

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Thursday, 20th November, 2014

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

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

PRAYERS

COMMUNICATION FROM THE CHAIR

VISIT BY MEMBERS OF PARLIAMENT TO THE
RESIDENCE OF THE LATE SEN. KAJWANG

The Temporary Speaker (Sen. (Dr.) Machage): Order, hon. Members.

Hon. Senators, as you may recall, yesterday, Wednesday, 19th November, 2014, I made a communication regarding the passing on of the Senator for Homa Bay County, the late Sen. Otieno Kajwang. In the communication, I indicated that the two Speakers have constituted a committee comprising of Senators and Members of the National Assembly to assist in the funeral arrangements of our departed colleague.

Hon. Senators, I now wish to inform you that the committee met today and agreed that a visit by all Members of Parliament to condole with the family in their Runda residence, Nairobi, be made on Tuesday 25th November, 2014, at 9.30 a.m. I repeat, Tuesday, 25th November, 2014, at 9.30 a.m.

In this regard, pool transport has been organized and we will depart from Parliament Buildings at 9.00 a.m. on the said day. Due to logistical challenges including parking space, hon. Members are requested to make use of the pool transport to and from the residence. Other funeral arrangements including the burial date will be announced later after consultations with the family of the late Senator.

Thank you.

PETITIONS

The Temporary Speaker (Sen. (Dr.) Machage): Order. Hon. Members, there are two petitions before us today.

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

CHALLENGES AFFECTING OPERATIONS OF
VIHIGA COUNTY ASSEMBLY

This is a petition to the Senate by Mr. Julius Masiva Obuga, a resident of Vihiga County concerning challenges affecting the operations of the County Assembly of Vihiga.

Honourable Senators,

1. Pursuant to Standing Orders 220(1)(a) and 225(2)(b), I hereby report to the Senate that a petition has been submitted by Mr. Julius Masiva Obuga, through the Clerk, requesting the Senate to, among others, conduct an urgent investigation into the affairs and conduct of the Vihiga County Assembly Service Board (CASB), its Secretary, and of the County Assembly in its entirety.

2. Mr. Julius Masiva Obuga, the petitioner, is a citizen of Kenya and a resident of Vihiga County.

3. Honourable Senators, in this Petition, the petitioner states the following:

(a) That, early this year (2014), ---

Could the Members standing please come in? It is a lengthy Petition.

Come in, proceed. Walk fast now that I have given you permission.

(Hon. Senators entered the Chamber)

Hon. Senators, the petitioner further states the following:-

(a) THAT, early this year (2014), the Vihiga County Assembly Services Board undertook competitive recruitment of 57 new employees for the County Assembly and the new employees reported to work on 1st April, 2014 having been issued with appointment letters signed by the Speaker in his capacity as Chair of the County Assembly Service Board (CASB).

(b) THAT, the recruited employees included the Deputy Clerk of the County Assembly, clerk assistants, legal counsel, Hansard Reporters, Serjeant-at-arms, research officers, protocol officers, liaison officers, amongst others, all of whom are very central to the effective functioning of the County Assembly.

(c) THAT, due to the differences between the Speaker of the County Assembly, who is the Chair of the CASB, and the Clerk of the County Assembly, who is the Secretary to the CASB, the Clerk refused to recognize the new employees, to issue them with staff employee numbers and to enter them into the payroll of the County Assembly as directed by the CASB.

(d) THAT, it is now over seven months since the said employees were recruited by the CASB and reported to work, yet their employment is yet to be rationalized.

(e) THAT, the Clerk of the County Assembly has failed to assign any duties to the new employees who have spent the last seven months sitting at or outside the County Assembly without anything to do.

(f) THAT, there exist seemingly irreconcilable differences between the Speaker of the County Assembly and the Clerk of the County Assembly and this, in addition to leaving the employment of the said new staff in limbo, threatens to bring operations at the County Assembly to a standstill.

(g) THAT, the County Government risks losing hundreds of millions of shillings in the event the said employees decide to file a suit against the County Assembly despite the fact that they have not been assigned any duties or delivered any services since their employment on 1st April, 2014.

(h) THAT, the Clerk of the County Assembly has also-

(i) refused to attend meetings of the CASB

(ii) operates bank accounts not authorized by the CASB and whose status and amounts held therein is unknown to the CASB or the Speaker;

(iii) assigns junior staff the roles of departmental heads;

(iv) single handedly and without involving the CASB recruited employees and proceeded to place them on the payroll where they receive salaries;

(v) exhibited favoritism towards certain employees;

(vi) openly displayed disrespect to the MCAs and staff of the County Assembly including using insults and abuses against them; and

(vii) instead of acting as adviser to the Speaker, assumed the role of head of the County Assembly.

(i) THAT, there is very little service delivery taking place at the County Assembly due to this gridlock and the County Assembly itself seems unable or unwilling to help resolve the conflict between the office of the Speaker and that of the Clerk.

(j) THAT, there is wanton wastage of funds by Members of the County Assembly (MCAs), including undertaking unjustified foreign trips where allowances and *per diem* is paid running into millions of shillings, as supported by the various reports of the Auditor-General on the county.

(k) THAT, efforts to resolve the conflict between the Speaker and the Clerk or to have the Clerk disciplined, removed or replaced, have been unsuccessful and have not yielded any fruits.

(l) THAT, the issues in respect of which the petition is made are not pending before a court of law, constitutional or legal body.

4. The Petitioner, therefore, prays that the Senate:-

(a) Conducts an investigation into the affairs and conduct of the Clerk of the County Assembly and Secretary to the Vihiga CASB and also conducts investigations into the affairs of the Board in its entirety;

(b) Asks the Ethics and Anti-Corruption Commission to investigate the books of accounts of the Assembly and those parties that are culpable be prosecuted;

(c) Calls for documents and conducts an audit into the human resource of the County Assembly, nature of recruitment of new employees and the process;

(d) Comes up with any decision aimed at protecting devolution and taxpayers' monies and any parties found to have received monies irregularly surcharged; and,

(e) Request the Office of the Auditor-General to undertake an audit on the accounts of the Vihiga County Assembly.

5. The petition is signed by the petitioner, Mr. Julius Masiva Obuga.

Hon. Senators, pursuant to Standing Order No.226, I shall now allow comments, observations or clarifications in relation to the petition for not more than 30 minutes, if anybody has something to say.

Sen. Khaniri: Mr. Temporary Speaker, Sir, the said county is the county that I represent in this Senate. I must admit that I am shocked that all these allegations are

being made. These are many and serious allegations. Obviously, if these allegations turn out to be true or if, it is, indeed, true that this is happening, then this will definitely hamper the operations of the County Assembly of Vihiga.

I want to agree with the petitioner that the Senate should urgently investigate this matter and come up with a solution, if this is happening. I would urge that this matter be referred to the relevant committee, I think the Committee on Devolved Government headed by my good brother and friend, Sen. Murkomen.

Sen. Billow: On a point of order, Mr. Temporary Speaker, Sir. I want to seek your guidance on this matter. First, the petition is about the County Assembly. In my view, county assemblies enjoy the same traditional parliamentary immunities and privileges as institutions. I wonder, with an assembly in place, if there are issues regarding employees or the clerk, whether it would not be appropriate for matters regarding the people who are working for that Assembly to be handled by the relevant county assembly rather than the Senate being called upon? I want your guidance on whether it is appropriate for the Senate to be involved.

The Temporary Deputy Speaker (Sen. (Dr.) Machage): Whereas I was thinking very hard to rule you out of order, but I think you have a legitimate concern. This Senate accepts petitions, even from individuals or from assemblies. This petition is quite in order to be before us. I will rule on which Committee will look at it. The Committee will decide on whether what you are thinking is appropriate or not. They will scrutinize the petition.

To complete the information to you, if you could read Article 119(1) and (2) of the Constitution. I will not read it for you, you have the Constitution with you. Also read Standing Order Nos. 226 and 227.

Sen. (Dr.) Khalwale: Mr. Temporary Speaker, Sir, I would like to put on record my appreciation of the patriotic son of Vihiga County, Mr. Obuga, who has brought this petition before us. Indeed, the matters prayed for by Mr. Obuga not only affect Vihiga County but also obtain in a number of other counties. I can see two arms to that petition, issues that might require the Committee on Labour and Social Welfare to address and others to be addressed by the Committee on Devolved Government. I, therefore, suggest that it might be useful if this matter will receive a joint sitting of the two committees.

I would like to suggest further, that as they look at this petition, they consider the possibility of expanding the mandate while looking at this issue, by way of putting in the media an advertisement that will invite members of the public from that county with views or other counties with similar views to come before them. I say this because the County Service Board of Kakamega County, for example, has three times re-advertised for ward administrators because of many things but mainly some of the things that Mr. Obuga has prayed for. I, therefore, would like to urge the Chair to consider whether that would be an admissible fact that we expand it to include other counties that might be faced with the same challenges.

Sen. Hargura: Mr. Temporary Speaker, Sir, this is a serious issue because we have cases where the county assemblies are not operating like Isiolo County Assembly. I do not know how far this issue has gone. The last time we instructed the Committee on Devolved Government to sort out that issue within three weeks. However, to the best of my knowledge, we have not received any report to that effect. We are seeing serious issues coming up. It is better we handle this issue because as the Senate, we are supposed

to protect county governments and make sure they take off. It is evident they already have problems which need to be sorted out. So, I support that the petition be handled by the relevant committee and the issues be sorted out quickly.

Sen. Karaba: Mr. Temporary Speaker, Sir, there was a time we went for a recess for about one or two weeks so that we could be able to look into the affairs of Makueni, Isiolo and other counties. Vihiga County was not mentioned. Now that the issue of Vihiga County Assembly has come up and we had set aside that recess to sort such crisis, I am sure there are more counties which might come up with similar cases. I thought that the Committee Sen. (Dr.) Khalwale chairs should embrace more counties with the example of this one.

(Sen. Murungi stood up in his place)

The Temporary Speaker (Sen. (Dr.) Machage): Yes, Sen. Murungi. I see you standing. Your request is not showing here.

Sen. Murungi: Mr. Temporary Speaker, Sir, it is showing I have put the request.

The Temporary Speaker (Sen. (Dr.) Machage): I am not seeing that here.

Okay, just proceed.

Sen. Murungi: Mr. Temporary Speaker, Sir, this petition is properly before this House because it falls squarely within the mandate of the Senate as spelt out in Article 96(1) of the Constitution which requires us to represent and protect the interests of the counties and their governments. It is our constitutional duty, as the Senate, to ensure the proper functioning not only of the County Executives, but also of the county assemblies because it is one way of protecting the interest of counties.

There are many situations like what has been highlighted in that petition across the country. We should not shy away from our responsibility. Standing Order No.219 provides for the procedure and the definition. Therefore, we should proceed with the petition as forwarded.

Sen. Murkomen: Mr. Temporary Speaker, Sir, first, I would like to congratulate the petitioner. One of the greatest benefits of the new Constitution is that the public have an opportunity to participate in law making and petitioning Parliament directly as a right under Article 119. Even more importantly is to see that many Kenyans have faith in this House. The number of petitions that have come in demonstrates that in matters of county government, the people of Kenya have a lot of faith in the Upper House. Article 96 is very sanctified. It says that our responsibility, and it is the first responsibility, is to protect counties. The petitioner rightfully is concerned about the operations and functions of the County of Vihiga and the ability of that county to provide services to the people. It goes further in Article 96(1) to also talk about the protection of county governments. The county assembly is one arm of the government in Vihiga County.

It would sadden us to hear, if it is true, as alleged by the petitioner, that as a result of a bad relationship between the Speaker and the Clerk, the operations of the county assembly are paralysed. I know there will come a time when we will debate the report of Isiolo and other counties. It is a phenomenon that we must be able to nip in the bud as early as possible because if we do not do that, we will create a foundation that will hamper service delivery in the counties. My plea to the relevant committee that will be given this responsibility is not just what Sen.(Dr.) Khalwale was saying about even

inviting the people of Vihiga County, it is taking the Senate to the people of Vihiga County by physically all of us going to Vihiga County itself, listening to what the people are saying and listening to the different stakeholders.

It is also important that as a House, we tighten the requirements and regulations that are related to operationalization and management of the county assembly in terms of its structure because one of the issues we have---

The Temporary Speaker (Sen. (Dr.) Machage): Can you summarise? We only have 30 minutes to look at this.

Sen. Murkomen: I am almost concluding, Mr. Temporary Speaker, Sir. I am just saying that we know that the County Assembly Service Board is so lean that sometimes it is the Speaker, Majority and Minority leaders and one other person from outside. Sometimes that small component is subject to a lot of pressure and manipulation unlike the County Public Service Board (CPSB) that has outsiders appointed, as many as possible, who can look at the interests of the people. Therefore, the other step going further is for that Committee to recommend to us whether we need to change the structure of management of the county assemblies, if need be, so that they can be more democratic and representative of the people.

Sen. (Dr.) Kuti: Mr. Temporary Speaker, Sir, I fully agree that, that petition is properly before the House and it needs to be executed. However, my worry is: What is the result at the end? Are there mechanisms to enforce the decisions of this House? We had the Isiolo case and the Committee reported how the Speaker did not show respect to the Committee that summoned him, speaking while smoking before them and answering phones and putting his legs on the table---

Sen. Murkomen: On a point of order, Mr. Temporary Speaker, Sir. I would rather you rule the Member out of the order because the Committee has not tabled the report in this House. The Committee is scheduled to meet the Member and other legislators from Isiolo County. I would rather we do not use the issue of Isiolo in detail.

The Temporary Speaker (Sen. (Dr.) Machage): I rule you out of order. The issue of Isiolo County has been mentioned by Sen. Hargura.

Sen. (Dr.) Kuti: Mr. Temporary Speaker, Sir I do not want to go into the issue of Isiolo, all I want to know is: what mechanisms are there to enforce whatever decisions that the House comes up with?

The Temporary Speaker (Sen. (Dr.) Machage): Very well, Sen. Ndiema! Be brief because you have three minutes only.

Sen. Ndiema: Thank you, Mr. Temporary Speaker, Sir. I agree that this petition is rightly before this House. We should expect more once we enter into this one because quite a number of counties are experiencing almost similar problems. Trans Nzoia County has also had a problem and perhaps if we intervene, the issue of running to court will be obviated. This is because the courts take long and in the meantime, services stall.

I support the initiative.

The Temporary Speaker (Sen. (Dr.) Machage): Hon. Members, pursuant to Standing Order No.227 (1), I therefore rule the following:-

The petition stands committed to the relevant Standing Committee, in this case; the Standing Committee On Finance, Commerce And Budget, and in terms of Standing Order 227 (2), the Committee will be required in not more than 60 days from the time of reading the prayer to respond to the petition by way of report addressed to the petitioner

and laid on the Table of the Senate. I also rule that where necessary, the Committee should enjoin the Committee on Labour and Social Welfare, the Sessional Committee on Devolved Government and the County Public Accounts and Investments Committee.

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

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

Sen. (Dr.) Khalwale: On a point of order Mr. Temporary Speaker, Sir. During the interventions that Members made, the issue of Isiolo and Makueni counties came up. One of the Members, on a point of order, was wondering when the results of the two week recess that we took shall be tabled in this House. Could you give an indication when the Committee on Devolved Government is going to give us a feedback because we are very anxious about the County Government of Makueni? This is especially in view of the fact that they are considering dissolution of that government.

The Temporary Speaker (Sen. (Dr.) Machage): The Chairperson of the Committee on Devolved Government is here. Can you shade some light on that?

Sen. Murkomen: Thank You, Mr. Temporary Speaker, Sir, ---

The Temporary Speaker (Sen. (Dr.) Machage): Hold on, there is an addendum.

Sen. Khaniri: Mr. Temporary Speaker, Sir, suggesting addendum to what Sen. Khalwale has raised, Standing Order 227 (2) gives the Committee 60 days within which to report back to this House. This happened about a month and a half ago and we realize that we are going for recess. Therefore, if this does not happen in the next week or so, then we will have flouted the provisions of Standing Order 227 (2).

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

Sen. Murkomen: Mr. Temporary Speaker, Sir, first of all, time has not lapsed yet when it comes to the two committees in terms of the 60 days; it is not yet 60 days since we were given that responsibility on the Floor of the House. Most importantly, the Committee decided in consultation with the Speaker that we could not proceed with the Makueni case because of what was decided in this House. Once they decided to go to court, it was impossible to canvass the issues without interfering with the court decision. Under the Standing Orders and the law, we could not proceed with the Makueni issue.

In the case of Isiolo, we are almost completing. We also had a few challenges to do with court issues. However, when we table it in a few days, you will know some of the issue. The report will be in this House before we go on recess.

The Temporary Speaker (Sen. (Dr.) Machage): Mr. Chairperson, I wonder what a report means to you. Even reporting to us that there were issues on Makueni and the court case, it is all the same a report. We need that on the Floor of this House. You are quite out of order to assume that we should assume that way. We want that report, and I order in one week's time, for Makueni because you already have the report.

(Applause)

Sen. Murkomen: Mr. Temporary Speaker, Sir, you have made a decision and I cannot go against the Speaker.

The Temporary Speaker (Sen. (Dr.) Machage): Thank you very much.

Sen. Murkomen: Not you, the Temporary Speaker.

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

Sen. Murkomen: The main Speaker has made a decision.

The Temporary Speaker (Sen. (Dr.) Machage): Order. I may throw you out of this House for disrespecting the Chair.

Sen. Khalwale: Mr. Temporary Speaker, Sir, I thank you for that ruling about the issue of Makueni. This is because that directive ---

Sen. Murkomen: Mr. Temporary Speaker, Sir, is it a ruling really?

The Temporary Speaker (Sen. (Dr.) Machage): Order, Sen. Murkomen. I know it may not be fair to you but it is a ruling all the same.

Sen. (Dr.) Khalwale: Mr. Temporary Speaker, Sir, it is a ruling. I want to thank you for that and on a serious note, over and above what you said, that even if they chose on technicalities to terminate, they should have come and reported to the House formally. Our other fear, was that probably the Committee never got seized of the matter because immediately after we allowed the Committee to visit Makueni, we saw the Committee at The Hague ---

The Temporary Speaker (Sen. (Dr.) Machage): Order, Sen. (Dr.) Khalwale. You are depicting that Committee in bad repute in this House and I will not allow that. You do not know the timings of the meetings and you are not entitled to comment on when they met.

(Laughter)

You are quite out of order.

I will rule this way on the request of Sen. (Dr.) Khalwale; that this petition includes other counties, I say, no. This is a specific petition and it will be handled as such. On the issue of Isiolo, please, fast track the report, may be two weeks is not too much. If there is a problem, let us know.

Sen. Murkomen: For the records, Mr. Temporary Speaker, Sir, we can submit the one line report on Makueni on Thursday next week.

The Temporary Speaker (Sen. (Dr.) Machage): Order, Sen. Murkomen. A report is a report. Whether it is a one word report or a one line report or a twenty page, all the same, it is a report.

Sen. Murkomen: That is why I have said Thursday next week, Mr. Temporary Speaker Sir.

ESTABLISHMENT OF COMMISSION TO INVESTIGATE BOUNDARY
DISPUTE BETWEEN LAIKIPIA AND NYANDARUA COUNTIES

The Temporary Speaker (Sen. (Dr.) Machage): The second petition is from Hon. Jeremiah Kioni, concerning the boundary between Nyandarua and Laikipia counties.

Hon. Senators, pursuant to Standing Order Nos. 220 (1) (a) and 225 (2) (b), I hereby report to the Senate that the petition has been submitted by hon. Jeremiah Kioni through the Clerk requesting the Senate to expeditiously form an independent commission for the purpose of investigating the boundary dispute between Nyandarua and Laikipia counties. This will be with a view to considering the probable scenario of altering the said boundary and placing Nyahururu Town in Nyandarua County.

I repeat: This will be with a view to considering the probable scenario of altering the said boundary and placing Nyahururu Town in Nyandarua County.

Hon. Jeremiah Kioni, the petitioner is a citizen of Kenya and a resident of Nyandarua County.

Hon. Senators, in his petition, the petitioner states the following:-

(a) THAT, the Independent Government of 1963 created Nyandarua as a settlement area from part of the Rift Valley namely; Laikipia and Naivasha. It also made Nyahururu Town its headquarters.

(b) Subsequently and over the years, the Government continued to invest in Nyahururu Town. The said developments span a district hospital and other healthcare facilities. There is also Nyandarua Police Headquarters, Nyandarua County Council Headquarters, Nyahururu Municipal Council offices, educational institutions including Nyandarua and Nyahururu high schools; tertiary colleges and universities, prison facilities, law courts and district land offices, among others.

(c) In 1990s Nyandarua Town was moved to Laikipia District, currently, Laikipia County.

(d) Since then, there has been a spanning dispute of a boundary between Laikipia and Nyandarua counties, a matter compounded by the fact that the Government made no further efforts to create and develop an alternate headquarters for the then Nyandarua District but continued investing financially in Nyahururu Town.

Indeed, the people of Nyandarua continued investing, working in and building Nyahururu Town.

(e) To date, Nyahururu County Government has no alternative facilities to enable it to effectively discharge its mandate and cannot make use of the facilities in Nyahururu as they are administratively located in Laikipia County.

The County Assembly of Nyandarua has also been holding its sittings and meetings in churches and hotels.

(Sen. Murkomen consulted with Sen. Murungi)

Order! Freeze, Senator Murkomen! You should not be conversing silently when the Speaker is on his feet. You have to freeze and that is the law. Now, I have to repeat a whole paragraph.

(f) All the facilities in Nyahururu Town including healthcare facilities and schools continue to serve a large number of people from Nyandarua County while the revenue collected is utilized wholly by the County Government of Laikipia although the revenue is substantially generated by the people of Nyandarua.

(g) By being placed in Laikipia County, the people of Nyahururu have been denied their right to proper presentation at the county and national government level as they identified themselves with Nyandarua County. However, administratively, they are placed in Laikipia County where the elected and nominated Members of the County Assembly do not represent their interests.

(h) The people of Nyandarua have greatly suffered due to the annexing of Nyahururu Town to Laikipia without their consent.

(i) For peace to prevail in Nyandarua and Laikipia, it is imperative that the boundary issue between Nyandarua and Laikipia counties is dealt with decisively by returning Nyahururu Town to Nyandarua County.

(4) The petitioner petitions Parliament to;

(a) expeditiously form an independent commission for the purpose of investigating the boundary dispute between Laikipia and Nyandarua counties aimed at considering the probable scenario of altering the same boundary and placing Nyahururu Town in Nyandarua County and in any case, returning the boundaries to their positions as they were before the year 1992.

(d) Develop a timely mechanism for involvement of relevant stakeholders in arriving at a decision including the residents of Nyahururu Town, Nyandarua and Laikipia counties and their leaders and concerned constitutional bodies such as the Independent Electoral Boundaries Commission (IEBC).

(5) The petition is signed by the petitioner, Jeremiah Kioni.

Hon. Members, pursuant to Standing Order No.226, I will now allow comments on the same.

Sen. (Eng.) Muriuki: Thank you, Mr. Temporary Speaker, Sir. The petitioner has a point. First of all, the issue of Nyahururu is one which I have variably tried to get the support of the Government through the House and otherwise to develop the headquarters for Nyandarua County. The genesis of that, as the petitioner said, is that the year 1963, when we got Independence found Nyahururu where it is as a town in the Rift Valley. When Nyandarua District was formed, the Government built the facilities for the headquarters in Nyahururu. This went on and on so that all the hospitals, the education facilities, prison and all other facilities were built in Nyahururu, all this time geographically in Laikipia and, therefore, in Rift Valley as opposed to being in Nyandarua County which is in central region.

To cut a long story short, in all the years, the residents of Nyandarua and Laikipia who were being served by government facilities like the hospital in Nyahururu were not concerned about the location of the facilities. However, with the new Constitution, we now must define where we are. In all these years, we must state that the headquarters for Nyandarua District, according to Government records was in Ol Kalou with a whole 900 acres for building the headquarters. However the Government did not make any efforts at all to either shift the headquarters or to build anything at all.

When the new Constitution came with the counties, residents of Nyandarua County agreed that their headquarter would be in Ol Kalou Town hoping, naturally, that there would be budgetary support for Nyandarua County – through the Government and this House – to develop their own headquarters. The end result now is that all the offices which belonged to Nyandarua District which is now Nyandarua County are now in Nyahururu Town which is effectively in Laikipia County.

Mr. Temporary Speaker, Sir, if funds had been allocated to develop a headquarters at Ol Kalou Town, the issue would not have been as difficult as it is now. As it is now, all the workers of the county government either live in Nyahururu, Nakuru or Naivasha because the headquarters do not have any facilities at all.

The Temporary Speaker (Sen. (Dr.) Machage): Unfortunately, the petitioner has not requested us to look at moving that headquarters to Ol Kalou. You should be careful on how you comment on this issue.

Sen. (Eng.) Muriuki: The petitioner is asking that we look into commissioning alteration of the boundary to bring Nyahururu into Nyandarua County. I was only giving the background and I have finished to that extent.

The Temporary Speaker (Sen. (Dr.) Machage): Okay, continue.

Sen. (Eng) Muriuki: As it stands now, I, certainly, as the Senator for Nyandarua County, support that the commission be set up to look into this matter. I believe Sen. G.G Kariuki is around. He can also say something.

Thank you very much.

The Temporary Speaker (Sen. (Dr.) Machage): Then, let us make brief comments so that I can listen. There are very many requests here and we are limited to only 30 minutes for everybody to have contributed.

Sen. G.G Kariuki: Thank you, Mr. Temporary Speaker, Sir, for this opportunity. I have just come in, to find that the issue concerns my county and Nyandarua County.

(Loud consultations)

The Temporary Speaker (Sen. (Dr.) Machage): Order. Let us consult in low tones so that we can listen to Sen. G.G Kariuki.

Sen. G.G Kariuki: When I came in, I found that the matter on the Floor concerns Laikipia and Nyandarua counties. No one objects to any petition, because the petitioners may have a good reason for doing what they want to do. However, I would like to say that this matter has been there for many years. At one time, the Government wanted Nyahururu to be included in Nyandarua as a new district, but because of many districts which wanted the same to happen, the Parliament of the day did not find any logical reason to transfer or extend the boundaries of Nyandarua inside Laikipia because there are many other counties with the same problem.

It is important that people know that the Government designated Ol Kalou to be the headquarters of Nyandarua but due to some politicking, some people still believe that this change will take place easily. I want to assure you that if the commission found it necessary, we will have no objection. One person came and told me that they have heard that Thompson Falls which is in Nyahururu will be transferred to Nyandarua. How will that be done? I have not seen a transport system that can transfer something like that? We should take the whole town to Nyandarua. If you think critically about these issues, they are being pushed by desperate politicians, because wherever you are, whether you are in Ukambani, Laikipia or anywhere, you belong to this country. I remember one day, the Members of Nyandarua and some MCAs asked the President the same question. His answer was simple, Nyahururu is in Kenya and it will remain in Kenya, which is a fact.

This is a matter which has been bothering some few people; a clique of politicians who think they can change the situation from what it is. I beg not to oppose any idea of bringing issues like a commission because I know the matters will be taken care of by those who will be involved in trying to understand this issue. Otherwise, there is no major problem, The issue has just been politicized by those who want to have something to say like the petitioner himself.

Thank you, Mr. Temporary Speaker, Sir.

The Temporary Speaker (Sen. (Dr.) Machage): Okay, Sen. Munyes.

Sen. Munyes: Mr. Temporary Speaker, Sir. Likewise, I want to support this petition. I look at it as a petition that is affecting many other counties. We have about 22 counties which have boundary disputes, in form of alteration and people disputing the acreage in their various counties. If I heard clearly, the prayer in this petition is for peace to prevail. That sentence is exactly what is causing the conflict in northern Kenya and the Rift Valley. In Turkana, Baringo and West Pokot, the conflict there is because of a boundary dispute. If we get a commission that will look at all these counties, we will reduce these conflicts by 50 per cent. The main cause of the massacres that we seen in Baringo, Turkana and West Pokot, is because people have boundary disputes. I want to mention that and say that maybe we should expand this and form a commission that will look in totality at the conflicts in over 22 counties.

Thank you Mr. Temporary Speaker, Sir.

Sen. Billow: Mr. Temporary Speaker, Sir, that petition is very significant in the view of the challenges that are being experienced in many parts of this country. I know there are some other counties where investigations have been done. However, in view of what some of the Senators have said, the fact that petitions can be brought by an individual Kenyan sometimes not probably with the best intention. I want to suggest that maybe in the committees that we will be looking at this, if they include in their recommendations a process for bringing such a petition, especially the one regarding boundaries, to be a bit more elaborate and not an individual's petition because the very fact that a petition on boundaries is placed before the Senate, could sometimes trigger some tension in some areas. Maybe in their recommendations, I would want to urge that the committee comes up with the process for initiating this kind of thing from the grassroots, so that their leaders are involved in the process before it comes to the House.

Thank you, Mr. Temporary Speaker, Sir.

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

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

Sen. Murungi: Thank you, Mr. Temporary Speaker, Sir. I rise on a point of order to challenge the competence of this petition.

(Applause)

Article 188 (1) and (2) of the Constitution is very clear and it states that:-

(1) The boundaries of a county may be altered only by a resolution—

(a) recommended by an independent commission set up for that purpose by Parliament; and

(b) passed by—

(i) the National Assembly, with the support of at least two-thirds of all of the Members of the Assembly; and

(ii) the Senate, with the support of at least two-thirds of all of the county delegations.

(2) The boundaries of a county may be altered to take into account—

(a) population density and demographic trends;

(b) physical and human infrastructure;

(c) historical and cultural ties;

(d) the cost of administration;

- (e) the views of the communities affected;
- (f) the objects of devolution of government; and
- (g) geographical features.

It is not very clear how that commission which will be recommended by the Independent Electoral and Boundaries Commission (IEBC) - because we can only set up the commission by making a recommendation to the IEBC.

The Senate cannot deal with issues of alteration of the boundary. We can only recommend a commission to be formed by the IEBC at the initial stage. The Senate can only deal with it after it has been dealt with by the National Assembly. The gist of that petition is to alter the boundary by transferring Nyahururu from Laikipia to Nyandarua. That would clearly offend Article 188 of the Constitution.

Sen. (Dr.) Khalwale: On a point of order, Mr. Temporary Speaker, Sir. I would like to support the King for Meru about the validity of this petition.

The Temporary Speaker (Sen. (Dr.) Machage): Is that a recognized title? There are very Kings in this House.

Sen. (Dr.) Khalwale: Mr. Temporary Speaker, Sir, it is because we are very close in our other lives and so---

(Laughter)

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

Sen. (Dr.) Khalwale: Mr. Temporary Speaker, Sir, the fulcrum of those prayers is Nyahururu Town; everything else that you have said rotates around Nyahururu Town. According to this Constitution, Article 188 (2) reads:-

“The boundaries of a county may be altered to take into account the following: Population density and demographic trends, physical and human infrastructure, historical and cultural ties, the cost of administration, the views of the communities affected, the objects of devolution of Government and geographical features”.

That is the clearly set out criteria.

Mr. Temporary Speaker, Sir, in none of these items do you find the issue of town as a consideration for the boundaries to be altered. Secondly, the nearest that that petition goes is the wish of the community. Given that the petitioner has not given evidence of having consulted communities that live within this county, he would be moving on assumption on a matter with grave constitutional implications.

This House has already made a decision on the issue of Nyahururu Town through a Bill which I sponsored and which I am waiting that the President gives assent to. In that decision, this House decided after I went and consulted the County Assembly of Laikipia and the County Assembly of Laikipia and made a resolution through a Motion that went through that county and the resolution was that Nyahururu is in Laikipia and that the headquarters of the county assembly would move to Nyahururu. That particular resolution was not opposed by any Senator on this Floor.

Mr. Temporary Speaker, Sir, my final consideration on constitutionality is that in the same decision of this House. Ol Kalou was identified unanimously as---

The Temporary Speaker (Sen. (Dr.) Machage): Remember you stood on a point of order and yet you are taking too long. You have to shorten it.

Sen. (Dr.) Khalwale: Mr. Temporary Speaker, Sir, Ol Kalou was identified as the seat of government of the County Government of Nyandarua. Why can the engineer not approach the Government to look for more funds to go and build the headquarters in Ol Kalou instead of breaching the Constitution?

The Temporary Speaker (Sen. (Dr.) Machage): Order. Sen. (Dr.) Khalwale, please, let us have decorum and respect Members of the House. Address the Chair.

Sen. (Dr.) Khalwale: Mr. Temporary Speaker, Sir, I therefore finally say that constitutionally, the petition does not seem to be admissible.

The Temporary Speaker (Sen. (Dr.) Khalwale): Now, I have six requests for points of order. Sen. Kagwe!

Sen. Kagwe: Mr. Temporary Speaker, Sir, I just wanted to get clarity on this. I do not know whether I am the only one who is lost as far as this discussion is concerned, but clearly I am. I wanted to understand where the opposition is, because if I remember correctly, when you read the petition, it was basically asking for an independent commission to be set up to determine the boundaries. Could the Chair clarify whether that is what was being sought?

The Temporary Speaker (Sen. (Dr.) Khalwale): Indeed, Sen. Kagwe, I do not see what the hullabaloo is about because some of these issues will be determined by the relevant Committee that I am about to order to take over this matter and they will address all these issues. So, really, we should not turn this House into that Committee.

Sen. Abdirahman: Mr. Temporary Speaker, Sir, I was about to contribute to the ongoing debate, but because of the other two points of order which were raised, I do not think this House can transform itself into an independent commission. I think this House is the voice of the counties and I do not think that the people of Nyandarua and even hon. Kioni, a former Member of Parliament who brought this Petition is on the wrong because as far as we are concerned, this is where he should seek guidance. This petition will be referred to a Committee of this House as you are about to order, for directions and so let us not jump the gun.

Sen. Sang: Mr. Temporary Speaker, Sir, I think the issue raised by Sen. Murungi is very crucial in the sense that the provisions of the Constitution under Article 188 (1) (a) talk of the boundaries of a county being altered only by a resolution recommended by an independent commission set up for that purpose by Parliament. The point is that we already have an independent commission which is the IEBC. The Parliament of Kenya has already set up that commission, so that petitioner has a valid issue but he is bringing it to the wrong chamber because the role of the Senate comes after the commission has recommended.

I think it suffices to say that the petitioner has come to the wrong institution but not to discredit the petitioner because he has a valid point on the boundaries and we only need to advise that he should take it to the right institution instead of tearing into a petition by an individual who has a constitutional right to raise an issue.

The Temporary Speaker (Sen. (Dr.) Machage): I have listened to all your comments and they are all valid. I have listened to the various articles of the Constitution quoted, but the petitioner has a right to petition this House on any issue that he deems necessary to be listened to and he will be given that right. Therefore, pursuant to Standing Order No.227 (1), the petition stands committed to the relevant Standing Committee, in this case the Standing Committee on Legal Affairs and Human Rights. In terms of

Standing Order No.227 (2), the Committee will be required in not more than 60 days from the time of reading the prayer – that is today – to respond to the petitioner by way of a report addressed to the petitioner and laid on the Table of this Senate. I want the Committee to carefully interrogate the HANSARD on the comments that have been made on the Floor of this House today as they give their report to this House.

Next Order!

PAPERS LAID

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

Sen. Ndiema: Thank you, Mr. Temporary Speaker, Sir. I beg to lay the following paper on the Table of the Senate, today, Thursday 20th November, 2014:-

Report of the Standing Committee on Agriculture, Livestock and Fisheries on public hearings held on 30th July, 2014, on the Potato Produce and Marketing Bill (Senate Bill No. 22 of 2014).

Thank you, Mr. Temporary Speaker, Sir.

(Sen. Ndiema laid the document on the Table)

The Temporary Speaker (Sen. (Dr.) Machage): Very well.
Yes, Sen. Kagwe.

Sen. Kagwe: Thank you, Mr. Temporary Speaker, Sir. I beg to lay the following papers on the Table of the Senate, today, Thursday 20th November, 2014:-

Report of the Committee---

The Temporary Speaker (Sen. (Dr.) Machage): Sen. (Eng.) Muriuki, I see you have an intervention. Are you on a point of order?

Sen. (Eng.) Muriuki: Sorry, Mr. Temporary Speaker, Sir. It was a point of order when Sen. (Dr.) Khalwale was speaking, but it has passed.

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

Please, proceed, Sen. Kagwe.

Sen. Kagwe: Thank you, Mr. Temporary Speaker, Sir. I beg to lay the following Papers on the Table of the Senate, today, Thursday 20th November, 2014:-

REPORT OF THE ICT COMMITTEE ON RETREAT ON

Report of the Committee on Information, Communication and Technology Retreat on “Reflecting on the past one year and re-strategizing” held at the Mombasa Continental Resort between 22nd and 25th May of 2014.

REPORT OF THE ICT COMMITTEE
ON STUDY VISIT TO UAE

Report of the Committee on Information, Communication and Technology on a study visit to the United Arab Emirates between 20th and 25th January, 2014 and the Seventh Annual Global Education Forum held between 2nd and 7th March, 2014.

(Sen. Kagwe laid the documents on the Table)

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

NOTICE OF MOTION

ADOPTION OF REPORT BY THE STANDING
COMMITTEE ON ICT ON THE STUDY VISIT
TO THE UAE AND THE 7TH ANNUAL
GLOBAL EDUCATION FORUM

Sen. Kagwe: Thank you, Mr. Temporary Speaker, Sir. I beg to give notice of the following Motion:-

THAT, this House adopts the Report by the Standing Committee on Information, Communication and Technology on the study visit to the United Arab Emirates between 20th January and 25th January, 2014 and the 7th Annual Global Education Forum held in the United Arab Emirates between 2nd and 7th March, 2014, laid on the Table of the House today, Thursday 20th November, 2014.

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

STATEMENTS

The Temporary Speaker (Sen. (Dr.) Machage): Statement by the Senate Majority Leader?

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

Please, proceed, Sen. Gwendu.

IMPLEMENTATION STATUS OF THE REPORT OF THE
PRESIDENTIAL TASKFORCE ON PARASTATAL REFORMS

Sen. Gwendu: Thank you, Mr. Temporary Speaker, Sir. I rise to seek a Statement from the Chairperson of the Standing Committee on Finance, Commerce and Budget regarding the implementation status of the report of the Presidential Taskforce on

Parastatal Reforms which was presented to H.E. the President on 12th November, 2013. This Report recommended the amalgamation of the Kenya Tourism Board with the Export Promotion Council and the Kenya Investments Authority and Brand Kenya into one agency, which was to be called the Kenya Investment Authority.

In the Statement, the Chairperson should explain why the amalgamation has not been done to date. The Statement should also state whether he is aware this has disrupted the operations of the Kenya Tourism Development Cooperation because its board of management has not been in operation since then. The Statement should also explain when the amalgamation process will be expedited and the boards of management appointed.

Lastly, in the Statement, the Chairperson should state whether eligible investors who are interested in hotel development could access development loans while the finalization of the amalgamation process is awaited.

Thank you, Mr. Temporary Speaker, Sir.

Sen. Billow: Thank you, Mr. Temporary Speaker, Sir. The Statement sought by the hon. Senator is very important. I am glad that she raised it because many people – I think including most of us here – have been concerned as to why the Government has not been able to fill in many of the positions that are vacant in a number of boards in this country. The reason has always been because of the pending reorganization of the parastatal institutions. I would appreciate if we will be given two weeks, to be precise, to get this information.

The Temporary Speaker (Sen. (Dr.) Machage): Is two weeks okay?

Sen. Gwendo: Mr. Temporary Speaker, Sir, I am afraid we will be on recess by then. Why do we not have it at least before recess because, as you can see, the process has been long overdue?

The Temporary Speaker (Sen. (Dr.) Machage): I agree that this is a Report that was submitted to the Head of State. There is nothing to go and research on. Make it one week please.

Sen. Billow: Mr. Temporary Speaker, Sir, this information can only be given through the Cabinet Secretary (CS). We have the whole of next week to try and get hold of them so that we can respond next Tuesday but one, and the House will still be in session.

The Temporary Speaker (Sen. (Dr.) Machage): The Chairperson's request is not too much to accommodate, in view of his reasons. Two weeks; it is so ordered.

MEASURES TO RESOLVE BORDER DISPUTES AND CONFLICTS BETWEEN VARIOUS COUNTIES

Sen. Murungi: Mr. Temporary Speaker, Sir, I rise to seek a Statement from the Chairperson of the Committee on Security and Foreign Relations as follows:-

Given the deteriorating security situation in the country, violence and the loss of lives arising from resource conflicts in poorly demarcated border areas and the very clear definition of the county boundaries in Article 6(1) as read with the First Schedule of the Constitution and the Provinces and Districts Act of 1992; request is hereby made to the Chairperson of Committee on Security and Foreign Relations to give a comprehensive statement from the Cabinet Secretary detailing:

1. The current situation on border disputes and conflicts between various counties in Kenya and the measures that the Government is taking to resolve those conflicts

2. In the particular case of Meru County, the measures that the Government is taking to point out the beacons and demarcate the boundaries between Meru and Isiolo counties and between Meru and Tharaka-Nithi counties.

3. Finally, the Chairperson of the Committee to lay on the Table of the House the Report of the task force on the Meru, Tharaka-Nithi boundary which is popularly known as the Ogongo Report and give specific timelines and the resources allocated for the implementation of that Report.

I thank you, Mr. Temporary Speaker Sir.

Sen. G.G. Kariuki: Mr. Temporary Speaker, Sir, I am a Member of the Committee. I am informed that the Chairperson and the Vice-Chairperson are not in the Chamber. If I am allowed, I will give some undertaking to answer these questions by Thursday next week.

The Temporary Speaker (Sen. (Dr.) Machage): Very well. It is so ordered.

Sen. Kittony: Mr. Temporary Speaker, Sir, I rise on a point of order to seek a Statement from the Chairperson---

The Temporary Speaker (Sen. (Dr.) Machage): Order! Order! Let us all understand the process and procedure. Before you put a request for a Statement from any Chairperson, the Speaker must be privy to what you are just about to request and it must be signed. Have you done the same? I do not have the information.

*(The Temporary Speaker (Sen. (Dr.) Machage)
consulted the Clerk-at-the-Table)*

Sen. Kittony: Mr. Temporary Speaker, Sir, I had requested for a Statement and it was promised to be given in two weeks. I am still waiting for the Statement.

The Temporary Speaker (Sen. (Dr.) Machage): You are asking when your Statement will come and not for a new Statement.

Okay! Go ahead.

CRITERIA USED FOR SELECTION OF CONSTITUENCIES FOR CONSTRUCTION OF TECHNICAL TRAINING INSTITUTES

Sen. Kittony: Mr. Temporary Speaker, Sir, I expect a Statement from the Chairperson of the Standing Committee on Education. It relates to the selection of 60 constituencies. I was promised a month ago that it would be delivered after two weeks. I am still waiting for it.

The Temporary Speaker (Sen. (Dr.) Machage): That is unfair to the gracious lady. Is the Chair of the Committee not here? Senate Majority Leader?

Sen. Murungi: Mr. Temporary Speaker, Sir, is it in response to Sen. Kittony?

The Temporary Speaker (Sen. (Dr.) Machage): Yes. Are you able to do that?

Sen. Murungi: I am not able to do it, but I undertake to inform him.

The Temporary Speaker (Sen. (Dr.) Machage): Who is representing the Senate Majority Leader today?

Sen. Murungi: Mr. Temporary Speaker, Sir, the Chairman of the Committee should deal with it.

The Temporary Speaker (Sen. (Dr.) Machage): Chair, can we hear from you?

Sen. Murkomen: Mr. Temporary Speaker, Sir, as a responsible Member of this House, I will inform the Chair, so that he can deliver the Statement next week.

The Temporary Speaker (Sen. (Dr.) Machage): Very well. I understand the dilemma in which Sen. Murungi and Sen. Murkomen found themselves. But I have to reprimand the Majority leadership which is expected to be present always in this House to listen to requests. We will not accept these flaws in this House.

Sen. Murkomen: Mr. Temporary Speaker, Sir, the Senate Majority Leader is a Member of the Committee on the funeral of our late colleague, Sen. Kajwang, and I am also a Member of that Committee. He has escorted some dignitaries to visit the family together with the Senate Minority Leader. So, they are not here because of the duties that we allocated to them. However, there also must be responsibility in terms of the Committee on Education, Science and Technology. The Chairperson, Sen. Karaba, was just here a few minutes ago. I am surprised that not a single Member of that Committee of nine Members is here to take responsibility.

The Temporary Speaker (Sen. (Dr.) Machage): Very well, Sen. Murkomen. We appreciate the duties that the Senate Majority Leader is doing today in honour of our departed colleague. But the message has been passed loud and clear to the Committee on Education, Science and Technology, whose Chair truly was in the House. Unfortunately, a Member of that Committee listened silently to Senators' struggle---

(Sen. (Prof.) Lesan stood up in his place)

I have not given you permission to stand, unless you want to say that you are sorry.

Sen. (Prof.) Lesan: Mr. Temporary Speaker, Sir, first, I want to apologize for not having paid attention as the question was put across. I am aware that the question asked by the gracious lady was tabled and we are still looking for an answer to it. As far as I know, in the last meeting, we were yet to receive the answer. But the Committee is doing its best to---

The Temporary Speaker (Sen. (Dr.) Machage): She has waited for over a month.

Sen. (Prof.) Lesan: Mr. Temporary Speaker, Sir, it is increasing becoming difficult to get answers from the Ministry. I think ---

The Temporary Speaker (Sen. (Dr.) Machage): What timeline will you give Sen. Kittony?

Sen. (Prof.) Lesan: Mr. Temporary Speaker, Sir, we will try. I even think that the Chairman has gone out to see whether he can get the answer. We have been trying to do that all the time.

The Temporary Speaker (Sen. (Dr.) Machage): That has gone into the HANSARD and you will be reprimanded for that.

Sen. (Prof.) Lesan: Mr. Temporary Speaker, Sir, can we be given another week or so? We will report back again if we have an answer.

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

What is it, Sen. Sang?

Sen. Sang: Mr. Temporary Speaker, Sir, would I be in order to request that Sen. Billow Kerrow, the Member who distracted Prof. Lesan, who is a serious Member of this House who pays attention, owns up and apologizes?

The Temporary Speaker (Sen. (Dr.) Machage): I did not see that. There are more points of order.

STATE OF INSECURITY IN LAMU AND OTHER
PARTS OF THE COAST REGION

Sen. Hassan: Mr. Temporary Speaker, Sir, I had sought a Statement last week from the Chairperson of the Standing Committee on National Security and Foreign Relations on the curfew in Lamu. That Statement was supposed to be delivered on Thursday last week, but the Chairperson gave us a very robust response, saying that he shall deliver it on Tuesday this week and in the event that, that Statement is not delivered on that day, he shall personally summon the Cabinet Secretary in charge of Internal Security. Today is Thursday and the Statement has not been delivered. I want a commitment from the Committee, because that question is pertinent and also touches on part of the insecurity in the coast region, including Mombasa region.

(Sen. Madzayo approached the Chair)

The Temporary Speaker (Sen. (Dr.) Machage): Hon. Senators, I like concentrating, especially when Members are making requests. That is my nature.

Sen. Hassan: Do you want me to repeat?

The Temporary Speaker (Sen. (Dr.) Machage): You may have to. I will request that Sen. "Justice" steps aside and seeks advice from the Clerks-at-the-Table.

(Laughter)

Sen. Hassan: Mr. Temporary Speaker, Sir, I am sorry for that disruption by the eminent Sen. Madzayo.

I had sought a Statement two weeks ago from the Chairperson of the Standing Committee on National Security and Foreign Relations, which he committed to give last week. Upon my request, Sen. Haji stood and committed that, that Statement would be delivered on Tuesday this week. He even went further to reassure this House that in the event that, that Statement is not sent to him by the Cabinet Secretary, he shall summon him. When will that Statement be delivered? Did the Committee actually summon the Cabinet Secretary regarding that issue and other issues around insecurity in the Coast region, in particular, the curfew in Lamu?

The Temporary Speaker (Sen. (Dr.) Machage): Sen. Haji is not in the House for reasons that are known to the Speaker. The Deputy Chair is not in the House and I have no reasons for that. The Leader of Majority is not in the House. May be I will request for your indulgence. Do we have a Member of the Committee?

Hon. Members: Yes, Sen. G.G. Kariuki!

Sen. G.G. Kariuki: Mr. Temporary Speaker, Sir, you are looking for the Chair and the Vice Chair, so I am not qualified to be ---

The Temporary Speaker (Sen. (Dr.) Machage): No. No. My apologies, I recognise your presence.

Sen. G.G. Kariuki: However, Mr. Temporary Speaker, Sir, I would like to give the undertaking to the House that this matter will be delivered to the Chair and I will advise him, if possible, to have this matter resolved before Thursday next week.

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

Sen. Hassan: on a point of order Mr. Temporary Speaker, Sir. I hope that by the statement that “before Thursday” he means Tuesday or Wednesday. That statement is so pertinent to what is going on right now at the coast. Tuesday would be more ideal.

Sen. G.G. Kariuki: Mr. Temporary Speaker, Sir, this is a security matter which I do not think is just a matter to be rushed. However, the important thing is to inform the Chair the importance of this question, so that it can be answered between Tuesday and Thursday. That is what I am saying before Thursday, meaning ---

The Temporary Speaker (Sen. (Dr.) Machage): In the circumstances of a report being given between Tuesday and Thursday, it only means Wednesday. So, can we have the report on Wednesday?

Sen. G.G. Kariuki: Okay, Sir.

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

Sen. (Dr.) Kuti: Mr. Temporary Speaker, Sir, I rise to give an answer to a statement.

The Temporary Speaker (Sen. (Dr.) Machage): I will give you the opportunity later. Yes, Sen. Khaniri!

Sen. Khaniri: It is the same, Mr. Temporary Speaker, Sir.

The Temporary Speaker (Sen. (Dr.) Machage): Sen. Karue, are you on a point of order?

Sen. (Eng.) Muriuki: Yes. Just to seek your guidance, Mr. Temporary Speaker, Sir, because I have a statement to make. Not an answer to a statement sought but ---

The Temporary Speaker (Sen. (Dr.) Machage): What does that mean? Do you want to request for a statement?

Sen. (Eng.) Muriuki: No. I want to make a statement under Section ---

The Temporary Speaker (Sen. (Dr.) Machage): Okay. We will come to that. I will give you the opportunity.

Sen. Khaniri: Mr. Temporary Speaker, Sir, can I issue the statement?

The Temporary Speaker (Sen. (Dr.) Machage): Just be fair. Sen. (Dr.) Kuti will start because I had already acknowledged his request earlier than yours.

DESTRUCTION OF INSULIN MEANT
FOR CHILDREN WITH DIABETES

Sen. (Dr.) Kuti: Thank you, Mr. Temporary Speaker, Sir. I stand to give an answer to a Statement sought by Sen. Wangari on the destruction of insulin which was meant for children with diabetes. I hope she is listening.

The Senator had asked about the jurisdiction of the Ministry of Health and the Kenya Revenue Authority (KRA) to have the drugs removed from the cold room and subsequently destroyed.

Under the East African Community Custom Management Act, 2004 Sub-section 34(1), cargo shall be entered within 21 days after the commencement of discharge. Article 34(4) states that where goods remain unattended during the period specified under subsection (1), then goods shall, if the proper officer so requires, be removed by, or at the expense of, the agent of aircraft or vessel in which such goods were imported to a customs warehouse.

In light of this, goods arrived at the Jomo Kenyatta International Airport (JKIA) on flight SA 184 through Swissport Cargo Service Centre on 21st January, 2014. These goods were transferred to the customs warehouse on 7th April, 2014 which is 55 days after discharge of the aircraft by Swissport Cargo Service Centre because the consignee, Life for a Child Kenya Limited Nairobi, had not come for them.

The goods were entered on the 7th August, 2014 vide entry number 2014JKIA2304018, but the clearing agent, Alliance Logistics Kenya Limited Nairobi, came for clearance on 14th August, 2014. Upon verification, the proper officer requested the agents to seek a permit from the Pharmacy and Poisons Board (PPB). On 15th August, 2014, a pharmaceutical inspector inspected the consignment and on 21st August, 2014, he issued a letter condemning the drugs for destruction vide a letter Ref: 01/21/08/2014.

The other issue the Senator wanted clarified is why the KRA imposed tax on the consignment despite evidence that it was a donation meant for public use in the national referral hospital. The response to that is that the payment reflected on the custom entry 2014JKIA2304018 clearly shows that no Important Duty, Excise Duty or Value Added Tax (VAT) were paid on this consignment. What was paid is Kshs56,770 being the total of Import Declaration Fee (IDF) which is 2.25 per cent of the value of the goods, concession fee and Kenya Road Development Levy (KRD) which is 1. per cent which are mandatory for every import in Kenya.

The other clarification sought is why KRA is charging Kshs60 million VAT to a donor called Shoe for Africa. The response is as follows: We cannot respond satisfactorily to this query because we need import entry and other documents in support of the consignments. However, with the introduction of the Railway Development Levy (RDL), all imports are subject to payment of the same including medicine. VAT is never imposed on drugs. Medicine meant for cancer treatment is normally of high value hence the payment of the above amount.

Sen. Wangari: Thank you Mr. Temporary Speaker, Sir. I thank the Chairman for finally bringing something as a response to my question because I have really waited for it. The clarifications I want to seek are the following:-

1. Had the consignment been identified as medication? Were the drugs in a cold room in the first place? I do not see any indication in this response whether they had been stored in a cold room as is supposed to be.

2. Between the arrival on 21st January, 2014 and transfer on 7th April, 2014, where exactly were the drugs kept? Were they in a cold room?

3. What exactly does “proper officer” mean? Who exactly is charged to take up this role of entering this consignment?

4. Whose responsibility is it exactly to enter the goods so that we know where the lapse was? On the follow up question on the Kshs60 million VAT which came as a follow-up question on the Floor of the House from, I think, Sen. Wetangula, KRA already says and admits that it cannot give a satisfactory answer. My follow-up question is: when do we expect a substantial answer because these issues are still going on?

Thank you.

The Temporary Speaker (Sen. (Dr.) Machage): Chair, respond to that.

Sen. (Dr.) Kuti: Mr. Temporary Speaker, Sir, starting with the last one, the Kenya Revenue Authority (KRA) says that they do not have an import entry. That clarification should have been accompanied by the details of that import. At the time when the Senator provides those details, then the proper answer could be given after verifying the details.

Regarding the issue of the “proper officer”, it is very clear here that there is a time limit on the period when the goods arrive and when they need to be removed. Obviously, those 21 days elapsed and it took 55 days. The Senator should realise that the main issue here is that the period given for goods to be removed expired. The burden for that lay with the importer who is Life for a Child Kenya who did not come for the goods until after 55 days and had to be removed.

Regarding the issue of warehousing, Swiss Port has a cold room and it is not indicated where exactly the goods were kept but I am sure that all goods requiring cold chain maintenance are kept in the cold room. That is usually the case whether it is a vaccine or farm produce. They are kept in the cold rooms at the Swiss Port or at the Kenya Cargo Handling Services. Every cargo carrier has its own warehouses with cold rooms.

Sen. (Dr.) Khalwale: Mr. Temporary Speaker, Sir, the issue raised by Sen. Wangari on cold storage is not academic. As a professional in that area, I know that vaccines or insulin, for example, if kept there for 21 days and goes to the consumer, it will be administered and will have no effect. Could the Chairman confirm that there is a procedure of ascertaining and ensuring that when such goods come in, they actually go to the cold storage? If you have such a procedure, why did it not occur to you, as a Government, that this being a donation, the consignee was not going to sell it? Therefore, where were you expecting this man to get the Kshs60 million and because of the state of diabetic children in this country, you would have exercised waiver. Why did you not do it as a Government, unless you are keen on having the children of the poor die in this country?

The Temporary Speaker (Sen. (Dr.) Machage): Let us listen to one or two interventions before the Chair responds.

Sen. Billow: Mr. Temporary Speaker, Sir, I appreciate the answer but there is a sense when we ask for a statement on a matter of public interest, we expect our committees to aggressively interrogate the relevant Ministries from the perspective of the public whom we represent in this House. Any senior public official, be it in KRA, they are required by law to exercise due diligence and take judicial notice of a matter like this one. This is a vaccine which has a short shelve life and it is a donation. Some people went ahead and took the trouble to bring it. We know how many people are dying in this country because the statistics are published daily. People in KRA should have taken judicial notice of the fact that this is an urgent thing which is perishable and donated. It is

not only this one. There are many incidences of donations including food. I know examples of food that had been donated but wasted in Mombasa and thrown away. What I want the Chairman to clarify is this; in view of the investigations that the Committee has done, is there any culpability by KRA or any other official in the Government who has failed to exercise due care and diligence in view of the kind of products we are dealing with and who should be held responsible?

Sen. (Dr.) Kuti: Mr. Temporary Speaker, Sir, in response to my distinguished senior, Sen. (Dr.) Khalwale, I think he mixed two different issues. The Kshs60 million was a clarification sought after Sen. Wangari's issue. It involves another Non-Governmental Organisation (NGO) called Shoes for Africa which was paid Kshs60 million but we do not have details because the import papers have not been provided by the Questioner. That mixes up the insulin issue.

The Temporary Speaker (Sen. (Dr.) Machage): Just to help him; how much was demanded by KRA for the insulin?

Sen. (Dr.) Kuti: It is only Kshs56,770.

The Temporary Speaker (Sen. (Dr.) Khalwale): Do you mean Kshs56,770 made insulin to be kept at the port---

Sen. (Dr.) Kuti: Mr. Temporary Speaker, Sir---

The Temporary Speaker (Sen. (Dr.) Machage): Sorry, let me make my comment as Chair. I also have a right to lament and project the face of this Senate on the disapproval of that behaviour; the callousness, the incompetence, non-patriotic status of some of the workers at the port for not considering the poor of this country.

You can continue, Mr. Chairman.

Sen. (Dr.) Kuti: Mr. Temporary Speaker, Sir, it is very interesting that even our Temporary Speaker has not listened to my answer.

The Temporary Speaker (Sen. (Dr.) Machage): Order! This Temporary Speaker is one of the most intelligent Senators in this House.

Sen. (Dr.) Kuti: I want to read this one more time:-

In the light of the goods, they are arrived on 21st January, 2014 were transferred to the customs warehouse on 7th April, 2014 which was 55 days after discharge of the aircraft by Swiss Port Cargo Service Centre because the consignee – Life for a Child Kenya – had not come for them.

The Temporary Speaker (Sen. (Dr.) Machage): Yes, because he was required to raise Kshs56,770. I think we heard that loud and clear, and the Chairman said "only". That is a subjective term.

I am not trying to reprimand you because you are reporting on what the Cabinet Secretary gave you but we have to call a spade a spade.

Continue, Mr. Chairman, you are doing well.

Sen. (Dr.) Kut: The issue of Kshs56,000 came up because of a clarification that was sought on why the KRA imposed a tax. However, this does not clearly state whether the consignee made an appearance because they came 55 days after the arrival of the goods. The standard procedure is that after 21 days, they are to be removed. This is about an issue of lateness by the consignee.

Sen. Ndiema: On a point of order, Mr. Temporary Speaker, Sir. Is it in order for the Chairman to say that the consignee should have come while the goods, perishable as

they are, had overstayed before being warehoused? Immediately the goods arrived, they should have been kept safe.

The Temporary Speaker (Sen. (Dr.) Machage): Actually, Sen. Ndiema that was raised by Sen. Khalwale. Fortunately, our Chairperson of the Committee on Health is a medical professional, having been an Assistant Minister in that Ministry. He understands very well the cold chain system in handling vaccines and other perishable medicine. In your own opinion, do you think that the insulin was still viable at the port after the 55 days?

Sen. (Dr.) Kuti: Mr. Temporary Speaker, Sir, that is not viable and that is why upon verification the officer at KRA who handles the matter sought permit from the Pharmacy and Poisons Board. This was on 15th August, 2014. The pharmaceutical inspector inspected the consignment on 21st August and issued a letter condemning the drugs and recommended them for destruction.

Sen. Kagwe: On a point of order, Mr. Temporary Speaker, Sir. Given the importance of this matter and the fact that the Chairman of the Committee is someone who is quite conversant with matters medical, in accordance with Standing Order No.35(2)(a), is it possible for the Chairman to tell us, broadly speaking what the rules are, relating to health related material that are lying at the port? This is not just about that. There is a lot of medicine and medical equipment which is lying in the port and will get lost at the port just because of matters of the KRA.

The Temporary Speaker (Sen. (Dr.) Machage): I will save the Chairperson on that. You are being unfair. You are asking for a policy which was not included in this question. You could come with another request with the same to the Committee on Health. This is a very important issue. However, right now, it is not fair.

Sen. Kagwe: On a point of order, Mr. Temporary Speaker, Sir. For the sake of clarity, in accordance with our Standing Orders, a Senator can stand and make a statement on a matter irrespective of whether somebody has gone out to ask a question or not. I was just asking whether in view of what we are asking, respectively, whether in view of what is happening here, it is possible for the Chairman to volunteer to make a statement on the matter even without a question being asked.

The Temporary Speaker (Sen. (Dr.) Machage): Mr. Chairperson, are you in a position to make that statement especially so having been a Cabinet Minister of Livestock Development and Fisheries?

Sen. Billow: On a point of order, Mr. Temporary Speaker. In view of the importance of this---

The Temporary Speaker (Sen. (Dr.) Machage): We are taking too much on this but I have allowed it because of its importance.

Sen. Billow: Mr. Temporary Speaker, Sir, this one involves millions of shillings of an NGO that tried to get this kind of thing. It is happening daily. Could I request the Chairman, since he gave us one side of the story, what the Government officer told him. This may or may not be the case. Could I ask the Chairperson to go back and to get the facts from the importer? There is a possibility that at times, these things are condemned by the Pharmacy and Poisons Board because of other competing interests in this country. You are a medical person and you know what happens. Could I request the Chairman to go back and get the other side of the story so that we know exactly what happened? I rule that we conduct more research on this issue.

The Temporary Speaker (Sen. (Dr. Machage): Thank you for having brought some light on this issue. Address the issues that have been raised by Members in this House and report back in another one week. We have run short of time in terms of statement time. However, I have two issues. One is a personal statement by Sen. (Eng.) Muriuki.

Please, make it short.

PERSONAL STATEMENT

IMPLEMENTATION OF 50-KG RULE FOR PACKAGING OF POTATOES

Sen. (Eng.) Muriuki: Thank you Mr. Temporary Speaker, Sir. I hope that when you talk about short you mean about five minutes.

I would like to make a statement under Standing Order 45(2)(a) regarding the current wholesale crisis in potato producing counties following the announcement by the Government on new standard weights of various produce.

The economy of Nyandarua County, which I represent, revolves almost wholly around dairy products and potatoes. The subject matter is potatoes. The potato industry is very fragile, starting off with the product sale. Last week, the Government announced a new wholesale weight of 50 kilogrammes per bag to change from the previous weight of 110 kilogrammes. The effect of that was that the farmers in Nyandarua County and other potato producing counties did not know what to do. The previous standard of 110 kilogramme had a physical bag where when farmers put potatoes in it, it automatically became 110 kilogrammes. Now that the Government is talking about 50 which is the future of this country and the world, the farmers are now operating between a rock and a hard place.

This announcement came with a very heavy fine of Kshs500,000 for anybody who will contravene this rule. The farmers are finding themselves in a very awkward situation where either they will not harvest their crop which will make it go bad or they may harvest and put the produce in the old 110 kilogrammes bag after which they will be arrested by the police. The “normal” way of doing things so that one is not arrested is to bribe the police. Farmers have not harvested since Monday and yet it is harvesting season. They do not know what to do.

The purpose of my statement is to request the Government to review the situation with a view to suspending the implementation of this rule until the Government comes up with the standard physical bag where farmers can put potatoes. The Government can also organize for the supply of these bags which farmers can use. The end result of this is that I have sent observers to the Marigiti Market every morning since Monday. The situation is that---

The Temporary Speaker (Sen. (Dr.) Machage): I will not allow you to debate. Interestingly, you are the sponsor of Order No.11 on the same issue. Therefore, I will not allow you to discuss the issue under the disguise of a personal statement.

I am trying to tell you to be brief.

Sen. (Eng.) Muriuki: This statement was supposed to come a few days ago but due to some issues, it was not brought earlier. The Bill is still important because it is a bit

further down. The situation is that the Government has to do something to help alleviate the plight of farmers now because they cannot sell their produce. If you go to the road, you will find that the weights have not been adjusted. People are taking bribes and this is just a cash cow for the police. The Government must step in and help farmers.

The Temporary Speaker (Sen. (Dr.) Machage): Thank you, Sen. Karue. That statement cannot be interrogated.

Sen. Khaniri: Mr. Temporary Speaker, Sir, if you give me four minutes, I will be done.

The Temporary Speaker (Sen. (Dr.) Machage): Very well. You will be timed.

PLIGHT OF FARMERS IN NYAMTHOWI, KOLWA CENTRAL
LOCATION, KISUMU EAST CONSTITUENCY

Sen. Khaniri: Mr. Temporary Speaker, Sir, Standing Order No.45(2) of the Senate provides that a Senator may request for a Statement from a Committee Chairperson relating to matters under the mandate of the Committee. Pursuant to this provision, at the sitting of the Senate held on Thursday, 23rd October, 2014, Sen. Gwendo requested for a Ministerial Statement from the Chairperson of the Standing Committee on Land and Natural Resources on the plight of farmers in Nyamthowi Kolwa Central Location in Kisumu East Constituency.

In her Statement, the Senator sought the following information:-

- (a) The measures the Ministry is taking to deal with perennial flooding.
- (b) What the Government is doing to contain the hippo menace to the farms.
- (c) What is the progress on provision of title deeds to farmers in Nyamthowi Kolwa Central Location; and
- (d) Measures being taken to develop a proper road network so that famers' produce can reach the prospective markets.

The Committee requested for response to the Statement sought from the Ministry of Environment, Water and Natural Resources, the Ministry of Lands, Housing and Urban Development and the Ministry of Transport and Infrastructure.

As to the measures the Ministry is taking to deal with perennial flooding; flooding in Kolwa Central Location occurs from swelling of rivers Kibos and Nyamasaria. In this regard, a study was recently concluded that outlined the measures required to deal with the flooding in the Central Kolwa Location. These measures are expected to commence in the next Financial Year, 2015/2016 and will include construction of dykes along Nyamasaria River, construction of water evacuation channel from Ombeyi to Lake Victoria, river draining work and distilling of Marienye River.

In addition, focus on capacity building of Kisumu County Government on planning, coordinating and implementing community based flood management will form part of the activities arising from the study. This will lead to development of a framework for collaboration with Kisumu County Government and other stakeholders on integrated flood disaster management.

On what the Government is doing to contain hippo menace to the farms, the Kenya Wildlife Service (KWS) has undertaken the following measures to contain the hippo menace in Kolwa Central Location:-

(a) It advises the community to dig motes and put high tensile chain link fences around their farms and leave a space of over 50 metres along the riparian land as required by law. This is already being done at the Kano Irrigation Scheme, Kasagam and Nyathowi areas.

(b) Quick response by the well trained and equipped KWS officers.

(c) Community wildlife committees have been formed in hot spot areas such as Nyakach, Kusa area rice irrigation schemes, Ahero, Nduru, Rongo, Nyabondo, Ngege and Otonglo, to enhance reporting of conflict cases.

(d) Structured involvement of Government administrators such as chiefs, opinion leaders and the identified points to carry out continuous wildlife conservation education and awareness by discouraging farmers not to plant up to the lake shores.

(e) Fast tracking compensation cases involving human injuries or death cases.

Mr. Temporary Speaker, Sir, as to the progress on the title deeds, authority to commence adjudication work in the proposed Nyamthowi adjudication section was granted on 27th August, 2014. Sketch maps and GPS generated co-ordinates for this section were forwarded to the Regional Centre for Mapping of Resources for Development on 3rd October this year in order to produce satellite images to be used in identification of parcels of land. The Ministry expects to receive the images by the end of November this year.

The Nyamthowi adjudication section shall be declared before 30th January, 2015, and it is expected that the adjudication work will be completed by December 2015. Processing of these title deeds will be fast tracked through the National Titling Programme.

To ensure that farmers' produce can reach the prospective markets, the Ministry of Transport and Infrastructure has taken the following measures towards the improvement of the road network in Kisumu County:

The Kisumu East Constituency Roads Committee has compiled a work plan for the 22 per cent routine maintenance levy fund totaling Kshs13.8 million, which has been approved for funding.

During this Financial Year, 2014/2015, Kshs5 million has been disbursed as the first tranche for this expenditure. The Constituency Roads Committee has also compiled a narrow work plan of Kshs6.2 million for the 10 per cent routine maintenance levy fund which has been approved for funding.

The Ministry will upgrade to bitumen standards the Rabuor-Kondele road which is 21 kilometres. This road has been earmarked for implementation in the second phase of the contractor facilitated road development mechanism in the next phase starting early next financial year.

Mr. Temporary Speaker, Sir, the Ministry, through the Kenya National Highways Authority, is undertaking the following roads projects in Kisumu County: Rehabilitation of Kericho-Nyamasaria Road, Nyamasaria-Kisumu-Kisian, including the Kisumu by pass A1 and B1 and the Kisumu-Muhoroni C34 Road.

Sen. Gwendo: Mr. Temporary Speaker, Sir, other than the issue of the hippos, I am very satisfied with the Statement issued by the Committee of Lands and Natural Resources. With regard to the hippo menace, I do not think the chain link fence is able to deal with hippos. The hippos get into the farms, destroy the farms and, in some cases,

have killed the farmers. I do not know what we are going to do with regard to that. But for the rest of the questions I raised, I am satisfied.

The Temporary Speaker (Sen. (Dr.) Machage): Well, I would like to know the gauge of the chain link. If the gauge is strong enough, it should be able to take care of that. I rule that the answer was satisfactory and we take it as such.

Sen. Murungi, you are supposed to give a Statement.

BUSINESS OF THE OF THE SENATE FOR THE WEEK
COMMENCING TUESDAY 25TH NOVEMBER, 2014

Sen. Murungi: Mr. Temporary Speaker, Sir, I wish to make the following Statement on behalf of the Senate Majority Leader who, as the House was explained to earlier, went to escort some dignitaries to the home of the late Sen. Otieno Kajwang. The Statement is as follows:-

Hon. Senators, pursuant to the provisions of Standing Order No.45, this is to present the Senate Business for the coming week. On Tuesday 25th, November 2014, the Rules and Business Committee (RBC) will meet at 12.00 noon to schedule business of the Senate for that week. Subject to further directions by the RBC, the Senate will continue with the business that will not be concluded in today's Order Paper focusing on debate on Bills at the Second Reading and at the Committee of the Whole stage. The Senate will continue with the business not concluded during Tuesday's Sitting and consider any other business scheduled by the RBC.

The Senate will also deliberate on the following Motions:-

1. Motion by Sen. Sammy Leshore on Establishment of the National AIDS Control Council County Offices.
2. Motion by the Chairperson of the Standing Committee on Agriculture, Livestock and Fisheries on the Status of Food Security in Baringo County.
3. Reports of the Kenya Delegation to the ACP-EU Joint Parliamentary Assembly meetings held in 2013 and 2014.
4. Motion by the Chairperson of the *Ad hoc* Committee on Adoption of the Report on Legislation on *Harambees*.
5. Motion by Sen. Daniel Karaba on Accreditation of Institutions of Higher Learning.
6. Motion by Sen. Joy Gwendu on Construction of Wheelchair Accessible Footbridges on Major Roads.
7. Motion by Sen. (Dr.) Agnes Zani on Review of Categorization of Secondary Schools.
8. Motion by Sen. Mutula Kilonzo Jnr. on Initiation of legislation to Provide for the Establishment of an Independent Commission to inquire into the boundaries of Counties and make appropriate recommendations

On Thursday 27th November, 2014, the Senate will continue with the business not concluded on Tuesday and Wednesday, in particular, deliberating on Bills at Second Reading and Committee of the Whole stages, and any other business scheduled by the RBC.

I hereby lay the Statement on the Table.

(Sen. Murungi laid the document on the Table)

Sen. Karaba: On a point of order, Mr. Temporary Speaker, Sir. I was away looking for an answer to a request for Statement from the Committee on Education---

The Temporary Speaker (Sen. (Dr.) Machage): Order! Order, Sen. Karaba. You have been overtaken by events.

Order Nos. 8 and 9 are deferred.

BILLS

COMMITTEE OF THE WHOLE

THE PUBLIC PROCUREMENT AND DISPOSAL (AMENDMENT) BILL
(NATIONAL ASSEMBLY BILL NO.31 OF 2013)

(Committee of the Whole deferred)

Second Reading

THE NATIONAL YOUTH SERVICE (AMENDMENT)
BILL (SENATE BILL NO.26 OF 2014)

(By Sen. Elachi on 4.11.2014)

(Bill deferred)

Second Reading

THE NATIONAL POLICE SERVICE (AMENDMENT)
BILL (SENATE BILL NO.29 OF 2014)

(By Sen. (Prof.) Lonyangapuo on 18.11.2014)

(Resumption of Debate interrupted on 18.11.2014)

The Temporary Speaker (Sen. (Dr.) Machage): Sen. Mungai had 13 minutes to go. I do not see him around.

Prof. Lesan.

Sen. (Prof.) Lesan: Mr. Temporary Speaker, Sir, I rise to also join my colleagues who have made contributions to this Motion.

First, I want to send my condolences for those people who lost their lives in West Pokot and Baringo where there was some conflict, which is mainly the subject of this debate. I condemn all forms of banditry in the country, specifically what occurred in Baringo County, which resulted to the loss of several lives. The security of citizens is paramount. Therefore, it is very important that we are concerned when lives are lost and should do something about.

Secondly, I ask for some restraint from our forces as they deal with the civilians in the banditry-prone areas, so that we do not unnecessarily lose lives. Thirdly, I ask that the civilians too who are in these areas of conflict assist the forces that are trying to bring peace by giving information.

Mr. Temporary Speaker, Sir, I support the recruitment of reservists in these areas. Particularly, I support the training of these reservists because when they are trained, they will serve better. I do remember one very well trained police reservist in this country by the name Patrick Shaw who operated in this city. I lived in this city at that time. This one trained police reservist was armed with a lot of information. It is because of the information that he had that all the thugs and bandits in this city knew him. If we recruit any police reservists in this country, training is, perhaps, the paramount thing to undertake, so that they can serve better. We could actually train these reservists and deploy them to targeted areas. I know that they can protect the country, not only from external forces, but also educate and protect the community in which they live.

Mr. Temporary Speaker, Sir, I was saddened to realize that the girls from West Pokot were injured by the residents in the name of circumcision. I want to believe that this was done even in the presence of police reservists. The training of police reservists who live amongst the communities should be undertaken in order to protect the community from itself, especially from cultural activities that are not useful. I condemn the illegal act of circumcising girls. This is mutilation and it is unacceptable. It is a painful process. There is no need to subject them to this illegal act which has been happening in various parts of the country, even in the presence of police reservists within these communities.

Mr. Temporary Speaker, Sir, I support the deployment of police reservists, but suggest that this should be a temporary measure. As we go on, we should deploy well trained officers in these areas in order to bring peace and assist the communities to live in harmony with each other and their neighbours.

Mr. Temporary Speaker, Sir, with those remarks, I support this Bill. I hope that my colleagues will also support it so that we deploy well trained police reservists.

Sen. Sang: Mr. Temporary Speaker, Sir, I rise to support this Bill and congratulate Prof. Lonyangapuo.

The challenge of insecurity in this country is getting out of hand. This country has witnessed a tremendous loss of lives of Kenyans in Lamu, Tana River, Wajir, Baringo, Samburu and Turkana. Insecurity in this country has to be addressed. We know that there are several challenges facing the security forces in this country. One of the issues is that this country has not sufficiently invested in the security sector, especially in terms of facilitation. We need to ensure that our police apparatus are able to have the necessary facilities and equipment that they need to secure Kenyans in this country. We have a huge shortage of police personnel in this country.

Mr. Temporary Speaker, Sir, the cost of running and recruiting enough security personnel may not be achieved in the short term in this country, but we want to appreciate the Government's commitment and the steps being taken to increase the number of police officers being recruited and trained every year. This year the Government recruited 10,000 police officers. This is the largest number of police recruitment that has ever been done in this country. However, it saddens me that certain arms, through the instigation of certain institutions, ended up cancelling the exercise. In

fact, a court order was issued to cancel the recruitment of exercise. We need to have a better way of recruiting police officers to ensure that the integrity of the process is maintained. This will enable the Government to fill the gap in the security apparatus.

Mr. Temporary Speaker, Sir, if the 10,000 recruited officers were allowed to go for training, it means that in the next ten months those officers would be absorbed in the security system. This would enhance the efficiency that would help this country address security issues. We appreciate that the national Government may not meet the threshold required by the international standards of the public-police ratio and that is why the issue of police reservist is important. Some of us initially had issues with this Bill because my concern was that we run the risk of creating a parallel police force. We will be recruiting a large of police reservists who would be armed, but not trained like the police officers. My concern was; how do we ensure that the Kenya Police Reservists (KPRs) are properly trained and are supervised properly to ensure that they are accountable? This will also enable us to facilitate them.

Mr. Temporary Speaker, Sir, on Tuesday afternoon, Sen. Obure and I had a lengthy discussion with the late Sen. Kajwang. He was supporting this Bill from the word go. I crossed over to the side where Sen. Kajwang sat and we had a discussion for almost 15 minutes. He took us through the challenges and it was evident when he stood up to contribute to the Motion. He was able to capture the real issues. He was able to address the challenges that the Kenyan security operates undergo. He articulated and elaborated the reasons the KPRs would step into the gap.

Yesterday, some of us did not get a chance to contribute, but the contribution of the late Sen. Kajwang on this issue, gave us a lot of insight on how this country needs to be strategic in a manner guided by the law, being in sync with the Constitution, being able to look at a mechanism of ensuring that there is synergy and synchrony within the security apparatus of this country. The challenges facing this country calls for extra ordinary measures up to and including the deployment of the Kenya Defence Forces (KDF) to quell some of the difficult situations that we find ourselves in as a country.

It is important that in each and every engagement that we find ourselves in and as we address the challenges within the security sector, we should do it within the law. I want to appreciate that this law helps us to institutionalize and provide facilitation to the KPRs so that they can engage and deliver on the issues assigned to them. We should appreciate that whereas the KPRs would be helpful in dealing with some of these challenges, we need to provide sufficient safeguards so that the facilitation and equipment provided would not be used in the negative sense.

Mr. Temporary Speaker, Sir, in this country, we have seen situations where police officers collaborate with some elements that destabilize this country in terms of causing insecurity. Therefore, we know that if we are not careful, we could open a Pandora 's Box where the facilitation provided to the KPRs could be found in the wrong hands. We need to strengthen the supervisory element so that we can account for every arm and ammunition given to them.

In areas like Kapedo, Baringo, Samburu, Turkana and West Pokot, the terrain can only be understood very well by a local person. Whereas we appreciate that within the security apparatus in this country, it may not be desirable to have an individual working in the area they come from, I think for every rule there must be exception. Looking at the challenges that we face like in Kapedo where 23 or so police officers were killed in one

day, one would ask if it is possible that one of the issues contributed to the situation was that the police officers did not understand the terrain very well. Therefore, we need to evaluate this situation. We have police training colleges in Kiganjo and Embakasi, but it is time to consider setting up these institutions in difficult terrains so that when a police officer is trained there, he would be better placed to handle such situations. If you train people in Kiganjo, Embakasi or in areas where there is no harsh terrain, they will still find difficulty in engaging, working and responding with effectiveness in the areas they are posted.

Mr. Temporary Speaker, Sir, we also need to look into the issue of training. If you give a police reservist a firearm, how do you ensure that they are trained? How do you trust a civilian with a firearm before you do proper training? We know that the Kenya police officers train for up to 15 months. The element of training has to be relooked at, both at the regular police services within our country, but more importantly at the level of the KPRs. We need to provide them with sufficient training.

We also need to look into providing them with adequate vehicles to respond to some of these challenges. Mobility for a police officer in terms of response is critical. If a police officer is properly armed and has the necessary ammunitions, but is not mobile in such terrains, their work becomes very difficult. That is a very crucial element.

Finally, the big challenge we have in this country is the element of intelligence collection. For a very long time even if you had lean personnel, but had effective intelligence, you would identify how to respond, when to ask for reinforcement and when to send police officers to the right place. In this country, we have seen some situations which are unimaginable.

You will not imagine that people could sit, plan and even attempt to execute a raid in a barracks. Where was the military intelligence? Where is the security intelligence in this country? We need to give them adequate facilitation, but more importantly ask them to be accountable. We need security apparatus that are funded using taxpayers resources to be accountable. We know the national budget allocated to intelligence in this country may not meet all the requirements that they need. However, it is fairly adequate. We need to hold them accountable and ensure that they provide accurate and timely intelligence to enable the police and the security forces in the country to respond to the security challenges in our country.

It is important for this House to interrogate as protectors of devolution, the role that the country governments play in helping and facilitating the security operations in this country.

Sen. Murkomen: Thank you, Mr. Temporary Speaker, Sir. I would like to support the amendment by Sen. (Prof.) Lonyangapuo. You will understand what this Bill means, particularly if you come from pastoralist areas, the Arid and Semi Arid Lands (ASAL) which have been marginalised for a long time.

I believe that this is a timely Bill. We know that there is a shortage of uniformed police formerly known as the Administration Police (AP) and the regular police. It is important, at this stage, for me to disclose that my reading of the amendment shows that this Bill does not have sufficient capacity to be called a Bill that concerns counties.

The reason I have said that is because its reference, as the Sen. said in his memorandum regarding its concern to counties stretches the interpretation of what concerns counties. However, I believe that this Bill should go deeper to provide the role

of county governments; the place of county governments and their place as far as matters of police reservists are concerned.

I am saying this because these counties, as the Senator has expressed in the memorandum, which are marginalised, are suffering underdevelopment because of insecurity. Therefore, once the Bill gets to the Third Stage, I will be proposing that it be amended to provide an opportunity for county governments that will have extra resources to support police services to put those resources on the police reservists.

We have seen some counties buying vehicles for the police. We have seen some counties investing in technological equipment for the police. Under the law, it should be permissible for counties to invest in security and as far as KPRs is concerned as it has been proposed by the Senator.

To make this Bill even stronger, the place and role of the county governments and the contextualisation of the management of the reservists at a local level needs to be provided. As such, I believe that the National Police Service (NPS) using the existing county police committees should form a committee that will have a representation of county governments which together with the NPS will manage the national reservists.

Apart from protection of properties, peace, law, order and apprehension of offenders, reservists should be given an opportunity to carry out other functions that are related to the counties, particularly social functions. Sensitisation of locals on matters of security should also be allowed. There should be sensitisation on matters regarding peace, not just preservation, but also sensitisation and training of other responsible citizens on matters of security, peace, law and order.

I also believe that if we want to make this country a place we are all proud of, we need to use the KPRs to win back some of our youth who have previously been involved in crime. We have been told stories about people who have been recruited to go and fight in a country like Somalia. We have had situations where some youth have been recruited to be cattle rustlers. Others have been recruited to other unlawful activities.

One way of winning them back to become good and responsible citizens, considering that they already have basic training on matters of firearms and insecurity, we can rehabilitate them by hiring them to be part of the police reservists. As such we can turn them to be the source of security. As the saying goes: "Send a thief to catch a thief." Sometimes, you need someone with some kind of lawlessness to fight crime. Some of them are unfortunately very young. Before they turn 18, they have already been introduced to criminal activities. We should rehabilitate them and bring them back to society with clear leadership.

In the amendment, we should also propose that we create a ward committee. Under the *Nyumba Kumi* initiative where we should understand and know who is living in our surrounding. There should be a committee at the ward level that reports to the committee at the county level on how the KPRs are working. They should have their own commander within the ward who will guide them on the activities they should provide. They should advise the Committee at the county level on who can be hired. The identification and recruitment of the KPRs should be on need basis and should be managed from county to county. This issue should not be centralised so that someone in Nairobi makes decisions on hiring of a police reservist in Kocholwo or Tot in Elgeyo Marakwet County. This is something the people of that locality must appreciate. People

who are not young, but very useful in managing security and peace at the local level would be very useful.

Mr. Temporary Speaker, Sir, apart from creating a monetary structure for compensation through the NPS, again, the county should be permitted to do so in the same legislation. I will be willing to work with the sponsoring Senator to bring certain amendments. Apart from just investing in the infrastructure and the structures, some of the resources can be spent on monetary compensation for those who will be hired by the county government to work in wards. We want the ward administrator at the county level to have a role to play in this security arrangement. For example, he might sit down together with the person in charge of reservists at the county and be able to compensate them.

Mr. Temporary Speaker, Sir, someone in Nairobi, Uasin Gishu, Kisumu, *et cetera*, may never really feel the pain of being somewhere in Kapedo, Turkana, West Pokot or some parts of Elgeyo Marakwet, Samburu, Wajir County, Mandera and Tana River. Those are places where many officers have been unable to provide security. The reason is because sometimes you recruit people who come from areas where they cannot understand the terrain of that area. They are unable to deal with the diverse challenges and the cultural practices of those areas. However, if we hire people who understand the environment or who have the interest to protect the locals, they will be able to put a lot of effort into it.

At such a time as this when we are debating such an important Bill, I will not miss to mention that part of the problems we have with this cattle rustling and the lawlessness in these areas is because of marginalization. The residents of these areas have never been made to understand or to feel that insecurity is a bad thing. The economic conditions, the environment they are operating in and the investment that Government has put in that place does not attract the locals to feel like they have a responsibility to protect those resources. If you talk about mining of oil resources, geothermal resources and many other resources that exist in those areas, it is important for us to, first, identify, sensitize and show the locals what their role in these resources is. We must show them how they will benefit from these resources and they can become part and parcel of the exploitation of these resources. Therefore, they will have the confidence to say that since they are getting about 20 per cent of the total earnings or using it to educate their children and change their economic status, they will feel they are co-heirs, co-inheritors, co-beneficiaries with the rest of Kenyan, therefore, they will have the interest to protect those resources.

Mr. Temporary Speaker, Sir, when these areas have bad roads. They do not have good schools. There is no irrigation or any other economic activity taking place. Therefore, we see insecurity as a culmination of a collection of many other problems that exist in that area. If we have no good road, we will not be able to deploy the necessary police or security team to be able to man those places. I think as a matter of fact, the solution to marginalization of these many areas is in devolution.

With regard to that, we must be able to agree in this Bill to transfer some of the security functions. As a matter of fact, Article 187 of the Constitution allows enactment of a legislation that will give the powers of transfer of a function from one level of Government to the other. In the limited ways, we should be able to give some of the security functions to be carried out by the police reservists working together with the county government and create structures for devolving those resources.

Finally, I have advice for our leaders. We know that there are challenges in these marginalized areas. However, it is important to realize that our leaders must take a step, sit and work together. I am one of the leaders from north Rift, but I would like to see more. If the residents of Turkana and West Pokot see Sen. (Prof.) Lonyangapuo and Sen. Munyes walking together, talking together, preaching peace together and providing solutions to the problems that are in those regions together, tensions, fights and border differences that we are seeing in Turkana, Isiolo and Samburu will be dealt with. If the leaders have the necessary commitment and work together, these problems will be dealt with immediately.

I want to encourage our brothers and sisters in the “Lower House” that they must be able to come together and put peace ahead. They must appreciate that the existence of Laikipia County with Samburu County is intertwined in terms of economic development. But if we continue being myopic and thinking that because you will look like a hero if you are seen to be defending your community, being aggressive against another community, we, as leaders, will be riding on the ignorance of our people. Instead of taking them from Egypt to Canaan, we are telling them that we want to continue leading them in Egypt.

We must get our people to cross over. We must even do that at the expense of losing our positions. If they do not understand us so that 20 to 30 years down the line, they will say: “Behold, if we had listened to Murkomen, we would have crossed the River Jordan to Canaan together.”

Mr. Temporary Speaker, Sir, at the moment, because of the immediate benefits; that we all want to secure the desire to remain in office, we have glorified war-lordship and violence so that we can ride and step on dead bodies in order to remain there. We, as leaders, must let go of our desire to remain in office at all expense. We must be able to say no to this violence so that we can walk jointly to get the solution. What I have always said is that we need leaders to start coming together at the regional level for the benefit of solving problems. If it is leaders from Mt. Kenya, they must be able to come together and look for economic activities that they can do together. If it is the leaders from north Rift where Sen. (Prof.) Lonyangapuo and I come from, must be able to come together and exploit certain benefits, including economics of scale, and do programmes together as counties that have a common interest.

With those many remarks, I support this law. In order to make it constitutionally dormant in this House, we must introduce the necessary amendments for the county governments to play a role in the management and running of the police reservists.

The Temporary Speaker (Sen. (Dr.) Machage): Hon. Senators, I had to allow Sen. Murkomen to speak before some of you for reasons you will soon understand. I will now allow Sen. G.G. Kariuki to speak.

Sen. G.G. Kariuki: Thank you, Mr. Temporary Speaker, Sir. I am happy that you have allowed me to make a statement on this matter which I find to be very important for this country, especially at this time. Every morning when you read the newspapers, there is a story of some people having been killed either by thugs or by the police.

This is a very involving matter, whereas, we stand here and make casual statements about our security in this country because it appears that that is the only thing we must do and forget. I am not so sure that those who are in charge of security bother to look at HANSARD reports to read the contributions of hon. Members. If they do, in fact,

there is nothing that we are saying here that they do not know. These people are trained to protect the property and lives of the people of this country.

Mr. Temporary Speaker, Sir, I do not think that they would expect any Member here to competently advise them because they are in the game and understand it better than us. Sometimes they think that some incidents of insecurity are perpetuated by the politicians themselves. Whenever you speak to a security officer, you will never get an answer from him. Where politics is involved, he is so scared to mention Sen. Kiraitu Murungi or Sen. G.G. Kariuki, because he will suffer the consequences. Therefore, we expect too much from them. We have politicised the security of this country and yet, we want the security operators to be as open as we may wish. We are dealing with human beings; people who know us very well. They have worked for us and assisted us in one way or another. Therefore, we are in the same family, but in disarray.

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

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

Mr. Temporary Speaker, Sir, I am not so sure that a police officer or any other person would want to have the kind of criminality that is taking place today. All of us would want to be protected. Police officers are in danger of being eliminated by criminals. The criminals are facing the same problem. In fact, it is by the grace of God that we are all here and surviving. We can claim that we are protected, but it may take a minute for us to realize that we are not, especially now that we are facing international criminals, including *Al Qaeda* and others.

I brought a Motion here early this year, expecting that something will be done, but nothing happened. In every civilized and developed country, there is a review commission all the time after five years, to review the integrity and performance of the security men and women. But in this country, when you become a police officer, you are left free to do what you think. We are confronted by another bigger problem where, for example, we have a young man aged 18 or 22 years, who is the son of Sen. Kipchumba. I am not so sure that he would want to go and work in Mandera. He will work so hard through his father, to make sure that he is posted in an urban centre. This means that there is no discipline in the security forces.

Many years ago when I was the Minister in charge of Internal Security, life was better because the politicians were not involved in matters of the police force and security. You know very well that where you come from, politicians will even side with criminals, so that they can continue getting votes to come back to power. This is very evident in presidential elections. This is the biggest problem that this country needs to look at and find out whether we are in the right direction. Many people are hesitant to fight criminals, especially in Baringo and Turkana counties, because they know that in the next two years, they will need votes from those people for the Presidency, Member of National Assembly and the Senator. No Senator, especially from areas prone to crime would dare to lead the people. Unfortunately, most of us are led by the people, yet we are supposed to lead them. If you attempt to lead the people, your political enemies will have a heyday and attack you right, centre and left.

Mr. Temporary Speaker, Sir, this is not a simple matter to be discussed here. I feel that we need to go beyond what we are talking about here. We need to ask ourselves why we recruited the KPRs in the first place. It is because the police officers were not capable and enough to deal with the situation. After employing the KPRs, more or less the police officers and others were confined to the big cities where we have all kinds of pressure. It is not prudent to bring on board people who are not trained on security matters and expect them to assist you to do something. You would rather employ informers. In this country, unless we spend enough money on intelligence gathering, our security will not be guaranteed.

Mr. Temporary Speaker, Sir, we have employed quite a number of policemen and women, but what is the impact of that? The security situation is continuing to deteriorate. Has our security improved as a result of the recent employment of additional 20,000 police officers? They have tried to deal with *Al Qaeda* and other international criminals. We have to give credit where it is due. Terrorists have almost been kept at bay and are not as active as they were. But terrorism is some kind of guerrilla war. The terrorists are not going to announce when they will attack. They will strike anytime. Therefore, the Government must be very vigilant.

Mr. Temporary Speaker, Sir, I want to disagree with those who are just talking about the number of security officers. You can add as many as you want, but if their training, discipline and selection are questionable, we will be doing a worthless job. We have to get politics out of the security matters. Let us stand as politicians without relying on our friends in the police force.

Mr. Temporary Speaker, Sir, the other issue is the kind of security that we are talking about. Corruption is the worst insecurity we have in this country. Our young people are corrupting the authorities to be employed in the police force. After they have been employed, they do nothing other than looking for their survival and the money they paid as bribe. If you see a young person paying Kshs300,000 to an officer so that he can be employed, the argument is that he must get back that money. Therefore, it is like a business or a game. Unless this country decides that the police do not need to be confined in just one place, we need to have one central place for evaluating the performance of the police from an independent body and not the National Police Service Commission (NPSC) because it is also misplaced.

First, we need to understand our problem better. If it is poor leadership in the intelligence service, then we must change it. We know our police officers are very well trained, but when one is needed to be in charge, we go to the army to get an army officer. This demoralizes the people who have been working there for many years. There are no other people well trained in this part of the world, particularly in Africa, better than our police officers. We used to compete with South Africa and Israel. Even today, our training is still very strong. However, we are training people who cannot be trainable because they have been infiltrated by corruption.

Mr. Temporary Speaker, Sir, when security matters are being discussed in this House, sometimes I decide not to speak. For example, I was not ready to say anything on this Motion because we are going to repeat ourselves. We have to get to a stage where we shall demand to get involved in the management of the security of this country. We must also start identifying people who are in politics because of being supported by criminal acts. In Laikipia, for example, if I want to fight a group of people from the other side of

the boundary and I start saying “we are going to die for you” I will get support. This is terrible. A politician would want to go to heaven, but I doubt how many will even reach at the gate. Some of them will not be interrogated, but will be told to go to hell straight away because they lie and people are dying. It is not good for people to rejoice when people die just because he is not your sister or brother.

Sen. Murungi: Mr. Temporary Speaker, Sir, thank you for giving me this opportunity to support this important amendment Bill. The purpose of this amendment is to recognize the KPRs as part of the security forces of this country. That is why we are supporting that they be better trained, facilitated and equipped for performance of the critical role they are playing to support the police in this country. It has been known from very early days, from the early philosophers, that the only purpose of the Government is to protect the lives and property of the citizens. That critical role will not be performed by the whole government. The Government instrument for protecting the lives and property of the people is the police. Indeed, if you read the police Act, Section 14, the purpose of the police service is to protect the lives and property of Kenyans and maintaining law and order.

Mr. Temporary Speaker, Sir, it is quite clear that there is a security crisis in this country. Our police are inadequate in numbers because we fall far below the United Nations recommended ratio. We cannot hope to win the war on insecurity with police who are underpaid, demoralized and inexperienced. This challenge of a weak, demoralized police force must be addressed urgently by the Government if we have to hold this country together and lead it to the path of economic development and prosperity as outlined in our Vision 2030.

It is in recognition of the inadequacy of the police that the Government over the years relied on the KPRs. In the colonial days, we had the tribal police. Over the years, the KPRs have done a great job. These are ordinary citizens who eat their own food, wear their own clothes, but perform very difficult tasks in very difficult conditions. It is criminal for us, as leaders, not to recognise the role that these patriotic Kenyans are playing. That is why we, as a Senate, are supporting this Bill.

Mr. Temporary Speaker, Sir, if you look at the geographical distribution of the KPRs, they are largely confined in far-flung remote areas, basically pastoralist areas. That is the reason there is so much insecurity in those areas and cattle rustling has gone on for a long time. This is because of inadequate Government presence. In the past, there were theories in the West about strong governments in Africa with the big man syndrome. However, that is not the challenge. The challenge is not that, but having weak ineffective governments. If you look at areas where there is insecurity like in Nigeria where there is Boko Haram, it is not in Lagos, but in far-flung areas. I think those are the areas we should pay attention to if this country will curb insecurity.

Mr. Temporary Speaker, Sir, look at the way our army barracks are distributed. They are in Mombasa. In Nairobi, we have several barracks like Kahawa and Langata with soldiers who are just sleeping and eating food and doing nothing. There are others in Gilgil, Eldoret and Nanyuki. These are areas which were predominantly white highlands.

Mr. Temporary Speaker, Sir, we have not decolonised the distribution of the security forces in this country. Where we have very major insecurity, where there are incidences every day of people dying and property getting lost like in Turkana and Pokot, there is no army base. I would transfer this base or at least half of it from Langata and

put it on the border between Turkana and Pokot. Then, I would put another base; a bigger one in Samburu, Marsabit and another one in northern Kenya. This is the only way we can have rapid response capacity in those areas which are hot beds of insecurity.

When we talk about facilitating our police or security forces, the police only talk about one thing; money. In fact, when we came into Government in 2002, we doubled the salaries of police officers. For the first time, the APs were able to earn Kshs10,000. They were earning more than the District Officers (DOs), who they were guarding at that time. There was a protest from the DOs. Therefore, it is not purely a question of money, but there is also a question of morale. Even when Mengistu ran away from Ethiopia, he had the largest army in Africa. However, the army was demoralized and defeated by some ragtag army from the guerillas because they were psychologically defeated. So, we cannot fight insecurity in this country with a psychologically defeated police or KPRs. We need to have people who are highly motivated in what they are doing.

Mr. Temporary Speaker, Sir, we have tried in our County to do self-help to protect Meru County from cattle rustlers who largely come from Samburu and partly from Borana. We co-operated with Kenya Wildlife Service (KWS) and the County Government funded training of some people from Meru County in the training camp in Manyani. They were deployed because we created a buffer zone between Meru and Isiolo all the way to Ewaso Nyiro. We created a conservancy and assigned the youth who had been trained to be protecting it. When those youth were deployed, the police refused to give them guns.

Mr. Temporary Speaker, Sir, there is a lot of discrimination because it seems that KPRs are only for pastoralists. It seems that we who are not pastoralists are not entitled to KPRs even when we have spent time to train them. Therefore, we are appealing to the Government to also arm the people we have trained through KWS to guard our conservancy. This will prevent cattle rustlers crossing from Samburu and coming to cause insecurity in Meru. In fact, because the Meru people are not armed, we hear the Samburus say that they have come to the ATM in Meru, because they know there will be no resistance. Therefore, we are asking for fairness and equitable distribution of KPRs countrywide.

How can we be guarded by people with *rungus* in our houses in Nairobi when the robbers are armed to the teeth? I think we should borrow the Ugandan example where some of the registered security companies are given guns by the police. Once the armed robbers know that our guards are armed, the robberies would come down. Every morning the security guards would return the guns to a police station and pick them up when they are going on duty.

Mr. Temporary Speaker, Sir, there was a proposal that former servicemen, since they are trained and many of them are not that old, should be deployed to guard people's homes like we do with the G4S. I do not know why the Government refused to allow those servicemen to form their own private security organization that would be providing services to our people.

Mr. Temporary Speaker, Sir, what we are talking about in this Motion will solve part of the problem. Time has come for us to address the underlying causes of cattle rustling for which we are looking for the KPRs. A research has been conducted by the University of Nairobi which shows that the chronic food shortages in Turkana, Samburu and all those areas are caused by insecurity. Today, one can be very rich with many cows,

donkeys, sheep and other things. However, the following day, cattle rustlers may come and take away everything. Although you and your family have been very hard working, the day after tomorrow, you may start begging for food because of what happened the previous night. When you organize yourself to get the cattle back and when you make people who were rich for two days poor again, you transfer poverty from one village to another under the guise of enrichment through cattle rustling.

The issue of resources in the counties is critical towards having a long term solution to this problem. I would like to appeal to the governors in those areas to come up with clear projects for economic development and prosperity. I agree with you that the county governments should be involved in providing part of the security to counties. I was telling Senator No.1, Sen. G.G. Kariuki, that there was a time when there was a Somali Provincial Commissioner (PC) in North Eastern Province appointed by the former President Moi. When the PC was appointed, all the banditry and shifta issues went down. He came from the area and understood the psychology of the people. Immediately some insecurity took place, he used to go to the village that caused the violence and drive away their camels. He used to tell them that unless they said who had caused the violence, he would not release the camels. The *wazees* would dutifully bring the young people who had committed the crime because they wanted their camels back. That way, the place was kept peaceful for some time. It was not by using brutal force, but by understanding the psychology of the community.

It is not enough to send an army to beat up people in Pokot. Learning the intelligence and culture is also as important in the war as having the weapons. In fact, Sen. G.G. Kariuki was saying that understanding the community is much more important. However, we cannot leave this completely to the county governments because we will just create one army against another army in Turkana and that war will never end. There must be a national command for the KPRs which will go all the way down to chief, county commissioner among others. That way, we will guard all these villages. There is no point of having *Nyumba Kumi* initiative if we have no fighting capacity. There should be a *Nyumba Kumi* KPRs to protect the “ten houses” security.

Time has come for us to deal very radically with the security situation in this country. I want to thank the President for using the Kenya Defence Forces (KDF) in cases where security has gone out of hand. We saw them deployed in Trans Nzoia during the land problems. When the army moved in, the Sabaot Land Defence Forces (SLDF) evaporated. I do not see how the Turkanas and the Pokots can defeat an army. Time has come for us to think along those lines.

Sen. (Eng.) Muriuki: Mr. Temporary Speaker, Sir, a lot has been said about this Bill. I have one or two points to make. One, this is a developing country and like all developing countries we have a lot of inadequacies. At the moment, one of them is insecurity which appears to be completely out of hand. The call for recruitment of more KPRs is timely. Of course, this varies from place to place. There are some places where it is more serious than others. However, overall, calling for the training and recruiting of more KPRs will effectively fill the gap of the police where the ratio of the police to the residents is very low.

Once they go through training, there will be proper accountability of their operations. That is not enough; it is also important for them to be facilitated. We do not want a team of reservists who are not facilitated to do their work.

The other point is that recently we had a recruitment of 10,000 police officers, but I believe now it is in abeyance because some people went to court. When you look at the recruitment process itself, it is such that you end up with a group of people without real commitment. In many places, the highest bidder is recruited occasioned by the process being so fraudulent. Eventually, the people recruited are the ones who could afford to pay what was required to be paid to whoever it was to be paid. These people are not committed to their duties because they were just looking for a job. They are not committed to be police officers.

The final and most important point is that whether they are reservists, whether we call them regular police or APs, they must be facilitated. Where I come from and this might be the case with all counties, when young men and women graduate from the police college, they expect to get facilities like housing. However, when they are posted, they are confronted by the rude shock. There are no staff quarters for them. They have no where to stay. Sometimes you find three or four officers being taken to a police post. There is only one room. Sometimes you get two men and a woman and they are told that if they are going to work, they have to stay there. The facilitation is very important for the police officers.

Mr. Temporary Speaker, Sir, when the Baragoi incident occurred, we were told of one policeman who survived the initial attack, but unfortunately, he later on died. After checking his mobile phone, he had been calling for reinforcement for more than 30 hours. That means that there was no organisation. Even the administrative set up and the command of the police did not know who to send where and did not have any plan B in any eventuality. If you have 40 plus police officers being killed by bandits and the police command could not get there within 30 hours; that is, a day and a half, it is pathetic. My point is that the police force must be facilitated if it is going to work.

I beg to support.

The Temporary Speaker (Sen. Murkomen): Sen. Murungi, I can see your intervention. Do you have something to say?

Sen. Murungi: Mr. Temporary Speaker, Sir, I was seeking your guidance whether we could move to the next Order which is the Potato Produce and Marketing Bill (Senate Bill No.22 of 2014) if there are no other contributors on this Bill?

Sen. Karaba: Mr. Temporary Speaker, Sir, I had contributed to this Bill, but for only three minutes because at that time there were very many Members who wanted to contribute and so we were limited to three minutes.

The Temporary Speaker (Sen. Murkomen): So, what are you trying to say?

Sen. Karaba: Mr. Temporary Speaker, Sir, I am saying that I can continue with my contribution.

The Temporary Speaker (Sen. Murkomen): What Standing Order allows a Member to speak twice to a Bill?

Sen. Karaba: Natural justice!

Sen. Murungi: Standing Order No.1.

The Temporary Speaker (Sen. Murkomen): Sen. Karaba, unless you show me the relevant Standing Order, I am totally unable to give you the opportunity to make that contribution. Is Sen. (Eng.) Muriuki ready to move his Bill?

Sen. (Eng.) Muriuki: Mr. Temporary Speaker, Sir, I am very ready to move my Bill.

Sen. Murungi: On a point of order, Mr. Temporary Speaker, Sir. Before we can move to the next Order, I think the Standing Orders require that we conclude on this particular one. I think it appropriate for me to request the Chair whether we could defer the putting of the Question on the Bill to another day given the situation in the House, under Standing Order No.54 (3).

The Temporary Speaker (Sen. Murkomen): Which Standing Order were you talking about Sen. Murungi?

Sen. Murungi: Mr. Temporary Speaker, Sir, it is Standing Order No.54(2), (3) which talks about the manner of debating Motions. If you allow me to read it:-

“At the conclusion of the debate, the Speaker shall put the question.

(3) Despite paragraph (2), the Speaker may on request of a Senator defer the putting of the question to the following day in which case the Speaker shall thereupon nominate a time at which the question shall be put.”

I am seeking deferment at the conclusion of debate on the previous Bill until tomorrow.

The Temporary Speaker (Sen. Murkomen): Thank you, Sen. Murungi. Unfortunately, the debate is not concluded. I can see a request from the Senate Majority Leader.

The Senate Majority Leader (Sen. (Prof) Kindiki): Thank you, Mr. Temporary Speaker Sir. I would like from the outset to thank the Senator for West Pokot County, Sen. (Prof) John Lonyangapuo for bringing this Bill. This Bill is timely in as far as it tries to handle or strengthen the security situation in our country which is a matter of big concern. It is only fair to say that Kenyans are concerned. Kenyans in urban centres, in agricultural areas, pastoral areas and in all walks of life are concerned that the security situation is not as good as it is supposed to be.

As I speak, I have just seen a news alert that some four people have been killed in Marsabit by bandits. As you are aware, what is happening in Mombasa for the past few days is not good. As we look at this problem of security and how our security can be strengthened, let us look at it holistically. While it is true that most of the challenges around security are in pastoral areas and areas that have been marginalized, this Bill should be in such a way that it also looks at the possible roles of reservists even in other parts of the country, including agricultural areas and also in the urban centres.

It is true that pastoral theft, insecurity and death in marginalized areas have been a big problem. In my own county of Tharaka-Nithi, especially Tharaka Constituency, there have been cases of bandit attacks and cattle thefts, which normally take place because the bandits seem to use the Meru National park as a conduit, a hiding place and a transit facility to assist them to get away, especially when they come late in the evening. Therefore, tracking them becomes difficult. That is why I would start by supporting what the speaker before me, Sen. Murungi, said- at least he spoke when I was here -I do not know if there has been another speaker in between, but I want to support what he said that insecurity is not necessarily a problem of the pastoral area, it is affecting all counties. It affects even those counties where pastoralism is not overly the way of life. Even where there is a mixture of pastoralists and agriculturalist, there is this problem. Therefore, there is need to include the training of KWS officers so that they can have techniques to combat cattle rustling and such like instances.

It is important to highlight that the Jubilee Government has tried to address this problem. I know the issue of insecurity was part of the Jubilee Manifesto. We are not yet there, but it is also good to acknowledge the positive steps that have been taken in the last one and half years on this issue of insecurity. As you are aware, we are on the second year, where the Government has recruited 10,000 thousand extra police officers. The first bunch was recruited last year. Unfortunately, this year the delay in recruitment has been caused by court battles. There were issues that were raised, but I think that we need a country where certain national activities can go on and those who are, perhaps, aggrieved can have other ways of getting compensated or expressing grievances.

These are 10,000 young people who wasted their time by running around and some even resigned from their jobs. Then, one morning a Judge seated in a court of law simply says that the recruitment is nullified countrywide. These are some of the things that we, as a country, need to relook. We are appealing to the Judiciary to have the national interest at heart. It is not about disputes and who is aggrieved. You cannot stop the police recruitment, construction of roads, laptop project, railway project and everything, simply because somebody is aggrieved. There must be a way in which national projects, especially in sensitive areas like security can proceed, while people who are aggrieved are given an opportunity to process their grievances and paid damages in the event that their rights have been violated or claims found to be valid.

Mr. Temporary Speaker, Sir, the idea of the Jubilee Government as provided for in our manifesto was to recruit, at least, 10,000 police officers every year for five years. That is almost like doubling the total number of the police officers that we have hired since Independence. It is good to appreciate that. Of course, some of the people being hired now are not experienced. I have heard very valid complaints that some of the police officers are being attacked because of lack of experience. But, at least, there is effort in the right direction to ensure that the human resource component is addressed.

Mr. Temporary Speaker, Sir, secondly, there is the issue of life insurance. For a long time our security officers have been killed and there was no compensation. Most of them are young people and they end up leaving behind young wives and children. For the first time, from July last year, every police officer is under life insurance. So, in the unlikely event of a life threatening injury or death in the course of duty, there is some comfort for families that are left behind. That will address the morale issue which other speakers have also brought out.

The issue of salaries and emoluments, of course, is being addressed. The commitment of the Jubilee Government is to provide, in the next three years, 20,000 housing units for our police officers. It is an open secret that our police officers are living in squalid and dilapidated conditions. Some of them are sharing houses and yet, they are grown-ups with families. That humiliation and embarrassment has affected their morale. You cannot expect such a person to perform their duties of guarding property and protecting lives efficiently.

Mr. Temporary Speaker, Sir, in terms of equipment, last year the Government bought 1,200 police vehicles. These are facts. I am not talking about fairy tales. If you go to any part of Kenya today, you will not miss to see a new police car, even in very remote places. We know that the vehicles are not enough, but at least, a deliberate effort has been made to ensure that the police force has facilities to discharge their duties.

Mr. Temporary Speaker Sir, this year, an additional 1,200 cars will be purchased. If this continues in the next five years, then we will have the issue of police vehicles and infrastructure taken care of. One of the problems that we have had in this sector of security before is where police officers would be called, they have a car in some places - in other places they would not have a car - and would say: - "Yes, we have heard you, but we do not have fuel". Each of the vehicles which have been bought under this programme, since the Jubilee Government took over comes with its own vote for fuel and maintenance. So, the issue of citizens being asked to fuel police vehicles is a thing of the past.

An area that requires greater attention now is the sophistication of the weapons that our police officers are using. That is an area where we need to up our game. We need to modernize the equipment and the weaponry that is available to our police officers, so that we can combat crime.

Mr. Temporary Speaker Sir, all these successes, compared to the grave security challenge our country is facing today, appear to be a drop in the ocean. I am afraid that today the citizens of this country are living in fear in our towns and cities, counties, villages, at the coast, North Eastern and Western. The time has come for the security crisis to be declared a national disaster. We must come up with a comprehensive homeland security programme that is able to help us. That is why a Bill like this one, to me, is a great idea because research has shown that human resources, facilities and weapons; what one would call "security hardware" plays less than 20 per cent of the efficiency of policing and combating crime. Of course, this 20 per cent is important; you need people, vehicles and fire arms. However, more important, 80 per cent of the success in combating crime and insecurity is in what we call soft policing skills; the software of policing. This software includes a sound water tight intelligence gathering, analysis and usage system.

Mr. Temporary Speaker, Sir, three things are important. There is the ability to gather intelligence on crime and ability to analyse that intelligence, so that you do not make wrong conclusions simply because suspicions have been reported somewhere. Thirdly, after gathering good intelligence, analyzing it and arriving at scientific conclusions, how you utilise that intelligence becomes very important. This Bill talks about those who will be recruited and given training and appropriate firearms. The curriculum should move away from the colonial type of mentality of a police force that uses brute force, command and control and subjugation, to the police science of looking at crime as a phenomenon of the human person. A police officer must be a top psychologist and counselor to crime victims. A police officer should be a modern, well educated and trained person that is able to combine the use of force and weaponry with the soft skills that we are talking about, including psychology and other aspects of policing.

Mr. Temporary Speaker, Sir, it is because of this movement and the change in paradigm that the new Constitution of Kenya had to change the name of our police unit. Remember under the old constitution, it used to be called the Kenya Police Force (KPF). That was a colonial terminology. It was a police that had to use brute force to subjugate criminals, overpower them, overrun them and ravage them. That is why most people who became police officers did not require much education. Right now, the police service is recruiting graduates. As you know I used to be a professor in my earlier life before I

mutated to what I am today. I know a few students who are now graduates in law who are chief inspectors of police. They were recruited directly into the police service.

We need to rethink this so that the police service does not become a dumping ground of people who have not made it in life. The same applies to what is proposed in this Bill. A police reservist should not be any person who is available and willing to take up a gun. I want to thank Sen. (Prof.) Lonyangapuo for that foresight, the people who end up being reservists must be vetted. The vetting must not take place in Nairobi or be done by the Inspector-General of Police and so on. The communities should be empowered to identify the kind of people to protect them and they can trust them with death-causing weapons.

Mr. Temporary Speaker, Sir, I believe that there will be need in every country and, if possible, in every sub-county to have a vetting committee that is overly composed of local people and key stakeholders in the locality so that we remove the Nairobi mentality from this process. Other than that, we are hoping that we would have these reservists in other counties in our country. There is also the urban angle; the role of reservists in the urban settings. In the 1980s, there were certain reservists who were more feared than the Officer Commanding Police Division (OCPD) of Central Police Station or the Provincial Police Officer (PPO) of Nairobi.

Mr. Temporary Speaker, Sir, in the rural areas, the kind of people we are likely to get as reservists are people who would depend on allowances. However, both out there in the counties and in urban areas, we need volunteers. These are people who are doing other things like teaching or business people, but who can actually be trusted to help and support the work of the Kenya Police Service. We used to have Mr. Patrick Shaw, who single handedly ran out all the dreaded criminals out of Nairobi. He was a big guy who was a teacher in Starehe Boys. He was tall and big and when criminals heard that Shaw was in the neighbourhood, they would take cover.

I am told he was so dreaded that some of them committed suicide when they would hear he was in the neighbourhood.

I hear the former Minister for Internal Security, G.G. Kariuki, confirming. I am sure he is aware of what Patrick Shaw did in Nairobi. Those are the kind of things we want because security, first of all, is a consciousness. That is why training of police officers and reservists---

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

The Temporary Speaker (Sen. Murkomen): Are you willing to be informed, Senate Majority Leader?

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Temporary Speaker, Sir, if the information is coming from Sen. Murungi, I have no objection because I know he is a very resourceful informant.

Sen. Murungi: Mr. Temporary Speaker, Sir, it is true the late Patrick Shaw was a very huge man, but he was very fast. When we were students at the University of Nairobi, we also dreaded him. It was not only criminals who dreaded him. Whenever we rioted along Uhuru Highway and saw Patrick Shaw just driving his car, we would all run back to the University.

The most important point to note is that the late Patrick Shaw was not a policeman in uniform. He was a police reservist. That is why we are saying even the City itself will require KPRs like him, who can drive criminals out of this town.

Thank you.

The Senate Majority Leader (Sen. (Prof.) Kindiki): Thank you, Sen. Murungi for that information.

What I have just been informed by Sen. Murungi confirms my hypothesis which is that the ability to give your life to protect other people as they sleep or enjoy their business, first of all, is a calling. I support what he said before. It is not about how much money you are paid or appreciated, but it is driven by a call to serve other people. That is why we are saying in Nairobi we will buy cars and employ more officers---

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

The Temporary Speaker (Sen. Murkomen): would you want to be informed?

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Temporary Speaker, Sir, Sen. Ndiema is also a very useful informant. I accept to be informed.

Sen. Ndiema: Mr. Temporary Speaker, Sir, I want to inform the Senator that even in the unfortunate situation of the West Gate Mall, there were quite some impressive citizens who were civilians; KPRs. They were armed and they risked their lives to save others. One of them is the son of Sen. Yusuf Haji. He did quite a commendable job.

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Temporary Speaker, Sir, I thank Sen. Ndiema for that reminder. Some of the most heroic performances in security operations, not just in Kenya, but anywhere in the world, are done by non-core officers. For a person to volunteer to protect other people, there is something over and above a job and the pay that they receive.

I will say a couple of things because I know time is not on my side. One, that going forward, we want the Inspector-General of police to stop sending young, inexperienced boys and girls to hardship areas. That is why our boys and girls are being slaughtered. The most experienced and well trained persons are the ones who should command and operate in places where bandits have taken control for very many years. The young Turks can stay around town for about five years because the challenge is less. After that we post them to far flung areas.

The second point is that we must review the packages for officers who work in these areas, especially pastoralist areas. The Bill proposes that the NPS will determine what pay and allowances. This should not be a uniform allowance for KPR people. I hope they will not sit and say that every KPR person will be paid Kshs10,000 allowance. If you are a KPR in Nyeri or Kiambu, you cannot be equated to a KPR in those places. So, I want to see the KPR in every part of the country with differentiated compensation so that we attract the right people in those places.

Other than that, I want to urge that for the training part of it, the KPR as well as the Kenya Police be given comprehensive training which is integrated, but includes auxiliary roles like disaster management. You should not post somebody as a reservist or a police officer just to look out for cattle thieves. You should send somebody who can deal with civilian evacuation so that when there are floods or famine, they can do humanitarian work. This is the kind of training we want to see.

The future of this country with regard to security and stability lies in modernising our police, integrating civilian initiative with the regular initiatives of policing; it lies in a comprehensive curriculum and in getting our best brains and attracting them in the police force and sending them with a good package in the most difficult and challenging areas.

Finally, Mr. Temporary Speaker, Sir, I want to take this opportunity as I end my remarks to thank our men and women in uniform who have dedicated their lives selflessly to defend other people and their neighbours and fellow countrymen and countrywomen. I pay homage to the officers who were recently slain in the line of duty. I want to say that the blood that was shed through the attack by bandits; the 24 young people's blood did not go in vain. It will help this country to come to terms with the reality that a secure country cannot just emerge. It must be crafted and worked on. It must be created. This is something that the Jubilee Government is committed to do. The challenges are many. However, I am hopeful that in a few years' time, Kenya will be much safer than it is today.

Mr. Temporary Speaker, Sir, with those many remarks, I beg to support.

The Temporary Speaker (Sen. Murkomen): Order, hon. Senators! There was an earlier request by Sen. Murungi. However, there was a decision made by the Speaker that we have designated time and day for voting for all the Bills. Therefore, the Question for this Bill will be put next week on Wednesday as it had been ruled by the Speaker before.

ADJOURNMENT

The Temporary Speaker (Sen. Murkomen): Order, hon. Senators! It is now time to adjourn the Senate. Therefore, the Senate stands adjourned until Tuesday, 25th November, 2014 at 2.30 p.m.

The Senate rose at 6.30 p.m.