

# PARLIAMENT OF KENYA

## THE SENATE

## THE HANSARD

Tuesday, 28<sup>th</sup> June, 2016

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

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

### PRAYERS

### PAPER LAID

ANNUAL REPORT AND FINANCIAL STATEMENTS  
OF THE KNCHR FOR 2014/2015

**Sen. Wako:** Mr. Speaker, Sir, I beg to lay the following Paper on the Table of the Senate today, Thursday, 28<sup>th</sup> June, 2016---

**The Speaker** (Hon. Ethuro): Order, Senator! Which date is today?

**Sen. Wako:** Sorry, Mr. Speaker, Sir. I am always ahead of time.

I beg to lay the following Paper today, Tuesday, 28<sup>th</sup> June, 2016:-

Annual Report and Financial Statements of the Kenya National Commission on Human Rights for the year 2014/2015.

*(Sen. Wako laid the document on the Table)*

### STATEMENTS

**The Speaker** (Hon. Ethuro): Hon. Senators, we shall start with the statements to be requested. Is Sen. Elachi here?

Let us proceed, Sen. Karaba.

#### STATUS OF WANGURU AIRSTRIP IN MWEA

**Sen. Karaba:** Mr. Speaker, Sir, I rise to seek a statement from the Chairperson of the Standing Committee on Roads and Transportation regarding the status of Wanguru Airstrip in Mwea, Kirinyaga County. In the statement, the Chairperson should explain the following:-

(1) Highlight the status of the land which is reported to have been grabbed.

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(2) Indicate the amount of money that has been used so far to rehabilitate the former state of the Airstrip.

(3) What is the present status of the Airstrip? Is the Airstrip in use or not? If it is not in use, why is this the case, yet money has been spent?

**The Speaker** (Hon. Ethuro): Sen. Sijeny, if you could respond.

**Sen. Sijeny:** Mr. Speaker, Sir, I request for two weeks to provide an answer to the request.

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

Proceed, Sen. Elachi.

#### DELAYED PROMOTION OF ADMINISTRATION POLICE OFFICERS

**Sen. Elachi:** Mr. Speaker, Sir, pursuant to Standing Order No.45---

**The Speaker** (Hon. Ethuro): Order, Sen. Elachi. You know what to do.

**Sen. Elachi:** Mr. Speaker, Sir, I apologise for coming in late. We were held up in a meeting.

**The Speaker** (Hon. Ethuro): Okay. You can proceed.

**Sen. Elachi:** Mr. Speaker, Sir, pursuant to Standing Order No.45(2)(b), I rise to seek a statement from the Chairperson of the Standing Committee on National Security and Foreign Relations regarding delayed promotions of Administration Police officers to senior positions.

In the statement, the Chairperson should:-

(1) State whether he is aware of pending cases of promotion of Administration Police officers to senior positions and why those due for promotion to the rank of Senior Superintendent of Police and other high ranks have not been promoted.

(2) Explain why only 23 officers out of the 193 recommended by the Police Service Commission for promotion to the rank of Superintendent of Police in 2013 were not promoted.

(3) Explain why there is a disproportionate promotion of officers among the various services within the National Police Service, and;

(4) Explain measures being taken to ensure all Administration Police officers who are due for promotion are promoted without further delay.

**Sen. (Dr.) Khalwale:** Mr. Speaker, Sir, I wish to ride on that very important question and request the Chairperson to also include in his statement the per county distribution of the promotions that were done in the last two episodes.

**Sen. Sijeny:** Mr. Speaker, Sir, I also wish to seek further information on the statement. Out of these promotions, how many are women.

**Sen. Haji:** Mr. Speaker, Sir, I am not aware of any delay in the promotion of Administration Police officers. However, I undertaken to give a statement in the next two weeks.

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

Let us move on to the statements to be issued. The first one is a statement that was sought by Sen. Karaba.

STATUS OF MAKUTANO-NGURUBANI-KIMBIMBI-  
SAMSON CORNER ROAD

**Sen. Sijeny:** Mr. Speaker, Sir, on Wednesday, 8<sup>th</sup> June, 2016, Sen. Karaba requested for a statement from the Chairperson of the Standing Committee on Roads and Transportation on the Makutano-Ngurubani-Kimbimbi-Samson Corner Road as follows:-

(a) State whether he is aware that the road is too narrow yet it has a very high population of users.

(b) Explain whether the Government has considered expanding the road to cater for increased traffic.

(c) State whether the Government has plans to provide for pedestrian walk ways along the road so as to deter pedestrians from walking on the main road which has been a cause of accidents.

(d) State whether the Government intends to increase the number of bumps on the roads as a way of reducing accidents.

(e) Explain why the section from Ngurubani to Ndindiriku is already damaged even before the construction works are completed.

The answers are as follows:-

(a) I am aware that the road is not too narrow but has a carriageway width of 6.25m and 1.5m wide, with paved shoulders on each side.

(b) There are no plans of expanding the road. However, routine maintenance of the road has been happening annually. The KeNHA has utilized about Kshs8.5 million to implement the said maintenance intervention in the current Financial Year, 2015/2016.

(c) Currently, there are no plans to provide pedestrian walk ways. Nonetheless, the 1.5m wide shoulder is expected to serve the pedestrians and other non-motorized traffic. Any future rehabilitation, which is contingent upon availability of funds, will give consideration to provision of a wider carriageway and adequate non-motorized traffic facilities especially within trading centres.

(d) Sufficient bumps have been provided in most of the trading centres on a need basis along this road. It is important to note that engineering solutions alone may not significantly reduce road accidents and, therefore, other measures involving education and enforcement are very critical and call for the involvement of all stakeholders.

(e) The road is not damaged and construction works are ongoing. Due to delays in the review of the pavement design and adverse weather conditions, the progress of works has been delayed. The pavement design review was necessary due to the evolving new low volume seal technology to ensure durability and better performance of the roads without variations to the costs. The work activities are at various stages of construction, with some works completed while others are ongoing. The ongoing works will be processed before being finalized. The construction of this road was divided into three lots for faster construction.

Mr. Speaker, Sir, if you could allow me to issue a statement on a second request by Sen. Karaba. He can interrogate them both after I am done.

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

## RENOVATION OF THE SAGANA-KAGIO-KUTUS ROAD

**Sen. Sijeny:** Mr. Speaker, Sir, on Wednesday, 8<sup>th</sup> June, 2016, Sen. Karaba requested for a statement from the Chairperson of the Standing Committee on Roads and Transportation on the Sagana-Kagio-Kutus Road as follows:-

- (a) State why the renovation of the Sagana-Kagio-Kutus Road has stalled.
- (b) State when the renovation of the road will resume.
- (c) Explain whether the road will be renovated to bitumen standard.
- (d) State how much funds were set aside for renovation of the road; and,
- (e) State the completion date of the renovation works on the roads.

The answers are as follows:-

(a) The renovation works on the Sagana-Kagio-Kutus Road have not stalled but are on course under the periodic maintenance works which commenced on 28<sup>th</sup> December, 2015. We wish to clarify that the project road starts from Murang'a and runs through Sagana terminating at Samson Corner. At some point during the renovation, the contractor concentrated on the section near Murang'a and this may have created an impression to the public that the works had stalled. The major scope of the works entailed surface dressing, which requires utmost diligence in quality control right from the point of material extraction and is also impacted on by the weather conditions. As a result, the works could not be carried out during the rainy season that was experienced in the months of March, April and part of May, 2016.

(b) The renovation of the road is on course and the contractor is in the process of doing surface dressing which is the last activity.

(c) The existing road is being renovated to bitumen standards and the ongoing project is at periodic maintenance intervention.

(d) The contracted amount for the renovation is Kshs45,838,096.

(e) The completion date is expected to be towards the end of June, 2016.

**The Speaker** (Hon. Ethuro): Sen. Karaba, proceed.

**Sen. Karaba:** Mr. Speaker, Sir, I thank the Chairperson for issuing the statement. I am happy that the statement has covered contentious areas. Nonetheless, I have a few clarifications. This road was constructed in the 1960s before major towns came up. These towns have grown into huge shopping centres resulting in high population along the roads. It is common sense that when it rains, most people concentrate their activities along the road. There are also motorists who drive fast along this road, especially vehicles ferrying Miraa from Meru. Every other day, there is somebody dying on this road---

**The Speaker** (Hon. Ethuro): Order, Senator. You are not making another statement. Conclude.

**Sen. Karaba:** Mr. Speaker, Sir, why is the Government not widening the road? Why is the Government not taking care of the shoulders which are already worn out, particularly between Ngurubani and Kimbimbi?

The bumps which were erected earlier have already been worn out. Why can they not increase their height so that they slow down the speed of motor vehicles?

Mr. Speaker, Sir, the section between Ngurubani and Nduruku is pathetic. I was there yesterday and I saw how bad it is. I am shocked to hear her not telling the truth because that section has already been damaged before its completion. What will they do to make sure those sections which are repaired are not damaged by heavy traffic?

Mr. Speaker, Sir, with regard to (d), we are told they spent Kshs45 million to do the section between Sagana and Kutus. This road traverses from Murang'a to Samson Corner. Is Kshs45 million the total amount spent to repair the Kirinyanga section or the entire length of that road? If it so, how much was spent to repair the Kirinyanga section?

She says the completion date is expected to be towards the end of June. Today is 28<sup>th</sup> June, 2016 and yet the road is not even half-way done. Is she aware of that? I am shocked if that is what she refers to as "near completion". The road is yet to be completed and today is 28<sup>th</sup> June, 2016. Could she, please, expound on that?

**Sen. Obure:** Thank you, Mr. Speaker, Sir. Reference has been made on the issue of bumps. I have witnessed a number of accidents on our roads, some of them fatal, just because a *mwananchi* suddenly decides to erect bumps without giving any warning. This has caused accidents and has led to deaths and injuries. Could we know from the Chairperson what the policy of the Ministry is in respect to bumps because some of them are unofficially erected on our roads?

**Sen. Omondi:** Mr. Speaker, Sir, my concern is about the accessibility of roads to persons with disability and signage. I want to know from the Ministry how they will address those concerns. How will they make it easier for persons living with disabilities to use our roads comfortably?

**Sen. (Prof.) Lonyangapuo:** Thank you, Mr. Speaker, Sir. I heard the Chairperson talk about this Makutano-Ngurubani-Kimbimbi road. He said that the tender for the road had to be split into three for faster construction. This is strange because the Public Procurement Act does not allow splitting of tenders. Could she explain what she meant by that split?

**Sen. Nabwala:** Thank you, Mr. Speaker, Sir. I would like some clarification. This is because the road from Eldoret to Kitale which was built by the colonial government is so narrow and its shoulders are worn out. We have heard of so many accidents involving those riding motorbikes. Could the government do something?

**The Speaker** (Hon. Ethuro): Could we hear from the Chairperson?

**Sen. Sijeny:** Mr. Speaker, Sir, on the use of the roads, as the Cabinet Secretary had stated, the works are on course. Some of them are subject to availability of funds. However, I have heard the sentiments expressed by the Senator and we will seek further consultation and confirm the way forward.

I will need time to get the details on how the Kshs45 million was distributed because the Senator had not sought for that information earlier.

The indicated date of completion was the presumed time of completion. I will also get further clarification if there is any variation because I was told the completion date is supposed to be June. If the Senator says he was there yesterday and the road is yet to be

completed, then I will need to consult with the Cabinet Secretary so as to see what can be done because I have not been there.

That also goes for the policy on the erection of bumps as sought by Sen. Obure, I will provide the policy within the next two weeks. This also applies to Sen. Omondi's request on the accessibility of the roads by persons with disability. I will give the clarification on whether that has been catered for. I will actually give all the clarifications, including what has been sought by Sen. (Prof.) Lonyangapuo.

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

**Sen. (Prof.) Lonyangapuo:** On a point of order, Mr. Speaker, Sir. Sen. Sijeny, while responding to clarifications sought by Sen. Karaba, said that she has not been there to see whether that section of the road has been completed or not. However, she is not in the Government although she is asserting the Government position with regard to this road. I am wondering how this can be sorted out because we are putting her in an awkward position because she cannot go to Murang'a or Kirinyaga to inspect that road.

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

**Sen. Wangari:** On a point of order, Mr. Speaker, Sir. Is it in order for the Senator of West Pokot County to mislead this House and, indeed, the country as whole that Sen. Sijeny is making this response as an opposition Senator when we know very clearly that we have elected chairpersons and vice-chairpersons of committees in this House? In fact, we have some chairs that come from the other side. Just to inform the Senator of West Pokot that we are all in Government. We are one arm on the Government. Is he in order to mislead the country?

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

**Sen. (Dr.) Khalwale:** Mr. Speaker, Sir, did you hear Sen. Wangari claim and allege that we are all in Government? How can we, the distinguished Senators on the CORD side of this country, be part of this corrupt Government? A Government that shortchanges Kenyans in appointments! How can we be part of it? We are the opposition, the official opposition against this Government.

**Sen. Murkomen:** On a point of order, Mr. Speaker, Sir. If you remember, just two weeks ago when I raised the issue of the Judicial Service Commission (JSC) and whether it was an arm of Government, Sen. (Dr.) Boni Khalwale questioned whether I was a lawyer. I now want to ask: Did Sen. (Dr.) Boni Khalwale go to school, now that he is contradicting himself in a span of two weeks, having declared the other week that we are all in the Government because we are an arm of Government?

**The Speaker** (Hon. Ethuro): Order, Sen. Murkomen. You are completely out of order. Being a lawyer, you must also have read the law of equity. Those who seek equity must come with clean hands. Yours are not clean because you want to prove Sen. (Dr.) Khalwale wrong. That debate was canvassed and exhausted; I am sure that Sen. (Dr.) Khalwale was equally convinced. But Sen. (Dr.) Khalwale's question was also right. As you know, in one of the rulings, a Judge has actually asked a lawyer questions. I do not remember anybody asking the other one on record whether he has gone to school.

What is it, Sen. (Prof.) Lonyangapuo?

**Sen. (Prof.) Lonyangapuo:** On a point of order, Mr. Speaker, Sir. I raised that statement seeking an elaboration on the position given by Sen. Sijeny, who is in the

Opposition. I expected Sen. Murkomen, who is sitting next to me, to give the undertaking. Sen. Karaba has just come from Kirinyaga and he can confirm that the road is in a very bad state, but the Statement here says the opposite. Given that scenario, I would expect the Deputy Senate Majority Leader seated in front of me to stand up and undertake that the road will be done, rather than putting Sen. Sijeny in an awkward position.

**Sen. Haji:** On a point of order, Mr. Speaker, Sir. Is it in order for the Senator for West Pokot to raise an issue when Sen. Sijeny says that she had not visited that road? She was not giving a Statement that was given to her by the Cabinet Secretary, but she is going to find out whether or not the road is completed?

**Sen. Wangari:** Mr. Speaker, Sir, I do not want the issue of Sen. Murkomen and Sen. (Dr.) Khalwale to overtake my point of order. Is it in order for the Senator for West Pokot to actually mislead the country that if a Senator is sitting on the other side, and he or she is a Chair or Vice-Chair of a Committee, they cannot answer questions? I do not think he is any better. Has he visited the road despite being on this side? Is he in order?

**The Speaker** (Hon. Ethuro): Order! This is a fairly straightforward matter. I am afraid that I have to agree with Sen. Wangari. Even with your proposition to ask the Senate Deputy Majority Leader to respond to a matter that is factual, he will still rely on the same sources of information that Sen. Sijeny is relying on. Why do you assume that the Senate Deputy Majority Leader, who sits in this House, just like you and Sen. Sijeny, has fresher information than the Chair of the Committee? The Chair of the Committee has told us that whereas the Members have sought clarifications, she does not have that information. She is seeking more time to verify. If it means going to visit the place with Sen. Karaba, so be it. Under the circumstances, these two questions are actually deferred since Sen. Sijeny requested for two weeks. She should come back with all those responses.

*(Statements deferred)*

**Sen. Sijeny:** Mr. Speaker, Sir, I just need to perhaps jog the memory of Sen. (Prof.) Lonyangapuo. I have intervened on so many other roads and issues that concern the Committee, as an Opposition Member of this Senate and a Vice-Chairperson of the Committee. Therefore, it does not matter whether I sit on this side or the other side; when I am given work I do it to satisfaction. I have even succeeded in summoning the Cabinet Secretary who has appeared here to answer questions. Why did you not refuse to attend because I am a Member of the Opposition? That question, therefore, is out of order.

*(Sen. (Prof.) Lonyangapuo stood up in his place)*

**The Speaker** (Hon. Ethuro): Order! Sen. (Prof.) Lonyangapuo, we are not going to proceed with that matter; she is absolutely right. The Standing Orders are also very clear, that the Chairpersons will respond to statements. You know that since you are a Member of the Rules and Business Committee.

What is it Sen. Karaba?

**Sen. Karaba:** On a point of order, Mr. Speaker, Sir. You have ruled that the two questions be deferred. I was there last night and the answer given seems to suggest that I am now aware of what I asked about.

**The Speaker** (Hon. Ethuro): Order! What are these nocturnal activities that you engage in?

**Sen. Karaba:** Mr. Speaker, Sir, I was doing my normal duties of ensuring that the roads are well maintained. Even the edges of the road are not marked.

**The Speaker** (Hon. Ethuro): Were you marking the road at night?

**Sen. Karaba:** Mr. Speaker, Sir, at night it appears black because there are no road marks on the road sides. We need to know what is happening.

**The Speaker** (Hon. Ethuro): What is the issue, Senator?

**Sen. Karaba:** Mr. Speaker, Sir, the answer given is substandard and you should order---

**The Speaker** (Hon. Ethuro): Order, Senator! We have ruled on that matter. The Vice-Chair has told you that she needs more time and I have ruled that the statements be deferred. They will appear on the Order Paper in two weeks time. I am sure she will address all your concerns; just be patient. I would urge that next time you should visit the road during the day.

Next Statement by the Chairperson, Committee on Energy.

#### STATUS OF THE LAST MILE ELECTRICITY CONNECTIVITY PROJECT

Is the Vice-Chair or any Member from the Committee here?

Let us proceed to Statement (d) by the Chairperson, Committee on Finance, Commerce and Budget.

Vice-Chairperson.

#### STATUS OF THE EQUALIZATION FUND

**Sen. Mositet:** Mr. Speaker, Sir, the Statement is ready, but I do not have it now. I seek your indulgence that I present the Statement tomorrow.

**The Speaker** (Hon. Ethuro): Sen. (Prof.) Lonyangapuo, what do you have to say?

**Sen. (Prof.) Lonyangapuo:** Mr. Speaker, Sir, that is in order. I can share this copy with him.

**The Speaker** (Hon. Ethuro): The Statement is deferred to tomorrow. It is up to the Vice-Chair to deliver his Chairperson. Failure to do so, he will deliver it himself. It is a directive.

*(Statement deferred)*

Statement (e) by the Chairperson, Committee on National Security and Foreign Relations.



HARASSMENT OF *BODA BODA* OPERATORS  
BY POLICE IN KAKAMEGA COUNTY

**Sen. Haji:** Mr. Speaker, Sir, unfortunately, I do not have this Statement. I seek your indulgence that we issue it on Tuesday next week.

**The Speaker** (Hon. Ethuro): It is so ordered; next week on Tuesday.

*(Statement deferred)*

Let us go back to (c).

STATUS OF THE LAST MILE ELECTRICITY  
CONNECTIVITY PROJECT

What is it, Sen. (Prof.) Lonyangapuo?

**Sen. (Prof.) Lonyangapuo:** On a point of order, Mr. Speaker, Sir. This Statement has been pending for a long time. Last time you directed that the Chairperson or the Committee delivers the response as soon as possible because it is a key Statement that I had asked about the Last Mile Electricity Connectivity Project in the whole nation, particularly, in the North Rift where I come from. Our schools are suffering.

**The Speaker** (Hon. Ethuro): Sen. (Prof.) Lonyangapuo, that is why you need to deal with the Senator in front of you, in the absence of Members of that Committee.

Sen. Murkomen, what do you have to say?

**Sen. Murkomen:** Mr. Speaker, Sir, maybe Tuesday next week.

**The Speaker** (Hon. Ethuro): Order! It was about the urgency of the issue. It was supposed to be today.

**Sen. Murkomen:** Mr. Speaker, Sir, I have to consult the Chairperson of the Committee in order to know the possibility of getting the answer. However, I do not see the urgency to the extent that it can be for only one week.

**The Speaker** (Hon. Ethuro): The urgency was in the sense that this matter had been deferred. So, any more delay is not acceptable. I am willing to give you up to tomorrow. I think 24 hours' notice is good enough for the Chairperson or any Member of the Committee to deliver the Statement. It is not new because it has been pending before the House.

**Sen. Murkomen:** Mr. Speaker, Sir, I will be very happy if Sen. (Prof.) Lonyangapuo can also assist me to get his party Chairman who is the Chairperson of the Committee so that we make sure that it happens tomorrow. However, I will do my best.

**Sen. (Prof.) Lonyangapuo:** On a point of order, Mr. Speaker, Sir. Did you hear the Senate Deputy Majority Leader absconding duty by trying to assign me work that is not mine? He is our leader here to deliver statements as a last resort and give a firm direction, rather than telling me to go and look for ordinary Members.

**The Speaker** (Hon. Ethuro): Order, Sen. (Prof.) Lonyangapuo! I want to confirm that Sen. Murkomen is in order in the sense that he has not absconded duty. He said that he would request you to assist him deliver the Chairperson because of proximity. It is a

concept known as privity on the basis of party lines. Even on your own admission, you had an occasion to demonstrate here that you are actually Government when you are releasing the weekly report of the Business of the House in your capacity as a Member of the Rules and Business Committee (RBC). So, why are you shaking off the responsibility now when you have just been asked to assist and not even assume the responsibility?

HARASSMENT OF *BODA BODA* OPERATORS  
BY POLICE IN KAKAMEGA COUNTY

**Sen. (Dr.) Khalwale:** On a point of order, Mr. Speaker, Sir. While I was consulting Sen. (Prof.) Anyang'-Nyong'o on a matter of pending Bills, the Chairperson of the Committee on National Security and Foreign Relations has responded to my Statement and I have no problem with it. I will wait until next week.

However, I would like you to allow me to request the Chairperson to communicate to the Inspector-General (IG) that the police officer who shot Mr. Apwoka, the *boda-boda* rider is still in Kakamega County. They have moved him from Kakamega Police Station to Malaika Police Station in Ikolomani. It is wrong for this man to be meeting our children when he killed their father.

In the meantime, as we wait for the answer, could the Inspector-General move him, not just out of Malaika Police Station in Ikolomani, but completely out of Kakamega County and do what he wants to do with him? We do not want to see him there. He murdered our boy.

**Sen. Haji:** Mr. Speaker, Sir, while I appreciate the sentiments of Sen. (Dr.) Khalwale, I think people feel that he murdered somebody and should not, therefore, be held there. However, for justice to be seen to have been done, it will not be fair to transfer him to another station because that is where he committed the crime and that is where he will be held. So, it will be very difficult to convince the Inspector-General (IG) to do otherwise.

**Sen. (Dr.) Khalwale:** On a point of order, Mr. Speaker, Sir. I thought I should not ask for too much. Ordinarily, speaking as a Senator in Kenya, I should be demanding that this police officer be dismissed forthwith. However, because sometimes the voice of the poor is not always heard, I have said that even if they want to retain him, why do they not move him out of Kakamega County? He is now meeting our children as they go to school when he has killed their father. See how painful it is to us. We are demanding that he leaves Kakamega County and goes probably to Elgeyo-Marakwet County where the Inspector-General (IG) comes from, if he wants to keep him in the force.

**Sen. (Dr.) Machage:** On a point of order, Mr. Speaker, Sir. Is Sen. (Dr.) Khalwale in order to demand that a criminal is moved from his county to somebody else's county in this country?

**Sen. (Dr.) Khalwale:** Mr. Speaker, Sir, it is true, I appreciate that I am completely out of order. As they say in French; *voix des dieu vou la voix de pauvres*. Which means ---

*(Loud consultations)*

May I repeat for the few of you who understand the language?

*Voix des dieu vou la voix de pauvres*, which means that the voice of the poor is the voice of God. As the children of the poor cry in Kakamega from the shooting of their father in cold blood, that is the voice of God. I choose to leave it to God to speak to the conscience of the Inspector General of Police (IG). How can he transfer a murderer from Kakamega Police Station to Malaika Police Station? Ordinarily, he should have dismissed him. Could he get him out of Kakamega County?

**Sen. (Prof.) Lonyangapuo:** On a point of order, Mr. Speaker, Sir. Although my other point of order will come later, is Sen. (Dr.) Khalwale in order to start answering himself when the chairperson of the Security Committee has asked that he should be given time to come and respond? He has not yet come back with a response. Is he in order to attempt to answer himself?

**The Speaker** (Sen. Ethuro): Yes, Sen. Murkomen.

**Sen. Murkomen:** Mr. Speaker Sir, while I agree with the English version of what Sen. (Dr.) Khalwale talked about regarding the poor, Sen. Cheruiyot is a French speaker and he was also floating. I am not sure whether that is French or Sen. (Dr) Khalwale's mother tongue. Is the Senator in order to declare a police officer to be a murderer while in law, the words murder and a murderer are a legal term where there is intercourse between *mens rea* and *actus rea* having been proved in a court of law? I am sure you came across that in your first year criminal law class.

Mr. Speaker, Sir? Is he in order to make that declaration where a court of law has never declared that officer a murderer?

**The Speaker** (Sen. Ethuro): Sen. (Dr.) Khalwale.

**Sen. (Dr.) Khalwale:** Mr. Speaker Sir, I want to confirm that unlike you and Sen. Murkomen, I have never been into a law class, but there is something I know, which is that, he who holds the weapon that led to the death, through that vision of a human being, in English, he is called a murderer. So, this is the policeman, who pulled the trigger in broad daylight. He is therefore a murderer. Is it by chance that the police officer is called Serem and he could be coming from Elgeyo Marakwet? Could you declare your interest?

**Sen. (Murkomen):** On a point of order, Mr. Speaker Sir. Is Sen. (Dr) Khalwale in order to assume that an officer called Serem can only come from Elgeyo-Marakwet and not Kisumu or Homa Bay? Is he in order to confuse killing with murdering? Those are two different words.

**The Speaker** (Sen. Ethuro): Yes, Sen. (Dr.) Machage.

**Sen. (Dr.) Machage:** On a point of order, Mr. Speaker, Sir. Sen. (Dr.) Khalwale requested that Sen. Murkomen declares his interest, which he has not. Could he declare that interest?

**The Speaker** (Sen. (Ethuro): Order, Sen. (Dr.) Machage and Sen. (Dr.) Khalwale. There is something about the two doctors being out of order. There is a connection. Sen. (Murkomen) is completely under no obligation to declare any interest because he has already challenged Sen. (Dr.) Khalwale that if your name is Serem, that does not imply that the only origin of that name is a county known as Elgeyo-Marakwet. That is in public domain. What is there to declare?

In fact, Sen. (Dr) Khalwale is completely out of order because he is imputing improper motive on Sen. Murkomen, and so are you, Sen. (Dr.) Machage, for perpetrating an illegality.

So, on the killing and murder, I would not want to go into that for now. Sen. (Dr.) Khalwale is giving quite compelling areas, and Sen. Murkomen is also talking about a conviction which has been secured and the intention to commit that particular crime and the action of doing it. So, you are referring to the *actus rea*, that there was a commission of an act; he is referring to the intention. That can only be proven by a competent court of law. Let the matter end there and that should be the end of that order.

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

#### ETHNIC CLASHES ALONG THE KISUMU-NANDI BORDER

**Sen. (Prof.) Anyang'-Nyong'o:** Mr. Speaker, Sir, in accordance with Standing Order No. 53, I would like to move that the House do adjourn to discuss the matter of ethnic clashes along the border of Nandi and Kisumu counties.

*(Several Senators stood in their places)*

**The Speaker** (Sen. Ethuro): Order, Members. You may resume your seats.  
*(The Senators resumed their seats)*

Sen. (Prof.) Anyang'-Nyong'o, the correct Standing Order is No. 33 and not 53. Standing Order No. 33 states as follows:

(1) "A Senator may at any time rise in his or her place and seek leave to move the adjournment of the Senate for the purpose of discussing a definite matter of urgent national importance.

(2) A Senator who wishes to seek leave to move the adjournment of the Senate under paragraph (1) shall, at last one hour before the commencement of the Sitting, hand to the Speaker a written notification of the matter but the Speaker shall refuse to allow the claim, unless the Speaker is satisfied that the matter is definite, urgent and of national importance and may properly be raised on a Motion for adjournment of the Senate.

(3) If the Senate is satisfied in terms of paragraph (2) and not less than five other Senators rise in their places in support, the Speaker shall nominate a time on the same day at which such Motion may be moved.

I want to confirm that the matter has met all the above requirements, and so I will order that the Motion be moved at 5:30 pm today.

### COMMUNICATIONS FROM THE CHAIR

**The Speaker** (Sen. Ethuro): Order, Members. Before we proceed to the next order, allow me to make a few communications.

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VISITING DELEGATION OF STAFF FROM NANDI AND  
KAKAMEGA COUNTY ASSEMBLIES

The first one is to acknowledge the presence in the Speaker's Gallery of visiting staff from Kakamega and Nandi County Assemblies. The County Assembly staffers are here on a five day attachment visit to the Senate. I request each member of the delegation to stand when called out so that he or she may be acknowledged in the Senate tradition.

Nandi County Assembly

- |                    |   |                  |
|--------------------|---|------------------|
| 1. Isabella Maiyo  | - | Deputy Clerk     |
| 2. Sammy Yego      | - | Committee Clerk, |
| 3. Justice Kirui   | - | Legal Counsel    |
| 4. Abraham Leitich | - | Hansard          |
| 5. Frank Korir     | - | ICT Officer      |
| 6. Jason Korir     | - | Librarian        |
| 7. Lucy Jemasunde  | - | Secretary        |

Kakamega County Assembly

- |                       |   |   |
|-----------------------|---|---|
| 1. Diana Otoko        | - | Executive Secretary, Office of the Clerk) |
| 2. Ruth Shikamai      | - | Clerk Assistant                           |
| 3. Emily Muthoni      | - | Clerk Assistant                           |
| 4. Timothy Ngome      | - | Clerk Assistant,                          |
| 5. Linet Odunga       | - | Clerk Assistant                           |
| 6. Esther Ariko       | - | Senior Administrative Officer             |
| 7. Christopher Oshuli | - | Commissionaire                            |
| 8. Josek Onyango      | - | Commissionaire                            |

I hope that they will have a fruitful programme in the Senate. On behalf of the Senate and on my own behalf, I welcome all of them to the Senate and wish them well for the remainder of their stay.

HALF-DAY WORKSHOP FOR SENATORS ON STATUS  
OF CONSTITUTIONAL BILLS

Hon. Members, the second Communication is on the half-day workshop for all Senators on the status of constitutional Bills.

Hon. Senators, following the meeting of the Senate Liaison Committee held on Thursday, June 16, 2016 it was resolved that a half-day workshop be convened for all Senators on Wednesday 29<sup>th</sup> June, 2016 to appraise Senators on the current status of critical Bills and how the Senate intends to proceed with their consideration. The Bills are as follows:-

1. The Community Land Bill (National Assembly Bill No.45 of 2015)
2. The Physical Planning Bill (National Assembly Bill No.46 of 2015)
3. The Land Laws (Amendment) Bill (National Assembly Bill No.55 of 2015)
4. The Health Bill (National Assembly Bill No.14 of 2015)

Hon. Senators, you may recall that on 15<sup>th</sup> June, 2016, the Motion for Second Reading of the Community Land Bill and the Land Laws (Amendment) Bill were both negated by the House and the two Bills are therefore now a subject of mediation committees. Similarly, the Physical Planning Bill was read a First Time on 17<sup>th</sup> February, 2016 and is yet to be listed for Second Reading in the House for consideration. The Health Bill is now due for the Committee of the Whole.

The half-day workshop has offered all of us an opportunity to put forward proposals on how the Senate shall proceed in the consideration of these important Bills realising that the extension was made for one year and the deadline is 27<sup>th</sup> August, 2016. There is no provision for another extension. The half-day workshop will be held at the Crown Plaza Hotel, Upper Hill, Nairobi starting at 8.00 a.m. in the morning. I urge you all to purpose to attend the workshop in order that we all contribute and shape up in the manner in which we proceed with this critical business as we go forward.

I thank you.

#### PROCEDURE FOR CONSIDERATION OF THE CONSTITUTIONAL OF KENYA (AMENDMENT) BILL

Hon. Senators, the final Communication is on the procedure for consideration of the Constitution of Kenya (Amendment) Bill, Senate Bill No.16 of 2015).

Hon. Senators, as you will recall, at the sitting of the Senate held on 10<sup>th</sup> February, 2016 the Constitution of Kenya (Amendment) Bill No.16 of 2015 which appeared as Order No.12 on the Order Paper of that day was called for Second Reading. Thereafter, the Motion for the Second Reading of the Bill was moved by the sponsor of the Bill, Sen. Sijeny who was seconded by Sen. (Prof.) Anyang' -Nyong'o.

Hon. Senators, you will also recall that after the Motion was moved and seconded and subsequently proposed, the Senator for Kakamega County, Sen. (Dr.) Khalwale, rose on a point of order and sought the direction of the Chair as to whether the Bill was one that would require a referendum in terms of Article 255(1) of the Constitution. Article 255(1) provides that a proposed amendment to the Constitution shall be enacted in accordance with Article 256 or 257 of the Constitution and shall be approved in a referendum in accordance with Article 255(2) if it concerns any of the matters set out in paragraphs (a) to (j).

Sen. (Dr.) Khalwale argued that the amendments proposed in the Bill extended to the sovereignty of the people as set out in Article 1(2) of the Constitution. Therefore, in accordance with Article 255(1)(c) of the Constitution, the Bill was one that required to be approved in a referendum. Sen. (Dr.) Khalwale stated that it was important that guidance be given by the Chair as to whether the Bill was one that fell within the ambit of Article 255(1) of the Constitution before further proceedings on the Bill.

There were some interventions on this issue from various Senators including Sen. Nabwala, Sen. Muthama and Sen. (Dr.) Zani. In the end, the Chair observed that Sen. (Dr.) Khalwale raised a fundamental issue that would require determination before proceeding with the consideration of the Bill.

From the deliberations, two issues arose for the direction of the Chair:-

- (i) Who is to determine whether a Bill is one that falls within the provision of Article 255(1) of the Constitution and therefore one that requires a referendum?
- (ii) At what point, in the consideration of the Bill should such determination be made?

As hon. Senators are aware, Chapter 16 of the Constitution provides for amendment of the Constitution. In this regard, Article 256 of the Constitution provides for amendment by way parliamentary initiative while Article 257 of the Constitution makes provision for amendment by way of popular initiative. Either way, whether a constitutional amendment Bill proposes amendment by parliamentary or by popular initiative, if the Bill provides for any of the matters set out in Article 255(1) in terms of Article 256(5) and Article 257(10) respectively, the Bill would require to be submitted to the people for ratification by way of a referendum.

It is however noteworthy that the Constitution does not provide details as to when or by whom the determination as to the applicability or otherwise of Article 255 of the Constitution to a Bill for the amendment to the Constitution is to be made. Our Standing Orders also do not contain provisions on this matter.

Hon. Senators, there is no doubt that for good order and in order to provide guidance to Senators as they consider no less than a Bill for the amendment of the Constitution, a determination would require to be made in the Senate as to the nature of a Bill to amend the Constitution and in particular whether the Bill falls within the ambit of Article 255 of the Constitution. It cannot be the case that this determination would be reserved to be made after the Senate has concluded its consideration of a Bill. This cannot have been the intention of the Constitution and would certainly not be useful to the process of consideration of the Bill.

I therefore find and rule that the determination as to whether a Bill is one that falls within the province of Article 255(1) of the Constitution and therefore one that requires referendum ought to be made by the Speaker of the Senate whenever the Senate is to consider a Bill for the amendment of the Constitution.

As to the point at which such determination is to be made our procedure regarding voting on a matter other than a Bill provides useful lessons. Standing Order No.72(1) requires that:-

“where the Senate is to Vote on any matter other than a Bill, the Speaker shall rule on whether the matter affects or does not affect counties.”

Standing Order No.72(2) further provides as follows:-

“that the Speaker’s ruling under paragraph (1) shall be made after conclusion of debate on the matter but before the Question is put.”

Hon. Senators, this would similarly be an appropriate point at which to make a determination as to whether Article 251(1) of the Constitution applies to a Bill proposing amendments to the Constitution. Prior to such determination, Senators in the Committee and in the Plenary as well as the public, would have an opportunity, in the course of deliberation on the Bill, to ventilate on this matter before the final determination by the Speaker.

In light of these directions, the Senate, therefore shall proceed with debate on the Second Reading of the Constitution of Kenya (Amendment) Bill, (Senate Bill No.16 of 2015). After the conclusion of the debate on the Bill and before the Question for Second Reading of the Bill is put in terms of Standing Order No.131 (1) of the Senate Standing Orders, the Speaker shall make a ruling as to whether the Bill falls within the ambit of Article 255(1) of the Constitution, and therefore, whether it is one that would require ratification by the people of Kenya in a referendum.

Finally, it is evident that there is need in the future to set out this procedure in our Standing Orders. I therefore, direct that the Rules and Business Committee at the appropriate time consider this matter and propose suitable amendments to the Standing Orders.

I thank you.

Sen. Omondi, proceed.

**Sen. Omondi:** Mr. Speaker, Sir, thank you for giving me this opportunity to join you in welcoming the team that is visiting the Senate from Kakamega and Nandi counties. I am happy that they will get knowledge that will improve on their efficiency as they serve the people in the counties they come from.

**Sen. (Prof.) Anyang'-Nyong'o:** Mr. Speaker, Sir, I would like to join Sen. Omondi in welcoming these ladies and gentlemen who have come to the Senate for attachment. The team from Kakamega has already been to our committee. This is a good learning process for them. We should encourage this kind of exchange between us and the assemblies because county assemblies are, indeed, our counterparts in the counties. We hope when they go back, they will give a good report to the county assemblies so that more Members come to see us in action, in the plenary and our committees.

**Sen. (Dr.) Khalwale:** Mr. Speaker, Sir, I join my colleagues in welcoming the delegations from Nandi and Kakamega counties. I wish to leave them with one word. During our sitting this morning, we found that in Elgeyo-Marakwet County Assembly there was no record of the proceedings of the Assembly during the supplementary budget. It is important for the staff, especially from Kakamega County, to know the critical role that they play. This morning we found very damaging evidence about the Kakamega County Assembly. We want you to guard your records jealously because they will be useful to us and the courts so as to jail the people who are stealing the money of the people in Kakamega County.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Speaker, Sir, I too join you in welcoming the neighbouring counties of Kakamega and Nandi that have sent a delegation to the Senate. I encourage them to pick as much as they possibly can, the best practices that this Senate is famous for, so that they can go and add value to their counties.

**Sen. (Prof.) Lonyangapuo:** Mr. Speaker, Sir, I join my colleagues in congratulating the team that has been with us for almost over a week now, particularly from Kakamega. They have been watching the way the County Public Accounts and Investments Committee works. I mention this because the staff work with MCAs. As they draft Bills and come up with business in the county assemblies, it is key that they



advise the MCAs particularly when they are dealing with the expenditure of the executive.

I visited Nandi County a week ago to join Sen. Sang who was bereaved. On my way back between Eldoret and Kapsabet, I was amazed that over five ambulances were taking sick patients to Eldoret and not the Kapsabet County Hospital, reason being that they have not paid attention to the hospital. The MCAs and particularly the staff who have come from Nandi County should ensure that they scrtunize the budget and more funding is given to devolved functions like health. This will ensure that we do not stress the only referral hospital in the north.

**Sen. Murkomen:** Mr. Speaker, Sir, I would like to congratulate the team from Kakamega and Nandi counties for taking this opportunity to learn from the Senate. I thank your office for always providing exchange, internship and training for the county assembly staffers. On behalf of the Senator for Nandi, Sen. Sang, who is out of the country on official duty, I welcome the team from Nandi. When you go back, assist your counties to continue providing services and promoting unity between Nandi, Kisumu and Kakamega counties. This will ensure that we see more growth through devolution and partnership between and among counties.

On another note, I would like to briefly comment on your well researched, learned opinion and communication on the question of constitutional amendments. It is important that you have given that direction so that the Speaker of this House continues to have the responsibility of interpreting the Constitution and giving directions to the House, whether or not a particular matter requires a referendum after being passed by this House. Considering that there is debate on reforms on issues related to the IEBC and gender parity, it is important that this information is in place in good time.

I will go further, after agreeing with you that the Rules Committee should look into this matter and revise the Standing Orders, now that we have a Rules Committee separate from the Business Committee. The Justice and Legal Affairs Committee chaired by Sen. Wako should immediately move forward and work on a referendum law that will explain not only the procedures of a referendum, but also the issues that should go to a referendum and the determination of the question as to whether an amendment requires a referendum or not.

They should clarify those issues, the responsibility of the Speakers of both houses in so far as that declaration is concerned and also the responsibility of the IEBC and the citizens when that process continues. This will deal with matters related to how to verify signatures, what to do if there is no funding, how to make it mandatory that funding is provided for by the National Treasury and so on. This is so that a constitutional right is not inhibited as a result of using procedural or technical measures including budgeting and financing.

In Britain, for instance, they agreed in a short time on a referendum. They did the referendum as to whether Scotland should leave Britain. They also did the referendum for the exit of Britain from the European Union (EU) and they made a decision on the matter. So, elections and referendum will be part and parcel of our lives going forward. The legal frame work is really needed to make it clear, cheaper and one that allows decision-making faster. There should be no institution of Government whether the Executive or

the Legislature, that will take advantage of using administrative bottlenecks to derail in any way the right of Kenyans to determine what they want to do with their Constitution or even referendum on other issues that are important for national---

**The Senate Minority Leader** (Sen. Wetangula): What about Okoa Kenya!

**Sen. Murkomen:** Mr. Speaker, Sir, you can see the Senate Minority Leader is telling me that we killed Okoa Kenya. However, it is important that we, as legislators, appreciate that the responsibility of providing a legislative framework as to whether the drawing of a cat can be a signature or not is this House. We are supposed to assist in directing the country. Gone are the days when we sat down and waited for the Executive, the President or any other person to give us that which we have a responsibility to do.

Mr. Speaker, Sir, thank you for the wonderful and well-reasoned communication. I wish you the best as you continue serving us and the country.

**The Speaker** (Hon. Ethuro): Order, Members. I also want to agree with the submissions of Sen. Murkomen that the Committee on Justice and Legal Affairs should be looking into some of these issues that need more clarification. I also thank the Senator for Kakamega County for always pointing out some of these areas so that we can ventilate and make the necessary legislative interventions.

Hon. Senators, I have one last item from the Chair on a Message from the National Assembly.

### MESSAGE FROM THE NATIONAL ASSEMBLY

#### REJECTION OF SOME SENATE AMENDMENTS TO THE WATER BILL (NATIONAL ASSEMBLY BILL NO.7 OF 2014)

Hon. Senators, I wish to report to the Senate that pursuant to Standing Order No.40(3) and (4), I have received the following Message from the Speaker of the National Assembly regarding the rejection by the Assembly, of some Senate amendments to the Water Bill(National Assembly Bill No.7 of 2014). I quote:-

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

Whereas the Water Bill (National Assembly Bill No.7 of 2014) was published vide Kenya Gazette Supplement No.27 of 17<sup>th</sup> May, 2014 as a Bill concerning county governments, passed by the National Assembly on Tuesday, 7<sup>th</sup> July, 2015 and referred to the Senate for consideration;

Whereas the Senate passed the said Bill with amendments on 22<sup>nd</sup> March, 2016 and referred it to the National Assembly for concurrence;

Whereas on Tuesday, 7<sup>th</sup> June, 2016, the National Assembly agreed with the Senate’s amendments to several clauses of the said Bill save for the amendments to Clauses 2, 8, 8(b), 30, 64, 75, 102, 114 and 115;

Now, therefore, in accordance to the provisions of Articles 112 of the Constitution and Standing Order No.149 of the National Assembly Standing Orders, I hereby convey

the said decision of the National Assembly to the Senate and seek the appointment of Senators to the Mediation Committee in respect of the said Bill.”

#### APPOINTMENT OF SENATORS TO MEDIATION COMMITTEES

Hon. Senators, Article 112 (1)(b) of the Constitution provides that if one House passes an ordinary Bill concerning counties and the second House passes the Bill in an amended form, it shall be referred to the originating House for reconsideration. Further, Article 112(2)(b) of the Constitution provides that, if after the originating House has reconsidered a Bill referred back to it under Clause 1(b), that House rejects the Bill as amended, the Bill shall be referred to a Mediation Committee under Article 113.

Hon. Senators, in the circumstances, I concur with the Speaker of the National Assembly to form a Mediation Committee in accordance with Articles 112 2(b) and 113 of the Constitution. In this regard, I have received communication from the National Assembly that the Speaker of the National Assembly has appointed the following Members to represent the Assembly in the Mediation Committee that will attempt to develop a version of the Bill that both Houses will pass:-

1. Hon. Amina Abdalla, MP
2. Hon. Judias Njogu Barua, MP
3. Hon. Abdulaziz Ali Farah, MP
4. Hon. Andrew Mwadime, MP
5. Hon. Ibrahim Nasra, MP

After consultations with the Senate Majority and Minority leaders, I have appointed the following five Senators to represent the Senate in the Mediation Committee:-

1. Sen. Lenny Kivuti, MP
2. Sen. (Prof.) John Lonyangapuo, MP
3. Sen. Naisula Lesuuda, MP
4. Sen. George Khaniri
5. Sen. Hassan Omar, MP

Hon. Senators, the same Senators will also represent the Senate in the Mediation Committees on the following Bills which were rejected by the Senate on 15<sup>th</sup> June, 2016 during the Second Reading:-

- (a) The Community Land Bill (National Assembly Bill No.45 of 2015).
- (b) The Land Laws (Amendment Bill) (National Assembly Bill No.55 of 2015).

I thank you.

**Sen. (Dr.) Khalwale:** On a point of order, Mr. Speaker, Sir. I thank you for that communication. As you said, our understanding is that when a Bill goes to either House from the other House, the primary intention is to seek concurrence. However, the pattern that has emerged is that when a Bill comes from the National Assembly, the level of debate here is such that we normally do it in absolute good faith. It is disturbing me that most of our Bills that go to the National Assembly not only take too long, but when they end up being debated, there is a deliberate effort to try and reject them. Not that we mind rejection. However, this is starting to beg for answers to two questions: What is the quality of debate in the National Assembly? Is somebody trying to say that the best brains

of legislation are in the National Assembly and that is why they want to give themselves a role which the Constitution never gave them, that is, to look like they are a chamber of second reflection on what we have said?

We will go in that mediation, but there is need for the two speakers of the two houses to call the leadership of the houses, so that, that childish behaviour that we had at the beginning of the two houses competing against each other does not unnecessarily delay legislation.

Mr. Speaker, Sir, did you know that even the most important Bill that has ever gone to that House from here namely, the Bill on the formula of sharing of revenue amongst the 47 counties, was never debated? When Speaker Muturi told them that the 60-day rule was over, the Bill was assumed to have been passed, Members said: "Why did you not tell us, we wanted to throw out that formula." So, there is need for consultations.

**Sen. (Prof.) Anyang'-Nyong'o:** Mr. Speaker, Sir, while on that theme, some time back, I rose on a point of order and requested that the Senate be briefed periodically on the number of Bills pending in the National Assembly. Remember, after establishing a select committee in this House at the expense of Parliament, gathering information and finally bringing a Bill to this House on harambees, it is now over two years since the Bill went to the National Assembly. My entreaty to try and get some information on that Bill and its fate has come to naught. Can we seek some guidance on this? Is it necessary that we have a meeting with the Speaker of the National Assembly or shall we leave that to your good offices? If matters continue like this, should we assume that our efforts to pass Bills in this House are not productive?

**Sen. (Dr.) Machage:** On a point of order, Mr. Speaker, Sir. I stand on Standing Order No.90(5) regarding the contribution by Sen. (Dr.) Khalwale a few minutes ago. He called some of the communications of these two Houses, the National Assembly and the Senate, as childish. Is he in order because he is in breach of Standing Order No.90(5)?

**The Speaker** (Hon. Ethuro): Sen. (Dr.) Machage, what does Standing Order No. 90(5) state?

**Sen. (Dr.) Machage:** Mr. Speaker, Sir, Standing Order No.90(5) states:-

"It shall be out of order for a Senator to criticize or call to question, the proceedings of the National Assembly, a County Assembly or the Speaker's Ruling in the National Assembly but any debate may be allowed on the structures and roles of County Assemblies or the National Assembly."

**The Speaker** (Hon. Ethuro): Hon. Members, while agreeing with Sen. (Dr.) Machage to some extent and not just on the use of the word "childish", but even with the first question that Sen. (Dr.) Khalwale posed in terms of the quality of the debate in one House; I think it is a matter that falls squarely under the Standing Order that Sen. (Dr.) Machage quoted.

The important issue raised is the one that was supported by Sen. (Prof.) Anyang'-Nyong'o which is the status of our Bills and that is a real concern in this House. There are quite a number of issues around that particular matter. We have taken steps administratively along the lines that Sen. (Prof.) Anyang'-Nyong'o has proposed in

dealing with these matters. I will request the House to be patient until we advise for or otherwise. We are doing something.

Next order!

## BILLS

### *First Readings*

THE NATIONAL COHESION AND INTEGRATION  
(AMENDMENT) BILL (SENATE BILL NO. 6 OF 2016)

THE COUNTY GOVERNMENTS (AMENDMENT) (NO.2)  
BILL (SENATE BILL NO.7 OF 2016)

*(Orders for First Readings read – Read the First Time and ordered to be referred to the relevant Senate Committees)*

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

## COMMITTEE OF THE WHOLE

*(Order for Committee read)*

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

### IN THE COMMITTEE

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

THE NATURAL RESOURCES (CLASSES OF TRANSACTIONS SUBJECT TO RATIFICATION)  
BILL (NATIONAL ASSEMBLY BILL NO. 54 OF 2015)

**The Temporary Chairperson** (Sen. (Dr.) Machage): Hon. Members, we are now in the Committee of the Whole to consider The Natural Resources (Classes of Transactions Subject to Ratification) Bill (National Assembly Bill No. 54 of 2015).

*Clauses 3 - 15*

*(Question that Clauses 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14 and 15 be part of the Bill, proposed)*

Hon. Members, we will do the Division at the end.

*New Clause 9A*

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

THAT the Bill be amended by inserting the following new clause immediately after clause 9 —

Procedure for approval by Parliament. 9A. (1) The process of approval of an agreement shall commence in the National Assembly.

(2) The National Assembly shall consider an agreement within thirty days of its submission to the National Assembly and shall forward its resolution to the Senate for consideration.

(3) If within thirty days of submission of an agreement to the National Assembly, the National Assembly has not forwarded its resolution on the agreement to the Senate, the Senate shall commence its consideration of the agreement and shall forward its resolution to the National Assembly.

(4) If both Houses —

(a) approve the ratification of an agreement; or

(b) do not approve the ratification of an agreement;

the Speaker of the National Assembly shall, within seven days of the decision, notify the relevant Cabinet Secretary.

Mr. Temporary Chairperson, Sir, the import of this new clause is to make sure that when ratifications are requested at the National Assembly, they should be brought to this House for consideration. That will make sure that the Senate is in the know of what the “lower” House says and it is involved fully.

*(Question of the New Clause 9A proposed)*

*(New Clause 9A read the First Time)*

**Sen. (Dr.) Khalwale:** On a point of order, Mr. Temporary Chairperson, Sir. Just a small clarification. The Chair knows that the Committee has gone through the issues more thoroughly than us, but he owes us a small explanation. Is there any reason New Clause 9A (1) does not read “the process of approval of an agreement shall commence from either House?” Is there any reason you have said it must be the National Assembly?

**The Temporary Chairperson** (Sen. (Dr.) Machage): Order, Sen. (Dr.) Khalwale! When Sen. Kivuti was busy explaining, you were busy consulting loudly.

**Sen. (Dr.) Khalwale:** Mr. Temporary Chairperson, Sir, I want to apologize must profusely. I was consulting none other than the Senate Minority Leader and the Senate Majority Leader. These are critical officers in the House.

**The Temporary Chairperson** (Sen. (Dr.) Machage): At the detriment of us misusing time, could you explain to him, Sen. Kivuti? Be alert this time.

**Sen. Kivuti:** Mr. Temporary Chairperson, Sir, the import of this new clause is not to change the entire Bill into the process that is already in the Bill as it came from the National Assembly. What our Committee wanted to bring forth is that the proceedings of application for ratification must reach both Houses. They should not be considered in the National Assembly and end there. Regarding your question why it should not start from either House, the process of application would have to be reviewed. We did not see any justifiable reason the application cannot go to the National Assembly, so long as it comes to this House.

**Sen. Musila:** On a point of order, Mr. Temporary Chairperson, Sir. I would also like to seek a clarification from the distinguished Chair. New Clause 9A (3) reads:-

“If within thirty days of submission of an agreement to the National Assembly, the National Assembly has not forwarded its resolution on the agreement to the Senate, the Senate shall commence its consideration of the agreement and shall forward its resolution to the National Assembly.”

I thought that since the delay has occurred it would be assumed--- If the Senate considers and returns it to the National Assembly, and they sit on it indefinitely, then it will not serve the purpose. It would be assumed that since it has already taken 30 days and they have not passed or rejected it, before it comes to the Senate it is concluded. If they have not given any verdict on it, it is assumed that it is positive. Therefore, the Senate receives, processes and returns it as concluded. But if we take it the way it is, they will keep or consider it. I would like that area to be clarified, otherwise, it will be a ping pong situation.

**Sen. Kivuti:** Mr. Temporary Chairperson, Sir, we considered the content of what my brother, the Senator, has raised. The issue here is that the ratification being sought maybe of a national nature. To avoid a situation where we have a stalemate between the two Houses, the Senate may be at liberty to take up a matter which, in its opinion, has already taken 30 days. That, again, would be a good thing because it was to seal any gaps, where the applicant will assume that the matter has been concluded by lack of activity by the National Assembly, unless both the National Assembly and the Senate do not take any action within the first 30 days and the next 30 days. That means there is an opening of 60 days.

**Sen. (Dr.) Khalwale:** On a point of order, Mr. Temporary Chairperson, Sir. The way I understand Sen. Musila, he is asking at what point a House will call for closure. If we put a clause of 30 days and the National Assembly does not respect the 30 days, you will then tell the Senate to take up the process because of the expiry of 30 days. When you take it back, what insurance do we put in to ensure that the House then calls for closure? That is the clarity that we are looking for. If you could help us a little bit.

**Sen. Kivuti:** Mr. Temporary Chairperson, Sir, I may not have understood what Sen. (Dr.) Khalwale is asking. I understood Sen. Musila to ask: “What if after 30 days the matter has already closed because the National Assembly has not acted?” We will not wait indefinitely for the National Assembly; we will wait for only 30 days. If within 30 days they will not have sent the matter to us, we will take it upon ourselves to debate it.

**The Temporary Chairperson (Sen. (Dr.) Machage):** I want to bring it to your attention we are in the Committee of the Whole. You should have read the Bill and come

up with amendments that would have answered your concerns. You have only two options now; either to pass the amendments as they have been proposed or decline.

Sen. Musila.

**Sen. Musila:** Mr. Temporary Chairperson, Sir, the Chair means very well. I also know that we dealt with this matter in the Committee on Energy over the weekend. What we are trying to cure is indefinite delay. Here is an investor who is waiting for this contract to be cleared, so that he can start and one House sits on it--- Sen. (Prof.) Anyang'-Nyong'o has just said that his Bill has been kept for two years. What will prevent the National Assembly from keeping this agreement for two years and we lose the investment? I would propose a further amendment, maybe with the consent of the Chair, to provide for 60 days, after which if no action is taken, it would be assumed that it has been approved.

**The Temporary Chairperson** (Sen. (Dr.) Machage): Let me give some guidance on this. We are actually voting on the Second Reading of New Clause 9A. You have an opportunity to move your amendment after the Second Reading.

*(Question, that New Clause 9A  
be read a Second Time, proposed)*

The division will come later.

#### *Schedule*

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

That the Schedule be amended by –

- (a) deleting the tenth row that provides for “Genetic material”; and,
- (b) deleting the eleventh row that provides for “Genetic Resources”.

The reason for deleting these two lines from the Schedule is that we heard many presentations from all professionals – universities and research institutions – and they gave us a lot of information on the dangers of restricting the way research is done on genetic materials and resources. I do not think it is even worthwhile to go through a lot of discussion on this matter. The truth is that if we put the requirement that a student wanting to do some research on a new genetic material has to apply to Parliament, then we may as well have thousands of applications every year for us to deal with on subject matters that are being researched on. My committee did not find this being progressive for this country. I noticed that the same matter is being proposed by Sen. Mutula Kilonzo Jnr., just in the same way as my Committee and brought it forward.

I beg to move.

**The Temporary Chairperson** (Sen. (Dr.) Machage): Very well. I will propose the question because Sen. Mutula Kilonzo Jnr.'s amendment was actually similar to your amendments.

*(Question of the amendment proposed)*



**Sen. (Dr.) Khalwale:** On a point of order, Mr. Temporary Chairperson, Sir. I had gone over the amendment by Sen. Mutula Kilonzo Jnr. Since it is a mirror image of the other one, I support it.

*(Sen. Njoroge walked into the Chamber)*

Before I sit down, did you notice that the nominated Senator, Sen. Njoroge has just walked into the House? Thanks be to God! His effigy was burnt in Naivasha. We are probably lucky that the man is alive. I do not know whether it is appropriate but even in the Bible, we read of people who were killed for saying the truth.

**The Temporary Chairperson** (Sen. (Dr.) Machage): Order, Sen. (Dr.) Khalwale! Is that matter before the Committee of the Whole?

**Sen. (Dr.) Khalwale:** Mr. Temporary Chairperson, Sir, I was just giving thanks to God. We would have lost our colleague. He was going to die for nothing, just like Jesus. You were actually standing up for the truth; that the Deputy President (DP) will not be supported by Mt. Kenya in 2022. Be strong for saying the truth. The country is feeling you.

**Sen. Njoroge:** On a point of order, Mr. Temporary Chairperson, Sir. Is Sen. (Dr.) Khalwale in order to bring this matter before the Committee of the Whole, thus sending a message which is contrary to what I said? I stand to correct my friend ---

**The Temporary Chairperson** (Sen. (Dr.) Machage): Have a seat.

*(A Senator spoke off record)*

*(Laughter)*

You executed your point of order very well. Sen. (Dr.) Khalwale is completely out of order. You are not the subject of discussion here, neither has he moved a substantive Motion to discuss you as a person. However, let us appreciate that he is a friend, indeed, for asking the gods to protect you.

*(Sen. (Dr.) Khalwale spoke off record)*

Very well! Division will come at the end.

**Sen. (Prof.) Anyang'-Nyong'o:** On a point of order, Mr. Temporary Chairperson, Sir. I just wanted to draw the attention of the House. If you have read Shakespeare's Macbeth or Hamlet, apparitions are quite often very much like human beings. So, you cannot rule out that what we see in the House is an apparition of what we know as the Senator from Nakuru, Sen. Njoroge.

**The Temporary Chairperson** (Sen. (Dr.) Machage): Order, Sen. (Prof.) Anyang'-Nyong'o! Be it as it may, you should see a specialist for your eyesight to be--- The Chairperson sees Sen. Njoroge in person and not as an apparition. Apparitions are not touchable. I saw him greeting Sen. (Dr.) Khalwale who can testify that he actually held some person. He is real. Relax.

Very well, next Clause!

*Clause 2, Title and Clause 1*

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

Division will be at the end.

We need to report progress. Sen. Kivuti, approach the Table, please.

*(Sen. Kivuti approached the Table and consulted with the Temporary Chairperson)*

Mover!

**Sen. Kivuti:** Mr. Temporary Chairperson, Sir, pursuant to Standing Order No.139, I beg to move that the Committee reports progress on its consideration of the Natural Resources (Classes of Transactions Subject to Ratification) Bill (National Assembly Bill No. 54 of 2015) and seek leave to sit again tomorrow.

*(Question proposed)*

*(Question put and agreed to)*

*(The House resumed)*

*(The Temporary Speaker (Sen. Mositet) in the Chair)*

**The Temporary Speaker** (Sen. Mositet): Chairperson, you can report.

### **PROGRESS REPORTED**

THE NATURAL RESOURCES (CLASSES OF TRANSACTIONS SUBJECT TO RATIFICATION) BILL (NATIONAL ASSEMBLY BILL NO. 54 OF 2015)

**Sen. (Dr.) Machage:** Mr. Temporary Speaker, Sir, I beg to report progress that the Committee of the Whole has considered the Natural Resources (Classes of Transactions Subject to Ratification) Bill (National Assembly Bill No. 54 of 2015) and seeks leave to sit again tomorrow.

**Sen. Kivuti:** Mr. Temporary Speaker, Sir, I beg to move that the House agrees with the Committee in the said Report.

**The Temporary Speaker** (Sen. Mositet): Who is your seconder? You have to be seconded.

**Sen. Obure** seconded.

*(Question proposed)*

There is no interest. I will put the question since it is not a county matter. I think we can just agree that those who will have a high volume voice will have won.

**Sen. (Dr.) Khalwale:** On a point of order, Mr. Temporary Speaker, Sir. Are we not voting on the amendment Bill to the Natural Resources (Classes of Transactions Subject to Ratification) Bill (National Assembly Bill No. 54 of 2015)? If we are, all Bills that are debated in the Senate concern counties. Therefore, voting must be by county delegations. Just be guided. We are voting to an amendment Bill. It cannot be a voice vote.

**The Temporary Speaker** (Sen. Mositet): Yes, it is a county matter but the Chairperson was just reporting on the progress of what we went through. We did not vote because we did not have numbers.

**Sen. (Dr.) Khalwale:** On a point of order, Mr. Temporary Speaker, Sir. I want to know; what are we about to vote for?

**Sen. Obure:** So that we can sit tomorrow.

**The Temporary Speaker** (Sen. Mositet): You remember very well that the progress was reported and finally, there was voting so that the Committee could resume tomorrow because there was no quorum. That is the Report that is coming out of the House and we have to vote for it.

Are we together? Not on the Bill. It is just on the progress report. Are you satisfied?

Sen. (Dr.) Khalwale: Yes, Mr. Temporary Speaker, Sir.

**Sen. Musila:** On a point of order, Mr. Temporary Speaker, Sir. I am informed by the Chairman that there is going to be a Second Reading in order that we may introduce an amendment to that proposed amendment. At what stage are we going to do the Second Reading, so that I can introduce an amendment to Clause 9(a)?

**The Temporary Speaker** (Sen. Mositet): You will have to file the amendment with the Office of the Clerk, and then tomorrow after we resume, before the voting, that amendment will have been considered.

*(Question put and agreed to)*

## COMMITTEE OF THE WHOLE

*(Order for Committee read)*

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

## IN THE COMMITTEE

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

THE CANCER PREVENTION AND CONTROL (AMENDMENT)  
BILL, 2014 (SENATE BILL NO.3 OF 2015)

**The Temporary Chairperson** (Sen. (Dr.) Machage): Order, Members. We are now looking at Order No; 11 Committee of the Whole.

I hope, Sen. (Prof.) Lesan, you are standing in for the Chair. Let us have the clauses.

*Clause 2*

*(Question, that Clause 2 be part of the Bill proposed)*

*Clause 3*

**Sen. (Prof.) Lesan:** Mr. Temporary Chairperson, Sir, I propose that Clause 3 of the Bill be amended in the proposed new section 12B by:

(a) deleting subsection 1 and substituting thereof the following new subsection-

(1) The persons appointed under section 12A.(2) (a) and (d) shall be competitively recruited by the County Public Service Board and appointed by the county Governor----

**The Temporary Chairperson** (Sen. (Dr.) Machage): Order. I think you executed it wrongly. Can you start with the phrase: I beg to move?

**Sen. (Prof.) Lesan:** Mr. Chairperson Sir, I beg to move:

THAT, Clause 3 of the Bill be amended in the proposed new section, 12(B) by-

(a) deleting subsection (1) and substituting thereof the following new subsection-

(1) The persons appointed under section 12A.(2)(a) and (d) shall be competitively recruited by the County Public Service Board and appointed by the county Governor by notice in the County Gazette for a term of three years, renewable for one further term of three years.

(b) Inserting the following new subsections immediately after the proposed new subsection (1).

(1A) A person qualifies for appointment under section 12A (2)(a) if such person is a trained health professional with knowledge and at least five years experience in matters relating to cancer prevention and control.

(1B) A person qualifies for appointment under section 12A (2)(c) and (d) if such person holds a certificate of secondary education and has knowledge and at least one year experience in matters relating to cancer prevention and control.

*(Question of the amendment proposed)*

**The Temporary Chairperson** (Sen. (Dr.) Machage): I see no interest, so Division will be at the end.

*Title and Clause 1*

*(Question, that the Title and Clause 1 be part of the Bill, proposed)*

Division will be at the end.

**Sen. (Prof.) Lesan:** Mr. Temporary Chairman, Sir, I beg to move that the Committee do report progress on its consideration of the Cancer Prevention and Cancer (Amendment) Bill (Senate Bill No.3 of 2015) and seek leave to sit again tomorrow.

*(Question proposed)*

*(Question put and agreed to)*

**The Temporary Chairperson** (Sen. (Dr.) Machage): We will continue so that we can report progress on another Bill, together with this. Let us move to Order No.12.

THE KENYA NATIONAL EXAMINATIONS COUNCIL  
(AMENDMENT) BILL (SENATE BILL NO.14 OF 2015)

*Clauses 3 and 4*

*(Question, that Clauses 3 and 4 be part of the Bill, proposed)*

**The Temporary Chairperson** (Sen. (Dr.) Machage): I see no interest, so Division will be at the end.

*Clause 5*

**Sen. (Prof.) Anyang'-Nyong'o:** On a point of order, Mr. Temporary Chairman, Sir. Sen. Obure gave notice that he intends to move an amendments to the Bill on Clauses 3 and 4 but we are now on Clause 5 and those amendments have not been moved.

**The Temporary Chairperson** (Sen. (Dr.) Machage): You are very right. This is an error of print out. That is what the Order reads. Let me consult on the way forward in such a scenario because this is an anomaly. The amendments are not on the Order Paper.

*(The Temporary Chairperson (Sen. (Dr.) Machage)  
consulted with the Clerks-at-the-Table)*

Hon. Senators, there is normally a print out on the Order Paper, therefore, I request the Mover to request for more time. So, he will have to report progress.

**Sen. Obure:** Mr. Temporary Chairman, Sir, pursuant to Standing Order No.139, I beg to move that the Committee do report progress on its consideration of the Kenya National Examination Council (Amendment) Bill, and seek leave to sit again tomorrow.

*(Question proposed)*

*(Question put and agreed to)*

*(The House resumed)*

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

### **PROGRESS REPORTED**

#### THE CANCER PREVENTION AND CONTROL (AMENDMENT) BILL, 2014 (SENATE BILL NO. 3 OF 2015)

**The Temporary Speaker** (Sen. Mositet): Hon. Senators, I call upon the Chairman to report the progress on Order No.11, The Cancer Prevention and Control (Amendment) Bill, 2014 (Senate Bill No. 3 of 2015).

**Sen. (Dr.) Khalwale:** On point of order, Mr. Temporary Speaker, Sir.

**The Temporary Speaker** (Sen. Mositet): What is your point of order, Sen. (Dr.) Khalwale?

**Sen. (Dr.) Khalwale:** Mr. Temporary Speaker, Sir, I am sorry to interrupt the progress of debate. However, I have complained before about the manner in which the Speaker arrives in the Chamber these days. While previously, the transgression was that the Speaker appeared to emanate from the Chamber itself, it has now gone further; that the Speaker has now been announced to have arrived when he is in the Chair. For good order, let us insist that we keep to the traditions of the Parliament of the Republic of Kenya.

**The Temporary Speaker** (Sen. Mositet): Point noted though I never heard that. Continue, Sen. (Dr.) Machage.

**Sen (Dr.) Machage:** Mr. Temporary Speaker, Sir, I beg to report the progress that the Committee of the Whole is considering The Cancer Prevention and Control (Amendment) Bill, 2014 (Senate Bill No. 3 of 2015) and seeks leave to sit again tomorrow.

**The Temporary Speaker** (Sen. Mositet): Could we hear from the Mover, Sen. (Prof.) Lesan.

**Sen. (Prof.) Lesan:** Mr. Temporary Speaker, Sir, I beg to move that the House do agree with the Committee on the said report.

**Sen. Obure:** I second, Mr. Temporary Speaker, Sir.

*(Question proposed)*

*(Question put and agreed)*

#### THE KENYA NATIONAL EXAMINATIONS COUNCIL (AMENDMENT) (NO. 2) BILL (SENATE BILL NO. 14 OF 2015)

**The Temporary Speaker** (Sen. Mositet): Chairman, you can now report on the progress of The Kenya National Examinations Council (Amendment) (No. 20 Bill, Senate Bill No.14 of 2015).

**Sen (Dr.) Machage:** Mr. Temporary Speaker, Sir, I beg to report progress that the Committee of the Whole has considered The Kenya National Examinations Council (Amendment) (No. 2) Bill, Senate Bill No.14 of 2015) and seeks leave to sit again tomorrow.

**The Temporary Speaker** (Sen. Mositet): Could we hear from the Mover, Sen. Obure.

**Sen. Obure:** Mr. Temporary Speaker, Sir, I beg to move that the House do agree with the Committee on the said report.

**Sen. (Dr.) Khalwale** seconded.

*(Question proposed)*

*(Question put and agreed)*

### COMMITTEE OF THE WHOLE

THE PETITION TO COUNTY ASSEMBLIES (PROCEDURE)  
BILL, SENATE BILL NO. 35 OF 2014

**The Temporary Speaker** (Sen. Mositet): Since the Mover of Order No.13 is not here, I defer the Committee of the Whole. Let us move on to the next Order?

*(Committee of the Whole deferred)*

### BILLS

*Second Reading*

THE AGRICULTURE, FISHERIES AND FOOD AUTHORITY  
(AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 17 OF 2015)

Hon. Senators, where is the Senate Majority Leader? If he is not around, could we have somebody from the majority side who can move it? If none, let us move on to the next Order.

*(Bill deferred)*

*Second Reading*

THE MEDICAL PRACTITIONERS AND DENTISTS  
(AMENDMENT) BILL (SENATE BILL NO. 2 OF 2016)

**Sen. (Prof.) Lesan:** Thank you, Mr. Temporary Speaker, Sir. I beg to move:-  
THAT, the Medical Practitioners and Dentists (amendment) Bill (Senate Bill No. 2 of 2016) be now read a Second Time.

The object of this Bill is to amend the Medical practitioners and Dentists Act with the view of enhancing the penalties that are related to the offences that are created under the Act which was amended and enacted in 1977. That is about 40 years ago. This Act is very old and it has been overtaken by a lot of events that necessitated that we look at the amendments to make sure that it is current, useful and protects the citizens of the land.

The object of this Act was to regulate the medicine and dentistry practice in this country. Section 4 of the Act establishes the Medical Practitioners and Dentists Board whose key functions are stated here and they have been applied for a very long time. The main function of this Act was to regulate the training of the medical practitioners and dentists in this country. This is a very sensitive profession, a sensitive application to the citizens of this country. Therefore, for it to be practiced effectively, there must be well regulated laws and procedures of practice in this area of medicine and dentistry.

Secondly, the registration and licensing is also very important because it is not everybody who will practice medicine or dentistry in this country. The 1977 Act regulates the registration and licensing procedures of anybody who wants to practice medicine or dentistry in this country.

The areas in which this medicine and dentistry can be practiced also need to be controlled. Therefore, this Act also provided for the registration, inspection and licensing of individuals and premises. It has also provided for the supervision of the individuals as they continue to practice dentistry in the community and in faith-based organisations that offer medical and dental services. These organisations need to be licensed and inspected all the time.

The Act will help the Cabinet Secretary for Health to handle matters pertaining to health care which are changing all the time. Therefore, the Cabinet Secretary who is involved in effecting the Act when it is implemented should be aware of what is going on. If there are any amendments, the Cabinet Secretary should be guided by this Act while applying the regulations.

This Act sets out the offences that are likely to be committed by medical practitioners and the penalties for committing those offences. As recently as two weeks ago, various individuals have been found practicing as medical doctors or dentists in this country without any care of what is required of them before they can practice. Last week, somebody who was practicing as a doctor in Nakuru was arrested, taken to court and released on bail. A week later he was arrested again for doing the same thing even before the case was heard. That gives an indication that there are many people who are pretending to practice medicine; disregarding completely what is provided for in the Act which was enacted in 1977.

Mr. Temporary Speaker, Sir, the public is aware of very many people who claim to be doctors. In fact, we had a case of a doctor within Nairobi who was taken to court for attempting to rape his patient. We know how susceptible patients are when they go to see doctors. It would, therefore, require people practicing medicine to be highly disciplined.



As Sen. (Dr.) Khalwale would know, patients are very submissive when they visit the doctor. When you ask them to undress so that you can examine them, they do not raise any questions, because they trust and believe in doctors.

Part 2 of the Fourth Schedule of the Constitution provides that health is a function of the county governments. The Act enacted in 1977 has not involved the county government, which is a very important arm in the application of this Act. Therefore, this amendment that we are proposing brings in the county governments. The county governments need to be part of the persons who will deliver services within the counties. We will amend the Act which exists to include the county governments, where the local governments or national Government was involved in the health care services in the country.

We wish to make amendment to Section 19 of the Medical Practitioners Act. Medical practitioners have claimed to be eligible to practice medicine by procuring a license in a fraudulent manner. The procuring of licenses to practice in this country is one of those areas that have been abused in the recent past. As a result, some people have obtained registration without following the due process. We would want to discourage this practice in this country. We would wish to amend the Act that carries the penalties against those who fraudulently obtain licenses to practice medicine. The previous Act provides that a person who fraudulently procures the license to practice should be fined Kshs3,000 or imprisoned for a term not exceeding 12 months or both. People are repeating this offence over and over because this penalty is not punitive. This amendment seeks to enhance the penalty to a fine not exceeding Kshs1 million or imprisonment for a term not exceeding five years, or both.

Section 22 of the Medical Practitioners Act deals with people who practice medicine in this country, without registration or licensing. Of course, you cannot carry out business in this country without a license. Registration to practice Medicine is a process. For one to practice you have to show that you have gone through the necessary training. Section 22 (1) provides for the offence of willfully and forcefully taking or using any name, title or addition implying qualification to practice medicine, surgery, dentistry, or practicing without being registered or licensed. Under the Act that was enacted in 1977 the penalty for contravening this is a fine not exceeding Kshs10,000 or imprisonment for a term not exceeding 12 months or both. This is a very small penalty for this offence. This Bill seeks to amend this Section.

This Bill seeks to amend Clause 5(a). It seeks to enhance the penalty to a fine not exceeding Kshs500,000 or imprisonment for a term not exceeding five years or both. The reasons are the same as the previous one, in that these penalties wish to be a deterrent. We want to deter people from making it very easy to do illegal things within the medical practice. Of course, being deterrent, I believe it will also save some of our colleagues in medical practice, who would be tempted to do anything that is illegal and, therefore, preserve their own practices because they have a fine here which is deterrent.

Mr. Temporary Speaker, Sir, Section 22(2) creates an offence where a person uses the title “doctor”. The first thing that individuals do to fraudulently practice medicine is to first of all take up the title of “doctor”. This goes along with wearing a white coat. So, somebody called a doctor and wearing a white coat can pass very easily

for the gullible public that here is a doctor. Using this title has been a getaway where individuals have managed to practice medicine without necessarily being doctors.

We know that the title of a doctor is controversial. However, we are looking at that title as used by people in medical practice. This is the only time that you use that title to a person who has a first degree. In other situations, it is allowed that individuals can use the title “doctor” if they have a second degree even in humanities, business or other cases and not necessarily in medicine. When they have a post first degree qualification, then they can have that title. This is also defined and it is applicable elsewhere. Individuals with a first degree and are not medical practitioners are not eligible to use this title. Of course, we have issues with pharmacists many of whom who I know prefer to refer to themselves as doctors. Perhaps it is because they deal very closely with medical personnel, can dish out tablets over the counter and they will enhance their business if they use that title.

This amendment will deal with that because it specifies that anybody using this title should do so deservingly. Unfortunately, it is only in the medical field that people rush into this. We do not see this in other professions. For example, have you found lawyers who pretend to be lawyers and call themselves learned friends? Unfortunately, they do not have a title to tag on their coats. This happens in medicine all the time. It is misleading the public.

This Bill provides for a penalty not exceeding Kshs10,000 or imprisonment not exceeding two years or both. We know the seriousness of the misuse of this title of doctor. It leads to individuals to pretend to offer health services. This amendment Bill proposes to increase the penalty to a fine not exceeding Kshs300,000 or an imprisonment for a period not exceeding five years or both.

Mr. Temporary Speaker, Sir, these medical practices and the amendments that I have suggested here look simple but I think in the application, they are very far reaching. These are amendments that will save the most precious thing that each one of us has and that is life. Our lives have been put to great risk by individuals who use all means and the weakness or non-severity of the law to deny Kenyans the proper medical services that they deserve.

Medical services should only be offered by individuals who have been properly trained, undergone the entire course of training and perhaps even further through post graduate education or specialization areas that they are able to practice. So, we would want to use this amendment to make it safe for this country to have affordable medical treatment. This will ensure that medical practitioners are ethical and very professional in their practice.

I urge that these amendments be supported by Senators after, of course, looking at them very critically. As they continue to look at them, we know that these amendments will go a long way in saving the lives of Kenyans.

With that, I beg to move. I ask my colleague, a doctor in the medical field, as well and the Senator for Kakamega, to second the amendment.

**Sen. (Dr.) Khalwale:** Mr. Temporary Speaker, Sir, I rise to move that the Medical Practitioners and Dentists (Amendment) Bill (Senate Bill No. 2 of 2016) by Sen. (Prof.) Lesan, be read a Second Time.

I do this because the Medical Practitioners and Dentists Act, otherwise, called Cap 253 of the laws of Kenya, is highly abused. Specifically this afternoon, I congratulate Sen. (Prof.) Lesan for focusing on the quacks. Of course, we have abuse that is also within even the professionals themselves. You find somebody who does not have sufficient qualifications stretching himself to attempt to discharge as if they were better qualified. For example, a case of a clinical officer trying to carry out surgery normally, invariably, has disastrous consequences.

I support it because this Bill sets out offences and penalties related to professional misconduct in the practice of medicine and dentistry. This Bill, therefore, seeks to enhance the penalties set out in the Act, given the high number of complaints arising from cases of professional misconduct and misrepresentation in the profession. Members will remember that on many occasions in this House, many Senators and even hon. Members in the National Assembly have raised questions of professional misconduct and misrepresentation.

Mr. Temporary Speaker, Sir, I, therefore, laud the Senator for Bomet. As I second him, I am in full support. However, I beg him to consider the following thoughts. The first one is Clause 2 of the amendment Bill where you want to delete sub-section 5. Now, the House should know what that sub-section is all about. On the parent Act, it provides for the registrar of births and deaths as to who is expected to notify the registrar of the Medical Practitioners and Dentists Board (MPDB) of the death of any registered medical practitioner or dentist.

Sen. (Prof.) Lesan, let us think about this. What mischief is there? Why do you want to delete that? This Section was put there for purposes of good order so that a particular office, the registrar, should not just wake up and strike out Sen (Prof.) Lesan that you are dead. He should be informed by the Registrar of Births and Deaths. There are many incidences where somebody has claimed that so and so is dead. Probably, they want to inherit your property or wife, for example. They can go to whatever extent to get you deregistered. Being deregistered as a medical practitioner is a very important and serious issue. Sen. (Prof.) Lesan, I beg you that if you can bear with me, since you are curing no mischief, we just leave sub-section 5 to stay.

In Clause 3, you want, at Section 14 of the principal Act, to amend sub-section 1 by those deletions.

I support you, Professor, because you are acknowledging the fact that in the Fourth Schedule, health is a fully devolved function. Secondly, you must be lauded for this because you are now aligning this Act with the new Constitution.

In Clause 4, I also want to support you strongly. What is it that you are looking for in Clause 4? You are amending it so that quacks can be punished and dealt with properly. The issue of quacks is real and the Nominated Senator, Sen. Elachi, will recall the fanfare that there was about a quack doctor by the name Mr. Mugo in Githurai who ended up raping a patient and the video went viral. So, Sen. Prof. Lesan, you really impressed me because you have refused to be part of the media and to be a cry baby. Instead, you are part of the solution. We must laud you for this. It is a very good amendment.

I also support you in Clause 5, and may I draw the attention of the House to the parent Act Cap 253 by reading out to the House section 22 of the parent Act subsection (2). It says:

“Subject to this, no person shall use the title doctor unless he is registered or licensed under this act as either a medical practitioner or a dental practitioner or he has acquired a higher academic doctoral qualification which may entitle him to use that title.”

Mr. Speaker, Sir, I want to support this with two comments: first, probably as you go into the Committee stage, professor, you and I should sit together so that we see how to word it to capture that imagination, but also remind the public and people with academic qualification that give them entitlement to using the name doctor, to remind the courts, the judges, magistrates and lawyers that such a person should never abuse the fact that people call him doctor to attempt to practice medicine.

President Moi used to put it well in the other Parliament in Kiswahili: “*hii Daktari Kituyi ni ile ya sindano ama ni ile ya vitabu?*” When President Moi was told that Dr Kituyi *ni daktari ile ya vitabu*, he said, “*oo bure kabisa*” because of the troubles that Dr. Kituyi used to cause him. We should word it in that manner so that we remind those people who walk around with the title “doctor” not to be tempted to practice medicine.

When I was in medical school, there was a doctor by virtue of title. Since he is a cousin to Sen. Elachi, I will not say his name. He was a doctor of sociology. When you want to look different from the nurses and clinical officers at Kenyatta National Hospital, you have to have the prescription pad visible. People knew that the only person who could make a prescription is a doctor because he has a pad. “This doctor” used to walk with a prescription pad. I recall vividly when I was in the final year of medicine, how Prof. Mengich of Moi University, by then he was a professor of psychiatry, embarrassed this man before patients. He said, “Why are you walking with that prescription? You are not a doctor of medicine. You are a doctor of sociology.” That guy never taught us for the balance of the fifth year because the humiliation was too much. We had always thought he was a doctor.

Mr. Speaker Sir, in that area, Sen. (Prof.) Lesan and I should sit and see how to craft it, so that a doctor who also assists another person to be a quack can be dealt with. We have doctors who have nursing homes and clinics and they allow their practicing licenses to hang of the walls of such premises when the person he is allowing to sit in the clinic is a quack. This kind of doctor should also be punished for deploying in his clinic somebody without the prerequisite qualifications to practice medicine at that level.

I also want to laud Sen (Prof) Lesan because you mentioned it in passing, but you should have made it clear. There is something extremely dangerous going on especially for the young ladies, and because we have a youthful Senator here, it is good for my daughter to know. In the chemists where you buy medicine, the pharmacists pretend to be doctors, because they pass around calling themselves Dr. Kidero, for example - and that is purely for reference purposes. I have nothing against him. They are not doctors. They can get away by calling themselves doctors, forgive them, but they should not be allowed to inscribe it on their official titles. This law should further clarify it. The reason being that the young female Senators who are here, if you go to the chemist, pharmacists are asking patients to do urine test, because you can do a quick urine test to test whether a

woman is pregnant. The temptation is that they then go further to want to give medication that can interfere with that pregnancy, which is extremely dangerous.

In other instances, the urine test can warn you whether you have diabetes and in the process, the pharmacist attempts to dispense medicine without a prescription from a doctor of medicine to the extent that he makes the diabetes go completely out of control. What is even more frequent is the issue of blood pressure. They ask people to take a blood pressure test and one figure like this and he gives medicine. Patients have been reported to swallow those anti-hypertensives and collapse in their houses, because the pharmacist does not have a clinical mind to know that if the blood pressure is above normal by 10 or 20 units, this is the level you should give.

Lastly, is an additional thought which I wanted you to include: The way you have put these provisions, this law will end up jailing traditional birth attendants. You have not accommodated them - the *Wakunga*. They do a very good job. We have to include them here. Secondly, the law will end up jailing traditional circumcision experts. They abound in Luyhia land and most of these Bantu circumcising communities, Maasais and so on. We also need to coin it so that we accommodate traditional herbalists. They give medical treatment and very good treatment while at it.

I wish to second you and point out those issues.

**The Temporary Speaker** (Sen. Mositet): Hon. Senators, we are remaining with two minutes. I have here a request by Sen. (Prof.) Anyang'-Nyong'o. We also have a Motion of Adjournment brought by Sen. (Prof.) Anyang'-Nyong'o.

*(Question proposed)*

**Sen. (Prof.) Anyang'-Nyong'o:** Mr. Temporary Speaker, Sir, I rise to support this Bill moved by my colleague, Sen. (Prof.) Lesan. Having been a Minister for Medical Services, I can feel and fathom the concerns of Sen. (Prof.) Lesan in moving this Bill. Sen. (Dr.) Khalwale also raised very substantial and germane issues. The first thing I want to say is that the issue of doctors who take advantage of the medical needs - which are enormous -of our people, to trade with the bad health of our people is something that the law should help to cure.

Mr. Temporary Speaker, Sir, one of the dictums of good health says that prevention is better than cure. Preventive healthcare is the first line in medical and social practice with regard to our health. One of the key elements in preventive healthcare is knowledge: The fact that we should know our health status, thus, enabling us to know what to do when we need medical attention. In doing so, access to medical care should be transparent and easily known by the people.

Article 43 of the Constitution which guarantees every Kenyan access to affordable healthcare will not be implemented successfully if we do not pay attention to preventive healthcare. Our people are not properly informed about healthcare services and the status of their health. This is because this information has been rather scarce and it breeds an atmosphere where opportunists take advantage of the population. When I was young, I used to read that there are certain doctors who can cure everything. There was a

famous “doctor” called Ouma Makadudi, who was widely advertised; that he could cure almost everything.

There are many “Ouma Makadudis”. If you walk along Ngong Road, you will see billboards - some legal and some illegal - that tell you that doctor so and so, can cure impotence, AIDS, anxiety, help you find a job and so on. The list of what that “doctor” can do is unending. This is the kind of thing that Sen. (Prof.) Lesan is concerned about and he is bringing this Bill to cure this mischief.

Mr. Temporary Speaker, Sir, when people are desperate and have little knowledge, they are likely to fall victim to this kind of thing. What is interesting is that sometimes, these so called “doctors” do get patients and cure them. This goes to prove the law of probability but to what extent is it possible that by throwing a dart on to a board 100 times, you are likely to hit the centre at least once? The law of probability tells you that there is a high likelihood that although you do not know how to play, if you continue throwing the dart, you will hit the centre, not because you knew what you are doing but the law of probability makes it possible for you to do so. That is why these doctors use the law of probability and keep on guessing on how to deliver healthcare. Sometimes, they get it right and advertise the success, they even attract more people to go to them. In the end, you will find many more people dying.

You will remember not so long ago, when I was the Minister for Medical Services, somebody in northern Tanzania was advertised widely that he cured AIDS and people were going there in lorries to go and be cured. This information reached me and I drove to Kijabe Hospital. I was told that patients being treated for HIV/Aids had absconded to go to Tanzania. Some of them came back and reported to the hospital three weeks later and their condition had deteriorated. In the end, they died.

What is interesting is that when I was at Kijabe Mission Hospital, we actually interviewed some of the returnees and they described to us what they went through. When they got there, the queue was so long that if you arrived at 5.00 a.m. you would have to wait up to 4.00 p.m. before you are treated. When you got to the doctor, there was a concoction in a glass that you were given to drink, then you paid a lot of money. Then you were told to go back because your diseases are healed just like Jesus used to say; “rise up, your sins are forgiven”. In the end, quite a number of people lost their lives. I had to take a very firm stand. I am glad that Kijabe Mission Hospital came to me to make it very clear to the public that it was a hoax.

If I remember well; a senior official in Tanzania went there to be treated and never got anywhere, they had to bring in the force of law to stop this kind of practice in northern Tanzania.

I feel very strongly that this Bill needs support to see the light of day. therefore, I congratulate Sen. (Prof.) Lesan for bringing it and Sen. (Dr.) Khalwale had gone through it clause by clause and I do not need to add anything. I just want to add my voice, having been involved in policy-making in this area for a good five years, that this is a welcome Bill.

I beg to support.

*(Interruption of Debate on Bill)*

**The Temporary Speaker** (Sen. Mositet): Hon. Senators, I will now allow Sen. (Prof.) Anyang'-Nyong'o to move his Motion of Adjournment.

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

ETHNIC CLASHES ALONG THE KISUMU-NANDI BORDER

**Sen. (Prof.) Anyang'-Nyong'o:** Mr. Temporary Speaker, Sir, last week as the nation woke up on Monday and as farmers in the area went about their business, one shepherd looking after his cattle was suddenly accosted and his cattle taken by some rustlers who drove from Kisumu County to Nandi County. The shepherd summoned his colleagues in pursuit of the cattle. They captured the cattle and brought them back. As a result of that conflict that occurred because of cattle rustling, a whole sea of clashes started. The facts of what happened should be known. I would like to appeal to the National Cohesion and Integration Commission (NCIC) to establish a fact finding mission properly supported by the Ministry of Internal Security to go to the area with the view of stopping this kind of thing.

Mr. Temporary Speaker, Sir, last year, when this happened in the Kibigori area, I proposed that we need a strong anti-stock theft unit in the area to prevent this kind of thing occurring again. As I speak here today, 500 families have been displaced. As we know, at least three or more people have died as a result of this. I visited the area on Friday. In a church in Achego, there are over 200 families; men, women and children. They were crowded there because they were not feeling safe in their own homes. This was a very sorry sight. Thanks to Kenya Red Cross, friends and some supporters, including myself, who went there to provide clothing, food, mattresses and so on.

It was a terrible human condition to see citizens of Kenya being driven from their homes because of this kind of mishappening in this day and age and the fact that we aspire to be a middle income country by the year 2030. We all remember what we went through; a terrible experience in the year 2007-2008. Therefore, it is a pity that we are still having this kind of conflict in the Pokot Turkana area. These things must come to an end.

As we drove around from Achego through Kopere to Songor what shocked me is that roads in those areas are in a deplorable condition. On Tuesday, I appealed to my friend, Maj. Gen. (Rtd) Joseph Nkaissery, the Cabinet Secretary, Ministry of Interior and Coordination of National Government to ensure that security personnel were sent into the area. Indeed, he sent security to the area. There were security personnel sent from Kisii, Nyamira, Kapsabet, Bungoma and other places to the area.

The trucks moving around with these soldiers were going around at a snail pace because of the condition of the road. I believe a proper infrastructure is essential for security. My proposal is that a ring road be built. It is there, but it is not maintained. We should maintain a good infrastructure along the border, so that in the event that there is some problem, security can move in very fast and restore order.

The sad thing that we were told by people who were involved in this clash in Songor, Kopere and Achego was that on the first and the second day of the conflict, the security there were just standing because they were partisan to that invasion from Nandi County into Kisumu County. This means that the security personnel there were part and parcel of this problem and that is one of the reasons I appealed to Maj. Gen. (Rtd) Joseph Nkaissery, the Cabinet Secretary, Ministry of Interior and Coordination of National Government, to bring in security personnel from outside to restore law and order. Indeed, when they came and restored law and order, it was a proof that the local security was not up to the mark in doing what they should do, which is to maintain law and order. It is a real shame when our security personnel behave like that.

I learnt that the person who should be helping to manage security in that area is the District Commissioner (DC). He has been there for so long that he had become too familiar with the people. The English men say “familiarity breeds contempt.” The population in the area appealed to us passionately that this particular DC should be removed from Chemelil area. He should be taken somewhere else because he has become a menace to the security in the area. This should be a normal practice in the Government. It used to be a normal practice in the Government that if you are posted to a place, you do not stay there for more than three years. Indeed, in the diplomatic service, there is something called “a tour.”

If you are an ambassador in Washington, you have a three year tour and when you finish unless in exceptional circumstances, you can be given another tour. Otherwise, you are supposed to move from one station to the other so that this issue of familiarity breeding contempt is safeguarded. There are too many provincial administration officers who have stayed for too long and have become a menace to the people. This is because they cannot rise to the occasion and perform their duties. That should be one of the things that should be done immediately.

The other thing that is important is that it is not good to wait until that time when there is a problem to call the leaders for a meeting. We now know that there is a potential problem all the time. There should be a structured peace committee which, probably, meets periodically to review what is going on and to converse with the people. That peace structure should not be an adversarial peace structure where people from Kisumu and Nandi counties meet at a time of crisis as adversaries. These committee members should meet regularly to get to know each other.

In any case, if my colleague Sen. Sang who is the Nandi County Senator and I, were part of that peace structure, we can easily facilitate many things together with the two Governors, the MCAs and the community leaders from both areas. Let not the security apparatus in this country wait for crisis to happen and then they call people. Let us not wait for crisis to happen for us to see the Hon. Francis Ole Kaparo, the Chairperson of the NCIC, visit such areas. Let it be something that is done continuously for us to avoid this kind of conflict. It is not even necessary to have peace structures as part of the solution. That peace should be there as a matter of fact. Indeed, we have many borders where there are no clashes. We know when it occurred; we know the causes and this should be eliminated by having proper governance on both sides.



Finally, I want to speak about compensation. It was very painful to find a young lady, who is hardly 26 years old with three children, who had been misplaced from her home. When she went back during the day to check what had happened, she found her whole maize plantation cut down. She came to us crying and told us that she does not know how she will pay school fees for her children.

I would like the Government to go down to the people, assess the damages and compensate these people immediately. After all, we used to have a Ministry of Special Programmes. I think there must be an equivalent Ministry in the Jubilee Government. When such things happen, the Government should go there immediately and compensate these people because these people's livelihood has been interrupted for no fault of their own.

Another 75 year old woman approached me. She told me that her son was killed last year in the clashes and her other son has been killed in this clashes. She has lost all her things at home. The most painful thing is that when she heard the young men coming to rob her house, she locked the door and stayed in. These people kept on knocking, but she refused to open the door. When they went away, she came out and locked the door, but hid in the compound.

These people came back and found her and she was slapped by a young boy the age of her grandson. This is the thing that pained the woman most. The young man went ahead and took the key from her and they stole everything from her house, including her mattress. At 75 years, this woman has to look for security and plead with her fellow women to give her a place to sleep. She was now going from one home to the other, night after night, looking for where to sleep. These tales are too painful.

I beg to move.

**Sen. Elachi:** Mr. Temporary Speaker, Sir, I rise to support this Motion for Adjournment to talk about the clashes in the border of Nandi and Kisumu counties. As leaders, we need to ensure that citizens live together in peace regardless of their ethnicity and political affiliations. We should not be seen to support evil things.

We need to get to the root cause of the clashes between the communities in Muhoroni. I do not think that, that area is prone to cattle rustling like Pokot and Turkana. The clashes have caused a lot of suffering. Families have been forced to flee their homes and seek refuge elsewhere. Even if we send security personnel to the area, the matter may not be resolved fully. The best approach would, therefore, be the setting up of committees comprising of members of both communities. Leaders from both sides should be involved so that they can talk to their people.

As we head towards elections, some politicians take advantage of such situations to create more tension so that they can advance their political agenda. It is wrong to have communities in the 21<sup>st</sup> Century fighting each other. I hope that the perpetrators will be taken to court and convicted. The penalty for committing such offences should be punitive. When it comes to cattle rustling, all those involved including those who allowed the animals to pass through their homes should be penalized.

One wonders why people are killing one another in Muhoroni, which is a sugar belt. If the security personnel there are fueling the problem, they should be transferred and new ones brought to ensure that peace prevails. This is not the first time that we have

problems between the communities living in the area. We need to get to the root cause of the problems. If the Nandi community wants the sugar belt, they need to be told that, that land does belong to them. They need to be told that what they are doing is wrong.

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

Sen. Sijeny.

**Sen. Sijeny:** Thank you, Mr. Temporary Speaker, Sir, for giving me the opportunity to contribute to this Motion. I wish to thank Sen. (Prof.) Anyang'-Nyong'o for bringing this Motion, which gives us an opportunity, as leaders, to brainstorm and see how best we can protect the lives and property of our fellow Kenyans who live in this area.

I was once called when there was a serious attack on people who have lived in peace for so many years. They know one another and speak one another's languages. You cannot tell, for example, who is a Nandi and who is a Luo because they speak both languages. One, therefore, wonders why clashes occur, when children from both communities go to the same schools and people help one another to cultivate land.

The Government needs to invest in intelligence gathering. We need to be told why these clashes erupt mostly when the elections are around the corner. We need to be told if there are third parties or leaders – political or otherwise – who fund these clashes. If such people exist they need to be dealt with. I met Hon. Kaparo after he had paid a visit to the troubled area. He said that he had tried to calm things. His Commission should give us their strategic plan so that we know what activities they have been undertaking and where they intend to go. They should involve all stakeholders.

We need permanent security personnel in some places, like places of worship. In Nandi Hills there is a place called Mberere that is frequently visited by the *Legio Maria* faithfuls and other Christians. It is just a place of worship with quiet sanctuaries. People go to the riversides or mountains to reflect and they are now being made to believe that some areas belong to the Nandi and others to the Luos. We should therefore, have permanent security personnel in those areas, especially the shopping centres. Since we have been recruiting security personnel every year, some of them should be sent to such areas to stop clashes that lead to loss of property. Women lose dignity when they are stripped naked, like it happened last time. Some of us had to rush there and give them clothing. What is happening is not fair and something ought to be done.

One, as we debate this issue, we should find the implementation committee that should come and follow up with the resolutions. Perhaps the Senator who has brought this Motion should follow up with Mr. Ole Kaparo and the Cabinet Secretary (CS) for Internal Security. We can then come up with concrete issues that will not only solve the Nandi-Luo border but all these borders that have small issues that can be sorted out. This is because there is no real dispute that is clear and they are not fighting over minerals. It is not like fighting for Migingo Island that you think the water is yours and the ---

**Sen. Gwendo:** Mr. Temporary Speaker, Sir, thank you for giving me the opportunity to contribute to this Motion. It affects my people; my mothers, sisters, brothers and people who actually call me to go and see them and what they are going through. I would like to pick it up from where the Senator for Kisumu stopped, citing the possible reasons why we are having these clashes.

One of them is scrambling for pasture and land amongst people who have lived together for a very long time. So, you ask yourself, why are they fighting? These are issues where people could have sat, talked and we, as leaders helped them to resolve the issues.

I look at it as a case where maybe, as leaders, we have not helped these people in the right way that we should. This is because sometimes when these issues occur and we go to see them, what do we tell them? Do we encourage them to go on or sit down and solve the issues? Apart from having peace committees as a must factor, leaders from these two counties should also be in the peace committees. As leaders, we should also make it a tendency to keep on talking to these people to find better measures of resolving their issues and living together. That way, we will avoid clashes where people lose their lives and property. They then come to you and you wonder how you will solve their problems. You can only try your best but you cannot bring back the lives that have been lost and the property that has been destroyed. This is property that somebody has taken a lot of time to accumulate.

Mr. Temporary Speaker, Sir, I also agree with the fact that we need to indulge the Government, ask them to compensate these people and find a better way of supporting them. We should compensate them on the property they have lost and find a way of promoting peace in these areas, not just at the time of the occurrences but as a constant practice. The other time it was Kericho and Nyakach and now it is Nandi and Muhoroni. When are we going to have these again? We know very well that these are areas that are prone to these issues. So, we need to make it a practice to preach peace to them and find different methods of conflict resolution. That way, we will not sit and cry over lost lives, destroyed property and words spoken during the clashes.

As I sit, I also send my deepest condolences to people who have lost their loved ones and property. We hope that after moving this Motion, there will be speedy action in trying to compensate the people who have lost their property.

**Sen. (Prof.) Lesan:** Mr. Temporary Speaker, Sir, I also wish to join my colleagues to first of all express sadness and send my condolences to citizens of this country who have lost their loved ones needlessly, out of these incidents.

As I speak on this Motion, I, as Senator for Bomet and, perhaps, my colleague from Kericho County, get worried when we hear about clashes in Kopere area which is only 50 or 60 miles from Kericho. I am worried because there is an industrial action that is going on in Kericho in the tea estates. It was purely an industrial action but I am worried because it is mutating very slowly and deliberately towards a situation where it cannot be controlled. This is because this is a cosmopolitan area where there are residents from Nyanza and other places in the country.

Two days ago, it was industrial action but from what has transpired yesterday and today in those areas, it has completely changed its face. Now, it involves not only burning of property of those companies but also residences of managers in the tea estates. It has changed completely. Communities are accusing each other of burning houses of other communities. Therefore, it ceases to be an industrial action and will soon mutate into something that is similar to what we are discussing and is happening in Nyanza. It is very

unfortunate and we are seeking and hoping that this can be contained at this very early stage, by resolving the initial problem which was an industrial action.

Mr. Temporary Speaker, Sir, the Commission on National Cohesion and Integration is a body that was formed in this country. I regret and feel very sad that this Commission is a disgrace to this country. It has not lived up to its expectation of building peace at this time. This Commission should have done its best when there was peace. This is also the time when this Commission could have generated relationships between these communities and formed committees in order to work on security issues.

One of the weakest points on security in this country is lack of coherent and adequate information that is security oriented. This is information that can be used to detect and know what exactly is happening. In the last experience of Sondu and Ahero, we knew that there were professional cattle rustlers in this area. We also knew that the rustlers who drove the cattle from Kericho were Luos and not Kalenjins. Those who drove the cows from Luo land to Kericho were from the other side and not Luos. These are fellows who sit together in bars in the evening and share the loot from both sides.

Unless you have information, you cannot deal with this because rustlers look like everybody else during the day. So, it is impossible to isolate them unless you have information. I thought that this is one of the ways that security forces and, of course, the Cohesion Commission would have worked to deal with this issue before it took place. Unless this is dealt with this way, we will only be chasing shadows and hurting innocent citizens as a result of security operations in the country. Security is a very delicate matter and, therefore, information is one of the things that we should look for and ensure we give our forces the opportunity to deal with it by collecting information.

I think it is also incumbent upon politicians to allow security forces to concentrate. When demonstrations are held on the streets, security forces get distracted. They then run after demonstrators and throw teargas around and eventually get into the poor habit of dealing with demonstrators by simply using brute force. We would want security forces who collect intelligence information to set up good programmes in which they can deter issues like rustling and eventually causing harm to the people.

I support this Motion that my colleague, Sen. (Prof.) Anyang'-Nyong'o, has put forth. I hope that action will be taken quickly.

**Sen. Nabwala:** Mr. Speaker, Sir, I would also like to add my voice to the Motion brought forward by the Senator for Kisumu, Sen. (Prof) Anyang'-Nyong'o because of what is happening at the border between Nandi and Kisumu counties. These two counties have existed for some time, and one would wonder why, suddenly, there is such flare up of people fighting each other and cattle rustling. The security agencies should get to the bottom of the matter and find out why these communities are fighting now.

When I watched news of the clashes on television, on the day of the flared up, I saw a grass thatched house which had been torched and a lot of women and children walking with their luggage, trying to find a safe haven. It is very sad because when there is a conflict, it is the children and the women that suffer.

I want to appeal to the Government to ensure that they send security reinforcement to that area and more importantly, the home guards. One time I remember we suggested that these home guards be paid, so that we are able to get information

before cattle rustling takes place and people get hurt in areas like what happened in Turkana, Pokot and many other areas. This is because cattle rustling is not new. It is one of the major conflicts affecting our people in this country.

The Jubilee Government should take this matter very seriously and move in with speed to save our people because when children go to stay in, for instance, a church, there is no food and facilities even to bath your child, diseases are bound to spread, it is very cold, and children are bound to get pneumonia. So, we, as parents, are not happy. We would like to see action taken. We urge those responsible for maintaining security to make sure that this thing is brought to an end so that our people can live in peace without having to go for each other's neck.

We do not know whether the reason is because of poverty or politics. We just had the budget read recently. The price of kerosene has been increased. The other day the price of maize meal has increased. Where are our people going to get money to afford food without having to steal? May be, these people are going after the cattle because they are hungry and they also need to take their children to school. Can the Government act and please look after the poor people?

**The Temporary Speaker** (Sen. Mositet): Yes, Sen. Ong'era.

**Sen. Ong'era:** Thank you, Mr. Temporary Speaker, Sir, for giving me the opportunity to contribute to this Motion of adjournment on a matter of national importance. I first want to thank the indefatigable former Secretary General of Orange Democratic Movement (ODM), Sen. (Prof) Anyang'-Nyong'o, who I am told wants to be governor, for bringing this Motion of adjournment.

I condemn what has happened on the Kisumu-Nandi border in very strong terms because women and children have lost their lives, property has been destroyed and stolen. This is unacceptable in this day and age; that we should find a few disgruntled elements who do not deserve to be called Kenyans, and are taking us back to the old days of primitive ethnic warfare. I condemn the war mongers who are rising up and bringing two communities that have lived together in harmony, in balance and peace for many years into ethnic conflict.

Mr. Speaker, Sir, If we look at the history of the Nandis and the Luos, these are people who have lived together peacefully for many years, co-existing and, although they do different cultural practices. I do not see why we should be having the two communities fighting in this age. I am reading a script and I hope that these ethnic conflicts are not arising because of the general elections that are coming next year. If this is so, I also condemn in equal measure the security apparatus of this country for not rising up and bringing these conflicts to an immediate end. I know it is possible. We saw in other places where helicopters flew. We saw in Lamu and Garissa that the security apparatus rushed there, but I have not seen the same happening at the Kisumu-Nandi border with equal measure.

I therefore condemn this. It is unacceptable that women and children are being killed, and we know that women are the mothers of this nation. I support.

**The Temporary Speaker** (Sen. Mositet): Senators, I trust that the Ministries concerned and the national Government have heard what the Senate has said. The Senate

has spoken and we hope the departments concerned are going to take action on the same so that we can have one nation that we are proud of.

### ADJOURNMENT

**The Temporary Speaker** (Sen. Mositet): Hon. Senators, having interrupted the proceedings of the Senate for the purpose of debating the Adjournment Motion by Sen.(Prof) Anyang'-Nyong'o; it is now time for the interruption of business. Therefore, the House stands adjourned until tomorrow, Wednesday, 29<sup>th</sup> June, 2016, at 2.30p.m.

The Senate rose at 6:30 p.m.