

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Wednesday, 22nd October, 2014

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

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

PRAYERS

PAPERS LAID

REPORT OF THE MINISTRY OF ENERGY AND PETROLEUM ON THE
PERFORMANCE FOR THE PERIOD JULY 2013 – JUNE 2014

Sen. Mwakulegwa: Mr. Speaker, Sir, I beg to lay the following Paper on the Table of the House today Wednesday, 22nd October, 2014:-

Report of the Ministry of Energy and Petroleum on the Performance for the Period between July 2013 to June 2014.

(Sen. Mwakulegwa laid the document on the Table)

The Speaker (Hon. Ethuro): Sen. Mwakulegwa, did you present one or two Papers?

Sen. Mwakulegwa: Mr. Speaker, Sir, I presented one Paper.

The Speaker (Hon. Ethuro): Okay.

Next Order.

Hon. Members who had the Floor yesterday?

Hon. Members: Sen. Chelule, but she concluded!

The Speaker (Hon. Ethuro): Sen. Chelule, you actually concluded yesterday. So, any other person wishing to contribute is welcome.

MOTION**THANKS FOR PRESIDENTIAL ADDRESS**

THAT, pursuant to the provisions of Standing Order 24(6), the thanks of the Senate be recorded for the Address of H.E the President delivered on Monday, 6th October, 2014 during the Special Sitting of Parliament.

(Sen. (Prof.) Kindiki) on 21.10.2014)

(Resumption of debate interrupted on 21.10.2014)

Sen. Wangari: Thank you, Mr. Speaker, Sir. I join my colleagues on noting the Address on His Excellency the President that he made on Monday 6th October, 2014 during the Special Sitting of Parliament.

Mr. Speaker, Sir, before the President left for The Hague, there was a lot of anxiety in the country. There were so many people giving different scenarios on what could happen if he went to The Hague. There were many analysts on television and radio justifying their reason he should or should not attend his status conference at The Hague. However, when he addressed the Special Sitting of Parliament, many people were actually caught off guard.

Mr. Speaker, Sir, yesterday as I was coming from a meeting on Ngong Road, I was listening to the radio. I heard the Senate Minority Leader bashing the whole sitting and the whole Motion. However, there were some very reasonable Members, including the Deputy Minority Leader who actually attended the sitting. The President has the leeway to address the Parliament any time that he pleases so long as he follows the procedure as he did. The Address dispelled very many fears that Kenyans had. We heard many people urging the President not to go while others told him to go The Hague. However, he took a very firm stand. When he made the decision to go, he caught many unawares. The best thing for any leader is the ability to make a decision. Even if this decision was touching on Kenyans, at the end of it, it was touching on him as a person. It was touching on his responsibility on over the 40 million Kenyans of whom he is the President. He showed guidance. We saw him go to The Hague. He sat through the proceedings.

We saw how the prosecutor tried to really prove a case that does not exist.

We saw the prosecutors trying to make the burden of proof to be on the accused. Lawyers know in every case, especially criminal case, the burden of the proof is on the prosecutor. We were hoping that the ICC, with regard to how it was formed and why it was formed, even if we do not fault it, an office is as good as anyone who is sitting in it. Even the positions we occupy today, we cannot condemn the Senate. You must then condemn each and every Member who sits on their individual capacity. That is why when

you look at how the cases have evolved, right from when they began, you will see that they lost track at some point. The cases started becoming very political and you cannot just say it is a judicial process, when we are seeing political interference coming into the same process. It stops being a justifiable judicial process. For a prosecutor to admit and say that there is no evidence and, at the same time, wants it to stay forever, I think there must be a very good reason. We have seen even the judges on the bench defying and asking for a very good reason we need to push this case forever. That does not make sense.

Mr. Speaker, Sir, the former prosecutor was very clear that he wants to make Kenya an example. That is where the ICC lost it. That I want to crucify you to show others that it can be done. We are not criticizing this process and saying that what happened in 2007/2008 did not happen. We, a country, have seen the repercussions. We have gone through very many processes. They are not even over. The process of reconciliation has not been achieved in this country. There are still many underlying problems in very volatile areas. It is up to us now to do the right thing. We should not live it to the ICC to decide how we live with our neighbours. In Rift Valley, for example, where there was a big problem, we see people who took neighbours' cows still milking them across the fence. That has happened, but the reconciliation cannot be dictated to us through a process that does not have any evidence. Justice for the victims does not mean that we pass a guilty charge on the accused without the due process.

If these cases have evidence, are justifiable and sustainable then the story we would be speaking a different story, but the moment we go the route of telling the accused to prove their innocence, I think we have lost it. It should be upon the prosecution to make sure that there evidence is tight, the justifiable and sustainable.

Mr. Speaker, Sir, people in this country prayed. Women prayed and fasted. I saw people go to the mountains because it was not a simple decision to make even for the Head of State. There are 40 million Kenyans looking upon him to offer guidance. That means that there is a weight of 40 million Kenyans on his shoulders. Even if we want him to decide that he can be just Uhuru Kenyatta, it was not that easy; it was an immense responsibility. The President took a very brave decision. If some of us are told to delegate being Senators, I think many will refuse. He delegated being the President.

Who does that? His humility is amazing. That is why it sent everyone in a total confusion. It sent the nay sayers into confusion. They did not know what to do because he had done something that had not been witnessed in this country. Whether you want to rubbish it or dismiss it, it is history for this country.

He showed that the country is bigger than the President or any individual. That is the example we should be setting to our children.

You do not have to take this thing so seriously. Today, you are seated here and tomorrow, you are somewhere else. That is why we, as leaders, must realize that we are not sitting on super glue; these positions are not permanent. Yesterday, you were in Parliament and today, you are here as a Speaker. It does not have to get to insults and

thinking that you will never get out of those positions. He gave out hours of his Presidency. That is something commendable.

I want to join this House in noting and congratulating the head of state in showing leadership, in showing that God exists and he has also shown that he is a God-fearing man. Prayers of Kenyans, prayers of women and those who fasted were answered and we are now looking forward to the withdrawal of these cases because there is no evidence. They have said so themselves so why does it have to wait forever. Why are they telling us to wait until 2017? What do they know that we do not know? These are the questions that we need to ask ourselves.

I want to join this House in noting that Speech.

The Speaker (Hon. Ethuro): Sen. Wangari, I did not wish to interrupt you, but you said “the prayers of Kenyans and women”; where does that live men?

Proceed, Sen. Elachi.

Sen. Elachi: Mr. Speaker, Sir, I also rise to support this Motion and also thank the President for standing firm for the sovereignty of this country. Today, the institution of the Senate finds itself in a dilemma. It is that respect of an institution that we need to uphold so that we can get out respect. That is what the President did for this country. He stood with humility for the sake of the institution of presidency of this country. He stood up for 40 million Kenyans to earn the respect of the whole world.

The President also stood firm to ensure that the relationship we have with the African Union (AU) continues to flourish knowing very well that they stood with Kenya. Therefore, he had to keep that promise. That is why he had to ensure that Kenya continues because Kenya is bigger than any one of us. Indeed, that is what he showed us.

I also want to thank the Deputy President. Whether we like it or not, he also made history. When we document our history, it will be said one time, he was the acting President of the Republic of Kenya. He was, indeed, an acting President at one time, whether it was for one hour or 48 hours.

Mr. Speaker, Sir, yesterday, I interrupted the Senate Minority Leader, who is also my leader from western Kenya and I respect him, because I think the issue of respect of institutions must be upheld. If we need to see that happening, then we must show an example. It is from this Senate that we will get people who will vie for Presidency of this country. Therefore, one will need respect when that time comes. As I speak, we, as Kenyans, need to uphold the rule of law. We must respect the institutions created by our Constitution. It is unfortunate, the way some of us play political games on this issue. In 2007/2008 all of us were in this mess. We know that the Tenth Parliament pushed us to The Hague. We should ask ourselves how Kenya can come out of this mess. It is sad that we have continued politicizing the whole process. We have decided that the ones who are there are the ones who were the perpetrators. That is very wrong. With the new dispensation, it is time we focus ourselves positively on how we deal with these issues.

The Senate must be an institution that will take Kenya to the next level. Kenyans are looking upon us and believe that they can find sanity within the Senate. However, if

we get out in rallies to play political games, we will have lost it. Kenyans want to see us transform and help the President in developing this country. He talked about Vision 2013 which he would like us to realize together as hon. Members of this House. We all produced a blue-print and believed in it. That is why we are called the Upper House. However, we might lose it, if we continue with those kinds of politics. It is important to talk about it without fear. We are losing it as the Senate when we point fingers to different institutions without giving respect to institutions.

Mr. Speaker, Sir, His Excellency the President has turned the image of this country to a better one. Today, you can go abroad and be proud to be a Kenyan because of His Excellency the President. His Excellency the Deputy President has ensured that they are firm together. They have given us advice that we should not walk the talk of ethnicity and that we need to change. The Senate is a House that can bring that change, but unfortunately, it is the one that flourishes ethnicity. If we are not careful with the words we use in the rallies, we might fan ethnicity feelings in this country. When the President handed over to his Deputy for 48 hours the reason was to bring Kenyans together.

The Speaker (Hon. Ethuro): Order, Sen. Elachi! A Senator speaks through resolutions. I do not remember any resolution we passed on the basis of ethnicity. So, you may talk of individuals.

Sen. Elachi: Mr. Speaker, Sir, that is what I said. I said that it is for us to search ourselves and remember the institution that we are in. It is an institution that upholds the country together. The country is looking upon us to give direction in a positive way.

Therefore, whatever we do out there as individuals, always remember when you come out people will not look at you as a Member of the Senate. That is what I was trying to say. The President requested the two Houses to have a joint session because we are representatives of the people. Therefore, by talking to the two Houses of Parliament, he talked to every Kenyan through their representatives so that they can understand why he has to go to The Hague. He had to uphold the image of Kenya to ensure that the respect we have gained continues.

Mr. Speaker, Sir, the President knew very well that we are a young democracy and many Kenyans might not understand. The only way was to come and explain to Kenyans. It is for us now to learn from that. It is time we went out and let Kenyans understand what our role is in the society. They are also asking us what our role is. We, as a young institution, have a big challenge to ensure devolution works in this country.

Mr. Speaker, Sir, another lesson we learnt from the President is that we, as leaders, have been part of the progress of this country and we need humility in dealing with fellow Kenyans. With humility, we can go far and earn respect from our fellow Kenyans. As we move on, we have many challenges, including supremacy battles with different institutions.

Mr. Speaker, Sir, I know you have done your best in showing us that we look at a better way of managing all these through dialogue. The President was trying to tell us that dialogue can change many things. If we dialogue with different institutions, we will move this country forward and we will gain respect. We have gained a lot and stood firm under your leadership by moving serious policy change in this House. That is what the Government is using today to transform the country. It is time to go out and ensure that what we are doing is also accompanied with actions.

Mr. Speaker, Sir, as I conclude, there is one thing we, as leaders, need to ask ourselves because as we are here tomorrow some of us are going to be governors or president. Therefore, we have to ask ourselves what landmark or legacy we have left in the Senate. We must work in unity. Devolution does not look at everything the way we are doing. Devolution looks at unity. That is why governors have stood firm in what they believe in. It is also time this Senate stood firm in what it believes in. Looking at the lessons from the President, I believe that under your leadership, we can transform this country. We can look at the issue of The Hague because we have our Attorney-General *emeritus* here and he can guide us in such matters.

As I support, I want to thank the President for guiding this country and giving it a positive image where the whole of Africa will remember that Kenya move on. A good Constitution can assist Kenya to achieve good governance in terms of managing our resources. That is what we want to see in our counties. We should be able to dialogue on the different issues for example in Makueni. They should have that humility to move their counties to a different level.

With those few remarks, I beg to support.

Sen. Mwakulegwa: Mr. Speaker, Sir, I take this opportunity to support. I am one of the few from the CORD Coalition who attended the session. I am proud because it was something that I was expecting the President to make a decision. The decision that he took was good and courageous. There are four things that he did. One, he separated personal and official responsibilities. That is why he told Kenyans that he will leave the presidency and go to The Hague as a private citizen called Uhuru Kenyatta. To me, that was a bold and courageous decision which I admired. He also set a good example for the rest of Africa. The other heads of states had requested him not to go, but looking at the fact that he might put this country in cross-roads and blame, he decided to do something not only for himself, but for the good of this country. He decided to go.

There were so many opinions on that matter. That is why I had to come and hear what he had to say. First and foremost, there was a gazette notice from the Speaker recalling the House. Therefore, I came knowing that I represent the people of Taita Taveta County. Even on my own personal capacity, I wanted to hear from the horse's mouth his decision. If he would have made a contrary decision, I would have given my views otherwise. However, he did what I expected him to do. It was a good decision.

As we discuss, we also hope and wish that the victims also get a fair hearing so that justice is seen to be done to both sides. We, as Kenyans, must be careful. We have

been celebrating that the cases are going to be terminated. You cannot celebrate unless and until the judgement is delivered. We need to be conscious about premature celebrations. They are still at The Hague. We do not know if the proceedings will go on, but our wish is that both get a fair hearing.

The other example that the President set was to come and talk to the nation when it was facing impulse in terms of thought and where to go. Had he gone without addressing the nation, there would have been mixed feelings. I encourage other leaders to take the courage and learn a lot from good example given by the President. This is because when we, as politicians, are faced with difficult situations, we normally go back to our communities and say that we are being finished. However, he came forward and said:- “This is a personal matter. Let me go there personally and clear it.”

Mr. Speaker, Sir, we should also take that example. When we are faced with difficult situations, let us separate official and personal responsibility. Therefore, we should be seeing more people do the same when charged in a court of law in this country. For example, when people are charged with embezzlement of funds, they should respect courts and go there to clear their names.

They should not drag their communities into their own problems. They should stand on their own and clear their names.

Mr. Speaker, Sir, lastly, the Kenyan courts have been reformed. The Kenyans who have been charged at The Hague are only three, but the people who committed atrocities are many. We should have seen the Kenyan courts starting to charge people who are not at The Hague, so that the healing process can, indeed, take place. If we do not charge these people, healing will not take place.

I support the President’s speech. I am a proud Senator for Taita Taveta County because I was there to witness and hear what the President said.

Thank you, Mr. Speaker Sir.

Sen. Kagwe: Mr. Speaker, Sir, thank you very much. I also rise to add my voice in congratulating the President, for not just a very informed speech, but also very informed actions. In doing what he did and telling Kenyans what he told them, he emphasized that Kenya is a nation that respects the rule of law, not just internally, but also externally.

There are those who had advised him not to take this particular action and not to present himself to The Hague, but I think what he did was wise. It is wise, not only because of the fact that we, as a nation, are seen to be respectful of the international community, but also because in a sense it was also a set up. There are those who would have wanted him not to go to The Hague, so that The Hague could then turn around and issue a warrant of arrest saying that he had refused to attend the court hearing. Therefore, they would have assumed that he is a criminal forthwith. Therefore, in a manner of speaking, the President called the bluff of the ICC.

Mr. Speaker, Sir, like Sen. Mwazo, I was sitting in that chamber. It was embarrassing moment, not for the President, but the ICC. This is because the President

sat there. He was asked whether he had anything to say and said he had nothing to say. The lawyers were going to speak on his behalf. So, those of us sitting there were questioning ourselves whether it was then necessary for the President to come and sit there, listen to a hearing and then go home. It became abundantly clear, that the intention was not that the President was supposed to say anything, but to embarrass him. The intention was to make him sit there and for the ICC to show that they can, indeed, summon a President. Fortunately, he took a very wise decision of not being the President as he sat there. Therefore, all they had was an individual from Kenya known as Uhuru Muigai Kenyatta, who sat and listened and said nothing. We asked ourselves several questions as we sat there. Was that not something that could have been done by video conference in this day and age?

Was it not possible for the President to simply sit in the State House and watch the proceedings that went on the ICC via video conference?

Mr. Speaker, Sir, those of us who were there watched the proceedings. We saw what was happening. It became very clear that this process is not just a technical judicial process, but also a political process. It was very clear that the issues at hand were not really issues of law, but politics. We understand international politics, saw and continue to see international politics. There are those of us in Kenya who might believe that when we go to The Hague that Europe stops or The Hague stops. I would like to inform fellow Kenyans that in The Hague they do not even know that such a process is going on. The newspapers in The Hague do not even report that there is such a procedure going on. So, they are safe. For them life goes on normally. I do not think that they are aware of upheavals that they cause not just in Kenya, but also in other parts of the world, when they go ahead and mess with offices that are supposed to be duly respected.

Therefore, as we deal with this matter and pray for the President, the Deputy President and Mr. Sang, we should do so in unity. There are those of us who have now earned the name of the personification of critics. There are those of us who will be seen and, immediately, we will know that something is going to be opposed. There is nothing wrong with that, except for the fact that it is African tradition that I can fight with my brother. However, when that happens, it is our own war. When my cousin and I start fighting, then my brother will automatically support me to fight my cousin. It is the way we have lived for many generations.

Therefore, as partisan politicians, we can engage on this matter as a political parties matter. However, the truth must be told because this is the matter for the nation. The President is the President of the nation, not a section or party. He is the President of Kenya. When the presidency is under attack, all of us from all corners of Kenya, should see it as such. When we are attacked from the outside, we, as a nation, should always stand together.

Mr. Speaker, Sir, the ICC will not unify Kenyans. In fact, it has the opposite possibility of dividing Kenyans. Kenyans will be unified by Kenyans. When we sat there, there were arguments to the effect that if the cases are dismissed and withdrawn, then we

will have forgotten the plight of the victims of violence. Far from it, there is actually no direct relationship between the future of the victims and what happens in The Hague. This is because, at the moment, it is the same presidency that we are relying on to deal with the issues of the victims of 2007-2008 violence. Antagonizing and destroying the presidency, in its self, will not solve the problems of the victims. We, as a House, Parliament and the people of this great Republic, must deal with the victims in a manner that is humane, respects the sufferings that they went through, recognizes their humanity and can put them in the shoes that they were in prior to the violence. This is something we, as Kenyans, should be doing.

Mr. Speaker, Sir, it has nothing to do with whether the Hague court finds His Excellency the President, the Deputy President or Mr. Sang guilty or not. It is important for us to note that technically there is actually no trial going on in The Hague. The debate in The Hague is whether there will be a trial or not. Since it is clear from what the prosecutor has said, it is not possible to go to trial because there is no evidence to take the matter to trial. Therefore, the only option left is either to withdraw or to postpone indefinitely.

We were flabbergasted when we heard somebody saying that this trial could be postponed up to the next general elections. What is the relationship between what is going on currently and the next general elections? To my mind, there is absolutely no link between the two. How are you supposed to find the evidence because of the next general elections? What those of us who were there witnessed was basically an act. We saw Hollywood actors there pretending that there was actually something going on when actually there was nothing going on.

Mr. Speaker, Sir, we are now hearing that they are demanding for records of certain mobile numbers. When you ask them which mobile numbers they want the records for, they do not know them. They have even gone ahead to suggest that there were certain vehicles which were involved. They want the Registrar of Motor Vehicles to explain who owns certain vehicles and what use they are for. How in God's name is the Registrar of motor vehicles supposed to know how a motor vehicle is used and who is driving it when he is seated at Nyayo House? We respect the ICC and the international community as a nation and we are obligated to do so. However, I think a time comes when it is very clear that the path that the ICC is taking is no longer tenable. There is no evidence to proceed with this matter and, therefore, they should stop the case all together.

Mr. Speaker, Sir, I want to remind my colleagues that every time people are in power, they are under the illusion that they will be in power forever. Those of us who were Members of Parliament are under the illusion that we will be in Parliament forever. Those of us who have gone in and out of Parliament; won and lost elections, appreciate very clearly that life is not just in this Senate or in the National Assembly. A time will come when you will be a private citizen. At that time, you must stand boldly by the statements you made while you were here and not because of a partisan position. If the electioneering records in Kenya are anything to go by, 70 per cent of Members of

Parliament; the National Assembly and the Senate, will not be there. We must be bold enough to know that this happens. I count myself either within the 70 per cent or 30 per cent, God knows.

Mr. Speaker, Sir, I want to take this opportunity to thank those Members from the CORD coalition who travelled with us to The Hague. They have continued to support and pray for the President because of the realization that this is not a CORD or a Jubilee matter. This is a cause for all Kenyans; this is a time for us to be together. This is the time for us to forget about political partisanship and move forward as a nation.

I also want to urge that the Jubilee administration focuses very seriously on the plight of those people who are still in camps because some of them have not been resettled to date. We should remember that as long as they have not been settled, they will be a grave reminder to what happened to our nation in 2007/2008. The sooner we settled them so that they live like the rest of us, the sooner we shall heal the wound that we have. Even a nation that is wounded will feel treated better if we have got those people in their homes living like other Kenyans.

With those few remarks, I beg to support.

Sen. Kisasa: Asante sana, Bw. Spika. Ninachukua nafasi hii kuunga mkono Hotuba iliyotelewa na Mhe. Rais wa Kenya. Kwanza ningependa kuwapongeza Wabunge wa mrengo wa CORD ambao walikuja kuhudhuria kikao hiko kufuatia mwito wa Rais kwa sababu yeye ni Rais wa kila mtu katika taifa hili. Ilikuwa na faida gani kutengewa viti kwenye Bunge na kuamua kutohudhuria na bado unaonekana kwenye runinga ukiongea mambo mengine. Ilikuwa ni aibu kubwa sana. Kwa nini msiitikie mwito badala ya kukaa nyumbani na kujifanya hamna haja huku mnataka kujua kile ambacho anahutubia Bunge. Hilo ni jambo la huzuni sana.

Bw. Spika, Rais wa Kenya alijitoa mhanga na kuonyesha ushujaa wake. Tunajua kwamba si rahisi kiongozi kupeana nafasi kwa mwenzake akalie kiti chake cha uongozi. Mbona wewe hunikaribishi kwenye kiti cha Spika ili nikalie hata kwa dakika mbili ili katika historia ijulikane kwamba nimewahi kukalia kiti cha Spika. Ukiangalia historia ya nchi ya Kenya, kuna watu ambao wakati huu wameaga dunia, lakini wangepewa hicho kiti kwa dakika mbili tu, wangepufuka kutoka makaburini mwao. Hilo ni jambo la kihistoria ambalo Wakenya watalikumbuka milele. Dunia nzima itakumbuka ule uhusiano wa Rais na Naibu wa Rais kama ule ambao hauna kifani; ni undugu na ujamaa ambao hakuna mtu anayeweza kueleza.

Bw. Spika wakati Kenya inashinda medali michezoni sisi sote hufurahia. Vile vile tukifiwa, sisi sote huwa na huzuni kwamba mmoja wetu amefariki. Sioni ni kwa nini wakati huu tuna dua ya kuku au dua mbaya wakati mmoja wetu anatarajia kuhukumiwa kule The Hague. Ni lazima tuwe wazalendo; jambo likimkabidhi mwenzetu inafaa sisi sote tusaaidiane kama jamii moja. Pia ningependa kusema kwamba, inafaa tuwaangalie wale waathiriwa wa michafuko ya 2007/2008. Watu hao wakiweza kuishi vizuri kama Wakenya wenzao, tutafutika machozi kidogo.

Bw. Spika, ninaomba Wakenya waendeleo kuomba na kushikamana. Kama tunavyojua, umoja ni nguvu. Tukishikamana sote, tutafaulu kwa sababu hakuna mtu ambaye atatoka nje ya Kenya na aje kutujengea Kenya yetu isipokuwa sisi wenyewe. Ni lazima tuungane mkono na tuwapatie nguvu hawa viongozi wetu. Yule atakayechukua mamlaka 2017, pia tutamuunga mkono. Hakuna jambo nzuri kama kuwa katika Serikali. Ninawaomba wale ambao wanajiingiza kwenye hiyo kesi kwa sababu hao ni wa mreno fulani waunge Serikali mkono ili tushughulikie maslahi ya Wakenya ili ile manifesto ya Jubilee itimie na tuishi kwa amani. Hii ni kwa sababu bila amani hatuwezi kupiga hatua yoyote.

Bw. Spika, mifano imetolewa hapa na hakuna mtu ambaye anaweza kupeana kiti chake. Hakuna mtu ambaye angependa kutolewa nyama mdomoni. Lakini ukiona Rais amepeana kiti chake, huyo ni Rais ambaye lazima tumheshimu. Huyo ni Rais wa kipekee. Hata lile gari lako Bw. Spika, ama langu hatuwezi kumbalia mtu mwingine alikalie. Kwa hivyo, huyu ni kiongozi wa kimaajabu. Halafu pia naomba kumpa kongole makamu wetu wa Rais. Kile kiti kilikuwa kimpendeza kweli. Mimi sikujua kama angeenda kumpokea Rais wake. Hawa ni viongozi ambao lazima Wakenya waige mifano yao.

Bw. Spika, naomba kila mwananchi wa Kenya achukue mfano wa viongozi hao tulio nao. Ulikuwa ni mfano mkubwa na funzo kubwa kwa taifa hili. Hii ni dhihirisho kubwa kuwa tuna viongozi ambao ni wa kipekee. Kuna baadhi ya watu ambao dua zao ni kuona kuna uhasama kati ya Rais na Naibu wa Rais. Hawafurahii kuona uwelewano kati ya viongozi hawa wawili. Wengine wanadai kuna mgongano kati yao. Lakini kitendo hiki cha Rais kilidhihirisha wazi kuwa watu wanasema uongo. Ninatoa hongera yangu kubwa isiyo na kifani kwa kuwa hawa ni viongozi wanaofaa kuigwa na wengi. Tukiangalia mpaka mashinani kule kwa Kaunti, wakati mwingine unaona kuna kutoelewana kati ya viongozi wetu. Mtu mmoja akiwa juu, hamtaki yule mwingine atambulike.

Kwa hivyo, hili ni funzo ambalo limekuja na limeonyesha kwamba Rais wetu anaichukulia nchi nambari moja kuliko nafsi yake.

Sen. (Prof.) Lonyangapuo: Thank you, Mr. Speaker, Sir. I also rise to join my colleagues in congratulating the Head of State for the manner in which he decided to address the anxiety and all the confusion that was almost to arise as a result of the summon that he received. Acknowledging this, he quoted Article 132 of the Constitution that provides him such a time to address Parliament. For that reason, he was not there as an intruder. He came legally in the House in order to give a speech and address the nation on any matter that may be of interest. He also mentioned as he spoke that he came in as a representative of the people as indicated in Article 1 of our Constitution. On anything that may be touching on them and sovereignty, an elected representative of the people must address them. I will quote that Article 1(3) of the Constitution. It says:-

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

- a) Parliament and the Legislative assemblies in the county governments;
- b) the national executive and the executive structures in the county governments;
- c) The Judiciary and independent tribunals.

Mr. Speaker, Sir, he came because he is an Executive in the national Government. For that reason, anything that may touch on the sovereignty of our people needed to be addressed. He mentioned that he received a notice that he was supposed to attend a status conference at The Hague. Everybody in Kenya and the region also learnt and heard that our Head of State had been called. There were so many people that were anxious and they did not know what was going to take place. Therefore, it was essential that the Head of State had to take notice and come and address Parliament so that any implication that people may have thought, could be cleared. He read the mood that there was some confusion and anxiety being played in the minds and hearts of the people of Kenya. Therefore, he needed as the Head of State to address the nation. There was no other better place than to come to Parliament. Every parliamentarian, in the Senate and the National Assembly was supposed to come there in their capacity as elected representatives of the people to listen to the President of the Republic of Kenya and not the head of the Jubilee Coalition.

Mr. Speaker, Sir, I am happy that the Head of State was able to take us through the history of what transpired. He reminded us that on 15th December, 2010, four years ago, he watched in disbelief as his name was mentioned among the other five as one of the suspects bearing the greatest responsibility for the loss of the lives of the people that took place in the year 2007/ 2008 during the post-election violence. Six people were named. It reminds us of our history that in 1952 in a place called Kapenguria, the headquarter of my county, the famous six who became the liberators and the beacons of the nation of Kenya, were arraigned in court. Finally, they were tried and sent to Lodwar to start their jail term. However, out of the resolve of the six, the Kenyan nation came to being.

Mr. Speaker, Sir, I do not know what the magical number was and the figure that was associated with the number six.

Somebody was trying to go around this six. Incidentally, the champion of the Kapenguria six was the late Mzee Jomo Kenyatta. Now his son, Uhuru Kenyatta was also among these six suspects. Whoever was trying to get some arithmetic to work for him or her, nobody knows why this was replayed.

Mr. Speaker, Sir, we know that we cannot close the history and run away from it. We lost lives as a result of our careless behaviour as a people of Kenya during that election. We are sorry that people died. However, from that time, we, as a nation, have walked to the extent that last year, 4th March, 2013, the people of Kenya consciously

made a choice to elect leaders. They chose the Head of State, one Uhuru Muigai Kenyatta and his Deputy, William Samoei Ruto. Kenyans knew that the two were among the people that had been charged. I do not think that we, as Kenyans, made a mistake. We never did. We did participate in our democratic elections and it worked. The two were chosen and you can now see the sum total of our choice. The leader of the nation decided to come and address Parliament and take a step that nobody ever imagined he would.

Mr. Speaker, Sir, some doubting Thomases were roaming around this country and outside, saying that these people will never ever come out of their offices. They would never take responsibility. They would have tasted power, but because power is sweet, as we read in the books, they would not come out of it. That they will stick there as others have done. They quoted some fellows from our neighbouring states that have been summoned and refused to honour those court summonses.

We need to remember that prior to the election, the Head of State and the Deputy President then, as civilians had presented themselves. The other three had been cleared and were in the process of clearing their names. It was essential that he came to mention and tell Kenyans not to be anxious at all. It required that all of us at such a time as this, need to stand up as a nation.

If you read and look at what happened to parliaments in the first world, when a problem like this erupts, the opposition and those ruling in the land at that time stand together as one. Did you not watch when the Americans were going to fight Osama bin Laden and others? There was no dissenting voice because it touched on a matter that was so important to the people of that nation. Even then, everybody in this land who had been elected and who is elected now needed to come, in their capacity, to stand with us and to stand with the Head of State as he was giving us direction so that we do not begin planting wrong seeds of discomfort and discord again in the land.

Mr. Speaker, Sir, I want to laud and give the President all the commendations because all of us are aware that there are some people who hold certain offices to whom even imagining getting out of those offices to proceed on leave is like a nightmare. They will not even want to imagine going for leave. There are some civil servants who have never gone for leave for ages and years because they do not know what will happen to their office and to their seat the next day.

We, as a nation, learnt a lot from the President's Speech. We learnt that we have a Head of State we can rely on. We learnt that he means every word he tells us to the extent that we must treat the manifesto and the agenda of Jubilee, that we are following, seriously. This is because it was written from the hearts of the men that just addressed us in this matter. I also want to thank the Deputy President for walking the talk together with the President, because if he was somebody who was not reliable, we would not have gone this far.

Mr. Speaker, Sir, it is quite interesting that some people are still imagining that Africans cannot think for themselves. Some people are thinking that we cannot make any

decisions that can challenge the world. I want to believe that the decisions, the choice or action that the Head of State took was a remarkable one. Everybody was able to read and follow that Kenya is a nation of leaders and of people that they can emulate. That is why some of our brilliant brains are in key leading sectors in some of these countries in Africa like South Africa, Botswana, Rwanda, *et cetera*. It is because Kenya has a pool of people who are champions that can be relied upon, just as the Head of State has become an exemplary leader who can be copied by many.

Mr. Speaker, Sir, I now want to come back home to the 47 small county governments that we have. I do not know, in the last one year, whether any governor has gone on leave. I am not aware and I am not sure. You have already read about how governors have been having trouble and problems with their deputies. Governors need to learn a very key lesson from the steps that the Head of State took. They need to learn that the President was able to trust his Deputy President. Some of the deputy governors have almost zero duties in the counties just because the governors do not trust them.

Mr. Speaker, Sir, I pray that this speech should be photocopied and be given to both governors and deputy governors in all our 47 counties.

If possible it should also be translated into their mother tongues so that they can learn how trust one another. It is a pity that some of the deputy governors are just sitting in their offices without a single activity because the boss, who happens to be the Governor, does not trust them.

Mr. Speaker, Sir, it does not end there; even Chief Executive Officers (CEOs) of parastatals have the same problem. They have the problem of lack of trust in somebody else. They do not even apply for leave. They do not believe that somebody else can carry out the activities in their office. It is quite important that we need to trust each other. Even some of our political leaders do not trust anybody else apart from themselves. We have some of the heads of political parties who have held positions in those parties permanently. They do not want to relinquish them to anybody else. They are permanent and pensionable there. We need to believe that somebody else can run the show better than us.

The same scenario is true in the world of academia and in the universities. You will get vice chancellors who have never gone on leave since they became Vice Chancellors. You have headmasters who have stuck in their offices because they do not believe that anybody else can run the schools in their absence.

The lesson we learnt from the President's Speech of 6th October, 2014, needs to remain with us. It is true statesmanship that the President was able to go alone and everybody else in that country could not believe that what had been done was done.

Mr. Speaker, Sir, I do not know whether my colleagues, who never came to listen to the Head of State's address, have any moral authority to even challenge and critique the speech. If you do, do it decently as a Member of the Opposition rather than rubbish almost everything in it because you do not know who will be next. When you are saying that the speech that was given by the Head of State is nothing or baseless,

which speech did you want to give yourself? You need to give us one copy of your speech so that we can compare it with what the President gave us. Yes, it is good to challenge issues, but challenge them decently. When you critique the speech, you should do so if you had your pen and paper taking notes when the speech was being delivered.

Mr. Speaker, Sir, it is high time that all of us, as the people of Kenya, came together and forgot our political differences, particularly now that this is the year of development. We just came out of elections almost one year ago and we have three more years to go. We need every part of this country to be developed, including where the Senate Minority Leader comes from. All of them are our people and all them need their areas to be developed. So, when we are running our politics, we need to run them in such a way that we can be friends immediately you finish your contribution to this speech, rather than refusing to even shake our hands.

Mr. Speaker, Sir, I have personally learnt a lot. We need to emulate this. Indeed, I want to finalize my contribution to this speech by urging every Kenyan citizen to accept and understand that the choice the President made was okay because it was good for our people. The President also went further, as he concluded, to urge African leaders, brothers and sisters, to always stand with Kenya and the people of Kenya. The people of Kenya will always stand with them even when they are in their difficult times.

Mr. Speaker, Sir, I want to conclude my remarks by saying that we have had a teacher. If it was those days, we would have said that this was “teacher number one” because of the lessons we have just learnt from him.

I want to ask that we continue in this manner.

Mr. Speaker, Sir, I beg to support this Motion.

(Applause)

The Speaker (Hon. Ethuro): Yes, Sen. Keter?

Sen. Leshore, I have just seen you now. I saw you briefly on my screen, but you disappeared.

Sen. Keter: Thank you, Mr. Speaker, Sir, for giving me this opportunity to contribute on this important Motion. From the outset, I want to say that I am one of those Members who have really been to The Hague since it started, even before the six were named. This is because of one thing, which I believe; I will always maintain that nobody planned violence in Kenya.

I will say that daytime and at night because I remember very well for those of us who were in the Orange Democratic Movement (ODM). We were campaigning all over the country. We went round looking for votes. After that, there was violence after the announcement of the presidential results. When the results of all the respective Members of Parliament were announced, there was nothing. However, violence erupted after the delay of the presidential results. It is good that my colleague, Sen. Ongoro, across there, was with me in ODM. We went round together soliciting for votes. There was violence

everywhere in the country. There was violence in Rift Valley, Nairobi, Mombasa, Kisumu and so on. Basically, there was violence everywhere in the country. Therefore, my conviction is that nobody planned violence.

I have been there and looked at the way things are. I am of the opinion that we, as a country, made a wrong decision by ratifying the Rome Statute. I do not believe that the ICC is the court of repute. It is the worst court. I cannot equate it to anything good. This is in the sense that the people controlling it are people who do not believe in the court itself. Americans pulled out of the ICC. They do not subscribe to it. They describe it using all the terms, you can name. No American can appear before the ICC. Yet they lecture us, Kenyans or African countries, that we must respect the ICC because it is an international court. That is double-speak. Why can they respect it themselves?

Mr. Speaker, Sir, we, as a country, made a wrong decision. As leaders, let us be bold enough and make a right decision regardless of the cases which are ongoing and cannot be stopped. Let us pull out of the ICC. I am one of the people who believe that we will not lose anything by pulling out of that court. The sooner we pull out it, the better for all the Kenyan generations to come. I am in support of the African Union (AU) and other African countries, which have made a resolution to that effect.

Mr. Speaker, Sir, the investigator of the ICC, the famous Ocampo, never did any investigation. We, as a country, gave him all the respect. He came here, enjoyed and we showed him our animals thinking that he was doing the work, but he came here as a tourist. Finally, he pronounced the names of the six individuals claiming that they were the ones with the greatest responsibilities. If investigations had been carried out very well, I do not think the minimum threshold for ICC would have been met.

Mr. Speaker, Sir, I want to say that neither the President, hon. Uhuru Kenyatta nor the Deputy President, hon. William Ruto, were seeking for presidential votes. They were just in the team. How they picked the two and, subsequently, others, who I believe they were escorting the two, was purely political. Some people sat somewhere, crafted a deal and said they have to get rid of these people so that some preferred candidates be in the ballot box come 2013. Thank God, He is there and He is overall. You cannot defeat God. The wishes of our God are there and that is why today we have hon. Uhuru Kenyatta as the President of the Republic of Kenya and hon. William Ruto as the Deputy President of the Republic of Kenya.

There were so many people who said that there are consequences. They made a lot of allegations. Surprising enough, the same people today are inviting and dining with the President and the Deputy President because they have known that they did not succeed in their game plan. Therefore, even the invitation or the summons to the President to appear before the ICC, to me, it was just pure politics. The ICC wanted to prove to the world that they have the power and they can do anything to our African leaders. I want to thank the President for saying that he would obey the summons. I also thank him for convening Parliament to pronounce the decision that he was going to The Hague as Uhuru Muigai Kenyatta.

I believe that Bensouda and her team, who were pushing this case, were surprised by the decision which our President made. I really congratulate him for that. He went there, sat there throughout and there was nothing. They would have proceeded with the status conference without even summoning him to appear. This shows that ICC look down upon us, as African countries, and more so as Kenya. That calls upon my earlier statement that we really have to think as leaders to pull out of the ICC.

Mr. Speaker, Sir, some people thought, I will pronounce here, that the President should not have summoned Parliament to make that decision, but I think it was a wise decision to announce to all Kenyans. We, both the Senate and the National Assembly, represent 40 million Kenyans. I do not think there was any other better forum than Parliament. Therefore, his convening Parliament and his pronouncements are welcome. To those friends of mine from the Opposition who attended, I congratulate them. I really thank them.

They include, Sen. Musila and Sen. Mwakulegwa and others for responding to the President's summons. Those who deliberately chose not to attend, to say the least, that was childish and immature. I wish they were here because they have been contributing. How do you contribute on a Motion which you mentioned that you did not want? I want to call upon them to be mature enough. I have been in the Opposition for the last 10 years and I remember disagreeing with the former President Kibaki. However, that did not constitute missing a meeting in our constituencies. We would attend meetings whenever he visited us because he was the President of the Republic of Kenya. Therefore, I hope my colleagues will style up so that next time they can be here when the President comes so that they can criticize the speech.

The Speaker (Hon. Ethuro): Sen. Keter, I thought that you are doing the third term now.

Sen. Keter: Yes, Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): In 10 years, we have two terms in which you also served as an Assistant Minister.

Sen. Keter: Yes, Mr. Speaker, Sir. I was only there for two years. I cannot say I have been in the Government because the years I was in the opposition are more than the years that I was in the Government. In any case, it was a *nusu mkate* Government so I cannot say I have been in there.

Mr. Speaker, Sir, the questions which Bensouda was asking our President are from the witnesses who had sat somewhere and wrote statements saying that the President called them and did this or that to them. These are the same witnesses appearing also in the case of the Deputy President. I remember before the Ocampo six were mentioned, we were on record saying that these witnesses had been compromised and paid to fix some people. Therefore, it is high time for the ICC to get to know that.

Regarding the telephone numbers which they are asking, why is it that these witnesses never gave out those numbers?

How do you expect the accused person to give you numbers which are not in existence? The President and the Deputy President gave their numbers. However, they are saying that they have other numbers just because they want to justify the information given by the witnesses to pin down our leaders. It is high time that they gave us information. Let the case proceed. The cases against the Deputy President and Mr. Sang are still ongoing. However, the remaining few witnesses have not said anything concrete about them. Some have said what they heard. Therefore, according to me, this is political thing and a waste of time.

Mr. Speaker, Sir, in my earlier message in support of the President of Uganda, Yoweri Museveni, who made it clear during the celebration of their Independence Day, that he will stand with us, as Kenyans and with all Africans. His message was very clear. He said we need to get out of the ICC. This is not a court of repute. This is the worst court we have seen. Even the ones in the *mtaa* are better off than this. The judges and prosecutors have no evidence, but they want to justify their existence and their huge salaries by prolonging these cases against Kenyans. There is no case, but they want to be there for the sake of it. Their time will come to an end and they will be left embarrassed. I do not want to say much.

I applaud what the President did and I support the Motion.

The Speaker (Hon. Ethuro): Sen. Keter, you have exhausted your entire allocation and yet you are saying that you do not want to say much. You have already said all that you needed to say.

COMMUNICATION FROM THE CHAIR

VISITING DELEGATION OF AFRICAN INDEPENDENT PENTECOSTAL CHURCH OF AFRICA FROM NAIROBI COUNTY

Hon. Senators, before Sen. (Prof.) Lesan takes the Floor, let us acknowledge the presence in the public gallery of the African Independent Pentecostal Church of Africa, Bahati Academy, from Nairobi County.

(Applause)

Proceed, Professor.

Sen. (Prof.) Lesan: Thank you, Mr. Speaker, Sir. I want to join my colleagues as well in congratulating His Excellency the President for the action he took during the difficult times of decision-making with regard to the case at The Hague.

I would like to congratulate the President for making a decision to address Parliament because he could have done it in any other way.

However, I thought and I am still thinking that the act of addressing Parliament, although Constitutional, is a sign of great humility by His Excellency the President. He recognised

that the country could go on without him. This was a great sign of humility. Therefore, I would like to congratulate him for doing so.

During his address to Parliament, the President kept on mentioning that his conscience was clear. This was very humbling. After all, we recognised that the President is only human being and was feeling heavily laden. His inner strength was being challenged by what was going on. Owing to this, I want to congratulate Members of the National Assembly and Senators who accompanied the President to The Hague. This was an activity that served to strengthen him during the difficult time. I also want to congratulate many Kenyans who turned up to welcome him back. These goes to encourage individuals who are experiencing great difficulties with court cases to recognise that there are other human beings who feel the same as them. Therefore, I thank all Kenyans who came out in large numbers to passionately welcome the President home and encouraged him.

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

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

Mr. Temporary Speaker, Sir, it would also be good to give a word of thanks to the family members of His Excellency the President who came close to him and supported him during the difficult time. He is not only a Kenyan to all of us, but also a member of a family.

The African Union (AU) came into Kenya and assisted us during the difficult time when these atrocities and the mistakes that happened took place. The AU still commands a respectable position with regard to this issue. I am encouraged by what the AU is appreciating with regard to these issues. I am encouraged by the fact that AU appreciates the issue, especially through the resolution that was made in Addis Ababa in October. The AU members clearly stated that to safeguard the constitutional order, stability and integrity of Member States, no charges will be commenced or continued before any international court or tribunal against any serving Head of State.

The AU recognising that this is a serious issue did not say heads of states should not be charged. It simply said that during their tenure in office, the whole country should not be humiliated with a court process simply because the serving head of state is in court. This is a very noble recommendation. It is a very welcome recommendation when you look at the whole issue sensibly.

It should be acceptable for the cases to be discontinued or not carried out when the Head of State is before the court.

There are a significant number of states that constitute the membership of The Hague. The African countries constitute a very big bulk. I think the decision that the African countries make when they sit together should carry significant weight. In fact, in

other situations, if they had veto power in the UN, this is where they would have used it to overrule the court cases from going on.

Mr. Temporary Speaker, Sir, I would like to say that the problem we had in 2007, even if it is being addressed at The Hague, in the long run, will require a local solution. This is where we need to think of how we will solve the problems and what is in store for the victims. It is important that we start realizing that we still have an opportunity to look at some of the consequences that the victims went through. I think this country has started mending fences. There has been a lot of resettlement of the displaced people. The ongoing resettlement has continued over the years and everybody who was affected by this phenomenon will be taken care of. We could also start solving this problem locally by thinking about compensation and identifying the individuals who suffered as a consequence. We need to think about compensating them. This is a better healing process. It is a local situation rather than The Hague process.

Lastly, Mr. Temporary Speaker, Sir, I would like to say a word regarding the Deputy President who has continued to deputise the President. For 48 hours, he had the constitutional responsibility to act as the President of this country. After the 48 hours, he constitutionally accepted to go back to his deputising position without any problems in an honourable way. The fact that this position can transcend from one individual Head of State to another even for a short time shows that the situation can be repeated again depending on what the circumstance may be. The two gentlemen acted in a very honourable way for the safety and security of our country.

With that, I want to support and encourage Kenyans that as we go through this process of The Hague, we be reasonable, think together as the President did when he came in front of us to let everyone know about the issue regarding our country and our nation.

With those few remarks, I beg to support this Motion and the Speech of the President.

Sen. Leshore: Thank you, Mr. Speaker, Sir, for giving me this opportunity to join my colleagues in contributing to the Speech made by His Excellency President Uhuru Kenyatta on the 6th of October 2014. First, I wish to congratulate the President because he acted within the Constitution. He respected the other arm of the Government known as the Legislature. He respected the sovereignty of our country. He respected the people who have been elected to represent the people of Kenya by calling us and addressing not only Parliament, but the entire nation.

Mr. Speaker, Sir, before the 6th of October, 2014, I was so confused whether to tell the President to go or not to go because I was weighing these two options. I was asking myself: If he will not go to The Hague, what will happen to him and Kenyans? If he goes to The Hague as a President, what will happen? But thank God. God loves Kenya. Indeed, God loves Kenya because through the wise counsel given by his lawyers he came up with a solution which made the entire country happy.

I just came back from Italy where I interacted with the Senators and MPs, there they call them Deputies. If our President had not gone to The Hague, I knew for sure the first question they would have asked me is: Why did your President not go to The Hague? I was proud because they did not ask me that. They instead told me that they are coming to invest in Kenya. They also told me that next year they will organise an investment conference in Italy and they wished Kenya would be attending it. I am proud for what the President did for Kenya.

Mr. Speaker, Sir, A few of my colleagues on the other side have said that we should trash this speech because it has no meaning. If you read the entire speech, it is not about The Hague. It talks about the unity of Kenyans, forgiveness of what happened in 2007/2008. It also talks about the job our gallant soldiers are doing in Somalia and what our diplomats are doing across the globe. It talks about our sportsmen and sportswomen. It also talks of many other things we are doing in Kenya, as a country. It is not just about The Hague.

He did something very good as a leader of this country. He did not leave leadership in a vacuum. I remember when he was addressing us, one of the opposition Member of Parliament was seated next to me. He asked me “what did the President say, did he hand over the Presidency to Hon. William Ruto?” I told him yes and he said wow! Not very many Kenyans could believe that he was handing over power to his deputy. This made us proud.

Mr. Temporary Speaker, Sir, we would like other leaders in Kenya, who hold constitutional offices to be doing the same. Sen. (Prof.) Lonyangapuo spoke about. I think he read my mind because I was going to tell the governors that when they leave their counties, they should hand over power to their deputies.

Likewise, I would like to tell the leadership of the opposition, the CORD that when he leaves for the United States of America (USA) or anywhere else, *baba* should leave the leadership of the opposition to Sen. Wetangula or hon. Kalonzo Musyoka. This is so that there is no vacuum in that leadership. It is sad that when he leaves, there is a leadership vacuum until he comes back and then they start asking: “*oh, Baba*, what did you bring from us from the USA?” He could also hand over leadership of the CORD to my good friend, Sen. Mutula Kilonzo Jnr. so that we can see how he can practice to become the leader of CORD.

Our President has stressed about the unity of Kenyans. Therefore, we, in the Legislature and as the elected leaders of this nation, must stand as one people. We, as leaders of Kenya, must stand to show the young people that we are united because we are sovereign. We are brothers and sisters and we are fathers and mothers. We must nurture this young democracy so that the young leaders who are watching us out there know that they have got leaders in the present 21st Century. They have got leaders in the Senate and in the National Assembly. They have leaders in this nation who care about them, their education, health problems, shelter and everything else for them to live decent life. I want to emphasize that we, as leaders, must stand and show Kenyans that we are one people.

Yesterday, the Senate Minority Leader spoke very well. I do not know why others are jittery about him. It is his democratic right as an opposition leader to oppose. However, he should have come here with an alternative, not just to trash everything in the speech. Some of us are proud that our soldiers are fighting for us across the border. Those are the people who we, as Kenyans, must praise day and night. We want to also praise the President as the Commander-in-Chief so that those young boys' families and parents know that they are taken care of well when they are outside the country. We have had very many peace missions by our soldiers in Eritrea, Sierra Leone and Liberia. We must be proud of our young soldiers. We, as Kenyans, must be proud. We must be proud of our sportsmen who have gone all over the world. When you hear the National Anthem being sang in those countries, that is when you know that you are a Kenyan.

We must also be proud of our diplomats who are representing our country. Now our diplomacy is geared towards economic achievements. Let us see to it that our diplomats can contribute immensely so that we get investors to come to this country. We need to create a good environment for investors to come to this country so that our young people will get employment and the good things which we say are the fruits of Uhuru.

We, as Kenyans, let us see to it that the ICC will not derail us from becoming a united nation, a united people and a progressive country. Since we blindly signed that treaty, let us not allow it to derail us so that Kenya and other African states will not come together as one continent. We have received a lot of support from our friends across the borders. We must, therefore, maintain that. When our President went there as a private citizen, he made the African continent proud. Let us not allow the ICC humiliate us, as Kenyans, and our President. Let us stand by him, our Deputy President and Mr. Sang. Let us also stand by the victims who suffered.

Mr. Temporary Speaker, Sir, with those few remarks, I want to thank and congratulate all Kenyans, including those who accompanied him to The Hague. He went there and came back with the prayers of those who did not accompany him and the entire country. God loves us. Let us cherish to live as one people.

Thank you, Mr. Temporary Speaker, Sir.

COMMUNICATION FROM THE CHAIR

VISITING DELEGATION OF PUPILS FROM MOI AIRBASE PRIMARY SCHOOL

The Temporary Speaker (Sen. (Dr.) Machage): Members of the Senate, may I recognise the pupils of Moi Airbase Primary School, from Nairobi County, seated in the public gallery. They are 138 pupils who are visiting Parliament. They are accompanied by six teachers.

Welcome.

(Applause)

(Debate on the Motion resumed)

Sen. Ongoro: Thank you, Mr. Temporary Speaker, Sir. I rise to add my comments to this debate.

I want to start by stating that in my own opinion, when the President asked to address the nation, I did not really find anything, particularly wrong with that. He is the Head of State and asked to address the nation. Anybody had their democratic right to be in attendance, not to be or watch. I have no particular issue with that. Actually, if I had any issue at all, then the events that followed closely after his address convinced me then that he needed to have that sitting to prepare all of us psychologically for what was supposed to follow, which he did with a lot of pomp.

Secondly, the decision to travel to The Hague was also okay, because he had been summoned. As a leader and somebody who needed to defend his position, I find absolutely nothing wrong, first, with the summons and, secondly, his attendance. I want to reiterate to those who have already spoken, that when you speak in this Senate, know that your statements are kept in the HANSARD. You will be held accountable whether by this generation or another. So, what we should avoid is forcing others to sing a song. We are here as legislators and everybody is free to speak their mind.

If you want to carry a sword because somebody is making a statement that is uncomfortable with you, that is your own cross. I will stand in this Senate and speak my mind at all times, without fear or intimidation. I will debate it as I think right and stand by my statements, not just here, but outside this Parliament at any time and not just in this dispensation. It is a pity that I am giving my contribution when my colleague, Sen. Keter, is out of the Chamber. This is because he reminded me of what happened in the Tenth Parliament.

Thirdly, politics is about perception. The President did something very interesting by giving us the impression that he handed over power to his Deputy. To be honest, I am not still convinced that he handed over any instruments of power. But let me be honest that he is a very shrewd politician, because politics is about perception. To ordinary minds that wanted to see that power was handed over, it was a very smart move because it built a lot of strength and security in the minds that thought that the President was out of the country. We saw a ceremony of handing over of power. However, I am yet to be convinced by anybody that any serious instrument of power was handed over. Was it the fleet or the limousine? I am also not convinced that the President needed to hand over any power to anybody even for one minute, one day or whatever. The Constitution is very clear on what happens when a Head of State leaves. It is enshrined in the Constitution that when he steps out of the country, his Deputy takes over temporarily. So, he was not doing anything that was unconstitutional or a surprise.

Having said that, I want us to be honest; stop looking at people sitting on this side as though they were not Kenyans. Stop looking at the Opposition as if they are just dropped from somewhere. The Opposition is recognized by the Constitution of this country. Whether or not you recognize it, as an individual, the Constitution is supreme and superior. You need to have the strength of character to accept and appreciate constructive criticism. You do not have to take issue with anybody who is in the Opposition. You listened to Sen. Keter with whom we were in the Opposition for ten years. He is now in the other side. I respect that. Politics is very fluid. May be tomorrow, you will find yourself sitting where I am seated, and I will be seated where you are seated. I do not have to hate you and you do not have to hate me. Could we style up? In fact, those of you who are telling us to style up need to style up themselves. Know that we are in a democratic space where you can play your politics without having to really carry the extra burden of carrying a sword also with your politics.

Mr. Temporary Speaker, Sir, let us be very honest. We have a sizeable number of Senators who were with me in the Tenth Parliament, who supported The Hague process. Now you can sit pretty and say that some Kenyans dragged our President to The Hague. Some of you were never even in politics or did not bother to listen to the proceedings in the Chamber. I was in the Chamber when we pleaded passionately with our colleagues not to send any Kenyan to The Hague. We insisted that we should have a local tribunal or process. We said that this was a Kenyan problem. Since Kenyans had died, we had to sort our problems locally in our own soil. But our brothers and sisters took us on. It is a pity that I am making my contribution when my honourable colleague, Sen. Keter, has left the Chamber. This is because I engaged him on the Floor of the House and pleaded with him personally. He told me to my face: - "Elizabeth, do not be vague, go to the Hague." That was the slogan on the Floor of the House. Even money exchanged hands. We were defeated on that Motion a record three times. Let us be honest in this country. There are people who just have a Raila phobia. Anything that hon. Raila Odinga will state becomes poisonous. Just because he was supporting at that time that we should have a local tribunal and not send Kenyans to The Hague, to some people the other position became pleasant instantly. That is the truth. They supported The Hague process and sent our brothers to The Hague, when we were shedding tears.

Do not forget that I actually feel the pain that our brothers and the President are feeling. Are you forgetting that in the first list of six people, I was one of the people who were wrongfully accused together with the President, the Deputy President, Dr. Sally Kosgei, hon. Balala and hon. Henry Kosgey. So, I am talking from a point of knowledge because I have walked that path. Do not also forget that I am the immediate former Member of Parliament for Kasarani Constituency which was a hotspot. So, the pain that I feel for having lost 100 people who I know personally and I can call them by name, including my personal driver who was shot in broad daylight with a packet of milk in his hands, is enormous. I supported the local tribunal in the Tenth Parliament and I am still supporting it now passionately. It pains me when some people want to look pretty and

talk about things that they are not really feeling pain for. I am pained. I do not celebrate when my country is dragged before a foreign country, but honestly, we were not tied to the rope to sign that treaty.

Sen. Muthama: On a point of information, Mr. Temporary Speaker, Sir.

The Temporary Speaker (Sen. (Dr.) Machage): Do you want to be informed?

Sen. Ongoro: Mr. Temporary Speaker, Sir, I would like to be informed by Sen. Muthama.

Sen. Muthama: Mr. Temporary Speaker, Sir, the information I want to give to Sen. Ongoro is that in that Tenth Parliament, I was the Government Chief Whip. I led the PNU coalition members together with other Members from the ODM, to reject the process of the tribunal being set up here rather than going to The Hague.

I participated and led a good number of Senators, including Sen. Beth Mugo, to reject the local tribunal.

Sen. Mugo: On a point of order, Mr. Temporary Speaker, Sir. Is the Hon. Senator in order not to tell the whole truth to the House, that I rejected the Motion to go The Hague. I was on the Government side and the President was in the House when we were voting as Government to create a local court for our people to be tried locally. Even in the Cabinet, I stood firm on having a local process.

The Temporary Speaker (Sen. (Dr.) Machage): Very well! You can only re-examine yourself and I find nothing wrong whether you said that people should not be vague, but go to The Hague. I know your Chair was in a group of very many who wanted the case to proceed to The Hague. The reason was that we thought it was going to be a lengthy process that nobody will ever be prosecuted. So, whichever way you look at it, that is the truth. Sen. Ongoro, is just saying the truth.

Sen. Ongoro: Thank you, Mr. Temporary Speaker, Sir. Tell them so that those doubting Thomases will know that even you and the many others defeated us on the Floor of the House when we were supporting a local tribunal and insisting that nobody should be taken to The Hague.

The Temporary Speaker (Sen. (Dr.) Machage): There was a loud leg thumping and we defeated you.

Sen. Ongoro: Mr. Temporary Speaker, Sir, they were shouting: "Do not be vague, go to The Hague". The Chair was one of them and Sen. Muthama has even confessed that he was given facilitation to mobilize people to defeat us." So, Sometimes when you are talking from a point of not knowing something very well, then just stand up to support the Motion and do not go into the details.

When you are debating, you must bring the historical perspective of any matter. We must ask ourselves why and how we got to The Hague. That is the bottom line. What you are sharing with Kenyans now is what we were sharing with Kenyans in the Tenth Parliament when we were saying that no Kenyan should stand before any foreigner for trial. You defeated us and we honourably conceded defeat and let you drag those

Kenyans to The Hague. You have now dragged them to Hague and turned around and started blaming us. This kind of blame game and absolute hypocrisy must stop. You should stand by what you said and mean what you said. You should be ready to defend it in the House or outside this House.

Mr. Temporary Speaker, Sir, another group which is doing us a lot of injustice is the media; the Fourth Estate, who have the list of how Members voted for this Motion. Why do they not, once in a while save Kenyans all this drama by publishing the names and constituencies of those who voted for The Hague and those who voted for a local tribunal.

I lost 100 people in my former constituency. In Kisumu, Naivasha, Mombasa and other places many lives were lost. A local process would allow us to visit those same sites and talk to the local people and get to know what really happened. We want to know who burnt that entire family of 16 people in Naivasha. We would like to know from eyewitnesses, who burnt Kenyans in that church in Eldoret. That can only be got from the herdsmen or the local people who actually saw it. The people who bear a very big responsibility are also still here with us. As time goes by, we are losing credible evidence of people who should have been prosecuted and now be behind bars.

Mr. Temporary Speaker, Sir, while we sit pretty here, we should know that there are children who were orphaned during the post election violence. We still have displaced persons who are not being catered for. We still have people who are still moaning. We have Kenyans who are so wounded who need to see us come up with some compensation. I always ask myself: Even as we make a lot of fuss about The Hague process, what stops us from having a local process going on at the same time unless we are not interested in getting to the bottom of this thing? We are not interested in healing and knowing which Kenyan killed who for us to confess and ask for forgiveness and move on as one nation. I want to state that I am one wounded Kenyan who is still looking for answers to know who killed 100 of my chief supporters. This hypocrisy must stop. Everybody knows that Kasarani Constituency was on fire. For all these years, nobody has asked me to make a simple statement or to tell them what I saw or what I know. This is because they know I will speak the truth. That is why they keep on going round and round in circles creating big drama about everything and not asking the right people to state the right things because they are not interested in bringing to book those who were behind this.

With those remarks, I support.

The Temporary Speaker (Sen. (Dr.) Machage): Very well, Sen. Ongoro. I am sure you can volunteer a whole page to write your whole experiences and views.

Sen. Gwendo: Thank you, Mr. Temporary Speaker, Sir, for giving me the opportunity to support the President's Speech. Personally, it was good for him to address the nation and Parliament before going to The Hague. Initially before calling Parliament, many had anticipated that he would not go and this had brought a lot of anxiety among Kenyans. It is good that he talked to Parliament and Kenyans and reassured them not to

be anxious. I believe this will lead Kenyans to a reconciliatory mood which I wish my colleague, Sen. Ongoro could adopt. We all know a lot happened, but I think it is time we joined our leaders in leading Kenya towards reconciliation and working towards a better Kenya. This country already had good things going on, but if we keep on concentrating on the negatives, I wonder where our children will end up. The President did a good thing to talk to Kenyans and reassure them that all be well and secondly going to The Hague as an ordinary Kenyan citizen and not as the President of this country.

This action brought out the simplicity and the humility of the President. It is a lesson for anybody who wants to be a leader in this country and anybody else who would like to be a president in future. He has brought out the simplicity of this thing; that it is just a seat. Therefore, we should support and give him the best we can. We should also help him to lead this country towards reconciliation and working together.

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

Sen. Mugo: Thank you, Mr. Temporary Speaker, Sir, for giving me the opportunity to also contribute to the ongoing debate. I would like to start by saluting and congratulating both His Excellency the President and his Deputy President, Mr. William Ruto, for the manner they have handled themselves since they took power. They have proved to the whole world that they believe in the rule of law. They have also proved to the whole world that they are mature, responsible and trusted leaders. Africa as a continent is accused of lacking these qualities. The action of the President has been applauded across the globe because of the humility and the maturity. It is a pity to hear some of our own people here in the country criticizing that very noble act.

Mr. Temporary Speaker, Sir, there comes a time when one must stand for his country and not for self. I went to The Hague and I have been there three times. I have followed the debate and what the judges and the prosecutor have been saying there, especially the lead prosecutor. Even before the confirmation of the case against the President, the world was amazed because everybody thought that there was no case. However, the charges were still confirmed. I want to support Sen. Keter, this is a political case. When the Americans themselves withdrew from The Hague, they said that it is a political court and there is nothing about justice in it. I want to believe that the court was created for the Africans. In fact, it was created to promote neo-colonialism for them to control Africa. You just need to see who is being taken to The Hague and from which continent. It does not mean that the others do not commit even worse atrocities than Africans.

Mr. Temporary Speaker, Sir, from what transpired at The Hague, it was quite clear that there is absolutely no case, especially both against the President, the Deputy President and Mr. Sang. This is because they do not have credible witnesses. It came out that the witnesses have been bribed to orchestrate this case. Who led this campaign? It is the west. It is well known that they were hiding behind human rights, civil society and the victims. The victims have said, time and again, that they have forgiven one another and they are now working together in the villages. So, who are these people? Who are these

victims? Is it the civil society, which more than often acts like the opposition to the Government in this country? Have they taken the opposition to The Hague? Those are questions we should be asking ourselves. All countries---

(Sen. Muthama stood up in his place)

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

Sen. Muthama: On a point of order, Mr. Temporary Speaker, Sir. With all due respect and as much as I respect my older sister here, Sen. Beth Mugo, who I worked very closely in the Tenth Parliament, is she in order to say that it is the civil society activists who took this case to the ICC when you know very well, being part of the Tenth Parliament, that the majority of parliamentarians voted for the case to be taken to the ICC? Is she in order to leave that truth out and blame the blameless?

The Temporary Speaker (Sen. (Dr.) Machage): Very well, that is Sen. Mugo's opinion on what she thinks about the whole issue. I cannot interfere with her opinion.

Sen. Mugo: Thank you, Mr. Temporary Speaker, Sir. I hope that I will not be interrupted again on those flimsy grounds.

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

Sen. Mugo: Mr. Temporary Speaker, Sir, I was at The Hague. It is well known that the lawyer for the victims was hired for them by the civil society. I keep on saying the case should be dismissed because they have nothing now to hold on until 2017. We are not really fools. So, what I am saying is what they were saying at The Hague. Whereas the victims themselves have repeated that they have no case, I want to tell The Hague and the judges that there will be no evidence because they have charged the wrong people. The accused persons had nothing to do with the violence. Therefore, the court will not find evidence against them even if they keep them there for more than 100 years. If they are interested, they should charge the right people who instigated and called for mass action. They should charge those leaders who called people to demonstrate in the streets and fight. Those are the ones who bear the biggest responsibility. As I keep on saying, this is a political case. Some people have even volunteered to give evidence and they have not been asked to do so. It is a pity that those who should be charged have not been charged.

Mr. Temporary Speaker, Sir, I know we have very good lawyers in this House. They will agree with me that when a prosecutor says she has no evidence, the case should not continue. Why should they continue shifting the goal posts if they do not have evidence? I believe the accused have rights, just like the victims. They have rights like everybody else. Therefore, to keep on punishing the wrong people because of political ends, is devilish. It is not Godly. We want to call on the ICC to come out and say "enough is enough." They should not allow themselves to be used any more by those who want a short cut to State House because that is what is happening.

As much as the Tenth Parliament voted for The Hague, a lot has happened. Kenyans have cried enough and they want these cases brought here. I am for justice for everybody. However, I would like to see a process go on here where it will bring those who wronged Kenyans to book---

Sen. Muthama: On a point of order, Mr. Temporary Speaker, Sir. Once again, is my sister, Sen. Mugo, in order to turn the Chamber to be a witness box where she is giving evidence of what is happening at the ICC? We are here to debate a very important issue and Sen. Mugo is turning herself to be in the witness box. Is this the right place to give evidence on who is right and who is wrong when there are victims suffering outside there? These victims also want to see justice, no matter how small they are in the eyes of God.

The Temporary Speaker (Sen. (Dr.) Machage): I am the Speaker of this House. I am not a judge. We do not have witnesses in the House. We only have Senators!

Sen. Mugo: Thank you, Mr. Temporary Speaker. During the Tenth Parliament, as a Cabinet Minister, I was with my friend, Sen. Moses Wetangula and former President Kibaki in New York. He attended a meeting of leaders representing the President. The meeting was about Africa and the troubles in Somalia and Sudan. He then came and told us what the West said. The former President Sarkozy of France said that they would pump out the African leaders out one by one. That is what Wetangula told us. He told us that they would start with Muamar Gaddafi and they did. So, is that the plan?

The Temporary Speaker (Sen. (Dr.) Machage): Hon. Sen. Mugo, I am beginning to accept Sen. Muthama's view. Be careful because you are discussing a Member who is not here to either accept or refute your sentiments.

Sen. Mugo: Mr. Temporary Speaker, Sir, I take your advice.

Let me say that some of the things that the prosecutor is asking for beat all logics. What do tax returns of President Uhuru have to do with The Hague? Have they now turned into handling a case for Kenya to see who does not pay their taxes and those who pay?

The Temporary Speaker (Sen. (Dr.) Machage): Sen. Mugo, may I overrule you and remind you of the rule of *sub judice* in Parliament? Please, observe that. We may not be doing anything better for the President and his Deputy regarding this. These issues are in court and this Senate must respect that.

Sen. Sang: On a point of order, Mr. Temporary Speaker, Sir. With a lot of due respect to your guidance on the issue, if we are discussing the contents of the Address and make reference to the issues that he raised, would that still be subjected to the rule of *sub judice*?

(Sen. Sang stood up in his place)

The Temporary Speaker (Sen. (Dr.) Machage): Sen. Sang, are you doubting the ruling of this Chair?

Sen. Sang: Mr. Temporary Speaker, Sir, I was just seeking clarification.

The Temporary Speaker (Sen. (Dr.) Machage): Could you sit down? I have ruled you out of order.

Sen. Mugo, please, continue.

Sen. Mugo: Thank you, Mr. Temporary Speaker, Sir. As I come to an end, I would like us to add here that we went into elections in 2013. I would like to congratulate Kenyans for a peaceful election and urge Kenyans to maintain the peace because we have already learnt our lessons, not from Ocampo as he may want to take the credit. We did not carry out a peaceful election because of Ocampo, The Hague or anybody. We did it because we are Kenyans. We wanted our country to remain peaceful. They should stop interfering with the internal affairs of our country. They should let the country spearhead its course.

Sen. Muthama: On a point of order, Mr. Temporary Speaker, Sir. With all due respect, is Sen. Mugo in order to keep on mentioning the issue of the ICC when yesterday, a ruling was made by the same court? They said that we should be careful as Kenyans not to discuss confidential matters that concern the ICC. One of them had to do with the properties that are owned by the President of the Republic of Kenya. It is clear that Kenya stands to be isolated---

The Temporary Speaker (Sen. (Dr.) Machage): Order, hon. Senators! You are now forcing me to read to you Standing Order No.92(1). I want Sen. Sang to listen. It is on the Matters of *sub judice* or secret. It says:-

“Subject to paragraph (5), no Senate shall refer to any particular matter which is *sub judice* or which, by the operation of any written law, is secret.

(2) A matter shall be considered to be *sub judice* when it refers to active criminal or civil proceedings and the discussion of such matter is likely to prejudice its fair determination.

(3) In determining whether criminal or civil proceeding is active, the following shall apply-

- (a) criminal proceedings shall be deemed to be active when a charge has been or summons to appear have been issued;
- (b) criminal proceedings shall be deemed to have ceased to be active when they are concluded by a verdict and sentence or discontinuance;
- (c) civil proceedings shall be deemed to be active when arrangements for hearing such as setting down a case for trial, have been made, until the proceedings are ended by judgement or discontinuance;

(d) appellate proceedings whether criminal or civil shall be deemed to be active from the time they are commenced by application for leave to appeal until the proceedings are ended by judgement or discontinuance.

(4) A Senator alleging that a matter is *sub judice* shall provide evidence to show that paragraphs (2) and (3) are applicable.

(5) Notwithstanding this Standing Order, the Speaker may allow reference to any matter before the Senate or a Committee.

Sen. Mugo, if you move towards that direction, I will consider you to be violating our own Standing Orders and I will kick you out.

Sen. Mugo: Thank you, Mr. Temporary Speaker, Sir. I was only saying that the issue has been in the Press. I was referring to the Press Conference that Mr. Ocampo made. I was not going outside that. I end there.

Sen. G.G. Kariuki: On a point of order, Mr. Temporary Speaker, Sir. My point is this: If the case is taking place outside the country and has an international connotation, how would it be affected by the *sub judice* rule now that it is not taking place in Kenya?

The Temporary Speaker (Sen. (Dr.) Machage): Sen. G.G. Kariuki, let me refer you to Article 2 of your own Constitution. This is on the domestication of laws. I do not need to continue.

(Sen. Sang stood up at his place)

Sen. Sang, you have a tendency. I would like to advise you, as your Speaker, that when the Speaker rules, you have to keep your cool.

Continue, Sen. Beth Mugo.

Sen. Mugo: Mr. Temporary Speaker, Sir, as I come to an end, I want to appeal to the ICC to dismiss these cases against Kenyans. Let us handle the cases here. One judge said that the cases are a Kenyan issue and should not be at The Hague. I will also ask Kenyans to unite. We should be proud of our country. We should be proud of the Presidency because it is a national institution.

Let us wait for 2017 because it is not yet here.

Sen. Mutula Kilonzo Jnr.: Thank you, Mr. Temporary Speaker, Sir. I have the Speech by His Excellency the President, which reminds me of many things. If my father was alive today, he would have said; "I told you."

When he presented a Bill to Parliament on this issue, it was rejected. I remember vividly when he said that the President of the Republic at the time and the Prime Minister should resign because they had let down this country by allowing our citizens to be subjected to an international court process when we would have handled this here. Maybe he is listening in his grave, but this is where we should not have gone as a country. As we do so, it is embarrassing and, probably, the reason that he was very upset, for a Kenyan to be on the witness box, shielded accusing another Kenyan before foreigners. It is

embarrassing for that Kenyan to stand up and say that I was bribed to lie. We, as Kenyans, should be embarrassed that we have subjected this country to what I call ridicule before the international community. While those witnesses are confessing that they were bribed or intimidated, there is a gentleman in Naivasha who lost his family. Is that also a lie? What are we telling Mr. Ndege? I had the opportunity of representing the former Member of Parliament for Naivasha, the only Member of Parliament at the time who was subjected to the Kenyan justice system as a result of the post-election violence. What happened in Naivasha is despicable.

The report by Justice Waki ought to drive we, the legislators, to tears, because there are people in this country who will never recover. I have heard Sen. Beth Mugo say that people have reconciled. You ask yourself the question: How do you reconcile a family member, like Mr. Ndege, who lost 13 people? What do you reconcile with that person? How do you reconcile when we do not have a person who confesses and says: "Dear Kenyans, I was responsible. Please, forgive me." Then, we can have true reconciliation in this country.

I want to remind this country to record history. The Nuremburg trials of the Nazis have taken a lifetime. But the people who caused the atrocities have faced justice, even if it has taken a lifetime. So, as we congratulate the President for going to The Hague, like he should have, because he actually said that he would before he became President, we must go back to the drawing board. If we must have true reconciliation, we must first have truth and justice, so that we do not do what I call lip-service. There are members of my community, the *Akamba*, who were separated from their families, simply because they came from Makueni, Machakos and Kitui counties and were married to other tribes. Their children who had Kamba names were taken back to *Ukambani* and the rest left in other places. How do you reconcile those issues? History is going to judge us harshly for ignoring and sweeping this matter under the carpet, simply because we are comfortable and sitting on different sides of the divide. The only constant thing in this country will forever be the law. That law irrespective of time, will be enforced. If you read the Waki Report, particularly on Naivasha, it mentions very specifically what transpired.

Mr. Temporary Speaker, Sir, it is a sad day because truth, justice and true reconciliation can only come if we, as legislators, can offer leadership to this country. We should not celebrate about something that should not be celebrated because it is embarrassing that we can have Kenyans in Netherlands accusing other Kenyans and causing a charade, as if post-election violence was a comedy.

As we read this speech, I do not know why all of us were so worried, because a status conference is just that. Maybe sometimes we should read the law. There was no reason for all of us to panic and leave our homes. Some people could not even eat. We must find solutions that will help us. If you drive somewhere in Rongai, Nakuru, the true picture of the Internally Displaced Persons (IDPs) is there. Those people live in mud huts with blue iron sheets. We have segregated them so that we forever know that these are IDPs. In our family farm in Nakuru, our workers call them *wakimbizi*. This is not a good

term to refer to your brothers and sisters. It is an embarrassment. We must show those people that they did not have to be displaced from their own homes and lose family members. I am aware of people who were very close and neighbours who lost their lives. I am also aware of people who came to our family farm and collected livestock. These are true issues, but what we are doing here is what I call lip-service. We are just being nice and flowering these things. However, I want to say without fear of contradiction that there is nothing good about what happened in 2007/2008. It does not matter which political divide that person came from. Whether it is before God or the courts of this country, justice should be truly served to the people who lost family members or do not know where their relatives went.

There are also those who took money and went all the way to a European capital to lie. We should subject those people to true justice, because they have failed this country and created a mockery of Kenyans. We are better than that and should say so. It is not because the case is against the President, his Deputy and Mr. Sang, but it is an embarrassment to have people doing what they are doing in Europe. They are laughing at us. Maybe people should read what the late Judge who refused to confirm the case against the Kenyans said. What Judge Hanns said when he refused to confirm the cases against Kenyans represent what we should have done as a country. This is because he said that these crimes should have been tried in the Republic of Kenya, because they do not meet international standards and thresholds. That remains a fact because we are back to the drawing board. Kenyans have withdrawn their statements and witnesses, yet we have not resolved the issue.

Mr. Temporary Speaker, Sir, the true solution to this country and the problems that we faced is legislation, reconciliation and justice. However, the truth must be told, because people are suffering quietly in their huts. Some will carry the burdens to another generation. We do not want to see people who have coexisted peacefully turning against their brothers and sisters as they did. I want to be able to go to the farm in Sachangwan and Rongai and not wonder what will happen to me at night. This is because the Independence that we fought for is for somebody to move from one part of the country and invest in another part of the country, so that then we can have a true country. This post-election violence even affected the economy of this country. In fact, it affected the value of land in the Rift Valley. We have failed to address this issue. We should not wait for another five years, so that the people who were investing in this country, other than worrying Ebola, will be worrying about post-election violence.

Mr. Temporary Speaker, Sir, with those few remarks, I beg to record my statement.

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

The Temporary Speaker (Sen. (Dr.) Machage): What is it Sen. G.G. Kariuki?

Sen. G.G. Kariuki: Mr. Temporary Speaker, Sir, my colleague here has just come in and I had already shown interest in the debate---

The Temporary Speaker (Sen. (Dr.) Machage): Order! You know I did not set this computer here. On the computer here, Sen. Sang appears ahead of you. With all due respect, my eyes did not catch you, but now they have caught you.

Sen. Sang: Mr. Temporary Speaker, Sir, thank you for giving me this opportunity. As a matter of fact - I think sometimes technology lies – I found Sen. G.G. Kariuki in the Chamber.

The Temporary Speaker (Sen. (Dr.) Machage): Very well, would you like to forfeit your chance for now?

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

The Temporary Speaker (Sen. (Dr.) Machage): That is very good and patriotic. That is a gentleman's behaviour. Proceed, Sen. G.G. Kariuki and thank the youthful Senator. However, he may have lost his chance; I may not think of giving him an opportunity.

Sen. G.G. Kariuki: Yes, he must lose his chance. Mr. Temporary Speaker, Sir.

I also want to be counted in this debate by saying a few words.

First of all, I want to thank the President of the Republic of Kenya and the Deputy President for finding it wise to inform Kenyans that the President took a very serious action by going to The Hague.

This was not a small matter and I think all of us know very well that this matter was so confusing. There were some people calling upon the President not to go to the Hague while others were asking him to go. He ended up making the right decision and we should thank him for that because he removed agony from Kenyans who were suffering from indecision.

Mr. Temporary Speaker, Sir, if you look at the Speech which was delivered by the President, it did not call for so many statements. This Speech is asking people to note. He willingly volunteered to give this Speech although under Article 132, it provides that he comes and gives the statement of whatever nature if he finds it necessary to do that and if he thinks it is useful to the nation. The President found it very important to call the two Houses and tell them; my dear brothers and sisters, here we are, I am required to go to the Hague and I have decided to go as Uhuru Kenyatta and not as your President.

The Constitution is very clear that when the President leaves the country the Deputy President takes over his position. This was a situation of its own nature where the President boards an aircraft for the Hague as an ordinary Kenyan. This is why I think this was a very serious step that he took. It is not true for anybody to suggest that the President did not know what the Constitution says with all his advisors and that it is only in this House that we understand better. Personally as a student of international law, I believe that the President did the right thing, particularly to surrender the Presidency. This Speech does not require anybody to start talking about the case because it has no business with the case. It was a mere report that he was going to the Hague and for that reason, every Kenyan should be satisfied that he should go. This Speech should not be

misused. There was somebody who tried to take advantage and tell us what he saw and heard. The President and the Deputy President have very competent lawyers and I saw them. Therefore, we do not need to take time defending them here. Whether you defend them here, it holds no water because the case is not in this Chamber or in Kenya. It is for the judges to decide what will happen.

Mr. Temporary Speaker, Sir, personally, I thought the judges had a problem amongst themselves because they were dealing with people they do not have any evidence against and, at the same time, they did not know what to do with the IDPS. Some of us are saying that people were corrupted but the judges have to decide what to do with a person they do not have evidence against and yet they do not want to release him. This is a very serious issue and it will be kept on record in international law. It would be interesting to see how these judges are going to behave because the prosecutor has no evidence. One lawyer was asked whether he had evidence that people were given money and he said that he did not have the evidence that they had or had not been given money.

The country made a mistake by letting this case go to the Hague; we entered into the heart of neo-colonialism. The neo-colonialists want to develop international law as a result of this case. We are supporting imperialism without our knowledge, especially when we decided to send this case to The Hague.

Mr. Temporary Speaker, Sir, I think that we should leave this matter to competent people who are doing this job willingly, because the President said here that this is not the time for anxiety. It is time to be proud of the democracy that we have built. You can understand because the Head of State, unlike 20 years ago, can just willingly board a plane and go to appear before a foreign court. I think we have achieved quite a lot. Personally, I believe in the rule of law and the only way we can achieve constitutionalism is when we have people of high authority, like the President who has accepted to follow the rule of law. We hope that, that rule of law which was followed – although it is from outside Kenya – even locally in Kenya here, we will all have to present ourselves to the law so that we can achieve constitutionalism which will be a big gift for this nation in the next many years to come.

Mr. Temporary Speaker, Sir, I do not want to speak about what those who spoke before me said, like the Senate Minority Leader. We should also become serious when we are talking about a matter of this nature. Just because you are in the Opposition, it does not mean that you can speak outside the subject like that. I do not want to develop this line of thought because it may be assumed that I am questioning the Chair, but I believe that a majority of us have been talking outside the scope of this Motion all through. They have just secured an opportunity to say so many things. I believe in proposing solutions; I do not believe in making statements, as I said earlier in another forum. There is a time when hon. Shikuku, Mark Mwithaga, Mbogo and I, used to decide to speak the whole day from 2.30 p.m. to 6.30 p.m. We continued that way until everybody realized that we were just misusing the authority of the Members of

Parliament (MPs). Therefore, talking and talking too much does not help anybody. Let us go to the point and thank the President and his Deputy for what they are doing in this country, particularly by showing the whole world---

The Temporary Speaker (Sen. (Dr.) Machage): Sen. Mungai, are you on a point of order because I can see your intervention?

Sen. Mungai: No, Mr. Temporary Speaker, Sir.

Sen. G.G. Kariuki: Mr. Temporary Speaker, Sir, I know that Sen. Mungai would be the last person to interrupt me; he is my good friend. If it was my friend seated next to me here, he definitely would.

Mr. Temporary Speaker, Sir, as I conclude. I would like to say; let us take advantage of what President Uhuru said in his Speech, that; “nurturing a young democracy in a treacherous world of despotism---” We all know that to create a democracy in that situation is not easy. It is very, very difficult. I have been involved in despotic regimes and I know what it means. Therefore, I think the President needs to be applauded because he says that nurturing a young democracy in a treacherous world of despotism, terrorism and extremism is never going to be an easy task.

We have a lot in this country that we must do, particularly to nurture the democracy that we have now seen. Sometimes I feel very hurt when I see somebody talking against the current Constitution by wanting to change the Constitution. They do not know where we have come from. I wish they knew where we have just come from. We were all in the prison of one person when the country became the property of the President. So, this personal rule has really messed so many people in this world and we must pray very hard to God that we should never ever attempt to go back to that situation. We can talk of Governors “eating” money and being impeached. We can talk about the misconduct of Senators and MPs - we have all the right to do that - but we must know that we have a pillar that we all must defend and that is our Constitution.

Mr. Temporary Speaker, Sir, thank you very much for having seen me and for giving me the priority to contribute to this Motion because my son can wait but I cannot wait.

Thank you very much and God bless you.

Sen. Abdirahman: Thank you, Mr. Temporary Speaker, Sir, for allowing me to contribute to this Motion on the Presidential Address. I have listened to a number of people since yesterday and I kept on waiting to get my chance. So, I thank you very much. I want to begin by saying that I am one of the few people from the CORD affiliate parties who attended Parliament sitting during the Presidential Address.

(Applause)

I did this mainly because I thought the Constitution provides for the President to address Parliament in a special sitting and at any other time. The Constitution gives him that

express right. Two, I thought the President is also a symbol of unity in the country irrespective of where your party loyalty lies. Three, I thought the Senate is the voice of reason in this country and that we need to hold Kenyans together so that we can move forward.

Mr. Temporary Speaker, Sir, listening to the number of people who spoke, even from the Jubilee side, this is not a time to defend the President. It is a time to look at what can we do together to forestall what transpired in this country in 2007/2008 post election violence. It was not a good thing and I always say that it was as a result of irrational decisions by the leadership in this country. I was an MP in 2010 when a number of MPs said: "Let us not be vague; let us go to The Hague." This was the irrational decision which a number of MPs then made which actually changed our course from a local tribunal to people facing crimes against humanity at the International Criminal Court (ICC). I want to warn my colleagues - I can do this within the House - that fanning tribal animosity in funerals, chest thumping and purporting to represent the President in this House or any other person, including the Deputy President, will not pay Kenyans. It is, therefore, important that as leaders, we understand that the crimes that were committed, irrespective of who committed them, must actually be paid for if we are to find a lasting solution to this problem.

Mr. Temporary Speaker, Sir, Kenya is a signatory to all international treaties and conventions and we must comply when it comes to certain times, like when our President was actually asked to appear before the ICC for the status conference. It is not by choice but it was mandatory. This will ensure that we are seen to actually respect international law without necessarily compromising our sovereignty which we support.

Mr. Temporary Speaker, Sir, anybody who cheats and says that Kenya is united is not saying the truth. Normally, elections alone come with animosity. Without killing, robbing or trying to hurt, elections alone cause animosity. It is, therefore, very important that we look forward to serious dialogue between communities and their leadership and also serious dialogue between leaderships themselves so that we can have a country that is held firmly together so that we do not destroy our moral fibre as it seems to be diminishing year in, year out. Conflict is bound to recur, in any form. There are quite a number of underlying issues that have not been resolved in this country. They include, resource allocation and equity, land, employment opportunities and many other issues. These are issues that we need to address. We should not just talk about post election violence and expect people to reunite easily. We must look at the reasons why people fight in this country. Small issues including boundaries have sparked fire in a number of constituencies in this country. It is important that the leadership at the Executive, Legislature and at any other level in this country looks at the underlying causes of conflict and why it continuously comes to the fore.

We also need to address broader issues of national concern that range from corruption, negative ethnicity, under-development and stagnant economic growth. These are the broader issues that continue to affect us as we progress in the years to come. We

should start addressing these issues from this very House called the Senate and the National Assembly.

As much as we talk about trying setting aside party politics, the Jubilee coalition Members of Parliament must also realize that they cannot defend the President. The President does not need any defence from them. He is the President for all the people. I hope that I am understood. The President is for everyone as long as he remains the President of this country. You will have lost your objectivity if you think that that is the way to support the President. I am not saying that our side is better because they also do this during funerals.

I want to conclude by saying that we need to open up dialogue as it was started last year so that we hold our emotions back and see to it that we put our country together for posterity.

The Temporary Speaker (Sen. (Dr.) Machage): Sen. Stephen Sang, I will give you an opportunity because what you did was noble.

Sen. Sang: Thank you Mr. Temporary Speaker, Sir. I rise from the outset, to support and thank the President, His Excellency the President for his unprecedented move of accepting that this is a country governed by the rule of law. When the ICC requested the President to appear on the status conference, many people imagined that he would not appear. There was a lot of anxiety in this country and many people thought that the President would not appear before the ICC. Without discussing the issues before the ICC, in accordance with your guidance, Kenyans saw the process that took our people to the ICC since the post election violence and the formation of the Waki Commission that went around this country.

We know the report that was produced by the Commission. We know the steps that the Commission recommended in its report. We are also aware of the attempts by this country to establish local mechanisms to deal with the post election violence of 2007/2008. We all understand the difficulties, challenges and the issues that led us to the ICC. We have also seen the processes being carried out at the ICC and whether investigations were done properly. We have seen the pre-trial process and the confirmation of charges all the way up to where we are now. We started with six Kenyans but now we have three Kenyans at the ICC. Kenyans have seen some of the greatest challenges that the ICC has gone through. Kenyans have seen some of the loopholes and issues that we think the ICC court, considering its stature, should have done. An international court of the ICC stature should have done better.

We appreciate the fact that when the President and the Deputy President were seeking the mandate to run this country, they made commitments that the cases facing them at the ICC were personal challenges and they would handle them at a personal level and not drag the entire country into the whole process.

It was a great relief to note that the President lived to that promise. Sitting down in the Joint Session of Parliament and listening to the President all the way to the conclusion of his Speech, in his own words he made it clear that he did not want a situation where

Kenya or the sovereignty of this nation would be put to trial. He did the honourable thing; the unprecedented step of stepping down, in his capacity as the President and appointed the Deputy President as the acting President to allow him to pursue the personal challenge. This allowed him to live by the promise that he gave Kenyans. This is the kind of leadership we expect from the President, Deputy President and from all leaders.

We hope, as a country that within the next one year or so, issues affecting the three Kenyans at the ICC will be resolved. One of the cardinal rules in the justice process is speedy delivery of justice. The cases at the ICC have dragged for too long. It is important that the ICC expedites the case process so that it clears it and gives a clear verdict on the two cases facing the three Kenyans so that come the next election, this will not be an issue.

We know that during the 2013 election, the ICC was one of the critical issues. Kenyans were told of choices having consequences. We had a lot of court cases which were brought as a road blocks to the candidature of some of the leaders in this country. We hope that the ICC will clear the cases and give their verdict so that Kenyans can make informed choices come 2017 without the challenges and the consideration of looking at the other issues of the ICC.

As leaders in this country, our greatest responsibility is to ensure that Kenyans can live together. We must bring Kenyans together. The position taken by the President to entrust his Deputy to act as the Acting President, though provided by the Constitution, was a clear testimony of the nature of the relation and the trust that the two leaders have among themselves. This is something that all other leaders must borrow especially our county executives and Governors.

We have a Constitution that provides for the offices of Governors and their running mates in the name of deputy governors. However, it is worrying to see that many deputy governors idling in offices and not being assigned duties and responsibilities. If there is something that our governors should learn from His Excellency the President, is the art of humility, trusting and working together with their deputies. The working relationships that this country has witnessed between the President and the Deputy President are commendable.

If we had 47 governors working in the same way in our counties, we would unite communities in our counties. As the leadership of this country, we want to appreciate the many Kenyans who prayed for the President and have continually prayed for the Deputy President all the time that he has had to travel to The Hague. Whereas the International Criminal Court (ICC) issue was thought to be a personal issue to the President and the Deputy President, if you look at the reception of the President when he came back from the ICC and the prayers that Kenyans continue to make for the Deputy President together with Mr. Joshua arap Sang, it tells you that this is a personal issue not only to the President, Deputy President and Joshua arap Sang, but also to millions of Kenyans in this country who are willing to travel with our leaders all through the process of the ICC. That is a clear testimony. The ICC needs to expedite their process, clear up the cases and give

a clear verdict to allow the President, Deputy President and Joshua arap Sang to continue engaging in their responsibilities and duties, as citizens in this country.

Mr. Temporary Speaker, Sir, the kind of co-operation that our country has given to the ICC is commendable. For the Government of Kenya to share intelligence reports and critical information with the ICC, it is a clear testimony and demonstration of the highest level of cooperation that any country can give to the ICC. Therefore, it is important that the prosecutor and the entire mechanism at the ICC do not engage in utterances that seem to suggest that the country has not cooperated, when it has given the ICC the highest level of cooperation.

Mr. Temporary Speaker, Sir, I want to commend the work done by the Attorney-General of this country. He has presented the Government position at the ICC, communicated clearly and even educated the ICC on our own constitutional processes and legal mechanisms, so that the ICC is properly advised on how to proceed in terms of seeking some of the information that they think the Kenyan Government should share with them.

Mr. Temporary Speaker, Sir, on several occasions, looking at the Attorney-General of Kenya canvassing and giving his position, sometimes the court has demanded some of the things in a manner that imagines that Kenya is a banana republic where you can just get things done in whatever way that you want them done. It is important for people to know that whereas we have domesticated some of these international instruments, we are still bound by our Constitution and legislations. Therefore, any credible international institution must conform to our Constitution and follow the legislations that exist in our country in terms of seeking the co-operation. It would be unconstitutional for our Government in this country to break some of the regulations, legislations and constitutional provisions, just to facilitate the ICC in some of the demands that they make.

Therefore as a country that is governed by the rule of law, the ICC needs to study our Constitution and follow the existing legal and constitutional mechanisms, to obtain whatever information that will help them facilitate and expedite the cases before them. This will ensure that the three Kenyans are cleared of the cases only handled in whatever nature they want. We need speedy delivery of justice.

Mr. Temporary Speaker, Sir, the process of reconciling Kenyans in this country began immediately after the post-election violence. Some of us have participated in numerous peace building activities within our region. The Rift Valley is one of the regions that were affected heavily by the post-election violence. It is a shame that the Truth, Justice and Reconciliation Commission (TJRC) which was an internal and local mechanism that was expected to help us to undertake the reconciliation processes, turned into a circus that we all know. It is unfortunate that up to now, the TJRC report has not been tabled before this House. It is important that our country looks at that report.

We know that there were a lot of misgivings in the way that the TJRC handled its processes, but we need to expedite the process of tabling the TJRC report within this

House, for us to be able to interrogate it and look at some of those recommendations that they made with regard to reconciling Kenyans and having a proper closure to the post-election violence episode in this country. Therefore, I urge this House, especially the leadership, led by the Senate Majority Leader to expedite the process of bringing the TJRC Report so that we can look at the recommendations, discuss and agree on a marshal plan for reconciling this country.

I beg to support.

Sen. Murkomen: Mr. Temporary Speaker, Sir, from the outset, I would like to congratulate His Excellency the President for delivering this very important Speech.

When I heard that the President had requested the Speaker of the National Assembly and Speaker of the Senate to allow him to address a joint sitting of Parliament, I knew that it was a very serious issue, because it is a constitutional provision. I also knew that we were about to make history, in the sense that we were operationalizing certain provisions of our Constitution; that basically when we passed that Constitution, it was never imagined. For example, it was never imagined by many people that within the first two years of the first President under our new Constitution, we would have the person elected as the President relinquish his office and allow another person to be in office.

As from 5.00 p.m. when the President relinquished his presidency and left the Deputy President to hold office, he was in town. It happened in Harambee House and I was there. The President just became an ordinary person, used an ordinary vehicle, went to his home and allowed his Deputy to act as the President when he was in the country.

Very few people would have had the confidence and courage to allow another person to sit in that seat. It happens in other offices, like when you and I sit on the Chair on behalf of the Speaker, but some other public officers, particularly at the county level, find it impossible to allow even the deputy governor to act, even when they are out of the country. So, we must commend the President for basically showing selfless leadership and confidence in the office, being ready, believing in the people that he works with and in the person of the Deputy President. I also want to commend him for assuring the rest of the Government that he has confidence in the Deputy President. That was historical in itself.

Mr. Temporary Speaker, Sir, it was also historical in the sense that the President was honouring the constitutional requirement that when he is required in a foreign court, he will go. That was not an easy thing. Any other President in the world would have taken refuge in the office of the President to try to avoid attending such summons. He was being summoned just to go and sit down in a conference. He was not even required to speak. It is unfortunate that the ICC, that is expected to abide by certain minimum standards of law, would want a President to just go and sit there, be embarrassed and let go.

Mr. Temporary Speaker, Sir, I am a proud Kenyan to have witnessed the President addressing Parliament, particularly capturing salient provisions of Article 132

of the Constitution, relinquishing office to his deputy while he was in town and travelling to The Hague as an ordinary citizen. He also patiently listened to the Judges and proceedings at the ICC that actually never required his presence in the first place. He came back and remained the President. That humility should permeate other sectors of government. It should permeate our national and county leadership. It is a kind of leadership that shows an example; that we are willing to sacrifice and accept, even in the presence of those who want to humiliate us, that we are willing to give in and to continue accepting that the sovereignty of the people of Kenya must not be put to disrepute and, therefore, we must commend the President for that.

Mr. Temporary Speaker, Sir, for those who supported the trial to be done at The Hague, at that point in time, many Kenyans thought that it was going to be a serious process, the investigations were going to be watertight and that the prosecutor had done his assignment but only for us to realize that the ICC process has just become a charade, only to realize that Moreno Ocampo instead of utilizing the resources given by other countries including Kenya to do thorough investigations, we have now come to realize that a group of civil society organizations who are amongst us hired witnesses, paid them, promised them heaven on earth, seduced them to testify against the President, the Deputy President and Sang.

What a shame that a court of international standards has reduced itself to be a court that shows high level of incompetence. In fact, what I saw at the ICC cannot be done by our magistrate courts or the Marakwet Council of Elders where we observe certain cardinals of law. There are certain basic principles that the accuser must prove his case. I heard somebody asking the President to try to help the court proof their case. In the first place, where was the case and how did you form your case? How did you confirm the charges? It is now becoming clear that the hopes of Kenya in the international court that is the court of last resort that gives hope to victims, it is now clear to all Kenyans that, that court does not have the sub-stratum, the capacity and the ability to try any person in a credible manner.

I can tell you without any fear of contradiction that I am waiting for nothing less than the court to throw in the towel. I saw an argument between the prosecutor and the judges where the prosecutor was being asked by the judges to withdraw those charges so that she could bring other charges in future. The prosecutor requested the court to suspend the trial to a future date. To me, it was akin to the two departments of the court wondering who will carry the cross for shoddy investigations and bringing the wrong persons to the court.

Mr. Temporary Speaker, Sir, the ICC is on trial; the credibility of international criminal system is on trial. The credibility of the judges in ICC is on trial. They can only succeed with that trial if they can convince this country after finding their final decision that they are going to give a decision that shows that they care about--- What about if I am a suspect but that suspect is facing trumped up charges by witnesses who have already confessed to the whole world and the court that they lied because they thought it

was going to improve their economic status? We own the international criminal court as Kenya. We are part and parcel of that court. We have a right to ask why the court is behaving in such a shoddy manner. It is our responsibility to ask why the court that is funded by the whole world and Kenya as a signatory, is behaving far much worse than a Kangaroo court.

It is the events that followed the President's travel that demonstrate that this country has come of age in terms of leadership. First is the confidence that the President had in the Deputy President and secondly, the kind of support that---

(Sen. Ndiema crossed the Floor without bowing to the Chair)

The Temporary Speaker (Sen. (Dr.) Machage): Order, Sen. Ndiema. You should learn the right procedure. Walk to the Bar and bow to the Chair. Always remember that process.

(Sen. Ndiema walked to the Bar and bowed to the Chair)

Sen. Murkomen: Mr. Temporary Speaker, Sir, as I said, it was first of all the confidence that the President had in the Deputy President. I laughed the other day because I saw one Member of the "Lower House" in a funeral somewhere complaining that when the Deputy President was acting, he did not have powers. The question is: Did the Deputy President complain? Why do people sometimes instead of appreciating implementation of an Article in our Constitution, try to also behave as though they were in the mind of the President or the Deputy President? It was not about the Deputy President having the power; it was about service, trust and confidence. The people of Kenya can have confidence that when their President is not around, the Deputy President can carry out the responsibilities that that office has and that that section of the Constitution can properly be implemented. It was not about who was powerful and who was capable of hiring who, who was capable of firing who *et cetera*. It was about service continuing for Kenyans.

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

Sen. Murkomen: Those are the people I was talking about.

Sen. Hassan: Mr. Temporary Speaker, Sir, I usually do not like to interfere when my good friend and legal authority, Sen. Murkomen is speaking, but this is a very technical issue. Whenever they focus the camera where Sen. Murkomen is speaking from, there is usually a line that runs across that screen. This means that there is need for the technical people to take that into consideration so that we do not otherwise broadcast a very eloquent speech or document something that has a technical fault. I have seen it happen several times.

Sen. Murkomen: Mr. Temporary Speaker, Sir, I think the point is valid because of where the camera has been put. Sometimes if you sit at the corner, you will basically

block the camera and you will see some kind of blurred picture. I think the camera people should in future do better so that broadcasting is done well.

We need to learn from what the President did; that as a country---

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

The Temporary Speaker (Sen. (Dr.) Machage): What is it Sen. Sang?

Sen. Sang: Mr. Temporary Speaker, Sir, when Sen. Hassan rose on a point of order, did you hear Sen. Murkomen say “those are the kind of people I was talking about;” alluding to the fact that he had mentioned some people in funerals saying certain things? When Sen. Hassan rose on a point of order, he mumbled something close to that. Was he in order?

The Temporary Speaker (Sen. (Dr.) Machage): Well, to my knowledge, I do not think he was referring to Sen. Hassan. He was referring to “those people.”

Continue, Sen. Murkomen.

Sen. Murkomen: Thank you, Mr. Temporary Speaker, Sir. For your information, when I talked about “a Member of the Lower House,” it was not a Member of this House who had actually said what I referred to.

As a country, we must learn the spirit of servant hood. In future, I hope that our brothers – who decided not to coming when the President was addressing the Parliament – will also learn from the conduct of the President and realize that if you are servants of the people you have a responsibility. Even if you oppose a particular thing, this is the right forum to appear and oppose if you do not agree. There is something that people must not confuse in this country; the sovereignty and the love for our country with the hate of the government of the day. I could be sitting there and, perhaps, you do not like me to sit at the Speaker’s Chair, but one must respect that seat and the office that, that office holder has. In future, we need to advise – although I can say this without fear of contradiction – that we never missed anybody in that House; we were full and we were many. It was not recognizable who was missing except that they had announced that they will miss. So, I took time to look for Sen. Hassan, Sen. (Dr.) Khalwale, Sen. Wetangula and they were not in the Chamber. I noticed that they were actually becoming a fraud to their own voters because the voters want them to be here, listen to what the President said and debate it. Then, the same people now come and pretend that they are debating the same Speech in this House. Why did they boycott the Speech? You cannot tell us that you are boycotting when the President is reading his Speech but then come later to debate something that you did not want to listen to.

The Temporary Speaker (Sen. (Dr.) Machage): Sen. Murkomen, are you sure that they did not listen to the President’s Speech in the media?

Sen. Murkomen: Yeah; that is why I am saying that it is a contradiction---

The Temporary Speaker (Sen. (Dr.) Machage): Maybe they even listened and watched it longer than the rest of us.

Sen. Murkomen: Absolutely, Mr. Temporary Speaker, Sir. The reason why they were elected by Kenyans is not to listen to it in the media. Otherwise they would have allowed their voters--- What would the voters do?

The privilege that one has as a representative of the people is to sit in this House. It is a great honour and privilege. Suppose there was an opportunity for points of order or suppose there was an opportunity to raise an issue of a technicality?

The Temporary Speaker (Sen. (Dr.) Machage): Maybe I will rule you out of order. It was their constitutional right not to attend that proceeding.

Sen. Murkomen: Mr. Temporary Speaker, Sir, remember that missing this House eight times can lead you to go home; it is just a question of a reminder. The reason for missing a session of the House without permission of the Speaker by announcing it in a funeral or a market somewhere in Kawangware is not the right way to communicate to Kenyans that you were elected to represent. Why are we so loud in funerals and silent in the forum that we were elected to be in?

(Laughter)

In future, these people must be men and women enough to face the competitors they have and address issues that their people sent them to come and face.

Mr. Temporary Speaker, Sir, finally, what the President did by going to The Hague is a demonstration of his belief in the rule of law. Any person who has an issue about anybody or about himself must be willing to abide by the law. We have had issues with judges who are giving unconstitutional and “idiotic” court orders. We have had issues with judges who do not want other institutions to work, but in our personal individual capacity, we have a responsibility to obey and follow the law.

Mr. Temporary Speaker, Sir, as I conclude, I want to say this. Just like the President did---

The Temporary Speaker (Sen. (Dr.) Machage): Order. Sen. Sang, I can see your intervention here.

Sen. Sang: On a point of order Mr. Temporary Speaker, Sir. I would really love to restrain myself from interrupting my brother, but he is talking of “idiotic” court orders. Can he substantiate that?

Sen. Murkomen: Mr. Temporary Speaker, Sir, I was just quoting the President of the Supreme Court and the Chief Justice who told us that we must obey all court orders, however idiotic they may be. I have answered him before and said “we have refused to be idiots.”

Mr. Temporary Speaker, Sir, finally, we must, as a people obey the law; we must follow the legal process. If you are a land grabber in Lamu, Machakos, Makueni or Karen, or if you are a suspect of grabbing large tracts of land anywhere, whether it is an embassy abroad or whether it is land locally, you must be willing to follow the legal process.

You must be willing to report, if you have evidence, but you cannot tell us that because I stole thousands of acres in Lamu or I sold public property abroad in embassies, whether it is in Tokyo or in South Africa, that, therefore, you will escape the hand of the law if you chase other people with a plot here or a plot there.

All of you must be willing to be held accountable for what you have done and that is how this country will be different. I am willing to play my role in ensuring that I obey the law, but I am also willing to point out those who are not obeying the law.

Thank you.

Sen. G.G. Kariuki: Mr. Temporary Speaker, Sir, he has finished but I think there is a problem when I hear a learned friend like him talking about “grabbing.” I want him to explain the meaning of “grabbing.” When he says that somebody has grabbed land, how does he grab it? If the law has given you that land, is it grabbing or were you given the land unfairly?

The Temporary Speaker (Sen. (Dr.) Machage): Sen. G.G. Kariuki, these are language semantics.

(Laughter)

Sen. Omondi!

Sen. Omondi: Thank you, Mr. Temporary Speaker, Sir, for giving me this opportunity to say something to this ongoing Motion. First, I want to thank the President because he really behaved like the President of the people by speaking to the legislators who represent Kenyans. That was the only way he could reach out to his people.

Mr. Temporary Speaker, Sir, on the issue of the ICC, I do not want to know what will happen or what will take place because the law should be allowed to take its course. What is important to pass to Kenyans is that what are we doing as a country to reconcile the people of Kenya, especially the people who were affected?

Secondly, I do not want to be held accountable because it is written in the Bible that we should not judge. I want to believe that even as we are speaking, maybe the President and his Deputy have asked God for forgiveness for whatever things the people may be feeling they did. It is between them and their God. I want to believe that God knows the perpetrators of whatever happened. The very people are still wounded and we should not sit and say that all is well. We have people who are still in pain and they are only looking forward to justice.

Mr. Temporary Speaker, Sir, the process of the ICC is like a remedy to stop such behaviour happening again in this country. I feel so sad when somebody says that we should pull out from the ICC. If all this happened when we are members of the ICC, what will happen when it is now official that Kenya is not a member to the ICC? It will just be a matter of killing one another like you can kill a hen or a cow. So, it is a way of restricting people to respect one another. People should remain accountable for whatever they do so that each and everyone can enjoy the life given to him or her by God. It is not

written. Even the Constitution gives Kenyans the right to life. I do not see why other people should just come and eliminate others. We are not saying that the people who have been taken to the ICC committed or planned the post election violence (PEV). However, we leave everything to God.

Mr. Temporary Speaker, Sir, the way we point out and contradict issues makes the people we are representing not to trust us at all. This is because we want to pretend that all is well. They are left wondering who will come and voice for the voiceless. We have people who have not been compensated up to now. There is no plan and nobody recognizes them where they are and we want to pretend that all is well.

The issue of reconciliation is paramount and we must take it seriously because it is the beginning of Kenyans working together as a team, trusting one another and even improving on the development of this country. Right now if you tell me to invest in a county which is not in my county - for example, I come from Kakamega - I will not do it. This is because I remember what happened. I was a clerk during the 2007 elections. I remember clearly that the violence started from my district; that is, the former Mumias District. What happened was just an outburst of people's feelings. People believed in giving false reports and after that there was an outburst. What followed, I cannot tell. I want to say that ---

Sen. Hassan: On a point of order, Mr. Temporary Speaker, Sir. I want to reassure Sen. Omondi that although she might not have confidence to invest anywhere else apart from Kakamega, as the Senator for Mombasa, if she has any investments to make, Mombasa is more than ready to receive her. She will be protected and will be safe.

The Temporary Speaker (Sen. Murkomen): What is the point of order, Sen. Hassan? Is that a point of order or a point of information? I guess it should have been a point of information but anyway, it is a valid intervention.

Okay, proceed.

Sen. Omondi: Thank you, Sen. Hassan for that assurance and we need to build that trust in---

Sen. Sang: On a point of order, Mr. Temporary Speaker, Sir. Is Sen. Hassan in order to market his county as an investment destination when we are discussing serious issues and while the gracious Sen. Omondi is making very valid serious points?

Is he in order?

The Temporary Speaker (Sen. Murkomen): Sen. Hassan is perfectly in order to market his county but is completely out of order to do so under the disguise of a point of order.

Sen. Omondi: Thank you, Mr. Temporary Speaker, Sir. I also want to be assured by Sen Sang' by inviting me to his county.

May I say that the whole process of the President's Speech should not be taken by legislators from the ruling party to question why some Members did not appear in Parliament. We were on recess and when people are on recess they do not have access to

all information. For example, I was in Tanzania at that time. I was to give a presentation but I had to request for permission to watch the proceedings on *Citizen* Television which luckily airs there. After the proceedings, I went back to the meeting hall and had to give remarks on what had happened in my country.

Sen. Sang: On a point of order, Mr. Temporary Speaker, Sir. Would I be in order to congratulate Sen. Omondi? She has made a statement that she was in Tanzania and had to stop whatever she was doing so as to watch the live broadcast of the President addressing Parliament. That effectively means that if she was in the country she would have defied some of those roadside directives by some of the leaders in her coalition that she should not have appeared in Parliament. Would I be in order to congratulate her knowing that she would have attended the session in Parliament if she was in the country?

The Temporary Speaker (Sen. Murkomen): Of course, you are in order but you are completely out of order to do so under a point of order.

Proceed, Sen. Omondi.

Sen. Omondi: On a point of order, Mr. Temporary Speaker, Sir. I would like Sen. Sang to withdraw. My watching *Citizen* Television does not mean that I did not abide by the laws of my party. So, could Sen. Sang withdraw that statement?

(Laughter)

The Temporary Speaker (Sen. Murkomen): There is nothing to withdraw. I had already ruled him out of order.

Sen. Omondi: Thank you Mr. Temporary Speaker, Sir. Let me finish by saying that let us respect each other. In fact, is it Sen. Murkomen who said that some people were talking in funerals? The Constitution gives us freedom of expression. So, whatever I say, as long as I am not infringing on somebody's rights, those are my feelings as per the Constitution.

The issue should not be over-emphasized to mean that I was celebrating or what I did was wrong. Indeed, even the media highlighted that the Deputy President was not given the powers fully. So whatever the Member of Parliament was saying was just repeating what the media had highlighted.

The Temporary Speaker (Sen. Murkomen): Order! Order, Sen. Omondi! This house does not admit evidence of the media. Yes, look at the law as it is.

Sen. Omondi: Thank you Mr. Temporary Speaker, Sir. I stand to say that freedom of information is given to Kenyans at all levels, whether a legislator or a common citizen, you have all the freedom to express your feelings.

Thank you.

The Temporary Speaker (Sen. Murkomen): Sen. Ndiema, do you want to contribute?

Sen. Ndiema: Yes, Mr. Temporary Speaker, Sir.

The Temporary Speaker (Sen. Murkomen): Okay. Proceed.

Sen. Ndiema: Thank you, Mr. Temporary Speaker, Sir, for giving me this opportunity to contribute to the Speech by His Excellency the President.

I attended the Joint Sitting and listened carefully to what the President said. I attended as the Senator for Trans Nzoia and as invited by the Speaker of the Senate in the normal manner. The President had the authority and discretion to seek to address both Houses and this was not the first time that he had done it.

Mr. Temporary Speaker, Sir, the key issue that came out from the speech was that he was informing the nation that he was going to attend the court at The Hague as an individual Kenyan and not as the President of the Republic of Kenya. The accusations or allegations against him and the other two Kenyans also relate to a period that he was not the President of Kenya. Therefore, I found it in order that he had to make that clear. It was not really Kenya which was on trial, but him as an individual. He took the liberty to inform us that he was, indeed, going to The Hague as an individual.

Mr. Temporary Speaker, Sir, what happened in this country in 2007/2008 was, indeed, a very unfortunate and ugly blot in our history as a country. We are a proud country that fought for its Independence after many years of being under colonial rule. To a large extent we have always remained a united country and are proud to be Kenyans. What happened within that short period, perhaps, tainted our image. It was unfortunate because Kenyans lost their dear ones and property. The suffering has been there and we are in a healing process. We are not out of it because justice is still being awaited by the victims. Many are still traumatized by what happened. This, indeed, is very unfortunate.

Mr. Temporary Speaker, Sir, justice has a process to undergo. What is happening at The Hague is perhaps different from what we would expect from our courts. Some may argue that these issues should have been handled in our local courts, while others said that it was better to go to The Hague, but at the end of the day what matters is justice to be done. We are now in 2014 and are yet to conclude this matter. Closure to this matter is very essential if we are also going to recover and move ahead as a nation.

There is an old saying, “that justice delayed is justice denied.” I do not know whether the processes at The Hague will really amount to true justice, if there will be indefinite delays in concluding this matter. There is already doubt in the minds of people arising from the fact that even the prosecutor says that they have not found adequate evidence to sustain this case. It would be proper for a matter like this one which really concerns the nation to be brought to a just end. That will satisfy all the victims. This is because by delaying you may also be creating other victims from the whole process.

What happens at the end of the trial when the accused is found not guilty in any way? Will they not have also become victims? The best way to handle these matters even as the cases go on at the ICC is to adopt the truth and reconciliation route that was recommended and that has been used and worked elsewhere. We seem to have reached a situation where we have kept that aside. As a country, we should pursue the path of reconciling our people. I am not saying that some form of reconciliation has not

commenced; maybe individuals have gone to church and reconciled to some degree, but at the end of the day we should find out whether everybody has been reconciled after what happened that year.

Mr. Temporary Speaker, Sir, we should not view the ICC case as a way of dividing us further. The case is ongoing and the lawyers are handling it. This matter should not be looked at in a partisan way so that it divides us socially and politically. As a country, what we need most is unity. This country is facing a lot of challenges; poverty, lack of adequate food, heavy rains, inadequate health facilities *et cetera*. We should focus on other areas of development in order to move forward. We also have enemies in the name of terrorists. During the post election violence, we lost lives and we continue losing lives. Our economy has been affected because of the threat of terrorism.

Therefore, as a country and even as leaders, we need to remain united and focused on these issues even as we know that very soon we shall be going for elections. But elections should never be something that divides us in a manner that we become a fragmented country.

Mr. Temporary Speaker, Sir, I note and would like to urge all Kenyans to remain united to face the challenges ahead. Other countries are moving and Kenya needs to move.

There are threats around us; Ebola is now in West Africa and we should be planning and investing on areas of preventing the spread of that disease to this country.

Thank you.

The Temporary Speaker (Sen. Murkomen): Hon. Senators, I now call upon the Mover to reply, there being no other contributor.

I have taken note of the fact that the Mover is not here to reply. Basically, everybody has noted and, therefore, I would like to put the Question.

(Question put and agreed to)

ADJOURNMENT

The Temporary Speaker (Sen. Murkomen): Hon. Senators, pursuant to Standing Order No.30 (2) to interrupt the Business of the Senate, the time being 6.22 p.m.

The Senate now stands adjourned until tomorrow, Thursday 23rd October, 2014, at 2.30 p.m.

The Senate rose at 6.22 p.m.