

# PARLIAMENT OF KENYA

## THE SENATE

## THE HANSARD

Thursday, 13<sup>th</sup> November, 2014

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

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

### PRAYERS

### PAPER LAID

#### REPORT OF THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION 2013/2014

**Sen. Wako:** Mr. Speaker, Sir, I beg to lay the following Paper on the Table:-  
The Annual Report of the Independent Electoral and Boundaries  
Commission (IEBC) 2013/2014.

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

**The Sen. Ndiema:** Mr. Speaker, Sir, I seek indulgence on the Report on the Potato Produce Marketing Bill. The Report is ready, but it needs to be approved by the Committee before it is laid on the Table of this House. I know my Chairman undertook to have it laid today, but it has not been approved. Therefore, it will be ready on Tuesday. The only thing remaining is the approval by the Committee.

**The Speaker** (Hon. Ethuro): You can bring it on Tuesday, next week.  
Next order!

### STATEMENTS

#### FLAWED KENYA DEFENCE FORCES RECRUITMENT IN NYANDARUA-WEST SUB COUNTY

**Sen. (Eng.) Muriuki:** Mr. Speaker, Sir, I wish to request for the Statement from the Chairperson on the Committee on Security and Foreign Relations regarding the flawed Kenya Defence Forces (KDF) recruitment in Nyandarua-West Sub County. The Ministry of Defence placed the announcements in the press for upcoming recruitment of defence staff in various sub counties and she stated the dates for each sub county and its corresponding recruitment centre. For Nyandarua-West, the date was Friday, 7<sup>th</sup>

November, 2014 and the recruitment town was Ol Jororok. The sub county has five divisions namely; Gathanji, Silibwet, Gatimu, Weru and Ol Jororok. When the recruiting officers came, they accepted applicants only from Ol Jororok Division and rejected all applicants from the other four divisions.

When queried by irate residents, the officers responded that the instructions were to recruit only from Ol Jororok Division despite the announcement having been seen by residents of Nyandarua-West Sub County. In fact, the officers produced a letter to that effect, though they refused to give a copy to those people.

Mr. Speaker, Sir, could the Government, first of all, confirm or deny that the instructions were to recruit only from Ol Jororok Division and, therefore, to leave out the other four?

(ii) If the answer is in the affirmative, could the Government urgently arrange, announce and carry out recruitment in the four divisions that were left out?

(iii) If in the negative, could the Government urgently arrange, announce and carry out recruitment in the four divisions that were left out and take immediate disciplinary action against the officers who authorized the flawed exercise?

(iv) Notwithstanding Nos.(i), (ii) and (iii) above, could the Government give a list of all those who were interviewed and a list of all those who were recruited on that day; that is, Friday 7<sup>th</sup> of November, 2014 at Ol Jororok Town? We want to know the name, identification number, division and location where each hails from.

Thank you, Mr. Speaker, Sir.

**Sen. Haji:** Mr. Speaker, Sir, I will issue the Statement on Wednesday, next week.

**The Speaker** (Hon. Ethuro): It is so ordered Wednesday, next week.

#### POLICY ON GENETICALLY MODIFIED ORGANISMS

**Sen. (Prof.) Lesan:** Mr. Speaker, Sir, I rise to seek for a Statement from the Chairperson of the Committee of Agriculture, Livestock and Fisheries regarding the Genetically Modified Organisms (GMOs).

Mr. Speaker, Sir, I would like to know from the Chairperson of the Committee on Agriculture, Livestock and Fisheries, the current national policy on the GMOs.

Two, what is the status of the banning order of November, 2012 on the products propagated using GMOs technology. Is there any ongoing research locally on GMOs, specifically, plants products used as food such as maize, wheat, sorghum and potatoes?

Lastly, for public information, to explain whether hybrid materials such as hybrid maize is considered as GMOs.

Thank you, Mr. Speaker, Sir.

**The Speaker** (Hon. Ethuro): Yes, Vice Chairman of the Committee on Agriculture, Livestock and Fisheries; Sen. Ndiema.

**Sen. Ndiema:** Mr. Speaker, Sir, we request for two weeks to bring the Statement.

**The Speaker** (Hon. Ethuro): In two weeks time, the response should be here.

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

**Sen. Hassan:** Mr. Speaker, Sir, last week on Wednesday, I sought a Statement, particularly on the security situation at the Coast Region, the curfew in Lamu and the attacks in Mombasa. The undertaking by the Chairperson of the Committee on National Security and Foreign Relations was that he would give the response this afternoon.

**Sen. Haji:** Mr. Speaker, Sir, I wish to sincerely apologise considering the seriousness of the Statement required that I am unable to give this Statement. However, I want to tell the House that if this Statement does not come by Tuesday, next week, we will summon all the security apparatus in this country to come and appear before the Committee and explain why a simple Statement of “Yes” or “No” cannot be done within two hours.

*(Applause)*

**Sen. Hassan:** Mr. Speaker, Sir, I want to commend that very robust response from Sen. Haji. That undertaking demonstrates the gravity and seriousness of this Statement. Based on the commitment by the Chairman Sen. Haji reasonably, Tuesday should be fine. We should be able to get some indication because the matter is urgent and current before we lose track of time in this whole process.

**The Speaker** (Hon. Ethuro): Good.

Sen. Kembi-Gitura.

## ESCALATING BANK INTEREST RATES

**Sen. Kembi-Gitura:** Mr. Speaker, Sir, I have been waiting for a long time to get a final Statement on the Escalating Bank Interest Rates. The last time that the Chairperson of the Committee spoke about it, he said what he had was not satisfactory and that he was calling the Cabinet Secretary or the Governor of Central Bank of Kenya (CBK). I am still waiting. This is an important issue which I would like to get an indication of whether we are going to get the response this session.

**The Speaker** (Hon. Ethuro): Is the Chairperson Committee on Finance, Commerce and Budget here? Any Member of the Committee?

**Sen. Kagwe:** Mr. Speaker, Sir, I am aware that the matter came to the Committee on Finance, Commerce and Budget. In fact, the Committee has arranged for the Governor of the CBK to come to the Committee sitting as well as the Cabinet Secretary responsible for Finance at the National Treasury. However, he was away as well as his Principal Secretary. It is a matter that we have taken very seriously in the Committee. Therefore, when the Chairperson comes, we will give a comprehensive answer. However, I am unable to predict when that will be. But we can safely say in about two weeks.

**Sen. Hassan:** On a point of order, Mr. Speaker, Sir. I know I did not ask that question, but that question was asked quite some time ago. It is a matter of such grave national concern that it could also guide the policy of this country. Sen. Kagwe has talked of two weeks. This is something we want to dispose of before we go on recess.

**The Speaker** (Hon. Ethuro): That is a fair concern, Sen. Mutahi Kagwe.

**Sen. Kagwe:** Mr. Speaker, Sir, it is because of the gravity of this situation and the matter at hand that we propose that is not just a question of calling Cabinet Secretary Rotich or his Principal Secretary. This is a matter that needs to be discussed at length. In fact, in addition to the Treasury and the CBK, we were also going to engage the Kenya Bankers Association (KBA) so that they can also explain to us exactly what is happening. Rather than come here next week or a few days with another answer that will fall short---

**The Speaker** (Hon. Ethuro): Order, Senator! Nobody is contesting what you must do to get to the bottom of the problem. It is the period in which you want to do. The specific request from Sen. Hassan is that, in fact, to demonstrate the gravity of the matter as you have correctly observed that the matter must be dispensed off with preferably before the recess.

**Sen. Kagwe:** Mr. Speaker, Sir, I will convey that to the Committee. We will try as much as possible to ensure that the question is responded to before the recess.

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

**Sen. (Prof.) Lonyangapuo:** Mr. Speaker, Sir, yesterday the Vice Chairperson of the Committee on National Security and Foreign Relations undertook to give a response to the wanton destruction of property by our security officers in Tiaty today. I am waiting for the answer.

**The Speaker** (Hon. Ethuro): What is your response, Sen. Adan?

**Sen. Adan:** Mr. Speaker, Sir, Sen. (Prof.) Lonyangapuo is jumping the gun. I had requested to give a response. But nevertheless, I can give the response now. It reads as follows:-

On 29<sup>th</sup> October, 2014, Sen. (Prof.) Lonyagapuo requested for a Ministerial Statement on the security operations in Silale Ward in Baringo County. In the request, he alleged that all shops at Ameyan Trading Centre, a church and primary school were burnt down on 28<sup>th</sup> October, 2014 and 29<sup>th</sup> October, 2014 by Government security agencies. He particularly sought answers to the following questions:-

- (a) Why the Government security agencies destroyed people's property?
- (b) When the said method of operation will be put to a stop?
- (c) When the Government will rebuild the burnt shops, church and school?

I wish to state as follow:-

(a) The allegations that all shops at Ameyan Centre, a church and a primary school were all burnt down on 28<sup>th</sup> October, 2014 and 29<sup>th</sup> October, 2014 by Government security agencies are not true.

(b) It is a serious offence for security agencies to commit such activities. In case there is any person with a complaint of property burnt down by security agencies, the same should be reported to the nearest police station for appropriate action to be taken.

(c) Following the unprovoked killing of the 22 police officers and five civilians and wanton destruction of property in Kapedo and neighbouring areas, the ongoing security operation will not be stopped until all the firearms, ammunition and other police equipment stolen from the slain officers are recovered. It should, however, be clear that the operation targets criminals and as such innocent members of the public are requested to cooperate with security agencies.

Thank you, Mr. Speaker, Sir.

**Sen. (Prof.) Lonyangapuo:** Mr. Speaker, Sir, I want to appreciate the response and answer that has been brought quickly as it was requested yesterday. It looks like the Ministry is taking this matter casually. It is not alleged that shops were burnt down. They were actually burnt. Ever since I asked this question more towns and centres have been destroyed. When the statement says that it is alleged that they were burnt, this is not true. Every eye saw this, including Cabinet Secretary ole Lenku, who was with us that particular day. This part of the answer is not satisfactory. A proper answer needs to be brought.

Secondly, the response states and I quote:-

“It is a serious offence for security agencies to commit such activities.”

The response goes on to give a way forward and states:-

“In case there is any person with a complaint of property burnt down by security agencies, the same should be reported to the nearest police station for appropriate action to be taken.”

Mr. Speaker, Sir, I am surprised the way---

**The Speaker** (Hon. Ethuro): Order, Senator! I am equally surprised that you are just reading the same Statement. That Statement was read to the House. All of us heard it. Your job is to seek clarification.

**Sen. (Prof.) Lonyangapuo:** Yes, Mr. Speaker, Sir. The clarification was supposed to be so clear by me re-reading it, so that it comes out this way. Many people have attempted to go and report that their property was looted and shops were burnt down. Many things happened, including cows that were bombed. No statement has been taken. Why? The police officers that the answer purports to send them to say: “You are not allowed to come and report.” I want to hear from the Vice Chairperson, give us the direct address where people can go and report because the police are refusing to take statements.

Lastly, the Statement states that there is wanton destruction of property in Kapedo; the bandits have not destroyed anything. We want all the bandits to be arrested. Which property is being alleged to have been destroyed? I thought it is the houses and the shops that we are talking about that have been destroyed. Indeed, I appreciate that we must get all these criminals. However, to date, when they are given the list – I am told the Deputy County Commissioner (DCC) has a list of some of the names of the criminals. The KDF have refused to go and look for them. Is it in order that the Statement still hangs here saying that the criminals will be sought when no action is taking place and innocent people are being targeted?

**Sen. (Dr.) Khalwale:** Mr. Speaker, Sir, unfortunately, what we are seeing in Kapedo reminds us of what we used to see on television in the 1980s and early 1990s during the Apartheid Era in South Africa where police officers would attack villages with dogs. Could the Vice Chairperson tell us whether the Jubilee Government intends to ask Cabinet Secretary ole Lenku to take political responsibility for this bungled operation by resigning? Lastly, whether Inspector-General Kimaiyo is equally going to be dismissed for deploying inexperienced youth who had been in service for a period of just six months? They were deployed on terrain to go and pursue hard criminals, knowing that we have the Anti Stock Theft Unit and the GSU in this country, which is best placed to go to terrains like these. Will he resign or will he be sacked?

**Sen. Hassan:** Mr. Speaker, Sir, my own assessment of the Statement is that it is far from adequate to respond to the weighty issues. Clarify for the purpose of this Senate, is a Government allowed to close its eyes to the obvious? The fact that violations are taking place is a matter that is obvious to everybody.

Secondly, can the Senate set itself standards to deny responses that are characteristic, particularly from agencies of national security? I have seen it over and over again even at the time when I used to serve at the Kenya National Commission on Human Rights (KNCHR) that they would tell you, if there is really an issue of that nature, tell the relatives or somebody to report to the nearest police station. In law, the Government is under duty and obligation to act within the law. So, you need not file a complaint to the police. The police can, out of its own volition, undertake an investigation. To try and tell Sen. (Prof.) Lonyangapuo to go and record a statement is tantamount not to acting on that matter or to put a denial that is not acceptable within democratic practices and this Senate.

**Sen. Ong'era:** Mr. Speaker, Sir, could the Vice Chairperson further clarify why the military went to Kapedo in clear violation of Article 241(c) without the necessary approval of the National Assembly? Further, could the Commander of the KDF take political responsibility and resign in view of what has happened in Baringo, West Gate and other places? This includes the Cabinet Secretary hon. Rachel Omamo. When will they take political responsibility and resign?

**Sen. Boy Juma Boy:** Mr. Speaker, Sir, now that Sen. (Prof.) Lonyangapuo has clearly said that the Commissioner has already given the names to the security forces and the security forces are pursuing the raiders in vain. Could the operation be called off and follow up with the names that have been given?

**The Speaker** (Hon. Ethuro): Vice Chairperson, you can now respond.

**Sen. Adan:** Mr. Speaker, Sir, first, let me confirm to this House that the matter in question is serious to all of us. The security issue is a responsibility of all of us, as leaders. We, as a Committee, base our response on the information we have. However, it looks like there are further clarifications that are required by Members which I might not be able to give right now.

I will seek for further clarifications on the issues that were raised, especially on the concern of the resigning of the security officers. I might not be able to respond to that because there are procedures of removing those officers. Those procedures must be followed.

Secondly, the issue of the operation in Kapedo is an ongoing matter. We might not have information right now in terms of whether they have managed to get the perpetrators or not. However, I cannot confirm that the operation should be called off. We, as a country, must also be concerned in terms of the officers that we have lost. They too have rights for their lives to be protected. It is important for us to be able to use the procedures that are already laid down to be able to come to a conclusion on this matter.

As of the issue of Kapedo, there is a statement that we are waiting for. This matter was raised yesterday. We should be able to give a response next week.

BUSINESS FOR THE WEEK COMMENCING  
TUESDAY, 18<sup>TH</sup> NOVEMBER, 2014

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): Thank you, Mr. Speaker, Sir. I rise to issue Statements under Standing Order No.45 on the Business of next week. On Tuesday 18<sup>th</sup> ---

**Sen. (Prof.) Lonyangapuo:** On a point of order, Mr. Speaker, Sir. I thought that we have not exhausted this one and---

**The Speaker** (Hon. Ethuro): Order, Senator! Those are just your thoughts. Keep them to yourself.

*(Laughter)*

**Sen. (Prof.) Lonyangapuo:** One more clarification.

**The Speaker** (Hon. Ethuro): The Chair has opposite thoughts. The matter has been exhausted. You will have another opportunity because the Vice Chairperson promised a similar Statement that is related coming next week. So, you can still ventilate whatever is remaining.

Proceed, Sen. (Prof.) Kindiki.

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): Thank you Mr. Speaker, Sir. At this rate, I am scared of saying what my thoughts are.

Mr. Speaker, Sir, on Tuesday 18<sup>th</sup> November, 2014, as usual we will have the Rules and Business Committee (RBC) meeting at noon. The RBC will schedule Business for next week. Meanwhile, the Senate will continue on that day with the Business that will not be concluded this afternoon, including debate on Bills which are at the Second Reading and Committee of the Whole stages.

Once again, let me take this opportunity to kindly appeal to Senators to be more committed to our work because we have a number of Bills which are almost at conclusion stage. I am not trying to say that any of the Senators is not committed, but we can process quite an impressive list of Bills in the next three weeks before we go on recess. At least, we can be happy this year that the Senate has done a good job, especially in the line of Bills. Remember last year, we did not do very well on Bills because we were also handicapped by other reasons, including infrastructure.

Mr. Speaker, Sir, Wednesday is Motions day. Of course, Business for Wednesday will be scheduled by the RBC. However, some of the Motions that are of priority, that are going to be deliberated on include:-

- 1) The resumption of the debate on the Motion by the Chairperson of the *ad hoc* Committee on adoption of the report on Establishment of a Public Compensation Bureau.
- 2) Motion by Sen. Leshore on Establishment of National Aids Control Council County Offices.
- 3) Motion by the Chairperson on the Standing Committee on Agriculture, Livestock and Fisheries on the Status of Food Security in Baringo County. Reports of the Kenya delegation to the ACPEU joint Parliamentary Assembly meetings held in 2013 and 2014.

- 4) Motion by the Chairperson of the *ad hoc* Committee on Adoption of the Reports on Legislation on *Harambees*.
- 5) Motion by Sen. Karaba on Accreditation of Institutions of Higher Learning.
- 6) Motion by Sen. Gwendo on Construction of Wheelchair Accessible Foot Bridges on Major Roads.
- 7) Motion by Sen. (Dr.) Zani on review of Categorization of Secondary Schools.
- 8) Motion by Sen. Mutula Kilonzo Jnr. on Initiation of Legislation to Provide for the Establishment of an Independent Commission to Inquire into the Boundaries of Counties and to Make Appropriate Recommendations to Parliament.

Finally, on Thursday 20<sup>th</sup> November, 2014, the Senate will continue with the Business which will not have been concluded on Tuesday and Wednesday, in particular, emphasizing on the Bills that are in the Second Reading and Committee of the Whole Stages and any other Business that will be scheduled by the RBC.

Mr. Speaker, Sir, I thank you. I now lay this Statement on the Table of the Senate.

*(Sen. (Prof.) Kindiki laid the document on the Table)*

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

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

**Sen. (Dr.) Khalwale:** Mr. Speaker, Sir, I would like to thank the Senate Majority Leader, especially for what he did this week and specifically the way he moved his Motion a few days ago. However, he has told us that on anticipated Business there is the Motion by Sen. (Prof.) Anyang'-Nyong'o on *harambees*. In view of the good spirit that he has brought, could he undertake, just in the interim period to stop the sky team initiative of *harambees* all over the Republic until this matter is debated, considered and determined?

*(Laughter)*

**Sen. Hassan:** On a point of order, Mr. Speaker, Sir. I also feel that as we go to the paces of facilitating the conclusion of this Bill, maybe Sen. (Prof.) Kindiki can add more perspective in the Bill at its formative stages and throughout all the stages, knowing his vast experience in the field.

**Sen. Kagwe:** On a point of order, Mr. Speaker, Sir. Will I be in order to propose that rather than the sky team stopping, they should do very many *harambees*, very quickly before this thing comes to an end?

*(Laughter)*

**The Speaker** (Hon. Ethuro): The Senate Majority Leader, any response?

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): Mr. Speaker, Sir, there is nothing to respond to. My only worry is that Sen. (Dr.) Khalwale, a man I have tremendous respect for and Sen. Hassan, a man I respect significantly, are mixing serious issues with the jokes that we crack when we are on the streets. The serious issue here is

that this week we moved a very serious Motion and that, they appreciate. However, regarding the joke that he is talking about the sky team, it should go on record that the last time I was going to access the sky, at Wilson Airport, I met Sen. (Dr.) Khalwale. I even took photographs of him boarding a plane and headed to one part of this country. Is he in order, therefore, to call people sky team when he himself is a frequent flier?

*(Laughter)*

**The Speaker** (Hon. Ethuro): I guess now the Senate Majority Leader will appreciate that he should not be worried about thoughts anymore.

Next Order!

### MOTION

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

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

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

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

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

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

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

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

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

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

(b) in respect of twenty-one (21) Bills originating in the National Assembly, by proceeding to consider the Bills in circumstances where the concurrence process under Article 110(3) has been initiated but has not been concluded and in disregard of the proposals by the Speaker of the Senate, in accordance with the directions given in the Advisory Opinion of the Supreme Court, for the establishment of a Joint Committee to advise the Speakers on the nature of the Bills, and thereafter, where such Bills have been passed by the National Assembly, by proceeding to secure presidential assent to the Bills;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

*(Resumption of debate interrupted on 12.11.2014)*

**The Speaker** (Hon. Ethuro): Order Senators! We need to conclude this Motion. Sen. Hassan, you may proceed.

**Sen. Hassan:** Mr. Speaker, Sir, I support this Motion by the Senate Majority Leader, at this critical time when the media has made it appear like we are disgruntled, fighting the National Assembly and have been sidelined. I want to start my contribution by saying that is far from the truth. What we must demonstrate and continue to reinforce to the public out there is that the Senate is simply trying to ensure that the constitutional authority of this Senate is recognised and respected. We are telling all parties involved, be they the National Assembly or any organs of State that tends to undermine the authority of the Senate, that this Senate is willing to protect itself, not only through the constitutional means available, but also political means. We have decided at this point and time to go to the Supreme Court. We believe that the Supreme Court is likely to give a reasoned judgement that might advise other organs of this country on how to reinforce the mandate of the Senate.

Mr. Speaker, Sir, I do not know whether it would be in order for me to think futuristically. We have an existing advisory of this nature where the Speaker of the National Assembly is under obligation to consult with you. With regard to Bills, notwithstanding their nature, a determination must be made by both Speakers of Parliament. We know that these advisories have been ignored. I want to put a rider that it will not be business as usual. If any institution decides to disobey the Supreme Court verdict on account of what mandate the Senate has in the dispensation of the legislative agenda.

As my brother Sen. Kagwe said, let it be known that the initiative to go to court must not be viewed as a cowardly initiative by the Senate. I can bear you witness that no particular Member of the National Assembly has a greater standing in society than many

of the Senators seated here. If we were to take them to a political contest, they would lose on the first day. We are acting with decorum while pursuing the institutions available to us within the Constitution because we are people who believe in the rule of law. Which Member of the National Assembly marches the gravitas of Sen. Wako from Busia County? Which Member of the National Assembly from Kakamega County marches the gravitas of Sen. (Dr.) Khalwale? Which Member of the National Assembly---

**The Speaker** (Sen. Ethuro): Order, Sen. Hassan Omar! Do not go that way.

**Sen. Hassan:** Mr. Speaker, Sir, I will be cautious in what I say, but I was simply trying to articulate the message that we are going to the Supreme Court at the first instance for redress. Even from a political contest, the Senate will still carry the day if we were to go back to the people of Kenya.

Mr. Speaker, Sir, we are requesting our brothers and sisters to heed. I have heard the most obnoxious arguments by some Members of the National Assembly. How dare somebody make a statement that I, Hassan Omar, who has been elected by six constituencies, am inferior to somebody who was elected by one constituency? That is political buffoonism in terms of the argument. Common logic says that if your footprint of election is larger, then your authority and political standing is also larger. We do not need to have any contest with Members of the National Assembly. I have seen Members of Parliament making those fallacious arguments. Which Kenyan will believe that a man or woman elected by a myriad of constituencies can be subservient to a person elected from one constituency?

Mr. Speaker, Sir, I think we have been too restrained in our response. I urge the Senators to continue being restrained. I think that restraint is what is providing this country with moderation. Sometimes we must exhibit political sophistication as the Senate because people expect a lot from us. The galaxy of stars that I see here, these are people who are the brands in their own respect. Ask any Kenyan to name for you, Senators, and they would, probably, name all the Senators. For example, in this country who does not know Sen. Haji, Sen. Obure, the Deputy Speaker or even the Speaker of the Senate? When I was trying to contest for election, people asked me why I was going for a big seat instead of starting from a smaller one. They told me that this is a league for the superstars like Sen. Wetangula, Sen. Abu Chiaba, Sen. G.G. Kariuki *et cetera*. But I told them that I believed that I belonged to that league by right. They branded this House a House of retirees.

There are no greater ideas that I have come across than the ideas I meet in this Senate. Quite a number of Members of the National Assembly fall within my age bracket. I can neither have a political discussion or a discourse of the quality and scale that I have with Members of the Senate. People say that when you look and listen to the debates in the Senate for one hour, you will have got the kind of value that would have taken you a long time to learn. Those people who say that this is a House of retirees, I want to tell them that the more than 50 per cent of the Members of the National Assembly are older than me. What retirement are they talking about? It is because they did not have the courage to stand to be elected as Senators. Those of us who had the courage are here.

Mr. Speaker, Sir, we are making these political arguments because it should be known to all and sundry that the Senate has not woken up from slumber; the Senate was not sleeping. It was simply being patient. We have been patient for far too long. Unfortunately, the Member of National Assembly who made that remark is a person who

comes from the Wiper Democratic Party which I belong to. He is the Leader of the Minority in the National Assembly courtesy of a Parliamentary Group (PG) decision which I sat in to ensure that he is selected as the Leader of the Minority.

All I ask him to do is to do his job and stop theatrics. We did not sit in that PG to make him the Leader of Minority so that he could go and make the most unfortunate statements in the National Assembly that any leader worth his salt cannot make. It was unfortunate for him to stand on the Floor of the National Assembly and doubt whether the Senate serves any useful purpose. It shows that he is a person who, not only does not understand the Constitution or is an enemy of devolution, but has no understanding of his own mandate. In fact, this mandate should have been to protect coexistence between the two Houses.

I think this Motion is very timely and many Senators have spoken to it. This Motion is extremely important to us from the coastal region. Many of you might not know this history, but I have heard Sen. (Dr.) Khalwale say it before, that devolution was not born out of some lofty ideas by some constitutional lawyers seating somewhere in Nairobi. Devolution has been an idea whose principle founders are some of the greatest names that have walked the coast region. The spirit of the late Ronald Ngala is found in this document. Therefore, whoever tries to fight that spirit is fighting the spirit of the entire coast region. To abolish the Senate, is to abolish devolution. To undermine the Senate is to undermine devolution. Whoever undermines the Senate undermines all of us. Therefore, those who think that this was an idea that was manufactured somewhere in Nairobi by some good constitutional thinkers, are wrong. It was only put to form by those who know about legal drafting.

I want to warn that the coast region has waited for 50 years to get to this point and even to be acknowledged in the sphere of this nation. Therefore, any attempt to take us 50 years back, will be severely be met politically by the Kenyan people. So, I am proud to know that we have come here to defend a course that our forefathers stood for, for years, which was abolished at its very inception, with the same kind of stereotypes and notions that we have had.

I am here out of choice. I understood the broad dimensions of the Constitution, but elected to be in the Senate because if you want to defend devolution, you must be in the Senate. It has an express mandate to defend devolution. I shall defend this devolution against the National Assembly and any party. Even if my own Leader of Minority in the National Assembly goes against devolution, I will defend it against him. Therefore, let it be known that we will coexist as a country cordially. However, if you try to take this country 50 years back, we will deal with you before you do so.

Mr. Speaker, Sir, many people here have demonstrated the kind of developments we have seen in their counties. What Marsabit County has done in one year of devolution, is something they could not do in 50 years. The same can be said of Wajir, Mandera, Garrisa, Isiolo and Turkana counties. Who knew about the good things or good projects being carried out in West Pokot? This could not happen before we embraced devolution? Mombasa, Tana River, Taita Taveta, Kwale and Kisii counties are all talking about mega projects. I hear Migori County sometimes rolling out plans to start a project worth Kshs900billion. Even if they might not be true, at least, devolution has allowed us to dream.

**Hon. Senators:** Exactly!

*(Applause)*

**Sen. Hassan:** Mr. Speaker, Sir, there was a time we could not even dream. There is a dream that is coming true where people who have never seen roads since Independence are right now breaking ground for roads. How dare you say you do not know the reason the Senate is there? How dare you undermine the Senate? I need to send these polite words that we will all talk to our leaders in our respective coalitions. Tell them, and we will tell ours, we shall be friends in so far as the common agenda about the party remains. However, where anybody transgresses the boundaries and thinks that the Senate is nothing, we shall fight you even within those parties and coalitions.

*(Applause)*

Mr. Speaker, Sir, you cannot bring us in here and render us almost impotent to deliver and then you go making large political plebiscites. The reason people have created doubt on this Senate today is because deliberately we have undermined and manufactured consent that this Senate counts for nothing. Of What use am I to Raila Odinga, Kalonzo Musyoka and Moses Wetangula if I sit with him during the day and he undermines the Senate during the night? You shall not be my leader if that is what you will do. You have a job and a function that you are performing and we are giving you the support to do it. Why will you deny me the legitimacy and the constitutional authority to do what I was sent by the Kenyan people to do in the House of the Senate?

Mr. Speaker, Sir, these are my closing remarks. Yesterday, I was on a television interview and many Kenyans said that they do not know the role of the Senate. I believe we underestimate Wanjiku. Wanjiku is more sophisticated than most of us believe. Wanjiku always knows where his or her best interest lies as Sen. (Dr.) Kwalwale says: "Nanjala, Fatima, Moraa and all these people". We must go out there and use our political platforms over weekends and every other weekend, in churches and mosques to educate people on what the mandate of the Senate is. The mandate that we must tell all of them apart from the other two is Division of Revenue, Legislation-----

**The Speaker (Hon. Ethuro):** Order! Sen. Hassan, your time is up!

**Sen. Hassan:** I support, Mr. Speaker, Sir.

**The Speaker (Hon. Ethuro):** There is always an indication of the yellow light for five minutes.

Sen. Amos Wako

**Sen. Wako:** I am now starting. Time starts counting now---

**The Speaker (Hon. Ethuro):** Order! Sen. Wako, proceed.

**Sen. Wako:** Mr. Speaker, Sir, first, let me say that I support this Motion. I want to take this opportunity to express my appreciation and thanks to the Senate Majority Leader and Senators such as Sen. Mutahi Kagwe and other Senators from the Jubilee Coalition, which forms this Government, for supporting this Motion. Their support is very critical in the survival of the Senate. We are aware that the first Senate went down because of a coalition between the national Government and the National Assembly at that time. We are aware that in situations such as Kenya, the greatest threat that devolution such as what we have in Kenya or a federal situation that we have in other

countries, the national Government is the greatest threat. Therefore, to have Members who come from the ruling party supporting this Motion, gives me some ray of hope that we are going to survive. What I want to say is that with or without their support, the Senate is there greatly underpinned under the Constitution.

Going into the history of this issue, you may recall that at the beginning of our term, we made a deliberate decision to go to the court for an advisory opinion. It pains me that we have to go to court again for an advisory opinion. Why am I saying so? We made that deliberate decision to go to court for the advisory opinion because, at that time, we did not want to declare the Division of Revenue Bill null and void because of the implications that it would have had on the financing of the Government. We went to the court for advisory opinion to advise us that, one, the method used in that Bill was wrong, but also to provide guidance on legislative procedures between the National Assembly and us.

I am very pleased that the Supreme Court lived up to our expectations, that they interpreted Clause by Clause how a Bill should be originated, how it should come to the House, how it should be dealt with and after the debate what should happen up to the time the President assents to the Bill. They went into considerable details on this. The advisory opinion, also went further than that, they made comments on what a Bill concerning counties means. They said that a Bill concerning counties is not limited to Part (d) of the fourth schedule of the Constitution.

In other words, it is not limited to those specific functions that have been given to the county governments to perform. They went further and quoted an example of national security which is a matter of great concern for us here. We were debating this afternoon and every day we talk about national security. They gave an example of that and said that although national security is a function of the national Government, but it concerns the counties. They went further and said that there are very few Bills that they can think of which do not concern the counties. In matters of legislation, following that opinion it is quite clear that the Senate has a clear mandate on nearly all the Bills that emanate in this country. When they gave that ruling, I was very pleased because as much I have said that if we have Members of the national Government supporting devolution then, at least, that thread goes away. Also if we have a Judiciary that supports devolution, we are further protected.

In the United States of America (USA), at the very beginning the threat to the States was very real. It took the Supreme Court, at that time the Chief Justice was Marshall, in about 15 decisions to State out clearly the role of the States within the American system, to state out clearly that the states are protected. It is because of that leading role of the Supreme Court in the USA that America is what it is today. Therefore, this ruling by the Supreme Court gave me a lot of hope that, at least, our Supreme Court or the judicial system should have that legacy, just like the Supreme Court of the United States of America (USA) to have protected devolution in this country.

Mr. Speaker, Sir, it pains me that after the advisory opinion people were saying that it was just a mere advisory opinion and, therefore, it does not bind us. It also pains me that after that advisory opinion we still continue to behave as if the advisory opinion of the Supreme Court is not valid. We have specific provisions which say that the Supreme Court can give an advisory opinion. The clear purpose of that is that, that advisory opinion is supposed to guide the people who have gone for that advisory opinion

in all their future actions. That is why it pains me that, that advisory opinion has not been obeyed in the letter and spirit of what that opinion said. In fact, that opinion actually was merely repeating what many lawyers or any intelligent person who reads the Constitution would know. It merely repeated that and yet, it has not been obeyed. Therefore, one starts now wondering what the purpose is. We will go for an advisory opinion and it will be disobeyed again? These are the varied questions that must be running through our minds.

One of the differences between developed and developing countries, of course, is that we tend to engage in wrangles and very irrelevant and artificial wars which we should not really be engaged in. This is because intelligent people must know what the Constitution provides. Again, here we are going for an advisory opinion. That is why I support the Senators who say that in addition to this advisory opinion that we are going to get, people should be put on notice. Next time we are not going to seek an advisory opinion, but the Acts that have been passed without our involvement must be declared null and void.

Mr. Speaker, Sir, as elders or the Senate as it were, we have been very restrained in our actions and some people mistake that for weakness. Therefore, they proceed to provoke us into more and more actions. In fact, the sad situation here is that they proceed to relegate us into a Non-Governmental Organisation (NGO) and not a legislature duly enshrined under our Constitution. Why do I say so? I say so because of this unethical practice of plagiarism. We know that my neighbour's Bill – the National Flag, Emblems and Names (Amendment) Bill - was the first one to be enacted by the Senate. In accordance with the law, we took it to the National Assembly for them to debate. They should have debated it and brought it back to us with or without amendments. But what did they do? They removed all our names, put their names, debated and sent it for assent. That is highly unethical behaviour and provocative.

Maybe we did not react to it the way that we should have and they are now encouraged to continue in such unethical behaviours, as relates to the other Bill. That is why this action becomes necessary and I am also calling for the fact that the Government, particularly the President, should save us from all these things, if I may say so. I am glad that the other day he told the National Assembly, in no uncertain terms, that the Standing Orders that they had amended to allow the Cabinet Secretaries to go before the Committee of the Whole House were wrong.

Mr. Speaker, Sir, you may recall that we discussed this issue; whether or not to follow the precedent of the National Assembly. We advised that it will be unconstitutional. I am glad that you accepted our advice and kept quiet. We are now calling upon the President to save us from all this shadow boxing by ensuring that the correct procedures are followed. When I was the Attorney-General the President would never sign a Bill unless he had a certificate duly signed by me that it was in order and he should sign it. Under our circumstances now, the President should not sign a Bill unless there is a certification from the Speaker of the National Assembly and the Speaker of the Senate, that this Bill has followed the due process; and the Attorney General has confirmed that, that is so.

Mr. Speaker, Sir, if he now began adhering to that very strictly, then at least it will bring home to the National Assembly and others that whatever they do may not be assented to, unless we are somehow involved. Just as the Bill starts with the two Speakers deciding whether it is a Bill concerning counties, the whole process also ends

with the two Speakers concurring and giving certification that the procedure has been followed, therefore, the President should only sign at that time. I am saying this because advisory opinions may be ignored by the very same people, if the same culture will go on. We may go to the court and declare something *ultra vires* to the Constitution, but what is the use? It will be a waste of time. What it means is that whenever a Bill is passed by the National Assembly and the Senate, if we feel that it concerns a county, then we shall also now begin originating an amendment Bills, amending that Bill to take into account the concerns of the counties. We will go through the whole process again and since we are law-abiding, send it to the National Assembly. The same thing happens and mediation teams are called and so on. That is really wastage of our time in legislating.

If the President had just asked:-

“Has the Senate discussed this matter? Where is the certification from the Speaker of the Senate? I am not signing.”

If he began just doing that, then maybe it would not even be necessary for us to go and seek an advisory opinion. It would not be necessary for us to go and begin threatening that we will go to court to seek a declaratory suit declaring certain Bills null and void *ab initio*.

Mr. Speaker, Sir, as I support this Motion in total, my plea is that we should consider other means of putting pressure on this issue. But my main one is that we shall be saved these side shows completely by the President, because the buck stops with him. He must do so by ensuring that he does not append any signature to any Bill, unless the certification of Sen. Ekwee Ethuro, Speaker of the Senate, also says that it is in order for that to happen. He should recognize your role and that of the Senate in this entire process. Even those Bills that do not touch on counties must start and end with you.

**The Speaker** (Hon. Ethuro): Sen. Wako, your time is up!

*(Several hon. Senators stood up in their places)*

Order, Members! I see a lot of interest and we also must dispose of this business today. So, I am suggesting we reduce the time to five minutes so that we allow as many people to participate as possible.

**Sen. Nabwala:** Thank you, Mr. Speaker, Sir. I would like to add my voice to this very important Motion which has been brought to the Floor of the House by the Senate Majority Leader. That is a commendable job because this Senate has been working under difficulties, starting from last year when the Division of Revenue Bill was deliberated on by the National Assembly and it bypassed us. It was then sent for assent without our input. This led to us going to the Supreme Court to seek an advisory opinion. It was costly for both Houses of Parliament. The advice was given for the way forward, but as I see it, the National Assembly Speaker has continued to disregard that advice that was given by the Supreme Court.

Mr. Speaker, Sir, the Constitution is very clear and when you read Article 93 which is about the establishment of both Houses of Parliament. Article 93(1) says:

“There is established a Parliament of Kenya, which shall consist of the National Assembly and the Senate.”

Mr. Speaker, Sir, So, we are here by our right which was given to us by the public. Sub article (2) says:-

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

Mr. Speaker, Sir, this is very clear. I cannot imagine myself, a leader in the National Assembly, standing up and making very unfortunate statements; that the Senate has no work and that we need to go home. This talks about both Houses because we are tied together. It is about devolution and the mandate for the Senate is very unique and distinct. This is because we protect the interests of counties. So how can you say that we do not have work? They are the ones who are passing Bills and they do not want to pass them through us. What is the fear? This House is a very respected House. We have debated in a proper manner and we have carried ourselves well before the public. What I do not see is why the National Assembly is encroaching on our mandate. They are trying to take it away and saying that the Senate has no work. If the Senate has no work, then it means even they will have to go home because this was a package. It is about the Constitution which was passed by the people of the Republic of Kenya. So, if you want to dissolve one House, then it means we have to go back to the elections.

Mr. Speaker, Sir, the principle of separation of powers must also be upheld and respected so that different arms of Parliament operate within their jurisdiction. We have seen in the past, the Judiciary has frozen the impeachment powers. You impeach a governor, the next day he goes to court, he is given a stay of orders and he is back in the office.

Mr. Speaker, Sir, now we have the National Assembly who are also trying to take away our powers. So, where are we heading? We need direction. Who is supposed to direct us? It is the Jubilee Government; it is the President. He needs to call the Speakers of both Houses since they are leaders of this House. The Senate is the “Upper House” whether they like it or not. This is because as the Senate Majority Leader put it yesterday, from the Senate you ascend upwards. You do not descend to the National Assembly. Article 66(2) also retaliates that:

“Parliament shall enact legislation ensuring that investments in property benefit local communities and their economies.”

I think this is where now the dispute came about because of the Mining Bill. This House has had enough. Over 46 Bills have been enacted into law without passing through this House and yet the Constitution is very clear in Article 110(3), which states very clearly that:

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

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

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

Mr. Deputy Speaker, Sir, this particular Article has been breached. It is clear that the Speaker of the National Assembly continues to violate the Constitution and he is being assisted by the Attorney-General. The Attorney-General is supposed to advise the

President so that before Bills are signed – as Senator Wako put it – there must be a certificate to certify that the Bill does not concern the county governments.

**The Deputy Speaker** (Sen. Kembi-Gitura): Your time is up!

**Sen. Abdirahman:** Thank you, Mr. Deputy Speaker, Sir, for allowing me to contribute to this very important Motion. The manner in which this Motion is drafted is sufficient enough to convince anyone to actually support it. This is because it really details the prevailing circumstances which the Senate has found itself in, not once or twice, but from the time of its inception. The Senate has constantly been referred to as a House which is the voice of reason. It is a House where quite a number of its Members are not only old as described by our counterparts in the National Assembly, but in my own understanding, it has a lot of good professionals and all those who have good wisdom which can steer this country to the road to progress if we keep on the track we are trying to do.

Mr. Deputy Speaker, Sir, as I thought through this Motion this afternoon, I looked at a number of things that had happened at the National Assembly and the manner in which the leadership of the National Assembly, particularly the Speaker, Justine Muturi, who has been a friend, together with the Majority Leader of the House, who unfortunately, also comes from where I come from, have taken that House in terms of direction. No wonder *The Nairobi Law Monthly* has at one point described those two gentlemen as the faces of impunity. It is a clear testimony. I am leaving out the Senate Majority Leader whom they included wrongly. The truth of the matter is that these gentlemen have been correctly described as the faces of impunity in this country. If they move on this way, they will not only fail the National Assembly, but even the National Executive is bound to fail if they entirely put their hopes and trust in this kind of gentlemen. I am sorry to say this – and I say it with a lot of sadness – particularly to colleagues whom I feel should have done better.

Mr. Deputy Speaker, Sir, seeking an advisory opinion is a Constitutional right for this House and I think it is the only way to get some direction. It is always good to give people an opportunity to hear again that they are on the wrong path. It is not a bad thing.

Mr. Deputy Speaker, Sir, I also thank the Senate Majority Leader and the entire House in the bipartisan manner in which we have operated for long time. We are going to save this House and this country if we do not operate along party lines. This will help us reason better together.

Mr. Deputy Speaker, Sir, one other culprit in this sorry state of affairs is the Attorney-General, none other than Githu Muigai, who should have guided his Excellency the President into doing the right thing. These are Constitutional provisions; something which even any blind person can see. Even the blind people use the Braille to read. I mean, you cannot lose anything if you are very careful. I call upon the Attorney-General to lead this country into the right path and help the State agencies, whether it is the National Assembly or the Senate and the Judiciary, to support and enhance the provisions of this Constitution so that we do not have people arbitrarily crossing over boundaries.

Mr. Deputy Speaker, Sir, our counterparts in the National Assembly have only failed to comprehend one thing; that in this country, county government will not exist without constituencies and constituencies will not exist without the wards that are represented by county representatives. I just cannot understand where this extreme authority claimed by Members of the National Assembly where they imagine that they

have enormous power that transcends all boundaries. I want to urge them, especially those who have come into politics for the first time, because they are yet to realise that at any given time, 70 per cent of the political leadership do not come back. This is one thing they must know. A few people like Sen. G.G. Kariuki survive, but not everybody.

**The Deputy Speaker** (Sen. Kembi-Gitura): Your time is up!

**Sen. (Eng.) Muriuki:** Mr. Deputy Speaker, Sir, I stand to support this Motion. A lot has been said and I have one or two things to add. The Government has three arms, that is, the legislature, the executive and the Judiciary, but under the circumstances we find ourselves is as if the Judiciary is more equal than the other two. Since it is not more equal in the Constitution, there are some enemies of the Constitution who are now using the Judiciary to fight devolution. Out of the three functions of the legislature, that is, to make laws, oversight and representation, as far as the Senate is concerned, the oversight is far much more critical than the other two when it comes to protection of devolution. When a judge goes ahead and issues an injunction or an order to stop somebody who is coming to clear something to do with funds for the counties, I do not understand how the Chief Justice, who is the head of that institution cannot intervene.

There are two articles which require anybody to be called or for anybody in charge of public funds to be personally liable. The idea that the Judiciary or the judges are independent and can make their own independent decisions, I think that is a fraud. That institution has somebody in charge and anybody in charge of an institution must give guidance. Therefore, the idea that the Chief Justice is not in a position to call the Judiciary to a *Kamukunji* and tell them that they are overstepping their mandate, I think is superfluous. The Chief Justice should do his job.

Mr. Deputy Speaker, Sir, it is very well to hear the Attorney-General *Emeritus* describe how he used to operate when he was there. He used to send Bills to the President for assent through a procedure that is right. I have been going through this document in our Constitution and I cannot see where that procedure is. Maybe the legal minds here can throw some light. My point is; it is about time we originated a law which requires the Attorney-General to follow certain steps and, therefore, conform to certain things. For example, if we have a law saying that the Attorney-General while forwarding a Bill to the President for assent, he should make sure it follows the Constitution. We should go ahead and cite those steps. Did the Bill go before a meeting of the two Speakers for determination whether it affects counties or not? When the registration is over, did it go to both Houses or not? That law can require the Attorney-General to make sure that those steps which we are lamenting about are followed. In this regard any Bill which will go to the President for assent without having followed that specific law, it would be automatically unconstitutional.

Mr. Deputy Speaker, Sir, I believe that there are quite a number of issues which we have looked at and I personally think we are a little bit behind in making the law because the Constitution itself is skeleton in nature. Some of the specific provisions which we may want, we should take it upon ourselves through the Committee on Legal Affairs and Human Rights so that some of these provisions are made specific on what we want to see.

With those few remarks, I beg to support.

**Sen. Haji:** Mr. Deputy Speaker, Sir, I stand to support this Motion. As has been stated by many speakers, Articles 95 and 96 are very clear. The Executive which we

represent here as a party was involved in the making of this Constitution. Sometimes it is embarrassing that we sit here to see the Opposition taking advantage of the mistakes that are being done by the National Assembly and the Executive. I am saying so because the National Assembly is becoming a rogue House. It did not start yesterday. It started with the demeaning of the Senate.

They have even interfered with the courts by summoning the Chief Justice for doing his administrative job. The other day we witnessed the National Assembly subverting the Constitution by changing the Standing Orders to summon Cabinet Secretaries to appear before them. They did this in the eyes and nose of the Executive. It pains us because we represent a party which is the ruling party and we cannot sit back and see blunders being made every day despite the efforts we have made. I am not shy talking about this. We have attempted to bring this to the notice of the Executive. I am not surprised if the Minority Leader in the National Assembly supports what the Speaker is doing because they are playing politics.

Mr. Deputy Speaker, Sir, the National Assembly can summon the Cabinet Secretaries and give them instruction on what is expected of them. That is not undermining the authority of the Government. We have no agenda by our own selves because we have been elected on a Jubilee ticket. I would not accept the Senate to be killed as it happened during the early years of Independence. My father was the President of a Regional Assembly and my elder brother was a Senator. They lost their seats because of the game played by the National Assembly and the Executive at that time. We represent people and have to represent the interest of the people who elected us. We are not going to protect our seats as individuals because we are not here on our own, but on the mandate of the thousands of people who elected us.

Therefore, I want to assure the Senate Majority Leader that we are with him day and night. If there is an intention to make us sitting ducks, we are going to grown wings and fly to wherever we can reach so that we can get our rightful place in the eyes of Kenyans.

Therefore, we are sending a warning. We cannot be taken for granted and will not allow to be taken for granted. Nobody should think that we are supporting the Orange Democratic Movement (ODM). We are supporting what is right and the Constitution under which we have taken oath to protect.

With these few remarks, I say that we will stand very firm and make sure that we get an answer to what is ailing this House.

**Sen. (Prof.) Lonyangapuo:** Mr. Speaker, Sir, I want to join my colleagues in supporting this Motion. As we watch the debates in the National Assembly and read utterances in the newspapers, and sometimes watch on TV, we wonder whether the two gentlemen who come unfortunately from the side of the coalition where I am, are really there for the good of this Government or they are there as moles to bring down the Government. I am saying this because they have now become so “powerful” to the extent that they can dare the Constitution by allowing even such utterances such as; “Senate must go.” How can they say that the Senate must go when the role and the function of Senate is clearly indicated, which is different from that one of the National Assembly? They complement one another to make the House of Parliament.

I sometimes fail to understand whether these people could be the ones who were opposed to the creation of this Constitution. You recall that there are people who

vehemently fought the enactment of this law and eventually when the Kenyan people spoke and came up with this Constitution, it looks like they did not subscribe to this. If they did, they would not be speaking the way they are doing. I fail to understand how something that is clearly written; that should anyone have an issue within debating and understanding the Bill, the two Speakers have to sit down. It is also written here. What happens suddenly, that we want to revisit what took place in 1965/1966? Yesterday I decided to read and look for the law that dissolved the Senate of 1966. It was signed into law on 3<sup>rd</sup> July, 1967. When you read it, you wonder, because those Senators were appeased by being given a constituency which was equivalent to the now 47 counties. It is not good that we revisit those tactics by going back and killing the same Constitution we fought for.

If they are forwarding Bills that are unconstitutional to the President for assent, it means they have abdicated the Constitution. In other words, the National Assembly should automatically dissolve itself now. This is because they have quickly broken the law and unless the law is amended, it means that they must throw themselves out and then other people are re-elected.

When it comes to speaking and talking about what they are doing, they all speak as one; the opposition and the Government side. I visited one county with my colleague and saw the arrogance of the Members of the National Assembly. They walk with CDF cheques to embarrass all the Members of County Assemblies (MCAs) who have now been promoted by being given small time money by governors. They do not talk about CDF money having been used to build this and that, they say: "I have done it, clap for me". I find it a bit ridiculous because you are setting the stage to say that the Senate is useless and yet it is not. We are supposed to serve and protect the interests of every county that we represent. My governor has no powers outside that county except coming through the Senate. This is written here. When we labour to say that these laws touch on counties, we are not doing it for our good. We are doing it for the good of the nation. It follows then that we should not have leaders who paralyse the law. It is high time such leaders were removed.

**Sen. G.G Kariuki:** Mr. Speaker, Sir, I thought we will be given more time to talk about this Motion. Some Members were lucky to talk for almost an hour while others are going to speak for five minutes.

If you look at this Motion very clearly or carefully, in my view, it is seeking or requesting the entire public of Kenya and all the institutions to adhere to the Constitution. There is nothing else that we are after. This Motion is not seeking for any support or additional power from anybody. We want to be where we are. This is because we know that the day we shall need additional powers, we know where to get those powers.

Therefore, I feel very sorry because I know that this country has the most educated men and women south of the Sahara. I get concerned when I see things happening without any good reason. For example, we can speak here for the whole day but are we going to prove to anybody that the Attorney-General (AG) does not know what is happening? Are we going to convince anybody that the Head of State does not know what is happening? Are we going to think that the National Assembly is just a bunch of fools and that they do not know or understand what is happening? We know for sure that the National Assembly and all other institutions do not require any advice from

anybody. In fact, political leaders of this country are ridiculous because they have the power and everything they are supposed to do.

Due to time, I want to say that it is high time that the Head of State and other institutions started understanding that Kenyans are most competent people in terms of understanding the Constitution. Therefore, the Judiciary and the Law Society of Kenya (LSK) should also address this matter. None of the people are raising their fingers when the Constitution which we have all sworn to protect is being violated. All the institutions are quiet.

You ask yourself, what is the reason for this? This is because the Judiciary should not allow these things to happen. They are operating within the law without following the Constitution. They are the same people we are thinking of taking our case to at the Supreme Court. I am not quite sure that they will understand what you are saying. If they will do, why did they not understand yesterday? Are they to be reminded? I think we must wake up and do things according to the law and the way we are required to do them.

The Senate is looking for nothing more than the saying; give Caesar what belongs to Caesar. We just want what is due to the Senate. We are not crying to get anything else. We are now two years old and the President should know that he is dealing with people who are not honest to him. If they were honest, we would not be in this position. They would tell him that what is happening is not what the law says. I am sure and have a lot of confidence in President Uhuru Muigai's leadership.

**Sen. Obure:** Thank you, Mr. Deputy Speaker, Sir, for giving me the Floor. My contribution will be in support of this Motion. I, first of all, want to thank the Senate Majority Leader for the initiative to bring this Motion at this opportune time. I also wish to say, from the outset, that I am in agreement with the sentiments which have been eloquently expressed regarding this Motion by my colleague Senators who had the chance to speak before me.

The Constitution of Kenyan 2010 was supported and voted for overwhelmingly. People spoke loudly and clearly and their decision, voice and desires expressed through their vote must be respected. The duty of all of us is to respect and uphold this Constitution and the institutions it created. We do not have a choice, if we wish to move forward together, but to uphold this Constitution and protect it at all times. One of the major reasons that Kenyans supported the Constitution of Kenya 2010 was devolution.

In devolution, Kenyans see fresh hope. In devolution, they see an opportunity for equitable sharing of national resources. In devolution, they see an opportunity to achieve a faster case of development in their counties. In devolution, they also see an opportunity for better service delivery from their county governments. They would no longer be marginalised if the system was properly effected.

The role of the Senate is to protect devolution and the interests of county governments which have been formed to advance and actualize the objectives of devolution. The drafters of this Constitution must have known and envisaged that there would be elements in our society who would undermine devolution. The drafters were right because these elements have now emerged. Elements of devolution were determined to move in a systematic way to kill devolution.

First, they start with the institutions whose role is to protect county governments. Once that is done, the remaining task will be much easier to accomplish because county governments will have been exposed in the absence of the protector, the defender and

their champion. Let these people know that the cause they are pursuing will not be easy to accomplish. It will not be a walk in the park. Their mission will be futile because people will rise against them and nullify all their efforts. They should know that devolution is here to stay because it is the hope of the people of this country.

Finally, I appeal to all Kenyans to respect and abide by the Constitution. We should remember that each institution created under that Constitution has been put in place for a purpose; to perform and play a unique role in the smooth running of our affairs and for the good of this country as a whole.

I support.

**Sen. Njoroge:** Mr. Deputy Speaker, Sir, as I support the Motion, I want to be a bit generous to some institutions out there. These are the National Assembly, the Executive and the Judiciary. I extend my generosity by lifting this copy of the Constitution so that as we talk about it--- Some leaders and institutions may not be aware of what we are referring to. The Constitution of Kenyan 2010, which is available everywhere, looks like this.

*(Sen. Njoroge displayed a copy of the Constitution)*

This is a Kenya Gazette Supplement No.55 of 27<sup>th</sup> August, 2010. Above all, I want to refer my concerns to Chapter 8 of the Constitution Part 4. Chapter 8 is in page 63 of the copy that I have. I will go ahead to quote some articles in this Constitution and especially Article 93 which is on the establishment of Parliament. Article 94 talks about the role of Parliament and Article 95 talks about the role of the National Assembly. Article 96 talks about the role of the Senate. Article 97 talks about the membership of the National Assembly and Article 98 is about the membership of the Senate.

Article 110 is about Bills concerning county governments. Article 111 is on Special Bills concerning county governments and Article 112 is about Ordinary Bills concerning county governments. Article 113 talks about the Mediation committees and Article 114 talks about Money Bills. Article 115 talks about Presidential assent and referral.

Chapter 10, Part 2, page 163 talks about the Supreme Court where we are heading to for an advisory opinion. As referred to in Cap.10 where we get the Supreme Court, it has been caused by probably the ignorance of the Members of the National Assembly or them assuming the Constitution that we have and also negligence from the Attorney-General, who should play the role of advising the President on the way forward as far as the Bills are concerned.

Mr. Deputy Speaker, Sir, Cap.11 talks about the devolved government; Part I talks about objects and principles of the devolved government. With the spirit of respecting the Constitution, we will really need to understand that without the Senate, it means that the devolved government cannot be realized as it is the link between the national Government and the county governments.

I, therefore, want to support the Motion and condemn those leaders who feel that the Senate has no role to play.

**Sen. Ong'era:** Thank you Mr. Deputy Speaker, Sir, for giving me the opportunity to add my voice to what the rest of the Senators have said. Let me begin by first,

congratulating the Senate Majority Leader for moving this Motion and the Senate Minority Leader for seconding it.

This is a fairly straightforward matter that requires very great prudence on the part of the National Assembly leadership. However, this leadership did not take the bait and show this prudence. Why I say this is because Article 95 is very clear on the role of the National Assembly. Article 96 is also very clear on the role of the Senate. However, although this shows the distinct roles of the two Houses, Article 110 makes it complimentary that the two Houses have a complementary relationship; that is, to ensure that the institution of the two Speakers is highly respected. And because of this, it requires that before any House considers a Bill, the Speakers of the two Houses must actually ascertain and resolve any question whether it is a Bill concerning counties. That was the prudence that was needed by the leadership of the National Assembly.

**Sen. (Dr.) Machage:** Tell them!

**Sen. Ong'era:** Mr. Deputy Speaker, Sir, this Senate is here to stay. If I may quote in Swahili: "*Sisi kama Wanaseneti hatubanduki*" This means that we shall not be moved. This Senate has not been created by an Act of Parliament but by a plebiscite of Kenyans. It was not just an ordinary plebiscite but a landslide plebiscite. It horrifies me to see that the Speaker of the National Assembly is treating this House with contempt and yet we know that the Senate is actually the guardian angel of the counties. It is not just the guardian angel, but the custodian of all legal aspects including ensuring that the Bills, especially those concerned with money to the counties are well looked into.

Mr. Deputy Speaker, Sir, it horrifies me to see that over 46 Bills were actually enacted into legislation and the President of this country was actually misled into signing these Bills. This trend of not obeying the rule of law in this country must come to an end. That is why the military can descend on poor Kenyans in Baringo with impunity without seeking the approval of Parliament. One of these days, the citizens of this country will storm this Parliament like they did in Burkina Faso simply because we have refused to hear.

If I may quote, one day the late Hon. Mwangale in Parliament told a story of a rock and a tortoise. He said that the tortoise told the rock: "You, rock, even though you have refused to bulge, you have nevertheless heard me". I hope that the rocks in the National Assembly have heard what this Senate has been saying since yesterday afternoon. We will continue lamenting until we have a revelation.

I want to conclude by saying that the bed bug one time told its young ones when hot water was poured on to the bed: "My children, be patient because there is no permanent situation or solution". I know that one day this Senate will prevail.

Thank you.

**Sen. Okong'o:** Thank you, Mr. Speaker, Sir, for the time you have given me to support this Motion. This is a political question which requires political answers and the political head of the nation is the President of Kenya. When our Constitution has been mutilated and the views of the "Upper House" have been disregarded, the buck stops with the President of the Republic of Kenya.

I fail to understand when elderly statesmen are disregarded. If you can disregard elderly statesmen like Sen. G.G. Kariuki, I do not know who can be regarded. Many things have been done to this House and as I speak, our live broadcast should have lapsed at 4.30 p.m., but at 4.00 p.m., the channel was changed in order to focus on the business

in the National Assembly. A law was illegally passed to remove the Clerk of the Senate as the Chief Accounting Officer and nobody has ever spoken to it anywhere. You can see how far we have been taken to be busybodies.

Mr. Deputy Speaker, Sir, because the Members of the National Assembly fear our oversight role, they misappropriate CDF and when we ask them to account to the people of Kenya, they also start the same problems like the governors. That is why they are going around in constituencies flashing cheques as if they are their own. They should know that Kenyans are watching and however much they try to put this House down, they do not have the capacity.

The issue of the advisory opinion, for me, is quite interesting because one was flouted and we are again going for another one. If the earlier advisory opinion were to be converted to orders that have been flouted, then we would be making some headway. If one advisory opinion has not been heeded to, why are we going for another one? I do not know how far we will go. Since we are law abiding citizens, we will knock the doors of those courts and the judiciary must remember that history will be on or against their side with regard to the ruling they are going to make. It is often said that; in all difficulties, there are opportunities. Maybe this is the right opportunity we have as the Senate to rise up to the occasion to be seen as the "Upper House".

With those few remarks, I beg to support.

**Sen. Ndiema:** Mr. Deputy Speaker, Sir, I stand to support the Motion which is really addressing the core function of the Senate. This Motion is arising from a situation where the Senate is consistently being denied the opportunity to exercise its mandate given by the Constitution. The Senate or a Senator is a creature of the Constitution. The Constitution itself is a live document that must be kept alive all the time, with all its features. The Constitution bestows upon the Senate certain responsibilities which it must perform. These are found in Article 96. Article 96 (1) says:-

"The Senate represents the counties, and serves to protect the interests of the counties and their governments."

This article does not specify "represent" in which aspects. To me, it means that, as the Senator for Trans Nzoia, I represent my county in all aspects and Bills whatsoever. The Senator, therefore, has no choice but to do what he is supposed to do, in addition to what is mentioned under Article 96 (3), which is oversight. It has no choice but to oversight over resources allocated to counties. Therefore, what the Senate has been doing since its formation has been to perform its mandate. Any effort, in my view, that seeks to stop, delay, suspend or injunct would be unconstitutional, because it seeks to suspend the Constitution.

Mr. Deputy Speaker, Sir, I refuse to believe that some of these things are being done through ignorance, oversight or mistakes. This is because the mandate of the Senate is very clear and can be understood by everybody. I only think that it is being done by forces that feel like history should repeat itself; that since the Senate went a long time, this time it will also go. But it is here to stay because the Constitution that we have now belongs to the people and cannot be changed at will by any act or omission of any person.

Mr. Deputy Speaker, Sir, we have seen the fruits of devolution in the first one-and-a-half years. There is a lot of hope and promise. Our being here is by virtue of the sovereign authority of the people and not ourselves. The Constitution gives the people

their sovereign authority and can be exercised directly by the people or through their elected representatives; in our case, the Senate.

**The Deputy Speaker** (Sen. Kembi-Gitura): Your time is up!

**Sen. Ndiema:** Mr. Deputy Speaker, Sir, I beg to support.

**Sen. (Dr.) Kuti:** Thank you, Mr. Deputy Speaker, Sir. I stand to support this very important Motion.

Mr. Deputy Speaker, Sir, I would like from the outset to state that the Constitution is made for posterity. Therefore, it is for us here now, our children, the children of our children and so on. Constitutional office holders are supposed to make this document better by practising---

*(Sen. Wako consulted while standing)*

**The Deputy Speaker** (Sen. Kembi-Gitura): Order, Sen. Wako! Is there a problem?

**Sen. Wako:** Yes, Mr. Deputy Speaker, Sir. There is a small problem which I am trying to handle.

**The Deputy Speaker** (Sen. Kembi-Gitura): I can see you all over the place.

Sen. Kuti, continue. Your time was held.

**Sen. (Dr.) Kuti:** Mr. Deputy Speaker, Sir, I was saying that all constitutional office holders are supposed to make the Constitution better by practising it and reviewing every now and then areas that cause difficulties. But if constitutional office holders try to play or utilize their good offices to belittle this document, then time will catch up with them. We have learnt in the 50 years of Independence of this country that those who go the wrong way will be judged harshly by history. For example, we had prison cells in Nyayo House. Those cells are nowhere today because time has passed and it has become an issue of ridicule. So, being a Jubilee Senator, I will hate to see one time down the line that our President may have signed documents, because of people's ego or ill advice, that one day will be looked at as unconstitutional. It is because of posterity and the Constitution that we, as constitutional office holders, must be very careful when we try to use our good offices to bend or break the laws. Time will catch with you.

Mr. Deputy Speaker, Sir, the struggle for freedom and rights is a continuous thing. Today, I join the Senators who have contributed and said that the issue of playing with the Constitution and making laws that do not follow the procedures will be objected to by this Senate. It is such voices that have brought Kenya where it is now. There was a time when you could not mention the name of the Head of State publicly. Today, because of the kind of voice that is going on right now in this Senate, we were able to put even in cartoons the President's images and what people feel about the presidency.

**The Deputy Speaker** (Sen. Kembi-Gitura): Your time is up, Senator! But I will add you a minute so that you can conclude, because I think your time was not held.

**Sen. (Dr.) Kuti:** Mr. Deputy Speaker, Sir, I was trying to conclude by saying that it is very right for this Senate to bring this Motion. This is the right time and we should always stand up when the Constitution is being broken by office holders. I warn all office holders that history will judge you harshly. You better use your office to uphold the Constitution, because we have all taken the oath to uphold the Constitution. It is important that you play your card right, otherwise, time will catch up with you. It will be

a shame one day to see 46 laws being declared unconstitutional. That is the time you will realize that you used your office wrongly.

Mr. Deputy Speaker, Sir, I beg to support.

**Sen. Ongoro:** Mr. Deputy Speaker, Sir, I also stand to support this Motion. Let me start by saying that if you take into account the fact that seven out of ten Kenyans, voted for this Constitution. If you read through the Constitution, the central theme that runs through it is devolution. So, it is right to refer to devolution as the spirit of the Constitution. When we came to the Senate and started experiencing teething problems, I took them for granted. I do not think I want to state like that now. These include lack of offices, the continued reversal by the Judiciary of all major decisions by the Senate – the first one I took it for granted; but this is one too many, it is telling. When the first Bill was assented to without due process being followed, again, I thought that was a very bad oversight but 46 Bills later, this is really telling. In my opinion, I see a calculated attempt to weaken the Senate and by extension remove a key pillar that supports devolution and by extension killing it.

Unfortunately, for those who are orchestrating this, they did not realise that by killing devolution through attempting to kill the Senate, they are actually directly attacking the Jubilee Government. I do not want to believe that all the leadership of the National Assembly including the Speaker and the official advisor of the President, the Attorney-General and the not so many unofficial advisors of the President that all of them either do not understand, have not read or do not really take into account the implications of this oversight. I do not believe so. This is a very silent and salient attempt by those who are supposed to be advising the President. They are calculating the misadvice, they have not weighed their options and they do not know the implications and do not think we are going to sit and allow them.

Mr. Deputy Speaker, Sir, let me just start appreciating the tolerance and the character exhibited by individual Senators and the Senate collectively. We have been patient, acted with a lot of decorum, even now we are just doing what we need to do by going to the courts. However, nobody should think that this tyranny of brains in the Senate will take anything lying down. If something happened to the first Senate, I do not want to comment how and why it happened but, definitely, that will not repeat itself. By attacking the spirit of the Constitution, which is devolution, you are actually trying to rubbish that same Constitution thereby hitting at the core of what Kenyans now hold in high esteem and overlooking the supremacy of the Constitution.

Mr. Deputy Speaker, Sir, our Speaker Hon. Ethuro, has shown leadership in this matter and on this one matter, I want to appreciate the strength of character that has been exhibited especially by Senators from the Jubilee Coalition. They have come out fighting, they have known that on certain matters the Senate must stand united. We have spoken with one voice and on this one issue, I want to make a statement again; we are fully behind the decision to move to the Supreme Court, we are fully behind Kenyans in supporting devolution and the Senate, we are fully behind the strengthening of devolution by maintaining the relevance of the Senate which is the key supporting pillar of devolution. Today, I read in the Papers, counties like Meru, have seen big projects for the first time, housing projects which have been brought by devolution. Counties in North Eastern Kenya, some places where people had never even seen---

**The Deputy Speaker (Sen. Kembi-Gitura):** Your time is up.

**Sen. Chiaba:** Bw. Naibu Spika, asante sana kunipa nafasi niungane pamoja na wenzangu na vile vile kuchukua nafasi hii kumshukuru Kiongozi wa Wengi, Sen. (Prof.) Kindiki, kwa kuleta Hoja hii ambayo ina umuhimu sana kwa kulinda haki ya kikatiba ya Seneti.

Tumevumilia kwa muda mrefu, karibu sheria hamsini zimepitishwa na Nyumba Ndogo, National Assembly, na kutiwa sahihi na Rais, kinyume na Katiba. Ilikuwa ni wajibu wa Spika wa National Assembly kushauriana na ndugu yake, Spika wa Seneti, ili waweze, kufanya chombo ambacho kinaitwa *consensus* na kama sheria hizo zinaambatana na *devolution* ama kulinda haki ya *county government* ama *county assembly*. Hivi sasa Katiba yetu inatupa haki ambayo watu walikuwa wamenyimwa kwa siku nyingi lakini sasa inapatikana. Kama Kaunti ya Lamu haijapata maisha yake kwa miaka hamsini kiasi cha fedha cha Ksh1.7 bilioni. Ingawa pesa hizo hazitoshi lakini inaonekana ya kwamba kazi inafanyika. Hivi sasa katika Kaunti ya Lamu, kuna miradi mikubwa ambayo inafanywa bila kuhusisha watu na Seneti ambayo inalinda haki ya devolution, hizo sheria si za halali.

Tunaomba Mkuu wa Sheria anapowasilisha sheria kama hizo kutiwa sahihi amwambie Rais wetu aangalie kama kuna kile cheti ambacho kimewekwa sahihi na Spika wetu wa Seneti na Spika wa National Assembly. Sisi tutakuwa hapa na wala hatutakubali hii Seneti iwe kama ile ya 1963. Wakati huu, kuna maprofesa ambao wamejitolea, kuna watu ambao wamesoma kupindukia na wako tayari kulinda Seneti iwepo kwa damu.

Kwa hayo machache, naunga mkono.

**Sen. Omondi:** Mr. Deputy Speaker, Sir, thank you for allowing me to contribute to this Motion. I want to say that Kenyans are watching and listening and a time will come when Kenyans will be tired. The power and sovereignty of this country is in the hands of Kenyans. Any leader elected by Kenyans has a role and a duty to protect the Constitution. The violation of this Constitution is an indication that they want Kenyans to continue suffering as they have suffered for the last 50 years. I ask myself so many questions: If we deny county governments resources and we give them functions, how do we expect them to work? Do we expect them to do a miracle like Jesus whereby they give services to Kenyans without resources? It is so annoying.

If I were the President, I would fire my advisors. How could they advise the President in a wrong way? They are after failing him. It shows that we have elected leaders who are against devolution. As a Senate, we are the custodian of the county governments, we are not going to allow that to happen. We are being asked many questions, for example, why we allow the national Government to step on our mandate. We were quiet, giving them time to reason and to read the Constitution carefully. However, it appears as if they are not reading and following the Constitution. Instead, they are violating the Constitution. Kenyans have read this Constitution. Their keeping quiet does not mean that they are not aware of what is happening. A time will come when Kenyans will speak. A time is coming when we will call for a referendum. That is the time when Kenyans will speak because they are tired of hypocrisy and selfishness.

When something comes here for the benefit of the county governments, the National Assembly opposes it. The CDF should go to county governments. If they are saying that the Senate does not have work to do, they should know that they are the ones who do not have work to do. They used to deal with development matters which the

county governments are now doing. Construction of roads, building of schools and giving out bursaries is being done by county governments. What we are experiencing is conflict. A Governor can initiate the construction of a road but the CDF Committee comes later to claim that it is the one which is supposed to construct the same road. At the end of the day, nothing moves and yet Kenyans are still suffering.

Public money is being pocketed. We cannot allow this. Time has come when the Senate must stand up and say that enough is enough. We are speaking on behalf of Kenyans who cannot come here and speak for themselves. This is the high time that we, as a Senate, must say that enough is enough. We cannot tolerate this nonsense. Violation of the Constitution is bringing the country down. Is this the way we want to move? We are moving backward instead of going forward. We have leaders who have a duty and responsibility to take care of these things. They were elected and sworn in to protect the Constitution. Is violating the Constitution the same as protecting it?

Why is it that our colleagues at the National Assembly reason as if they are there for their own benefits? You must sit, as a leader, flashback and ask yourself whether the people you are representing are benefiting from your leadership. If they are not benefiting, you should find out what you are supposed to do. If the law is not favouring Kenyans, then we should come up with a law that will make them comfortable. We need to protect and support the Constitution.

**The Deputy Speaker** (Sen. Kembi-Gitura): It appears that we do not have more contributions on this. It also appears as if the Mover is not here to respond. Therefore, I will go ahead to put the question.

Hon. Senators, this is not a Motion concerning counties. Therefore, it will be voted for, not by delegations but by acclamation or the Senators present.

*(Question put and agreed to)*

Next Order!

### **DEFERMENT OF COMMITTEE OF THE WHOLE**

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

**The Deputy Speaker** (Sen. Kembi-Gitura): Hon. Senators, we are supposed to go to Order No.9 which is The Committee of the Whole on the Public Procurement and Disposal (Amendment) Bill (National Assembly Bill No.31 of 2013). I can neither see the Senate Leader of Majority nor the Chief Whip, and I can quite obviously see that we do not have the threshold to go into Committee of the Whole.

I am going to amend the Order Paper to suspend Order No.9 and Proceed to the next Order.

*(Committee of the Whole deferred)*

**BILLS***Second Reading*

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

*(Sen. Elachi on 4.11.2014)*

*(Resumption of Debate interrupted on 6.11.2014)*

**The Deputy Speaker** (Sen. Kembi-Gitura): Hon. Senators, this is a resumed debate. I am trying to see who was on the Floor. Sen. Karaba had 13 more minutes to conclude and since he is not here, the Floor is open.

Again I do not see any requests from the Floor and Sen. Elachi is not here to reply. I am told that she is out of the country. Hon. Members, we will now have to go to division on this Bill and I am not willing to put the question again because we do not have the threshold.

*(Bill deferred)*

THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) (NO.2) BILL 2013,  
(NATIONAL ASSEMBLY BILL NO.33 OF 2013)

**The Deputy Speaker** (Sen. Kembi-Gitura): The Senate Leader of Majority is not here and so it appears that I cannot proceed with it.

*(Bill deferred)*

Hon. Senators I am going to reorganize the Order Paper. Like I have said, we have finished with Order No.8. I am going to defer Order Nos. 9, 10, 11, 12, 13 and 14 until further notice when they next appear in the Rules and Business Committee (RBC). So, we are going to Order No.15.

*Second Readings*

THE PUBLIC FUNDRAISING BILL, (SENATE BILL NO.28 OF 2014)

*(Bill deferred)*

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

*(Bill deferred)*

**MOTION**ADOPTION REPORT OF THE ESTABLISHMENT OF THE PUBLIC  
COMPENSATION BUREAU

THAT, the Senate notes and adopts the report of the *ad hoc* Committee on the establishment of the Public Compensation Bureau laid on the Table of the House on Wednesday, 16<sup>th</sup> July, 2014.

*(By Sen. Obure on 5.11.2014)*

*(Resumption of Debate interrupted on 5.11.2014)*

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. Obure had the Floor.

**Sen. Obure:** Thank you very much, Mr. Deputy Speaker, Sir. At the close of business last Wednesday evening, I was emphasizing the point that the prime objective of establishing a Public Claims Bureau in each county on the basis proposed by the Select Committee is to facilitate settlement of claims and other dues owed to citizens in the counties by various institutions and agencies.

The proposed Draft Bill has assigned specific functions to the bureaus that are proposed to be established in the counties. The bureaus will have specific functions namely: To receive claims for unsettled awards and other claims emanating from the residents of the county. The bureaus will then proceed to create a database of all the claims received. They will then proceed to ensure that the claims are validated by demonstrating that they are supported by other requisite documents. The bureaus will then authenticate the claims received within a period of 14 days. We expect the bureaus to initiate follow-up action and expedite the processing of claims with the relevant persons, institutions or agencies alleged to be in default. During all this period, the bureaus will ensure that the claimants are informed of the status of their claims; they know what is happening, what they expect and when such claims would be settled.

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

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

In this Bill also, the bureaus have been given the power to resolve disputes between claimants and relevant authorities using negotiating powers and other soft methods.

Madam Temporary Speaker, it is expected, and I am personally very optimistic, that once the law is enacted, and the bureaus begin to operate, claims will be paid speedily since the Draft Bill has provided for severe sanctions against defaulting persons, institutions or agencies.

As pointed out last Wednesday, the Select Committee has recommended in this Report that the services of the Commission for Administrative Justice be devolved to the counties since the cost of travel to Nairobi to seek justice has become prohibitive.

Furthermore, this would be in keeping with the spirit of devolution of bringing services closer to the people and where they live.

Madam Temporary Speaker, the Select Committee has also recommended that the Commission for Administrative Justice, which is a critical Commission for the realization of justice for all Kenyans, be allocated more funds to enable it to spread its services to all counties. In this way, all *Wananchi* will have access to the services of the Commission.

Madam Temporary Speaker, I take this opportunity to appeal to the House to support the adoption of this Report in the same way and with the same spirit as the initial Motion.

I have no doubt in my mind that we will all cherish the day this Bill will be enacted into law as it will provide relief and hope to Kenyans whose rightful benefits and entitlements have been denied without reasonable cause. It will also be an important milestone to millions of Kenyans whose claims are delayed for unnecessarily long periods of time before they are settled if they are ever settled at all.

Finally, I thank the Office of the Speaker for extending the time of the *Ad Hoc* Committee which made it possible for the Committee to deliberate exhaustively and conclude all the weighty issues before it. The Committee is also deeply grateful for the technical and logistical support extended to it by the Office of the Clerk of the Senate and the Directorates in the Secretariat of the Senate.

Madam Temporary Speaker, I beg to move and request the able Vice-Chairperson of the Select Committee, Sen. Adan, to second this Motion.

Thank you.

**The Temporary Speaker** (Sen. Ongoro): Sen. Adan.

**Sen. Adan:** Thank you, Madam Temporary Speaker. I stand to second this Motion. Unfortunately, it looks like the House is almost empty. I do not know whether the Senators have taken off to Mombasa. Nevertheless, I take this opportunity to second the Motion.

Madam Temporary Speaker, this issue is long overdue in the sense that many Kenyans are suffering in the process of getting their dues, especially at the end of their retirement, when they lose their loved ones and there are compensations and when they are irregularly removed from service. As a Committee, we invited several departments that are relevant to this particular subject but, unfortunately, it looked like some of the departments were trying to protect their turf, which is going to be unfair to Kenyans. One of them is the Pensions Department which is notorious when it comes to actually paying the benefits of the deceased and retired civil servants. This clearly shows that they are not ready to devolve.

The second one is the Department of Public Trustee. They also did not actually come to our Committee even after invitation. I believe that Kenyans are facing a lot of challenges in terms of following up their dues in these departments. Maybe after we pass this Bill, those departments must be forced to give us their report and also try to amend the relevant section that will benefit Kenyans.

One of the things that the Committee actually looked at is the issue of the independence of the body. It is important for that particular body to be independent, for it to be able to handle issues of compensation and also benefits to the claimants. Therefore, it is really important that, that independence is given to that particular body. Again, as the Chair has said, we wanted to create a database where Kenyans will go to that office that

will be established to check when their claims are ready and what is required of them. Today, after retiring from the civil service, you are slapped with a letter of retirement the last day when you are leaving, if at all they do. So, it is unfortunate in this day and age that we do not prepare civil servants for a proper retirement. I believe that it is important maybe at some stage for the Government to prepare civil servants for retirement a year before their retirement age, so that they can also ease their way out.

Madam Temporary Speaker, this particular report should be able to amend the various sections that affect compensation and retirement. Again, we looked at the composition of the board members and thought that all the departments that are affected should be represented at that level. We also looked at the composition of the members, especially gender balance. It is really important for us to effectively establish this office, so that Kenyans can reduce their travel between Nairobi and their homes. Kenyans are actually suffering at the expense of these offices, because most of them even after retiring, do not afford accommodation and transport to Nairobi and back to their homes. Clearly, these are people who have not prepared themselves for retirement or lost their loved ones and are actually following up their benefits.

Madam Temporary Speaker, once this Motion is passed, it will sort out so many problems, like the bureaucracies that are involved in Government departments. It will also actually reduce unnecessary expenses that Kenyans have actually been incurring. I think it is important in this day and age that we sort out our issues at the county level, especially since devolution is in place. This is because there is no need for one to come all the way from your village to Nairobi or travel to Meru or Kisumu. All those things can be done at the county level.

Again, it is really important for Kenyans to know how they can get their benefits. Today, the only time that you can get your benefits is when you are faced with a problem. Proper sensitization has to be done. Actually, this is one thing that the Central Organization of Trade Unions (COTU) has brought out. Kenyans do not even know where to go when they have such problems. So, this particular body, apart from actually settling benefits, should be able to do proper sensitization in terms of how they can get their benefits once they are challenged.

Madam Temporary Speaker, I beg to second the Motion.

*(Question proposed)*

**Sen. Ong'era:** Thank you, Madam Temporary Speaker, for giving me this opportunity to also contribute to this Motion.

From the outset, I would like to congratulate the able Chairman of this *Ad hoc* Committee, the leader of the Kisii Delegation, Sen. Chris Obure, and also the able Vice-Chair, my sister, Sen. Fatuma Dullo, that we work very closely with. This is a very important Committee that went about to recommend the establishment of the public compensation bureau. It is the high time that we had such a bureau in this country, because a lot of people's claims are not being settled properly since we do not have these offices in the counties.

I have in mind the Office of the Registrar of Societies or where people process death certificates at the office of the Attorney General. Having worked in the office of the Attorney General when I was a State Counsel, I can tell you that it was a nightmare.

Many people used to travel all the way from upcountry and would stay in the city for months and even years, just chasing maybe a cheque of Kshs5,000. I can see that in the proposed Bill the Chairman has outlined that some of the functions of this Bureau will be to receive claims for unsettled and unknown monetary awards emanating from the residents of this country and create a database of the claims received.

Madam Temporary Speaker, that brings me to my second point. You will find that in this country, a lot of this money is actually sometimes stolen, simply because there is no database or proper way of recording these claims. Therefore, the money goes into the hands of unscrupulous public servants in this country. There is a saying in Kiswahili: "*Haba na haba hujaza kibaba.*" Which means little by little whether it was Kshs.5, 000 or Kshs.500, eventually you find that these officers have enriched themselves and are now millionaires on money stolen from poor widows and orphans. Therefore, I am happy to note that the Chairman has also proposed that this Bureau is also going to inquire into claims of abuse of power, unfair treatment, oppression or/and unresponsive official conduct relating to the office of the county government, the national Government and other state institutions.

Madam Temporary Speaker, this is a very important proposal made by this Committee. I congratulate them for having gone round all the counties and come out with this Report, that I am sure the Senate is going to pass. It will enable this Committee to come up with the requisite legislation.

With those remarks, I beg to support.

**Sen. Omondi:** Thank you, Madam Temporary speaker. I support this Report because it has reminded me of the war that I am struggling with in terms of retirement age for persons with disabilities. According to the law, Kenyans are supposed to retire at the age of 60, but for persons with disabilities, it supposed to be 65. Some Kenyans with disabilities are being retired at 55 years, without being prepared, especially, the private sector is violating this. I think if this is adopted, and it becomes law, it is going to help Kenyans in these brackets who are suffering. We have Kenyans who have been suffering and are still suffering when they are retrenched without prior arrangement or notice. It becomes a problem for them to get their benefits and sometimes they go an extra mile of hiring lawyers to help them trace the money.

What happens is that their benefits are not given to them or if they are given, the advocates deny the beneficiaries their money. You will find a Kenyan who has been sacrificing and saving some money hoping that, that money will help his or her family, ending up not getting what belongs to him or her.

This Committee did well in getting these views and bringing this Report, so that we can debate, enrich it and work towards making it a law that is going to help Kenyans. The reason why Kenyans die quickly after retirement or losing their job is because of the difficulties they go through, stress and other issues. Collectively, they make them not to continue living. It is so difficult for a person to lose a job without communication or intervention. The resources, contributions and savings are also denied, simply because somebody understands that this Kenyan is not able to do a follow up of the savings that he or she has been making. It is frustrating and it makes many Kenyans to suffer, especially the families after losing their parents because they do not know which way to go to get their benefits.

Madam Temporary Speaker, you will find that whoever is doing a follow up of the savings at the end of the day, the money spent during this process goes beyond what he is looking for. If the bureaucracy is reduced and decentralization done, this will be a great help so that the money is given to the beneficiaries in a lump-sum. This is going to improve the development of education and also the improvement of their families.

I want to support the report and as I do so, I want to say that this is the way to go, that is, reasoning and looking into issues which touch on the welfare of Kenyans. When Kenyans listen, they should feel comfortable that someone is raising their issues on their behalf. These are the real challenges that face Kenyans. Whoever is listening to this debate will applaud the Senate for thinking to reduce their burden of struggling to get compensated. There should be proper arrangement and compensation on time so that Kenyans can stay healthy and continue developing this country and even continue taking care of their families.

With those few or many remarks, I support.

**Sen. G.G. Kariuki:** Madam Temporary Speaker, I rise to support this Report because I also participated in the Committee. I was supposed to be there throughout but unfortunately, I did not keep up with the demand of the Chair because he wanted me there all the time, but I had many other things to do.

Madam Temporary Speaker, this matter is very clear to all of us. I have gone through these problems, it does not only affect people out there but even those who retire from the National Assembly, they used to suffer quite a lot. When I was a Member of the Parliamentary Service Commission, we put in place a provision that no Member of Parliament or staff will run around in offices looking for what is due to them. I am sure you know that. We come from the rural areas where people are really suffering. If you are supposed to come to Nairobi to get your money, for instance, you are looking for Kshs30,000 and you have been travelling to Nairobi many times, what do you expect this person will get? We cannot understand the reason why the people concerned do not expedite the payment of these people. You cannot understand the reason why they do that. It seems this is a Kenyan culture; that you have to be corrupt to survive. The reason why they want to be corrupt is that after they leave their jobs, they remain poor. Therefore, they need to collect as much money as possible before they go home.

It is high time that the Bill being proposed by the Chair in this report was expedited so that we can give this country some answers even if we are not going to stop the corruption. Some people have every right to demand but they do so without any law. That is why they are being frustrated by the officers concerned. When the leaders from the affected areas came to be interviewed by us, you find that everybody is protective of their own position. If anything, they wanted power to be added. Then you ask yourself; why do we behave like this? We need to go through a kind of mental rehabilitation in this country so that we can change for the good of this nation. When a young boy who is a graduate and sees or hears how his father behaves in the office, what does he think? Kenyans do not even feel ashamed.

I read a book called *The Illusion of Power*; that all the children being born in Kenya will all believe in corruption and you cannot change. They all believe in corruption because their fathers are the drivers and promoters of corruption. That means we have a long way to go to change this country from the position where we are to a new

Godly position where you will not want to take an individual's money for the job you are supposed to do.

Madam Temporary Speaker, the mental torture that people go through is too much. They end up accusing politicians. I think they are doing the right thing to condemn and abuse the politicians because they are the custodian of the Constitution. They are the people who are supposed to amend all the laws to make sure that corruption is eradicated. Why can the National Assembly and the Senate not come out and do what we are supposed to do? Why do we cry here all the time? A time will come, like in England, United States of America (USA) or in any developed nations if we continue lamenting--- Here we just lament and if somebody stands here he or she complains how there are problems at home.

For example, I can stand here and talk about what everybody knows, thus just repeating myself. There is nothing new you are saying to the public of Kenya. We are observed like cartoons because we have to be talking all the time without coming to the answer. The only way we can move closer to the answer and stop corruption is if we start thinking about making laws. Let these laws be rejected by the people or by those who think that they know better about the Constitution. Let us pass those laws so that the public can see that we are here for their purpose.

If you ask anybody at home, they will say: "you have been there for five years, let us take another person there to be as rich as you are" This is because you are not expected to do any job when you come to Parliament. You are expected to come and make money and go home. Therefore, that is why people say: "We will elect someone else for another five years, let him continue "eating". How will we remove this attitude? We should try as much as possible to eradicate this attitude. In this country, we claim to be 80 percent Christians, now you can see what Christians are doing by making money in ways that you cannot believe. In this country, even if you become crazy and you can give money to a few fellows around Nairobi, they will be singing for you because you are giving them food which they did not have. So, corruption will continue and we will continue to get the wrong people as our leaders. If you look at the lives of Kenyans, for example, we have been talking about drug issues in this country and many other things. Who would not say that drugs are not being sold by people that we know? Do we have powers to stop them? This is because we are also corrupt. If we were not, we should be able to take action. Therefore, this report is overdue and I am very supportive of it.

I want to thank my Chairman, a man I trust and respect, because he has a wealth of experience. He has gone through all these problems. I do not want to speak for him, sometimes, when you are looking for good minds and you do not look at people like Chris Obure, you would want those who want to stand here to talk as if they have just come from the moon. They make a lot of noise repeating themselves, being irrelevant and we enjoy clapping for them and they will give them hope that they know everything. This is most unfortunate, your mind is not proper. We need not to support the people who do not bring any solutions. We should be involved in looking for solutions like what Chris Obure has just done. It is a solution, he his hunting for a solution. In other words, he is a philosopher because he is looking for knowledge and he has got it by presenting this report to us.

Madam Temporary, Speaker, I was not going to speak but since the House is almost empty and the staff of the Parliament are here to see that the House is just empty, I

decided as an old man, that I would sit around here and make sure that I will be the last in this House.

I thank you very much Madam Speaker and also my colleague Sen. Chris Obure. I respect you. Thank you.

**The Temporary Speaker** (Sen. Ongoro): Sen. Nanjira, do you want to talk or it is an intervention?

**Sen. Omondi:** Madam Temporary Speaker, it is an intervention. In fact, it is a point of order. Is Sen. G.G. Kariuki in order to show the public that the House is empty? Senators are just relaxing may be taking tea. The House is not empty. Is he in order?

**The Temporary Speaker** (Sen. Ongoro): Sen. GG. Kariuki has made a visual observation and he has stated it. That is a statement of fact, I do not think he is out of order. We can just proceed and may be for good practice, we should not be alerting but he is not out of order.

Are there any other interventions or requests? Sen. Nanjira, do you want to contribute to this or have you already contributed?

**Sen. Omondi:** No, Madam Temporary Speaker.

**The Temporary Speaker** (Sen. Ongoro): I will not delay this but will call upon the Mover to reply because we have very many Motions that are pending.

**Sen. Obure:** Thank you, Madam Temporary Speaker. I must say that I have been humbled by the comments and contributions that have been made by hon. Senators who have the opportunity to contribute on this Motion. I want to thank the Secunder of the Motion, Sen. Fatuma Dullo Adan and Sen. Janet Ong'era for their very positive contributions. I want to thank my friend, Sen. Nanjira, for her contributions.

Lastly, I want to thank Senator No.1, Senator for Laikipia, and our mentor in many respects. I am very grateful for the remarks he has made about me and the huge compliments. As pointed out by those who have contributed to this Motion, time has come when we must find a solution. I know that you have been a Member of Parliament in Nairobi and that you have interacted with the public. I know that you have listened to many desperate voices of people coming to seek your intervention. These are people who have, for example, been involved in accidents. You probably have come across someone who has been knocked down by a GK vehicle. This person has suffered injuries. They have probably gone to court and even received court redress. They have received court awards in their favour so that those who were responsible for causing the accident can pay them a certain amount towards compensating such claimants.

Madam Temporary Speaker, where a proper court process has taken place and an award has even been given in favour of the claimant, it still becomes very difficult for a person to be paid. Retirement benefits have been talked about. It is unfortunate that the Director of Pensions, whom I had asked to come and give us a submission, did not find it necessary to come. The Public Trustee who is notorious for these kinds of cases has not found it necessary to come and make submissions. At this time, we have very many such cases in the country. We have many people out there in the counties who have been travelling to Nairobi for years in pursuit of these claims. I think what we have proposed in this Report will go a long way to provide relief to such people. I am very glad to this House and, in fact, I am deeply grateful to Hon. Sen. G.G. Kariuki.

My initial Motion was merely urging the national Government to find a mechanism to find quick relief for these people. However, at that preliminary stage, Sen.

G.G. Kariuki made an amendment saying that we should not urge because no action will be taken. He proposed that we form a Select Committee to come up with legislation which will be passed by this Senate. That is the process we have gone through.

As you can see, we have drafted legislation that will come to this House in a short while- I hope soon. The legislation will be debated in this House. I am confident that this will provide long overdue relief to people who have found themselves in these circumstances. Damage caused by wildlife to properties belonging to farmers is not settled. I am glad that this will come under the ambit of this Bill. *Wananchi* can look forward to getting a quick settlement to their claims.

Once again, I thank hon. colleagues for supporting the adoption of this Report. I look forward to working with everybody, the Senators and all other stakeholders so that this Bill is ultimately enacted into law.

With those few remarks, I beg to move.

**The Temporary Speaker** (Sen. Ongoro): Hon. Senators, I want to remind the House, once more, that this Bill does not affect counties. Therefore, I will proceed to put the question.

*(Question put and agreed to)*

ADOPTION OF THE REPORT OF THE AD HOC COMMITTEE  
ON LEGISLATION ON *HARAMBEE*

THAT, the Senate adopts the Report of the Ad Hoc Committee on Legislation on *Harambee* laid on the Table of the Senate on Tuesday, 19<sup>th</sup> June, 2014.

**The Temporary Speaker** (Sen. Ongoro): Hon. Members, the Mover of this Motion is Prof. Anyang' -Nyong'o. I do not see him in the House. Therefore, the Motion is deferred.

Next Order!

*(Motion deferred)*

ADOPTION OF REPORT OF THE STANDING COMMITTEE ON AGRICULTURE, LIVESTOCK AND  
FISHERIES ON  
THE STATUS OF FOOD SECURITY IN BARINGO COUNTY.

THAT, this House adopts the Report of the Standing Committee on Agriculture, Livestock and Fisheries on the status of food security in Baringo County laid on the Table of the Senate on Thursday, 24<sup>th</sup> July, 2014.

**The Temporary Speaker** (Sen. Ongoro): Hon. Senators, this is for Sen. Murungi who is also not in the House. The Motion is deferred.

Let us move to the next order.

*(Motion deferred)*

ADOPTION OF REPORTS OF THE ACP-EU JPA MEETINGS  
FOR 2013 AND 2014

THAT, the Senate adopts the reports of the ACP-EU Joint Parliamentary Assembly meetings held in 2013; the 35th session of the ACP Parliamentary Assembly and the 27th session of the ACP-EU Joint Parliamentary Assembly held in Strasbourg, France, from 12th to 19th March, 2014 laid on the Table of the Senate on Wednesday, 1st October, 2014.

**The Temporary Speaker** (Sen. Ongoro): Hon. Senators, Sen. Kembi-Gitura has just walked out. The Motion is deferred. Let us move to the next order.

*(Motion deferred)*

CONSTRUCTION OF WHEELCHAIR ACCESSIBLE FOOTBRIDGES  
ON MAJOR COUNTY ROADS

THAT, aware that county transport is one of the devolved functions under the Fourth Schedule to the Constitution; noting that Article 54 (1) (c) of the Constitution entitles persons with disability to reasonable access to all places, public transport and information; further aware that under Article 27(1) of the Constitution every person is equal before the law and has the right to equal protection and equal benefit of the law; concerned that people with disability continue to be discriminated against in the construction of foot bridges across the country; noting that if the situation is not urgently remedied, the lives of people with disability who cannot cross roads without assistance will continue to be in danger; the Senate urges all county governments to construct wheelchair accessible footbridges on major county roads for use by people with disability.

**The Temporary Speaker** (Sen. Ongoro): Hon. Senators, Sen. Joy Gwendo is not in the House. That Motion is also deferred.

*(Motion deferred)*

**ADJOURNMENT**

**The Temporary Speaker** (Sen. Ongoro): Hon. Members, there being no other business in the Order Paper, it is now time to interrupt the business of the Senate. The Senate, therefore, stands adjourned until Tuesday, 18<sup>th</sup> November, 2014 at 2.30 p.m.

The Senate rose at 5.53 p.m.