CORD members, but Kenyans are lost as to what the Government is doing about security in this country.

This particular Motion is focused on Mandera and Kapedo. However, when I look at it, we really have to go further than that. Right now, it is okay to focus on those two incidences, but make a report as the Mover has requested, we have no doubt we shall agree. When you look at it you realise that we really need to get to terms with ourselves. Mandera is bad enough. An incident happened and Government said it killed so many *Al*

*Shabaab* militias. I do not know about that. I have problems with that. However, we have to come to terms all of us. I do not believe that we can have 60 people killed in a night in Mpeketoni and the killers disappear completely into thin air such that after many months we have no clue about them. The Government has not come up with any clue as to what happened. We go on even after we are told that the Government has now moved in, we find that three days later another 15 people are killed under similar circumstances. Again, the killers disappear into thin air.

Mr. Temporary Speaker, Sir, if the incidences in Mandera – because I am finding them a little different from the one in Kapedo – were affecting people who were outside this country, that would be external aggression. The army must move in. We now have the KDF in Somalia. Some people will say: “Get them back” and others say: “Keep them there.” What did they go to do there if it was not to secure our borders?

Mr. Temporary Speaker, Sir, I have every confidence that Hon. Nkaissery, who has been nominated to hold that docket, will do, perhaps, some of the things which are not being done. His track record in security matters is such that we expect him to be organized. When you look at some of the incidents which have happened in this country, for example, Baragoi, you will wonder whether there was a command system. Was there someone at the top who actually knew which *askaris* were there? When you lose some, you should know what happened and who holds the responsibility for what action down to the detail. We have incidences where we have a security operation. However, it takes 30 to 40 hours for any response to be received in that area. This is bad enough as far as I am concerned.

Mr. Temporary Speaker, Sir, I know the President means very well, but I was disturbed when he said that every person to look after their own security. Much as we shall do so, we all have our own systems. However, I do not know what the people who are in bars were expected to do.

We have a Joint Committee of the Senate and National Assembly on Cohesion and Joint Opportunities, of which I am a Member, and in it we have already resolved something similar to what Sen. Billow is requesting, but on a wider scale. That Committee is not a security committee. The mandate of the Committee is to look into the circumstances and genesis of what happened. What is behind the scene that made it possible for whoever they were to come in undetected, do what they did and disappear into thin air? What is it that will make people come and divide us along ethnic or religious lines and somehow it works? How do they do so? What are those ingredients, fundamental problems that are there or the underlying issues which are making this country almost ungovernable? Some of those places are almost ungovernable.

Mr. Temporary Speaker, Sir, I support very strongly.

**Sen. Orendo:** Thank you very much, Mr. Temporary Speaker, Sir. I rise to support this Motion.

Mr. Temporary Speaker, Sir, we have little time, but I want to make a few points. First, it is about the arrogance which the agents of terror are showing in Kenya. With regard to places which have been attacked, including Mandera, *Al-Shabaab* is sending a message saying that they can attack any time anywhere at their moment of choice. I am saying so, because the attack in Mandera; the ones which have happened in the last ten

days, are within the radius of 30 miles of Mandera Town. I find that difficult to understand.

I join Sen. Hajji in saying that there is something terribly wrong with our security agencies. This is because the hot spots that we have in Kenya as a whole are known. They are in Marsabit, Wajir, Mandera and Lamu. They are not new and yet, these terrorist organizations seem to be having the time, place and opportunity to attack these places almost undetected.

Mr. Temporary Speaker, Sir, before the Inspector-General was put into account, the Chief of Kenya Defence Forces should have been the first to account. We went to Somalia to keep *Al Shabaab* in Somalia so that they would not enter the Kenyan territory. That is why we went to Somalia. That is why the Americans went to Afghanistan. How come that now with their presence in Somalia with other forces, *Al Shabaab* is able to enter Kenya at any time they wish? That responsibility is not with the Inspector-General; it is with the KDF. Article 241(3)(a) of the Constitution says:

“The Defence Forces – are responsible for the defence and protection of the sovereignty and territorial integrity of the Republic.”

That responsibility is not on the police force. So, whereas I support the sacking of the IG - that should have happened a long time ago; I do not think he willingly left office; he was forced to resign. This is because when they were telling the opposition that we had crossed the red line, they are the ones who had crossed the red line a long time ago. What we are seeing now should have happened many days ago.

Mr. Temporary Speaker, Sir, there are some simple things that when people are told they think, probably, you are being petty or politicising an issue. Sometimes I look at the way Gen. Julius Karangi looks at the President when he is donning the military uniforms. The look says: “Should anything happen, do not look at me. Look at the Commander-in-Chief.”

Once you do so, it will be very difficult for you now to start questioning your generals. I still think that it is important to make sure that the President is not under the control of these security forces; he must be controlling those security forces.

I want to emphasize what Sen. (Dr.) Khalwale said earlier about recruitment in the national security organization. Article 231 says that recruitment must reflect the diversity of the Kenyan people. This is generally on security organizations. On the KDF, the composition of the command of the defense forces is also supposed to reflect the regional and ethnic diversity of the people of Kenya. All this is not there for a reason.

Mr. Temporary Speaker, Sir, there was mischief on the part of the makers of this Constitution at the beginning. If we continue this way, the people of Mandera will demand of the county government to form their own army because the KDF is not taking care of them. This thing happens in countries where law and order has broken down like in Afghanistan where every governor has his military unit. We do not want that, but what does a governor do like in Mandera where there is evidence to show that he had already given intelligence to the national Government and nothing happened? What does he say to his people?

I support.

**Sen. (Prof.) Lesan:** Thank you, Mr. Temporary Speaker, Sir. I also stand to support this Motion. I want to appreciate my colleague who has brought this Motion here on this very sad day where citizens of his county and other Kenyans have lost their lives. I also send my condolences to the families of the departed souls.

Dealing with security is a very difficult issue. I know that at this very moment, people like Kimaiyo are at their lowest ebb; he is feeling embarrassed. I know that Kimaiyo has been in the police force for close to 35 years. In the past, he has served this country as best as he could. Something must have gone wrong to the extent that an officer of his calibre has been forced to resign. I am sure this is not the person of Kimaiyo, but the institution he was serving. We must start to question ourselves how our institutions are using our officers; whether they are experienced or inexperienced. Our institutions are, perhaps not getting the best out of the officers that we have had.

Mr. Temporary Speaker, Sir, we have had to go the full cycle. Before, we also had a general from the army heading the police force. He performed well, but it is unfortunate that we have to let Kimaiyo who I believe tried his best to serve his country, go. It is unfortunate that his best was inadequate for the purposes of today. However, we want to commend and thank him for the good service rendered to the Republic of Kenya.

The United States of America (USA) went through a similar difficult situation like we have in Kenya with regard to insecurity. There was the September 11<sup>th</sup> bombing of the World Trade Centre as one of those difficult times. As the two major parties in the US; the Republicans and the Democrats addressed the issue of insecurity in that country, you could hardly tell the difference between the political parties in that country. We would really like to go that way in this country where we do not see any line drawn between the parties in the Opposition and the parties in Government. This is one area where we should demonstrate solidarity and face our security challenges.

Mr. Temporary Speaker, Sir, in Nigeria, it reached a situation where Nigerian soldiers ran away from the *Boko Haram*. We do not want to get to a situation where our forces will be demoralized to that level and behave unprofessionally. Unfortunately, if we get to that level, we will not be able to operate. I want to encourage our forces to be professional and patriotic because dealing with security issues is very difficult because it even puts the lives of those officers in danger.

Lastly, we cannot fight terrorism in this country without intelligence. We should know their plans well ahead so that we can deal with them. We cannot fight terrorism with only iron. We should know that what we are facing in this country has got international dimensions. Therefore, we should call upon our friendly countries so that we can counter this terrorism.

**The Senate Minority Leader (Sen. Wetangula):** Mr. Temporary Speaker, Sir, when I listened to Sen. Haji speak with strong words and emotion, I realized that we have a serious problem because he normally weighs what he says. That touched a raw nerve. The distinguished Senator for Garissa speaks volumes.

In countries like Israel, the United States and many European countries, when the country is going through a crisis like this, the Government of the day reaches out to the opposition to close ranks and solve the problems of the country, or at the very least, discuss, appreciate and offer solutions. Here we have a Government that is a know-it-all.

The country is going through crisis upon crisis, upon crisis. One would have expected the President and the Jubilee team to reach out to the Opposition and sit down together and say: “This is our country, things are not working and everybody, including the blind can see, could we find a way forward?” The country has veered off the track and people are dying.

Mr. Temporary Speaker, Sir, when you see young people strip our mothers, our wives and daughters on public transport and film them as they do so, then you know that the country is at its lowest. What has happened to Mandera can happen to any country. I feel for the distinguished Senator for Mandera and the people of Mandera losing in grisly massacres; 28 and then 39 people in less than 10 days. Last weekend, Sen. (Dr.) Khalwale and I, buried four victims of the Mandera I attack. On Friday, we are burying seven more who are in a morgue in Kakamega. There are many other counties that have recorded similar deaths. This is following a litany of murders, muggings, killings, and massacres that have gone unchecked.

Mr. Temporary Speaker, Sir, as I stand here, I welcome the exit of one ole Lenku, who was speaking endlessly about nothing; drawing red lines and doing all manner of things like a comedian, with national security. Inspector General Kimaiyo was a prosecutor before me, when I was a young magistrate – a very decent man – but we are not looking for decent men. We are looking for serious people who can man our security. You can read the Bible from morning to evening. However, if you cannot command your troops, the Romans say: “You must fall on the sword.” That the President has reached out to fish from our backwaters, to pick Maj-Gen. Nkaisserry and propose him for the job, explains the desert of availability of talent on the other side. We lend Maj-Gen. Nkaisserry to them and wish him well. We hope that he will change the security situation.

Mr. Temporary Speaker, Sir, I was the Minister for Foreign Affairs when we, as Cabinet, agreed to go to Somalia. Sen. James Orendo said this; that when America was attacked on 9/11, George Bush went to the screen and said: “Never again; we will take the war to them.” They took the war to Iraq, Afghanistan and have fought out there. The philosophy behind going to “*Operation Linda Nchi*,” was to take the war to them after the attacks in Lamu, kidnappings, killing of the French tourist and so on. What have we done? We have taken the war to them, got stuck there and forgotten that there are lines behind us to protect. These people are walking in and out of our territory at will, killing innocent people.

This afternoon, the President should have had the courage. When he made Kimaiyo to sign on a dotted line, he should have also made the Commander of the KDF, the Director of the National Intelligence Service (NIS) and everybody responsible to sign on a dotted line. The intelligence of this country is in shambles. They spend billions. This year alone, they have a budget of Kshs23 billion. They spend the money listening on politicians’ telephone calls and trailing them from place to place. Everyday, they churn out fake information, for example, on how Sen. Billon Kerrow’s graph is rising or dropping and so on. They have forgotten their core mandate of helping to secure this country.

Mr. Temporary Speaker, Sir, we speak with pain; that the Government of the day has abdicated its responsibility. We can count the litany that my colleagues have counted;

right from the killings in Bungoma and Busia. When we asked questions, they said that they were political. But no politician has ever been arrested. We moved to Mombasa. Marwa and ole Lenku said that those were ODM and CORD operatives. Nobody has been arrested. We moved to Mpeketoni and none other than the President himself, even when the most respected intelligence agencies – the Americans, French and British – were saying that it was *Al Shabaab*, stood up without batting an eyelid and said that those were local political networks; even when the *Al Shabaab* themselves said that they did it. What goes round comes round.

Mr. Temporary Speaker, Sir, then the comedy of errors reached the crescendo last week when the Deputy President stood up and said: “We moved in and killed 100.” Where are the 100 that they killed? Then they published a false picture, taken in May, and said: “These are the people we killed.” They even forgot to erase the date. The people were in military uniform. Since when did guerillas wear military uniform? You cannot play games with the people of Kenya.

I share Sen. Amos Wako’s feelings and views that as we welcome the expanded Motion by Sen. Billow Kerrow, I would love to see it bring together Committees of the “Lower House” and the Senate to work together. If Parliament wants to work, it can do so. Remember the case of J.M. Kariuki---

**The Temporary Speaker** (Sen. Mositet): Are you proposing an amendment?

**The Senate Minority Leader** (Sen. Wetangula): Mr. Temporary Speaker, Sir, it is up to the Mover to decide. Even when we give the Committee an opportunity, in the interest of the nation, they can go beyond what we have said. We can invite the Committee in the “Lower House” to twin with our Committee and work together. It is not difficult. We will do that because the Chairperson of the Committee that I belong to is right here with us.

Mr. Temporary Speaker, Sir, when J.M. Kariuki was murdered those were the most difficult times. It was under a most frightening regime in the history of this country. Parliament constituted a Committee chaired by the late Elijah Mwangale and found the killers of J.M. Kariuki. I am sure that this Committee can find the culpability of those responsible; name and shame them and remove them from public office.

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

**The Temporary Speaker** (Sen. Mositet): Hon. Senators, under Standing Order No.30(1), I will extent the sitting of the House, so that I can allow all those Members who want to speak to do so. Each Member will speak for five minutes.

**Sen. Mugo:** Mr. Temporary Speaker, Sir, I also want to support this Motion. From the outset, I want to send my condolences to the people of Mandera, the Senator for Mandera and the families of the people who lost their lives. Indeed, it is shocking and unbelievable. It is a loss, not only to the people of Mandera, but to the whole country. Those who lost their lives come from all over the country. Even if they came from Mandera, they are Kenyans. So, we should start looking at this country as a Kenyan nation.

The only way we can fight insecurity is by approaching the issue from a united front. If we continue all the time pointing fingers, I think we will be losing the way. As the President said the other day, security is for all us. Whenever measures are put in place

by the Government for security purposes, we should support them. This is because there are intelligence reports that inform decisions. However, when some measures are put in place, some people always complain. Whether it is the curfew in Lamu, closure of mosques and deployment of the KDF, it is because of the information on security. I wish we could all support instead of opposing those measures every time and influencing other people to do things that they would not have done.

We should encourage our professionals not to leave Mandera, because it is also part of Kenya. The children who are there are Kenyan children. We will be playing into the hands of *Al Shabaab* if we did that. Of course, there is need for the security forces to provide adequate security to professionals working there.

Mr. Temporary Speaker, Sir, I do not think criticizing the President is helping much because he speaks from the information he gets from security. I do not know how we are going to prove otherwise that the Deputy President said people were killed unless we have our own security system to prove that he is lying. That language of saying the leadership is lying is really bad. We are surprised when the youth cause mayhem by undressing women. If leaders abuse other leaders the way it is happening, what will keep our nation sane?

I would like to say that the President has done what he has done timely because he has more information than we have. You cannot run a government like playing cards or like you run your private home. There must be systems. I commend hon. Maj-Gen. Nkaisserry for being nominated and we have high hopes that things will improve. Let us put a wall or fence our boundary with Somali. I believe that if we decide to put all our money there, we can put up a deterrence fence and surveillance equipment to see who is crossing.

**The Temporary Speaker** (Sen. Mositet): Your time is up!

**Sen. Mugo:** I beg to support.

**The Temporary Speaker** (Sen. Mositet): Let us try to finalise so that we can give the Mover time to reply.

**Sen. Ong'era:** Mr. Temporary Speaker, Sir, thank you for giving me this opportunity so that I may also make my contributions to this Motion. Let me join my colleagues in expressing my condolences to the bereaved families in Mandera I and Mandera II. As you are aware, in Mandera II, the county of Kisii where I am a delegation to this Senate, lost ten citizens. This country is burning from Mandera, Wajir, Garissa, Lamu, Nairobi and Mombasa. This country is burning from the north to the south and from the west to the east. Our mothers are wailing because they have lost their children. Our women are being stripped naked in public. Our wives have become widows and our children have become orphans. This country is burning and I am wondering why. This country is burning because of poor leadership, poor institutional framework in terms of managing and coordinating security. This leads me to think - I read somewhere that the Emperor of Rome, Nero, was playing the fiddle while Rome was burning. I hope that Kenya will not end up in such a situation.

Mr. Temporary Speaker, Sir, I welcome the changes that have been made on the change of guard in the Ministry of Interior and National Coordination. However, I want to agree with Sen. (Dr.) Khalwale that it is too little too late. I am saying this because the

real masterminds of insecurity in this country, who should be managing it, are the KDF. I expected the chief of defence to be purged out of office.

It saddens me that this very people who are supposed to be protecting this nation are actually selling charcoal in Somalia. Security is the responsibility of the State. We cannot be told that it is the responsibility of the citizens. The Constitution is very clear on who is in charge of security. I do not see why we are rushing to Somali to fight terrorists. I recall in the last Parliament, the late hon. Ojode, who was then the Assistant Minister in charge of security, told us where the head and tail of *Al Shabaab* is. What is happening in this country is that people are using this opportunity to make money. Unless this is arrested---

**The Temporary Speaker** (Sen. Mositet): Your time is up!

**Sen. Ong'era:** I support.

**Sen. Ndiema:** Mr. Temporary Speaker, Sir, I want to support this Motion. From the outset, I join in mourning of the loss of lives of Kenyans in Mandera. The attack in Mandera is an attack on Kenyans and our country. This is a call that it is not business as usual. We must design ways and means of defending our country because we are under attack. The organs that are supposed to provide security have not performed to our expectation. The people in charge of security must be held accountable. In situations like this, it is proper and advisable that the root causes and failures are investigated and ascertained. Just removing individuals from office and replacing them with others, with the systems as they are, may not provide solutions. I know Mr. Kimaiyo is a qualified, well-trained and capable officer. However, we do not know whether what has happened is due to his failure or the systems failure.

Mr. Temporary Speaker, Sir, equally if we were to get all the officers here, they might as well acquit themselves---

**Sen. Hassan:** Mr. Temporary Speaker, Sir, I want to join my colleagues in sending condolences to all the victims of these attacks. The Quran asks us; are they equal those who know and those who know not? The truth of the matter in this situation is that the Jubilee Government is clueless on how to combat this sophisticated crime. The arrogance and the nature of the Jubilee Government is not to accept that it does not know and seek the coordination, collaboration and partnership of those who know. The truth is that crime is sophisticated. These are not challenges that other countries have not dealt with. Terrorism is a global threat; it has global partnerships, it has global experts and people who know better. These people have been able to mitigate the threat of terrorism in their countries.

We try to hang to our cocoons, tribe mates, regional mates and friends because it is hard for us to admit that where we do not know, we must seek the support of those who know. Therefore, we have pursued a strategy that is outdated, archaic and that is unable to meet the challenges of sophistication of the crime called terrorism. In the interim, we have occasioned ourselves enormous loss. We have also threatened the social fabric of this country and the very existence of this nation by endless insecurity in regions that are hitherto marginalized.

I want to join the Senator for Bungoma County when he said that it is important right now to have a bi-partisan approach where people can contribute ideas. It is not true



that not everyone knows about security. There are people who know about security. If they had come to Maj. Gen. Nkaissery before they appointed him, probably, he would have been able to advise if we sat as leaders who are elected to discharge our mandate. So, you do not wait for a crisis to get out of hand and then mitigate it using cosmetic measures that neither necessarily solve the problem, nor act as a temporary solution.

Mr. Temporary Speaker, Sir, moving forward, there has been a lot of fire and vilification in this matter, but I believe the future is still hopeful. I believe that we, as a country, can come together. I have heard some people blaming the new Constitution and the regime of law. They have to know that this is a reality that faces us. These laws will not change. This Constitution has ushered in a new way of doing things. It is important that they try to keep up with the dynamics of the new Constitution rather than seek to blame it.

I support, Mr. Temporary Speaker, Sir.

**The Temporary Speaker** (Sen. Mositet): Hon. Senators, I now call upon the Mover to reply.

**Sen. Billow:** Mr. Temporary Speaker, Sir, I want to thank all the Members who have contributed to this Motion, including the amendments that have been made which will have the Committee on National Security and Foreign Relations and the Legal Affairs and Human Rights Committee investigate the circumstances under which these incidences have occurred. Also important is that they also need to check whether there were failures in the institutional command or operational structure. Some of the things that many Kenyans do not know is that even when the Cabinet Secretary or the Inspector-General may be meaning well, if the command structures, the people who are actually responsible down in Nairobi all the way to Mandera are not doing their bit, there is likelihood that we may not succeed.

I want to take this opportunity to send my condolences to the families of the people who were killed last night in an incident that many of us from Mandera believe was preventable because information was relayed and no action was taken. Even when they called for assistance, an hour even before the first gun shots were heard in town, there was no one from the security forces who went to secure them. Eventually when the gun shots started and everyone in town said: "These people must be killing those people, can people go and help?" There was nobody until morning. So, from 2.00 a.m. when that place was surrounded and the first report was raised, nobody went to assist until 6.00 a.m. when there was sunlight.

Mr. Temporary Speaker, Sir, the people are a very worried lot. There is a lot of anxiety. People are dissolutioned because if these incidences are happening every day, and do not forget there have been explosions almost every other day before that, there is a lot of anxiety. People are fearing because there are messages from the *Al Shabaab* that they are, in fact, going to attack the town. I mentioned here last week when I moved the Motion that there were reports that the intelligence have got that these people are even threatening to attack the town. That is how serious this matter is. With all the public servants leaving and the level of insecurity, we are concerned that Mandera might become a ghost town if this situation continues.

One of the things we have recommended regarding that region - many times, I mentioned this when I moved the Motion - is that the area bordering Wajir and Garissa, the Somalia side which was left under the hands of the Ethiopians to police under African Union Mission in Somalia (AMISON), is where there is a serious mistake. I want to reiterate that the Government needs to talk to AMISON and get the KDF to manage that sector so that we have a buffer zone of, at least, 50 to 100 kilometres which will be in control of the KDF. Right now, the KDF is in the Southern parts towards Kismayu. However, Wajir all the way to Mandera is an area occupied by *Al Shabaab*. The KDF needs to move in.

I also want to say that we all appreciate some of the action that the President has taken in the replacements. However, I specifically want to note the fact that he said that he would change the security strategy. We want to see that. That is the most important thing. There has to be a change. There must be a paradigm shift. You cannot do things the same way, all the time. That promise is one that I appreciate. I also want to appreciate his assurance to Kenyans that this is not a religious war. The people who do these barbaric inhuman acts cannot claim to be doing it for Muslims. You cannot kill people and say that you are doing so because Muslims are being harassed in Kenya. Kenyan Muslims have not asked them to do anything for us. In fact, the opposite is true. By killing Christians or non-Muslims in the manner they are doing, they are, in fact, jeopardising many lives of Kenyan Muslims in many parts of this country. These are people with worked up minds. The sooner this matter is dealt with the better.

I saw the President making it clear that this is not a religious war. These are people who are using religion, as it has happened in history for a long time now. I also want to encourage the new appointee, hon. Maj. (Rtd.) Nkaissey and the one who will take the Inspector General's position that they must work with the local communities and political leadership. They cannot win the war on terrorism without working with the local communities.

**The Temporary Speaker** (Sen. Mositot) I will add you two minutes.

**Sen. Billow:** Mr. Temporary Speaker, Sir, the issue of community involvement is quite critical. If you look at what happened in Iraq, you will see that Americans had to get some people into their side by influencing the local leadership. This is the same thing they did in Afghanistan. You cannot, just by throwing artillery, succeed. You must involve the local leadership. We are members of Parliament. We have local leadership on the ground. If seven days after that bus attack, we have not even had an opportunity to sit with the Inspector General of Police or the Minister; that shows that nobody bothers about the leadership on the ground. This does not mean that we have no ideas. Everyone here has ideas, particularly the local leadership. These people pass through communities so as to enter places. They must have ideas and it is important that the Government officials who are in charge of the security docket engage with the leadership. This is very important.

There is no way the status quo can continue on the ground with regard to the security situation. If with all the information, explosions keep on happening, there is need to overhaul the local administrative and security structure that is on the ground.

This is one thing that any Government would do immediately. You must hold them into account. They must tell us how it happened and whether they got a notice.

Although many Kenyans do not know, we know that in the Westgate incident, Lamu and even in Mandera, the NIS forwarded information to the police. After the Westgate incident, the Head of the NIS came to Parliament to say that he was ready to lay on the Table that evidence. They have gone public to that level. In the case of Mandera, for example, we know that this information was provided. There is lethargy and complete inertia, particularly within the police. There is need to crack the whip not just in Nairobi, but on the ground.

With those remarks, I beg to move.

**The Temporary Speaker** (Sen. Mositet): This Motion, under Standing Order No.72 does not concern counties. I, therefore, put the Question.

*(Question put and agreed to)*

### ADJOURNMENT

**The Temporary Speaker** (Sen. Mositet): Hon. Senators, it is now time for interruption of the Business of the House. Therefore, the Senate stands adjourned until tomorrow, 3<sup>rd</sup> December, 2014 at 2.30 p.m.

The Senate rose at 6.30 p.m.