

# PARLIAMENT OF KENYA

## THE SENATE

## THE HANSARD

Tuesday, 3<sup>rd</sup> March, 2015

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

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

### PRAYERS

**The Speaker** (Hon. Ethuro): Order, Order, Sen. Kisasa. Do you have a petition?

**Sen. Kisasa:** Yes, Mr. Speaker, Sir.

**The Speaker** (Hon. Ethuro): My apologies. Sen. Mbura, proceed.

### PETITION

PETITION ON CONSTITUTIONALLY PROTECTED RIGHTS AND FUNDAMENTAL  
FREEDOMS OF FISHERMEN AND RESIDENTS OF BUDALANGI  
AND FUNYULA CONSTITUENCIES

**Sen. Mbura:** Thank you, Mr. Speaker, Sir, for this opportunity. I thank you for this chance this afternoon. I bring the voice of the people of Busia through this Public Petition to the Senate under the Constitution of Kenya Articles 1, 2, 3, 4, 10, 12, 19, 20, 21, 22, 24, 25, 26, 27, 28, 29, 37, 39, 40, 42, 43, 46, 47, 70, 238 and 119 as read with Articles 93, 94 and 96 to the Standing Orders Part 24 of Public Petition.

This is a petition for the protection of the socio-economic, environmental, human dignity and other constitutionally protected rights and fundamental freedoms of fishermen and residents of Budalangi and Funyula constituencies, off the shores of Lake Victoria, in Bunyala and Samia sub-counties of Busia County. These are the undersigned citizens of the Republic of Kenya who fish in Lake Victoria in Busia County and who are also taxpayers.

These people want to draw the attention of the Senate of the Republic of Kenya to the following:-

(i) THAT, fishing in the waters of Lake Victoria which is the main economic activity of the communities living on the shores of Lake Victoria, in Bunyala Sub-County, Budalangi Constituency and in Samia Sub-County, Funyula Constituency of Busia County, is facing eminent collapse.

(ii) THAT, due to gross neglect of the local fishing industry in Busia County by successive Governments of Kenya since Independence, the lives and the livelihoods of

the fishermen and of the local communities which they support have been gravely and negatively affected.

(iii) THAT, fishermen continue to encounter major challenges and obstacles which hinder their prosperity including:-

(a) Harassment or brutalization by Ugandan authorities. Ugandan authorities regularly harass and brutalise Kenyan fishermen, confiscating caught fish and even fish boats and other fishing gear both within and without Kenya's territorial waters.

(b) The main conflict is around the fact that fish such as the Nile Perch breeds in the shallow Kenyan waters and then relocates to grow and mature in the deeper Uganda waters. Naturally, Kenyan fishermen follow the fish to Ugandan waters where they encounter all manner of abuses at the hands of Ugandan authorities.

(c) General insecurity and piracy in the lake: Many fishermen have fallen prey to criminals who operate unchallenged on the lake. The criminals beat up innocent fishermen and steal their caught fish and fishing gear, including boats and nets. A number of fishermen have even lost their lives to the criminals.

(d) Exposure to illness and lack of health facilities for the fishermen: Both fishermen and other people living on the shores of Lake Victoria get exposed to mainly air, water and vector-borne diseases, including bilharzia, malaria and tuberculosis. The dreaded HIV/AIDS pandemic is also rampant in the area due to what is called "fish for sex" business. Even Ebola is a likely risk due to the frequent interaction between Kenyan and Ugandan fisher folk. The fishermen lack local health facilities, where they can access services.

(e) Lack of modern landing sites: In spite of the fact that there are many landing sites on Lake Victoria, in Samia and Bunyala Sub-counties, they are not demarcated, earmarked or developed. Also, the sites lack the necessary facilities such as fish, good roads, electricity, piped water and good sanitation, which are the required minimum of modern landing sites.

(f) Lack of fish processing and preservation plants: There is an urgent need to establish fish processing and cooling plants to prevent the massive losses suffered by fishermen when fish goes bad due to poor storage facilities.

(g) Lack of search and rescue facilities: The lack of modern search and rescue equipment and skilled manpower in times of emergency has resulted in many people losing their lives in circumstances where they could easily have been saved.

4. Many local attempts to resolve some of the grievances above and seek appropriate relief have all failed. They include:-

(a) setting up community vigilante groups armed with crude weapons to patrol the lake;

(b) pleas by community elders to the Ugandan authorities to stop harassing Kenyan fishermen;

(c) pleas to civil society groups;

(d) intervention by local politicians seeking an amicable solution from their Ugandan counterparts;

(e) pleas to Kenyan authorities.

5. The time has come for the Government of Kenya to intervene and save the fishermen and other members of the communities in Bunyala and Samia Sub-counties from imminent calamity.

6. None of the issues raised in the petition is pending in any court of law; constitutional or any other body.

Your humble petitioners pray that the Senate inquires into the matters raised in this Petition and:-

(a) urges the national Government to reach out to the Government of Uganda with a view to setting a policy and system for the proper utilization of the common lake resources for the mutual benefit of the citizens of the two countries;

(b) urges the national Government, in coordination with the Government of Uganda, to consider setting up formal taxation points on any of the islands along the Kenya/Uganda border on the lake, where fish caught by Kenyan fishermen in Ugandan waters can be formally taxed by Ugandan authorities;

(c) urges the national Government to immediately beef up security on the lake through the provision of adequate mobile police units, to patrol the lake round the clock, using modern speedboats and other equipment for policing such waters;

(d) urges the Busia County Government to urgently set up adequate health facilities, including floating dispensaries, hospitals and ambulances along the shores of Lake Victoria in Bunyala and Samia Sub-counties of Busia County, to address the health challenges faced by the fishermen and other members of the local communities;

(e) requests the national Government and Busia County Government to allocate funds towards setting up of modern fish processing and/or cooling plants in Bunyala and Samia Sub-counties of Busia County;

(f) requests the national Government and the Busia County Government to allocate funds towards construction of well equipped landing sites along Lake Victoria in Bunyala and Samia Sub-Counties of Busia County which meet the stringent standards of the European Union, to facilitate the direct export of fish from Busia to the Euro Zone;

(g) urges the national Government and Busia County Government to collaborate to set up proper and adequate modern disaster, emergency and search and rescue facilities and equipment along Lake Victoria in Bunyala and Samia Sub-counties of Busia County;

(h) takes any other measure, as the honourable Senate would deem fit, just and expedient in the circumstances to protect the territorial integrity and sovereignty of the Republic of Kenya, to uphold the rule of law and protect the rights and fundamental freedoms of the residents of Bunyala and Samia Sub-Counties and other Kenyans under the Constitution of the Republic of Kenya.

The petitioners who have annexed hereto lists marked as A, B, C and D containing their names, national identity card numbers, mobile phone numbers and signatures.

We ever pray; your humble petitioners.

Mr. Speaker, Sir, this petition is signed by me.

Thank you.

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

**The Speaker** (Hon. Ethuro): I assume that no Senator is interested in making comments. It shall, therefore, stand committed to the relevant Standing Committee, which in this case, should be the Committee on National Security and Foreign Relations.

**Sen. Haji:** Mr. Speaker, Sir, the Committee should be given 60 days since we have so much work to do.

**The Speaker** (Hon. Ethuro): Okay. Bring back the report within 60 days.  
Next Order!

### PAPERS LAID

#### THE NSA OPERATION OF PSVs REGULATIONS, 2014

**Sen. Sang:** Mr. Speaker, Sir, I beg to lay the following Paper on the Table of the Senate, today, Tuesday 3<sup>rd</sup> March, 2015:-

The National Safety Authority Operation of Public Service Vehicles (Amendment) (No.2) Regulations, 2014.

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

#### REPORT OF THE JOINT COMMITTEE OF THE NATIONAL ASSEMBLY AND THE SENATE ON VETTING OF NOMINEE TO THE POSITION OF INSPECTOR GENERAL OF THE NATIONAL POLICE SERVICE

**Sen. Haji:** Mr. Speaker, Sir, I beg to lay the following Paper on the Table of the Senate today, Tuesday 3<sup>rd</sup> March, 2015:-

Report of the Joint Committee of the Departmental Committee on Administration and National Security of the National Assembly and the Standing Committee on National Security and Foreign Relations of the Senate on the vetting of Mr. Joseph Kipchirchir Boinett, nominee for appointment to the position of Inspector General of the National Police Service.

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

### NOTICES OF MOTIONS

#### REVIEW OF THE CATEGORIZATION OF PUBLIC SECONDARY SCHOOLS

**Sen. (Dr.) Zani:** Mr. Speaker, Sir, I beg to give notice of the following Motion:-

THAT, aware that the prime purpose of devolution in Kenya is to decentralize and transfer functions, resources and power to the county level of government in order to promote participatory democracy and sustainable development for the benefit of all Kenyans; concerned that the Ministry of Education, Science and Technology still upholds the historical classification of schools into national, county and district schools; concerned that such categorization has implications in terms of funding, administration and eventually academic performance and that it limits choices and admissions of students to Form One; appreciating that in the current devolved system of government, counties will play a key role in the educational outcomes of their schools; the Senate calls upon the Ministry of Education, Science and Technology to take immediate action

to review the categorization of public secondary schools and to classify all of them as county schools in order to ensure equity in resource allocation and guarantee quality education for all.

REVIEW OF EXISTING LEGISLATION ON HEALTH CARE  
TO MAINSTREAM AND ENHANCE CARE FOR  
PATIENTS WITH DEMENTIA

**Sen. (Dr.) Machage:** Mr. Speaker, Sir, I beg to give notice of the following Motion:-

THAT, aware that currently there are approximately 44 million persons living with dementia worldwide, a figure that is expected to triple by 2050; acknowledging that caring for dementia patients can be a difficult experience; appreciating the contribution of family members and other care givers of people suffering from dementia across Kenya; noting with concern that mental healthcare does not seem to be a priority in the public health sector in Kenya since the allocation for mental healthcare is less than 1 per cent of the total public health budget; acknowledging the importance of raising awareness on dementia and ensuring that people with dementia are treated with dignity and respect; appreciating the contribution of Non-Governmental Organizations (NGOs) such as the Africa Mental Health Foundation and the International Institute for Legislative Affairs, who provide a platform for sharing of views and experiences on care of people with dementia; noting the need to enhance awareness on and provide better care for patients of dementia; the Senate directs the Standing Committee on Health to immediately initiate review of the existing legislation on health care in order to mainstream and enhance care for patients of dementia and further that the Committee submits a report to the House on the matter within ninety days.

ADOPTION OF JOINT COMMITTEE REPORT ON  
VETTING OF NOMINEE FOR THE POSITION OF  
INSPECTOR-GENERAL OF POLICE

**Sen. Haji:** Mr. Speaker, Sir, I beg to give notice of the following Motion:-

THAT, this House adopts the Report of the Joint Committee of the Departmental Committee on Administration and National Security of the National Assembly and the Standing Committee on National Security and Foreign Relations of the Senate on the vetting of Mr. Joseph Kipchirchir Boinett - Nominee for appointment to the position of Inspector-General of the National Police Service (NPS), laid on the Table of the House, today, Tuesday, 3<sup>rd</sup> March, 2015.

## STATEMENTS

DESTRUCTION OF ECO-LODGE IN  
KAINUK TOWN, TURKANA COUNTY

**Sen. Haji:** Mr. Speaker, Sir, On 17<sup>th</sup> February, 2014, Sen. Munyes requested for a Statement regarding the destruction of Turkana South ecology in Kainuk Town, Turkana County. The hon. Senator sought to be informed on:-

- (i) the extent of the destruction of the property;
- (ii) the motive of the destruction on the perpetrators;
- (iii) the number of the National Police Reservists(NPR) and the civilians killed to date and explain the cause of these killings;
- (iv) the step being taken by the national Government to compensate the affected families for loss of their loved ones and property; and,
- (v) the steps that the Government will undertake to avert more killings and sabotage of this project and other projects like schools and roads in the County of Turkana.

I wish to state as follows:-

In January 2015, suspected Pokot raiders attacked a construction site for Eco-Lodge Resort Centre which is being put up by the county government of Turkana within Kainuk area. The raiders destroyed one plastic water tank of 10,000 litres and demolished a temporary iron sheet store before stealing a number of iron sheets. It is suspected that the motive of the attackers was to stall the construction of the resort centre since they claim that it is being constructed in their grazing fields and that they were not consulted. However, the police have since commenced investigation into the incident. A number of the National Police Service Reservists and civilians have been killed by raiders in the last one year as indicated below:-

- (i) reservist Damien Iwoi Kadamong and Samwel rongor and one civilian Paul Ikidor were shot dead on 4<sup>th</sup> April, 2014 at Kaptir grazing field.
- (ii) reservist Langamundamoi Namutwoli, was shot dead on 18<sup>th</sup>, July at Kakong grazing field;
- (iii)reservist Joseph Inqlan Ekal, was shot dead on 11<sup>th</sup>, September, 2014 at Amolel grazing field;
- (iv) on 27<sup>th</sup>, November, 2014, Reservist John longori was found dead in the bush with gunshot wounds in the head;
- (iv) reservist Ebrahim Lopotet was shot dead on 28<sup>th</sup> January, 2015 and one civilian Samuel Ewotong injured; and,
- (v) reservist Philip Ekalale Tia was shot dead on 6<sup>th</sup> February, 2015 at Lorogon Manyata.

The Government cannot compensate the families of the deceased persons because they were not employees of the Government and as such, they are not covered by the existing Government compensation schemes for deceased persons.

Mr. Speaker, Sir, security patrols have been intensified in the affected areas and on request, any contractor will be provided with security at the site. Further, the local leaders have been informed to seek for consent whenever their respective communities wish to be allowed to graze their livestock in areas outside their counties.

Lastly, more often than not, the locals and the relatives of deceased persons do not inform the police of the murder of their kinsmen and do not as well allow for postmortem of the bodies before interment. Failure to have postmortem conducted on the bodies hinders the conclusion of investigation and as such inquest cannot be conducted by the court. It is therefore imperative for the leaders to advise members of their county on the importance of conducting postmortems on bodies. This was signed by Maj-General Joseph Nkaissery.

Thank you, Mr. Speaker, Sir.

**Sen. Munyes:** Mr. Speaker, Sir, this is a situation where one county decides to sabotage another county government, in ensuring it does not develop. They sabotage construction work and they stop them from bringing education to their people, fixing roads and killing reservists. We have lost over 30 reservists in Turkana; as I speak, yesterday, we lost two. The head of the reservist in Kainuk was killed and in a place called Kakong, we lost another young reservist.

For some of these places, I know it is a land issue; for example, a place like Lokori which is over 60 kilometres away from the border is still being affected by these cattle rustlers. So, what action is the Government going to take to ensure that the Turkana County Government is supported in ensuring that they develop and implement their budgets, which are being affected by West Pokot? We cannot fix our roads, we cannot do construction of schools and we cannot do farming. I remember last month when they harvested all the crops along River Turkwel and brought their donkeys to carry the produce from the Turkana Side. What action is the Government going to take to stop this intended sabotage against the Turkana?

**Sen. (Dr.) Khalwale:** Mr. Speaker, Sir, the deceased did not lose their lives as a result of a malaria or a tuberculosis attack; neither did they commit suicide. They lost their lives because the Government failed to offer security. Can the Chairperson justify his assertion that the Government is not going to offer compensation when the Government failed?

**Sen. Karaba:** Thank you very much, Mr. Speaker, Sir. Recently, some people were killed in cold blood along the borders between Kenya/ Somalia and Kenya/Ethiopia and very little is said about them. I am aware that one of the persons who was killed in Mandera is from Kirinyaga and is going to be buried tomorrow. Nothing is happening and there is no communication from the Government. Is the Government going to take responsibility to see to it that any time such an incident happens and somebody is killed, they pay for the damages caused to the victims and even to the family?

**Sen. Hargura:** Thank you, Mr. Speaker, Sir. From the list of the deceased persons, this is a security issue because all of them are either civilians or police reservists. This shows that the Government security presence in the area is very minimal. I would like the Chairperson to clarify what the Government is doing about the cause of the conflict, because we know that it is mainly a border issue. We are just addressing the results, but what is the Government doing about the cause of these county border disputes which are causing all these deaths?

**Sen. Leshore:** Thank you, Mr. Speaker, Sir. For the last 50 years, these two communities have been involved in cattle rustling, with militia fighting against militia over the boundary. What is the Government going to do about the boundary in Kainuk,

because it is not just an issue of cattle rustling; it is a border issue and the faster they resolve that issue, the better for the two communities living together.

Thank you, Mr. Speaker, Sir.

**Sen. Hassan:** Mr. Speaker, Sir, mine is a follow up question. People were armed by the Government and subjected to harms' way by the Government. Therefore, why would the Government not compensate people who they have subjected to the line of fire? I think that by giving somebody a gun, it can be implied that there is some kind of contractual obligation and, therefore, is the Government then, in that circumstance, prepared to meet its scope of compensation particularly to reservists?

Secondly, Mr. Speaker, Sir, when will the Government desist from using this particular line "investigations have been commenced" whenever they have no answers to specific questions?

**The Senate Minority Leader** (Sen. Wetangula): Mr. Speaker, Sir, could the Chairperson of my Committee tell us, as a follow up to what the distinguished Senator for Samburu has said; that this volatile area has been engulfed in these serious security challenges between the Pokot and the Turkana communities since pre-Independence? The Government knows – not just this Government, but successive Governments; therefore, what measures will the Government take to ensure that there is adequate and proper policing between the two communities so that it is not left to helpless police reservists who, as you can hear from the answer, when they are killed, the Government just disowns them even when they were killed because they were bearing Government arms? What measures are being taken to bring permanent and lasting peace between the two communities of Pokot and Turkana and, indeed, all other areas which have security challenges, including your own area?

**Sen. (Dr.) Kuti:** Thank you, Mr. Speaker, Sir. First, I would like to concur with the sentiments that the Pokot and the Turkana counties have been having a very long standing conflict--

**The Speaker** (Hon. Ethuro): Sen. (Dr.) Kuti, it is time for clarifications, not for concurrence!

**Sen. (Dr.) Kuti:** Yes, Mr. Speaker, Sir; but I wanted to put my clarification from that understanding. I realize that there were challenges in Mt. Elgon and the Government took a very decisive action; they sent in the Kenya Defence Forces and Mt. Elgon is quiet since then. There was a similar challenge in Mandera and the Government sent in the armed forces; Mandera is now quiet – although it keeps coming back in various different ways. Why is it that we listen to the cries of the Pokot and the Turkana people and it looks as if now it is so normal when deaths happen in these two counties?

**The Speaker** (Hon. Ethuro): Finally, Sen. Mutahi Kagwe.

**Sen. Kagwe:** Thank you very much, Mr. Speaker, Sir. I also wish to seek a clarification regarding the training of the reservists who are used in these places. It is one thing to present a volunteer or a young person with a gun and quite another to actually train them so that they can use these guns. Is there some determination of how many reservists are on either side or is there a possibility that one side has got more reservists than the other side? We can only get to a position where one side does not attack the other when either side knows that the other side is equally strong.

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

**Sen. Haji:** Thank you very much, Mr. Speaker, Sir. I will start with the question raised by Sen. Munyes as to what the Government is doing. When I was reading the Statement, I said that the Government has intensified patrols in the affected areas and we have to wait and see how effective those intensified patrols are going to be in curtailing the killing of people in Turkana and other parts of the country.

Mr. Speaker, Sir, Sen. (Dr.) Khalwale, Sen. Karaba and Sen. Hassan all asked similar questions relating to compensation. I think when I was reading the Statement, I said that these people were not working for the Government and, therefore, there is no compensation which is due to them according to the laws of this country. They are the people who volunteer to do service for the community in which they live and also do a service to the country. It will be recalled that only a week ago, we passed a Bill here which says that reservists should be paid.

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

**The Senate Minority Leader** (Sen. Wetangula): On a point of order, Mr. Speaker, Sir. Is it in order for the Chairperson to confuse issues? We are not saying that reservists are Government employees; but reservists are quasi-government employees. That is why the Government gives them guns to do their work. The moment they are given guns, they automatically put them in the line of attraction and a line of fire. So, the Government must come clean and be responsible for their safety and compensation for their families, where they lose their lives. Is he in order to equate the situation with the Bill which we have just passed that was brought by Sen. (Prof.) Lonyangapuo which required them now to be enlisted as Government employees? The two are not related.

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

**Sen. Murkomen:** On a point of order, Mr. Speaker, Sir. Is it in order for a Member of a Committee to question the Chairperson instead of assisting him in answering questions?

*(Laughter)*

**The Speaker** (Hon. Ethuro): Order, Order! It is perfectly in order for a Member of the Committee to interrogate his Chairperson. But, it is also perfectly in order for a Member of the Committee to assist his Chairperson at the Committee meetings; once they are done, this is a different ball game from the one at the Committee meetings.

Proceed, Chairman.

**Sen. Haji:** Mr. Speaker, Sir, as I said earlier, no reservist is forced to be a reservist; it is a voluntary service. It is the person who is armed who volunteers to do the service for the community in which he lives in. Therefore, my colleague should not try to confuse me by wanting me to change my position because I cannot change it. It is a fact that home guards and reservists are people who volunteer and they do this without any payment. By extension, they are not employees of the Government and, therefore, there is no provision for them to be compensated.

Mr. Speaker, Sir, the question raised by Sen. Hargura as well as Sen. Leshore on the border dispute; the question of border disputes is raging all over the country. I know that there are disputes in many counties and they have become even more prevalent. Now that we have counties, border disputes which have not been there before are now cropping up. It is really incumbent upon the Government to make sure that something is

done about this. I went round about two weeks ago to various parts of this country and the problem being raised in the House is also being raised by members of the community.

My Committee will be meeting tomorrow with the entire security officials, including the Cabinet Secretary (CS) and some of the issues that we want to raise are about cattle rustling, border disputes and the number of reservists who are armed in various places and areas where reservists are not armed. So, I do not wish to pre-empt the questions that we are going to put to them. I hope that Sen. Wetangula will be there to help in formulating the questions that we are going to ask.

Mr. Speaker, Sir, another issue that was raised was about the compensation for people who are killed. In Kenya, people are being killed every day; even the other day, a man killed his wife and his daughter; is he going to be compensated? Let us ask the Government reasonable questions. There is no question of compensating every deceased person; it is not possible. I think I have answered the questions---

*(Loud consultations)*

**The Speaker** (Hon. Ethuro): Order, Members! This Statement is taking too long. What is it, Sen. Leshore?

**Sen. Leshore:** Mr. Speaker, Sir, is the Chairman in order to mislead us by telling us that they have intensified patrols while we know that in West Pokot, Turkana, North Baringo and Samburu North, there are no patrols being undertaken by policemen or the Administration Police (Aps), unless the Kenya Defence Forces (KDF) uses choppers? Even yesterday, there were killings. So, is he in order to mislead us that they have intensified patrols when they have not even sent a chopper to that area?

**Sen. Haji:** Mr. Speaker, Sir, the use of choppers alone is not the mode of patrolling. Patrolling can be done on foot and by vehicles, and I assume that these police officers are doing patrols on foot.

*(Laughter)*

**The Speaker** (Hon. Ethuro): What is it, Sen. Munyes? This is the last intervention!

**Sen. Munyes:** Mr. Speaker, Sir, since the killings in Baragoi and Kapedo, the National Police Service went on leave. They decided it was dangerous to engage these criminals but these forces are the ones with the protective gear. I have always challenged them; why not give the reservists this protective gear, even women. So, that is what is lacking. The policemen have bullet proof jackets and this reservist does not have one, yet he is the one engaging criminals. What action is the Government going to take to improve the supply of equipment that will protect these reservists?

Secondly, Mr. Speaker, Sir, we have lost thirty guns in the last two months to this militia who come from West Pokot and parts of Uganda. What actions are you going to take, as the Government, to ensure that we have actually captured these criminals and returned the guns - that are meant to protect the Turkana side and which are now being used for restocking the criminals and supporting one side against the other side which is lacking the guns which were used to protect them?

Thank you, Mr. Speaker, Sir.

**Sen. Haji:** Mr. Speaker, Sir, the question of protective gear, like bullet proof vests, is a totally new question which I cannot answer. But if the hon. Member wishes to put the question in future, I will respond to it. But, I also agree with the hon. Member that there are a lot of arms which are in the wrong hands of people who have murdered reservists and police officers. Therefore, these are some of the things I hope my Committee will engage in with the officials when we meet them tomorrow.

**The Speaker** (Hon. Ethuro): Chairperson of the Committee on National Security and Foreign Relations, looking at the interest of this matter and the fact that you are also having difficulties answering the questions, I direct that you dig deeper into this matter so that you can bring a more comprehensive report to the House.

**Sen. Haji:** Mr. Speaker, Sir, you will recall that a Select Committee was appointed to investigate this issue. Among the things that we are investigating and on which we are going to make a comprehensive report is about what is happening in Turkana, Pokot, Baringo, Laikipia, Samburu, Isiolo and many other places where people have come to give us their evidence.

We are meeting the Kenya National Security Committee tomorrow to further interrogate them. When we submit that report, it will be very elaborate and will address all the issues of concern that have been raised.

ONGOING PROPERTY DEVELOPMENT ON LAND REF:  
NO. NRB/BLOCK50/599 – AT THE JUNCTION  
OF LORESHO ROAD AND KAPTAGAT ROAD

**Sen. Kivuti:** Mr. Speaker, Sir, I stand to issue a Statement that was requested by the Senator for Murang'a, Sen. Kembi-Gitura on the ongoing property development on land Ref : No. NRB/Block 50/599 situated at the junction of Loresho Ridge Road and Kaptagat Road

Mr. Speaker, Sir, this piece of land, originally LR. No. 599, was allotted by the Government after re-planning into three plots, all the three plots were allotted to Mitema Holdings Limited, Mayword Limited and Nova Construction Company Limited, all the three companies of P.O. Box 1771 Kisumu. This was way back in February 1996. The three companies sold the letters of allotment by way of informal transfer to the present owner who is Shital Bandali at a cost of Kshs3 million per plot.

To be more specific, the Statement sought to know why the development has been allowed on this piece of land which houses Nairobi City Council offices and which was reserved for a water reservoir by the defunct City Council of Nairobi in the 1970s when Loresho Estate was being developed. From the available records, no building plans have been approved by either the Ministry or the Nairobi County Government to warrant the purported development.

As to when, if it all, the said piece of land ceased being a public utility land, and the State to state when the change of land use from the original purpose to private ownership was effected, the re-planning was done through a PDP No.42/19/95/8 which was used to re-plan the original piece of land which was allotted to three companies that I have mentioned.

Mr. Speaker, Sir, the name of the developer is Shital Bandali who bought the three pieces of land as aforesaid and went on to amalgamate the three plots into one piece

of land which is the registered Plot No.NRB/BLK90/599. It is the feeling of the Ministry that this matter may be interrogated by the National Land Commission to review if the allocation of the said parcels of land was okay and if they are found to have been reserved for a water reservoir as the Member has sought, then the title may be revoked.

**Sen. Kembi-Gitura:** Mr. Speaker, Sir, I wish to thank the Chairman of the Committee for the answer. You note from the outset that the answer from the Minister ends by saying that the Ministry through the National Land Commission is going to review the allocation of the said parcels of land and if found that they had been reserved for water reservoirs which is a public utility, titles will be revoked. This is an extremely important issue because as you know, we are now dealing with issues of land “grabbed” in the 1990s.

As Mr. Speaker knows very well, or like every hon. Senator knows, if you wanted to develop an estate in the 1970s, it was a condition that you would surrender a portion of that land for public utility. Loresho was planned in the 1970s and that was the sane condition.

The question that needs to be answered if we are going to do away with land grabbing is; if the developer surrendered his land for public utility and if at any point the public need ceased, then logically that land should revert to the developer and not a third party. Mitema Holdings of P.O. Box 1771 Kisumu, Maywood of P.O. Box 1771 Kisumu and Novac Construction of P.O. Box 1771 Kisumu is the same person who got granted public land and a letter of allotment and then sold it for Kshs3 million each. He made a total of Kshs9 million. In the meantime, public land has been given away.

First and foremost, I live in Loresho and he has said that from available records, no building plans have been approved by this office to warrant the purported development. On what account is the developer then fencing and continuing to develop that plot if there are no approved plans? What is the work of the Nairobi City County Government and NEMA?

Then his reply states that the piece of land was sold to Shital Bandali. What right does Shital Bandali have of taking a public utility plot which is meant for a water reservoir for Loresho and Nairobi in general for his personal development? This is a classic example of impunity of the 1980s and the 1990s spilling down to this new era. We must protect this. What is the Cabinet Secretary going to do to repossess this piece of land and revert it to its public use which it was meant for?

Mr. Speaker, Sir, you must have noted that at the triangle near Westgate as you go towards Peponi Road, some people had fenced what is supposed to be a wetland and I was very proud to see the Cabinet Secretary and the Commission for Lands bringing down the wall, cancelling the title and declaring it a public land. Are they going to repossess this title, demolish those walls and declare that the same is reserved for the Nairobi City County Government for the benefit of its people, and particularly, those people who live in that estate who have bought their properties for valuable consideration?

The Chairman should also tell us when there is going to be a stop order on all development until the Cabinet Secretary is satisfied that what is happening is legal or illegal and then revert this title to its owners.

**Sen. Kivuti:** Mr. Speaker, Sir, I concur with Sen. Kembi-Gitura that the issue of impunity over land is not new to all of us. With your permission, I have had a few

questions from a few other Members and I would like to request that you give our Committee one week so that we summon the Cabinet Secretary and the National Land Commission so that we can get to the bottom of this matter particularly as regards the stoppage of the work which is going on because I do not think I have the powers to issue such orders.

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

**Sen. Mbuvi:** Thank you, Mr. Speaker, Sir. The land in question is within my county. I visited the site over the weekend and managed to take photos with the area's residents. The land in question was reserved for a water reservoir for the residents of Nairobi and its environs.

**The Speaker** (Hon. Ethuro): Order, Sen. Sonko! In this House, everyone has a role to play. There is a Chairperson of the Committee who responds. So, if you have any information, you should have given it to the Chairperson. For now, you can only interrogate the Chairperson further.

**Sen. Mbuvi:** Mr. Speaker, Sir, I want to seek a further clarification from the Chairperson since the developer has already taken construction materials to the site. What action is the Chairperson going to take to ensure that the construction work at the site is suspended with immediate effect as we wait for the revocation of this title in question?

**Sen. Kivuti:** Thank you, Mr. Speaker, Sir. Actually, when I mentioned earlier that I had consultations with some other Members of this House, the Senator for Nairobi, Sen. Sonko, was one of the people who sought such consultation. Like I mentioned earlier, it is my intention and that of the Committee to call the Cabinet Secretary together with the National Land Commission (NLC). Now that the stoppage is becoming imminent, we will also call the National Environmental Management Authority (NEMA) to come before our Committee next week and answer some of these questions. To this effect, I would like to invite the Senator for Nairobi and any other Senator who may be interested in this matter to attend that Committee session. I will notify them before next week.

**The Speaker** (Hon. Ethuro): Senators, we need to make progress.

What is your point of order, Sen. (Dr.) Machage?

**Sen. (Dr.) Machage:** Thank you, Mr. Speaker, Sir. Two weeks ago, I sought for a Statement from the Chairperson---

**The Speaker** (Hon. Ethuro): Order Sen. (Dr.) Machage! The points of order must relate to the current Statement. It is Statement Time, you do not need to rise on a point of order.

**Sen. (Dr.) Machage:** Mr. Speaker, Sir, you have already ordered the Chairperson of the concerned Committee on what to do.

**The Speaker** (Hon. Ethuro): You should put the request and I will order. However, when you say "point of order", it means something else. It is not an opportunity to seek your Statement.

Having appointed you to this position myself, I cannot indulge you any further.

**Sen. (Dr.) Machage:** Thank you, Mr. Speaker, Sir, for your indulgence.

**The Speaker** (Hon. Ethuro): Order, Sen. (Dr.) Machage! Please resume your seat. I said that I will not indulge you because you should know better.

Please, proceed, Sen. Kembi-Gitura.

**Sen. Kembi-Gitura:** Thank you, Mr. Speaker, Sir. I do not know whether you are also going to overrule me on that issue. It is about a Statement because this one is finished.

**The Speaker (Hon. Ethuro):** Order, Sen. Kembi-Gitura! I am glad that you made your case easier for me. It is 25 minutes to 4.00 p.m. We will have another 15 minutes to deal with the Statements. Please, let us try to get as much as we can within that time. At exactly 10 minutes to 4.00 p.m, we will proceed to the next order.

Please proceed Sen. (Dr.) Machage.

#### CHOLERA OUTBREAK IN KENYA

**Sen. (Dr.) Machage:** Thank you, Mr. Speaker, Sir. Two weeks ago, I requested for a Statement from the Chairperson of the Committee on Health on a matter that I thought was an emergency, on the cholera epidemic situation---

**The Speaker (Hon. Ethuro):** Order, Sen. (Dr.) Machage! I will help you manage time. Since the Chairperson is here, let him answer because he knows your matter. Please, proceed, Chairperson of the Committee on Health.

**Sen. (Dr.) Kuti:** Thank you, Mr. Speaker, Sir. The Hon. Senator is a Member of this Committee and he is fully aware that we tried all means possible, including direct phone calls to get this message. However, until now, we do not have any communication from the Ministry. We got a Statement from the Disaster Management Center which was very inadequate and we are unable to release it. So, urgent as this matter may be, I am sorry to say that we do not have a written Statement to read here.

**Sen. (Dr.) Machage:** Thank you, Mr. Speaker, Sir. I rise with a heavy heart to cry for the people of Migori County who are in a situation that the Government has ignored; it cannot even issue a Statement on the health status on the so-called epidemic that I demanded in this House. It is totally unfair on the side of the Jubilee Government to ignore its people in a situation like this, of a cholera epidemic, and not even give a Statement on the situation as it is on the ground. Would I be in order to request that you order that I get that answer the soonest possible?

**The Speaker (Hon. Ethuro):** Cholera outbreak is a very serious matter. The Government must not only appear, but actually go out of its way to do something about it. I direct that the Chairperson does what it takes by Thursday to get a response. Failure to do so, you know what to do with the relevant Ministry. I will approve a Motion to deal with that Cabinet Secretary.

Please proceed, Sen. Kembi-Gitura.

#### RECRUITMENT OF THE VICE CHANCELLOR OF THE UNIVERSITY OF NAIROBI

**Sen. Kembi-Gitura:** Thank you, Mr. Speaker, Sir. Sometimes last year, I sought a Statement regarding the appointment of the Vice-Chancellor of the University of Nairobi. I know that an answer was given. However, the Speaker ordered that it was not sufficient and that further consultations should be done and a proper answer given. I know that since that time, a Vice-Chancellor has been appointed and is in situ. I have no quarrel or argument with that because it is administrative, but the Statement that I sought,

being the property of this House, I believe is not preempted and must be answered, because there were issues of legality that I had raised and I would like to know what the final answer the Chairman got for that question. It should not be assumed that it disappeared because the appointment was made.

**Sen. (Dr.) Khalwale:** Mr. Speaker, Sir, I rise to request that you invite the Chairman of the Committee on Education to give me the answer on the state of Affairs at The University of Eldoret.

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

**Sen. Abdirahman:** Mr. Speaker, Sir, I was keenly following the number of responses from the various chairs, starting with Sen.(Dr.) Kuti and the other two. It is quite evident that responses are either inadequate or not very good answers are given. Just to pick one example, if you allow a second, Lenny said he needs another two weeks--

**The Speaker** (Hon. Ethuro): Order! Who is Lenny?

**Sen. Abdirahman:** It is Sen. Lenny Kivuti. He said that he needs another two weeks besides the two or three weeks they were initially given. I think we are being treated to a situation where we are not getting any meaningful transaction of business in this House particularly with regard to Statements. It is about time we looked for an alternative approach because bringing Cabinet Secretaries to the Committees is not sufficient.

**The Speaker** (Hon. Ethuro): Order, Sen. Abdirahman.

**Sen. Abdirahman:** Mr. Speaker, Sir---

**The Speaker** (Hon. Ethuro): You cannot. I am the one who granted you the opportunity and I have the right to deny it if I feel you are abusing it. That is a substantive point of order which you should have alerted the Chair to, so that I can allocate you more time. Secondly, I do not think it is factual. We had two Chairs responding; the Chairman of the Committee on National Security and Foreign Affairs and the Chair of the Committee on Lands and Natural Resources. I think, fairly, they were satisfactory and as usual, there would be one or two other issues to be raised. It is only Sen. (Dr.) Kuti who has expressed serious difficulties of getting the Statement. We have given him one more chance with a warning of dire consequences to any public officer who is frustrating the work of the House. Therefore, those assertions should be done if they have failed to do something. If one week goes by and the comprehensive report is not there or by Thursday nothing would have happened, then I would entertain your point of order next week.

**Sen. Abdirahman:** Mr. Speaker, Sir, I stand to be corrected, I agree but looking at the supplementary questions that are raised and the manner in which the responses are coming out, I thought it is important to bring out the issue because we do not get adequate answers and time will bear us out, Thursday is not far.

**The Speaker** (Hon. Ethuro): Order. My reading is different. The many supplementary queries raised demonstrate the importance and the interest of the matters being canvassed.

Let us proceed and as I have suggested, next week is not too far. You will make a better case based on more facts. We need to get the Chairman of the Committee on Education because I said by ten minutes to 4.00 p.m., we will be done. First, I will help the Chair for Education on the one by Sen. Kembi-Gitura. We need the information but the Senator is fully aware that whatever transpired by the end of last Session ended with

that Session except for Bills. If the Senator is interested in the matter, he can put a fresh request to you. For now, let that one lie. Deal with the issue of Sen. (Dr.) Khalwale.

**Sen. Karaba:** Mr. Speaker, Sir, thank you very much for your concern especially regarding Sen. Kembi-Gitura's concerns. We had discussed with him but the ruling is welcome.

PREVAILING CHAOS AT THE UNIVERSITY  
OF ELDORET

Mr. Speaker, Sir, I stand to inform the Senate that following the request from the Senator for Kakamega last week about the problems facing the University of Eldoret, my Committee went to Eldoret over the weekend. We were there from Thursday to Monday and we are still compiling the report. We are also still receiving more reports from that area. It is not possible therefore, to table the report in draft form. We have to wait until all the information is received and adequate report is tabled in this House. In view of what can happen, it can lead to precedence and this can precipitate into other universities seeking the same intervention. So, I rest there.

**The Speaker** (Hon. Ethuro): Sen. Wetangula.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Speaker, Sir, I do not know what the Chairman of the Committee is purporting to rest on the Floor of this House. The situation in Eldoret is volatile, the university is closed, there is an ethnically engineered assault on the Vice-Chancellor and threats are being issued on a daily basis. In fact, the Vice-Chancellor's life maybe threatened. I expected and indeed the House, expected the Committee to bring an answer to this House. In fact, they asked for tomorrow but you directed that it be brought today because of the volatility of the situation. You have heard the Chairman rumble on and end up by saying he rests there. I do not know what he is resting. We want an urgent, cogent and conclusive answer about this university.

**Sen. Kagwe:** Mr. Speaker, Sir, I quite appreciate the urgency of the matter and I appreciate the frustration that my colleague, Sen. Wetangula, is expressing. However, the Committee met this morning after having been in Eldoret to find out what the problem at the university is. It was very painful this morning when we discussed that this Statement cannot be read today because we have not received all the information required. Therefore, we are just praying with the House for understanding. What would have been brought here this afternoon would have been incomplete information which perhaps would have been more dangerous and indeed fuel the situation even more. We are seeking for understanding from the House and from you. You ordered that the Statement be read today but the Committee felt that the draft we have is not sufficient enough to address all the issues because it is a weighty problem.

**The Speaker** (Hon. Ethuro): Order! I think you have made your point.

**Sen. Murkomen:** Mr. Speaker, Sir, I also appreciate the concerns of the Minority Leader, who seems to be in constant touch with the Vice Chancellor, looking at his statement, but my greatest concern is the use of language; did you hear the Minority Leader say that the Chairman is rumbling? Is it really parliamentary to say that a Member of this House was "rumbling" while we know the Committee Chair was only communicating to this House?

**The Speaker** (Hon. Ethuro): The Chairman of the Committee on Education.

**Sen. Karaba:** Mr. Speaker, Sir, it is unfortunate that somebody in the name and stature of the Minority Leader can say that I was “rumbling” in this House. Having been a teacher for that long, that is intimidating and it is wrong. He should therefore apologize to the House. I never rumbled but just stated the facts. The situation is that if I was to table what I have in the raw form, we are going to open a Pandora’s box and it is going to signify other problems for other universities in future. For that matter, therefore, I am asking the Senate to take it from me that we have come a long way and we are not going to give half-baked information just to please one or two people in the House.

**Sen. Hassan:** Mr. Speaker, Sir, I also wanted you to guide the House. I rise particularly with respect to Standing Order No. 88, which is about anticipating of debate. Last Sunday, when I was scrolling through my newspaper; *The Sunday Nation* - you know, 90 per cent of Kenyans are said to trust the media - page 32 read: Senate unearths massive rot at varsity. As I read through, the report said that the investigation being carried out by the Senate Committee on Education has unearthed massive rot in the university. Therein was a picture of Sen. Karaba and the Vice-Chancellor of the University.

I just want your guidance pursuant to Standing Order No. 88 in terms of the sanctity of processes of this Senate including investigations, reports and Motions which are covered broadly under Standing Order No. 88 and whether Sen. Karaba was in order to divulge such information to the media and start to pre-empt or anticipate debate of this House.

**The Speaker** (Hon. Ethuro): What is it, Senate Minority Leader? We have exceeded our limit. So, I will allow just five more minutes.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Speaker, Sir, my point of order is in relation to what the distinguished Senator for Kirinyaga County, the Chairman of the Committee on Education, has said; that he is not here to give statements to please one or two people. Once a statement is sought, it becomes the property of this House. The fact that any particular individual Senator shows interest does not mean, he wants to be pleased. These are matters of national importance and we have a right and duty to follow.

So, is it in order for the Chairman of the Committee on Education, who holds a position of privilege, to use extravagant, unhelpful and directionless language that does not in any way enhance the course of debate in this House?

*(Laughter)*

**Sen. Wangari:** Mr. Speaker, Sir, I rise on a point of order, noting that today, the Cabinet Secretary for Education, Science and Technology, Hon. Jacob Kaimenyi, released the Kenya Certificate of Secondary Education (KCSE) results of last year, we are getting another 450,000 students who sat for their KCSE headed to our institutions of higher learning. We must take seriously whatever is happening in the University of Eldoret. If there are institutions that we should safeguard as the citizenry, they are those institutions.

Therefore, I beg that as we conclude this matter, the Chairman of the Committee on Education must take this thing very seriously. He should not only give a statement of indulging the House but also give a definite day. We must get a solution to this problem even if it means Members of the Committee having to work overnight.

Mr. Speaker, Sir, you must direct that tomorrow, the Statement be tabled in this House because it is of national importance and everyone is looking at these institutions. The way we deal with the University of Eldoret will gauge how other universities will be dealt with because those issues will come up.

Thank you Mr. Speaker, Sir.

**Sen. (Dr.) Khalwale:** Mr. Speaker, Sir, it has taken almost 20 minutes and in all that time, the Chairman of the Committee on Education has not told the House when he will bring the answer. He is just saying, we need more time. How much time?

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

**Sen. (Dr.) Machage:** On a point of order, Mr. Speaker, Sir. The Chairman of the Committee on Education said that he does not want to open a Pandora's box which may lead to anarchy in other universities. Is he in order when he knows that, however serious whatever information he has, this House has the capacity to listen to him in camera? It is our right to hear whatever dirt there is. Open up that Pandora's box so that we can know.

*(Applause)*

**The Speaker** (Hon. Ethuro): Order! Order, Chairman! Let me dispose this matter in the following manner. Firstly, Chair, you need to give a definite date taking into account all the points that Members have given in terms of the urgency of the matter.

Secondly, I am satisfied that the Committee is seized of the matter. I think that is very critical. They have actually visited the place, attempted to beat the deadline and the Senator for Nyeri County has told us as much. You remember Sen. Abdirahman had talked about the Chairs bringing information that was not good enough. I think when the Chair comes and pleads for more time, we should also be a bit understanding, of course, given the sensitivities around it, so that we ask him to do a better job, faster.

There is the issue of the language. Sen. Wetangula said that the Chair was rumbling. The same Sen. Wetangula was quick to challenge the Chair on some words that he is not issuing statements in order to please one or two people; a statement that I felt was basically in the context of he does not want to do a shoddy job just to beat the deadlines. I think everybody appreciates that technicalities should not deny us good work. He then went ahead and added his own many words, which were not offensive, describing the same thing. You know, being repetitive is also not acceptable.

Therefore, under those circumstances, I will allow the language thing to cancel itself. Just to make this point, there is neither Chairman nor Senator who rumbles.

Sen. Wetangula, do not raise an issue with this. I have given you an escape route. The last one is the one of Sen. Hassan which is a serious one. I need to look at the paper so that I confirm that they were quoting the Senator and not reporting on the activities of the Committee. You know that our activities are in the open. If you are visiting a place and the media is there to cover what you are uncovering, how do you blame the Chair or the Committee? So, we need to establish the particulars and then we will deal with that matter.

Mr. Chairman, when will that be?

**Sen. Karaba:** Mr. Speaker, Sir, in view of what has been observed, I will give a full report next week on Tuesday. I have to meet the Governor for Uasin Gishu, Senator for the area, chief and many others.

**Sen. (Dr.) Khalwale:** On a point of order, Mr. Speaker, Sir. I do not want to be seen to be casting aspersions on the Committee. But if public funds were used to take the Committee to Eldoret, exactly where the Office of the Governor is domiciled, what reason did he have not to meet the Governor? In fact, many people in the public are asking why those people were not invited to come and give those answers from the Senate. To me, this amounts to wasteful expenditure of public funds.

**The Speaker** (Hon. Ethuro): Order, Sen. Khalwale! Even when you make that statement, it is based on audited accounts. I do not think that you have taken the role of the Auditor General. I know that you work closely with him, but that is not your job. You can go wherever and the Governor may not even be present. If you are to invite people, also you have to give some notice.

So, I direct that a comprehensive report be brought on Tuesday next week.

**Sen. Sang:** On a point of order, Mr. Speaker, Sir. Last week, the Speaker promised to give a ruling on some discussions in the House on the same issue, but in regard to the language used by some of the Senators. We were promised that, that ruling would be delivered today. A few of us were mentioned in regard to the same. The Senate Minority Leader, Sen. Khalwale and others were mentioned on the same.

**The Speaker** (Hon. Ethuro): Order, Senators! I got to learn of that matter today. So, I am still working on it. I will advise appropriately.

Next order!

## MOTION

### ADOPTION OF REPORT ON SUITABILITY OF NOMINEES TO THE COMMISSION OF INQUIRY INTO THE PETITION TO DISSOLVE THE MAKUENI COUNTY GOVERNMENT

**The Speaker** (Hon. Ethuro): Order, Senators! I want to plead that this is very critical for us to dispose off today. We need the numbers because it is a matter affecting counties.

What is it, Sen. Mutula Kilonzo Jnr.?

**Sen. Mutula Kilonzo Jnr.:** On a point of order, Mr. Speaker, Sir. I am concerned that something is about to be moved and we, Senators, do not have a copy of the Report that was tabled by the Chairperson, to be able to contribute effectively---

**The Speaker** (Hon. Ethuro): Order! Order! Did you really have to wait from 2.30 p.m. to 4.00 p.m. to raise that matter, for an order that is already on the Order Paper? You should even have approached me and we would have circulated copies of the Report.

Move the Motion as you circulate the document. When was the Report tabled?

**Sen. Murkomen:** On Thursday.

**The Speaker** (Hon. Ethuro): The rule is that once a report has been tabled, then it is available to the Members.

**An hon. Senator:** On our desks.

**The Speaker** (Hon. Ethuro): Which desks?

What is it, Sen. Khalwale?

**Sen. (Dr.) Khalwale:** On a point of order, Mr. Speaker, Sir. It is quite evident that the Report is being circulated now. But our tradition in Parliament has been that such

a Report is made by the Office of the Clerk to be available in our pigeon holes. We want to thank you because for the last three weeks, we have had pigeon holes. So, it has to come clearly from the Chair that the Office of the Clerk is failing. They should take the reports to the pigeon holes.

*(The Speaker (Hon. Ethuro) consulted  
the Clerk-at-the-Table)*

**The Speaker** (Hon. Ethuro): Order! The Clerk is making his case worse. There is no excuse that since the document has been tabled it is public. This document must be availed to the Senators. So, to raise the issue is legitimate. All I was requesting the Senator for Makueni is that he should have brought it to my attention much earlier, ahead of the Order itself. We had one-and-a-half hours to sort out all those issues, including circulating the document as we are doing now. That would have accorded you even more time to read it.

In future, the Clerk is ordered that all documents must be deposited at the pigeon holes of Members.

Proceed, Chair.

ADOPTION OF REPORT ON SUITABILITY OF NOMINEES TO THE COMMISSION  
OF INQUIRY INTO THE PETITION TO DISSOLVE THE  
MAKUENI COUNTY GOVERNMENT

**Sen. Murkomen:** Mr. Speaker, Sir, I beg to move the following Motion:-

THAT, this House adopts the Report of the Sessional Committee on Devolved Government on the suitability of the Nominees to the position of Commissioner in the Commission of Inquiry into the Petition to Dissolve the Makueni County Government, laid on the Table of the House on 26<sup>th</sup> February, 2015.

Mr. Speaker, Sir, thank you for reminding the House that we have to dispose of this matter today. This is because the consequences are so serious that if this House does not finish in good time, by law the President can say that we have delayed and continue to appoint these people, yet it is important for this House to be involved in terms of passing these names.

Yet, again, as I said one year ago when we were debating the first impeachment in this House for the Governor of Embu, Hon. Martin Wambora, another very unfortunate situation has occurred, which is precedent setting. The Senate is for the first time engaging in a process that, though provided in our Constitution, most of us who are constitutional students and have followed the development of what is happening in our country as far as devolution is concerned, never imagined that in the first term of the first elected leaders in our Republic, we would discuss or even contemplate the suspension of a county government.

**The Speaker** (Hon. Ethuro): Order! Order! Have you moved the Motion?

**Sen. Murkomen:** Yes, Mr. Speaker, Sir.

**The Speaker** (Hon. Ethuro): Proceed. My apologies.

**Sen. Murkomen:** Mr. Speaker, Sir, if you ask most of these Senators, some of the few sections in the Constitution that we never imagined would be operational in the first three years, were the ones relating to impeachments, removal of a public officer at the level of a governor and the suspension of a county government; a very serious matter. By suspension and dissolution of a county government, we are talking about removing all elected and nominated county assembly leaders, governor and deputy governor in a county. It is unprecedented, yet it is here with us. We never imagined to have a complete dissolution of a county government. In fact, in my own contemplation and study of law, I have imagined that if you look at the arsenals provided for in law, in so far as disciplining public officers who are errant, thieves and unable to manage resources at the counties, the first step would have been taking that person to court.

**Sen. Obure:** On a point of order, Mr. Speaker, Sir. I have been listening, I do not believe he has moved the Motion. Is he in order to proceed?

**Sen. Murkomen:** Mr. Speaker, Sir, I think many people thought it is a very long Motion. I read it and so in the shortest moment, I saw the Senator of Kisii consulting his colleague there, it could have by -passed him.

**The Speaker (Hon. Ethuro):** By the time he lifted his head, you were done. Order, Members. I have confirmed with the Clerks-at-the-Table that the distinguished Chair of the Devolved Committee actually moved the Motion by reading the Motion as per the Order Paper.

*(Sen. Orengo Consulted loudly)*

Order! Sen. Orengo, I have been so elaborate with words to avoid the doubt but you seem to be creating more.

I said I want to confirm that the distinguished Chair of the Devolved Committee actually moved the Motion by reading the Motion as per the Order Paper.

**Sen. Murkomen:** Mr. Speaker, Sir, I was saying, if I use the analogy of international law, in so far as for those of us who have studied international humanitarian law, you know that there are certain rules of war. Some of those rules say that when you go to war, you must not use indiscriminate weapons that are not targeted, that can cause greater damage than the target you were trying to achieve.

If I use that analogy, I would say, that there are various mechanisms provided for in law that could have enabled us to deal with matters of indiscipline and corrupt public officers and those who fail to carry out their duties. The Constitution provides for impeachment of a governor and also provides an opportunity for people to go to court to remove a person. It also provides for a recall of a Member of a County Assembly (MCA). The rule or the mechanism that should be used sparingly is the one of suspension because it is indiscriminate. It targets the MCA, the governor, deputy governor and every member who was for or against a particular issue. It is discriminate in nature, it is able to bring down the county government completely and paralyze the systems of county governments but yet again because the law provides and gives this House the greatest benefit to preside over and oversight the process of suspension of the county government, we must do it because we have a job to do and we must be seen to be doing it fairly, meticulously and faithfully to the benefit of the people of Kenya.

The process of suspension, just to remind the House, is anchored in Article 192 (1) (a) (b) of the Constitution which states that:-

“The President may suspend a county government –

- (a) In an emergency arising out of internal conflict or war or
- (b) In any other exceptional circumstances”.

That is why I was saying, that other exceptional circumstances in the rules of interpretation of law must be something closer to what is called emergency arising out of internal conflict or war. These are words that are used together, they must be interpreted as is close as possible to the ones that are specific in nature in the rules of interpretation, that those are internal conflicts or war. So, this process has began and the President received the Petition from the people of Makueni to dissolve the county government and as per law, the President went ahead to nominate a commission of inquiry as provided for under the County Governments Act, Section 123 and section 6(3) of the Public Appointments (Parliamentary Approval) Act 2011 and our Standing Orders No. 64 and 65.

So the Senate has received from His Excellency the President, the names of persons who have been nominated to preside over this very important process. Before I come to the names, I would like to say that this House must take this process seriously. We must be able to follow every step that is provided for in law. If I may just read Section 123 of the County Governments Act, sub-section (2) which provides that:-

“A person may petition the President to suspend a county government in accordance to Article 192 if the county government engages in actions that are deemed to be against the common needs and interest of the citizen of the county”

- (2) “That Petition under sub-section (1) shall be supported by the signatures of not less than 10 per cent of the registered voters in a county”

If you have voters of a particular county, 10 percent of that county have meticulously gone through a process of signing a petition to go to the President to dissolve the county government, it means that it is a serious issue for that particular county. The commission that was proposed by the President, the relevant Act section 123(5) of the County Government Act provides that:-

- (a) “That commission shall provide for in section 2(e) a chairperson, who shall be an advocate of the High Court of Kenya with atleast 15 years of experience.
- (b) The Chairperson of National Police Service Commission
- (c) Two persons resident in the affected counties and who have not for the last ten years stood for an elective office in the affected counties or have been an officer or an employee of affected counties
- (d) Two other persons not resident in the affected counties with experience of conflict management,

The President went ahead in a letter dated 6<sup>th</sup> February, 2015, which was received by the Office of the Speaker, to nominate the relevant persons whose names I am going to read now. In that nomination, in terms of the Petition itself, the National and County Government Coordinating Summit approved that process of dissolving the County Government of Makueni on 8<sup>th</sup>, December, 2014.

Therefore, the President nominated the following people:-

1. Mr. Mohammed Nyaoga, to be the Chairperson of the Commission of inquiry on the issue of Makueni.

2. Ms. Emily Gatuguta, to be a member under Section 123, as a person who is a resident in Makueni.
3. Prof. Harrison Maithya, which is also under the same section for a person who is a resident in Makueni County.
4. Ms. Alice Wairimu Nderitu, as an expert on matters of conflict management.
5. Mr. Taib Ali Taib, also nominated as a person who is an expert on matters of conflict management.
6. Mr. John Kavuludi, who by law is required to be appointed, who is the Chair of the National Police Service Commission (NPSC)

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

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

Mr. Deputy Speaker, Sir, once the Senate received this Petition, we went through the normal Standing Orders procedures and the Senate committed the vetting of these people to this Sessional Committee on Devolved Government.

In vetting these people, the Sessional Committee on Devolved Government working with relevant departments invited the nominees to the Committee for interview. We went ahead to provide the criteria as provided for in law; as to, what are the things we are supposed to see under the Public Appointments (Parliamentary Approval) Act, that is academic qualifications of those members, employment records, profession affiliations, potential conflict of interest, knowledge of the relevant subject matter, overall suitability of the position, matters of tax compliance, integrity and morality, vision and leadership and expectations on the key priorities.

These are the things that we asked the candidates or the nominees to answer prior to appearing before the Committee and also to be questioned individually when it comes to what they have done.

I want to go immediately to the specific persons. We started vetting Mr. Nyaoga to be the Chairman and we were satisfied that he had the relevant academic qualification, having both Bachelors and Master of Law Degrees from the distinguished University of Nairobi, where I am also an alumni. We also looked at his employment record and professional affiliation.

After looking at his employment record and professional affiliations, we have realized that he has been a member of the Law Society of Kenya (LSK) from 1985; he has been a practising advocate who has chaired various institutions including the International Commission of Jurists (ICJ) and Eco Bank, amongst others. We were also convinced that he was qualified because among his professional qualifications, he is a member of the Institute of Directors, the ICJ, the International Bar Association (IBA) and the Institute of Certified Secretaries (ICS) amongst others. So, when it comes to academic and professional qualifications, the Committee was satisfied that Mr. Nyaoga is qualified.

Mr. Deputy Speaker, Sir, when it comes to appreciation of the Commission's mandate, we were also convinced that from the manner in which he answered the questions, the nominee would withstand political pressure. He was not affiliated to a particular political grouping nor was he a member of a political party. Of course, we

asked about his other affiliations and we were satisfied, first of all, that he appreciated the responsibility that is before him and that he was qualified.

Mr. Deputy Speaker, Sir, we looked at matters of conflict of interest. The Committee even asked Mr. Nyaoga about the fact that his former partner is the Attorney-General and whether it was going to affect the manner in which he was going to perform his functions. We were again convinced, from his answer, that he was an advocate who was capable of acting independently because he has interacted with so many people across the political divide and he was level headed enough. He was also qualified to be a judge, as the law says and thus, he is also qualified to chair this Committee. We were also assured because he enthusiastically confirmed to us that they were willing to do the job even if it means within two or three months. The Committee was, therefore, unanimously convinced Mr. Jairus Mohammed Nyaoga was qualified to chair this Commission of Inquiry and we, therefore, propose to this House to approve his name as the Chairperson of the Select Committee or the Commission of Inquiry for that purpose.

Mr. Deputy Speaker, Sir, we also vetted Mr. Johnston Kavuludi. I need to say here that we were a little bit challenged in law to ask ourselves “the law already provides that the Chairperson of the National Police Service Commission (NPSC) will serve in that Committee;” are we, therefore, “also qualified to relook at his qualifications?” We were convinced that it was necessary that, going forward, this particular section will be relooked into so that in future, we would say that “the Chairperson of the NPSC or his representative” instead of just picking the Chairperson. This is because there will arise a situation where the Chairperson of the NPSC could be a brother of a Governor or a Member of County Assembly (MCA) and, so, conflict of interest will be so obvious. So, it is better to give that institutional representation to say “a representative of the NPSC shall be a member of this Commission.”

Mr. Deputy Speaker, Sir, Members were also very particular in terms of questioning the abilities of the NPSC Chairperson, considering that many Members thought that he has not performed very well on matters related to management of the NPSC. But we were very alive to the fact that we were not vetting him as the Chairperson of the NPSC but as a representative to this Commission. So, we were satisfied that there were no issues with conflict of interest. We also received a petition from a member of the public who challenged the Chairperson of the NPSC not to sit on this Commission. But we looked at the grounds of the challenge and they were a little bit farfetched. We also realized that this was a person who has been carrying out petitions against the Chairperson of the NPSC since before he was even appointed to be the Chairperson and we thought that this was already overtaken by events. But it was important that members of public were willing to respond.

Mr. Deputy Speaker, Sir, we also received representation from a Non-Governmental Organization (NGO), the Independent Medico-Legal Unit (IMLU). Their position for challenging the participation of the Chairperson of the NPSC was the fact that he is so busy dealing with matters related to vetting of police officers, amongst others. They thought that it would be very difficult for the Chairperson to give undivided attention to the matter of Makueni. That is why this House will be proposing proper amendments to the relevant legislation so that a representation of the NPSC or the Inspector-General’s representative is the one to sit there and not the person so that they can continue with their responsibilities.

Mr. Deputy Speaker, Sir, we were also convinced that he was ready to serve in the time that was required. Therefore, once again, we recommend to this House to approve the Chairperson of the NPSC to serve in this Commission of Inquiry.

Mr. Deputy Speaker, Sir, the third nominee we vetted was Mrs. Emily Gatuguta. I must say that she impressed me with wonderful academic qualifications; she had a Masters Degree from the University of Leeds in 1986. What impressed me most is her contribution to public service; that at a time when everybody who had good qualifications from the best universities in the world – The University of Nairobi and The University of Leeds – was running away from public service, this lady committed herself to serving the nation in the public service in many places. For about 35 years, she served in Ministries of industrial development, co-operative development, the Vice Presidents' Office, the Ministry of Agriculture and many other places. Therefore, in terms of her professional and academic qualifications, we were completely convinced that she is very qualified to serve in that Commission.

Mr. Deputy Speaker, Sir, in terms of appreciation of the mandate of the Committee, we also thought she understood the needs of this Commission of Inquiry and the desire to ensure that Makueni is moving forward. She had the interests of Makueni at heart, being a resident of Makueni – which fact I will come to in a short while. When it comes to potential conflict of interest, with all due respect to the qualifications of the very distinguished lady, we had a little bit of a challenge. That challenge emanated from the fact that she has, in the past, been involved in trying to bring together the Governor and the MCAs through the association of professionals from Makueni.

We were impressed because at her age, about five years ago – she just retired from public service – she was already a member of the Akamba Council of Elders. This shows her integrity and the respect that people have for her. But our fear was that since she had been involved in dealing with the two sides, that would be a potential minefield, particularly when it came to her views about the MCAs. She had stronger views against the MCAs when it comes to their qualifications, their capacity to appreciate issues and so on, and so forth. But then – and I shall be saying this later – that was weighed against the scale of her confirmation that, be that as it may, she was still level headed enough to deal with the interests of that county.

Mr. Deputy Speaker, Sir, on political affiliations, we were completely convinced that she was not politically affiliated to any side of the county or any political party. On the question of residence, we again had a little bit of a challenge because for the 35 years she has served in the public service, of course definitely she had to be in Nairobi because of her job, although she confirmed to us that once in two weeks, she would travel back to her home---. We, therefore, weighed her abilities – the fact that she has been travelling home, that she has a home in Makindu, which is in the same county and that is where her late husband is buried. We were convinced that balancing the two – although she has not been living in Makueni for very long periods of time because of public service – she had a lot of interest in the county and that she had the county at heart despite the fact that she was married in a different county. This is by virtue of the fact that she still set their home in the same Makueni County. We were, therefore, convinced on the issue of residence, that she was qualified enough to be called a resident of Makueni.

Mr. Deputy Speaker, Sir, we were also convinced that she understood the responsibilities before her and, therefore, weighing the two – and I want to be transparent

here because that is provided for in the report; for those who are following the final recommendations, because I want to marry them together so that I complete – you will find in page 53 that the Committee eventually approved her to serve in this Commission despite the fact that---

**Sen. (Dr.) Khalwale:** On a point of order, Mr. Deputy Speaker, Sir. I am following the Mover of the Motion very keenly. There is a point of law which he should help me understand before I make my contribution to this Motion. Apparently, in this document, there are no attachments to prove that at least two persons are actually residents of Makueni County. He has confirmed by his own contribution that even they were in doubt. Could he, please, lay on the Table, documents to confirm that this lady is a resident of Makueni County? On one hand, he says she lives in Nairobi. On the other hand, he says she is married, but lives in a different county. We might pass this Motion and then it subsequently ends up being challenged in a court. Could he table those documents?

**Sen. Murkomen:** Mr. Deputy Speaker, Sir, we do not have pictures showing her home in Makindu. However, we are convinced she is a resident of Makueni County. We have her national identity card which she got from Makueni County. That attachment is here in the addendum. So, we have her identity card here in the report which is here with me. I am sure that after I move the relevant member, I can trace the relevant page.

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. (Dr.) Khalwale, are you not satisfied?

**Sen. (Dr.) Khalwale:** I am not, Mr. Deputy Speaker, Sir. The law is not speaking to the identity card; it is speaking to residence. If you have an identity card of Elgeyo-Marakwet County and you are a resident in Nandi, that does not mean you are a resident of Elgeyo-Marakwet County. Could he prove that, indeed, she is a resident of Makueni County?

**The Deputy Speaker** (Sen. Kembi-Gitura): Order, Sen. (Dr.) Khalwale! Is that not a question of debate in the sense that the Committee has sat and it is satisfied that she is a resident of Makueni? If you are not satisfied with that, that is a matter of debate. It cannot possibly be a point of order. That is how I look at it.

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

**The Deputy Speaker** (Sen. Kembi-Gitura): Let me repeat this; the Committee has sat and found that she is a resident of Makueni County. So, even if you make a point of order now, you are not going to change that position; neither do I have the capacity to do so. But when you are debating and if you can convince your colleagues that she is not a resident of Makueni County, then that would be a matter of debate.

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

**The Deputy Speaker** (Sen. Kembi-Gitura): Who are you informing?

**Sen. Ndiema:** Mr. Deputy Speaker, Sir, I am informing the Chairperson.

**The Deputy Speaker** (Sen. Kembi-Gitura): He has to tell you whether he wants to be informed or not.

**Sen. Murkomen:** Of course, yes, Mr. Deputy Speaker, Sir. He is a Member of this Committee. I will also request that if the Members will be kind to us---

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

**Sen. Murkomen:** Yes, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. Kembi-Gitura): Then take your seat; let him inform you.

**Sen. Ndiema:** Mr. Deputy Speaker, Sir, I want to add that the identity card could have been taken even in Kibera. But in the same identity card on the back, it shows the place of residence as Makueni---

**The Deputy Speaker** (Sen. Kembi-Gitura): Order, Sen. Ndiema! I thought I dealt with that when I was trying to answer Sen. (Dr.) Khalwale about the identity card.

Sen. Muthama, who do you want to inform?

**Sen. Muthama:** Mr. Deputy Speaker, Sir, I want to inform the Chairperson that there are Senators here who come from that county. The debate will be open if truly this lady will be proved by none other than the Senator for Makueni and Sen. Muthama will stand to supplement him. That is the time that we will actually determine if the lady comes from Makueni County or she does not live there. These are issues that the Chairperson is presenting. We will debate and thrush out everything in the open.

**The Deputy Speaker** (Sen. Kembi-Gitura): Basically, Sen. Muthama, you agree with me then.

**Sen. Muthama:** Yes, Mr. Deputy Speaker, Sir.

**Sen. Mutula Kilonzo Jnr.:** Mr. Deputy Speaker, Sir, I want to help the Chairperson because he is about to finish. I want to direct him to pages 9 and 55 of the Report. It reads the same, but it is in reference to Mr. Taib Ali Taib, where they have stated:-

“With respect to Mr. Taib, the Committee having considered the Curriculum Vitae (CV) submitted, supporting documents and the nominee’s submissions on the approval hearings, unanimously approve the nominee and recommend his appointment to the position of Chairperson of the Commission.”

Mr. Deputy Speaker, Sir, there is an error here which we need to correct before you finish.

**Sen. Murkomen:** Thank you, Sen. Mutula Kilonzo Jnr. It is true there is an error which must be corrected accordingly. Mr. Taib is approved to be a member, but not the Chair. However, I wanted to be clear on the question of residence as asked by Sen. (Dr.) Khalwale. This is because this issue will be raised in future---

**The Deputy Speaker** (Sen. Kembi-Gitura): Order, Sen. Murkomen! I have ruled on that issue.

**Sen. Murkomen:** No problem, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. Murkomen, could you, please, proceed?

**Sen. Murkomen:** Mr. Deputy Speaker, Sir, on the question of residence, this is a very important criterion which we should consider as a Committee. The Committee was alive to that fact that there will come a time in the future when somebody will be deemed to have come from a particular county by virtue of his name, but actions and everything else, that person does not belong to that county. If you look at Section 37 of this Report, we, as a Committee, were convinced she is a resident of Makueni. She informed the Committee as follows:-

- 1.) She was born in Mukaa Location which is in Makueni County. That is as per documentary evidence which is the national identity card. It shows where she was born.

- 2.) The nominee attended primary school in Ukambani and proceeded to Mary Hills School and Machakos School. These institutions are found in Ukambani.
- 3.) The nominee has her matrimonial home in Sultan Hamud, where, as we said earlier her late husband was interred.

Mr. Deputy Speaker, Sir, the nominee participates in the affairs of the county. The nominee was very good in Kikamba because she gave us more than four wonderful proverbs in Kikamba. It is no wonder that she is a member of *Nzama ya Atumia ma Ukambani*. This means that she is a member of the Council of Elders. This council consists of all Kamba men and women. She also stated that she travels to her matrimonial home regularly.

We were convinced that despite the fact that she was not a registered voter in Makueni at that point in time, but she is a resident of Makueni. Lawyers who are here, like Sen. Orenge, yourself, Sen. Wako, Sen. Mutula Kilonzo Jnr., and Sen. Hassan Omar Hassan, will tell you that the issue of residence is a serious mine field, particularly for yourself, Mr. Deputy Speaker, who has served as an ambassador when you are dealing with matters of conflict of law; somebody getting married in another country, and so on and do forth. We did not want to be too classical on the matter of residence in so far as conflict of law is concerned. We did not want to close opportunities in future for persons who are residents to serve in such a Committee. So, we were convinced that she is a resident.

Mr. Deputy Speaker, Sir, the approval of Mrs. Emily Gatuguta was not very unanimous, but nevertheless, it was important that a majority of the Members approved her on some grounds. For example, if you look at page 53, 3 Members approved the nominee, 2 Members approved the nominee with strong reservations, 2 Members abstained from voting and 2 Members rejected the nominee all together. We exercised a lot of democracy on the matter. But ultimately, we thought that she would serve. We wanted to be alive to the fact that there was potential room for conflict of interest, having participated in bringing the parties in Makueni together. It was not a bad thing, but having interacted with the county assembly and the county executive, we said that she must be careful not to import her past interactions with that county assembly. That was the caution we gave to the nominee. Nevertheless, she has an unquestionable public record as a public servant and commitment to the nation. She has been a career civil servant for 35 years.

The next nominee is Prof. Harrison Maithya. He is a very qualified gentleman, a professor of Anthropology at Moi University, very eloquent in Kamba and English languages. He also hails from that county where he goes regularly. He interacts with his MCA once in a while. He interacts with the leadership of the county executive. We were also convinced that he understood the subject matter and the weighty nature of dissolution for his county.

We saw Prof. Maithya as a person who was passionate about the resolution of disputes in that county. From our discussions with him, he was level headed. We, as a Committee, were convinced that his academic and professional qualification was good. He got his first degree in 1989 at the University of Nairobi and a Ph.D. at the University of London in 2002.

Mr. Deputy Speaker, Sir, we also looked at matters of conflict of interest and we were convinced that the person was confident. He has never served in any political party

and he has yet to show any political interest. We were also convinced that in the matter of residence, he is a resident of that county because he was born in Nzueni Village, Ngumbau Sub-location, Makueni Constituency, Makueni County. He attended Nzueni and Kambili Primary schools and Mbooni Secondary School. He is a registered voter and has always voted in Nzueni Primary School in Makueni.

He informed the Committee that he had several investments in Makueni and despite the fact that he is at Moi University in Eldoret, he travels very often to Makueni. When we asked for his criminal record, the only thing he said was that he has a traffic offence of over-speeding which we realized is a result of him rushing from Makueni to Moi University. He was found over-speeding somewhere in Naivasha. We were, therefore, convinced that he is qualified to serve.

If you look at our recommendations, the whole Committee approved his suitability apart from one Member who said that looking at that nominee, he looked like he was biased towards the Governor, but no evidence was tendered to that effect.

The next nominee is Alice Wairimu Nderitu. I want to say that she is also very qualified academically. She got her first degree in 1990 and a Masters degree in 2013. She has served in the National Cohesion Commission. She is a fellow in many places and is helping deal with matters of conflict in Sudan, Nigeria and many other places. She has won many awards on matters of conflict. We were satisfied that what the laws provides that you must be qualified in conflict resolution, is what she has. She has no potential conflict of interest. She has no political affiliation and she was ready to work and dedicate her time to resolve the problems of Makueni. She has personal commitment to matters of devolution.

Mr. Deputy Speaker, Sir, finally, we have the name of Taib Ali Taib who is a former Mayor of Mombasa. He is a very qualified advocate, having completed his degree in 1987 and his diploma in Law in 1988 and he was admitted to the Bar in 1988. We were convinced that in terms of professional qualification and academic, he is very qualified because he is the managing partner of A. Taib Advocates. He is the Vice-chairman of the Law Society of Kenya, among many other qualifications. Those of us who are in the legal profession know that Mr. Taib is a respected advocate within the legal circles.

We were also convinced that there was no potential conflict of interest because currently, he is not affiliated to any political party. He does not come from Makueni County and neither does he have any personal affiliations to the Governor or the County Assembly Members. We were also convinced that he was qualified to serve and the Committee unanimously agreed that we approve the name.

Our request this afternoon is that this Senate may approve the said six names to serve in this Commission. We have general observations about the process. First is that there are no detailed provisions in law that provide how the Secretariat will be constituted, the budget for that Secretariat to serve in the commission of inquiry and how to facilitate them. I am sure, of course, they will have to be supported through the Ministry of Devolution and the resources that are related for intergovernmental relations. However, this Senate must move very fast to amend the law to provide specifically how a commission of inquiry dealing with dissolution of counties will be facilitated because they are not subservient to the national Government. They are supposed to operate independently without any interference.

Mr. Deputy Speaker, Sir, this is the message we want to pass to the nominees: that if they have had the privilege of being nominated by the President, their responsibility is not to the President, but to the people of Kenya and Makueni. We urge them to be totally impartial and to ensure that should there be any interest because it has not been expressed now, that the national Government has in terms of matters of Makueni, they must be willing to go against those interests and act impartially to ensure that they serve the people of Makueni.

I have no doubt that the President is impartial in his mind in terms of the dispute in Makueni. I will not cast aspersions to the President of the Office of the President. This is a caution generally for any person who serves in a commission of inquiry; that they must be independent from the national Government because that is one level of Government dealing with matters of another level of Government.

Again, Mr. Deputy Speaker, Sir, as I said earlier, we also noted that we need to amend Article 123(5) in two ways. First is to ensure that the National Police Service Commission Chair is not mandatorily required to sit there - it could be his representative - and evaluate the necessity of having the National Police Service or the Inspector-General of Police being represented in a commission of inquiry. Particularly when the Constitution provides that on matters of conflict that may occur, a county may be dissolved as a result of war or internal conflict. When there are matters of internal conflict, already the police have a hand in resolving those disputes. So, in future, it would, perhaps, lead to a situation of conflict of interest to have a police officer sitting and inquiring into a situation in a county where we know that when there is a conflict or war the first area of intervention would be the police.

Secondly is to review the composition of the Committee, because as at now, there are six members. We are assuming that everybody has an equal vote. Therefore, there is a high possibility of a tie if they vote on a particular issue. Again, it would be nice for the law be amended to ensure that for such a committee, we have an odd number; seven, nine or five.

Mr. Deputy Speaker, Sir, finally there is a very important issue which was overlooked by the drafters of the County Governments Act, which I must say I was also there. Section 123 of the County Governments Act gives all timelines in terms of after how long the names come to the Senate, a report can be dealt with by Senate and after how many days the President can submit the report. The most critical timeline is not provided for. This is the time which the Commission of Inquiry will take to be able to conclude a report. This is not provided for in the law. Therefore, using the Commission of Inquiry Act, the President at his discretion appointed this Commission to serve for a maximum of six months. I do not think even in law there is anything that stops the President to extent it for another six months.

Mr. Deputy Speaker, Sir, if that extension is given six months and it continues, there is possibility and danger that on matters such as these which are supposed to be resolved expeditiously, there is a possibility for inordinate delay. That delay can affect the county for a very long period. As at now, that county needs to resolve its problems so that people can move forward.

As I conclude, the position of this Committee is very clear. I have said this over and over again; that those who have been dreaming and imagining that the Senate is lacking responsibilities, and is an idle House, must be told in no uncertain terms and very

clearly that this House carries out very weighty responsibilities in the protection of the counties. We have dealt with about four impeachments, and found only one Governor culpable. We are now dealing with a very important process of matters related to dissolution of a county. We are dealing with a Motion that leads us to matters dealing with the boundaries of the counties. We have been dealing with matters of accountability, which is not negotiable. The Sen. (Dr.) Khalwale led Committee where I also sit as a Member is working on a report to Table in this House.

There is a lot of work that this House has been doing and will continue to do. Those young people out there that have been discouraged that Senate is not relevant for you, we want to tell them in no uncertain terms that Sen. Mutula Kilonzo Jnr., Sen. Moses Kajwang, Sen. Hassan Omar, Sen. Sang, Sen. Lesuuda, Sen. Wangare, Sen. Daisy Kanainza and Sen. Melly are here. There is a great future in terms of this Senate. There is also Sen. Haji and the aspiring Senator to be, young Sen. (Dr.) Khalwale.

Mr. Deputy Speaker, Sir, it is important for the people of Kenya to now start appreciating the role of the Senate. The youth of this country; the students who have just passed the exams, to have an interest in coming to serve in this House, because it plays a very critical role in matters of protecting devolution. No one should discourage the citizens, especially the students of this country from having an interest in what goes on here. Which other House can preside over matters dealing with the dissolution of a county and impeachment of 47 Governors and 47 Deputy Governors? It is also this House that has a final say in the prosecution and impeachment of the President and the Deputy President. There is no better place to serve than to be a Senator.

It is the most wonderful place and that is why we have always said as a House that we have a great responsibility to define how Senate will be looked at by the public. We should not seek momentary praises. We must not be seen for a short period. We are not seeking for personal or public approval. If we do our job meticulously and faithfully, like the servant in the Bible, who was given five and three talents, our work will be multiplied, not twice or thrice. It will be multiplied 10 times. That is why, I believe in this House from across the political divide, because it is capable and able to work as a team in terms of resolution of matters affecting our country.

Mr. Deputy Speaker, Sir, even as we deal with the resolution of the dispute because we do not know exactly the details of what is happening in Makueni County until we get the report, we want to be very clear that we will not condone corruption, mismanagement of public funds and any public officer who wants to run away from accountability. We have said that this is not a Jubilee or CORD issue. It is a matter of public interest. If you have five cents, be satisfied with that and work hard to multiply it to 10 cents. Do not be tempted to put your finger in the cookie jar, because if you do so, Sen. (Dr.) Khalwale, Sen. Hassan and Sen. (Dr.) Machage of the County Public Accounts and Investment Committee will come for you. Sen. Ongoro says that she is even ready to go for somebody.

We must tell public officers that the Senate is responsible and committed to ensuring that public resources are used in an effective manner. We appreciate the work that is being done by county governments; both the county executive and legislature. We are not going to abdicate our responsibility to protect devolution. Protecting devolution is not protecting the individual person of a Governor or Member of the County Assembly (MCA). It is a big responsibility that we must carry out meticulously.

Mr. Deputy Speaker, Sir, for devolution to proceed well, we prefer proper movement of public information. The situation we are in with the three media houses not operating, for whatever reasons, should be resolved immediately, because there is a situation of partial darkness in digital migration regime. There is a digital darkness in this country at the moment. We want to ask that the players work together as a team and ensure that we resolve this situation, so that our people can follow proceedings as this, understand and appreciate what the Senate does. We can also ensure that there is a lot of transparency in whatever we do in our country. The media plays a role in ensuring that there is greater transparency and accountability from public officers.

As I sit down, I want to say that this country has a great future, as long as we avoid matters of running all the time to our tribal cocoons. Whether we fly in the skies, walk on our feet or swim in Lake Victoria, we must be ready to defend the integrity of this nation and ensure that we bequeath the future generations a great Republic. I really feel for Makueni County, and the Duke, Sen. Mutula Kilonzo Jnr. who is seated here. My friend, I would like to see that county move forward as well as Isiolo County and Narok County. We want to ensure that all these counties are capable of sitting together. A synopsis of the problem would be that as long as counties are not participatory in terms of running their affairs, we will have all sorts of conflicts. Even if there are teething problems, we must solve them now for posterity and the betterment of the Republic of Kenya.

Mr. Deputy Speaker, Sir, with all those remarks, I beg to move and invite my friend, Sen. Hassan Omar, the Senator for Mombasa county and the newly crowned Wiper Party Secretary-General to second.

**Sen. Hassan:** Mr. Deputy Speaker, Sir, I rise to second this Motion by the Chairperson of the Sessional Committee on Devolved Government on the suitability of the nominees.

My Chairman, Sen. Murkomen has stated the gist of the compelling argument that we need to support for the adoption of this Report. I will just highlight one or two issues. It is important for Makueni County to bring the wrangling in the county to a closure. We have seen claims and counter claims, attempted impeachment of the the Governor of Makueni County, that is in fact before this Senate, but has been stopped by the courts. In the interim, the residents of Makueni County have brought this Petition for the dissolution of Makueni County.

As Sen. Murkomen has said, the Constitution states that counties can be suspended on very exceptional circumstances. We advised the nominees as we interviewed them that they must locate as precedence those exceptional circumstances that will warrant the dissolution of any county.

As the Chairperson has indicated, this is an adverse drastic step that must never be part of the *modus operandi* in us abolishing or dissolving elected governments and counties. I hope that this Committee will put a high threshold for the dissolution of counties across the country. As I speak now, there is another county where people have started collection of signatures. I spoke to the governor of that county to find out whether it is true or not. When we torpedoed several impeachments of governors, including a deputy governor, counties have at least cooled down on that impeachment.

I hope this commission will set a certain threshold, but the Senate still reserves the final say as to whether to dissolve Makueni County or not. Therefore, when the report comes back to us, it will be for us to make that determination.

We had a lot of debate about “residence” and “domicile”. That is what we were asking ourselves and tried to address. I join my colleague, Sen. Murkomen, in suggesting that we need to set criteria in this country of what constitutes residence. For example, I have lived in Nairobi for the last 26 years and yet the people of Mombasa were courteous enough to accord me the position of Senator for Mombasa County. Many of us here live in Nairobi for one reason or another. We have homes, business and transact our professional lives here. Therefore, it would be important to set up that criterion which will allow us in determining the threshold for residency. Our Committee was totally satisfied that within the evidence provided and the interrogation we had of the two nominees who were supposed to hail from Makueni County, we were satisfied that what they told us constituted the threshold for residence, at least, for purposes of this particular nomination.

Mr. Deputy Speaker, Sir, it is also clear that in the approval process, these commission members bring in different capacities and competences. It was great to see professors in the field of anthropology, distinguished lawyers like the chairperson, Mr. Taib Ali Taib, people who have served in distinguished positions like Alice Nderitu who was a commissioner in the National Cohesion and Integration Commission who is actually helping to resolve conflicts in Nigeria and other parts of Africa. This is a distinguished group of persons which this Senate must approve so that the process can move forward. The adverse effect of not approving this is to drag Makueni County backwards and continue to create anxiety.

I commend the Committee for its diligence. This work was undertaken within a span of two days. The interviews were held and the report was concluded. We put our thoughts into the report and ultimately, we all by consensus adopted this report. As the Chairperson said, these men and women are serving on a temporary commission. Therefore, we needed to make it clear to them that as much as the President provided for a period of six months, it would be important for them to expedite this process so that within two or three months, the process is concluded.

Mr. Deputy Speaker, Sir, I wish to second my Chairperson. As most of you will acknowledge that the report has just been circulated, given your intellect, wisdom and experience, most of you have scanned through this report and sufficiently have picked some of the substantive issues.

It is, indeed, a sad day for Makueni and this Senate. I believe that this Senate must not be getting many of this Petitions or Motions for impeachment or dissolution. This Senate also needs to make a Statement to our county governments. County governments try to mirror the national Government and county governors try to mirror the national President. Most of them rather than pre-occupy themselves with governance and setting up of systems, part of the problems across the counties is lack of systems. Many of them think that to impress us means you have to go initiating or inaugurating development projects. Today you are digging boreholes and so on. I hardly know of any governor who is in the process of setting up systems of governance and government that work in the counties. Most of them are pre-occupied with personalization of county governments.

County governments were about equity and service delivery. However, today if you look at it critically, I do not think there has been any fundamental shift in the improvement of services. I was once telling a county gathering in the coastal region that there is no county where you can go in a hall, queue and get all services in a one stop shop; similar to what the Huduma Centres do. How long does it take to connect people to water? How long does it take to get building approvals? In fact, county governments in some regards have become dens of corruption. People are put under more severe strain than it was with the former municipalities.

Mr. Deputy Speaker, Sir, counties must realize that part of their obligation and duty is to set up systems of governance that better the lives of people through making service more accessible. Service delivery should become the mainstay of county governments. If you look at all this confusion in Makueni, it is partly about systems. I do hope that this commission will go a step further to give a precedent document, setting out the responsibilities of county governments and county assemblies to institutionalize themselves. After a Constitution is enacted, the next most important step is setting up institutions. I can tell you for a fact that our institutions at counties are far weaker than what we had envisaged. The MCAs, county speaker and governors are not strengthening these institutions.

Mr. Deputy Speaker, Sir, it is my hope that the issues around Makueni will come to a close with the approval of this Commission with its commencement of work and production of the report. If these commissioners are listening to us, once the President gazettes them to start, they should commence immediately. I hope the President and the executive will give them all the facilities to establish their secretariat. But most importantly, they should come back to us in a few weeks so that we can conclude this matter. Many of them are busy men and women. They also expressed the interest to conclude this assignment in the shortest time possible.

Mr. Deputy Speaker Sir, with those few remarks, I beg to second.

*(Question proposed)*

**Sen. Kagwe:** Mr. Deputy Speaker, Sir, from the outset, I want to support the nominees as presented. When we look at these names, we support the work done by the Committee. They look like able Kenyans and people who can do the job that needs to get done. Even though I do not personally know most of them, I do know that Mr. Mohamed Nyaoga, the Chairman, is a renowned advocate, lawyer and a person of integrity. I have no reservations in saying that we support his chairmanship and, indeed, the other Members.

Having said that, it is important for us to understand because the notion out there seems to be a misunderstanding of what the Committee is supposed to do. It is important for, perhaps, some Members of the Committee, when they get a chance, to explain it legally that this Committee is there to recommend whether or not to suspend Makueni County Government. It is very important because there is an assumption that what is happening actually is a process of suspension. It is not a process of suspension, but simply the determination of whether there is sufficient ground that there be suspension or not. That is an important aspect of the presentation.

Mr. Deputy Speaker, Sir, in a sense, the new Constitution gives us opportunities to address some of the issues. For example, it is because of this new Constitution that we, as a Senate, can vet and discuss the Members of this Commission.

Mr. Deputy Speaker, Sir, I realised that some people ask questions such as to why should they be vetted by the House. They forget that we, as Senators, indeed, as elected Members of Parliament, are vetted by many people. As Senator for Nyeri County, I am vetted by over 350,000 people who decide whether I should be a senator or not. Having been subjected to such a telling affair as you get yourself elected, it is only right that even those others who are given positions of influence of any kind also go through vetting just like we do. The process we have gone through and this issue that is in front of us highlights some of the short-comings in our Constitution.

Even though it is not possible to legislate everything about the relationship between the various arms of Government, there should be a way, very clearly, on how to structure or how to relate between, for example, MCAs and Senators, Senators and Governors, Governors and MCAs, Members of Parliament and Governors and so on and so forth. There is in an area or a lacuna, as the lawyers say, that has not established how those people are supposed to relate to each other. Because of that lacuna, a lot of issues are going to come to the fore. As the commissioners work on these issues, it is very important if people can give recommendations about how to proceed forward in terms of that relationship.

Mr. Deputy Speaker, Sir, as I finalise because I do not want to take long on this, it is also important for us to appreciate the way forward. For the Senate to prepare itself, you know good management is about preparing yourself either way. If they say that there is no suspension, then so be it. If they say that there is suspension, then the issue arises of how to deal with the Interim County Management Board (ICMB).

I heard Sen. Hassan talk about six months. I think the time given in the Constitution in Article 192 is actually 90 days. So, it is necessary that a lot of issues come up because I do not know how long, if there is a suspension, for instance, it should take for the ICMB to be appointed. I am not sure that this is spelt out in law. These are some of the weighty issues that will come in front of us. The Committee should be addressing some of these things and say, in the event, not just for this particular case, but also other cases. Is it the Act of Parliament that should be facing amendments to address particularly the issue of timing or how should we proceed forward once the matter is in front of us?

Mr. Deputy Speaker, Sir, there have been cases where governors have been invited to come and make presentations, particularly on the issue of resource governance because they have resisted coming to the Committee on Commerce, Finance and Budget. They have said they do not wish to appear before the Committee. If there is a classic case of the power that the Senate holds as far as midwifing of the Constitution and the devolved government system are concerned, this particular case establishes it. There is need, therefore, for those in county governments, not only to be in good books or to relate positively with the Senate, but it is necessary whether we are friends or not, for us to understand that the institutions must at least relate with each other.

Mr. Deputy Speaker, Sir, when you hear somebody refusing to come and present themselves in front of the committee and an issue like this arises, one wonders. If one had said they are not presenting themselves in the committee, would they then present

themselves in these circumstances? Therefore, I think it is good advice and a good *modus operandi* on the part of governors to relate to the Senate and other institutions in a manner that behoves that in the event that we get to situations like this, we come out as friends rather than hostile persons to each other.

Mr. Deputy Speaker, Sir, I support the names given in front of us and ask them to expedite the process as quickly as possible. They should also be as fair and as balanced as anybody could possibly be. They must come with hands as clean as Caesar's wife.

With those few remarks, I beg to support.

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

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

**Sen. (Eng.) Muriuki:** Thank you, Madam Temporary Speaker. Excuse me because I have a cold. I stand to support this Motion which is a very simple matter. It is only asking us to approve a report the essence of which is to accept the recommendation of the Committee that the six persons named are suitable for this commission that will look into affairs of Makueni County.

Madam Temporary Speaker, listening to the able Chairman of this Committee, I feel they have done their job. The proposed names are more than qualified in my view for the job at hand. In that case, I do not think there should be very much debate. We need to approve this. I urge the rest of the House, let us approve this and move quickly to look at the real issues; that is, what is inflicting Makueni County.

Having said that, let me also say that this Motion is about Makueni County. Last year, there was a small story told of a group of people who went to Mogadishu in Somalia. We are told that there was no organized way of how to get a taxi and go to town. So, they got a lift from someone and when they got to town, the person from Nairobi was booked in Hotel Mogadishu. However, where they were dropped, the name on the hotel was not Hotel Mogadishu. When they asked the driver, the driver needed to speak in their language then somebody interprets. The driver kept on insisting that there are many Hotel Magadishu, which one do you want? He did not understand that the particular one is the name called Hotel Mogadishu.

Madam Temporary Speaker, there are many "County Makueni". That kind of a problem is not confined to Makueni County. The only thing which has happened is that governors have found their way of quietening their county assemblies the normal Kenyan way; a very unholy way. Otherwise, I support this and inform the House, or rather, prepare the House for many more "County Makueni".

I beg to support.

**Sen. Mutula Kilonzo Jnr.:** Madam Temporary Speaker, I rise to support the approval of the names of persons to sit in the commission to investigate the Petition filed by the residents of Makueni.

From the outset, I want to reiterate what the previous speakers have said; that this process has put Makueni under great anxiety. Therefore, it would be in the interest of the people of Makueni that the Report of this Commission is presented to His Excellency the President and this Senate as quickly as possible. I want to reiterate that there have been a lot of misconceptions about this Commission. If this was a legal case, the title would

read: “The people of Makueni versus the County Government of Makueni.” So, the County Government of Makueni, where there have been misconceptions that there are two governments in Makueni, would be demystified by this Commission, to the extent that the county government, executive, members of the county assembly and leaders of that assembly are going to be on trial by the people who elected them, to determine what we would call in legal terms “notice to show cause why they should continue to be leaders in that county”.

Madam Temporary Speaker, the supremacy of the Constitution and Article 1 itself, comes into play where leaders who have been elected by persons are put to task. There is no difference between the process of dissolution and the recall clause under the Elections Act. Both have the same result; that the persons who are on trial are the leaders themselves. Therefore, the misconceptions that, maybe, it was targeting certain persons or not would be demystified by this Commission.

After reading the Commissions of Inquiry Act, you will find many things that would challenge this Commission. This is because they will have to cross-reference and refer to many other legislations in order to determine this issue. I would have loved to see maybe a recommendation or obiter from this Committee of ours - particularly, Sen. Kipchumba Murkomen, who was amongst the drafters of this law – to guide the commission on what was the purpose of having two persons who are experts in conflict management, but do not come from that county. It would have been fair to have maybe a title to say the purpose of this would be to either find out whether there was an attempt to have dispute resolution; if not, then they recommend. If they have, maybe do something. But more importantly, it is a tremendous opportunity to find out and be able to navigate what appears to be a lacuna in the Constitution.

The good people who drafted our Constitution anticipated that the national Government would have problems with county government, hence Article 189. But in the case of counties, nobody imagined that county governments would get into quarrels with county assemblies. That is the reason in counties, you end up looking as if you have two governments, yet you have one government. But the county assemblies and their leadership in some cases have taken such positions as if they have the overall mandate of the people of whatever county that they come from. Maybe for the people who are drafting the amendments to the Constitution – the Okoa Kenya initiative – this is one of those potions that they ought to look at in terms of the work of the Senate, so that we can have a dispute resolution mechanism. Everytime the Chief Justice is called to any place, he keeps on talking about alternative dispute resolution.

I would have loved to have a position where these matters are handled at some point before they get to the level where they are going. This is because without a doubt, the County of Makueni is going to be opened bare by this Commission. Nothing should be left unturned. No stones should be left unturned. If there are snakes, it is the high time that we find out. I have not read the Petition itself because I do not have it. But from what I hear, it contains 46 grounds. Those 46 grounds ought to be interrogated in detail. If there are bodies or institutions of the national Government – the Auditor General, the Controller of Budget or any other person who might be required under the Commissions of Inquiry Act – they should summon them.

Madam Temporary Speaker, most importantly, the Commission must ensure that the people of Makueni get a hearing. That can only happen if they are at a place where

the people of Makueni would not be taken to a great expense to provide whatever material they need, in order for this determination to be made. In doing so, the Commission must ensure that the rules of evidence and natural justice are complied with in full. We do not want to have a report that has got hearsay information or is not supported by any facts or evidence, being targeted against persons, because this is precedent setting in every sense of the word.

Madam Temporary Speaker, the drafters of the County Governments Act never anticipated or put a timeline to this. The word they have used in Section 123 is that this process must be done expeditiously. "Expeditiously" can mean anything. It is as ambiguous as it can be. It could mean 90 days or more than that, yet ideally this matter is urgent. It could not have been more urgent than it is today as it was last year. The people of Makueni have been waiting anxiously to interrogate their Petition in so far as dissolution is concerned.

I have no objection to the nominees to the Commission. Mr. Mohamed Nyaoga is a lawyer of high distinction. This is a gentleman who, in fact, was the Chair of the Commission appointed by the President to investigate something to do with the Mining law or licences that had either been given illegally or otherwise. As a legal practitioner, I have not heard of any report of quarrels about this gentleman, Mohamed Nyaoga.

Madam Gatuguta without a doubt is resident in Makueni, in a farm which I am well aware of. Taib Ali Taib is a lawyer of high repute, practising in Mombasa. He is a very calm gentleman. In fact, I was equally surprised when I saw his name, because I was not aware that he is actually an expert in conflict management. It is good that his name has been put here. There is also a Professor whose name is in this Report. I have received several reservations about his name, but in my own view, the commission of Inquiry will act in the open. They will not sit in a closed room. Therefore, if somebody campaigned for another person or participated in the elections, as many have suggested, I do not think that, that would be a bar from this person sitting. This is because the commission will, by necessity and law, have to sit in the open. The public must be given access and there must be adequate time so that the presentations are made.

Madam Temporary Speaker, so that we do not waste too much time on these names, I want to ask that the President expedites the approval by gazetting them. More importantly, a timeline should be given for this commission and places where it will sit, so that arrangements can be made for the presentation of the evidence. The Petition itself might be complex, but it is important that these men and women, who are of high repute, both in academia and public life, dissect it in such minute detail, so that the persons who are elected will forever know that as long as devolution is contained in our Constitution, they will forever be under the microscope by the people who elected them. Therefore, every document and piece of paper in Makueni County Government that is necessary for this process must be produced for purposes of a fair determination of this very important issue by the sovereign of Makueni County, that is, the people of Makueni.

Thank you, Madam Temporary Speaker.

**Sen. (Dr.) Kuti:** Madam Temporary Speaker, I will also be very brief in supporting the adoption of this Report. I would like to say that this is a precedence setting activity and we are very happy that the President appointed these nominees. I am very familiar with Mr. Mohammed Nyaoga, the Chairman of the commission to be. He is a lawyer of high standing. I have interacted with him even in social and legal matters. He

commands a lot of respect both in his profession and his other lives. I do not know much about the others, but from the reading they are all people of repute. We are sure that they will come up with very just and impartial findings. This will also be an example to what is going on.

There is a lot of overlap, conflict and misunderstanding of roles at the county level, given that is a new dispensation. It is, therefore, important that this clearly brings out mandates, although it is clearly stated in the Constitution and other legal documents. The settling in of the county government and the county assemblies is becoming a major issue in some circumstances. There is merging and underhand relationships that do not augur well for the counties in such a way that they leave or share the same bed. Therefore, they do not actually have the interests of the county and the populace at heart, but some form of underhand understandings which do not augur well for democracy at the county level.

In other circumstances, there are grand standings whereby there is competition for power and this also affects service delivery. A good example is the case of my county where there is a serious stand-off between the county assembly and the executive. This has brought a lot of disadvantage to the people of the county. Therefore, it is now time, through this kind of activities of the commission where, it is not about grandstanding, sharing their personal interests, but it is about every institution to do its part and be able to be respecting and working in an inter-relational manner where each section of Government at the county should work together.

Madam Temporary Speaker, this is a very important exercise and, therefore, we need to support and adopt this Report. As Sen. Mutula Kilonzo Jnr. stated, the President should gazette these names so that they can go and start working immediately. We want to understand the workings or the problems in Makueni County which will actually be a mirror image of what is happening in most counties, either through fighting or inter-relationships that are not legal.

Madam Temporary Speaker, both cases are very disadvantageous to the people. These two institutions are supposed to work independently. At the same time, they are supposed to work in an interrelated way so that the services that have been devolved benefit people and the full benefit of devolution can be realized at the county level.

With those few remarks, I beg to support.

**Sen. Orengo:** Madam Temporary Speaker, thank you very much for giving me an opportunity to also contribute to this very important Motion. Initially, I had thought that I would not support the Motion because of certain legal problems that I was seeing in terms of the Constitution and the County Governments Act. However, having reconsidered my position on this, I fully support the establishment of this commission. I hope it will do its work as required. I understand that the distinguished Senator for Makueni asked me what the problem was. Let me touch on it because it may put some light on the work of the commission. I was looking at the Constitution and I think the mover of this Motion pointed out the grounds upon which a county government can be suspended. The Constitution talks about it. Article 192(1)(a) states as follows:-

The president may suspend a county government-

“In an emergency arising out of internal conflict or war”

The Mover explained that under the category found in 1(b) as a ground for suspending a county government which reads:-

(b)“in any other exceptional circumstances”

Madam Temporary Speaker, this would then mean that, that part of the Constitution should be read as analogous to (a) which talks about internal conflict or war. If you read that provision together with the County Governments Act which says in Article 123 which the distinguished Senator for Makueni has referred to, it spells out the grounds as being; “engages in action that are deemed to be against the common needs and interests of the citizen of the county”. To me, that law was the threshold because what is deemed is not actually saying what it constitutes, it says what is deemed to be an action against the needs and interest of citizens of the county. Who determines what the needs and interests of the county are? In my view, it would then mean that, probably what is deemed to be “common needs and interest of the citizen of a county” may depend on who is driving the process.

If you have a powerful force in a county which is determined to bring the county government down and collect the signatures of 10 per cent of the registered voters in a county, then the process can be triggered. Initially the President does not have much of a say, at least until now, all that he has to do is determine that the people who have signed the Petition are actually the registered voters. If it is established that it is so, then the matter automatically goes to a commission to be appointed by him after a resolution is made by the apex of inter-governmental bodies as established under the Inter-governmental Relations Act.

That being the case, my starting point is that as we appoint this commission, we must bear in mind that it should not be politically driven. It is about politics, but it should not be politically driven. The reason I am saying so is because devolution is so central, so key to our system of Government that if you remove the pillar of devolution and the structure of Government under devolved system of Government, if you remove it from our Constitution, then the new design and architecture of our new Constitution will have been taken away. Therefore, this is a section that we should look at, at some point to make sure that the threshold of what is deemed to be “needs that are common or interests of the citizens of a county” are spelt out in some way and fashion that is concrete enough, so that those driving the process at the county level are not driven by politics.

The reason I am satisfied that, probably, politics may not play a role is if each organ of this process plays its part beginning from the President. How this matter is resolved depends on the commission that is appointed. This particular commission which has been appointed, I am in agreement essentially they are not people who are likely to drive the process in a political fashion.

Secondly, the matter has to be approved by the apex body as stated in the County Government Act and then it comes to the Senate. It is to be emphasized that even where the Senate has agreed and resolved that the county government should be suspended, that suspension can be brought to an end by the Senate. If it emerges to the Senate at some point after this resolution has been made that there were ulterior motives unconnected with the problems of the people of the county and which were not brought to the fore at the beginning, the Senate can change its mind and make sure that suspension is terminated.

Madam Temporary Speaker, the other thing I saw in the law and which somebody has commented about is the involvement of the Chairperson of the National Police Service Commission (NPSC). First of all, members of an independent commission or

office should never be involved in this kind of process. The duties they have under the Constitution are so onerous that they should not be seen to be brought down to a controversy like this one, even if it is a committee. Once you are a member of a commission; for example, the National Land Commission (NLC) or if you are a member of an independent office, like the Director of Public Prosecutions (DPP), you should not be brought down to this level where you are required to now go into a county, begin to receive evidence and views on a matter which may be politically charged.

Madam Temporary Speaker, having said all this, I am in agreement that in totality, the people recommended to be appointed and who have been nominated by the President are men and women of distinction. We may have a little problem here and there, but generally, we will only question their work when we get there. Let them do this work and let us get their report. We can then debate it and come up with recommendations as a Senate.

Madam Temporary Speaker, this Constitution wants Kenya to be an indivisible nation. We may have ethnic diversity; we may live as different tribes, but essentially in the preamble, this Constitution wants Kenya to be one nation. This is something that the Senate, in whatever and however we approach any problem; be it in the counties, we must always remember that this Constitution wants us to be one indivisible nation, even if we have devolution, so that we are free to go to any county and to get any jobs in any county.

By the way, I finally got persuaded that the lady, Mrs. Gatuguta – whatever her name and description is, but at the end of the day, I would have wanted somebody from Elgeyo-Marakwet, so long as he is a Kenyan, to be involved in a process in Makueni County. It is not a Makueni problem, because the problems in Makueni will reflect in the rest of the country. If there is a problem in Siaya, including in the lake – and the lake includes an island called Migingo – what affects the people in that small island called Migingo affects the entire nation of Kenya. I am glad that even on this issue of Migingo, you will find Kenya as a whole has been saying that, that issue should be determined. So, all parts of Kenya are an integral part of the territory of Kenya.

Madam Temporary Speaker, one of the things I like about these appointments that have been made is that it is looking at Kenya as one indivisible nation. For example, when I see people like Taib being appointed, whatever their political affiliation is, I am happy because we are trying to involve everybody. I am saying from the Floor of this House, the Jubilee Government should make sure that every Kenyan feels that Kenya is one. The best way to make sure that Kenyans feel like we are one nation is when you make some of these appointments so that no one part of the country feels excluded. Exclusion sometimes can be worse than tribalism or even racism. Even in a family, if a member of the family feels excluded, then you will have internal conflict within the family.

I am not trying to go into a subject that is not yet ripe and moot before us, but even something like the appointment of the Inspector-General (IG) or the Commander of the Armed Forces, make Kenyans feel that this is a Kenyan thing. I do not want this country to feel like if the Chief Justice (CJ) is a Luo and he retires or dies, then it will be forever a Luo problem; that you must have another Luo there. Just like if Dr. Mutunga goes, if we take the example of the IG, we will expect the next CJ to be somebody, not from Ukambani, but from Kitui.

*(Laughter)*

**An hon. Senator:** Shame!

**Sen. Orengo:** This is a way of ensuring that Kenya will not continue to be one indivisible nation. You can see that even in Meru, determining who the king of Meru is becomes a problem.

I wish they can come to the conclusion that Meru is one ethnic group, but living in a country called Kenya and it has two Senators and I respect all of them.

*(Applause)*

Madam Temporary Speaker, in conclusion, it is not for nothing that some of these things are coming to the Senate. Dissolution of a county, like the Mover emphasized, is coming to the Senate. The impeachment of the President and even the Deputy President comes to the Senate. These things are meant to ensure that, above everything else, the Senate is considered as the ultimate voice in the legislature on any matter touching a country called Kenya.

*(Applause)*

Madam Temporary Speaker, with this, I feel that we are going somewhere, young or old, so long as we are of the same thinking; whether we are flying or not. So long as we are one thinking Senate, we will drive Kenya to one destination. I can tell you that a day will come and surely within our time, that we will not be judged by our names, but our names will just be a detail. To be the Senator for Elgeyo-Marakwet, as old as I am, I should have an ambition that having served the people of Siaya, I can equally serve the people of Elgeyo-Marakwet.

*(Applause)*

Madam Temporary Speaker, when we were following up the issue of residency, I was happy with the position that the Chairperson of this Committee was taking. This is because if we take residency literally to the extent that we must prove that where I wake up every morning, where I eat every morning or where I produce children every night, we will not be talking about one country.

*(Laughter)*

Kenya has been there before, where you could have Achieng Oneko in Nakuru; where you could have J.D. Kali in Embakasi and so on, and so forth.

Madam Temporary Speaker, I hope that when this report is finally brought to the Senate, we will deal with it in the manner that befits this House and that I will never regret the day I came here. Even those I thought were not fit to be in this House – and there are many that I thought were not fit – I have been proved wrong. The only problem I have is that when we have issues like this, it is never wrong even before we come to

plenary to talk together and to handle certain things in a bi-partisan manner, especially when they touch on the Constitution. Would it be good enough to impeach or suspend?

Thank you, Madam Temporary Speaker.

**Sen. (Dr.) Khalwale:** Thank you, Madam Temporary Speaker. Before I make my contribution, allow me to use the Floor of this Senate to congratulate four people; firstly, Sen. Murkomen. I have gone through this Report because it means so much to us. This is a historical Motion and exercise. It is one exercise that proves to those who care to know the Constitution of Kenya that the Senate is bigger than the President of the Republic of Kenya in this particular matter. I want to thank him because he has done a very good job; I know how difficult it is.

Madam Temporary Speaker, allow me to thank the Principal of Musingu High School in Ikolomani. Musingu High School has registered a mean grade of 10.8 with 63 “As”. Similarly allow me to congratulate the Principal of Kakamega High School, which has done equally well. Not forgetting my own little school; I have a school of orphans who I support from Form One up to Form Four. They were doing their first exam this year. We had a registration of 73 girls. I am happy because 20 of them have scored “C” and above. Three of them are going to the university.

The Majority Chief Whip has promised to help me with shoes for the girls, but she is yet to find time. She is a member of the “sky team”.

*(Laughter)*

I do not know whether she is waiting for me to look for an aircraft before she comes. But, I told the girls and they are still waiting for her. She can buy shoes for the ones who will go to university.

Madam Temporary Speaker, having said that, allow me to disclose that I have a friend of mine, a younger cousin who was a college mate of Sen. (Prof.) Kindiki and over the weekend, he had a lot of tension. He was telling me. “Will he be well?” and I asked him “why? Are you calling him?” I told him he will be fine. That was the tension in Meru and I am glad that Professor here is not in crutches.

*(Laughter)*

Madam Temporary Speaker, now addressing myself to the Report - and my comments will be very few. First, I am disturbed by the contribution by my teacher of politics, Senior Counsel, Sen. Orenge. He is not happy that the Chairperson of the NPSC is going to be sitting on this commission. He is confusing me because Mr. Kavuludi was not brought there as a friend of the appointing authority. He was only brought there, because he is the Chairperson. So, if my teacher was unhappy, he should have started by recommending that we should amend Article 123 of the Act.

Madam Temporary Speaker, something is disturbing me. The Act is very clear that two people should be from outside Makueni and two people should actually be residents of Makueni. The Chairperson has not made any effort to make those qualifications clear. I have seen in your report that the nearest you have come to meeting that criterion is Ms. Emily Gatuguta, where you have told us as follows:-

“The committee noted that despite the nominee’s approval, she needed to be safeguarded against possible conflict of interest arising out of a strong bias demonstrated against members of the county assembly.”

It further says:-

“Some members of the Committee also felt that the nominee had not provided sufficient evidence that she was a resident of Makueni County.”

Because of this paragraph, you will forgive Mr. Omtatah if tomorrow you see him in court saying that the commission has not been formed in accordance with the legal provisions of the County Governments Act. They will go to court. This is a paragraph which I hope in your response you will go out of the way to expound so that it becomes clear in the HANSARD.

Secondly, the nearest you have gone to that is on Prof. Harrison Maithya. On page 53, you have said as follows:-

“One Member of the Committee rejected the approval on the suitability of the nominee on the grounds that he appeared biased against the Governor. A Member of the Committee also felt that the nominee had not provided sufficient evidence that he was a resident of Makueni County.”

This is another fodder that you have provided for the people who are busy bodies, wanting to go to court at every opportune moment. Again, in your response, you need to clarify to us so that the matter rests there.

What is even more disturbing, on the two presumed nominees from outside Makueni, for example, Ms. Alice Wairimu Nderitu, you have not mentioned anything on residence. So, for all we know, she could be a resident of Makueni. You did not make any effort to tell the House that she comes from outside Makueni. He needed to demonstrate that fact. Similarly, when I saw the name of Mr. Taib Ali Taib; I was eating *nyama choma* in a ranch next to that one of Sen. Mutula Kilonzo Jnr. I will not tell you the owner, but I was roasting goat meat there. When I was discussing, I was told that Mr. Taib Ali Taib is actually a Mkamba. So, we need to be told that he does not come from Makueni. You will be embarrassed in court; somebody will arrive there with evidence, including voting card, national identification card, a constructed house, property and you will realize that he is from Makueni.

*(Laughter)*

Madam Temporary Speaker, this debate is so important that when I rose on a point of order, a gentleman called Mr. Steve Ndolo, quickly sent us a text message here and persuaded us that we should leave Ms. Gatuguta alone. He knows her very well that, in fact, she comes from Sultan Hamud. Therefore, Kenyans are following this debate; they are keen on these things. Mr. Chairman, I am encouraging you to make time now; go to your file and convince us as we speak.

Having said that, allow me to speak to why we are where we are in the first place. We are here because the Governor and the county assembly disagreed. The Governor thought they were being corrupt and greedy and MCAs responded by saying that it is their entitlement and that, in fact, it could be the Governor who is corrupt. I want to thank the High Court for making a determination on the very reasons we are where we are today. They have ruled that the county assembly has no business in ever imagining that

they can spend beyond their entitlement as provided for in the ceilings that were recommended by the Commission for Revenue Allocation (CRA). They have rested the matter.

If patriotism would guide the people of Makueni and if patriotism can guide us, as the Senators of this Republic, we can say “there the matter has ended; let the people go back and work together because, after all they will live within the ceilings which, by the way, we have approved, as a Senate. “ I would want it to end there. But, because it cannot end there, I will be keenly following the contribution of the number one Senator of Makueni, Sen. Mutula Kilonzo Jnr. If he tells me “dissolve,” I will support dissolution.

Madam Temporary Speaker, sometimes when these things come up at the weekend, people get too busy; they miss out. There is a report of the Controller of Budget to the effect that our MCAs not just in Makueni, but across the country are abusing public funds through foreign travel and sitting allowances. It is the Senate which must put this to an end. Allow me from my region on this particular score to congratulate Governor Sospeter Ojamoong of Busia County, Governor Khaemba of Trans Nzoia County and Governor Moses Akaranga of Vihiga County. In fact, it is Vihiga and Isiolo counties which spent least on paying for allowances to MCAs. We should congratulate them because they have done a good thing.

Madam Temporary Speaker, if you go to a county called Bungoma where the Senate Minority Leader comes from, Governor Lusaka, my own brother former Permanent Secretary, is listed together with Governor Oparanya of Kakamega County as the ones who have now taken hostage of MCAs. The Senate Chief Whip was in a function where the spokesperson of the Speakers, Dr. Nuh made a presentation and said that they give them a little budget within their entitlement as county assemblies and then they keep another hidden line of expenditure on the side of the executive so that when the Speaker says that you will not travel, the Governor then takes these MCAs to accompany him to go for whatever trips, in the process exposing the Speaker to possible Motion of impeachment. We, as a Senate, should protect the Speakers, now that we have put there ceilings. I want to thank the industry of Sen. Elachi, Sen. Sang, Sen. Murkomen and Sen. Mutula Kilonzo Jnr., who are coming up with an amendment Bill that will cushion our Speakers. Everybody must feel secure in whatever position that the Constitution gives them.

Madam Temporary Speaker, in Kakamega County, at the end of every four weeks, they spend Kshs11,718,900. This is shared amongst themselves. An MCA brings a receipt saying that he or she went to place “x”, ate *ugali* in place “y” and so on and so forth. Today there has been a very big joke in the County Assembly of Kakamega. The MCAs are so pissed off with what I am saying because I have already put that report to the ground. They are saying that they have no confidence in me as the Senator for Kakamega County. I want to tell them that it does not matter whether they have confidence in me or not. What matters is that I am the Chairman of the County Public Accounts and Investment Committee in this House. I will make sure that any MCA, whether he is married to my daughter like one of them is, will not get away with public funds. He has heard me and I am warning him; even it means that my daughter is left in the cold without her husband, because he is cooling his heels in jail for six years for playing around with public funds, then so be it. We have to build a new Kenya.

*(Laughter)*

Hon. Senators, imagine if what is happening in the Public Accounts Committee of the National Assembly started happening here. How would we be feeling? What became of Africans? Is it that by the colour black we have such a thick skin? Ordinarily, I would have expected the Chairman of the PAC in the National Assembly and the entire membership of that Committee to resign. It is terrible. I cannot stand those kinds of headlines; not even for one day. Who is going to liberate this country from this thing called corruption? We are lucky in the Senate where we not only have experienced politicians who have come here, but new and equally young Senators. We want you to bring a new culture. Ten years down the line, you should not be chased around the way they now want to arrest the perpetrators of Anglo Leasing scandal. Let us move our country to the next level.

I support.

**Sen. (Prof.) Lonyangapuo:** Madam Temporary Speaker, I rise to support this Motion and to thank the Sessional Committee on Devolved Government for sitting down for many days and hours to make sure that this Report is tabled in this House, on the suitability of the nominees whose names are listed here to inquire into the Petition to dissolve the County of Makueni.

The suspension of a county is indicated in Article 192 of the Constitution, as the Committee members have cited. I pity the County of Makueni because they have come to fulfill this prophecy that was written in the Constitution which is like the Bible of the people of Kenya. It says that, “the President may suspend a county”. It is not a must. In the County of Makueni, the leaders that were chosen on 4<sup>th</sup> March, 2013 as Governor and MCAs, instead of realizing that they are the servants of the people, they went into some war and brought the county to a standstill. It is now time that they went to school, opened their eyes and read this Chapter and Article 192 to realize that we are starting with them. Out of the 47 counties, they are the first county to be brought here. Instead of the people of Makueni getting services, they have now been subjected to this scenario.

Madam Temporary Speaker, it states that a county shall not be suspended unless this independent commission is set up to investigate. After this has been done, it goes on to state that: “the President shall be satisfied that the allegations are justified”. When that has been done, it comes to the Senate. Where it goes on to state: “and the Senate has authorized the suspension”. This means that whoever was thinking that the Senate was just an addendum or that we did not know anything that we were doing, now it is time for them to know who the Senate is. We are going to look at it thoroughly.

This issue of a stalemate in a county assembly arises because of some misunderstanding and where people have ceased to appreciate why they were elected. A county Governor and his executive are supposed to administer and work for that county using the resources that are passed by this House. However, when that money lands into the coffers of the county and then they divide it between the county assembly and the county government, suddenly in the minds of some executives, Governors and some MCAs, the Senate becomes irrelevant. They think that the Senate has no business and no role to play.

Now they are listening to us when we are telling them: “Woe unto Makueni County because they are now passing through a knife here which they are not supposed

to.” When they were going into a bitter war, where they were claiming who is more superior and wanted to go to Israel--- I found some MCAs who were telling people in my county: “We have gone to Israel and seen a wall. If anybody who is sick touches it, he or she is healed.” I told them that none of them was sick and they replied that they went there and the angels of the wall told them that they had already passed the 2017 elections. Everybody in the villages was being cheated that because those people had already gone to the walls in Jerusalem and the angels had spoken to them, they had already won the elections.

Madam Temporary Speaker, this is the arrogance that has come as a result of the money that we have sent and the money that they collect. Let us now see what will happen if this Petition proceeds and it is recommended that they go; it mean that elections will be done if Senate is satisfied. It will not be business as usual for anybody who was elected on 4<sup>th</sup> March 2013. I even doubt whether they will appear on the ballot papers. They were given the mandate to serve people and they quickly decided to go and share the “dead cow”, thinking that it was dead when it was not.

This is what we are seeing everywhere. You have heard of Isiolo which is also like a stalled project, where people are fighting. Nearly every county has a similar problem. If a county Assembly wants to survive, some of them have to kneel down to the Governor who sometimes, when there is hostility from the county assembly, does unimaginable things like bribing them. Have you heard of a case where the Governor of a ruling coalition running the county government suddenly decided to adopt all the members in opposition and chase away the members from the ruling coalition?

For example, in this House, I cannot imagine that the President can kick out the Senate Majority Leader, Sen. (Prof.) Kindiki, of Jubilee Coalition and immediately start working to transact business. I wonder what kind of business he will transact with the Senate Minority Leader, Sen. Wetangula. This is what is happening now in some county assemblies. Right now as I speak, they are just buying time and saying: “Let us do it until we finish our term.” This has not gone well and you will find that some of them have gone to the extent of employing relatives of MCAs, so that they work for them and vice versa.

We heard what Sen. (Dr.) Khalwale was talking about when they brought the reports after wasting time for two years. They imagined that the Senate does not exist. We asked them whether they had been calling their Senators to talk to the MCAs and bringing Petitions even on phone, so that we know what is happening on the ground. It is until they hit a dead end in the court that they remember that the Senate exists. We are telling them that it is time they realised that this institution was not put in place for no reason. The Senate is here to safeguard devolution. Sometimes, when fingers are pointed at governors, they quickly run and say that devolution is being killed by the Senate and the National Assembly. There is no way devolution is equated to governance of a county. Devolution is not a governor and his business there. So many people have already hidden themselves there whenever issues are raised.

I sit in the County Public Accounts and Investments Committee, which is chaired by Sen. (Dr.) Khalwale. Any time we call a governor, they come with a communal letter that one of them rushed to court and brought to say that; they cannot come and account for any reason because of it. They claim that they are so senior that they cannot be summoned by a Senate Committee. Article 96(3) says:-

“The Senate determines the allocation of the national revenue among counties, as provided in Article 217, and exercises oversight over national revenue allocated to the county governments.”

Madam Temporary Speaker, there is a lot of misunderstanding on this last statement, where the governors and their teams together with the MCAs say that; we should only follow the money that has come from the national Government officers to the counties, and that is all. They fail to realise that this is the money that we have given to the county governments and not the national Government officials in the counties. It is so key that the Constitution is read and every Article that has been put there to support devolution is fully understood. It calls upon the Senate that whatever duty we have been given, we do it honestly and diligently the way we have done.

People are citing whatever is happening in the ‘lower House’. That is none of our business here. However, if we meet them out there, we will tell them that it is good that they learn some leadership lessons from the Senate, so that we work together.

Madam Temporary Speaker, with regard to the suitability of the persons stated here, I was of the same opinion with Sen. Orengo. We are loading some person here whose duty is already cut out; excess problems in NPS. However, I have read the interrogation in details and I now know that the Committee that speaks on our behalf, the Committee on Devolved Government, has thoroughly inquired into that issue. We only hope that he gives his best. He said that he knows how to multitask and that he has performed many duties.

Today, I heard that some people were complaining in Baringo County, that the people from Tiaty of Pokot origin have migrated to some region in Baringo. There is a lot of tension and people are fighting. I personally went there on Sunday. When I went there and met the herdsman, they told me that they went there because last year it never rained in that part of the county. They said that as soon as God gives them rain, they would go back. Some people are playing politics about it, including what I heard yesterday on *Milele FM* radio station where a Member of Parliament from the same region, instead of adopting and talking to his people, started saying that I went there to incite and arm people. How can a mere reverend like me arm anybody? Politics should never be entertained when we are looking for peace.

Madam Temporary Speaker, I want to tell the leaders of Baringo County that the more they keep off from their people in the name of not wanting to talk to them because they may be seen to be inciting, they are allowing a bad breed to germinate. I encourage the leaders of Baringo County to go and talk to their young people and they will end this problem. They told me that they want to stop anything that was going on. This is what I am encouraging.

As we celebrate the released results, I heard Sen. (Dr.) Khalwale talking about Musingu Boys which was absent in the academic league for a long time. Musingu Boys has now joined the league of Chewoyet, Kapenguria Boys High School and Nasokol Girls High School in my county. Over 15 schools in my county today, crowded in the small town of Kapenguria are now singing in the spirit of the famous Kapenguria Six of 1952. We are now academic giants with a mean score of 10. His erupted from somewhere, but we are now in the same league. I do not know whether there is any celebration in Makueni county schools or the stalemate affected them. As we do this, we hope that the teachers of Makueni County did not follow this ritual of politics that messed

them up to the extent that we have this problem here. I hope that the students and the academia will keep on moving. But how pleasant it would have been today if ranking was still on!

I hope we will get a response this week for the question that I asked: Who abolished ranking? Could we be given prime reasons that would supersede the ranking that made Kenya a choice destination for all academia in East Africa? Everybody wanted to come and study here because of the spirit of competition. I have already seen people are already ranking schools.

**The Temporary Speaker** (Sen. Ongoro): Senator, your time is up!

**Sen. (Prof.) Lonyangapuo:** I support.

**Sen. Ndiema:** Madam Temporary Speaker, I stand to support the Motion that seeks to form the commission that seeks to inquire into matters of Makueni. This is an issue that is very unfortunate for the people of Makueni and for the people of Kenya. We went for elections and elected leaders in all counties hoping that they will serve their full term. Unfortunately, it is disappointing that we now have the prospect of a county being dissolved. I am not saying that the commission will recommend so. The work of the commission is to recommend dissolution or otherwise. They need to have that in mind.

Madam Temporary Speaker, the Constitution provides for only two situations where a county can be dissolved. The first one is emergency rising out of internal conflict or war. This case does not apply to Makueni. The second is in any other exceptional circumstance. Personally, I am not sure whether what has happened in Makueni could be categorized as a serious circumstance that warrants this kind of step. I say so because it would appear that the situation in Makueni has been brought about by adamancy; refusal by the leaders to work together to serve the people. It would appear here that this is dissolution of a county being sought through action of the same leaders who are in office. It is unsolicited and it is the leaders themselves who have decided.

There are lingering questions in my mind that in the event of dissolution and in the event that the same leaders are elected back, how will they perform? Perhaps in future, it may be necessary that where dissolution arises out of omission or commission by the same people who are given responsibility, then when dissolution occurs and they are going to stand, all of them should be disqualified. This is the first case. We do not know how many other cases will arise due to the outcome of this process.

Madam Temporary Speaker, elections are very expensive. An election in a county is going to use tax-payers' money. Of course, funds will be required to fund the commission. This Senate has spent a lot of time and resources discussing the issue of Makueni. That time and money wasted should really be the responsibility of those who fail to work. They should not be rewarded with what they are soliciting.

I am not sure that all other avenues which are economical were exhausted. We, as the Senate, represent counties and county governments. We are the defenders of counties. In all these processes, it would appear that the Senate was denied the opportunity to provide leadership and arbitration in this process. We, as defenders, must defend the people of Makueni as we are required by law to do in counties. When the law was drafted, that is, the County Governments Act, it should be amended to provide that all those avenues be exhausted. The Senate should have been given the opportunity, but what is happening is that whenever the Senate wants to come in, there is the option of

court. Why should the Senate be feared so much that it is easier to rush to the court and even seek the dissolution of a county government?

Madam Temporary Speaker, as long as the Senate is not allowed to play its role, unfortunately, we stand to see so many cases like this of Makueni. As long as elected leaders in counties do not sit together - the Constitution says there must be participation, inclusiveness, consultation and so on. In matters of running counties, elected leaders, including Senators, Members of the National Assembly and MCAs are not involved. They do not sit together and there is no forum. I seek for a day that there will be a legal provision that compels all leaders in the county to sit and agree. A boardroom situation will solve most of these problems. Right now, since there is no forum for leaders to sit in a boardroom situation, issues are being discussed in the press, in funerals and other fora and this is not in the interest of the public. This is not what Kenyans wanted when they enacted the Constitution.

Madam Temporary Speaker, we looked at the names, I am a Member of the Committee, and we are satisfied that they are qualified.

### ADJOURNMENT

**The Temporary Speaker** (Sen. Ongoro): Order! Senator, you will have five minutes when we next resume on this.

Hon. Senators, it is now time to interrupt business of the Senate. Therefore, the House stands adjourned until tomorrow, Wednesday 4<sup>th</sup> March, 2015, at 2.30 p.m.

The Senate rose at 6.30 p.m.