

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Wednesday, 12th November, 2014

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

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

PRAYERS

PAPER LAID

CRA RECOMMENDATIONS ON REVENUE SHARING FORMULA FOR 2015 – 2018

Sen. Mositet: Mr. Speaker, Sir, I beg to lay the following Paper on the Table of the Senate today, Wednesday, 12th November, 2014:-

Commission on Revenue Allocation recommendations on the criteria for sharing revenue among counties for the financial years 2015/2016, 2016/2017, 2017/2018.

Thank you, Mr. Speaker, Sir.

(Sen. Mositet laid the document on the Table)

STATEMENTS

EFFECTS OF INSECURITY ON TOURISM IN THE COASTAL REGION

Sen. (Dr.) Zani: Mr. Speaker, Sir, I sought a Statement from the Committee on Finance, Commerce and Budget on 29th October, 2014, on insecurity at the coast and its adverse effects, especially on tourism. That Statement is due today.

The Speaker (Hon. Ethuro): Was the Statement directed to the Committee on Finance, Commerce and Budget or the Committee on National Security and Foreign Relations?

Order! It is clear it was the Committee on Finance, Commerce and Budget. Is it not?

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Sen. (Dr.) Zani: Mr. Speaker, Sir, initially, it had been referred to the Committee on Labour and Social Welfare because it sought to look at the numbers in terms of employment. However, when it came to this House, we were advised by the Speaker then that it was not appropriate to be dealt with by the Committee on Finance, Commerce and Budget. There were some questions that needed to be dealt with by the Committee on Labour and Social Welfare. The agreement we made was that the two committees would liaise but the responsibility would be on the Chairperson of the Committee on Finance, Commerce and Budget.

The speaker (Hon. Ethuro): Is the Chairperson Committee on Finance, Commerce and Budget here? Give the microphone to Sen. Mositet.

Sen. Mositet: Mr. Speaker, Sir, I agree with Sen. (Dr.) Zani. Our Chairperson, Sen. Billow, had agreed that the Committee on Finance, Commerce and Budget would look into the answer to her Statement. However, I request that since we have not discussed about it yet, with the Committee on Labour and Social Welfare, we be given one more week.

Sen. Ong'era: Mr. Speaker, Sir, last Wednesday, I sought a Statement regarding the state of insecurity in Kapedo. I was assured that Statement from the Chairman of the Committee on Security and Foreign Relations would be presented to the House today.

The Speaker (Hon. Ethuro): We will come to that Statement. Let us first dispose of this one by Sen. (Dr.) Zani.

Sen. (Dr.) Zani, the Committee is asking for another one week.

Sen. (Dr.) Zani: Much obliged, Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): Although you have agreed, I thought you were going to resist because I have the HANSARD and the Chairman said: "Two weeks to be precise" when the Deputy Speaker referred the matter to the Committee. I did not mind if they asked for more time, when you use words like "two weeks to be precise", the degree of accuracy there is very high. Anyway, Vice Chairperson, you have one more week.

Sen. Mositet, it is not sufficient to tell the House that you have not discussed the matter with another committee. That is why you were given the two weeks. In one week's time, bring the statement.

(Statement deferred)

Let us proceed. Chairman Committee on Finance, Commerce and Budget, if you may respond to the Statement by Sen. Ong'era.

Hon. Senators: It is National Security and Foreign Relations.

The Speaker (Hon. Ethuro): Sorry. In the first statement, both of you were up. I wondered whether you had assumed another title of the Chairman of the Committee on Finance, Commerce and Budget.

Proceed, Sen. Haji.

RIISING INSECURITY IN THE COUNTRY FOLLOWING
AMBUSH OF APS AT KAPEDO BY BANDITS AND
ATTACK ON NYALI ARMY BARRACKS

Sen. Haji: Mr. Speaker, Sir, it was the wish of the House that this Statement should be presented today. Unfortunately, I am not able to do so. I have been on the Clerk of the Committee since yesterday. He has not been able to get the Statement because the Minister and all the officers who are supposed to have given the information are away out the country. We want your indulgence to be given more time for us to issue the Statement.

Sen. Ong'era: Mr. Speaker, Sir, I understand the difficulties the Chairman is experiencing in getting this Statement. However, Parliament is Parliament. When we ask for a statement, we demand that we are given the answer. Bearing the difficulties, insecurity and the issues that are facing Kapedo, we needed to get an urgent answer. It is not enough to be told that these officers are out of the country. Parliamentary business must go on. This is a digital Government, so they claim!

The Speaker (Hon. Ethuro): Indeed, I could not agree more with the Senator. When people travel, presumably, they do not carry their offices with them.

Secondly, this is a digital Government. They need to demonstrate this because with these days of mobile telephony, email, *Whatsup*, *Facebook*, *Skype* and *Twitter*, they should be able to communicate.

Sen. Haji: Mr. Speaker, Sir, you are quite right. However, if I could be appointed to that office, I can assure you the answers will be given immediately. However, for now I depend on other people to give me the answers to bring to the House. The House should bear that in mind.

The Speaker (Hon. Ethuro): Are you giving any indication? How long do you need?

Sen. Haji: One more week, Mr. Speaker, Sir.

(Statement deferred)

Sen. Madzayo: On a point of order, Mr. Speaker, Sir. I had a Statement---

The Speaker (Hon. Ethuro): Order, Senator. I advised yesterday that if you have a request, because we are already on the Order on Statements, then you put it under "requests." The "intervention" is where you have a point of order on the matter before the Floor for this particular sitting. So, if you have a request, you will put it under "requests".

Yes, Sen. Wangari Martha.

DESTRUCTION OF INSULIN MEANT FOR
CHILDREN WITH DIABETES

Sen. Wangari: Mr. Speaker, Sir, on 1st October, 2014, I sought a Statement from the Chairperson of the Committee on Health on the destruction of insulin. The Statement was referred to 21st October, 2014 then 27th October, 2014 until last week when I was assured it will be issued today. I am still waiting for the Statement. That matter is long overdue.

The Speaker (Hon. Ethuro): Vice Chairperson, Committee on Health, what is your response?

Sen. Kittony: Mr. Speaker, Sir, indeed, we agreed as a Committee to provide the answer today. However, up to now, we have not received any communication from the Ministry. In spite of trying to get that information, it has not come to our Committee. I am afraid we still have to hold on and wait for the communication from the Ministry.

The Speaker (Hon. Ethuro): Surely, you cannot just be at the mercy of the Ministry, especially after you have given them ample time.

Sen. Kittony: Mr. Speaker, Sir, we communicate and we are still waiting for the communication to get back to us.

Sen. Wangari: Mr. Speaker, Sir, this question has had very many inconsistencies. I had raised this issue two weeks ago and one of the Members had said the answer is with the Chair. When we came the following week, it was not. Last week, it was clear that the Ministry has already done a response. The only response that we were waiting for was from the Kenya Revenue Authority (KRA) which is different. That was given by Sen. (Prof.) Lesan as a Member of the Committee. The response from the Cabinet Secretary was already with the Committee. The response we are waiting for apparently was supposed to be that of KRA. These inconsistencies need to be cleared. We need to know where we stand because a month has gone by and we are almost going to another half of November.

The Speaker (Hon. Ethuro): Vice Chairperson, which is which? The KRA or the one from the Ministry?

Sen. Kittony: I do not understand what she is asking. If she already knows there is a response, then she is comfortable.

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

Sen. Kittony: I mean it, Mr. Speaker, Sir. She seems to be informed. I am not informed myself. I am saying that we are still waiting for the response from the Ministry.

The Senate Minority Leader (Sen. Wetangula): On a point of order, Mr. Speaker, Sir. Are you satisfied with the arrogance being displayed by the Vice Chairperson of the Committee turning to a questioner and saying: "You have the answer, so you do not need to ask"? We know that a week or two ago, this matter came to the Floor. It generated a lot of interest including the Deputy Speaker joining in and you directed that they have to bring more information. After we were told the Chairman had

the answer, then it turned out there was no answer. The House cannot be held at ransom by committees that are not working. We need to get answers, particularly to this question where drugs that were meant to cure people who are terminally ill have been destroyed.

Sen. Kittony: Mr. Speaker, Sir, I totally disagree that I portrayed any arrogance. I simply said; if the Senator is asking that question and she seems to be aware, then she knows exactly where the question is. But as far as our committee, which is a very hardworking one, is concerned, we have not received the response from the Ministry. That is my stand and it is not arrogance. I am just stating this clearly.

The Speaker (Hon. Ethuro): I agree with you, you may not be arrogant, but others perceive you to be arrogant.

Sen. Kittony: Unfortunately, that is how I am made.

The Speaker (Hon. Ethuro): Order, Senator. The most important issue is what your response was to the observation by Sen. Wangari that, already, there was a response from one source and another one was being awaited. The fact that she was aware that there is a communication does not mean that she knows the content. It does not deny the Committee the opportunity to come and bring it to the Floor because this is where we prosecute the business, not in the corridors.

Sen. Wangari: Mr. Speaker, Sir, it is very unfortunate that we are getting such a response from the leadership of the Committee because I did not get this information from the corridors. The information was on the Floor of this House last week when the Speaker directed that the Statement be brought this week. The Vice Chairperson was present and it was given by a Member of the Committee. I was hoping that it would have been a build-up of yester week's response and not going back to the beginning. Then it means that the Committee has nothing at all.

Mr. Speaker, Sir, I request that you guide us because there is a statement that had come from the Ministry. Can we first get the status of whether that is still there? Has the KRA responded? We are talking about drugs meant for children with Type 2 diabetes. It is not a joke and it is also not an easy matter as it is portrayed to be.

Sen. Obure: On a point of order, Mr. Speaker, Sir. I have sat here listening to the exchanges this afternoon in respect to the issue of statements sought from the various Ministries. Some of the questions are very important because they relate to the lives and welfare of our citizens, some to do with security matters, economic issues of tourism, drugs, and so on.

Mr. Speaker, Sir, are you satisfied that the Ministries concerned have the right attitude in terms of giving answers? Information is readily available in the Ministries on some of these issues. Are you satisfied that this is the way we are going to go on in this House?

The Speaker (Hon. Ethuro): Of course, I am completely dissatisfied. I am even dissatisfied that the Committee does not seem to see the sense of urgency. I have copies of all correspondence in terms of the HANSARD from the beginning of this request. Except, Sen. Wangari, I have actually confirmed that the Chairman of the Committee,

Sen. (Dr.) Kuti confirmed that they had not gotten any response even from the Ministry. They just said they were considering the matter that very morning, they had sent out letters and they were sending the clerk to take the letter. So, Sen. Kittony may be right, but she needs to demonstrate that.

Sen. Kittony, the Committee promised that you would summon the Cabinet Secretary in the intervening period. At least update us on that one.

Sen. Kittony: Mr. Speaker, Sir, we will try again, maybe, on Wednesday. We have Monday and Tuesday to find out whether we can get that response.

The Speaker (Hon. Ethuro): Today is Wednesday. We give you up to Tuesday, next week. You either bring the response or table the Cabinet Secretary. We need something.

Next statement, Sen. (Prof.) Lesan.

Sen. (Prof.) Lesan: Yesterday, I sought a statement regarding the tea industry. We were promised that at 2.00 p.m. today, we would get a response from the Chairman of the Committee on Agriculture, Livestock and Fisheries. I think the Chairman is here and he could give us the answer.

The Speaker (Hon. Ethuro): Members, I have previously advised that when it comes to Statements, let us first dispose the requests then we go the responses and we can do the reminders if there are any that are outstanding. That way, we will make better use of our time.

Let me have the fresh requests first and then I will come to the responses. Reminders will be last after the responses so that we can determine whether somebody is there to respond or not.

Yes, Sen. Melly.

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

Sen. Melly: Mr. Speaker, Sir, I rise to seek a Statement from the Chairman of the Committee on Agriculture, Livestock and Fisheries regarding the closing down of the National Cereals and Produce Board (NCPB) silos in Uasin Gishu County.

In the statement, the Chairman should:-

(1) Explain when the NCPB silos will be opened to allow farmers to deliver and sell their maize produce to the Board.

(2) State the price at which the Board will purchase the maize from the farmers.

Sen. (Dr.) Machage: On a point of order, Mr. Speaker, Sir. The issue raised by Sen. Melly is very significant not only to his area of jurisdiction but also to Migori County where the maize stores have remained closed despite the bumper harvest and rotting of maize in the villages. The NCPB is not buying any maize from the farmers hence giving a situation of middlemen to exploit farmers.

I request, if I am in order, that, that concern is made as an addendum to the request sought by Sen. Melly.

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

Sen. Ong'era: Mr. Speaker, Sir, the Statement that has been sought by Sen. Melly is a very important one. I want to add to that Statement that, if the Chairman could also inform us whether the poor, hardworking, ill paid farmers will be paid first or it is the brokers who will be paid first.

The Speaker (Hon. Ethuro): Chairman, Committee on Agriculture, Livestock and Fisheries, what is your response to this?

Sen. Murungi: Mr. Speaker, Sir, Sen. (Prof.) Lesan---

The Speaker (Hon. Ethuro): Order, Sen. Murungi. Before you respond to that, there is a request that has just been put by Sen. Isaac Melly. We will come back to you on the issue of Sen. (Prof.) Lesan.

Sen. Murungi: Mr. Speaker, Sir, we are getting problems getting prompt responses from the Ministry. Could we be given two weeks to respond?

The Speaker (Hon. Ethuro): Two weeks is fine.

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

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

Sen. Melly: Mr. Speaker, Sir, I want to make a request to the Chairman of the Committee on Agriculture, Livestock and Fisheries that as we talk today, most farmers in the country, not just Uasin Gishu County, have harvested their maize. The challenge we have is that they do not have a place to store their produce as they await the National Cereals and Produce Board (NCPB) to open their doors. It is so urgent that if we do not do it in a week's time, our farmers may lose their produce because as we talk now, their produce is outside. I request the Chairman of the Committee on Agriculture, Livestock and Fisheries to provide the answer by Tuesday next week.

The Speaker (Hon. Ethuro): Chairman of the Committee on Agriculture, Livestock and Fisheries.

Sen. Murungi: Mr. Speaker, Sir, the Committee is actually aware of the crisis that the maize farmers are facing. In our meeting today, we decided to request the Cabinet Secretary (CS) for Agriculture, Livestock and Fisheries to appear before the Committee on Wednesday next week so that we raise issues regarding the purchase of maize from farmers. However, we have not got a response because the request was only sent today. We have not got any confirmation whether the CS will appear or not.

However, Mr. Speaker, Sir, to give a formal answer to the House, I request that we be given two weeks so that we meet the CS. Thereafter, we will get a written response from his Office, then we will respond to the Hon. Senator. We are aware of the urgency of the matter and that is why we requested that the CS appears before us on Wednesday.

The Speaker (Hon. Ethuro): I think two weeks is reasonable and since, Chair, you have heard the sentiments from the Senators; if you can get the response sooner, feel at liberty to bring it forward.

We are done with the requests, so we will go to the responses.
Sen. Murungi, Chair, Committee on Agriculture, Livestock and Fisheries.

STATUS OF BONUS PAYMENT TO SMALL-SCALE
TEA FARMERS UNDER KTDA

Sen. Murungi: Thank you, Mr. Speaker, Sir. The Senator for Bomet County, Sen. (Prof) Lesan, requested a response from us in the following statement. He needed a response on the status of the second payment of the proceeds from the sale of green tea, commonly known as the “bonus”.

Number two, on the e-trade, which is now an accepted mode of trading in auctions internationally. Three, he wanted the Committee to indicate the number of directors in all the 66 tea factories, showing their total emoluments for the year 2012/2013.

Mr. Speaker, Sir, we have contacted the CS for Agriculture, Livestock and Fisheries and we wish to give the following response.

Regarding question number one, we would like to respond as follows:

The mini bonus is the interim second payment which is based on six months crop deliveries of tea. The directors of the factories could resolve to pay a mini bonus that ranges from zero to Kshs5 per kilogramme of green tea. The resolution to pay the mini bonus is a decision of each individual factory and is largely guided by a combination of the following factors:

1. Performance and cash flows of the respective factories at the time of the payment;
2. The factory tradition and precedence as approved by the shareholders of each tea factory; and,
3. Kisii and Nyamira resolved to stop paying mini bonuses in 2008 so as to maximize what is payable to growers during the final bonus payout.

Regarding second question, which is on the e-trade at the auction, the Mombasa Tea Auction is run and managed by the East Africa Tea Traders Association (EATTA). Any initiative at the auction will be spearheaded by the EATTA in consultation with other stakeholders such as producers, buyers, brokers, packers, well men and blenders of tea.

The Kenya Tea Development Agency (KTDA) has taken a hind row in adoption of electronic billboard system through which it has brought efficiency at the auction especially in tea tracking, prompt payments and credit mitigation. In partnership with commercial banks, the KTDA has developed a mass payment system that ensures over 600,000 farmers in this country receive their payments, which can be processed even within a day.

Mr. Speaker, Sir, on the third question, which is on the number of directors and their emoluments in 2012/2013, there are 54 parent companies each with seven directors who were elected by shareholders. Each of the seven directors is entitled to an annual

gross emolument of Kshs161,268 per year. This is paid out at a quarterly gross of Kshs40,317. This totals to a gross of KShs1,128,876 per factory for the 54 company factories for the Financial Year 2012/2013.

Thank you Mr. Speaker, Sir.

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

Sen. (Prof.) Lesan: Thank you, Mr. Speaker, Sir. First of all, I thank the Chairman of the Committee on Agriculture, Livestock and Fisheries for the response that he has brought to the House. However, I am completely not satisfied with the answer.

First, this is because I did not ask in any of my questions – which I put forward – anything to do with mini bonus. I noticed the first question is dealing with mini bonuses but I never mentioned anything to do with that since it was not relevant in this case. I asked for the entire total second payment for the farmers, which is the biggest issue in the country at the moment, as regards the payments for farmers.

Two, Mr. Speaker, Sir, the rest of the answer which has been given does not have any relevance to what I had asked. Therefore, it does not answer to the very needy questions that I had asked, in particular, with regard to the directors of the company. There are 66 tea factories and each one of the agencies that manage them should have seven directors as per the regulations of KTDA.

Mr. Speaker, Sir, I am aware that the 12 satellite factories which are indicated in this letter, seven of them are in Bomet and Kericho Counties. As far as I know ---

The Speaker (Hon. Ethuro): Senator, do you want to seek any clarifications?

Sen. (Prof.) Lesan: Mr. Speaker, Sir, I want a clarification on whether there are any directors who are representing satellite factories. Secondly, I would also like to know whether the regulations governing the election of directors were followed as regards the new established factories which have been nicknamed “satellites.” They are, indeed, part of the tea industry and complete companies that should operate on their own. I, therefore, would like to know why they are not represented by their directors.

I have just received this reply. There are many other things which I am not satisfied about. However, I will interrogate the report. I will read it further and if I get another opportunity, I will ask more substantive and detailed questions with regard to the answer that has been given.

Sen. Obure: Thank you for the opportunity. I know that tea farmers, all over the country, including the Chairmen of County Tea Boards have been given a raw deal. They are a dissatisfied group. I also know that the Chairperson of the Committee on Agriculture, Livestock and Fisheries, Sen. Murungi, took the initiative to invite all stakeholders to a meeting recently. These matters were discussed exhaustively. I was wondering when the Chairperson would bring the report of that meeting for debate in this Chamber.

Sen. Murungi: Thank you Mr. Speaker, Sir. The Kenya Tea Development Agency (KTDA) recognizes only 54 fully fledged tea factories and for which information they have given regarding emoluments of directors.

From the information I have, satellite factories are not considered to be separate legal entities, completely separate from their parent companies. That is why there is no information regarding the emoluments of the directors in the companies. With regard to the regulation regarding election of directors after the satellite companies fulfill certain conditions, they will be fully fledged tea factories with separate identities. The regulations regarding the elections will be applied at that particular time.

I share the concern of the two Senators regarding the disappointment and frustration of tea farmers in the country especially because of the low bonus payments across the country. I am aware that tea factories in Kisii, especially, pay farmers at very low rates; I think the lowest in the Republic, at Kshs8 per kilogramme. Even in my own region; which is supposed to be doing very well, we are only receiving half of the bonus that we were paid last year.

The Imenti Tea Factory which is top in the country receives Kshs26 per kilogramme down from Kshs42 per kilogramme last year. It is as a result of these frustrations and numerous complaints and petitions that we came before this House as a Committee and requested for your authority to convene a national tea conference in which we invited all tea stakeholders; the KTDA, the Cabinet Secretary for Agriculture and his team, tea brokers, representatives of tea farmers, Senators, Governors and Members of the National Assembly. We came up with a very comprehensive analysis of all the issues facing the tea industry. My Committee is in the process of compiling the report which we will bring to this House for deliberation and charting the way forward on the tea industry.

One of the very key issues we are pursuing as a Committee is the announcement by the Cabinet Secretary to the effect that the Government is considering a mechanism of stabilising the prices of tea especially in cases of market collapse like what we have now. I will be calling upon the Senators to help us firm up the proposals and reduce them into policy and legal reforms that will benefit tea farmers and restructure the industry in a manner that does not include cartels and other intrusions that have conflicts of interest which are detrimental for farmers. So, we are asking Senators to bear with us. We will bring the report to this House in the next two weeks.

The Speaker (Hon. Ethuro): Let us have the next Statement from Sen. Madzayo.

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

The Speaker (Hon. Ethuro): Mr. Karaba, the Chairperson has said that he has a comprehensive report. I am sure that some of the issues you have will be sorted out then.

Sen. Karaba: On a point of order, Mr. Speaker, Sir. He has not covered the issue of fertiliser, which I had raised earlier. The issue is that there is fraudulent or scandalous under weighing of fertilizer. Farmers are getting the bags at 45 kilogrammes instead of 50

kilogrammes which they pay for. The Chairman should tell us what the Committee is doing so that we can save farmers from further pecuniary embarrassment.

The Speaker (Hon. Ethuro): Sen. Kembi-Gitura, do it briefly as Sen. Karaba.

Well done, Sen. Karaba, for making a brief intervention.

Sen. Kembi-Gitura: On a point of order, Mr. Speaker, Sir. I have great respect for Sen. Murungi for the way he is running the Committee on Agriculture, Livestock and Fisheries. It is very admirable because he has taken real charge and interest in it. I am looking forward to seeing the report he is compiling pursuant to the stakeholders meeting that we had.

The only thing I would like to ask Sen. Murungi is whether or not the petitions that have come from the counties, like the one for Murang'a, will be answered specifically as it required by our own Standing Orders or whether the petitioners will be called to give evidence or adduce issues they may have since that is the requirement of the law; our own Standing Orders. A petition must be answered within 60 days from the date it was sought in the House. The one I sought for Murang'a is now going to that period. I do not know whether people have been asked to come and appear before the Committee.

Sen. Murungi: Thank you, Mr. Speaker, Sir. I have not specifically addressed the issue of fertiliser because it was not part of the Statement requested by Sen. (Prof) Lesan. I will need more time to study it. However, since the report we will bring to the House covers broad ranging issues touching the entire tea sector, I request our brother, Sen. Karaba, to raise his issues in the process of the discussion of that report. This is a very comprehensive report.

Regarding the issue raised by the Deputy Speaker, the Senator for Murang'a, indeed, my Committee considered that petition this morning. Initially, we thought that it would be covered by the general report. However, the Standing Orders require that we respond in a specific manner to every petition that we receive. We decided to give a 14 day notice to the petitioner. We are also requesting the Senator to appear before us next Wednesday when the petitioners will be here. We have also invited the KTDA management and the management of the Makomboki Tea Factory so that we address the issues raised by the petitioner and bring a report to this House as required by the Standing Orders. The matter is being addressed in that manner.

The Speaker (Hon. Ethuro): The next Statement is from Sen. Madzayo.

DISQUALIFICATION OF MR. B. MBEJA FROM
CHIEF ENGINEER RECRUITMENT AT MINISTRY
OF TRANSPORT AND INFRASTRUCTURE

Sen. Madzayo: Bw. Spika, majuma matatu yaliyopita, niliuliza swali kwa Mwenyekiti wa Kamati ya Barabara na Uchukuzi. Niliuliza swali kulingana na kile cheo kilichotangazwa cha *chief mechanical engineer*, na kwamba Bw. Beja alikuwa mmoja wa

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wale watu waliofanya mtihani na akaibuka kwamba yeye ndiye aliyekuwa na *qualifications* za hali ya juu. Katika mtihani huo, yeye ndiye aliyekuwa wa kwanza. Lakini, Waziri wa Uchukuzi na Miundo Msingi alichagua mtu mwingine aliyekuwa wa nne. Swali hilo tulilouliza hapa majuma matatu yaliyopita kwa Mwenyekiti wa Kamati ya Barabara na Uchukuzi, hatujapata jawabu mpaka sasa. Ninataka kujua kama jawabu hilo linaweza kupatikana, na litapatikana lini? Ama suala hilo linaweza kujibiwa siku gani?

Asante Bw. Spika.

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

The Speaker (Hon. Ethuro): Is the Chair, Vice-Chair or Member of the Committee in the House?

Ama Kiswahili kimewashinda?

Sen. Sijeny: No, do I have to respond in Swahili?

The Speaker (Hon. Ethuro): Sen. Sijeny.

Sen. Sijeny: Mr. Speaker, Sir, I was of the opinion that the last time we talked, we were to have a retreat and that is what we have been pursuing with the Cabinet Secretary for Transport and Infrastructure. The Senators who attended the Committee meeting requested for that and the Cabinet Secretary agreed. All the other issues were supposed to be articulated during the meeting. However, if the Senator requires an answer before that, because we are working on a date and I have been following it up, I would request for at least one week because I know a few Committee Members are meeting the Cabinet Secretary on Tuesday next week. We could follow up on that issue.

The Speaker (Hon. Ethuro): Let me guide the House. The retreat should deal with broad matters, but if you look at the Statement sought by Sen. Madzayo, there are quite specific matters which I think we should interrogate in the normal manner. What you are requesting should be sufficient for purposes of Sen. Madzayo. So, in one week's time, you respond to that one as you plan the other things.

Sen. (Prof.) Lonyangapuo.

DEPLOYMENT OF THE KENYA DEFENCE FORCES (KDF)
IN TIATY CONSTITUENCY; BARINGO COUNTY

Sen. (Prof.) Lonyangapuo: Mr. Speaker, Sir, last Wednesday, 29th of October, 2014, I sought a Statement from the Chairperson of the Standing Committee on National Security and Foreign Relations regarding the operation taking place in Baringo County. There was a specific question I sought, why the Government security agents were destroying people's property. The Vice-Chairperson was here and she requested for one week, which is today, that the answer will be given and she is seated here. I would like to get the answer.

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Thank you.

The Speaker (Hon. Ethuro): Vice-Chair, Sen. Adan.

Sen. Adan: Mr. Speaker, Sir, the Chairperson and I spoke to the clerk of the Committee this afternoon. He said the answer will be brought this afternoon and we are waiting. Therefore, once we get it, we will deliver it tomorrow in the afternoon.

The Speaker (Hon. Ethuro): You may wish to combine because there was one by Sen. Ong'era and the Chair asked for one more week. It is quite a bit similar. If you can get it sooner, the better. So, just make sure that it deals with both. Let us give it a shot tomorrow.

Sen. Adan: Mr. Speaker, Sir, I believe the one for Sen. (Prof.) Lonyangapuo is ready but the other one, I might not promise that we will have it tomorrow because the Chairperson has already given a week to respond to that.

Thank you.

The Speaker (Hon. Ethuro): Tomorrow afternoon, it is.

That should be the end of a Statement time.

Next order.

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

DEPLOYMENT OF THE KENYA DEFENCE FORCES (KDF) IN TIATY CONSTITUENCY; BARINGO COUNTY

Sen. (Prof.) Lonyangapuo: Mr. Speaker, Sir, I rise under Standing Order No.33 (1) to give notice of a Motion of the following Motion of Adjournment:-

THAT, the Senate, today, Wednesday, 12th November, 2014, adjourns to discuss a definite matter of national importance regarding the deployment of the Kenya Defense Forces (KDF) in Tiaty Constituency; Baringo County.

(Several hon. Senators stood up in their places)

Hon. Senators: Stand up!

The Speaker (Hon. Ethuro): Order! Hon. Senators, stop intimidating others, you have more numbers than you need.

(Laughter)

You may resume your seats.

(Laughter)

The matter should come up for debate from 5.30 p.m. today.
What is it, Sen. Chelule?

DELAYED SUBMISSION OF REPORT ON THE POTATO
PRODUCE AND MARKETING BILL
(SENATE BILL NO.22 OF 2014)

Sen. Chelule: On a point of order, Mr. Speaker, Sir. I am standing on a point of order to seek your guidance on the Potato Bill that was brought into this House by Sen. (Eng.) Muriuki and it was referred to the Committee on Agriculture, Livestock and Fisheries. Upto now, it has not come back as per Standing Order No.134. Kindly, I am requesting for---

The Speaker (Hon. Ethuro): Order! Do not be repetitive. I have heard you and the Chair has heard you.

The Chair for the Standing Committee on Agriculture, Livestock and Fisheries?

Sen. Murungi: Mr. Speaker, Sir, our Committee was doing public hearings on the Potato Bill. We have finalized that process and we have received very many comments requiring the amendments which the Committee has also finished. I am happy to report that we are ready to proceed and bring our report to this House any time from now, even if it is tomorrow.

The Speaker (Hon. Ethuro): Sen. Chelule.

Sen. Chelule: Thank you, Mr. Speaker, Sir. Let us hope the Chairman will keep his word because this is what we have been waiting for, for the last three weeks.

The Speaker (Hon. Ethuro): Chairman!

Sen. Murungi: Mr. Speaker, Sir, you have heard the compliment I have received from the Senate Minority Leader; that I am an honest person. I am ready to bring this report tomorrow, if it is put on the Order Paper. But as you know the Chairperson of the Committee on Agriculture, Livestock and Fisheries is not in charge of the Order Paper. Immediately it appears on the Order Paper, we will be ready to move it.

The Speaker (Hon. Ethuro): It shall be so ordered; tomorrow afternoon, so that you can maintain your track record of that honesty and delivery. I really thought she was challenging you on the particular Standing Order and she was very specific that it is Standing Order No.134. I guess you can add one. It is talking about 30 calendar days. This matter even came before the Rules and Business Committee (RBC) and there was need for the mover of the proposed legislative proposal to be informed if the period is exceeded, but she undid her own case by saying that she has been waiting for three weeks which comes to 21 days. Standing Order No.134 (i) talks of 30 calendar days. So, I think that matter is sorted out.

Next Order!

MOTION

RESOLUTION TO SEEK ADVISORY OPINION FROM THE SUPREME COURT
ON THE CONSTITUTIONAL STATUS OF ACTS OF PARLIAMENT PASSED
BY ONE HOUSE AND ASSENTED TO IN CONTRAVENTION OF
ARTICLE 110(3) OF THE CONSTITUTION

THAT, WHEREAS Article 93 provides for the establishment of the Parliament of Kenya consisting of the National Assembly and the Senate;

AND WHEREAS Article 94 provides for the role of Parliament and, in particular, provides at Article 94(1) that the legislative authority of the Republic is derived from the people and, at the national level, is vested in and exercised by Parliament;

AND WHEREAS Articles 95 and 96 of the Constitution provide for the specific roles of the National Assembly and the Senate;

AND WHEREAS Article 96 of the Constitution provides that the Senate represents the Counties and serves to protect the interests of the Counties and their Governments and further participates in the law-making function of Parliament by considering, debating and approving Bills concerning Counties as provided in Part 4 of Chapter Eight of the Constitution;

COGNIZANT that pursuant to Article 3 of the Constitution every person has an obligation to respect, uphold and defend the Constitution.

FURTHER COGNIZANT that Article 163(6) of the Constitution provides that the Supreme Court may give an advisory opinion at the request of the national Government, any State organ, or any County Government with respect to any matter concerning County Government;

RECALLING that the Supreme Court of Kenya in Supreme Court Advisory Opinion No. 2 of 2013 reaffirmed the central role of Senate in the legislative process and in particular with respect to Bills that concern County Governments and further pronounced itself on the manner in which, pursuant to Article 110(3) of the Constitution, the Speakers of the two Houses are to jointly resolve the question as to whether a Bill is a Bill concerning counties and, if it is, whether it is a special or an ordinary Bill;

AND WHEREAS despite the Supreme Court's Advisory Opinion, the National Assembly has failed to adhere to the requirements of Article 110(3) of the Constitution-

(a) in respect of forty-six (46) Bills originating in the National Assembly, by publishing and considering the Bills and where such Bills have been passed by the National Assembly, by proceeding to secure presidential assent to the Bills without seeking the concurrence of the Speaker of the Senate in terms of Article 110(3) of the Constitution; and

(b) in respect of twenty-one (21) Bills originating in the National Assembly, by proceeding to consider the Bills in circumstances where the concurrence process under Article 110(3) has been initiated but has not been concluded and in disregard of the

proposals by the Speaker of the Senate, in accordance with the directions given in the Advisory Opinion of the Supreme Court, for the establishment of a Joint Committee to advise the Speakers on the nature of the Bills, and thereafter, where such Bills have been passed by the National Assembly, by proceeding to secure presidential assent to the Bills;

OBSERVING that in the case of twenty-six Bills originating in the Senate, the Speaker of the Senate has sought the concurrence of the Speaker of the National Assembly in terms of Article 110(3) of the Constitution, and the Speaker of the National Assembly has either not responded to the Speaker of the Senate or where there has been a response, has on each occasion stated that the Bills do not concern County Governments even though the Bills manifestly affect the functions and powers of the County Governments in terms of Article 110(1)(a) of the Constitution and of the Advisory Opinion of the Supreme Court;

CONCERNED that owing to the unlimited legislative mandate of the National Assembly, the National Assembly may have no incentive to observe or to reasonably engage in the concurrence process under Article 110(3) of the Constitution thus resulting in a legislative process that disregards the Senate and that is virtually unicameral;

FURTHER CONCERNED that the continued exclusion of the Senate in the legislative process adversely impacts the Senate's ability to represent the Counties and to protect the interests of the Counties and their Governments in the legislative process in the national Parliament and that this could eventually result in the weakening and eventual dismantling of the devolved system of government which is the cornerstone of the Constitution of Kenya, 2010;

OBSERVING that this situation has continued to persist since the constitution of the two Houses of Parliament after the last General Elections;

DESIROUS that there should be a conclusive determination on the manner in which legislation should be processed between the two Houses and on the concurrence process under Article 110(3) of the Constitution, including the procedure to be observed where there is no concurrence between the two Speakers;

NOTING ALSO that the intervention of the Courts has on several occasions been sought by various parties on matters that are actively before the Senate and which are within the constitutional jurisdiction of the Senate;

OBSERVING that where such intervention has been sought, the Courts have proceeded to issue orders whose effect has been to stop the Senate from executing its constitutional mandate;

AND NOTING that similar court orders have also been sought and issued against a number of County Assemblies resulting, in some cases, in a situation where the affected County Assemblies have been unable to hold their sittings thus affecting the execution of the functions and powers of the entire County Governments;

CONCERNED that the issuance of such Court orders has the potential of crippling the legislative arm of Government both at the national and county levels; further undermining the implementation of the devolved system of Government;

NOW THEREFORE THE SENATE RESOLVES to immediately seek an Advisory Opinion from the Supreme Court on, among others, the following matters-

(1) the constitutional status of Acts of Parliament which have been passed by one House of Parliament and assented to in contravention of Article 110(3) of the Constitution;

(2) the appropriate way forward when there is a lack of concurrence by the two Speakers of Parliament on any particular Bill;

(3) the appropriate jurisdiction of the courts over the Senate and the national Parliament in general as well as over the county legislative assemblies when these are exercising the constitutional mandates;

AND CONSEQUENTLY FURTHER RESOLVES that the necessary administrative measures be put in place to ensure that the Senate is appropriately represented in this matter at the Supreme Court.

(By Sen. (Prof.) Kindiki on 11.11.2014)

(Resumption of debate interrupted on 11.11.2014)

Sen. Mwakulegwa: Asante sana, Bw. Spika, kwa kunipa nafasi hii kuchangia Hoja hii. Kwanza, nataka niunge mkono Hoja hii kwa nguvu zangu zote. Hoja hii imechelewa; ingekuwa imeletwa kitambo na tungekuwa tumewapeleka watu hawa kortini na kumalizana nao. Njama na mbinu zilizotumika kuua Seneti ya kwanza ndizo hizi zinazotumika hivi sasa. Mwaka wa 1965, walianza kusema kwamba Seneti haikuwa na kazi na kwamba kazi yake ingeweza kutekelezwa na Bunge la Kitafa. Wakaanza kusema kwamba lile Bunge la Seneti la kwanza linaweza kufanya kazi yake, lakini iangaliwe na Bunge Kuu. Pia, wakasema kwamba Bunge lile lilikuwa na watu wengi na lilikuwa halina maana ila tu kumaliza pesa za Wakenya.

Ukiangalia tunavyopigwa vita sasa, ni kama historia inajirudia; tunaambiwa kwamba kazi ya Bunge hili inaweza kutekelezwa na Bunge la Kitaifa na kwamba Bunge hili linaongezea mshahara na matumizi ya Serikali na kwa hivyo, linaweza kufutiliwa mbali. Lakini jambo ambalo hatuelezwi ni kwa nini Serikali ya majimbo iliua mwaka wa 1965. Ni kwamba maseneta waliokuweco wakati huo walihongwa na kupewa viti bila kugombea. Waliongezewa muda kwa miaka miwili na wakapewa marupurupu ndiposa wakakubali kuua majimbo. Lakini Katiba ya sasa ambayo tulipitisha 2010 ilisema wazi kwamba ugatuzi utakuwepo na ndio maana asilimia 80 ya Wakenya waliipigia Katiba mpya kura kwa sababu ya ugatuzi.

Bw. Spika tulipounda Seneti kuanzia mwaka jana, tuliona majaribio mengi kwa Bunge hili la Seneti na tukaanza kusikia wenzetu wengine wakisema kwamba wanaweza kutekeleza kazi yetu. Wengine wakasema kwamba uchumi hauruhusu Bunge la Seneti kuwepo; wengine wakasema kwamba Bunge la Seneti ni la wazee lakini ukumbuke kwamba, panapo wazee hapaharibiki jambo. Ndio maana ninasema kwamba Katiba hii ya

2010 iliweka Kenya kuwa na mfumo wa ugatuzi. Bila ugatuzi, hakuna Kenya na bila Kenya, hakuna ugatuzi. Ndio maana wakaweka Seneti kwenye Katiba na wakasema kwamba kazi yetu pia ni kutunga sheria. Lakini hivi sasa, inavyoonekana ni kwamba walivyofanyia Bunge lile la Seneti, wanataka kufanyia Bunge hili. Lakini nataka niwaambie kwamba Bunge hili ni tofauti kwa sababu tuna uwezo, ujuzi, maarifa na malengo. Hatutakubali kamwe mtu yeyote kugusa Bunge la Seneti. Ukitaka kuvunja Kenya, ni lazima uvunje ugatuzi na Seneti.

Hii ndio maana magavana wanapoendela kusema kwamba wanataka pesa mshinani, lengo lao la pili wanasema kwamba ni kuboresha Bunge la Seneti liwe na nguvu zaidi kuliko lile Bunge la wengi. Lakini sisi, masikitiko ni kwamba tuliwapuuza na tukawapiga vita; tunatetewa na tunakataa. Ni lini mgonjwa akakataa kutibiwa na daktari? Masikitiko ndio hayo. Lakini kwa sasa, kwa sababu tumepigwa vita na tumeamka, ukweli ni kwamba tutaonyesha Wakenya kwamba Bunge hili lina Wabunge wastaarabu wanaojua sheria, lina ujuzi na lina uvumilivu. Tunaenda kutupilia mbali hizi sheria zote zilizopitishwa bila kupitia Bunge hili. Inafaa zirudishwe hapa katika Seneti. Na bila kurudishwa hapa, nina hakika kwamba Korti Kuu inaenda kukubaliana nasi.

Bw. Spika, hapa tunapoenda kule mashinani, wao wanajua kwamba Seneta ndio baba wa kaunti na ndio maana wanajua kwamba ugatuzi hauwezi kuondolewa kwa sababu ya Seneti. Tukikubali, ama tuandhaliwe ama tupewe chochote tukiambiwa kwamba Seneti iondolewe, basi wakiondoa Seneti, na ugatuzi utaondolewa. Na mimi ninatoka Taita-Taveta Kaunti. Kwa miaka 50 tangu tupate Uhuru, tulikuwa tunalilia majimbo na sasa tuko na majimbo. Tumepata jimbo la Taita-Taveta. Mkitaka kuondoa ugatuzi, basi kutakuwa na shida nchini Kenya, na itakuwa shida ya kisheria kwa sababu hatuwezi kukubali kwa sababu kwa mara ya kwanza, tumeona Ksh3 bilioni zikiletwa katika kaunti yetu. Hatukuwa tumewahi kuona pesa kama hizo kwa miaka 50.

Leo hii, unataka utuambie unaondoa ugatuzi, uturudishe Nairobi kunyanyaswa ili mambo yetu yawe yanajadiliwa hapa na kukubaliwa hapa? Sioni kama Wakenya wengine watakubali. Ndio maana tunasema kwamba Bunge la Seneti litadumu na wasiokubali hayo, basi wakubali hayo. Hawana namna nyingine kwa sababu watashindwa. Ndio maana tunasema kwamba katika sheria zilizoko, tunataka kuungana na magavana wanaosema kwamba Bunge la Seneti liwe Bunge Kuu. Nitawaunga mkono kwamba waongezewe pesa kwa maana sisi ndio walinzi na watetezi wa kusimamia ugatuzi. Wikipata pesa nyingi na wazitumie vibaya, pia wembe ni ule ule; tutawapeleka gereza. Lakini kwa sasa, ndugu zangu, Maseneta, tukubaliane kwamba Bunge la Seneti ndio Bunge Kuu. Tuungane mkono na magavana ili tuwatetee huku tukijitetea. Na sio viti vyetu pekee bali kwa ustawi wa nchi hii.

Tunataka ugatuzi ili Kenya iendelee katika kila pembe. Tunaambiwa kwamba tangu ugatuzi uje, ufisadi umezidi. Lakini sivyo. Kama pesa zinatumika vibaya, ninaamini kuna wakaguzi wa Serikali ambao wanaweza kukagua hesabu na watawashika wezi. Ndugu zangu, tuende kortini, sio tu kwa sababu sisi ni Bunge la Seneti bali tunataka tudhihirishe kwa viongozi wa nchi na Wakenya kwamba huwezi kuichezea

Katiba; kuna vipengele na Mahakama ya Juu zaidi ambayo tunaenda kuitegemea. Nina hakika. Na hata ninapolala ninajua kwamba tunaenda kushinda kesi hii asubuhi ili iwe funzo kwa wote ambao wanataka kusema kwamba Seneti halina nguvu, halina kazi na ni la wazee. Sioni kama kuna mzee mkongwe hapa Seneti.

Watu wote walioko hapa ni watu wa maarifa. Kuna wanasheria, mahakimu, madaktari na watu wa aina mbali mbali. Hata Bw. Spika ni mtu ambaye amekuwa bungeni kwa miaka 15. Ana ujuzi wa kutosha na ndio maana tunaomba sheria ifuatwe. Kama kuna Mswada unaletwa Bunge na Katiba inasema kwamba Mswada huo ujadiliwe na Maspika wetu wawili, ni lazima sheria ifuatwe. Mtu mmoja asiseme: “Mimi nina ujuzi zaidi kuliko mwingine.” Hata yule bingwa wa ndondi, Michael Tyson, alikuwa anasema ni mbabe lakini akachapwa na mwingine. Kwa hivyo, tunataka sheria ifuatwe. Kama imesemekana Maspika wawili wakae wazungumze, wakubaliane na haikufanyika, sheria zote walizopitisha zirudi tuziunde upya.

Bw. Spika, lingine katika ugutuzi ni kwamba tutetee magavana wapate kazi zaidi. Kwa mfano, katika elimu, kuna mahali Kenya ambapo watoto wanasomea chini ya miti sasa hivi. Serikali Kuu inasema tuiachie kazi hiyo lakini mbona haijaifanya kwa miaka 50? Tunataka tuanze kuongeza zile kazi ambazo serikali ya ugutuzi inaweza kutekeleza zaidi. Kwa mfano, elimu na majengo ya elimu ni kazi ambayo serikali za kaunti zinaweza kutekeleza zaidi. Masikitiko ni hayo. Kwa nini Serikali Kuu inaweka pesa katika Wizara kwa mfano Wizara ya Kilimo, Mifugo na Uvuvi au Wizara ya Mazingara, Maji na Mali ya Asili? Pesa hizo zingekuwa zimepelekwa katika serikali za kaunti kwa sababu mambo ya ukulima, maji na afya tayari yanasimamiwa na serikali za kauti.

Naomba ndugu zangu, Maseneta, tunapochangia Hoja hii, tuweke wazi na bayana ili Kenya nzima na kila mwananchi ajue kwamba hakuna mahali tunaenda. Tuko hapa na tutakaa.

(Applause)

Hatuondoki ng'o! Wale ambao wanasema kwamba wataifanya mambo mabaya ili tuondoke, Bw. Spika, nataka nikuhakikishie kama Seneta wa Kaunti ya Taita-Taveta kwamba upo na utakaa. Ikiwa kuna sheria ambazo zilitiwa sahihi bila kuangaliwa na Seneti, wananchi wa Taita-Taveta wanasema tuzirudishe. Kwa mfano, tukizingatia Mswada wa Madini, Taita-Taveta ni mojawapo ya kauti zenye madini mengi. Je, unasema watu wangu, serikali yangu na mimi nisiwe na la kusema ili Waziri hapa apeane leseni anavyotaka na Serikali Kuu ifanye inavyotaka na wanakuja kuchimba madini kwangu? Haiwezekani na haitawezekana. Nataka Sheria hiyo irudishwe hapa, tuichaingie ili mwananchi wa kawaida ajue kwamba ana usemi kwa madini, maji na hata misitu.

Bw. Spika, na ndugu zangu, hata kama ni kuchanga kwa mfuko, niko tayari tutoe pesa, tuende kortini, kesi hii tuishinde ili tuweke alama, na funzo kwa wote kwamba Katiba sio kitu cha kuchezea. Katiba ni kitu cha kutimizwa. Kwa hivyo, naomba ndugu

zangu wote tuunge mkono Hoja hii kwa dhati ili tuweke funzo, somo na Seneti – sio hii pekee, bali Seneti zingine – zidumu bila kusumbiliwa na yeyote.

Asante Bw. Spika. Naunga mkono Hoja hii.

Sen. Kembi-Gitura: Thank you very much, Mr. Speaker, Sir. I stand from the outset to support this Motion and also indicate that maybe this is the turning point in our relationship as we proceed to create this institution that is called the Senate. Article 93(2) states:-

“The National Assembly and the Senate shall perform their respective functions in accordance with is Constitution.”

There is no doubt at all that the law guides us in our relationships with them. Article 94(1), and I think this is the most important article, states that:-

“The legislative authority of the Republic is derived from the people and, at the national level, is vested in and exercised by Parliament.”

Mr. Speaker, Sir, underline the word “the people”. It does not derive from the whims or thoughts of anybody else, least of all the National Assembly, on the question of whether or not we have a legislative authority. It goes on to say that at the national level, it is vested and exercised by Parliament and Parliament, of course, is defined as the National Assembly and the Senate. It is very important for everybody who is interested in matters of constitutionalism to know where the authority of this Senate is derived and the work that we have to do as the Senate. It is from the people who elected us. We represent the people; we have a more underlying need to protect the counties and the counties are populated by people who elected us to this Senate.

Mr. Speaker, Sir, in Article 96(1), it is clear again that we represent the counties and we serve to protect the interest of the counties and their governments. The reason I am bringing out all these issues is to show that when we operate as a Senate, as one of the arms of Parliament, we are doing so with the powers that have been given or donated to us by the citizens of this country, from where the authority of the Constitution derives. This is unlike 1966 when the Senate was not properly anchored in the Constitution; when people could be manipulated and devolution had not taken effect. However, we are now at an age where devolution, like my colleagues have said, is here to stay.

It may not be perfect at the moment, but devolution is not going to be wished away by anybody. Devolution is here with us to see to it that development of this country is both faster and also equitable. Here, we are talking about equitability and that is the main reason at the negotiation of this Constitution, it was agreed that it would be passed, so that development and other matters of nationhood could be given to the people faster and that there could be equitability.

Mr. Speaker, Sir, I like emphasizing and saying all the time like Sen. Mwakulegwa has said, never before has Kshs.3 billion been seen in his county. I could say that for Murang’a County where we have a large population and for the very first time, we are seeing Kshs.4.9 billion coming directly to the people and properly utilized,

this can change the people's livelihoods because we can now, at least, start to see a form of equitability.

Article 110(3), the one that all of us quote all the time is very clear in its provisions. I would like to bring it out clearly because it appears to me that some people have not taken time to read what the article provides. It says clearly:-

“Before either House considers a Bill, the Speakers of the National Assembly and Senate shall jointly resolve any question as to whether it is a Bill concerning counties and, if it is, whether it is a special or an ordinary Bill.”

I know for a fact, because it was brought out not so long ago, I think it was yesterday by the Senate Majority Leader and the Senate Minority Leader, that the Speaker of the Senate, has at every turn sought concurrence from the Speaker of the National Assembly on whether or not a Bill concerns counties. It is mandatory that when it concerns counties there has to be concurrence and that Bill is a Bill that has to be dealt with by the Senate. That then is what I would call the constitutional rundown on what we are doing here in the Senate.

The Mining Bill, which is what has brought out clearly these issues, is a Bill to do with resources of this country and the sharing of resources. Sen. (Dr.) Zani has come up with a Bill which is quite similar and has to do with the sharing of resources. The question is; how do we share these resources without involving the Senate, which protects the counties? These resources are to be found in the counties. Therefore, if there has to be sharing of resources, it has to be dealt with, with a view to benefiting the people who live in the counties and the county governments have to be interested in what is happening to their minerals. Those are matters that quite obviously touch on counties.

Of the 46 Bills of the National Assembly that have been assented to, to the exclusion of the Senate, I dare say that 90 per cent or maybe even 99 per cent of them touch on counties and, therefore should have gone through here. This is why we, as the Senate, have now said that enough is enough. We must do what is right and protect the law because we swore to protect and abide by the Constitution.

How do we go about it? In my considered opinion, one of the reasons that there have been conflicts in Africa is because of lack of institutions - people not wanting to create and deal with institutions – or assuming institutions because of their own partisan interests. That is why you find conflicts in some nations in Africa, particularly where they have oil and other minerals. This is because people are not consulted. There is no agreement on how the revenues will be shared. Multinationals come and exploit our resources, neglect the local people, destroy the environment and then want to get away with it. People have said: “Enough is enough, we are not going to agree with that.” These are people in the counties whom we swore to protect as a Senate.

Mr. Speaker, Sir, when we finally get to extract oil in Turkana or coal in the Mui Basin, it has to be after an agreement has been reached properly on how those resources will be extracted and shared, so that we do not have a situation ten or 50 years down the line, where people will say that they were cheated, their resources have been taken away

and they want to fight because of those resources. We can do away with conflicts in Africa if we agree to respect institutions, follow the Constitution and respect one another.

That is what we are asking between ourselves and the National Assembly, so that at least everybody knows where they are supposed to be. The county that I represent – Murang’a – also is the custodian of Ndakaini Dam. Ndakaini Dam supplies 75 per cent of the water that comes to Nairobi. Therefore, I can also say that 75 per cent of the industries in Nairobi rely on water from Murang’a County, and Nairobi produces 60 per cent of the Gross Domestic Product (GDP) of this nation. So, what is the role of a county like Murang’a? I can talk about other counties where there are natural resources that benefit more people.

We are not claiming that Ndakaini Dam should only serve Murang’a but it is important to realize that the people who take care of the trees in the Aberdares and make it possible to have Maragua River or Thika River feed Ndakaini Dam have an interest in that water that then feeds Nairobi and enables her to produce 60 per cent of the GDP. Are we, therefore, being told that the Senator for Murang’a County has no right to talk about the resources? Are we being told then that when that matter is passed in the National Assembly, it should not come to the Senate, when I represent the people of Murang’a? Again, I should underline that when I talk about Murang’a, I am talking about the generality of all the counties in this county, because that is the essence of the Bill by Dr. Zani and the Mining Bill. Only yesterday we heard some of us here say that there are lots of minerals that are found in this country and we need to protect and understand what it is exactly we are saying.

Mr. Speaker, Sir, on the issue of the Constitution, the Motion that is before us is aimed at us resolving to go to the Supreme Court to seek an advisory opinion, so that we can all of us agree finally on what is going to happen. The Supreme Courts all over the world have been known to help change the constitution. Those of you that are lawyers in this Senate and went through first year and second year law will remember very clearly the case of *Brown versus Board of Education of Topeka*, the 1954 decision. That decision ended segregation in education and everything else in the United States of America. The Constitution was not amended and they did not go for a referendum. But the Supreme Court took that position at that time to define the law and say what its role is on the application of a simple citizen, Mr. Brown, who wanted to fight segregation in America. He succeeded in a decision that was made in 1954, which was a landmark and continuously has been quoted by everybody who is talking about constitutionalism.

The point that I am making here is that the Supreme Court of our land, under Article 163 (6) of the Constitution, has a very major role to play in the deciding how this country and devolution will go forward and how the resources of this country will be shared equitably or otherwise. It is upon them now, once we get to them, to state the law. The law is very obvious, but since the National Assembly does not seem to appreciate this, let the Supreme Court state it once and for all and make that decision, so that we do not have to come back here again.

If you take Article 125 of the Constitution, on summoning before the Senate – which Sen. Khalwale is so clear about – it is so clear in black and white. But it has to be stated by the Supreme Court once and for all, let it be stated, so that we do not have to go back and forth in dealing with matters of governance and other matters that affect us as a nation.

Mr. Speaker, Sir, I support this Motion wholeheartedly. This is the defining moment. Let us not be involved in insults and name calling. Yesterday, I heard some people saying that we should be dissolved as a Senate. I want to tell them that they do not understand where this country is coming from, where we are and where we want to go and what we want to achieve as this nation. We do not have to engage with them. Let the Supreme Court state it; that the Senate has a very major role to play and it is going to continue existing, so that the dreams of this nation – devolution and all – can be achieved for the greater glory of this nation. I trust that everybody in this Senate today is going to be bipartisan on this issue and we are going to vote together on this Motion, so that, finally, we can state what is right, not for ourselves, but for this nation.

Thank you, Mr. Speaker, Sir.

Sen. Murungi: Thank you, Mr. Speaker, Sir, for giving me this opportunity to support this most important Motion.

Mr. Speaker, Sir, I was not able to join you in Mombasa and was not in the House yesterday, because of some personal challenges that I had. But I was following the proceedings both in Mombasa and yesterday. I was very happy with the positions taken by the Senators both in Mombasa and in this House yesterday. I was especially very glad to hear the Senate Majority Leader say that whoever touches the Senate Minority Leader touches him and the Senate Minority Leader reciprocates. I think that is the spirit. We want to fight for the institution of the Senate. We have to ignore the small and petty differences between us because the big picture is here for all of us. We have to fight this institution as Senators. Let us not be divided by those other small partisan interests.

Mr. Speaker, Sir, I especially want to support the idea that we go back to the Supreme Court for another advisory opinion. Many laws have been passed, which touch on the counties even in their own contexts, even when the plain reading of the law talks about the counties. However, there are some people who are maliciously reading the laws to pretend that they do not touch on issues regarding the counties. For instance, the Mining Bill. Where are you going to mine? There are no mines in the sky!

(Laughter)

Mining has to take place within one county or another. So, for any person to pretend that this law does not affect the counties, he must only not be a lawyer but somebody out of his mind. Time has come for the Senate to fight for its own space. We have a lot of enemies; there are people who do not want to see us within the counties because they say that the work of the Senate is in Nairobi. When we come to Nairobi, the

National Assembly says that we have no business passing laws because our work is in the counties.

Mr. Speaker, Sir, when we invite the governors to our committees to account for the national Government monies being authorized by the Senate to the counties, the accountability law is also being denied by the courts. Time has come for us to create our able space. Otherwise the Senate will be emasculated and wound up like the Senate that we had in the 1960's. A lot of laws have been passed, even in agriculture. We have the Crops Act which was passed by the National Assembly without any reference at all to the Senate, as if there is any agriculture taking place anywhere outside the counties.

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

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

Mr. Deputy Speaker, Sir, I support the proposal that all the laws which have been passed without reference to the Senate be reviewed by the Supreme Court to test their constitutionality. If they are found to be unconstitutional, let them be declared null and void so that we can go back to the drawing board.

As I have said here before, the Senate is here because of the Constitution. We are here because the people of Kenya voted for us to be here. We are not here because of friendship, benevolence, charity or goodwill of any quarter or any person. We exist as of right and we shall continue to exist as of right. We should not be afraid of any titles. We have seen policemen being arrested and locked up every day because of robbing banks when they are in uniform.

The fact that a Speaker like you is wearing robes does not mean that he cannot commit crimes and act contrary to the Constitution. We should not be intimidated by the robes, we should see if what you are doing is actually constitutional or unconstitutional. So, any rogue public servant, or head of a state institution should be dealt with in accordance with the law for breach of the Constitution. What I am saying is that we should go beyond seeking advisory opinions. We should also check whether the people holding these public offices should not be removed for undermining the Constitution. The High Court is there, we are just asking whether people are properly in office or not. We are removing governors every day for gross abuse of the Constitution. Why can we not move against other public officer like the Speakers who have also breached the Constitution?

(Applause)

Mr. Deputy Speaker, Sir, I would also go against the advisory opinion. If you look at the Constitution, it is the High Court which has admitted an original jurisdiction to deal with matters of the Constitution in the primary state. It is in the High Court where we

should also proceed to file other cases for removal of people from offices and to declare those laws unconstitutional because an advisory opinion has been ignored before.

The Speaker of the National Assembly has been out there saying an advisory opinion is what it is, it is merely an advice and it can be respected or disobeyed. In fact, an advisory opinion assumes that the person who is being directed through the advisory opinion will respect the advice because the Supreme Court is supposed to be the fundamental and the most authoritative court of the land. It is assumed once it has pronounced itself, all the lawyers and Kenyans will behave in accordance with its advice. However, there are those ones saying that it is a mere opinion, advisory opinion can be acted upon or ignored. When you are dealing with such characters, we need to go beyond that. My proposal is that we go beyond the advisory opinion, and file some cases in the High Court itself seeking removal of some people from office and also specifically annulling the legislation which has been enacted contrary to the Constitution.

Is my time up?

An hon. Senator: There is still time.

Sen. Murungi: What I was saying is that we need to go beyond advisory opinion because we have gone that route before and even the advisory opinion itself has been ignored by some rogue public officers wearing various titles in these institutions. I do not want to re-emphasise my point, I want it to be taken the way it is.

I want to commend the Senate for finally waking up and fighting for this institution because it is out of this institution that our people are going to derive the benefits of the new Constitution. I know that there are those who are calling us *nyumba ya wazee*, but Sen. Mutula Kilonzo Jnr. is a very clear evidence that we are even younger than them. We should handle some of the issues like what you saw in the Media today. Who were deciding the formula of allocation of resources to the counties before those formulas are brought to the Senate because they are also undermining our authority?

The Chair of the Commission of Revenue Allocation (CRA), Mr. Cheserem and his team are supposed to create advisory reports which should come to the Senate. It is only after the Senate has discussed and approved them that they can be made public. This business of the Commission for Revenue Allocation sitting with governors and agreeing on how they are going to allocate resources without approval of the Senate must also be condemned in the strongest possible terms because they are also eating away our powers.

Mr. Deputy Speaker, Sir, as has been said before, time has come for us; we are not bound by the opinion of former Governor Cheserem and his team, we can also, as the Senate, commission other experts to analyse those reports and tell us whether the basis they are using is correct or not. This is just one way. As they say, when thieves come to your house, you should not just say that you will fight them with fists. You use every weapon which is available at hand. You can go to the kitchen, come out with a kitchen knife to fight off the thieves. Therefore, I would like to encourage the Senate to sit down

and come up with other strategies. The legal strategy is just one of them. Let us look for new weapons with which to fight these enemies.

With those few remarks, I beg to support.

Sen. Orendo: Mr. Deputy Speaker, Sir, I also want to join my colleagues in supporting this Motion. In doing so, I want to remind the people out there that the Senate is not an ordinary Chamber of Parliament because it may be lost to those who are criticizing the Senate that each elected Senator here is elected directly by the people from the counties. It is not like in some countries where you find Senators elected by a college of councilors or a college of a county assembly. The Senators in Kenya are directly elected by the people and in accordance with Article 1 of the Constitution, whenever we speak, we do so on the basis of the sovereign power delegated to each Member of the Senate by the people of Kenya. If you have any doubt, I would urge you to read Article 1 of the Constitution.

The second point is that when Senators are directly elected, you will find that a Senator like the Senator for Kiambu, Sen. Wamwangi, in some constituencies, he got more votes than the individual Member of Parliament from that county. So, when he is speaking here, he is speaking with the voice and authority of the people of that constituency.

The third point is that unlike the National Assembly, when we vote, we do so as a delegation on important matters. We carry the vote of the entire county. If you look in the Constitution, the vote in the National Assembly is not on the basis of a delegation but the individual Member of Parliament. So the responsibility is with that individual Member but voting as a delegation, and the delegation includes the Nominated Members of the Senate, is that you are accountable to your people in the county and all over the country because you are directly elected.

The fourth point which makes this Senate a very important House is that when it comes to the impeachment of a governor or his deputy, that powers lies with the Senate. It was not given to the Senate for no reason. When it comes to the impeachment of the president who is also directly elected by the people of Kenya and his deputy, that power lies with the Senate and not the National Assembly. I have noted that at least the National Assembly has some powers; when they want a Cabinet Secretary to be removed, they may by resolution recommend to the President that a Cabinet Secretary be removed. That is a power directly granted by the Constitution. I am saying this to emphasize the point that the Senate in Kenya, unlike other countries, where the Senators are called the house of senior citizens who are in retirement, but in Kenya, the constitutional design and architecture is very different.

I can tell you, one day when any Member of the National Assembly attempts to campaign in Kiambu County to get votes or Kakamega County, that is when he or she will know that being a Member of the Senate is not something that you can get a membership into a club. This is a very special authority by the Senate given by the people.

Mr. Deputy Speaker, Sir, it is a big shame that something which is very clear in the law, that we, lawmakers, should run to another arm of government. In fact, if you had read the Constitution clearly as it is, we should not disturb the Supreme Court in trying to interpret this law because we also have power as a body under Article 10 of the Constitution to interpret and apply. Therefore, the lawmaker, who is a Senator and a Member of the National Assembly, who swore to defend and protect the Constitution - it is a big shame that when it speaks so clearly that no legislation can become law in Kenya until and unless it has reached the Senate, introduced formally as a Bill or when the Speaker has concurred with the Speaker of the National Assembly that the Bill does not concern counties - That is the reason why Article 116 says every law that is enacted by Parliament shall be so called an Act of Parliament and not an act of the National Assembly or an act of the Senate. It is an Act of Parliament because whether or not it has been introduced formally as a Bill, the Senate has dealt with it through the hand of the Speaker and his concurrence.

Mr. Deputy Speaker, Sir, I want to support that since now we believe in constitutionalism and we do not want to fight in the streets over this matter, we cannot go out there to demonstrate when there are proper organs established to make decisions on behalf of the people of Kenya because judicial authority is donated by the Constitution to the courts and the highest court is the Supreme Court. I agree entirely that we should go to the Supreme Court. The only thing I would ask is that the matter should be dealt with expeditiously because if it is not done so, then it means the violation of the Constitution is compounded everyday an Act of Parliament is dealt in the manner in which the National Assembly has been dealing with these matters.

As they decide, I hope that the Speaker of the National Assembly will abide by the decision of the Supreme Court because then if he is the first to disobey the orders of the Supreme Court or its opinion, then he cannot be said to be defending and protecting the Constitution as established by the people of Kenya.

My parting shot is this; the fact that the Senate Majority Leader is the one who moved this Motion is speaking volumes. I want to support him for his courage otherwise it would be very difficult to move a Motion of this nature. I want to commend my friends in the Jubilee Coalition for standing together with everybody on this matter. I believe that what you have done in this particular issue commends itself to the CORD Coalition so that if there is a matter dealing with the Constitution, then we, as a Senate, will speak with one voice irrespective of the consequences to us as individuals because we stand up to defend the Constitution of the Republic of Kenya.

I want, once again, to appeal to the President and his deputy that this matter need not go to the Supreme Court if the President addresses himself to the fact that he cannot assent to a law which has not been passed in accordance with the Constitution. It is his constitutional duty to ensure that the legal processes have been followed. He will stand tall amongst the nations of the world that on a matter which relates to the Constitution he does not cut any corners. I know that in the fullness of time, he will certainly go that

direction, but because the National Assembly and particularly the Speaker of the National Assembly is not listening to reason and is not applying the Constitution, the only alternative is the manner suggested by the Motion.

However, I support the Lion King, the Senator from Meru when he says, at the end of the day, when public officers offend the Constitution, we, as the defenders of the Constitution, should not be afraid to find alternative means within the law to deal with them. Otherwise, we will start in this direction, continue in that direction and deal with the issue of impunity and punish it.

With those remarks, I beg to support.

Sen. Kagwe: Mr. Speaker, Sir, thank you very much. From the outset, I rise to support this Motion and the sentiments that have been expressed by the very able Senators who have spoken before me, particularly, the last remarks by Sen. Orengo.

There are very many ways of destroying the Government. One way of destroying the Government is to sabotage it from within. It is sad and concerning that the individuals involved in these entire circus are actually Jubilee operatives who are sabotaging a Jubilee Government. There is no other way of defining the actions that are being taken currently, except through sabotage. When you want to destroy the name of a Government or work that has been going on is by allowing 46 Bills to be signed into law without the involvement of the Senate. This is done under the guise of the protection of egos, positions and other associated feelings. We are left with no choice, but to believe that as a matter of fact, someone somewhere wants to sabotage the Uhuru administration.

Think about the process that these Bills went through before they were signed. The National Assembly debated these Bills. Somebody from the National Assembly, may be the Speaker or the Clerk of the National Assembly, took the Bills on a Saturday morning or whatever day, directly to State House without any reference to somebody called the Attorney-General.

Mr. Speaker, Sir, when I served as a Cabinet Minister, hon. Mwai Kibaki, the former President of this country, would not have agreed to sign a document connected with ICT matters unless he checked to see that according to his own Ministers the correct position of the Government had been considered. That is what happens in Government. So, when somebody decides, on a Saturday morning that they will ignore the man responsible for advising the President in terms of law; the Attorney-General of the Republic of Kenya, that is not good. At one point right here, he said that as a matter of fact there are many Bills that have been signed which he knows nothing about. Therefore, it is good to put authority and blame squarely where it belongs rather than calling a spade a big spoon.

After that, there is somebody in State House who was given that Bill and told that it was brought for the signature of the President. Whoever that was, should have had the wisdom to know that the President should not have been given the Bill until and unless there is a certificate from the Attorney-General showing that he has checked it and that both Speakers of the House have agreed on the way it should be.

Mr. Speaker, Sir, when you think about this you will see that there are mistakes that have been made. However, the worst mistake that has happened is the exhibition of immaturity of debates. We are struggling with this situation within some Members of the National Assembly. When a mature individual stands on the Floor of the National Assembly and says that it is time to think on whether, indeed, we should have a Senate or not, not only is this an exhibition of serious ignorance, but a personification of ignorance.

Mr. Speaker, Sir, we should never get into that situation ourselves. We do not want a tit for tat situation in such a serious debate. If we take that direction, we will have someone in the Senate asking why we have very many Members of the National Assembly. As a matter of fact, if we changed this Constitution, the 47 Senators would be enough to make laws for Kenya. We do not need 400 plus people to determine issues. That is what somebody will say in this House.

We recognise the importance of the National Assembly. Equally, members of the National Assembly should recognise the importance of the Senate. The Senate is not here by the good of men. The Senate is not here out of the generosity of the National Assembly or any other institution, for that matter. The Senate is here by the determination of the Kenyan people. Let us not forget that, that is the actual position lest we go on the defense. There is no reason or excuse for this House to be on the defence. Who are we defending ourselves against? If we go on the defence and appear as if somebody will destroy us, even the public out there will lose confidence in us. We want to send a very strong message to the public: Do not be shaken. We are not shaken.

The last time we went for an advisory opinion from the Supreme Court, I recall, distinctly that both the Deputy President and the President told us that they wanted to be enjoined in the advisory. If, indeed, that be the case, we would like to invite the Executive; that is, the President, the Deputy President and the National Assembly, if they so wish and if they are mature enough, to be enjoined in this advisory. The advisory does not advise only on a matter of the Senate. This is a matter of law and the Constitution. That is what the Supreme Court is supposed to tell us so that we know this matter is supposed to work this way or that way. Therefore, there is nothing wrong with us being enjoined with others who may want this to be part of them rather than looking as if we are against them.

Mr. Speaker, Sir, we should make it very clear that when we go for an advisory, we will not be doing it against somebody or an institution, the Executive or the Judiciary or the National Assembly. In fact, this is supposed to clear matters so that all those institutions relate in a manner that is mature. If this had not come to be, had there never been, a situation where Bills are being passed against the Constitution and being acted upon against the Constitution, the matter would not have arisen.

Therefore, the reason that we are in the Supreme Court is not a matter of choice by the Senate. This is a matter of force by certain other institutions. That is why we are there. We are not there because we love the Supreme Court, notwithstanding the fact that we do. We are there because there are matters that must be determined. Since clearly,

there is no wish on the part of Parliament to determine these matters because of egos or otherwise, it is clear that we go to other institutions that can assist in that process. It is very important that we do not become hostages of egos. Indeed, that is what we have become. If you read the Constitution, you will see that it envisages a situation where there might be differences between Governors and Senators. That is why there is the Inter-Governmental Relations Act.

However, at no time did the Constitution contemplate that the Speaker of the National Assembly and the Speaker of the Senate will not get along. It was a mistake because it vested a lot of authority on the goodwill of individuals. Only on the goodwill of institutions should we rely on and never on individuals. Had there been a clear law or manner in which these two gentlemen must relate, for example, they must meet on Thursday, twice a week, every quarter or some other very clearly established manner, perhaps we would not be in this situation.

Mr. Deputy Speaker, Sir, having said that, if an individual is capable of ignoring what is in the Constitution, then even if there was a law, chances are that they would still ignore that law. Therefore, I support that we go to the Supreme Court. I am of the view that the Supreme Court will rise above all these things and give us a proper advice.

Mr. Deputy Speaker, Sir, it is not just the question of going to the Supreme Court. This is why I also join my fellow Senators in agreeing that there must be other measures, over and above, the Supreme Court ruling. Once again, what will stop the National Assembly Speaker from ignoring the Supreme Court? I want to put that responsibility squarely on the Executive because, at the end of the day, the signature that falls on that law is that of the President of the Republic of Kenya. Therefore, it is very important that the message goes forth from this House to the President of the Republic of Kenya that the House is troubled by the fact that there are documents with his signature that did not pass through here and which were supposed to have passed through this House. It will be interesting for us to be told what the leadership of the Senate discusses with the President when they meet. If they do not discuss this kind of issues, it would be very interesting for us to be told what, if any, they then discuss.

Mr. Deputy Speaker, Sir, I think we should never be those people who tell the King that he has a very nice outfit when he is completely naked. We should never stoop so low and think that our President and the Deputy President are so weak that they are not prepared to face the truth or be prepared to be told the truth. It is imperative that word goes to them from this House that in fact, they are being sabotaged from within. In fact, by them ignoring the Senate at any time for any reason is ignoring the entire 2010 Constitution. This is because that is where all matters regarding devolution lie.

Let those people who are against devolution know that Kenyans have made it very clear that the current position of our country is such that it is either devolution in its wholeness or revolution. Let it never be in anybody's doubt that Kenyans will never accept to go back anywhere they were prior to devolution. They must also know that a devolved unit called the county government is the most important institution as far as a

lot of people in this country are concerned. Only the country is above the county. Therefore, let nobody ever cheat themselves that a constituency can never be considered as important as a county. It is not right to think that you can dissolve a county and simply operate on the basis of constituencies. That was yesterday; not today and not tomorrow. Let everybody know that.

Sen. (Dr.) Machage: Bw. Naibu Spika, ninakushukuru kwa kunipa nafasi hii. Kwa moyo mzito sana ninaunga mkono Hoja hii iliopendekezwa kwetu na Kiongozi wa Wengi katika Bunge hili. Ningependa kuyaangazia mawazo yangu juu ya uzembe wa watu fulani ambao kwa hiari yao wenyewe wamekataa kutii sheria na kuhujumu uongozi wa Rais wa nchi hii. Na sijui kama anajua ama hajui. Ni sawa kukosa mara moja au mara mbili, lakini kutia sahihi yake Miswada 46 bila kujali Seneti si jambo mwafaka. Ametia kidole chake bila kuzingatia Kipengele 93 cha Katiba. Kipengele hiki ni juu ya umuhimu wa Seneti katika Miswada yote. Je, mtu huyu ni mbumbu au hekima ilienda wapi? Hiyo ndio picha unayotaka iwe ya Rais wa nchi hii kuwa hatunzi sheria.

Aliyeleta Hoja hii amenukuu vipengele 93, 94, 91 vya Katiba yetu ambavyo vinapeana mamlaka kwa korti zetu kuangalia haya mambo. Kipengele 110 cha Katiba kinampa uwezo Spika wa Seneti wetu kukaa na kuangalia haya mambo na Spika wa Bunge la Kitaifa. Amenukuu sheria zote na sitazisoma. Lakini kuna sheria moja ambayo nitasoma kuhusu nguvu alizopewa Rais na Katiba. Kipengele 132(2)(a), kinasema kwamba “Rais atafanya hivi”. Haombwi bali anashurutishwa na kuamrisha na Katiba. Kwamba, ataiheshimu, kuinua na kutetea Katiba hii. Kufuatana na kipengele hiki, kutia Miswada hii kidole chake mwenyewe aidha hakuonyeshwa, hakuongozwa, hakukumbushwa kwa vyovyote vile kabla ya kufanya hivyo. Kwa hivyo, mwenyewe amevunja sheria. Hivyo ndivyo Katiba ya Kenya inavyosema. Yeye mwenyewe aliapa kuilinda Katiba alipopewe kile Kisu cha Mamlaka ya kutawala Kenya. Yeye aliapa kuitunza Katiba ya Kenya kwa mujibu wa Sheria na akaomba Mungu amsaidie.

Bw. Naibu Spika, mimi nitasema maneno kinaga ubaga; sitazunguka hapa na pale. Kwa kweli matope yametupwa kwa uso wa Rais wa nchi ya Kenya. Sitasema haya kwa lugha nyingine ili aendelee kudunduwa. Nitamweleza kinaga ubaga kwamba ameivunja sheria wakati anapofanya hivyo. Hivi sasa, Miswada utoke kwa “Bunge la Chini” kwamba afukuzwe kazi na hayo mambo yafike katika Bunge hili, tutafanya nini?

Sasa tunaeleza kwamba Mkuu wa Sheria hajaona Miswada mingine hapa na ilifika kwa meza ya Rais na akaweka sahihi bila ushauri wake. Naamini kwamba Bunge hilo halina walevi. Yeye amezembea kazini mpaka Rais anapata makaratasi yamerundikwa yakingojea aweke sahihi yake akiamini kwamba Mawaziri wake wameshayapitia. Je, tuanzie wapi kuwafyeka? Kwanza, Mkuu wa Sheria amezembea kazini na anafaa kuacha kazi. Hana sababu ya kutomwambia Rais wa nchi hii vile Katiba inasema. Ni jukumu lake la kwanza kumshauri Rais wa nchi hii.

Bw. Naibu Spika, Wabunge wanasema kwamba Seneti hii ni ya wazee. Ni kweli kwa sababu hapa hakukosi hekima. Hata Biblia Takatifu katika kitabu cha Methali inasema kwamba kichwa chenye mvi ni taji la utukufu. Seneti hii tunaonekana kwa njia

ya haki kwa sababu tunafuata Katiba ilivyo andikwa na ikapitishwa na Wakenya. Mimi na wenzangu tulisema kuwa kuna vipengele ambavyo ni vigumu kutekelezwa. Majuto ni mjukuu, huja baadaye. Hamkusikia. Kwa hivyo, Katiba itekelezwe vile ilivyo kwa sababu hivyo ndivyo Wakenya waliamua. Kama ni vigumu kuitekeleza Katiba, basi Wakenya wafanye *referendum* au kura ya maoni. Lakini mambo ambayo tunaongea sasa hivi si magumu kuyatekeleza. Ni uzembe, ujeuri, ufidhuli na ufisadi. Sijui kuna furaha gani au utukufu gani kuivunja sheria ya Kenya kulia, kushoto na katikati.

Wabunge wanasema kwamba kazi ya Seneti ni kulialia. Tatalia kwa sababu nchi inatumbukizwa katika kina kirefu sana. Kwa nini tusilie sisi tukiwa viongozi wenye akili timamu na hekima kuu kwamba nchi yetu inaangamia kwa sababu ya watu wachache wasiotaka kuiheshimu Katiba? Hakuna sheria hata moja isiohusu kaunti. Waanze kulia wakisaga meno wakijua kwamba sasa sheria zote wanazozipitisha kule zinahusu kaunti. Kwa hivyo, sheria zote wanazozipitisha kule zitapitia hapa. Sisi ndio wa mwisho. Wasiwe kama nungu ambao wameficha vichwa vyao kwenye mchanga. Huo ndio ukweli. Tumekataa na lazima haya mambo yapelekwe kwa Mahakama ya Juu Zaidi kama Hoja hii inasema. Korti inafaa kutatua janga hii ili tujue ukweli uko wapi na kama Katiba imevunjwa.

Miswada 46 tayari imekuwa sheria za bandia. Wananchi wa Kenya watalazimika kutumia sheria za bandia ambazo hazikupitishwa kwa mujibu wa sheria. Hicho ndicho kilio. Kisha tunatarajiwa kukaa kitako na tuiseme ukweli. Tulichaguliwa na tukaapa kuitetea na kuilinda Katiba. Hoja hii si ya ya Muungano wa Jubilee au wa CORD. Hoja hii imeletwa ili watu wote ambao wamevikwa taji za hekima waamue. Mimi naomba tukubaliane na yule aliyeleta Hoja hii kwamba wakati umefika sasa. Ukitaka kuukunja mti, ukunje ukiwa mchanga kwanza. Mti huu ukikomaa huenda ukavunjika ikiwa utapenda kuukuja. Tuukunje sasa hivi na si kesho wala mtondogoo. Wanatucheka kwamba sisi ni wazee. Hata hivyo, katika Bunge hilo sidhani kama kuna hata mmoja ambaye hajaoa au kuolewa. Wote wameoa na kuolewa. Kwa hivyo, wote ni wazee.

Ni kisa cha kima au nyani kumcheka mwenzake na haoni kundule. Hakuna ambaye hatakuwa mzee siku moja. Lakini tumekubali kwamba wao ni vijitoto visivyo na hekima kwa sababu wamekubali hivyo. Sasa sisi tuwafundishe kwa sababu wamevunja sheria. Tuwatangazie hata kwa kupiga madebe, tarumbeta na ngoma kwamba wamevunja sheria. Tumeamua kuchukua nafasi yao kwa mujibu wa sheria kuongoza nchi hii. Sasa hili ni gurudumu kubwa ambalo limeanza kubingiria; litakata vichaka, vichwa vya watu, mawe na chochote kile kitakacho simama mbele yake.

Ninahakika kwamba Mahakama, kama kweli ina watu wasomi ambao wanajua kutafsiri sheria ilivyoandikwa, itakubaliana na mawazo ya Seneti. Je, watapokubaliana na mawazo ya Seneti, ni nani atayefyekwa? Nakubaliana na Sen. Mutahi Kagwe aliyesema kwamba ingekuwa vizuri kama Rais wa nchi angerudisha Miswada 46 aliyoweka sahihi ili kusiwe na aibu kwake. Tunamwambia hivyo kama Maseneta na wala si kama wanachama wa Jubilee au CORD. Hata wale wa muungano wa Jubilee wanamwambia:- “Kiongozi wetu, tahadhari kabla ya hatari.” Lakini asiyesikia la mkuu, huvunjika guu.

Asante, Bw. Naibu Spika.

Sen. Kittony: Mr. Deputy Speaker, Sir, I would like to commend those who have spoken before me on this very important Motion. This Motion has come timely. I would also like to commend the Mover of the Motion and say the devolution is closer to the people for better development. We all supported and signed the new Constitution. It is very clear that Article 96 talks about the Senate and its mandate. I know that we have 16 women Senators. I was very concerned because it is only the men who were catching the eye of the Chair and I was wondering where the position of women is. I am even going to call upon the women of Kenya that come next elections, let them be elected to the Senate because we are going to be closer to the people for better development and prosperity of this country. Therefore, let more women catch the Speaker's eye so that they can support devolution.

Mr. Deputy Speaker, Sir, this is a Motion that should have come like yesterday. It is almost coming late. I support the sentiments by other Senators. We need to respect the laws that have been put in place. We need to conform to what is being said and what is in the law so that we do not make mistakes or mislead the Government of the day. We all like this country and love our leaders so we do not want to look like we are fighting one another. This country is big enough for all of us. The space is big enough for us to make it a better place for better development and prosperity. I want to commend Senators and I am happy to be associated with this House of seniority. It is a House of mature people. Even if we are in different parties, we respect one another because we know we are in this country to leave behind a legacy. I am really commending the way the Senate has carried itself since we started our work two years ago.

It is very important, therefore, that we remain so for the prosperity of this country. Maturity is very important. Therefore, those who are misleading the State should know that a child has to crawl first and we have to nurse it. We do not want to rush or be hasty and regret later. I am calling upon every leader in this country, especially those who are saying that the Senate should not be in existence, to know that we are here and our mandate is very clear. We would like to see transparency and leadership respecting one another so that we, as a country, may go forward because God has blessed us in many ways.

Mr. Deputy Speaker, Sir, I support this Motion. I am challenging the women of Kenya. I do not want to talk a lot because we would like to see Kenya going forward. We do not want to see our laws being abused by greedy people who want things for themselves. We want to see the laws of Kenya respected and adhered to.

Mr. Deputy Speaker, Sir, with those few remarks, I beg to support. I thank you for recognizing that a woman has a voice and the women of Kenya will be many in this House in 2017. Sen. Zipporah Kittony will be one of them.

The Deputy Speaker (Sen. Kembi-Gitura): Order. I recognized you because you are a Senator not because you are a woman. I do not want us to genderise the Senate. Sen. Kittony, I thank you very much for your contribution.

Sen. (Dr.) Khalwale: Mr. Deputy Speaker, Sir, I rise to support this Motion. I am quite confident that the Supreme Court of Kenya will agree with what Senators have said. However, I am not afraid to say that the Supreme Court will eventually find itself where it found itself in the first instance when we approached it; namely, a defiant Speaker of the National Assembly. Let the Speaker of the National Assembly know that we also have other options. Yes, the Supreme Court is there, but we also have the court of public opinion. If pushed, we shall be asking the country to amend this Constitution so that it conforms with the best international practices of bi-cameral parliament as it obtains in the United States of America (USA), Canada, Australia, South Africa, Nigeria and in many other countries.

Mr. Deputy Speaker, Sir, having opened so, allow me to thank the Senate Majority Leader. He moved this Motion very well yesterday and it was seconded very ably by Sen. Wetangula. Some of the Speakers in the “Lower House” are new entrants to the political journey that some of us started walking at the age of 22 years when we were at the University of Nairobi (UoN).

Allow me to remind them that since 1965 when Tom Mboya and Mwai Kibaki came up with a Sessional Paper that locked out many parts of this country out of national resources, many things have changed. In 1985, the former President Moi discovered that something was wrong. So, he came up with the District Focus for Rural Development (DFRD). This was driven by none other than Simeon Nyachae. All who care to read the political history of this country know that the reason Moi was doing that was because he realized that to plan, budget for and implement development uniformly across the country, we needed to do it in every district. However, this thing flopped because it was left to the discretion of heads of line Ministries.

I must pay tribute to Sen. (Eng.) Muriuki Karue because in 2003, he led us to pass the Constituencies Development Fund (CDF). The CDF was also speaking to the issue of inequality. We attempted, and as Sen. Kajwang once told us in this House, that CDF was like John the Baptist who came before Jesus Christ. The CDF was John the Baptist and Jesus Christ of Nazareth is the current devolution.

Mr. Deputy Speaker, Sir, in 2010 when the new Constitution was promulgated, it opened a new opportunity which I challenge all those young people in the National Assembly who think they are now the custodians of wisdom, to tell me one line in the Constitution, one line, one paragraph, one article or one chapter that legitimizes CDF. The CDF is nothing; it is devolution which we must all support. I want to urge all Members of Parliament from the great county of Kakamega, 12 of them, to sit back and think that if devolution is a small thing, how come in all the 12 constituencies none of the sitting Members of Parliament ever got half of the votes I was getting in their constituencies?

In fact, in one of the largest constituencies in Kakamega, Malaba, I got 47,000 votes. The sitting Member of the National Assembly got about 15,000 votes. That means

that I have a greater mandate to fulfill and cry for even if you call me a cry baby. Really, can a bull fighter be a cry baby? That is not possible. It is the mandate that makes us cry.

The Tenth Parliament where I was privileged to sit, decided to correct the fallacy that befell the DFFRD which was lack of legislation. We went beyond the Constitution and created nine critical laws so that we would not go wrong. Allow me to remind the country what laws these are. We used to enact them in this very Chamber.

I can see some Clerks-at-the-Table, including Mr. Njenga, whom we used to sit with here until midnight creating the County Governments Act, the Transition to Devolved Governments Act, the Inter-Governmental Relations Act, the Urban Areas and Cities Act, the Public Finance Management Act, the National Government Coordination Act, the Commission of Revenue Act, the County Governments Public Finance Management Transition Act, the Division of Revenue Act, the Transition of County Allocation Revenue Act and the Transition Appropriation Act. We did this to make it work. It is working only that it is working with hiccups. Let us face these hiccups the way Sen. Kagwe, Sen. Orendo and the Senator for Migori, my senior, Dr. Machage has faced it. The problem is that there is either deliberate or accidental failure to read Article 115 of the Constitution of Kenya. Article 115 speaks to the Presidential assent and referral of a Bill. Allow me to read that Article 115(1)

“Within fourteen days after receipt of a Bill, the President shall-

(a) assent to the Bill; or

(b) refer the Bill back to Parliament for reconsideration by Parliament, noting any reservations that the President has concerning the Bill.”

Mr. Deputy Speaker, Sir, in all these Bills, why is it that the President has never returned the Bills to the National Assembly with reservations that he is concerned that the Bill concerns counties and, therefore, the Senate should have been involved? If we, as the Senators of the Republic of Kenya, do not say it, who will bring it to the attention of the President? Probably, the Attorney-General has not been doing it. If he has been prevented from doing it, we, as the Senators of the Republic of Kenya, are saying the President has failed us by not showing us his reservations.

This Article, sub article 2, says, that;

“If the President refers a Bill back for reconsideration, Parliament may, following the appropriate procedures under this Part –

(a) amend the Bill in light of the President’s reservations or

(b) pass the Bill a second time without amendment.”

We wanted to see this. When they refuse to assent and take it back, since the President wants to defend the Constitution, he would be left with the final option in 115(6). It says:-

“If the President does not assent to a Bill or refer it back within the period prescribed in clause (1), or assent to it under (5)(b), the Bill shall be taken to have been assented to an expiry of that period.”

Mr. Deputy Speaker, Sir, as a defender of this Constitution, I would have like to see some of those Bills which automatically became law because the President had refused to sign. If one day, I was called upon to cast a vote on the possible matter of the President having acted against this Constitution, I would be the first to defend him. It is this impunity that the Speaker of the National Assembly is perpetuating. He would like all of us to be there at his mercy.

I am very happy that Senators today have been very clear and have remained resolute. They have remained resolute. I am reading a book called *The Legacies of Power* which captures all the former African leaders and some of the long serving current ones. There is one thing that their legacies show; that they can never cede an inch of their power. Let Kenyans know that the choice in Uganda and Burkina Faso is not in Kenya. In Kenya, this Constitution deliberately chose to force the power of the former Presidency to be ceded vertically to commissions and county governments. If you think we are living in theory, then you should know that this particular Motion speaks to the important issue of devolution.

Commissions are not also at peace. Today, the National Land Commission (NLC), with all the powers given to it by this Constitution under Article 67 is being asked to sit, share and agree with a Cabinet Secretary. It is only this Senate which can decide that Dr. Swazuri will not be expected to sit and share any power whatsoever with the Cabinet Secretary for Lands, Housing and Urban Development.

Many of you, if what Dr. Machage said is true, have children. If we do not stop these things, the issue of land will affect our children and they will eventually fight. We will be sitting as old men watching our children fight for resources and regret why we never said that Commissions under this Constitution cannot share power with Cabinet Secretaries.

I want to conclude my contribution by speaking to the Mining Bill. The Mining Bill, for God's sake, concerns counties just like the Marriage Bill which did not pass here. I come from a place called Kakamega. The first multi-national to do mining in Kakamega was the Rosta Mine Company. There is so much gold in Kakamega that three days ago, when I was away on domestic matters, I found that during the recarpeting of the Kakamega-Kisumu Road---. The recarpeting has gone up to Museno in Kakamega and when the earthmover got there and scrapped the ground because they are widening the ground, gold came out *pwaah* and the entire village came out to witness. People were collecting gold. They were running to Malinya from Museno and selling an ounce for Kshs300. You can imagine a man who had a fingertip of gold. He was walking away with Kshs200,000 or Kshs300,000 just like that.

Today as I speak, the Administration Police (AP) came there. My presence notwithstanding, we were chased away in the Kapedo style. The movers came and covered the place. This was pure gold. How can you expect me to keep quiet and accept that we kill devolution when for 50 years after independence, we have not allowed Kakamega to exploit the riches that it has; pure gold?

I want to go down in history in this country as a legislator who said that the 1965 Sessional Paper was a mistake; a legislator who came in this House and participated in creation of CDF, a legislator who presided over Kshs594 million spread in my hands for the tenure I was in Parliament and not a single cent lined my pocket; a legislator who participated in enacting the new Constitution and it must succeed.

I beg to support.

Sen. Mositet: Mr. Deputy Speaker, Sir, let me salute the leadership of the Senate for the good conference they had in Mombasa, after which they came to realize that the existence of this Senate was under threat. I salute the entire leadership and also thank our Speaker, Hon. Ethuro who sat on the Chair the whole afternoon guiding this House when this Motion was being debated.

Mr. Deputy Speaker, I think the whole country knows that the Senate is there, it is going to be there and it knows that we have been doing a good job. One of the things we did after being elected so that we could be called Senators, we were sworn in. We were sworn in to defend our Constitution. Even those in the National Assembly and the Executive swore to defend the Constitution. The Senate with its humility, being the defender of the Constitution and the protector of the counties has come out with this Motion because there are some mistakes being made and we must correct them.

Many are the times when the whole nation would wonder whether the Speaker of the National Assembly has been acting out of ignorance or as a way of acquiring more power. It should be very clear in his mind and even to the Members of the National Assembly that power was devolved. The National Assembly has its limits and also the Senate has its duty. With all due respect, we need not be accorded respect, but to be given space so that we can practice what brought us here as per the Constitution. As I speak, it is with a heavy heart because we are heading where our President will be ashamed by the acts of the National Assembly and those who are supposed to advise him.

Mr. Deputy Speaker, Sir, devolution is too sweet. Each and every county is enjoying water. Every county has a testimony that at least some roads have been done. Every county can at least run to the county government for a solution whenever there is a crisis. In some areas where we are experiencing drought, the county government is there to feed its people. Right now, what many Kenyans are asking is that they need more devolution. We need more functions to be devolved. I think it has even reached a stage where to appoint a chief or an assistant chief should not be done in Nairobi. It can be done at the Governor's office.

At the county level, we know our people. We do not need a decision to be made in Nairobi. It is us who know which school requires classrooms and which one needs to be registered. That should not be the work of the national Government. We can talk of the sweetness of devolution and even go on and demand for more functions to be devolved. Anyone who thinks that he can kill devolution by killing the Senate is not only a day dreamer, but a person who has not visited the counties to know what is happening. There is a lot which has been happening in the counties. Even if here at the Senate, through our

oversight role, we are able to see that some governors are misappropriating funds, still a lot has been achieved in one year.

Mr. Deputy Speaker, Sir, let me remind this Senate that the first allocation to the counties was actually an amount we contested as the Senate. We even wanted more funds, but it is the National Assembly which watered it down. Even after that, the little amount which went to the counties has been felt. The old and the young people in the counties will not just sit there and listen to those talking about the Senate having mature people as one lady Member of Parliament said yesterday. I wondered what she meant because she was a female Member of Parliament. If you were to test the maturity of Senators and yet all elected Senators are male, does she really want to know whether we are mature. She could try it with one of us. I think time has come for the Senate to define its boundaries.

Sen. Ong'era: On a point of order, Mr. Deputy Speaker, Sir. Is Sen. Mositet in order to imply that women who contested as Senators and lost are not real women? What does he mean by what he said?

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Mositet, what exactly did you say?

Sen. Mositet: Mr. Deputy Speaker, Sir, I just said that yesterday in the debate in the National Assembly---

The Deputy Speaker (Sen. Kembi-Gitura): Do not cut it out because it is in the HANSARD. I did not quite follow it. That is why I want to know what agitated Sen. Ong'era so much.

Sen. Mositet: Mr. Deputy Speaker, Sir, I just said that all the Senators who were elected into this House are male. However, the maturity of the Senate was in doubt yesterday in the National Assembly. I asked whoever was doubting our maturity to try and test the maturity of one of the Senators from the county she comes from.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Mositet, I do not understand you. I am not quite with you. Are you challenging them? Are you saying that you want them to try and see whether you are man enough or what are you saying?

Sen. Mositet: Mr. Deputy Speaker, Sir, I have a lot of respect for Sen. Janet and I know that she will vie even next time. I just said that there was a feeling by one of the Members of the National Assembly that the Senators have not matured. In our community, maturity can only be tested, at least, if a bull can reach--- I will leave that to the bullfighter.

(Laughter)

The Deputy Speaker (Sen. Kembi-Gitura): Order! Has Sen. Mositet said something offensive? I do not understand him to have said anything offensive. I am not trying to defend him, but are you imputing that he has said something offensive?

Sen. Ong'era: Mr. Deputy Speaker, Sir, is Sen. Mositet implying that the women who lost were not mature enough?

The Deputy Speaker (Sen. Kembi-Gitura): No! I did not understand him to say that.

Sen. Ong'era: That is what he implies, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. Kembi-Gitura): You asked me for my ruling on this issue and I did not get him to say that.

Sen. Ong'era: Mr. Deputy Speaker, Sir, he said that there are only 47 men who won in the elections; therefore, that shows their maturity. He even went further to allege something about a bull in his community. These are terms that are being alluded to in a symbolic manner to disparage the image of the women who contested for the senatorial seats.

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

The Deputy Speaker (Sen. Kembi-Gitura): Do you want to be informed?

Sen. Ong'era: Yes, Mr. Deputy Speaker, Sir. I would like to be informed by my sister, Sen. Elizabeth.

Sen. Ongoro: Mr. Deputy Speaker, Sir, with all due respect, I have been listening to the debate and Sen. Mositet is simply debating with a *moran* mentality, which is also allowed. That is the community that he comes from. I have not personally taken any offence. I vied for the Senate seat and I am not here by default. I think he is just trying to drive a point home from a *moran's* mentality.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Ong'era, I do not want us to pursue this further. But honestly, in my own estimation, hearing and understanding, I get it that Sen. Mositet is trying to be symbolic. That is his way of understanding a contest between two people. If I got him to disparage women, I would be the first one to stop him. However, I did not get that impression at all. If you look at the HANSARD, maybe you will find that what he said did not in any way try to disparage women. I will not allow it. If that was the case, I would have stopped him on his tracks. That is why I asked him as much as possible to try and retrace and recall what he said.

Proceed, Sen. Mositet.

Sen. Mositet: Thank you, Mr. Deputy Speaker, Sir. Let it be on record that I wish all women in this country who will contest for the senatorial seat the very best, including the Member of the National Assembly who was doubting the maturity of the Senators.

Mr. Deputy Speaker, Sir, with all due respect, it is clear that we have come up with quite a number of Bills in this Senate and they have found their way to the National Assembly. I was a Member of the *ad hoc* Committee which was headed by Sen. Zani. We did a good job knowing very well that the counties have been suffering a lot with regard to minerals. Today it was even very sad to see Mr. Kinuthia wa Mwangi, the Chairman of the Transition Authority (TA) trying to caution the Governor of Kwale and Kwale County that they should not be talking about the minerals in the county. He said that they should not even include it in the Finance Bill of the county because it a national

Government function. Let him know that he is very wrong and completely out of order. The titanium which is mined there, is just like sand in many other counties.

Mr. Deputy Speaker, Sir, every county has a special mineral which they can boast of. My own county has a lot of minerals. In fact, cement cannot be manufactured without making use of the raw materials found in Kajiado. However, our county gets very little from the exploitation of those raw materials. Of course, we have salt in Magadi. In fact, we have oil reserves. It is only that announcements have not been done. At least from the explorations which have been ongoing, we know that we also have oil. Many other counties have these natural resources. Therefore, it will really be wrong for the Mining Bill to be assented to by His Excellency without passing through this House.

Mr. Deputy Speaker, Sir, it is our belief that our President would not want to be ashamed. The best that the Speaker of the National Assembly could do now is to apologize to the whole nation and reverse all those Bills. He could even request if they could be taken back, because whatever he has done is a big concern to the nation. He has actually breached the Constitution. We need to remind him that even though maybe he remembers the days when he was a Member of the National Assembly, the Constitution changed and power was devolved. Just the way we are talking about the benefits of the functions which have been devolved to the counties, power was also devolved. That is why he cannot just do what he has been doing without consulting our Speaker when the Bills are taken to him.

Mr. Deputy Speaker, Sir, on behalf of my beloved people of Kajiado, I support this Motion.

The Deputy Speaker (Sen. Kembi-Gitura): Order, Senators! It is now almost 5.30 p.m. and it would be futile to call any of you to contribute to the debate. As all of you are aware, at 5.30 p.m. the Senator for West Pokot will move a Motion for Adjournment as was ordered by the Speaker earlier. We shall proceed with it to the end of the day.

The Motion that is before the House now, therefore, is interrupted and shall be resumed as soon as it is back on the Order Paper as shall be directed by the Rules and Business Committee (RBC).

(Motion deferred)

There is a lot of interest in the Motion that we have just deferred. So, I want to believe that the Senators who had indicated their interest to contribute will not be so disappointed that they will not be able to contribute. They can contribute again when the Motion resumes. I consider this to be of such great importance for us and that is reason I am sure none of you has even applied that we should reduce the talking time. Every Senator should get enough time to express themselves on the very important issues before the House.

Sen. (Prof.) Lonyangapuo.

**MOTION OF ADJOURNMENT UNDER
STANDING ORDER NO.33**

DEPLOYMENT OF KENYA DEFENCE FORCES (KDF)
IN TIATY CONSTITUENCY, BARINGO COUNTY

Sen. (Prof.) Lonyangapuo: Mr. Deputy Speaker, Sir, I move that the Senate do now adjourn to discuss a matter of national importance.

Mr. Deputy Speaker, Sir, everybody in Kenya knows that two weeks ago, a decision was made to send the Kenya Defence Forces (KDF) to go and quell a problem in Tiaty Constituency of Baringo County. We have heard, read and seen on television that we lost 22 officers two weeks ago---

The Deputy Speaker (Sen. Kembi-Gitura): Order, Senator! I am not trying to interrupt you. What I would suggest is that you now indicate your interest if you want to contribute to the current debate, the Motion of Adjournment.

Sen. (Prof.) Lonyangapuo: Mr. Deputy Speaker, Sir, it is now two weeks since this incident took place between Kapedo and Lomelo where we lost 22 officers and a decision was made to send the KDF for an operation to flush out bandits that killed the officers. Many things have since happened that are not right. First, by law, the KDF can only be deployed within if an approval is sought from Parliament. However, to the best of my knowledge, nothing like that has happened. A number of officers have been sent to that sub-county and serious atrocities and anomalies have gone on there. Instead of flushing out the bandits, the said officers on Thursday, last week, at around midnight, disabled the only small and little communication network that existed. Therefore, the entire Tiaty Constituency which is 42 per cent of the entire Baringo County has no network connectivity, so communication is a challenge.

At midnight, they decided to disable communication and moved from Kapedo to Chemulingot, Nginyang' and Ndangumbei, surrounded them and did the unthinkable. They went house to house where civil servants, teachers, businessmen and all other civilized Kenyans doing business live. They beat everybody they found, took people's money, broke into shops and so on. It became a looting spree almost equivalent to what we saw during the post-election violence and anybody who asked them a question was beaten. One classic example is of the road that was approved and given by the last Government. The former President Kibaki authorized that road be done from Baringo-Loruk-Chemulingot-Marakwet-Pokot-Lodwar. They have covered almost 50 kilometres and all the workers stay in the town. These are the people who were beaten. They are not Pokots, but other Kenyans who had the privilege to go to school earlier than us. They come from Kikuyuland, Nyanza and all over the country.

There are 258 primary school teachers. Noting that this is the sub-county with the least number of schools in the country and that is why we have excess bandits, almost 80

per cent of those teachers are non-Pokots. They were beaten. I can tell you that they have left and no learning is ongoing in any school. Remember the schools are not supposed to have been closed by now. The only three secondary schools that existed have now been closed. I am wondering who gave these precise instructions that they had to stop looking for the bandits and go for the only civilized people they are supposed to be engaging with in order to bring and spread the gospel of education and peace.

Mr. Deputy Speaker, Sir, the road that was under construction has been closed because the workers have gone. The teachers have left. Some of them have vowed never to go back. I have a feeling that whoever sent the KDF will assist them to transfer fully to where they came from. That means that we are taking this sub-county back to the colonial days when Kenya was looking dark in terms of education. A theory and a theorem was created that maybe some few elites were behind this. How can an elite person communicate and co-operate with a bandit? The army then decided to say that they have found suspects. Those are some of the people flushed from lodgings and homes. They even went for the top businessman who has the only two *matatus*. They have now taken him as the ring leader and charged him in court claiming that he is a bandit.

We should note that in Pokot few people have gone to school. We should not be surprised if we get a mature person between 18 to 30 years in primary school. Some boys had just finished Standard Eight and were still preparing to go home, but were collected as exhibits and taken to Kabarnet as bandits. What you have been reading that 25 bandits have been found are people who are speaking English and Kiswahili languages, but the real bandits are roaming freely in the hills and valleys.

Mr. Deputy Speaker, Sir, our own officers, due to frustration of not getting whom they are looking for, are shooting people on sight. Yesterday, they shot camels and goats. Right now, they also shot cows belonging to a former Member of Parliament. When they see people standing, they throw a bomb. I am asking whether this was an organized plan. Was the Government working in cahoots with these bandits? They were looking for an excuse that the bandits strike and then they go with the might of a force that is shocking everybody. People have been killed, maimed, but the KDF have forgotten to go after the bandits. I have received a text in my phone, as the KDF are purporting to be doing what they are doing, one herder has just been killed and not less than 346 goats have been stolen after armed raiders from Turkana County attacked Ng'aung'ayian village in the east of Kapedo. Those animals belong to the Pokot.

Mr. Deputy Speaker, Sir, was this operation also meant to flush out bandits or disable the community from being able to defend itself?

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

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

This is very amazing and interesting.

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Mr. Temporary Speaker, Sir, the Government had agreed to deploy the Kenya Police Reservists (KPR) in 1986 in areas where pastoralists lived because of the terrain and the cattle rustling that used to take place at night. Those are the people who can assist. Out of the blues, the Government decided to disarm the KPR from the Tiaty Constituency and yet all its neighbours have the KPRs. There are very many in Turkana, some are in Samburu. In West Pokot, we have a few KPRs, but we do not complain. We still need more because the ones we have are few. However, this particular sub-county has none.

I move that the KDF be returned back to their base. They should come back to guard the people and boundaries of the Republic of Kenya. They should not continue doing what they are doing there. They should start coming back today. Otherwise, I do not know whether they have a lorry to carry the animals they are killing. When you kill over 60 animals in one hour, how much are you killing in one day?

The Senate Minority Leader (Sen. Wetangula): On a point of order, Mr. Temporary Speaker, Sir. Given the importance and interest that may be generated by this matter, would I be in order to request the Chair to limit our interventions and contributions to five minutes? I have been privy to the reading on your screen and I can see that it is already full. We are sitting up to half past six. We can either extend our sitting time to 7.00 p.m so that as many Members as possible can speak as adequately as they possibly can or we use five minutes per speaker.

The Temporary Speaker (Sen. (Dr.) Machage): I will refer you to Standing Order No.33(4) which takes care of what you are asking.

“No Senator speaking on a matter under this Standing Order shall speak for more than five minutes without the leave of the Senate, except that the Mover may speak for ten minutes.”

You, as the Senate Minority Leader are tied to five minutes if you want to speak.

Sen. Kajwang: Thank you, Mr. Temporary Speaker, Sir. When I heard the order that unless guns were returned within some hours, I knew the President would order the deployment of our defence forces. A decision had been made for our soldiers, the KDF, to be released to Kapedo and the surrounding areas. It was not to look for guns, but to teach them a lesson. You do not look for bandits or guns by unleashing the power of the armed forces of the Republic of Kenya on civilians. That is not the way to do it. The only way to get bandits is, first of all, to use intelligence. You should first know who the bandits could be and where they could be hiding. The next thing is to use the police to find out where the bandits are. They should arrest the bandits if they are arrestable. However, if they resist arrest, then we should use necessary force. That is the training given to the police. The training given to the defence forces is to fight and if possible, destroy the enemy. That is how they are taught and the ideology used by the defence forces all over the world. That is why defence forces are supposed to defend our borders because beyond our borders, there could be enemies. However, within the Republic of Kenya; the four corners of the boundaries of Kenya, the Constitution knew that there

were some instances where you could unleash the power of the defence forces. That is in Article 241 of the Constitution of Kenya. The drafters of the Constitution provided for it for good reasons.

In Article 241(3)(c), the Constitution says:-

“The defence forces may be deployed to restore peace in any part of Kenya affected by unrest and instability only with the approval of the National Assembly.”

That is the test; that there be unrest and instability.

Soldiers were massacred. This was a terrible thing. However, I do not know whether there was any instability or unrest. The fact that 50 soldiers have died does not mean that there is unrest and instability in any part of the Republic of Kenya. There is a crime, of course, which has been committed. However, whenever there is instability or unrests, that has to be explained to Parliament. You must explain that there is unrest and instability so that you ask Parliament, as the Commander-in-Chief of the Defence Forces, to deploy officers. If you persuade Parliament, then you deploy. Parliamentarians are the representatives of the people. The Commander-in-Chief of the Defence Forces is the Head of State. He has a responsibility to the people who elected him. You cannot assume that the President or the Chief of General Staff of the Defence Forces have more interests in securing peace in this country more than the representatives of people themselves.

The mischief that this Constitution was dealing with was this: That, the President can use the defence forces to eliminate a community if he does not like it. If he does not like it, he could say that the community is experiencing instability when there is none and proceed to deal with it. In this case, there was no instability. I think when the President went there; some elders told him that they were sorry that was not their intention.

(Sen. Kajwang spoke off the microphone)

I support.

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

Sen. Kagwe: Mr. Temporary Speaker, Sir, from the outset, I sympathize with the people of Pokot for the suffering they might be going through. I also sympathize with them in suffering both in the hands of the bandits and the few soldiers who might be misbehaving during the operation.

Let us get a few things clear; first, the KDF are not in that area illegally nor are they in that area unconstitutionally. This matter bothered me so much that I went to look for the Kenya Gazette. On 5th December, 2013, the Clerk of the National Assembly wrote to Joseph Kinyua giving the approval for the Kenya Defence forces (KDF) to be deployed in some areas. The letter reads as follows:-

“I, Justin Bundi, Clerk of the National Assembly, hereby convey the following resolution of the National Assembly. That pursuant to Article 241 (3) of the Constitution, the National Assembly by resolution passed on Thursday 5th

December, 2013, approved the deployment of the KDF for purposes of restoring peace and security, including averting further loss of lives and destruction of property in Marsabit, Samburu, West Pokot and Turkana counties of the Republic of Kenya”.

Mr. Temporary Speaker, Sir, this was in a gazette. If anybody wishes to see it, I have got it here.

The Temporary Speaker (Sen. (Dr.) Machage): Let me look at it and authenticate it first and then you table it.

Sen. Kagwe: Mr. Temporary Speaker, Sir, I will do that.

(Sen. Kagwe laid the document on the Table)

A gazette notice was also given on 5th December, 2013 to the same effect. I am not saying that I approve, for any reason, the abuse of people in that region, but I think we should first clarify that there was, indeed, an approval by the National Assembly.

The Temporary Speaker (Sen. (Dr.) Machage): Order! The way I see it, it has the legal requirements; an address, it is signed and it is acceptable.

Sen. Kagwe: Mr. Temporary Speaker, Sir, while many will question why it was *ad infinitum*, nonetheless, there was no defined---

The Senate Minority Leader (Sen. Wetangula): On a point of order, Mr. Temporary Speaker, Sir. The distinguished Senator for Nyeri County who appears to be holding brief for external forces in this House, to mislead the House---

The Temporary Speaker (Sen. (Dr.) Machage): Order! Sen. Wetangula, be fair and withdraw that.

The Senate Minority Leader (Sen. Wetangula): I withdraw and apologise to him.

Mr. Temporary Speaker, Sir, why he sprung that Gazette Notice, it is for him to tell. Is it in order for him to mislead this House? Authority by the National Assembly to deploy is for a specific event; it can never be *ad infinitum*. This is not a military State and you cannot have a December 2013 authority of the National Assembly and still be deploying troops in December 2014. It is not possible.

The Temporary Speaker (Sen. (Dr.) Machage): I rule you out of order because Sen. Kagwe has just started his contribution. Let us listen to him and hear what he has to say.

Sen. Kagwe: Mr. Temporary Speaker, Sir, I agree with what Sen. Wetangula has said and that is why in the Gazette Notice of 4th November, another gazette notice was issued. It was pursuant to that. It is very easy for us to look at this issue and think---

The Temporary Speaker (Sen. (Dr.) Machage): Do you have a copy of the same?

Sen. Kagwe: Mr. Temporary Speaker, Sir, I have a copy of the same.

The Temporary Speaker (Sen. (Dr.) Machage): Can I see it? Table those copies because hon. Senators would like to see them.

(Sen. Kagwe laid the document on the Table)

Very well! These are again authentic.

Sen. Kagwe: Mr. Temporary Speaker, Sir, the reason I think this is important is because whereas we are looking at the event where our soldiers were killed, I think the Senator for West Pokot County will admit that this is an area that had some element of instability for some time and when the Senator for Homa Bay says that the killing of 21 soldiers is not a sign of instability and unrest, I fail to understand what that would be.

Sen. (Dr.) Khalwale: On a point of order, Mr. Temporary Speaker, Sir. If, indeed, it is on the strength of this Gazette Notice that the soldiers are there, this would then be the most unconstitutional movement of our forces. Allow me to read it. It reads:-

“Notice is given pursuant to Article 241 (3) (c) of the Constitution of Kenya---

The Temporary Speaker (Sen. (Dr.) Machage): Maybe I will request that you read it. I will give you time to put your case and then you can come up with that. That is his document. You have time if you so want to contribute and challenge what he has tabled.

Sen. (Dr. Khalwale): Mr. Temporary Speaker, Sir, my challenge is based on the KDF Act and the resolution of the National Assembly passed on 5th December, 2013. This thing is just cutting and pasting on a decision that was made last year. There has been no fresh resolution of the National Assembly. Is he, therefore, in order to defend the presence of forces in Kapedo, a move that is not backed by the National Assembly?

Sen. Kagwe: Mr. Temporary Speaker, Sir, indeed, it would be you who would say whether I am in order. However, I feel and I am convinced that I am absolutely in order.

When this order was given and when deployment was done, we are not the people who know whether a situation has got unrest or not.

Sen. Kajwang: On a point of order, Mr. Temporary Speaker, Sir. Is the Senator in order to suggest that we have to be specialists in security matters when the law actually says that it is up to those who have that knowledge, who have to come to the House to persuade the House that there is unrest and instability? It is not for us to know, but it is for the House to be told.

The Temporary Speaker (Sen. (Dr.) Machage): Order! I know that there are a lot of holes to be punctured in Sen. Kagwe’s debate, but just look at the documents so tabled, let Sen. Kagwe finish his five minutes, pick what you can from his presentation and wait for your time. Unless something is out of order, I will not entertain a discussion or a contribution in the name of a point of order.

Hold Sen. Kagwe’s time.

Sen. Hassan: On a point of order, Mr. Temporary Speaker, Sir. Is Sen. Kagwe in order to suggest that we are not experts in security matters and yet the Constitution expressly says under Article 238(2)(a) that national security is subject to the authority of this Constitution and Parliament and Senate is part of Parliament?

The Temporary Speaker (Sen. (Dr.) Machage): Did Sen. Kagwe say that? I thought those were words of Sen. Kajwang.

Sen. Ong'era: On a point of order, Mr. Temporary Speaker, Sir. Is the distinguished Senator from Nyeri County in order to mislead this House by implying that an approval can be sought on the basis Article 241 in anticipation of an event that will happen in the future? I have never heard of such a law.

The Temporary Speaker (Sen. (Dr.) Machage): Order! That is Sen. Kagwe's opinion. Let him finish his debate and then you will have all the time to puncture his contribution although you have somehow tickled his mind.

Sen. (Prof.) Lonyangapuo: On a point of order, Mr. Temporary Speaker, Sir. I want to ask Sen. Kagwe to, again, read the counties for which the said authority was given. We are talking about Baringo County which is not on that list which he claims to have been done last December.

The Temporary Speaker (Sen. (Dr.) Machage): I will sustain that. Could you read it out?

Sen. Kagwe: Mr. Temporary Speaker, Sir, I would like the Senator to tell us where Kapedo is. But the areas that I am talking about are Marsabit, Samburu, West Pokot and Turkana counties in the Republic of Kenya.

Mr. Temporary Speaker, Sir, as I said from the beginning, I think we should separate two things. We should separate the issue of the mistakes that the soldiers might have---

The Senate Minority Leader (Sen. Wetangula): On a point of order, Mr. Temporary Speaker, Sir. The distinguished Senator for Nyeri County cannot continue misleading this House. He has tabled a gazette notice. What he is holding and reading is different from what he gave you.

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

The Senate Minority Leader (Sen. Wetangula): Let me finish. I am on a point of order.

This gazette notice reads:-

“Notice is given pursuant to Article 241(3)(c) of the Constitution of Kenya as read with Sections 33(2) and 34(2) of the Kenya Defence Forces Act and the resolution of the National Assembly passed on 5th December, 2013. The Kenya Defence Forces in support the National Police Services deployed to West Pokot and Turkana Counties on 3rd November, 2014.”

There is no mentioned of Baringo. It is dated 4th November, 2014. It is signed by Rachel Omamo, the Cabinet Secretary, Ministry of Defence. Where is Baringo?

The Temporary Speaker (Sen. (Dr.) Machage): Where is Baringo?

Sen. Kagwe: Mr. Temporary Speaker, Sir, I did not mention Baringo.

The Senate Minority Leader (Sen. Wetangula): Kapedo is in Baringo.

The Temporary Speaker (Sen. (Dr.) Machage): Order! Order! This House must have some decorum.

Sen. Kagwe: Mr. Temporary Speaker, Sir, there is an attempt by the Senator for Bungoma to intimidate me. The word “intimidation” is not in my vocabulary. I cannot be intimidated. If only my friend could sit quietly and listen, I would tell him what my views are.

The Temporary Speaker (Sen. (Dr.) Machage): Sen. Kagwe, you are protected and nobody will intimidate you. However, as the House requires, you must respond to points of order.

Sen. Kagwe: Mr. Temporary Speaker, Sir, in fact, I am responding to the same.

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

Sen. Kagwe: Mr. Temporary Speaker, Sir, my understanding is that the Senator for West Pokot County is speaking largely about the constituencies and what is happening in that area, including West Pokot. I have said very clearly that I sympathise with what is happening to the people of both West Pokot and Turkana counties. But instead of us saying that our armed forces were trying to help the people of West Pokot and the general region and the operation should be limited to the area of Kapedo or even West Pokot, we should ask that it should be extended so that the guns in West Pokot and Turkana are collected and no community is left vulnerable to the other community. This is what this House should be asking.

The Temporary Speaker (Sen. (Dr.) Machage): Order! I think that I have given you enough latitude.

Sen. Kagwe: Mr. Temporary Speaker, Sir, most of my time was taken by Sen. Wetangula.

The Temporary Speaker (Sen. (Dr.) Machage): Order! Order! Nobody took your time.

Sen. Ongoro.

Sen. Ongoro: Thank you, Mr. Temporary Speaker, Sir.

Sen. Hassan: On a point of order, Mr. Temporary Speaker, Sir. Having expended a considerable time, particularly within the interventions during Sen. Kagwe’s contribution, would it be in order now to revisit the leave of the House, so that we limit our contributions maybe to---

The Temporary Speaker (Sen. (Dr.) Machage): Can you read Standing Order No.33 (4)?

Sen. Ongoro.

Sen. Ongoro: Mr. Temporary Speaker, Sir, I hope that my time has been held.

The Temporary Speaker (Sen. (Dr.) Machage): If what Sen. Wetangula is trying to advise is what was in your mind, that may be considered. But that extension can only be done before 5.30 p.m. Look at the Standing Orders on that.

Sen. Ongoro: Mr. Temporary Speaker, Sir, I stand to give my contributions on this very weighty matter.

Kenyans are being killed. I want all of us to make reference to Article 26 of this Constitution and remember that the Constitution is supreme. It states that every person has the right to life. I, therefore, take issue with the execution of human beings, whether they are Turkanas, Pokots or any other human beings, within our borders. Kenyans are being killed.

Mr. Temporary Speaker, Sir, I take specific issue with the killing of law enforcement officers. This is not a good example. It is not a good sign. But I take extreme offence as a person - and believe that I represent the sentiments of many Kenyans - to the comments of an elected leader when interrogated on this matter, who stated that the killers of these enforcement officers thought that these people were Turkana. The big question is: Are Turkanas not human beings and Kenyans? Have Turkanas been---

The Temporary Speaker (Sen. (Dr.) Machage): Order, Sen. Ongoro! Was that an extraction from the HANSARD of the House or the media?

Sen. Ongoro: Mr. Temporary Speaker, Sir, this is in the public domain. It was a statement made and I do not want to give names.

The Temporary Speaker (Sen. (Dr.) Machage): I will, therefore, advise you maybe to---

Sen. Ongoro: Mr. Temporary Speaker, Sir, in the interest of the House, could I proceed?

Have Turkanas collectively been condemned to death; by whom and for what reason? Having said so, I also do not believe that one wrong can correct another wrong. Yes, the Pokots killed 21 law enforcement officers, but the law enforcement officers are now killing hundreds of Pokots. Is this just?

Sen. (Prof.) Lonyangapuo: On a point of order, Mr. Temporary Speaker, Sir.

The Temporary Speaker (Sen. (Dr.) Machage): What is it, Professor? If I were you I would have listened because you are the Mover of the Motion.

Sen. (Prof.) Lonyangapuo: Mr. Temporary Speaker, Sir, I am listening, but do not want that point mentioned by the Senator to just pass. It looks like she has not even taken time to know the genesis of this---

The Temporary Speaker (Sen. (Dr.) Machage): Order! Order! Can you guard your language?

Sen. (Prof.) Lonyangapuo: Mr. Temporary Speaker, Sir, is she in order to almost imply that there are some people who say that others should be killed? She needs to clarify that, so that Kenyans can be clear on what that is all about.

The Temporary Speaker (Sen. (Dr.) Machage): Prof. Lonyangapuo, you cannot gag people's opinion on issues, especially in a legislative Chamber like this one. Allow Sen. Ongoro to continue.

Sen. Ongoro: Mr. Temporary Speaker, Sir, it looks like the Senator is not even listening carefully to my contribution. I stated that one wrong cannot be corrected by

another wrong. Twenty one law enforcement officers were killed by Pokots, but it looks like the same law enforcement officers are now killing hundreds of Pokots. This really is not justice.

Article 29 (a) and (b) of the Constitution is very clear. I will not take time to read because of constraints of time. However, I do not believe that we are in a state of emergency. This article directs us to Article 58 which directs us further to Article 132. Although I do not support what happened to the 21 officers and strongly still want to repeat---

The Temporary Speaker (Sen. (Dr.) Machage): Sen. Ongoro, you have one minute.

Sen. Ongoro: Thank you, Mr. Temporary Speaker, Sir. I was just concluding by stating that, on one hand, I do not support the killing of the 21 officers. On the other hand, I do not support the manner in which we are trying to correct what already happened. I believe that we can refer to the Constitution. We can make arrests and respect what is provided for in the Constitution under the Bill of Rights. When we arrest these people we should treat them humanely and in such a way that we are even able to get information from them, instead of intimidating and almost treating them like slaves within our midst.

Mr. Temporary Speaker, Sir, I beg to support

Sen. Hassan: Mr. Temporary Speaker, Sir, again, I rise to propose that because of the great interest on this matter, we should limit our interventions to about two or three minutes, so that everybody can have an intervention.

The Temporary Speaker (Sen. (Dr.) Machage): What are you saying? Is it two or three minutes? You must be explicit.

Sen. Omar: Mr. Temporary Speaker, Sir, with respect to time, I would suggest two minutes.

The Temporary Speaker (Sen. (Dr.) Machage): Two minutes is very short time. We will have three minutes, except for the Senate Minority Leader who will speak now.

The Senate Minority Leader (Sen. Wetangula): Mr. Temporary Speaker, Sir, my sympathies and condolences first go to the 21 police officers and their families who were killed in cold blood. As Sen. Ongoro said, two wrongs do not make a right. There is a very worrying trend emerging in Kenya. As the 21 officers were killed, an army barracks was attacked in Mombasa, and an Administration Police (AP) camp was also attacked in Malindi and so on. This is a worrying problem because when the security forces are themselves under attack, how can civilians be safe? Two wrongs do not make a right. In this country we have police force comprising regular police, APs and General Service Unit (GSU). Whenever we had challenges beyond regular police, the GSU is normally the first to be deployed because these are police officers enforcing internal security issues.

There is even a more worrying trend; the President of our country is consistently wearing military fatigues these days. This is worrying because he may start thinking that

he is a military officer. He may start running this country as if it is a military regime. This should not be accepted.

The Temporary Speaker (Sen. (Dr.) Machage): Order, Sen. Wetangula! Unless you have forgotten your Constitution, he is still the head of the defence forces. So, be careful, do not go there.

The Senate Minority Leader (Sen. Wetangula): He is the fourth President of Kenya. We have had three Presidents before him. At no time did I see, except only once or twice at a ceremony---. I never saw them wearing military fatigues, but our President today is regularly wearing military fatigues. This is a source of concern and it is my opinion and I am entitled to it.

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

Sen. Kittony: On a point of order, Mr. Temporary Speaker, sir. Is the honourable Senator for Bungoma aware that the fourth President of this country is a Commander-in-Chief of the Defence Forces and he is entitled to wear his uniform?

Sen. Orendo: On a point of order, Mr. Temporary Speaker, Sir. The principle in the Constitution is that the Commander-in-Chief is civilian. The military is under civilian control. That is why anywhere you go in the world, you do not find heads of States wearing military uniforms every other day. This is because you lose the constitutional principle that the military is under civilian control.

Sen. Kagwe: On a point of order, Mr. Temporary Speaker, Sir. I think we are really losing the plot. If the discussion is focusing on the dressing of the President, then there is something wrong. We saw the biggest democracy on earth, the United States of America (USA), George Bush wearing all sorts of fatigues. The frequency of how many times---

The Temporary Speaker (Sen. (Dr.) Machage): Order! Let me advise you on this: If you have to discuss the person of the President, then you must move a substantive Motion. Unfortunately, that is what our Standing Orders are all about. The point is clear as put by Sen. Orendo. I do not want to entertain anything more than what has been said.

Sen. Ong'era: On a point of information, Mr. Temporary Speaker, Sir.

The Temporary Speaker (Sen. (Dr.) Machage): Who are you informing?

Sen. Ong'era: I want to add to the point of information that Sen. Orendo raised---

The Temporary Speaker (Sen. (Dr.) Machage): Order! That one is over.

Sen. Ong'era: It is an important point, Mr. Temporary Speaker, Sir.

The Temporary Speaker (Sen. (Dr.) Machage): Okay, cough it out!

Sen. Ong'era: Mr. Temporary Speaker, Sir, just to emphasize on the principle that Sen. Orendo raised, the Constitution is very clear under Article 239(5). It says:-
"The national security organs are subordinate to civilian authority"

The Temporary Speaker (Sen. (Dr.) Machage): Proceed, Sen. Wetangula.

The Senate Minority Leader (Sen. Wetangula): I will be very quick. I have made the point, those who have heard have heard and they will know the truth.

Mr. Temporary Speaker, Sir, Article 241 gives the President the authority to deploy the military internally only with the approval of the National Assembly. This can only be done on a case by case basis. There is no way any Parliament in its right frame of mind can give a blanket approval that as and when the President wishes he directs the Minister for Defence to gazette a defective gazette order and then proceed to deploy the military. The military is deployed in Kapedo in Baringo County.

(Several Senators stood up on their feet)

The Temporary Speaker (Sen. (Dr.) Machage): Sen. Wetangula will be heard. Look at the time.

The Senate Minority Leader (Sen. Wetangula): This gazette notice says that they deploy in West Pokot and Turkana. Baringo is not mentioned. Therefore, the military is unconstitutionally deployed in Baringo. In addition to that, we want peace in this country. We want the Turkana, Pokot and all communities to enjoy peace in this country. What we are seeing in the news, the military is committing atrocities in Baringo. They are burning people's houses. There is a woman weeping uncontrollably on television because she had taken a loan to improve her business, but the military had taken her money.

The military is here to protect the territorial integrity of our country against foreign aggression and can only be used internally if there is unrest or instability. Who determines that? It is the National Assembly and not anybody else. Not even the President can determine that there is unrest or instability. He has to come to the House for them to determine and give him authority. The army is in Baringo without authority. The army is doing unlawful things in Baringo. As we condemn the killing of policemen, we equally and in the same breath, condemn the excesses that we are seeing in Baringo.

Mr. Temporary Speaker, Sir, let me finish by saying that the Government is elected and we have a social contract in law. We surrender our authority to the Government to give us protection. We pay taxes for them to give us protection. Has the Government abdicated? There is insecurity everywhere. If it is not Mombasa, it is Moyale, Bungoma, Lamu, Kapedo, Turkana and Pokot. How do we have a Government that is just busy extinguishing fires when we have given them taxes, the police and everything? They are now running scared and going to send the money to go and do what they ought not to be doing.

I support.

(Loud consultations)

The Temporary Speaker (Sen. (Dr.) Machage): Order! Let us listen to Sen. G.G. Kariuki in silence.

Sen. G.G. Kariuki: Mr. Temporary Speaker, Sir, all of us are equal in the eyes of the law. Therefore, we all need protection whether you are in the Opposition, from Turkana or Pokot. What I am failing to understand is: When we stand here, we talk of what is happening. When are we going to talk of what should be done? We just keep on saying; the President this or that and so and so did this or that. It is a repetition.

What I suggest is that, if or when we are in a position to deal with the problem when it comes to this House, we should start seeking for a solution, but not just stand to condemn. Everyone can condemn, issue a statement in the way it is being issued and say something, but not many people have a solution. This is where we should be ready to face all the time. There is a problem in Pokot, Turkana, Samburu and in all these areas. What has anybody suggested? Is this House suggesting how to solve these problems? This is because the problem here is not just a problem of killing a few police officers. Even the citizens are dying every now and then, but why is it happening?

We have to change the political dynamics of this area. It happened 50 years ago and will continue to happen unless this House comes up with a solution. Finding a solution is not a monopoly of the Government or this House. It is for all of us to put our heads together and find a way of resolving this serious problem which continues every now and then. In Laikipia, we have the same problem. People from Baringo, Samburu, and many other areas – all these has been happening as we sit here enjoying ourselves and making very big statements while people are dying.

Mr. Temporary Speaker, Sir, this matter has been politicised at home. It has turned to be political.

Sen. Orendo: Mr. Temporary Speaker, Sir, I have three minutes. Let me be the bad advocate in this issue and think like others are thinking; that the military is there legally and constitutionally. If that is so, Article 238 of the Constitution which deals with the principles of national security, provides as follows in sub article 2(b):-

“national security shall be pursued in compliance with the law and with the utmost respect for the rule of law, democracy, human rights and fundamental freedoms;”

(c) “in performing their functions and exercising their powers, national security organs shall respect the diverse culture of the communities within Kenya.”

When I was looking at the gazette notice by the Cabinet Secretary for Defence, I noticed an omission which explains why things are happening in Baringo as they are. This Gazette Notice refers to Sections 32(2) and 34(2) of the Kenya Defence Forces Act. The Cabinet Secretary, clearly and for very good cause, omitted Section 33(2) of the Kenya Defence Forces Act and this is very important. Even in an emergency the military has got something in the law to obey. It says:-

“The Defence Forces may with the approval of the National Assembly be deployed to restore peace in any part of Kenya”, which is what is claimed to have been done, but 34 (1) says:-

“In the event of the Defence Forces being deployed in support of the National Police Service, such deployment shall comply with constitutional standards relating to human rights and fundamental freedoms.”

I tend to agree with Mr. Githongo when he said, two days ago, that the Kenyan State is becoming militarised where the rule of law and fundamental freedoms are being disobeyed. We urge the Government, as the Senator for Nyeri was saying, that it is being sabotaged from within. I know even my sister there, the Senator from the delegation of Baringo, is not happy with what is happening in Baringo. All eyes are cast against this Government for what it is doing in Baringo. Please, protect life and property of the people of Baringo, at least, if you value the votes they gave you.

Sen. Ong’era: Thank you, Mr. Temporary Speaker, Sir. I disagree with the Senator for Nyeri that, indeed, the Gazette Notice that purports to have given a resolution of Parliament is correct. Article 243(c) is not a blanket approval as we have heard from our Senate Minority Leader, Sen. Wetangula. This is because it can only be issued whenever a situation arises. You can never anticipate an event and, therefore, give a resolution. I even doubt whether this military is actually doing anything in Kapedo because we are told that three kilometres away as the military was there, in a place called Chepsitet Military Camp, a herdsman was killed by armed by bandits. When people went to call the military, nobody responded.

I condemn the fact that innocent children and women continue to be killed in Kapedo. As I speak right now, women who are pregnant have actually miscarried because of these atrocious acts of the military. My heart goes to the woman whose shop was destroyed and yet she had just taken a loan. I urge lady Senators to raise money for that lady so that we restitute her to where she was.

Mr. Temporary Speaker, Sir, I conclude by condemning the Jubilee Government in its failure to curb insecurity and also check on proliferation of small arms and light weapons which keep on infiltrating this country.

I support, Sen. Lonyangapuo.

The Temporary Speaker (Sen. (Dr.) Machage): Sen. Chiaba.

Sen. Chiaba: Asante, Bw. Spika wa Muda, kwa kunipatia nafasi hii. Hoja hii ni muhimu sana si tu kwa Wapokot peke yao lakini taifa nzima. Tunakumbuka wazi ya kwamba katika Kaunti ya Lamu, kulikuwa na uvamizi, wakora wakaja – hatujui kutoka wapi – wakavamia na kuua watu wasio na hatia. Lakini kilichotokea huko Pokot kilionekana kuwa watu wamevamia mamlaka ya *Government*.

The Temporary Speaker (Sen. (Dr.) Machage): Ongea lugha ya Kiswahili au Kiingereza.

Sen. Chiaba: Bw. Spika wa Muda, wamewapiga na kuwaua maafisa wa Serikali ambao wako hapo kuwalinda na kudumisha amani. Hivi sasa Lamu kutokana na yale maafa yaliyotokea, imekuwa karibu miezi mitano. Kumewekwa marufuku ya kutotoka nje usiku. Madhumuni ya kuweka marufuku hayo ni kulinda ili wahalifu wasifanye

uhalifu mara nyingine tena. Lakini inaonekana marufuku sasa inawadhuru wale watu watiifu wanaolinda sheria. Inawaingilia pia katika hali ya kufanya kazi---

The Temporary Speaker (Sen. (Dr.) Machage): Do you know I can stop you on the rule of irrelevancy? Can you divert back to Pokot.

Sen. Chiaba: Bw. Spika wa Muda, tunazungumza mambo ya ukosefu wa usalama. Hivi sasa tunaomba Serikali, wakati umefika ya kwamba marufuku hiyo iondolewe Lamu. Hii ni kwa sababu ukiwasukuma watu kuleta sheria ambazo hazifai, basi kama Lamu au pahali pengine popote, hata Pokot, itakuwa lazima watu wachukue hatua ya kujilinda kulingana na Haki za Kimsingi.

Kwa hayo machache, ninaunga mkono Hoja hii.

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

Sen. Mositet: Thank you, Mr. Temporary Speaker, Sir. I rise to support Sen. (Prof.) Lonyangapuo and say, two wrongs cannot make a right. It was not a wise decision to take on the army against its own people.

Mr. Temporary Speaker, Sir, with all due respect, this Senate should just urge the national Government to remove the army from Baringo. Let us also remember that we had the Samburus who were attacked in Baragoi where about 50 policemen were killed and 50 guns disappeared.

ADJOURNMENT

The Temporary Speaker (Sen. (Dr.) Machage): Order! That is the end of today's business. It is now to interrupt the business of the House. The Senate stands adjourned until tomorrow, Thursday, 13th November, 2014 at 2.30 p.m.

The Senate rose at 6.30 p.m.