

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Tuesday, 31st March, 2015

*The House met at the Senate Chambers,
Parliament Buildings, at 9.00 a.m.*

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

PRAYERS

The Deputy Speaker (Sen. Kembi-Gitura): I had approved two petitions but I do not see any of the petitioners. There was one from Sen. (Prof.) Lesan and one, I believe from--- Anyway, they are not here. So, shall we go on?

PAPERS LAID

ADDRESS OF HIS EXCELLENCY THE PRESIDENT

ANNUAL REPORT TO PARLIAMENT ON THE STATE
OF NATIONAL SECURITY

THE 2014 ANNUAL REPORT ON THE MEASURES TAKEN AND
PROGRESS ACHIEVED IN THE REALIZATION OF
NATIONAL VALUES AND PRINCIPLES OF GOVERNANCE

The Senate Majority Leader (Sen. (Prof) Kindiki): Mr. Deputy Speaker, Sir, I beg to lay the following Papers on the Table:-

(1) The Presidential Address on the State of the Nation delivered on Thursday, 26th March, 2015 during the Special Sitting of Parliament.

(2) The Annual Report to Parliament on the State on National Security pursuant to Article 240(7) of the Constitution and Section 16 of the National Security Council Act, 2012.

(3) 2014 Annual Report on the measures taken and progress achieved in the realization of national values and principles of governance, pursuant to Article 132(1)(c)(i) of the Constitution.

(Sen. (Prof.) Kindiki laid the documents on the Table)

The Deputy Speaker (Sen. Kembi-Gitura): Next order.

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.*

What is it, Sen. Orengo?

Sen. Orengo: On a point of order Mr. Deputy Speaker, Sir. I am just wondering as to procedure under Article 132 of the Constitution, which covers the functions of the President in relation to the Presidential Address, which as everybody knows, was given last week. But under Article 132(1)(c), what is required is that there should be a report in an address to the nation on the measures taken. What is done to that report is required under (ii);

“publish in the *Gazette* the details of the measures and progress under sub-paragraph (i)” I am just wondering whether that report has been published in the *Gazette* as required under the Constitution for it to be a matter of business before the House now.

In addition, looking at Standing Order No. 24(6) --- I am not against what the Senate Majority Leader has done but I am just saying, as a strict matter of procedure, whether what he is doing is correct. It requires that: -

“(5) Whenever the President delivers an address, a Senator may, as soon as practicable thereafter, lay the Presidential Address on the Table of the Senate following the reading of such Address.”

So, he can lay the Presidential Address on the Table, which he has done; I have no problem with that. But with those additional documents, I would want to know under what Standing Orders or which provisions of the Constitution are being applied to lay them on the Table. More importantly, unless that report in relation to Article 10 is published in the Kenya *Gazette*, then, in my opinion, it cannot constitute business upon which this House can now engage in by way of it being tabled before the Senate.

The Deputy Speaker (Sen. Kembi-Gitura): Proceed, Senate Majority Leader.

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Deputy Speaker, Sir, the issue of the publication of the Report is not only a requirement of the Standing Orders which are hierarchically inferior to the Constitution but also a requirement of Article 254(3) which requires all Reports from independent commissions and offices to be publicized and published.

There are two things to be considered. There are no timelines for such publications. So, as to whether or not the publication is done prior or *ipsos facto*, that is after the tabling the relevant document, has not been the case. It can be done either before or after. Before there is no order of precedence in terms of which one comes first.

Two, I know that my senior, Sen. James Orengo, is a very good lawyer and his point of order is in good faith. He wants to make sure we act within the law. You will find that in the spirit of the Constitution, gazettelement is not required as condition precedence but as an administrative requirement to make sure that as many people as possible in the country are aware of certain documents or events that have taken place.

In fact, the Constitution says that where there is a requirement for publication in the *Gazette* and that does not happen within a certain period of time, automatically, the document in question takes effect. The point I am trying to make is simple. One, there is no requirement on whether the publication should come before or after tabling of the Report and whether the publication is only for public notification and should not be a condition precedent so that without publication a Report cannot be tabled before this House.

The Deputy Speaker (Sen. Kembi-Gitura): I will not entertain very many points of order. The point that has been raised is a matter of law. Could I hear what Sen. Orengo has to say?

Sen. Orengo: On a point of order, Mr. Deputy Speaker, Sir. Anything that is put before this House must meet constitutional test. You cannot, for example, elect somebody to Parliament and before gazettment you say that publication to the *Kenyan Gazette* need not be prior or after. The only way that a Member of Parliament can be sworn in is after publication of the results of any general election; parliamentary or presidential elections.

I am indebted to the Senate Majority Leader who has said that I am making my point in good faith. Once a document is to be presented before the Senate, then it has to meet the requirements of the Constitution. There is a direction by the Constitution which is mandatory. The Report based on Article 10 of the Constitution must be gazetted. We cannot begin to argue whether it is “after” or “thereafter”. The provisions we are referred to under Article 254, in fact, reinforce my point. That requirement is on the assumption that anything that this House deals with should be out there in the public. Members of the public are deemed to have seen it. They may inform their Members what their positions are on any particular publication as it is required under the Constitution.

Mr. Deputy Speaker, Sir, if you will cut corners, I will be quite happy with it because we are used to doing it. However, when the Constitution says that it must be gazetted, then that becomes a mandatory requirement. According to the Standing Order I have quoted, what is required to be tabled is only the Presidential Address. On this one, I think we need publication in the *Kenyan Gazette* before we deal with it in the Senate.

Sen. Ong’era: On a point of order, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. Kembi-Gitura): Is it on the same issue? Do you want to clarify the issue or what do you want to do? Sen. James Orengo has raised a very important point of order on a matter of law. The Senate Majority Leader has also made a reply to it. Unless you want to help me to make a decision on this point, I do not know why we need many points of order on the same issue. Let me make it clear that we will not dwell on points of order regarding this matter this morning.

Sen. Ong’era: On a point of order, Mr. Deputy Speaker, Sir. I just want to help you out by referring you to the Presidential Address for last year and the Report that was laid on the Table. How did we debate it with the annexes that were attached? I think that precedence will guide us on how we will conduct today’s proceedings.

Sen. (Dr.) Khalwale: Mr. Deputy Speaker, Sir, I want to agree with Sen. Orengo and the Senate Majority Leader in this manner; the Article of the Constitution that has been referred to by Sen. Orengo in terms of publication in this Constitution is not the only one. In Article 35, this Senate is given access to the information that the President gave to the two Speakers. Article 35(3) says; “the state shall publish and publicize any important information affecting the nation.” For that reason, I agree with Sen. Orengo.

In both Articles 35(3) and in 132 that Sen. Orengo has quoted before me, there is no mention of when the publication should be done. Therefore, if it is done before, during this debate or after, that should not affect us in any way. It is my view that the only thing you should guide us on is the provision of Article 135.

Article 135 of the Constitution states;

“A decision of the President in performance of any function of the President under this Constitution shall be in writing and shall bear the seal and signature of the President.”

Once you assure us that the documents you have are authentic and, therefore, in keeping with Article 135, please, allow us to move quickly. We want to debate, unbundle corruption. We want to deal with thieves and we want them to leave public office.

The Senate Minority Leader (Sen. Wetangula): On a point of order, Mr. Deputy Speaker, Sir. I enjoin the distinguished Senator for Siaya, Sen. Orenge, and urge you to see that a provision of the Constitution is not meant to add colour and numbers. It has effect. Article 132 opens with the statement;

132(c) “The President shall-

(i) report, in an address to the nation, on all the measures taken and progress achieved in the realisation of the national values, referred to in Article 10;

(ii) publish in the *Gazette* the details of the measures and progress under subparagraph (i); and

(iii) submit a report for debate to the National Assembly on the progress made in fulfilling the international obligations of the Republic.

So, it is really mandatory. Nobody is trying to freeze, curtail or stop this debate. We are very eager to deal with it but the moment we start taking shortcuts against the Constitution itself, then we will be taking the wrong direction. The document has been circulated and I have a copy of the Speech of the President which is not in compliance with Article 135. I have seen no signature ---

The Deputy Speaker (Sen. Kembi-Gitura): Order, Senator! We are pre-empting debate. No Notice of Motion has been given. All that has been done is to table the documents and the Papers in the Order Paper.

The Senate Minority Leader (Sen. Wetangula): Perfectly all right, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. Kembi-Gitura): So, I do not want anyone to pre-empt debate. We are not going to debate at this point. Sen. Orenge raised a very specific point of order and that is what we are dealing with now.

The Senate Minority Leader (Sen. Wetangula): Mr. Deputy Speaker, Sir, more importantly, the distinguished Senate Majority Leader himself has conceded that publication is mandatory. He is trying to play about with the timing; that it is not a condition precedent and so on. Once publication is required, it must be done and it takes an hour to publish this in the *Gazette* as a special gazette notice and we fulfill all the requirements.

The Deputy Speaker (Sen. Kembi-Gitura): I think we should move on to business. My view is that the issue raised by Sen. Orenge is very important and like Sen. Wetangula says, it is mandatory, as per Article 132(1) of the Constitution that the President must report in an address to the nation, which he has done.

Article 132(2) says that it must be published in a *Gazette*. Those things are there and they are clear. The question is, must they be done contemporaneously or the same time and does it bar the Senate from debating the Presidential Address because it has not been gazetted? Last year, we debated the Presidential Address, the issue was not raised and there was no question of publication in the *Kenya Gazette* at that time. This House

proceeds by precedence and also by what is in the Constitution. My view is that the Constitution wanted the Presidential Address to be discussed only after it has been published in the Kenya Gazette. It is be very clear in the Constitution and we would not have otherwise proceeded last year when we debated the Presidential Address.

The issue that has been raised by Sen. (Dr.) Khalwale on Article 35 is important but this is, again, the question of how you look at it because it says that the State shall publish and publicize any important information affecting the nation. Our Standing Orders require that it shall be tabled as soon as practicable after the President has given the Address and “as soon as practicable” has to be today because it is the first sitting after the Address. It does not talk about how it shall be published or publicized. I dare say that one way of publishing and publicizing it is by debating it in the Senate. Once it is tabled in the House, it is a document that is open to the public and is a public document after this. So, the newspapers and the media will now have a right to publish and publicize it.

The only other issue that is really pending there, in my view, is Article 135 which says; “Decision of the President shall be in writing.”

Papers have been laid and I have not seen them. I believe a Notice of Motion is going to be given after which then we can debate the Report and its veracity or otherwise. That is the way I would look at it. I would say that I do not see that we have broken any rules.

Sen. Orengo also raised the issue of our own Standing Order 24(5) which says that:

“Whenever the President delivers an Address, a Senator may, as soon as practicable thereafter, lay the Presidential Address on the Table of the Senate following the reading of such Address.”

Which then leaves us to move to S.O.24(6) – the moving of the Motion, which again is not mandatory because it says; “A Senator may give Notice of a Motion.” We have not reached there but I believe that that is the next point where we are going. Anything short of or any point of order beyond that at this time would be preempting debate because we do not know what is going to happen.

That would be my ruling on that issue. So, if any point of order is made to make me change my ruling, it is not going to be of any help to the House and to me.

The Senate Minority Leader (Sen. Wetangula): On a point of order, Mr. Deputy Speaker, Sir. I do not intend to challenge your ruling but the Chair has made a statement that last year we proceeded without gazettelement. Where is the evidence that there was no gazettelement? Just because we did not raise the matter does not mean there was no gazettelement. We must be factual. The record must be kept straight for the future. In future, your children will sit in this Chamber. I am very relaxed. I am waiting to analyze that Speech. Do not worry about that.

Sen. Orengo: On a point of order, Mr. Deputy Speaker, Sir. I do not intend to take issue with your ruling and that matter is really settled as far as I am concerned. Only to add that it should not be seen that I am raising this point of order with any ulterior motive. I am also willing and ready to debate that Motion.

However, the President cannot override a clear provision in the law. Precedent, custom or even a judgement which is in clear breach of the Constitution cannot override provisions of the law. You have, then, to give some direction on that constitutional

requirement; that now that you have given us the latitude to debate it without fulfillment or compliance with the constitutional provision, you cannot let the matter stand there. You must give some direction that as we debate this, at some particular point in time within the next three days, the report should be gazetted.

Article 132 deals with several things, the first one is that:-

“The President shall address the opening of each newly elected Parliament.”

That is separate and distinct. Article 132(b) says:-

“Address a special sitting of Parliament once every year and may address the Parliament at any other time.”

That is distinct and separate. Article 132(c) says:-

“Once every year –

(i) report in an address of the nation, on all the measures taken and the progress achieved in the realisation of the national values referred to in Article 10;

(ii) publish in the *Gazette* the details of the measures and progress under subparagraph (i)---.

So, there are obligations under the Constitution which are separate and distinct.

Mr. Deputy Speaker, Sir, you cannot say that now that the Report has been tabled, we can leave the matter standing there because the Constitution says what is to be done with it. There is no requirement that this particular Report on measures taken under Article 10 of the Constitution must be a subject of the Presidential Address. I hope you are seeing this thing, not in terms of the anticipated debate. I am just concerned with the pure questions of law which I think the Senate Majority Leader should give some direction on when this shall be published as required.

The Deputy Speaker (Sen. Kembi-Gitura): Thank you, Sen. Orengo. First of all, I want to assure you that as far as I am concerned and as the Senate Majority Leader has said, I am satisfied that you have raised the point in good faith and in my mind, I have no doubt at all. In my ruling, what I said, and I think again I would stand by it, is that Article 132 (1) (c) is clear that the Report in an Address to the Nation on all the measures taken and progress achieved was dealt with last Thursday.

On part (2), publishing the gazette, the details, the measures and the progress under paragraphs (1) and (2), it does not set out the timelines. If it wanted to be contemporaneous, it would be clear in its terms. If you look at part (3) which nobody has raised, it states “submit a report for debate to the National Assembly”. You would be arguing that you are sure the report has been given to the National Assembly and not to Parliament for debate, again you would be precluded from dealing with part (1).

The point I am trying to make is that (i), (ii) and (iii) could be mutually exclusive in the sense that none of them holds the other to ransom; that we cannot, therefore, continue to deal with the issues to the exclusion of the other. I believe that is why last year that issue was not raised because it is quite clear to me that parts (i), (ii) and (iii) are exclusive of each other. Part (iii) has to do with the National Assembly and not with us, but it cannot hold us to ransom; you cannot say that until you are sure the President has submitted this Report to the National Assembly, we therefore cannot proceed under part (ii). That is the position I hold and that would be my ruling on this issue. That would be the direction I would give on this issue.

NOTICE OF MOTION

THANKS FOR THE PRESIDENTIAL ADDRESS

Senate Leader of Majority (Sen. (Prof.) Kindiki): Mr. Deputy Speaker, Sir, I rise to give Notice of the following Motion:-

THAT, pursuant to the provisions of Standing Order No.24 (6), the thanks of the Senate be recorded for the exposition of public policy contained in the Address of the President delivered on Thursday 26th March, 2015 during the special sitting of Parliament.

The Deputy Speaker (Sen. Kembi-Gitura): Hon. Members, I propose that since the documents that have to be debated as attachments to the Speech by the President have been tabled and a Notice of Motion has been given, the documents that have been tabled are now public documents. However, hon. Senators do not have the benefit of having those documents with them. I am directing that the House stands suspended for one hour when we shall reconvene and then the Notice of Motion shall be moved and then we will commence the debate. The House will resume at 10.35 a.m.

(The Senate adjourned temporarily at 9.35 a.m.)

(The Senate resumed at 10.35 a.m.)

The Deputy Speaker (Sen. Kembi-Gitura): Hon. Senators, I believe that the reason we went on a short break has been fulfilled. We have resumed with the next order. Next Order, please!

(Loud consultations)

Hon. Senators, we have spent one hour when the Senate was briefly adjourned. My view is that we are not going to deal with the Statements now. I had given a chance for petitions in the morning but we are not going to deal with Statements now. So, we shall proceed to the next Order.

MOTION

THANKS FOR THE PRESIDENTIAL ADDRESS

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

THAT, pursuant to Standing Order No.24(6), the thanks of the Senate be recorded for the exposition of public policy, contained in the Address of the President, delivered on Thursday, 26th March, 2015.

Mr. Deputy Speaker, Sir, on 26th March, 2015, the President of Kenya fulfilled his obligations under Article 132 of the Constitution, which among other things, require

him to table three reports; two of those reports to be tabled to the Senate and the National Assembly and one report to be tabled in the National Assembly alone.

The President addressed the nation on the realization of national values and tabled a report, pursuant to that Address, on the measures that he has taken in the realization of the national values and principles of governance in Article 10 during the past one year. He also addressed the nation and tabled a report on the state of national security in accordance with Article 240(7) of the Constitution, as read with Section 16 of the National Security Council Act of 2012. This Motion is therefore in accordance with Standing Order No.24 of the Senate. This Motion is to give the thanks of the Senate as a result of the Presidential Address on the exposition of public policy contained in that Speech and the Address that he delivered to both Houses of Parliament on 26th March, 2015.

Mr. Deputy Speaker, Sir, allow me from the outset to congratulate His Excellency the President for not simply addressing the Joint Sitting of Parliament or tabling the report as required by the law but in that Address, the President brought out in very express terms the fundamental aspects that the Constitution anticipated should be brought out in a presidential address of this nature. I want to, therefore, congratulate the President because from the proceedings of that day, we saw him receive not less than three standing ovations from Members of Parliament from both the majority and the minority sides in both the Senate and the National Assembly. Given the public debate that has proceeded after that Address, one thing is very clear, namely; that the President touched on matters that matter most to the people of Kenya whom we represent in this House.

Mr. Deputy Speaker, Sir, of interest to this nation has been the issue of the successes that the President highlighted in his Speech as the successes of his Government in the past one year. I do not really want to repeat the litany of successes that the President illustrated, but I can mention them. The President reminded Kenyans that as promised in the Jubilee Manifesto, the Standard Gauge Railway (SGR) Project is on course and the railway is on its way to Nairobi. When the Jubilee Government promised Kenyans that they would build a modern railway, many skeptics thought the Jubilee Coalition Government was playing the usual politics that people play with manifestos. The President assured the nation – indeed it is true – that the earthworks of the railway line have been completed, 80 per cent, between Mombasa and Nairobi as we speak. The company that was contracted to build this railway has assured Kenyans that by 2017, the railway line will have reached Nairobi and we will be planning how to extend that railway from Nairobi to Malaba.

Mr. Deputy Speaker, Sir, the President also talked about the expansion of the airport. We had a fire in November 2013 and within ten days, we were able to restore normalcy at the international airport, build a terminal and right now, the Greenfields Project that will even expand that airport and build us another runway is way on course.

The President also talked about the 5000 megawatts electricity generation project. He said that in the past one year, the Ministry of Energy has added nearly 600 megawatts of electricity. He said that we are on course in terms of meeting the objectives under the energy pact of the Jubilee Manifesto. He also mentioned, and this we appreciate as leaders in this country, that the annuity programme which intends to increase the number of kilometres of tarmacked roads by 8,000 kilometres in five years is way on course and

the first phase of the annuity programme roads network projects will be launched within the next couple of weeks because the awards are expected to be made by 10th April, 2015, which is only a week from now.

Mr. Deputy Speaker, Sir, the President also mentioned the successes in the security sector. For the first time since Independence, the Government, under the Jubilee Administration, has bought 1,200 vehicles for our police officers in the first year and the same number in the second year. That is a total of 2,400 vehicles. In every village across this country, there is a sight of a new police vehicle because by the time the Jubilee Government took over the police across this country did not have vehicles.

He also noted that since July last year, all members of the disciplined forces have been put on life insurance to make sure that when there is loss of life or limb in the course of duty, their families or they themselves can be compensated. He also mentioned the police housing project as well the 10,000 annual increment of police officers, which unfortunately has been thwarted by litigation. So, last year, the boys and girls recruited into the National Police Service could not join the force because of a pending court case. The Jubilee Government want to see that in the next five years, there is an additional 50,000 men and women to back up our security forces.

Mr. Deputy Speaker, Sir, he mentioned so many other areas where the Jubilee Government has succeeded including the identification of at least two hospitals of Level Five category in every county which will be equipped with modern diagnostic equipment especially in aspects of health that are critical to Kenyans. We have seen Kenyans lose life because of renal failure, cancer and so on. We have had to do harambees for patients to go to India for medical treatment and so on. This project is trying to ensure that in every county there is good equipment that can provide early detection of diseases like cancer, kidney problems and other diseases troubling our people. He also mentioned the free maternity programme that is on course as supported or supplemented by the efforts of the First Lady in the “Beyond Zero” Campaign.

Mr. Deputy Speaker, Sir, there are many things and I cannot mention all of them. These include more capitation in education, both in primary and secondary, with the aim of making secondary school education in public schools free by 2018. That is the intention. We are on course in terms of that objective.

The Speech by the President was objective and comprehensive because it touched on education, health and devolution. I remember he mentioned that the capitation that the national Government is giving through the sharing of division of revenue is way above the 15 per cent required by the Constitution. Therefore, in spite of the challenges that devolution is facing, that aspect of implementing our Constitution in terms of devolution is way on course.

The President’s Speech was also balanced in terms of bringing out the challenges that the nation is also facing. He mentioned the challenges of insecurity and terrorist attacks. He said that despite greater investment in equipment and personnel, the terrorists continue to pose a national, regional and global challenge to Kenya and our neighbourhood. This is an area that has to be addressed.

The other thing that he brought out in his Speech is the challenge of disunity in our country and the fact that right now, especially with the advent of devolution, we are witnessing a lot of disagreements along ethnic and sub-ethnic lines. That is a great

challenge in terms of achieving our national values and principles in Article 10. Other than the challenges and successes, the President also brought out two other challenges which I want to major on because much of his Speech dwelt on these challenges that he thought must be confronted, head on, if we are to secure our country as a modern prosperous nation, going forward.

The first one is the issue of past gross violations of human rights in our country. This is the first instance where the attention of legislators was caught almost unaware. For the first time, the head of state apologized on behalf of all governments that have been in Kenya since Independence, up to and including his own Government. He said that he offers an official apology to all the people of this country who have been victims of human rights violations and injustices perpetuated by the Government and its agents. For many of us in this country, that was a very bold statement. It is something that must be applauded. It is not easy to give an apology. I have heard some people commenting that sorry is not enough. I agree but saying so, is the first step towards achieving the objectives of truth, justice and reconciliation. To acknowledge that governments have done wrong and to apologize is not something that should be taken lightly.

I want to assure the people of this country that all the countries that have closed a chapter of their dark past have all started with an official acknowledgement that something went wrong: El Salvador, East Timor, Cambodia, Rwanda, South Africa and so on, are some of the countries which took a first step in acknowledging that something did not go right. That is what happened on 26th March, 2015. No president has had the courage to acknowledge that, indeed, there have been human rights violations and injustices in our country.

The President went on to suggest that he would be encouraging the establishment of a fund that can be used to achieve the next step of making sure that justice is done and there is a bit of restorative justice in our country.

Mr. Deputy Speaker, Sir, I remember when Kenya got into trouble with itself in 2007 and January, 2008. Many leaders at that time, including leaders who are looking at me in this House, condemned our country into the hands of the International Criminal Court (ICC) by refusing to believe in a local solution that mixes truth, justice and reconciliation. Some of us at that time were in the academia. We said that the path of retribution would destroy our country. The path of “an eye for an eye” is a concept of justice that only looks at one part of the problem. I still hold the same view today, even as I speak as the Senate Majority Leader in this House, that the future of our country does not lie in how many people we jail or hang. The future lies in three things. All of them have to be backed by a credible full-proof and transparent institutional mechanism.

First and foremost, we need to know the truth. As the holy scriptures say, “you shall know the truth and the truth shall set you free.” Therefore, what the President did was to initiate national dialogue on trying to establish what actually happened in Kenya since Independence. The operative word is “truth”. The moment we know and establish the truth, our country will move towards freedom.

Mr. Deputy Speaker, Sir, the second thing is justice. When we know what happened and what did not go right, we need to right our wrongs. My argument – and I think it is the position that I proudly saw in the Speech and the address of the President – is that if we want a comprehensive package of justice in our country once we know the

truth, that justice must be a mixture of punitive and restorative justice. Therefore, when the dust is settled as it is about to settle on the issue of international criminal trials which some Kenyans thought they could use to settle scores and remove certain people from certain strategic places,---

(Loud consultations)

(A mobile phone rang)

The Deputy Speaker (Sen. Kembi-Gitura): Order Members. Order, Senate Majority Leader.

I have two things to put across. First, the consultations are too high. The other thing is that there is somebody's phone which keeps on ringing as if they are receiving messages. I make a request that you either put your phone on silent mode or you *zima* it completely. I have said this many times. However, I am quite surprised that a Member can still watch his or her phone ringing or messages being sent to them and making noise when such an important Motion is going on. I will remind you again that it is against the courtesy of this House. I want that to be taken seriously.

Sen. Hassan: On a point of order, Mr. Deputy Speaker, Sir. I know that we have all become trendy. You said that we either put our phones on the silent mode or we *zima* them. I would rather you say we put our phones on silent mode or put them off.

(Laughter)

The Deputy Speaker (Sen. Kembi-Gitura): You know your Swahili is much better than mine. Of course, you are right, Sen. Hassan. So, it is important that you take the House seriously. Put your phone on silent mode if you must have it with you.

Sen. (Prof.) Kindiki, please, go on.

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Deputy Speaker, Sir, I was saying that three things will rescue Kenya from the current national and social paralysis. The first one is truth and I had just quoted the scriptures in the Bible; John 8:32. It says that you shall know the truth and the truth shall set you free.

So, the President has initiated a process where as a nation, we can sit down and start establishing what actually happened in a credible way and in a way that inspires confidence within the society. I am saying this because we had failed experiments with the Truth, Justice and Reconciliation project. Even the person who chaired the Commission was a subject of investigation for past human rights violations. I am not saying that the Chairperson of the Commission was the wrong person. What I am saying is that the moment you are involved in a matter as sensitive as this one and people doubt that you are clean, the honest thing would be for such a person to give way so that the national cause takes precedence over personal rights or jobs and positions in the country. We lost the project because even the person chairing the Commission and the Commission itself became embroiled in unnecessary fights.

Mr. Deputy Speaker, Sir, as we initiate the new process of national renewal and the search for a just, peaceful and prosperous nation, we must go back to the drawing

board and look for men or women who can inspire confidence across this nation. When people are appointed, people should not start complaining that that is the person who stole my plot or that is the person who did this or that.

Mr. Deputy Speaker, Sir, we have an opportunity of redesigning the project of national renewal. We should not give up. The fact that we failed in the past project does not mean we cannot restart it again.

Mr. Deputy Speaker, Sir, I am very aware, from my previous studies and research, that all countries that have resolved their past trauma have had to confront the issue of truth, justice and reconciliation comprehensively. That is the kind of work you saw in South Africa because Bishop Desmond Tutu was acceptable by both the oppressors and the victims. He carried out a process that was acceptable. In our case, even the people carrying out the search for truth had questions over their heads.

Mr. Deputy Speaker, Sir, after the truth next is the project of justice. I have argued; justice is not about how many people you lock up. In fact, I am prepared to argue that as we initiate the new dialogue and search for national refreshment, the less people---

(The amber light went up)

Mr. Deputy Speaker, Sir, I do not know how much time I have.

The Deputy Speaker (Sen. Kembi-Gitura): It is on the Order Paper. You have 30 minutes. You now have five minutes to go.

The Senate Majority Leader (Sen. (Prof.) Kindiki): Yes because I have seen some light. I wanted you to clarify. It is okay, I will manage. I just wanted clarification. You know, normally, I do not prolong things.

Mr. Deputy Speaker, Sir, once we establish the truth, we need to do justice. Justice does not mean locking up people. In fact, you achieve much more by taking measures that appear restorative but are even more punitive than taking people to prison. For example, you can bar people from participating in future elections or order them to pay compensation and reparation to their victims. These are measures that do not have very prison-like effects but they yield results.

Mr. Deputy Speaker, Sir, other than the issue of the Truth, Justice and Reconciliation Commission (TJRC), finally, there is the issue of corruption. I know that this is the matter that has taken a lot of interest, because as we sit here and pontificate, the annexure that was tabled to both Houses of Parliament contains names of people in the three arms of Government; the Executive, the Judiciary and the Legislature. It contains names of people in the two levels of Government; national Government and county governments. Allow me to say a few legal issues about that report. First, the President has shown Kenyans that he is willing to look even within his Executive in the fight against corruption and hold everybody individually accountable. This is because corruption is not a corporate crime but an individual crime.

Secondly, the people whose names are in the report have been named as suspects. We must uphold the rule of law and ensure that those people are presumed innocent until proven guilty. Thirdly, I have heard some people saying that this report should have come from the Commission and not the Chief Executive Officer. Given the paralysis in the Ethics and Anti-Corruption Commission (EACC), that report could have as well come

from anywhere. I have heard some people also saying that the President did not have to share the report with Parliament. Read Article 254 of the Constitution. It talks about “published” and “publicised.” Publishing does not necessarily mean through the *Kenya Gazette*. It also means making it public. So, by sharing with this Parliament, the President is saying that he is transparent and wants the country to see what he has received. He wants this House to offer solutions to this problem that has bedeviled our country.

Mr. Deputy Speaker, Sir, finally, the dichotomy between those people who are in the Executive and those who are elected--- I agree that it will be difficult to ask the elected leaders to resign, but we are not talking about resignation, but stepping aside. A middle ground can be identified, especially for the elected leaders who are being investigated in the context of a Committee. It is not your role as a Member for constituency “X” which is being investigated. So, you do not have to resign. It is your role as a Member of a particular committee that is being investigated. You can step aside from that Committee, so that the investigations in that Committee can go on.

We need to soul-search. I know that even Members of this House have been named, but all that this report is saying is that those people are innocent until proven guilty. But it is the role that is being investigated that people are being asked to step aside from and that includes even governors. Stepping aside is not resignation. It is removing yourself from office for the time of the investigation. You do not access your office; simple and clear. So, I see no legal issues here.

Mr. Deputy Speaker, Sir, let me applaud the President of this nation for doing what none of his predecessors have dared to do. The ball now is in the court of this House.

I beg to move and request the Senate Minority Leader, Sen. Wetangula, to second.

The Senate Minority Leader (Sen. Wetangula): Thank you, Mr. Deputy Speaker, Sir. I second the Motion.

On Thursday last week, I am one of those who stood up to applaud the President after he made two very critical statements. The first one was when he publicly apologized on behalf of the Government – current and previous – for atrocities visited on Kenyans in their quest for freedom. That was a very courageous act from a Head of State. What he did not tell Kenyans is that, in fact, that was a recommendation from the TJRC Report and not just his own initiative. So, he should have acknowledged that the TJRC Report actually recommended that the Government tenders an apology and embarks on restorative justice for Kenyans who suffered injustices.

I want to encourage the President to go a step further and ensure that the Kshs10 billion kitty that he mentioned is not selectively administered in certain quarters of the country, to the exclusion of others. This is because in the fight for Independence you remember the famous Mekatilili wa Menza, the woman who was arrested in Malindi, jailed in Rusinga Island and walked all the way from Rusinga Island to Malindi. There are many others including Elijah Masinde of *Dini ya Musambwa*, Koitalel arap Samoei and Lenana. Literally, every part of this country had resistance movements. We want to see that the process of identifying and compensating those who suffered indignities and atrocities is fair and just for all Kenyans.

Mr. Deputy Speaker, Sir, I also applauded the President when he made his Statement on corruption. Let me go back to other things that the President said that I take

issue with. The President said that Kenya is one of the fastest growing economies in the world. This is evidently false and contestable. I do not need to be a statistician to say anymore. The economy of this country is not one of the fastest growing in the world. In fact, World Bank statistics show that among the ten fastest growing economies in the world, about six are African and Kenya is not one of them. It is Ethiopia, Angola and others. So, it is good to imagine that we are one of the fastest growing economies in the world, but it is wrong to make it as if it is a statement of fact. We are not.

Mr. Deputy Speaker, Sir, the President also said that our Gross Domestic Product (GDP) has hit Kshs53.3 billion. Again, this is not true. Our GDP is about Kshs42 billion or Kshs43 billion. With the slump in tourism, it is probably even much less. We would want to see better facts founded on scientific analysis.

Mr. Deputy Speaker, Sir, the President also mentioned the construction of the Standard Gauge Railway (SGR) line, which despite the controversies and corrupt transactions surrounding it, is ongoing. Now that it is ongoing we want to hear from him when this SGR will be extended, all the way through Nakuru, Eldoret, Malaba, Uganda and beyond. Remember that the railway line is the artery of our economy. Uganda is our number one trading partner and the countries west of Uganda, including Rwanda, Burundi and the entire Eastern Congo with a population of close to 60 million people depend on the Port of Mombasa for their external trade. Kenya would do very well if we even invested in extending the railway line to Goma, Bunia and Kisangani, to spur great economic growth and realize a greater GDP. With the railway line done, we will also be able then to ease pressure on our roads, which the President alluded to.

In doing so, I want to encourage this Government and I can assure you that our next Government will do this. We should not follow the beaten path of history by simply following the rail line as it is; I know there is the Lamu Port Southern Sudan-Ethiopia Transport (LAPSSET) that will go through Isiolo to Turkana and South Sudan. We want to see the rail lines that were there before rehabilitated, that is Nairobi- Nanyuki, we want to see light rail running through to Marsabit, to Loiyangalani and to all those places for transport of humans, goods and other services.

It is, in fact, cheaper, if you take the experience of Australia, to have light rails running through all those vast arid and semi arid territories than to build tarmac roads. Those rail lines will do a lot more to spur economic growth in the northern parts of Kenya and parts of Narok, Kajiado and so on.

Mr. Deputy Speaker, Sir, in his Address, the President touched on the issue of inclusivity. Paragraph 46 of his Statement says he is concerned about disruptions that are going on in counties and he named a few of them including Mandera, Marsabit, Tana River, Narok and Embu. Then he goes on to say in paragraph 47 that:-

“I therefore call on all leaders at the county level to be guided by those aspirations and not serve their own narrow self-interest. We must all remember that Kenya is one indivisible nation”

Mr. Deputy Speaker, Sir, I wish that when the President told us in his apology about the atrocities visited on Kenyans in the past, that he was also courageous enough to stand and apologize to Kenyans for entrenching tribalism, exclusivity and narrow partisan interests in appointments to public offices. We have seen, since Jubilee came to power, that the narrow attitude of the President and his Deputy resulting in literally sharing the

country between themselves and their communities. Every appointment where the Cabinet Secretary is from the President's community, the Principal Secretary (PS) is from the Deputy President's community and *vice versa*. We have counted for the last two months, all the appointments that have been done by the State – I do not need to mention names here, eight of them have only come from two communities.

We stand here to tell the country that “*kupinga ukabila si ukabila*”; this is a saying that comes from the Swahili speaking people. We have seen the Government engaging in very divisive public sharing of opportunities. It is important for us to know that exclusivity breeds rebellion. Rebellion can lead to conflict. Countries that have degenerated into conflicts have gone through what the Jubilee regime is practising.

(Sen. Kiraitu stood in his place)

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

The Senate Minority Leader (Sen. Wetangula): You will have an opportunity to speak. Let me say my bit and you will say your bit.

The Deputy Speaker (Sen. Kembi-Gitura): Order, Sen. Wetangula.

Sen. Murungi: On a point of order, Mr. Deputy Speaker, Sir. I do not know why the Senate Minority Leader is panicking. In his opening remarks, the Minority Leader said he rose to second this Motion. The Motion is very clear; that its purpose is to thank His Excellency the President.

(Laughter)

I have been listening to him and he is not thanking the President.

(Sen. (Dr.) Khalwale stood in his Place)

The Deputy Speaker (Sen. Kembi-Gitura): Order, Sen. (Dr.) Khalwale. Sen. Murungi will be heard on his point of order. Sen. Murungi, can you please use your microphone effectively?

Sen. Murungi: Mr. Deputy Speaker, Sir, is the Senate Minority Leader in order to mislead Kenyans and this House that he is seconding the Motion and thanking the President, when he is criticizing and rubbishing what he said?

The Senate Minority Leader (Sen. Wetangula): Mr. Deputy Speaker, Sir, Malcom X said that we have the house nigger and the field nigger.

(Laughter)

Sen. Orendo: I wanted to inform the Senate Minority Leader that he should not worry about what the Senator for Meru is saying because the scripture says that, not all those that say Lord, Lord shall see the Kingdom of God.

(Laughter)

The Senate Minority Leader (Sen. Wetangula): Thank you, Sen. Orengo, and the scripture also says that those who stand on street corners and proclaim their virtuousness--

The Deputy Speaker (Sen. Kembi-Gitura): Order, Sen. Wetangula. You have been informed. Can you proceed?

The Senate Minority Leader (Sen. Wetangula): Mr. Deputy Speaker, Sir, Malcom X talked of the field nigger and the house nigger. The house nigger is identical to the remarks made by the distinguished learned senior to me, Senator of Meru, who when the mana is sick he says "we are sick" and when the mana is hungry he says "we are hungry".

(Sen. Kiraitu rose in his place)

I do not need any information from you.

The Deputy Speaker (Sen. Kembi-Gitura): If he does not want to be informed by you, allow him to proceed.

The Senate Minority Leader (Sen. Wetangula): I am perfectly informed.

The Deputy Speaker (Sen. Kembi-Gitura): Where is Sen. Keter? Is he on a point of order? Sen. Murkomen, what is your point of order?

Sen. Murkomen: On a point of order, Mr. Deputy Speaker Sir. Is it in order for the Senate Minority Leader who holds a very senior position in this House to compare honourable Senators with niggers? Considering that this is a very disparaging term in the modern world, are there niggers in this House?

The Deputy Speaker (Sen. Kembi-Gitura): Order Sen. Murkomen, you must allow the use of figures of speech and such things.

The Senate Minority Leader (Sen. Wetangula): Mr. Deputy Speaker Sir, I knew you would make such a good ruling. I want to finish on that point by saying that the President and his deputy, because they are the presidency, must rise above parochial tribalism and narrow interests. The Constitution is very clear that you cannot exclude Kenyans from participating in public activities, including leadership. It matters not that we are in a multi-party situation and we have coalitions. Even if I was the one in charge of this country, I will not bring myself to a cocoon where everybody I appoint must be from my community and the community of my deputy. That is dangerous, wrong and it is sowing seeds of future dissent, discord and conflicts. Look around; there are countries that have degenerated into an abyss. Why have they gone that way? It is because of young educated people who come into office and start running the country as if they never went to school.

(Laughter)

This is very dangerous. It is very dangerous for the country and for this region, especially when we look around us and see how Somalia went---

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

Sen. Keter: Thank you, Mr. Deputy Speaker, Sir. I did not intend to interrupt my colleague there---

The Deputy Speaker (Sen. Kembi-Gitura): But you have!

Sen. Keter: Is he in order to say “young educated people” do not run the office properly? Could he be direct instead of taking us round in circles?

The Senate Minority Leader (Sen. Wetangula): Mr. Deputy Speaker, Sir, I hope my---

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Wetangula, could I get what you said?

The Senate Minority Leader (Sen. Wetangula): Mr. Deputy Speaker, Sir, I had said “young educated people came to office and started behaving like they did not go to school at all; practicing open tribalism at this day and age.” I can count for you, if you want. For example, if you look at the last seven appointments – and I have no problems with the individuals; I have a problem with those who appointed them. For example, Mr. Kimaiyo leaves the office of Inspector-General of Police and he is appointed to be in charge of the Kenya Airports Authority (KAA), while Mr. Boinett is picked from his village to replace him. Mr. Tanui is appointed to---

The Deputy Speaker (Sen. Kembi-Gitura): What is your point of order, Sen. Njoroge?

The Senate Minority Leader (Sen. Wetangula): Mr. Deputy Speaker, Sir, I am responding to a point of order.

The Deputy Speaker (Sen. Kembi-Gitura): Let me see if those two points of order could be dealt with together.

Proceed, Sen. Njoroge.

Sen. Njoroge: Mr. Deputy Speaker, Sir, could the Senate Minority Leader be a bit clear and name the learned leaders who came into the office and are not doing things the right way? Could he be specific?

The Senate Minority Leader (Sen. Wetangula): Mr. Deputy Speaker, Sir, I bear and take no responsibility for the Member’s limited understanding of the English language---

The Deputy Speaker (Sen. Kembi-Gitura): Order, Sen. Wetangula!

(Laughter)

Order, Members! Sen. Wetangula, there is one thing I am not going to allow as long as I am presiding over this House. There must be decorum and respect. However lowly you may think of a Member, you must treat him or her with decorum. Therefore, I will not allow that kind of language when I am presiding here.

(Applause)

You should treat your colleagues with decorum. Do not---

The Senate Minority Leader (Sen. Wetangula): Mr. Deputy Speaker, Sir, I withdraw and apologize to my very good friend, Sen. Njoroge.

If Sen. Keter wants me to go on, I can go on---

Sen. Keter: Go on!

The Senate Minority Leader (Sen. Wetangula): Mr. Deputy Speaker, Sir, Mr. Kimaiyo leaves the Office of the Inspector-General and goes to head the Kenya Airports Authority (KAA) and Mr. Boinett is picked from his village to replace him. Mr. Tanui is appointed to Konza Mega City; Njiraini's contract is renewed; Ms. Guchu and my friend, Mr. Bett, are appointed to the Judicial Service Commission (JSC). Yes, Mr. Bett is my very close friend. Therefore, I have no problem with him because I have worked and served with him on the Energy Regulatory Board (ERB), which I founded with him. He is a very decent and distinguished man. However, what I am saying is that it is wrong for anybody to embark on a misadventure of that nature, thinking that this country belongs to two communities. There are many other people in this country. If you have any doubt, you wait until CORD comes into power and we will show you how to run a country.

(Applause)

We will show you how to run a balanced country; we will appoint people from everywhere. For avoidance of doubt, I salute *Mzee* Kibaki because under his presidency and my stewardship at the Ministry of Foreign Affairs, he appointed the first Turkana since Independence as an Ambassador.

The Deputy Speaker (Sen. Kembi-Gitura): What is your point of order, Sen. (Prof.) Kindiki?

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Deputy Speaker, Sir, I have tremendous respect for the Seconder of my Motion, but there is something that worries me every time Sen. Wetangula is on the Floor of this House. As much as he is entitled to his opinion, I think he is intentionally and deliberately dividing this country.

Hon. Members: Aaaaah!

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Deputy Speaker, Sir, is he in order to give a selective list of appointees and fail to recognize that Dr. Noah Wekesa, Mr. Chris Okemo, the Director of Immigration and former Speaker, Mr. Kenneth Marende, have been appointed in the recent times? He was talking about recent appointments, but I think he is pursuing a very dangerous ideology. I say so because he is misleading this House and Kenyans that appointments made by the Jubilee Government are tribal. He is out of order.

(Loud consultations)

The Senate Minority Leader (Sen. Wetangula): Mr. Deputy Speaker, Sir, I want to move to my next point. Even primary school children know that President Uhuru and Mr. Ruto are exercising tribalism in this country.

The Deputy Speaker (Sen. Kembi-Gitura): Order, Sen. Wetangula!

The Senate Minority Leader (Sen. Wetangula): Mr. Deputy Speaker, Sir, let me move on to the next point.

The Deputy Speaker (Sen. Kembi-Gitura): Order, Sen. Wetangula! You can hold very strong opinions because it is your right to do so. But how you express them could be

offensive to other people. If they are unparliamentary, I will not entertain them because they will attract many points of order.

It is true that we are discussing the Presidential Address. However, if you referred to Standing Order No.90, you will also realize that there are limits to which you can go. So, I ask you, once again, to be within the rules of the House. Please, respect your colleagues and the Standing Orders of this House.

The Senate Minority Leader (Sen. Wetangula): Mr. Deputy Speaker, Sir, I am contributing in seconding this Motion. We are debating the Speech of the President. It is a Motion to do with the President and his conduct as the President of this country and how he is running this country.

Mr. Deputy Speaker, Sir, let me move on to the next point.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Wetangula, I do not know whether you want to join, by way of trying to enter into an argument with me, but can I go through Standing Order No.90 with you if you wish because it is clear? I am sure you are aware of this Standing Order. There are things you can say and things you cannot say. That is important to note. As long as we understand the parameters, then we shall move on together very easily.

You may proceed.

What is it, Sen. Muthama?

Sen. Muthama: Mr. Deputy Speaker, Sir, will I be in order to say that we are here, debating and discussing the Presidential Speech and what Sen. Wetangula is doing is to touch on and point out the appointments that have been made by the President? Sen. Wetangula has not gone outside that. In fact, he was in the process of saying; "Mr. President did one, two or three." Those are the issues we are supposed to be raising on the Floor of this House.

The Deputy Speaker (Sen. Kembi-Gitura): Listen, Sen. Muthama; I am following the debate. I do not know whether you are equally following it.

Your time will be saved, Sen. Wetangula.

The HANSARD will bear me out that Sen. Wetangula said; and I could almost quote him verbatim:-

"We are discussing the Presidential Debate; we can discuss his personal conduct and what he has done or has not done."

(Sen. Muthama spoke off record)

Do not altercate with me, please. I will be happy if you do not altercate with me because you can always rise on your feet and say what you want to say. Standing Order No.90(1) says as follows:-

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

I am not trying to and I am not going to gag anybody. But when Sen. Wetangula says that we are discussing the Presidential Address and, therefore, we can even discuss his personal conduct, which will be against the rules, that I will not allow. That is the point I am making to him.

The Senate Minority Leader (Sen. Wetangula): Mr. Deputy Speaker, Sir, I do not want to altercation with the Chair; but when the President makes an appointment, it is not a personal conduct. He is appointing people to offices because he is the President. So, I am not discussing his personal conduct as to what he does after 6.00 p.m. I cannot do that and I will not do that. I am not going to discuss his personal conduct as to who his personal friends are. I cannot and I will not do that.

Being a Motion about the President bringing to the nation the values of the country, the state of the nation and what his Government is doing, then we are obligated to touch on the good and the bad issues that he is doing. I have already pointed out the good things that the President said. I am going to the next issue, which I am sure will also leave my distinguished colleague across here smiling. But I will not dip my head in the sand and see, do or hear nothing when we see things going wrong. I want to tell the distinguished Senator for Tharaka-Nithi that when I stand here and lament that things are not going right, I am not speaking as myself. I lead this team here.

(Applause)

I have people out there who expect me to point out some of these things. I can tell you, how Uhuru Kenyatta as the leader of the Opposition used to say things with much stronger language than I am saying. You are not in the opposition, so you will not understand what opposition means.

(Laughter)

We have to keep the Government on its toes. We also have to point out what the Government is doing that is not right. It is important for you to know that the President and his Deputy are people I have worked with. They are my personal friends. However, personal friendship has nothing to do with discharge of public functions and duties.

The Deputy Speaker (Sen. Kembi-Gitura): Order! Let us hear what Sen. Mugo has to say.

Sen. Mugo: On a point of order, Mr. Deputy Speaker, Sir. Is the Senate Minority Leader in order to mislead this House that when the current President was leading the Opposition, he spoke like he did or with stronger terms? We were in that Parliament and we know that he spoke with decorum, respect and not in an abusive manner. He spoke facts, unlike what is happening here.

The Senate Minority Leader (Sen. Wetangula): Mr. Deputy Speaker, Sir, it will be decent for the distinguished nominated Senator to disclose her personal interest before she says that.

(Laughter)

The Deputy Speaker (Sen. Kembi-Gitura): Order, Sen. Wetangula! It is totally up to you, but I insist and remind you, once again, that you have to be fair, reasonable and show civility to your colleagues. When Sen. Mugo makes or raises a point of order, I do not think it is in your place to make the statement that you have made. I think you owe Sen. Mugo an apology.

Hon Senators: Point of order, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. Kembi-Gitura): Order! Sen. Wetangula, you owe Sen. Mugo an apology. She is your colleague and a Senator in this House.

The Senate Minority Leader (Sen. Wetangula): Mr. Deputy Speaker, Sir, if there is a spirit that is attempting to derail my debate, I am willing to leave it to others to say what I am about to say.

The Deputy Speaker (Sen. Kembi-Gitura): I told you that your time would be held.

The Senate Minority Leader (Sen. Wetangula): Mr. Deputy Speaker, Sir, the distinguished nominate Senator from Dagoretti is my good friend. If she feels offended, I am sorry.

Hon. Senators: No, apologise!

The Senate Minority Leader (Sen. Wetangula): Mr. Deputy Speaker, Sir, I withdraw.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Wetangula, you owe Sen. Mugo an apology.

The Senate Minority Leader (Sen. Wetangula): I have just said I am sorry.

Hon. Senators: No!

The Deputy Speaker (Sen. Kembi-Gitura): Order, Members! Sen. Wetangula, I directed that you owe Sen. Mugo an apology.

The Senate Minority Leader (Sen. Wetangula): Mr. Deputy Speaker, Sir, it is the easiest thing to do. My dear sister Beth Mugo, if I have offended you, I am sorry.

Hon. Senators: She is a Senator!

The Senate Minority Leader (Sen. Wetangula): Mr. Deputy Speaker, Sir, corruption---

Sen. (Dr. Khalwale): On a point of order, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. (Dr.) Khalwale, what is your point of order?

Sen. (Dr.) Khalwale: Mr. Deputy Speaker, Sir, the line of debate that the Senate Minority Leader has taken might be repeated by many of us. I would like the Chair to guide us a little on the distinction between the personal conduct of the President and the speech that we are debating. I refer you to Article 10(2)(b) of the Constitution which says:

“The national values and principles of governance include—

(b) human dignity, equity, social justice, inclusiveness, equality, human rights, non-discrimination and protection of the marginalised;”

Mr. Deputy Speaker, Sir, I beg that I conclude. In this speech that we are debating, the President is complying with the provision of the Constitution that he is supposed to report back to the House on how his Government has actually addressed Article 10. So, on the issue of inclusivity, which includes being given an opportunity to

serve in the public service, he has failed and we want to point out to him today. How shall we do it without offending him in his person as not the President, but a human being in the Republic of Kenya?

The Deputy Speaker (Sen. Kembi-Gitura): Sen. (Dr.) Kwalwale, you have raised an important point, but the point I am going to reiterate is that you know the Standing Orders as well as I do. I am referring you again to Standing Order No.90. It is very clear in its terms. It is up to you because when you cross the line, you know that you are crossing the line. That is what I can say at this point in time. I said clearly, and I want to repeat, that it is not my intention, neither is it in my place to gag colleague Senators in what they want to say. However, what they say, must be within our Standing Orders.

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

The Senate Minority Leader (Sen. Wetangula): Mr. Deputy Speaker, Sir, I will take the information.

The Deputy Speaker (Sen. Kembi-Gitura): When will you take information because your time is running out.

Sen. (Dr.) Khalwale: Accept it, Moses!

Sen. Hassan: Mr. Deputy Speaker, Sir. I want to inform Sen. Wetangula pursuant to Article 75 of the Constitution, you are perfectly in order to discuss any State Officer which includes---

The Deputy Speaker (Sen. Kembi-Gitura): Order, Sen. Hassan! Are you informing, Sen. Wetangula, the House or the Speaker? Who are you informing?

Sen. Hassan: I am informing, Sen. Wetangula.

The Deputy Speaker (Sen. Kembi-Gitura): If you are informing Sen. Wetangula, short of saying that he is a more senior lawyer than you are, again, you must remember that you are not going to inform him on matters of law. You can refer to him the law, but you are not going to inform him on issues of law because those are issues that are before us. Draw the distinction, Sen. Hassan.

Sen. Hassan: Mr. Deputy Speaker, Sir, he is totally aware. I am only informing him with respect to the provisions of Article 75. It says: "A State officer shall behave, whether in public and official life, private life, or in association with other persons, that avoid--" It means your conduct, broadly, can be discussed---

The Deputy Speaker (Sen. Kembi-Gitura): Order, Sen. Hassan! Do not debate if you are raising a point of order or a point of information.

Sen. Hassan: Mr. Deputy Speaker, Sir, I have informed Sen. Wetangula of Article 75, that a State Officer can be discussed while sitting to drink in the evening or otherwise.

The Senate Minority Leader (Sen. Wetangula): Thank you, Mr. Deputy Speaker, Sir. As I got my last point---

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

Sen. Ongoro: Thank you, Mr. Deputy Speaker, Sir. I seek clarification from the Speaker because, severally, provisions in the Constitution have been made reference to and on several occasions you have given a ruling referring us to the Standing Orders. I need clarification from you in reference to Article 2(1) of the Constitution which refers to the supremacy of the Constitution. It states:-

“This Constitution is the supreme law of the Republic and binds all persons and all State organs at both levels of government.”

Mr. Deputy Speaker, Sir, I need to be guided. When you are referring us back to the Standing Orders that, then, nullifies any provision and reference we are making to the Constitution. Are we implying that the Standing Orders in this case are becoming supreme to the Constitution?

(Applause)

The Deputy Speaker (Sen. Kembi-Gitura): Let me assure you that there is no law, provision, regulation or otherwise, that is superior to the Constitution. I do not think that I have said that the Standing Orders are superior to the Constitution. The Standing Orders are a product of the Constitution. They are made under the Constitution. I hope that satisfies your need.

The Senate Majority Leader (Sen. Wetangula): As I move to my last point, I want to encourage those who have been restless about my contribution to read paragraph 47 of the President’s Speech and his acknowledgment of what I am talking about.

Mr. Deputy Speaker, Sir, with regard to matters of corruption in this country, when the President talked about this and the steps he intends to take, I joined those who stood up to support him. I have since made statements supporting the war against corruption. This country is drowning in corruption. People in public positions are busy ripping the country apart. We salute the President for making the statement. However, we want him to walk the talk.

I agree with Sen. (Prof.) Kindiki that everybody is innocent until proven guilty. I also agree with him that elected persons do not fall within the same category as appointed persons. That is a very clear altruism in law. However, we do not want a country where the war against corruption will be fought selectively. We want all those mentioned, even if it is me, to walk without being escorted to the Chief Magistrate’s Court to be prosecuted for corruption.

There is one Minister who said that he was ready to take a bullet. We can purchase an AK 47 rifle from one of the counties and lend it to him. There are certain individuals in this country whose names are synonymous with corruption. There are certain office holders in this country whose names are synonymous with corruption. There are certain groupings called the sky, ground and the water teams which are running around the country displaying obscene wealth which we know they have not acquired correctly.

I want the President to make his pronouncement on this. When individuals are roaming around the country contributing to harambees; an average of Kshs5 million to Kshs15 million every weekend, we ask ourselves questions. We brought devolution to mitigate harambees. Harambees feed on corruption. We are aware of people in high places roaming from parastatal to parastatal, terrorising parastatal heads to give them money for harambees. We want the President to rein in on this sky, water and land teams that are busy ravaging and looting the country, literally. They then stand up and people call them *Bw. Maendeleo* when they are displaying stolen money or illegally acquired wealth.

Everybody will tell you that when you go to the Office of the Deputy President and pick a small girl who is a personal assistant and accuse her of taking Kshs100 million and bribing Members of Parliament to save Anne Waiguru, can that girl on her own steal that money? This is punishing the innocent and leaving the real perpetrators of the offences. That little girl cannot access even Kshs1 million in that office. This Report purports that Maryanne Keittany took Kshs100 million and brought to Parliament to bribe Members to save Waiguru. If Anne Waiguru was complicit to this, why is she not in this list? We do not want selective war on corruption. We want everybody who is culpable to be dealt with.

Sen. Njoroge: On a point of order, Mr. Deputy Speaker, Sir. Is it in order for the Senate Minority Leader to mislead the nation and this House that Ms. Maryanne Keittany is accused of giving out Kshs100 million to save Ms. Waiguru? That information is not in this Report.

The Deputy Speaker (Sen. Kembi-Gitura): Order, Sen. Njoroge! You will have a chance to debate.

(Laughter)

The Senate Minority Leader (Sen. Wetangula): Mr. Deputy Speaker, Sir, forgive me for being discourteous to my colleague. He obviously has not read the Report. I am correct that she actually took the money to cause the failure of the impeachment of Ms. Waiguru. Either way, that girl cannot access Kshs100 million in a public Government office on her own. It is not possible.

(Loud consultations)

Give me two minutes to wrap up. Finally, as ---

The Deputy Speaker (Sen. Kembi-Gitura): Order, Sen. Wetangula! Your time is up.

The Senate Minority Leader (Sen. Wetangula): Mr. Deputy Speaker, Sir, I hope that the Chair is not going to participate in debate and let Members air their views freely and fairly unlike in my case.

The Deputy Speaker (Sen. Kembi-Gitura): Order, Sen. Wetangula! I did not understand your final statement. I have not interfered with you at all. I have given you the full leeway and even held your time. I assure the House that regardless of what the Senate Minority Leader would like to think, I pledge that I am going to be fair to all and sundry in this House in their debate.

(Question proposed)

Sen. Billow: Thank you, Mr. Deputy Speaker, Sir. I commend the President specifically on a number of areas in his Speech. With respect, I disagree with the Senate Minority Leader. In terms of economic performance, I agree with the President that we have made significant improvement in the economy. With a growth of nearly 6 per cent, this country is doing pretty well in terms of the economy.

In some of the other areas like the energy sector, there is no doubt that we have also seen tremendous improvement in the past one year in terms of the performance at Olkaria and others where a lot more megawatts have been put on the grid. I agree on the areas of infrastructure development, regional integration, youth procurement and many other areas that his Excellency the President expounded on.

On the area of devolution, I agree with the President that the Government has given support in terms of ensuring that there are funds that go to county governments and other forms of support that have been given in various ways to county governments.

However, in that area of devolution let me look at paragraph 46 of the Speech. I take great exception to the provision of that paragraph, specifically, where the President said that in Narok, Embu, Mandera, Marsabit and Tana River – because Mandera is included, and it is my county – that ethnicity is being used to exclude, divide and manipulate the people. It goes on to say that the aspiration of the people was for grass roots development and not for ethnic balkanization. I disagree and strongly express my reservation and disappointment on that because election is universal suffrage. Any Kenyan can contest the election and the people of Kenya vote.

Mr. Deputy Speaker, Sir, if the people of Kenya vote for the people they want, it is not right for His Excellency the President to say that some people have been excluded. There are many people who vote in this country and I think that would be wrong. In the County Government of Mandera if the President's office had taken time to find out the composition of the county government, particularly with regard to the county executive officers and the chief officers of that county government. So, I believe that statement would be so embarrassing to the President; it would never have appeared here. It would be wrong to suggest that we used ethnicity.

The ethnic conflict in Mandera started in 2010 well before the Constitution was promulgated. It is well known in this country that there were conflicts in 2011 and 2012. How does it come into the issue of devolution? It is clear that there are people who have misadvised the President and Mandera, in particular, we have expressed our concern with regard to the repeated misinformation regarding Mandera in the Office of the President.

Recently, there was the issue of the County Commissioner. We have suffered in that county; over 100 people have died because of terrorism and not the President, the Deputy President or a Cabinet Secretary visited that county up to today. Our schools are shut because there are no teachers. Tens of thousands of pupils do not have teachers in their schools. Our health centres are all shut down. Our economy has collapsed and we cannot carry out construction.

Mr. Deputy Speaker, Sir, instead of highlighting the challenges we are facing as a country, today we are complaining about the travel advisories by the western countries. Officials in this country have advised adversely against travel into Mandera, Wajir or to Garissa. We do not talk about those concerns, but instead we sit here and say that there was exclusion in Mandera County. I take great exception to that.

Going forward, I, however, want to comment on the issue of restorative justice. The past injustices particularly in Wagalla, Mandera and many other parts of this country, people have suffered. We have been asking the governments for many years to apologize for the atrocities committed by public servants in these areas. I appreciate that the President stood up and, on behalf of all those people, apologized. It is a very good

gesture; the modest move to provide for Kshs10 billion to at least address that issue while we await the National Assembly to pass the Truth, Justice and Reconciliation Commission Report.

However, I would really have appreciated if the President made a pledge that under his administration, justice and equity will be observed for all the peoples and all the regions in this country. That pledge is very important so that today you do not apologize and tomorrow your officers are doing the same thing for which you have apologized a few months earlier. We have seen that kind of situation in some parts of this country where people's rights under the Constitution are not being observed, but being trampled upon. I have just given an example of Mandera where people do not feel like they belong to this country. For example, simple basic right like the issuance of identity cards has been suspended for the last two years, for no reason. This is happening in a country that is sovereign and independent.

Mr. Deputy Speaker, Sir, with regard to corruption, on paragraph 101 of this Speech, it is very interesting that His Excellency started off by saying: "I have received a report from the EACC which contains a catalogue of allegations". It is very important that we appreciate that what is contained here is nothing more than a catalogue of allegations. It also says in the next paragraph 101(b) that all those officials in the national and county governments who are adversely mentioned, to step aside. That means that if you have been mentioned in this report, it is enough for you to step aside.

Mr. Deputy Speaker, Sir, as far as I am concerned – and I have gone through the list attached – this list simply shows people whose cases are under investigations or where they have simply commenced. It contains rumours and innuendos. This document will create an opportunity for many people to sue that organization for damages and libel. I will give you examples. On page 15, it talks of Mr. Kazungu Kambi, the Cabinet Secretary for Labour and Social Services. The accusation is that he came out strongly in support of the NSSF Tassia II Project. That is the crime that is listed there. With regard to Mr. Chirchir, the Cabinet Secretary for Energy and Petroleum, he is accused, on page 15, of working to ensure that corrupt deals in the energy sector are successfully executed. How do you accuse somebody that they are ensuring that corrupt deals are happening?

(Sen. Hassan consulted loudly)

The Deputy Speaker (Sen. Kembi-Gitura): Order, Sen. Hassan!

Sen. Billow: Mr. Deputy Speaker, Sir, I will give you another example on page 22 on the Auditor-General's office. It is shocking how it is worded here. He is accused, among other things, of defrauding the World Bank.

(Laughter)

There is also lack of consistency in this document. For example, in one Ministry, the Cabinet Secretary is held accountable for tender irregularities while in another Ministry, it is the procurement director or officer. I will give you the example of the Treasury. The document says that the Procurement Director---

The Deputy Speaker (Sen. Kembi-Gitura): What paragraph are you reading from?

Sen. Billow: I am reading paragraph 15 from page 22 says:-

“Inquiry into allegations of irregularities in the implementations of IFMIS---

The other example that I want to give is the one of Mr. Nduva Muli, the Principal Secretary for Transport on page 16. He is accused of irregular award of tender---

The Deputy Speaker (Sen. Kembi-Gitura): Could you, please, refer to the paragraph?

Sen. Billow: Mr. Deputy Speaker, Sir, it is on paragraph 9 of page 16. It reads:-

“Irregular award of Tender for the Construction of Standard Gauge Railway to China and Bridges by Kenya Railway Corporation involving Kshs320 billion”

It is surprising that this is the same contract that was cleared by the National Assembly, went to court and was cleared. Since my time is limited, I want to say the following on this matter.

Mr. Deputy Speaker, Sir, never before has the President been so tactlessly and unwittingly misled in condemning, unheard, dozens of his top brass in the Government just to pacify political detractors. It is not acceptable. In my view, it is not acceptable for something like this, which has no basis to be published, to be used to ask people to quit on the basis of a report where investigation has just started. It is also impractical to suggest that this can be concluded in 60 days. From January, 2013, on page 2, only 11 cases have been investigated and concluded. But now you want to conclude investigations on 175 cases within 60 days. It does not make sense.

Mr. Deputy Speaker, Sir, lastly, I want to say that due process simply means the following. It means that this Commission has to carry out investigation, complete it and the list goes to the Director of Public Prosecutions (DPP). You cannot ask people who are governors, for instance, who are elected and representing people to vacate their offices on the basis of flimsy reasons we have seen in this report. I do not see the basis for asking Members of Parliament or governors to step aside. Even in the Western countries like the United Kingdom (UK), if you are a Member of Parliament, the only thing you give up is your party post, your position as Minister or any other office you are holding, but you cannot be told to step aside.

Mr. Deputy Speaker, Sir, Section 4 on the Ethics and Integrity Act and read together with Article 79, says that a report from the Commission must be signed by the chairman of the Commission or an authorized person. This report is not signed and must carry a seal of that Commission. Section 19 says that it must carry a seal authenticated by the chairman.

We do not support corruption, but I do not think this is the way to fight it. This, in fact, whoever the advisers of the President are, the intentions is to ridicule him. What it means is that in 60 days, this matter would not have been concluded and the President would be ridiculed by people coming back to their jobs. If the President needs to act, he needs to get rid of the people who advise him on this kind of thing because it is an embarrassment. This list was not meant for the President in the sense in which it was written. You can see the manipulation---

The Deputy Speaker (Sen. Kembi-Gitura): Order, Senator! Your time is up.

Sen. Orendo: Mr. Deputy Speaker, Sir, thank you for giving me this opportunity to contribute to this Motion. I want to say that the day the President made this Speech in the National Assembly, I was the first person to stand up to recognise the fact that what the President was saying had a significance. Later on, I was joined by Sen. (Dr.) Khalwale in giving that standing ovation until the rest of the National Assembly Members and the Senators joined us; those who were there to commend the President for that particular Speech.

I do not want it to be seen that I have changed my position. I have not changed my position. In terms of the Speech that was made by the President, I think this is, probably, in relation to the functions, duties and responsibilities of the President as spelt out in the Constitution; I have not changed my mind. I personally went to see the President and told him that he had done a good job.

Mr. Deputy Speaker, Sir, even going by what happened without going to the details, if this would be showing how well the job was done, there is no time that I have seen more than four Cabinet Secretaries stepping aside at the same time. Having said that, and this is very serious, when things are done for political purposes, they can never be right. This list that is before the Senate today was done for a political purpose.

Mr. Deputy Speaker, Sir, I have a Report here that was done by the Commission; a proper report in relation to the same cases that are being talked about concerning the Presidential Speech, was given to the National Assembly by the Commission. The Report talks about cases that were being investigated by the Commission. However, if you look at the Report that we are being referred to - concerning the Presidential Speech - you will see a world of a difference. Without saying who is right and who is wrong, I understand why Charity Ngilu's name is in one report, but not the other one. I understand why Felix Koskei's name is in one report, but not the other one. I understand why Sen. Orendo's name is in one report, but not the other.

Sen. Keter: On a point of order, Mr. Deputy Speaker, Sir. I am getting confused about what Sen. Orendo is saying. Are there two reports before the Senate? I thought that we are seized of one report. Which other report do we have?

Sen. Orendo: Mr. Deputy Speaker, Sir, I will table the Report. This Report is to the Parliamentary Committee on Justice and Legal Affairs dated 20th February, 2015. In fact, the Commissioners were interrogated on this Report. They have already appeared before the National Assembly on the basis of the Report. The only---

Sen. Wamatangi: On a point of order, Mr. Deputy Speaker, Sir. Given the weight of the allegations of the Report that the hon. Senator is making, would it be in order for the Senator to table the document and make relevance of the debate he is introducing so that we follow him? We are unable to make sense of what the hon. Senator is saying in the absence of us having that document.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Orendo, could I see the document you are referring to?

(Sen. Orendo handed the document to the Deputy Speaker)

(The Deputy Speaker consulted with the Clerks-at-the-Table)

Sen. Orengo, could you, please, approach the Chair?

(Sen. Orengo approached the Chair)

Order, Senators! The document that Sen. Orengo was referring to is a photocopy. It has no ownership, no date and it is not signed. So, it is not admissible in the House and Sen. Orengo understands that.

The Senate Minority Leader (Sen. Wetangula): On a point of order, Mr. Deputy Speaker, Sir. If I may seek your clarification, even the document that we are using has no signature and is not authentic. It is not any different.

The Deputy Speaker (Sen. Kembi-Gitura): Order, Sen. Wetangula!

The Senate Minority Leader (Sen. Wetangula): Mr. Deputy Speaker, Sir, you have given me the Floor.

The Deputy Speaker (Sen. Kembi-Gitura): I have asked you for order.

The Senate Minority Leader (Sen. Wetangula): Mr. Deputy Speaker, Sir, I do not understand this.

The Deputy Speaker (Sen. Kembi-Gitura): Order, Sen. Wetangula! I do not know whether you heard me say that I have conferred with Sen. Orengo and he has accepted the position that I have taken. The document that Sen. Orengo is referring to is a photocopy, has no ownership and is not signed or even dated. Therefore, it is not an acceptable document. If you wish, it should be laid on the Table of the House and then the Speaker will have a chance to look at it and then make a ruling on it. I am not saying that it is not a genuine document. All I am saying is that under our rules, precedent and customs, it is not a document that can be acceptable in the condition that it is in at the moment. That is the position.

Proceed, Sen. Orengo.

Sen. Orengo: Mr. Deputy Speaker, Sir, all I am saying is that in the report that was given to the National Assembly is very divergent position as opposed to the list that the President gave to Parliament. What the President was being persuaded to do was to have a list of names so that some credence would be given to what the President was saying. However, in actual fact, what is contained in that Report that he presented before the House, is something that should have been properly investigated before he could present it.

Mr. Deputy Speaker, Sir, since my time is limited – and I will come to the most serious issues about this – and I am a Member of the Senate and my name has been mentioned, it will be important that my colleagues, the Senators, would understand why a thing like this that affects reputation--- My name has been mentioned on Page 14 in relation to land that is said was irregularly allocated to me. I have got a title deed to this land and I want to lay these documents on the Table. This is land that belonged to my father. It is 0.01 acres. When my father died, it was administered by the public trustee, who transferred this land to my mother, step-mother, me and other siblings. My two step-mothers died and two siblings died. What I simply did was to ask the Commissioner of Lands whether this land could now be allocated to me, since my only surviving siblings, have no objections.

That is what I did and the land has never been allocated to me. I simply made a request. As I speak today, the land has never been allocated to me. I have not seen an acknowledgment from the Commissioner of Lands at that time, that this land had been allocated to me or that he had seen my letter.

Mr. Deputy Speaker, Sir, I am tabling this title deed together with the transfer documents. It was bought in the 1960s and transferred to me and my siblings in 1975. All that is on record. Then there is an allegation that I was “choppered” by the Malvani family between Jinja and Nairobi. This case was reported on the—

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Orengo, please, pass on the documents to the Table; let them be received by the Clerks.

(Sen. Orengo laid the documents on the Table)

Sen. Orengo: I will arrange them together. It shows how the land moved to an Indian family to my father, to myself, to my mother and, finally, to everybody.

I do not know what the offence is that the Malvani family on several occasions has been alleged to have sent a chopper to pick me from Nairobi to Jinja. This report was made in 2012. Up to now, I have not been asked to make a Statement on this. The truth of the matter is, I have never travelled between Jinja and Nairobi on a chopper at all or been in contact with this family on any other basis other than knowing them as being an old Kisumu family. But my accusers can get the manifest and see whether there is anytime I travelled between Nairobi and Jinja and back on a chopper. This is a blatant lie. If it was true, anyway, what is wrong with being picked by a friend in a chopper?

There is another accusation here that there was a land deal in which I and Mr. Aladwa were paid some money. I can tell you that this is not true. I have never been called to make a statement in regard to this issue. In fact, when I was the Minister for Lands, there were many of such cases, that people would go to the police and say “we did this transaction and there is money which seemed to have been paid to you through a lawyer.” I used to tell the police all the time that they arrest that person who alleged that they have paid a bribe before talking to me.

I can tell you that, Orengo, who has come to this House to move a Motion of no confidence on the Republic of Kenya, move a Motion of Censure of the Speaker of the National Assembly - I cannot belittle myself and engage in this kind of activity. This investigation started in October 2012, but up to now, I have not been called. What Sen. Billow was saying was the correct procedure. If the President gets information, I will not stand in the way of the President getting information; he can get information from intelligence agencies, not just Kenyans ones, but also from around the world. It is his duty to take that information to the appropriate agencies to see whether there were prosecutable cases or not. Otherwise, this is a big fraud on the people of Kenya, trying to tell people that there are people who have committed high crimes of fraud and so on, yet there is nothing.

Mr. Deputy Speaker Sir, this is a hollow Report and it was supposed to serve only political purposes. For us to deal with this animal called corruption, extraordinary measures must be taken, including by the President.

We need to involve the entire society, the whole organs of Government, the people as a whole and even the Opposition so that we can fight this animal called corruption. The Jubilee Government is not going to fight corruption if the information they are going to use is this kind of rumour and gossip. The President should never be a whistle blower; when he receives information, he must make sure that it is properly investigated. It will be a great embarrassment when, at the end of the day, it turns out that out of the 175 names that were in this list, only five people end up in court. It will be a great embarrassment. Next time, we should try and do things in a better way.

Mr. Deputy Speaker, Sir, what was happening, as far as I am concerned, was a result of the in-fighting within the Ethics and Anti-Corruption Commission (EACC). The three Commissioners were going in one direction and the Chief Executive Officer (CEO) was going in a different direction. They were fighting for the President's attention. Remember that there were even two Commissioners who had written a letter to the President and, later on, retracted it. So, if you want to have proper investigations, I can tell you that the place to begin is with the Commission itself.

(Applause)

Mr. Deputy Speaker, Sir, I can tell you that some of these agencies know that naming politicians and leaders is about everything else they should do, because we are so vulnerable in the eyes of the public. Right now, in fact, when this list came out after congratulating the Speaker, when I heard that my name was on this list, I called the Press, took my leader here, Sen. Wetangula, Sen. (Dr.) Khalwale and others and said "I have to resign." This is because when my wife had a disagreement in the Truth, Justice and Reconciliation Commission (TJRC), I encouraged her to resign. So, I said that I had no alternative, but to resign. But luckily, my colleagues persuaded me not to resign. Now I can see that if I had resigned on a thing like this and when I considered the consequences of resigning, just because you had been mentioned here---

(Applause)

We were still having that debate of whether I should resign or not until 2.00 a.m. in the morning,

Mr. Deputy Speaker, Sir, I think this should begin with Mr. Matemu and his lot; they should go. Secondly, the President should go even higher if he really wants to tackle corruption. There are some sacred cows – and I think we have been talking about his number two for too long. Even within his own circle, he should leave nobody.

(Applause)

We can understand why he is defending his number two; let us leave his number two a little bit aside because everybody is now fond of mentioning him. But right around the President, if I can see evidence that he is ready to tackle corruption the way it should be, then I shall never stand and say that I am complaining on anything because I know justice

will be done. That justice requires that even the President is accountable, like Sen. (Dr.) Khalwale demonstrated.

Mr. Deputy Speaker, Sir, this could have been a good beginning; it is not too late and we should, in fact, look at this list critically. Everybody in this list, including myself, the only way I can be absolved is by being fully investigated and the truth be known. I want the people of Siaya to know that their man whom they have trusted for nearly 30 years could be guilty for such an offence.

(Applause)

That should apply to everybody, including the highest office in the land.

Mr. Deputy Speaker, Sir, with those few remarks, let me say that the address is good in the sense that it touches on a subject which is important to this nation, but it was a bit of a fraud because of this list. Therefore, I find it very difficult to support it.

Thank you, Mr. Deputy Speaker, Sir.

ADJOURNMENT

The Deputy Speaker (Sen. Kembi-Gitura): Order, Members! It is now 12.30 p.m., and the House will stand adjourned until today at 2.30 p.m.

The Senate rose at 12.30 p.m.