

# PARLIAMENT OF KENYA

## THE SENATE

## THE HANSARD

Tuesday, 28<sup>th</sup> April, 2015

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

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

### PRAYERS

### MESSAGE FROM THE NATIONAL ASSEMBLY

#### CONCURRENCE OF THE SENATE ON THE PUBLIC AUDIT BILL (NATIONAL ASSEMBLY BILL NO.38 OF 2014)

**The Speaker** (Hon. Ethuro): Hon. Senators, I have a Message from the National Assembly to the Senate on the subject of the Public Audit Bill (National Assembly Bill No.38 of 2014) which was published in the Kenya Gazette supplement No.162 of 8<sup>th</sup> December, 2014, as a Bill originating from the National Assembly to provide *inta alia* for the functions and the powers of the Auditor-General in accordance with Article 226 of the Constitution which was passed on 2<sup>nd</sup> April, 2015. Whereas the Bill, as passed by the National Assembly, concerns county governments in terms of Article 110 of the Constitution, therefore, the National Assembly seeks the concurrence of the Senate on the said Bill, in accordance with the provisions of Article 110(4) of the Constitution and Standing Order No.142 of the National Assembly Standing Orders.

**Sen. (Dr.) Khalwale:** On a point of order, Mr. Speaker, Sir. Whereas we have religiously been giving our concurrence to Bills like the one you have just read, could you also clarify what has happened to our Message which we took there last year in respect of the amendment Bill which was passed in this House on the Political Parties Act, that was intended to change the sharing of the political parties funds? I am reliably informed by the Senate Minority Leader that there are attempts to introduce a similar Bill.

**The Speaker** (Hon. Ethuro): Sen. (Dr.) Khalwale, first, you must appreciate that substantial progress has been made in terms of Article 110. I remember before we went on recess, you raised the matter on whether concurrence had been sought on the Public Audit Bill (National Assembly Bill No.38 of 2014) and I confirmed that it had not been sought. Under those circumstances, we said our job usually is to mitigate and not to apportion blame now that it is here.

Regarding the matter that you raised on the National Flag, Emblems and Names (Amendment) Bill, 2013, we have already communicated. We will also communicate the same on the Political Parties (Amendment) Bill.

Next Order!

## STATEMENTS

### STATUS OF THE KENYA NATIONAL EXAMINATION COUNCIL (AMENDMENT) BILL, 2014

**Sen. Musila:** Mr. Speaker, Sir, I stand on a matter that has given me a lot of concern. This is in relation to introduction of Bills as captured in Standing Order No.117. In December last year, I made a proposal of a Bill titled The Kenya National Examinations Council (Amendment) Bill. I forwarded this proposed legislation to your office. I understood that through the hand of the Speaker, the relevant Committee, which is the Committee on Education, was given this proposed legislation in order to work on it.

Standing Order No. 117(3) states as follows:-

“Upon request of the comments of the Clerk under paragraph (2), the Speaker shall-

- (a) in respect of a legislative proposal for which no Committee is in charge, refer the legislative proposal to the relevant Committee for prepublication scrutiny and comments and the Committee shall submit its comments to the Speaker within fourteen days.”

The Speaker’s letter was dated 19<sup>th</sup> December, 2014. Today we we are almost at the end of April, 2015. As of today, I have not seen the Bill. I understand it is still with that Committee, many months after 14 days expired. My concern is that, if we move on at this rate where proposed Bills take six months to be published, then, we are not doing our job properly. Therefore, I plead with the Chair to get into this matter and make the Committee that is responsible to deal with this matter. Alternatively, my Bill can be published since the 14 days ended in December, 2014.

**The Speaker** (Hon. Ethuro): Indeed, Sen. Musila the Chair cannot agree with you more. We have had the occasion to remind Committees not to overstay with Bills. Before we went on recess, we went further to give notices. Failure to do so, we will proceed. So, we only need to verify the facts that you have established. If those timelines have been achieved, I assure you that your Bill will be published irrespective of what the Committee is doing with it.

*(Sen. Karaba stood up in his place)*

What is it, Sen. Karaba?

**Sen. Karaba:** Mr. Speaker, Sir, as much as you would agree with the procedure of getting such letters from other Members of the Senate, there are times when we do not even get those letters on time. Like what Sen. Musila is---

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

**Sen. Karaba:** Mr. Speaker, Sir, he is talking about a letter which is supposed to have been received by the Chairman. I am the Chairman of that Committee, but I have not received it. I only “hijacked” it from him when I saw him reading it.

*(Laughter)*

I have not received that letter officially. Therefore, I wonder whether it is the fault of the Chair, the Clerk or the system.

**The Speaker** (Hon. Ethuro): Sen. Karaba, you cannot be “hijacking” things from your colleagues. You need to be generous to your Member that he actually offered this copy to you, which you need to appreciate.

*(Sen. Karaba spoke off record)*

Order Senator!

Secondly, your office and my office are not very far apart. I am sure those letters must have reached you. So, search your office and see if that letter is relying somewhere. More fundamentally, the Standing Orders already provide on what should be done. They are enough for you to prosecute the business that was brought to you through the Floor of this House with the requisite deadlines of December, 2014, that you had been given. A letter was just another luxury to remind you that you have overstayed on your mandate. So, whether you grabbed it or not, it is really immaterial. If I were you, I would not even raise that matter for now. As I said, the Bill will be published. It is up to you now when it comes back to you to look at it and use the Floor to make the amendments that you wish to, so that the process does not stall.

Proceed, Sen. Wetangula.

#### PLANS TO OPEN MORE CONSULATES IN USA TO SERVE AS POLLING CENTRES

**The Senate Minority Leader** (Sen. Wetangula): Mr. Speaker, Sir. I wish to request for a Statement from the Standing Committee on Legal Affairs and Human Rights regarding the Government’s plan to open more consulates in the United States of America (USA), which according to the Cabinet Secretary (CS), Ministry of Foreign Affairs and International Trade, will be used as polling centres by Kenyans living in the USA during the 2017 General Elections. In the Statement, the Chairperson should clarify:-

- (a) The role of the Executive in setting up polling stations.
- (b) Whether the Cabinet Secretary, Ministry of Foreign Affairs and International Trade, has set up a task force on this matter which is not within the Ministry’s mandate.
- (c) Whether the Independent Electoral and Boundaries Commission (IEBC) was consulted in the plans to set up these polling stations.
- (d) Why this would be confined only to the USA yet there are many Kenyans residing in other countries?
- (e) What has informed the distribution of the proposed consulates within the USA?

(f) What is the population of Kenyans eligible to vote in the selected state?

**The Speaker** (Hon. Ethuro): Where is the Chairperson? What is it, Sen. Ong'era?

**Sen. Ong'era**: Thank you, Mr. Speaker, Sir. Further to that question I would also like to know the survey data that they have set up. On what basis and criteria are they doing it in getting the diaspora data base that has been set up?

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

**Sen. (Dr.) Khalwale**: Mr. Speaker, Sir, further to that question, I would like the Chairperson to clarify the following: Now that it is evident that the Executive is interested in the registration of voters and that they are actively participating in it, could he clarify whether this is the reason the continuous registration of voters, as provided for under the Constitution, is apparently taking place only in pro-Government areas? In the Opposition areas, we only hear about it, but we do not see the Biometric Voter Registration (BVR) kits. We do not know where this registration is taking place. Could he clarify?

*(Laughter)*

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

**Sen. Sang**: Mr. Speaker, Sir, on behalf of the Attorney General *Emeritus* and the Chairperson of the Committee on Legal Affairs and Human Rights, Sen. Wako, I undertake to forward this information to him.

**The Speaker** (Hon. Ethuro): Order! I know that you have a lot admiration for your Chairperson. However, for our purposes, deal with the job we have given you, others can follow.

*(Laughter)*

**Sen. Sang**: Mr. Speaker, Sir, I will inform the Chairperson of this Statement. On his behalf, I request the Chair to give us two weeks to avail it.

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

What is it Sen. Kembi-Gitura?

**Sen. Kembi-Gitura**: Mr. Speaker, Sir, I know that we are on Statements. I do not know whether you will allow me to---

**The Speaker** (Hon. Ethuro): It is Statements time.

ONGOING PROPERTY DEVELOPMENT AT THE JUNCTION OF  
LORESHO RIDGE AND KAPTAGAT ROAD

**Sen. Kembi-Gitura**: Mr. Speaker, Sir, I had sought a Statement on the construction works going on in the junction of Loresho Ridge and Kaptagat roads in Loresho. I know that the Statement is ready. In fact, there is a report. I wonder whether the relevant Committee headed by Sen. Kivuti can give that Statement now or when they will do it, so that we can now put the matter to rest.

**The Speaker** (Hon. Ethuro): Next is the question concerning the Loresho Estate Land. Where is the Chairperson or the Vice Chairperson of the Committee? Yes, Sen. Obure.

**Sen. Obure:** Mr. Speaker, Sir, I am a Member of the Land and Natural Resources Committee. I know that we exhaustively discussed that matter and that a report is ready. With your permission, we would like to bring the answer on Thursday this week. That is the day after tomorrow.

**The Speaker** (Hon. Ethuro): Will that be in the form of a report?

**Sen. Obure:** Yes, that will be the response.

**Sen. Kembi-Gitura:** Mr. Speaker, Sir, first and foremost, I would like to thank the Committee because I have seen the work they have done regarding that matter. Since the response is in the form of a report, then they have to lay it on the Table. They did not come up with a response to a statement. I assume that they will lay it on the Table and then you can make a decision on whether or not it will be discussed as a report or whether we will have the normal interventions like we normally have in the case of statements. In the event that we have a report laid on the Table and, therefore, have discussions, I request that we have it presented on Tuesday. If it is laid on the Table on Thursday, then another date will have to be set for the matter since I will not be available. With your kind permission, I request that we move it to Tuesday, next week, if that is convenient.

**The Speaker** (Hon. Ethuro): The report will be tabled on Thursday as promised by the Committee. Discussions do not ensue immediately. The issue will be discussed either on Tuesday or any other day. Sen. Kembi Gitura, the Rules and Business Committee will allocate time for that Report.

That matter is fairly straight forward.

#### ABORTED VISIT TO THE USA BY PRESIDENT UHURU KENYATTA

**Sen. (Eng) Muriuki:** Thank you, Mr. Speaker, Sir. Pursuant to Standing Order No.45(2)(b) of the Senate Standing Orders, I wish to seek a statement from the Chairperson of the Standing Committee on National Security and Foreign Relations regarding the aborted visit to the United States of America by His Excellency, Uhuru Kenyatta, the President of Kenya.

In the statement, the Chairperson should state the following:

- (i) The objectives of the USA visit by His Excellency the President;
- (ii) indicate the scheduled itinerary of His Excellency the President during the visit;
- (iii) explain why the flight by His Excellency the President had to abort midair;
- (iv) state the number of persons in the aborted flight and steps taken to ensure their safety after the flight aborted; and,
- (v) indicate the benefits that the country stands to lose as a result of His Excellency the President cancelling his scheduled visit to the USA.
- (vi) He should also state the disciplinary action being taken on all public officers responsible for having the flight abort midair; and finally,
- (vii) Explain steps being taken to ensure that such a scenario compromising the security of His Excellency the President does not occur again.

**Sen. (Dr.) Khalwale:** On a point of order, Mr. Speaker, Sir. I would like to seek clarification on that very important matter. I would like to point out the fact that the Chairman should also tell us what action will be taken against the spokesperson of State House for having misled the country that the cancellation was as a result of security

reasons on the route. A Kenya Airways, KQ310 that took off 15 minutes after the presidential jet completed its flight to Dubai. Three more Emirate flights that night also completed the same route. There was also one more Kenyan airline whose number I do not know.

The second point is that the Chairperson should clarify whether the cancellation happened because there was an afterthought after the President realised that he was being led to attend a conference that was being organised by Mr. Milken, a former criminal and jailbird in the USA?

**Sen. Khaniri:** On a point of order, Mr. Speaker, Sir. You will agree with me that my colleague, the Senator for Kakamega is pre-empting the statement that we expect from the Chairman. Is he in order to suggest that disciplinary action should be taken against one Manoah Esipisu for misleading the President even before we get the statement from the Chairperson?

**The Speaker** (Hon. Ethuro): Order, hon. Senators! I want to thank the hon. Senator for Vihiga. The hon. Senator for Kakamega is completely out of order. He is anticipating debate. I wonder from whom he is also seeking clarification. A Senator has sought a statement. The Chair has not yet responded. So, hold your horses and wait for the statement to come to the House. You will then have plenty of opportunity to seek clarification.

**The Senate Minority Leader** (Sen. Wetangula): On a point of order, Mr. Speaker, Sir. In addition to the very clear request by the distinguished Senator for Nyandarua, the Chairman of the Committee should also clarify, knowing that a Presidential flight is not an ordinary flight. Before the President's plane takes off, every jurisdiction over which it will overfly is notified, clearance sought and obtained. In fact, when the President overflies that jurisdiction, there is communication between him and his representative and the Government of the jurisdiction he is overflying as a goodwill message. Was this clearance sought and received before the President's plane took off? Is there much more than we are being told that is behind this turn around in the air that has caused such a terrible embarrassment, not just to the President, but to the country?

**The Speaker** (Hon. Ethuro): Order, Senators! Ideally, there should not be further requests or additions to a statement. Just because I have allowed it, it does not mean that a bad practice must be perpetuated. We allow things which are sometimes very significant. Instead of having very many requests to a statement just formulate your issues in a way that you can raise them in terms of clarifications. This is not the time.

With that understanding, Sen. Ong'era, what would be your point of order?

**Sen. Ong'era:** On a point of order, Mr. Speaker, Sir. I would further want the Chairperson to request for an immediate apology to Kenyans whose President has been greatly embarrassed from the officers who were responsible.

**The Speaker** (Hon. Ethuro): Order! I direct the Chairperson not to consider that request. That is not only proper anticipation of debate, but you have gone ahead to give an answer. The Senator for Vihiga had put it so well, that no officer, including the one he mentioned, should be named at this particular point. So, why would you anticipate an apology?

**Sen. Adan:** Mr. Speaker, Sir, I request Sen. (Eng.) Muriuki to give us two weeks to respond to that particular Statement.

**Sen. (Eng.) Muriuki:** Mr. Speaker, Sir, I do not think that two weeks are needed because there is no research needed. All the facts are there. In my suggestion, one week should be absolutely maximum.

**The Speaker (Hon. Ethuro):** Order, Sen. Muriuki! I want you to, first of all, appreciate that just because you sought the Statement, it does not give you automatic response capacity. You still need to ask the Chair to allow you to respond. I do not even know who gave you the microphone.

Sen. Dullo, you have heard the Senator.

**Sen. Adan:** Mr. Speaker, Sir, I further request Sen. (Eng.) Muriuki to give us two weeks because this is something that is very important and sensitive. Given two weeks, we will be able to give you a comprehensive report.

**The Speaker (Hon. Ethuro):** It is so ordered! The response should come to the Floor of the House in two weeks' time.

**Sen. (Dr.) Kuti:** Thank you, Mr. Speaker, Sir. I can now respond.

**The Speaker (Hon. Ethuro):** Please, proceed.

#### FAILURE BY KMPDB TO DEVOLVE TO THE COUNTIES

**Sen. (Dr.) Kuti:** Mr. Speaker, Sir, I stand to give a Statement that was requested by Sen. Mukite. She sought reasons the Kenya Medical and Practitioners and Dentists Board (KMPDB) is not yet devolved to the counties, despite the Senate's resolution passed on the 25<sup>th</sup> September, 2013, that they open branches in every county.

The response we give is that KMPDB is a regulatory body established under Cap 253 of the Laws of Kenya. The KMPDB's core mandate is to regulate training and practice of medicine and dentistry as well as healthcare standards in hospitals, medical centres and clinics. The MPDB carries out its functions from its offices in Nairobi. The MPDB is aware of the Senate's resolution of 25<sup>th</sup> September, 2013, requiring it to open offices in the 47 counties. However, the resolution has not been implemented due to financial constraints. The MPDB finances its operations using internally generated funds and does not receive funding from the central Government. It has been operating from a residential house purchased using a bank loan that was borrowed in 2009. It is currently putting up an office block at Kshs280 million, whose works will be completed by December 2015.

In the 2013/2014 Financial Year, the KMPDB collected revenue of Kshs142 million. A total of Kshs46 million from that amount was channeled to continue building the office block. The rest of the amount, about Kshs87.3million, was for recurrent expenditure. Therefore, with this financial base, the KMPDB is clearly not in a position to open offices in the counties. However, towards the compliance with the Senate's resolution, the KMPDB plans to devolve its inspection activities to counties in the 2016/2017 Financial Year. This will be done through establishing county offices, employing county inspectors and purchasing vehicles for counties on cluster basis.

Thank you, Mr. Speaker, Sir.

**The Speaker (Hon. Ethuro):** Who had sought the Statement?

**Sen. Nabwala:** Thank you, Mr. Speaker, Sir. The delay in implementing the resolution is unacceptable. The Motion was passed in September 2013. Two years down the line, we are told that they have financial challenges. What are the families out there

supposed to do? Last night, on television, there was a case in Eldoret where a family took their child to hospital and because wrong medication was applied. The child was injected on the head and it got infected. For over a year now, the child has not healed. There is pus coming from the head. The child's life is under threat. This is a very important matter and I request the Senate Committee on Health to go ahead with the appeal so that the families can take redress.

**The Speaker** (Hon. Ethuro): Order Senator! Please, seek clarification. If you are satisfied, say so.

**Sen. Nabwala:** Mr. Speaker, Sir, I am not satisfied because people are suffering out there and I would like action taken immediately.

**Sen. (Dr.) Kuti:** Thank you, Mr. Speaker, Sir. I would like to further inform the House that the KMPDB has established a web based service where people with complaints can lodge them. It is in operation even right now. They have also established a committee called Professional Conduct Committee which will handle disciplinary matters. The KMPDB has already done 11 professional conduct hearings in Nairobi, Trans-Nzoia, Kisumu, Kisii, Nyeri and Kiambu counties. Therefore, the fact that they have not been devolved does not mean that the cases of indiscipline or mismanagement of patients by professionals are not being heard.

There are those two methods; the web based surveys and the disciplinary committee that goes round and receives complaints and addresses them. Therefore, in the case of the child that Sen. Nabwala is talking about, these two methods could be applied. The case can be heard and the necessary disciplinary measures taken on the professionals. Thank you, Mr. Speaker, Sir.

**The Speaker** (Hon. Ethuro): Next Order!

## BILL

### *First Reading*

THE PUBLIC AUDIT BILL (NATIONAL ASSEMBLY  
BILL NO. 38 OF 2014)

*(Order for the First Reading read – Read the First Time and  
order to be referred to the relevant Senate Committee)*

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

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

STATE OF SECURITY IN PARLIAMENT  
AND IN THE UNIVERSITIES

**Sen. (Dr.) Khalwale:** On a point of order, Mr. Speaker, Sir. I rise to seek leave to move that the Senate do now adjourn. This is to enable the Senate to debate the state of security in Parliament and our universities, given reports that these institutions have



become the focus and targets for attack by Al Shabaab and given further that a member of staff of the Senate has reportedly---

**The Speaker** (Hon. Ethuro): Order, Senator! You need to read the Statement that was approved and not your own Statement.

I am the one who approved it and not you.

**Sen. (Dr.) Khalwale:** This is to enable the Senate to debate the state of security in Parliament and in our universities, given reports that these institutions have become the focus and targets for attack by the Al Shabaab and given further---

**The Speaker** (Hon. Ethuro): Order! That was the approved part.

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

On the face of it, subject to confirmation, you seem to have the numbers. So, we will allocate the last one hour to the Motion for Adjournment, that is, from 5.30 p.m. to 6.30 p.m. today.

Let us proceed.

Sen. Adan.

*(Resumption of Statements)*

LONG TERM MEASURES TO STAMP OUT CATTLE  
RUSTLING IN WEST POKOT COUNTY

**Sen. Adan:** Mr. Speaker, Sir, I think I have a problem with my system here.

I want to issue a Statement requested by Sen. (Prof.) Lonyangapuo.

Mr. Speaker, Sir, on 18<sup>th</sup> March, 2015, Sen. (Prof.) Lonyangapuo requested for a Statement regarding the long-term measures that have been employed to stamp out cattle rustling in West Pokot, especially along the Turkwel-Kainuk Junction. The hon. Senator sought to be informed on why the national Government has not established a General Service Unit (GSU) camp or an Anti-Stock Theft Unit (ASTU) at Perkeye Junction along the border between West Pokot and Turkana counties, despite a promise to do so for more than ten years. I wish to respond as follows:

Cattle rustling in West Pokot and neighbouring counties has been a long standing menace in the region. The national Government has, therefore, developed and put in place the following measures to stamp out the menace in the long run.

First, plans are underway to establish a special ASTU training camp at Orwa area. Other camps will be established at Turkwel Junction, Lomuti and Perkeye areas. Land for this purpose has already been identified. These camps will act as a buffer zone and will be put up once funds are available.

Secondly, the Government has deployed adequate security personnel in different parts of the county to enhance patrols and vigilance. The Government is planning for a comprehensive disarmament in the region. There are also plans for formation of inter-community grazing committees in the region; holding of inter-communal peace and security committees, public sensitization of members of the community through frequent *barazas* on the importance of peace co-existence.

The members of the public are being encouraged to enhance education and abandon cattle rustling. Finally, the national Government has launched *Uwezo* Fund which will provide youth and women with an alternative means of livelihood rather than engaging in cattle rustling.

Thank you, Mr. Speaker, Sir.

**Sen. (Prof.) Lonyangapuo:** Mr. Speaker, Sir, I want to thank the Vice Chairperson for issuing a comprehensive Statement to this very frequent questions that we have always asked since the Senate started. I had asked that for the last ten years, requests have been made that a GSU and anti-stock theft camp be established. She has not responded to that particular issue. She is just giving a general answer.

I said that Perkeye which is the junction of Turkwel and Kainuk coming back to Marichi, should have a camp. This has been asked for so long and even the Speaker, while still a Member of Parliament, asked the same. I want her to tell us when it is going to be done.

**The Speaker** (Hon. Ethuro): Order, professor! Do not take me there. I am now here and you are there.

**Sen. (Prof.) Lonyangapuo:** Mr. Speaker, Sir, I just wanted to demonstrate how serious this issue is, but nobody seems to be treating it seriously.

She also said that the Government has deployed adequate security personnel. What do you mean by “adequate security personnel” when this problem is still active even now? Could she substantiate and tell us the definition of “adequate” according to the Government?

She also said that the Government has formed an inter-community grazing committee. I just want her to know that what she is telling us is not true. There is nothing like inter-community grazing committee in that region, unless it was done a few minutes ago. If it was done, then most of the problems we have would not be there.

Lastly, she talked about *Uwezo* Fund that is going to be given to women and the youth to stop cattle rustling. This is a peculiar problem that was inherited. I expected her to say that we are forming a fund that is going to be used to renovate or rehabilitate cattle rustlers than to generalize using the usual *Uwezo* Fund. Could she give us a fund that is going to be used to mitigate this problem?

**Sen. Adan:** Mr. Speaker, Sir, I appreciate the issues raised by Sen. (Prof.) Lonyangapuo. First and foremost, I would like to say that as a Committee we rely on the information given by the relevant department. That is what I have in this answer. The Statement said that land had already been identified in Lamut and Perkeye areas and construction will be done once the funds are available. We need to refer that to the Statement by Sen. (Prof.) Lonyangapuo.

As to whether the Government is serious or not, of course, it is serious on security matters although there are challenges. Regarding the issue of adequate security I do not think I can respond to that because he has not requested for information about adequate security on the ground. I might not be able to respond to that question right now. However, if he really wants additional information on that matter, then I will give it to him.

Regarding the inter-communal grazing committee, this is information that we were given by the Office of the President. It is a matter that I can confirm if he asserts that the committees are not on the ground.

Finally, regarding *Uwezo* Fund, this is used for the empowerment of the youth and women. For us who come from pastoral communities, the reason people get involved in other criminal activities is because of poverty and idleness. By providing *Uwezo* Fund, it can occupy them leaving little time for cattle rustling.

If the Senator thinks he has a better solution to this particular problem, we can sit down and discuss a way forward to resolve the problem.

**Sen. (Prof.) Lonyangapuo:** Thank you, Mr. Speaker, Sir. I do not think the Vice Chairperson got me right. In the last statement, I said we create a dedicated fund different from *Uwezo* Fund, that can be used, not only in West Pokot County, but also in Turkana, Samburu, Baringo and any other county where this problem is. Has Kenya not suffered from cattle rustling enough to the extent that they want to treat it as a non-issue?

Lastly, when I said “adequate”, I will give you facts; that in Sarmach we have three Administration Police (APs) officers and yet this is the playground of cattle rustlers. We have less than 10 officers in Kainuk. Lumut which we are talking about here and Orwa have six APs and no car. So, go to your books and explain to us adequately and tell us how we can sort out that problem, including moving some of the officers who are at the headquarters in Lodwar and Kapenguria, so that this problem can be easily minimized or wiped out.

Thank you.

**Sen. Adan:** Mr. Speaker, Sir, I may not be able to answer about the funds that Sen. (Prof.) Lonyangapuo is asking because it is something that requires policies and legislations that are to be put in place. At the end of my response to his issues, I said that it is important if the Senator and I could sit together, discuss and see how we can resolve the issues that are affecting that particular region.

**Sen. Abdirahman:** Mr. Speaker, Sir, I have heard the Vice Chairperson say that they are going to establish the Anti-Stock Theft Unit (ASTU) in new places. It is true that the unit has existed since the formation of the police force in this country. It is not our belief that you can bring as many troops as you want to these pastoral districts and the triangular conflict currently in Samburu, Pokot and Turkana communities cannot just be solved by deploying troops. I heard the Vice Chairperson mentioning grazing committees. Unless you have a peace pact owned by the community, I do not think we can have a lasting solution.

If we solve this problem, we will have solved half of the pastoralist districts' problems. What we are looking for are actionable opportunities for provincial administration, the entire security systems and communities. What is the actionable plan you have to do this in the future and immediately, because I have heard you say that there are no funds. We do not need the funds. Talk about the actions.

**The Speaker (Hon. Ethuro):** Order, Senator! Had you started from where you ended, it would have been a perfect intervention.

**Sen. Mositet:** Thank you, Mr. Speaker, Sir. I appreciate the question that Sen. (Prof.) Lonyangapuo had asked and the answer that the able Vice Chairperson has given. However, it is good if the leadership in these areas that are affected by cattle rustling could come out because I know pastoral groups respect their leaders very much. I believe if only those who are in leadership like Sen. (Prof.) Lonyangapuo could talk to his brothers or his people, he can control them. Equally, I am sure the entire leadership

within Turkana or Samburu county can come together and speak to the people. That way we will even give the Government ---

**The Speaker (Hon. Ethuro):** Order! This is Statements Time and not time to give suggestions.

**Sen. (Prof.) Lesan:** Thank you, Mr. Speaker, Sir. I wish to ask the Vice Chairperson whether the Government is aware of the presence of technology which can be used to address this issue and whether the Government can attempt to use technologies which have been used in areas that manage large herds of animals. This can be done in this area. We have various systems like the BoLA and the texting systems where we can ring a cow and find out where it is. That way, we can sort out all these problems of putting military forces on the ground. We simply need to find out where the cow is.

**Sen. Adan:** Mr. Speaker, Sir, I would like to respond to the Senator for Wajir. I do not think I said that we are going to establish an ASTU in most of those areas. I was just responding to a question that was asked by Sen. (Prof.) Lonyangapuo in that particular area. Of course, the ASTU has existed in most of these areas.

On the final part of his question, security is a matter that is affecting this country and we are really concerned as the Committee on National Security and Foreign Relations and also as the leadership of this House. My Committee is working on a report and we are looking at the issues that are raised on the Floor of the House to be able to give a recommendation to the Government to make sure that things are done properly - from our findings when we visited Mandera, Kapedo and other parts of this country - as a result of the Motion that was brought by Sen. Billow.

Thank you.

## MESSAGE FROM THE NATIONAL ASSEMBLY

### REJECTION OF SENATE AMENDMENTS TO THE DIVISION OF REVENUE BILL (NATIONAL ASSEMBLY BILL NO. 11 OF 2015)

**The Speaker (Hon. Ethuro):** Order, Senators! Before we proceed to the next order, I have a Message from the National Assembly which I received after we had commenced our proceedings and I wish to communicate it to you.

Hon. Senators, I wish to report to the Senate that pursuant to Standing Order No.40(3) and (4), I have received the following message from the Speaker of the National Assembly regarding the rejection by the Assembly, of the Senate amendments to the Division of Revenue Bill, (National Assembly Bill No. 11 of 2015).

Pursuant to the provisions of Standing Order No.142 of the National Assembly, I hereby convey the following message from the National Assembly: Whereas the Division of Revenue Bill (National Assembly Bill No. 11 of 2015), a Bill concerning county governments was published by the Kenya *Gazette* Supplement No.28 of 18<sup>th</sup> March, 2015 and, thereafter considered and passed by the National Assembly on the 23<sup>rd</sup> March 2015; whereas the Senate's amendments to the Division of Revenue Bill (National Assembly Bill No. 11 of 2015), while received on 14<sup>th</sup> April 2015 for consideration by the National Assembly, and; whereas the National Assembly on 21<sup>st</sup> April 2015 rejected the amendments to the said Bill; now, therefore, in accordance to the provisions of

Article 112(1)(a) of the Constitution and Standing Order No.142 of the National Assembly Standing Orders, I hereby convey the said decision of the National Assembly, the consequence of which the Bill stands referred to a mediation committee.

That is the end of the quote of this message from the National Assembly.

Hon. Senators, Article 112(1)(b) of the Constitution provides that if one House passes an ordinary Bill concerning counties, and the second House passes the Bill in an amended form, it shall be referred back to the originating House for reconsideration.

Further, Article 112(2)(b) of the Constitution provides that if, after the originating House has reconsidered a Bill referred back to it under clause (1)(b), that House rejects the Bill as amended, the Bill shall be referred to a mediation committee under Article 113.

For the benefit of Senators, Article 113(1) provides as follows:-

“If a Bill is referred to a mediation committee under Article 112, the Speakers of both Houses shall appoint a mediation committee consisting of equal numbers of members of each House to attempt to develop a version of the Bill that both Houses will pass.

- (2) If the mediation committee agrees on a version of the Bill, each House shall vote to approve or reject that version of the Bill.
- (3) If both Houses approve the version of the Bill proposed by the mediation committee, the Speaker of the National Assembly shall refer the Bill to the President within seven days for assent.
- (4) If the mediation committee fails to agree on a version of the Bill within thirty days, or if a version proposed by the committee is rejected by either House, the Bill is defeated.

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

- (i) Hon. Mutava Musimi, MP;
- (ii) Hon. Mary Emase, MP; and,
- (iii) Hon. Tom Joseph Kajwang', MP.

In this regard, hon. Senators, I hereby nominate the following Senators to represent the Senate in the mediation committee:-

- (i) Sen. Beatrice Elachi;
- (ii) Sen. Mutahi Kagwe; and,
- (iii) Sen. (Dr.) Boni Khalwale.

I thank you.

**Sen. Musila:** On a point of order, Mr. Speaker, Sir. I stand on a point of clarification. It is well that the Speaker of the National Assembly has sent us a Message that you have just read to us which we receive. However, in future, would it be in order whenever one House; either this or the other House, rejects a Bill for there to be public spat on the House that rejects the Bill? I say this because when we reject or amend certain clauses of a Bill in question, there has been a lot of ridicule by Members of the National Assembly to this House that whatever we did was illegal; we do not know what we are

doing. Is it not normal for us to disagree on issues and receive a Message like the one we have received and then appoint Members of the arbitration in the absence of the abuses and ridicule by the other House?

Mr. Speaker, Sir, as you write back to your brother, would I be in order to suggest that you draw his attention to the fact that rejecting or not agreeing with the feelings of this House does not mean that Members should, through a public debate, cause ridicule or abuse to Members of this House?

Mr. Speaker, Sir, I thank you.

**The Speaker** (Hon. Ethuro): Sen. Mositet, I see you have put a request. Do you have another matter? Is it related, different or none at all to this issue?

**Sen. Mositet:** Mr. Speaker, Sir, it is also related to that.

Thank you for your communication. I also thank the leadership of the House for the names that it approved for the mediation team. However, just like Sen. Musila has said, it does not augur well, not just to this Senate, but to all Kenyans, to note that any time we do something that is for the benefit of the common man, our Members of the National Assembly try to exercise the superiority of their House. It is high time this House comes up and tells Kenyans that whatever Members of the National Assembly have been doing is hurting the common *mwananchi*.

Mr. Speaker, Sir, I believe that by the time the Committee on Finance, Commerce and Budget sat and went through the Revenue Allocation Bill, it was worth to note that the areas the Committee suggested that we need additional funding were needy areas. A very good example is national hospitals; Level 5 hospitals. They serve not only one county, but also other areas like neighbouring countries.

Mr. Speaker, Sir, I remember that we also talked about adding or making sure that we, at least, have enough funds for emergency. This is the right time for the honourable House to come out and tell our younger brothers that it is not an issue of saying, maybe, *ile ni nyumba ya wazee*. Let wisdom prevail upon them.

Thank you, Mr. Speaker, Sir.

**Sen. Mutula Kilonzo Jnr.:** Mr. Speaker, Sir, I just want to support the sentiments of my colleagues. The reports appearing in the press suggest that the Senate picked Kshs7 billion from the air without justification. Maybe, it will be appropriate that you tell this House, through a communication, whether the HANSARD of the proceedings, both at the Committee on Finance, Commerce and Budget level and in the Floor of the House, were communicated to the Chairman of the Committee on Finance, Commerce and Budget of the National Assembly. This is because it is in bad taste for Senators to appear as if we plucked Kshs7 billion from somewhere while the correct position would be that there was justification of the items that we rejected.

It is also fair that while you communicate with them, you tell them that the Supreme Court gave us the mandate to amend, alter or do anything that we feel is in the best interest of counties. Our work is not to rubberstamp decisions made by them.

Thank you, Mr. Speaker, Sir.

**Sen. Ndiema:** Mr. Speaker, Sir, this Senate represents the interests of counties. Any amendment or figures that have been put up are in consideration of the requirements of the counties. In this House, we have passed very many Bills originating from the National Assembly in good faith without rejecting or amending them.

Mr. Speaker, Sir, it is disheartening that any time we arrive at a figure which we think is proper and in good faith, the other House takes it as if we are in competition yet, Members of the National Assembly represent constituencies where this money is going. This exercise of allocating funds to counties should not be an area of contest just for the purpose of proving which House has more say than the other because we are all serving the public. It is the right time Members of the National Assembly took us as equal partners in terms of decisions concerning allocation of funds to counties and on any other matter so that our Bills are not trashed just because they did not originate from the National Assembly.

Thank you.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Speaker, Sir, statements that came from the Chairman of the Committee on Budget and Appropriations were not only disheartening, but demeaning to this House. They were laced with unhelpful arrogance. In a nutshell, what the Chairman said is that this House does not know what it is doing. They originated a Bill and yet the mandate to deal with revenues allocated to counties almost exclusively lies with us.

We want to have a harmonious relationship with the National Assembly and we have told you that as our Speaker and you have done very well in trying to create that harmony. However, we seem to continuously have bloated egos from certain Members of the National Assembly chairing committees. Little wonder that this is the same Committee that sits and allocates every Member of its Committee Kshs100 million from the national Budget. When this House makes an amendment with very cogent reasons as to why we are adjusting the figures allocated to the counties, the Chairman rudely and arrogantly and without any show of respect to the "Upper House" says that we do not know what we are doing.

I want to suggest that as part of the leadership, we are going to nominate a strong team to go to mediation as is required under the Standing Orders and the Constitution. That team must know that they are not going there to please anybody, but to defend the reasoned position of this House. *Kama inapasuka, ipasuke!* We cannot continue being belittled by a person who has been elected by 7,000 people when Members of the Senate are elected by hundreds of thousands of people. This House must take a firm position on this continuing belligerence, arrogance and obstinacy from Members of the "Lower House".

**Sen. Wako:** Thank you, Mr. Speaker, Sir, for giving me an opportunity to speak on this matter. I will not so much focus on the behaviour of the Members of the National Assembly and chairmen of the various committees in the National Assembly and so on, but I would want them to recognize the place of the Senate in contributing to the Division of Revenue Bill. This is because we, as Senate, are charged with the responsibility of protecting the interests of county governments. There is no better place to protect the interests of county governments than in the Division of Revenue Bill. Therefore, one can say that when it comes to the Division of Revenue Bill, we ought to have a bigger say in how much will be allocated to the county governments.

Mr. Speaker, Sir, I do not know whether Members of the National Assembly are in the intergovernmental committees where some of these agreements are reached and so on. Therefore, they must not deviate in a very serious way from what has been arrived at by the Commission for Revenue Allocation (CRA). The CRA goes into these matters in a

very professional way; in a way of experts and so on, and they make recommendations. If you noted, part of the differences between us in terms of figures and so on, are on those matters where the CRA, for example, had said that county governments should get so much and yet at the end of the day that was reduced considerably and yet there was no adequate explanation which is required under the Constitution for that deviation. You just see a figure there and then they just say that it should be so much, but no adequate explanation is given as to why and why not.

There is the issue of free primary education, a very important stage in our education system in this country. This is a stage where the foundation of a child's education is made. That is the responsibility of the county governments. Both the county governments and the CRA were united in saying that so much should go for that item and yet, it was drastically reduced. Although the Constitution says that there should be adequate explanation for that, there were really no adequate reasons given as to why we had that reduction. Therefore, I would appeal to the committees in the "Lower House" to be cognisant of the recommendations of the CRA and not to deviate from those recommendations unless, really, there is a pressing reason, which must be stated. Here the reasons given were not really compelling.

The third point I want to state because I watched this debate very closely is where they said that we should tell them where the money will come from. It is not our duty to say where the money will come from. It is our duty to ensure that county governments get adequate funding so that they can perform their functions. This is not just a duty of Parliament, but also the Executive. Once the national cake has been arrived at and the national Government says that it should be so much, the question of division now becomes our question. In other words, by increasing the allocation that they had recommended, it does not mean that that increase is over and above the national Budget. It can mean that somewhere they have to work it out to ensure that money is available, but within the national Budget. There are very many budgets which have the amount that has been reserved at the national level where, really, most of that money should go to the county governments which are implementing the programmes of those Ministries.

With those three reasons, I hope that, in future, we will not have such statements that have emanated from the "Lower House". They should know that we are doing our job and we should sit down and do it. I wish the Mediation Committee every success in negotiating an amicable solution to this problem. So far, the Mediation Committees have all succeeded in mediating properly. I have no doubt in my mind that the Chancellor of the Exchequer who is also the Chair of the Committee and is also a Member of this Mediation Committee and other Senators who have been appointed, will be able to reach an amicable solution.

Thank you.

**Sen. Kembi-Gitura:** Thank you very much, Mr. Speaker, Sir. First and foremost, I want to thank you for that Communication and particularly for having made the nomination or decision of who is going to represent the Senate in the Mediation Committee. That is a strong team of three. I know that they will be very helpful in finding a lasting solution for the benefit of the counties that we have sworn to represent as the Senate.

For the Senators who did not come to Mombasa for the meeting with the speakers of the county assemblies, first and foremost, I want to state that we had an extremely



successful meeting with them. It was one of the best attended consultative meetings that I have been to. The speakers of the county assemblies came with their clerks and other officials. One of the requests that we made at that meeting was the need for them and Members of the County Assemblies (MCAs) to take interest and realise that it is in the best interest of counties that we act.

When we talk about the Kshs7.7 billion that we proposed, the Chairman of the Committee on Finance, in the “lower” House, needs to realize that none of that money is coming to the Senate. It is money that will go to the constituencies that they represent. It is money over and above, the highly contested Constituencies Development Fund (CDF). It is money that will be equitably distributed because all of us come from the former provinces. In those provinces, we had what was called provincial general hospitals which currently are Level 5 Hospitals.

These hospitals serve people across counties. In Murang’a, for instance, where we do not have a Level 5 Hospital, we go to what used to be the Nyeri Provincial General Hospital. We expect that the Nyeri Level 5 Hospital will be funded directly by the funds going to Nyeri County. This is because people go to that hospital all the way from Isiolo, Meru, Murang’a, Kirinyaga and other places. I would like the Members of the “lower” House to appreciate that before each county can have a Level 5 Hospital, we must be reasonable enough to allow the financing of the existing Level 5 Hospitals so that they can serve everybody.

Mr. Speaker, Sir, I feel very offended when I hear people talk about supremacy battles, when the Senate speaks in reason to improve devolution. The Committee on Finance of the National Assembly must realize that we voted for the Kshs7.7 billion here, over a very long period of time, with a view to enhancing and emboldening devolution. So, it is good that, at least, we have a way forward. But remember the request that we made to the MCAs in Mombasa in the last meeting; that they should find it fit to sit down with the Members of Parliament and talk to and tell them that the Senate is there for the benefit of the lowest levels of devolution – the wards – where our people that we serve and have sworn to protect are.

Mr. Speaker, Sir, I believe without fear of contradiction that the Committee you have directed to go to mediation will put our case forward and very properly, so that none of the Kshs7.7 billion that we voted for to help devolution grow, will be whittled down because it is done in the interest of our country, counties and the people that we represent.

Mr. Speaker, Sir, thank you for the opportunity.

**Sen. Elachi:** Mr. Speaker, Sir, when the National Assembly was debating the Bill, one of the questions that they asked their leaders was whether the Senate had indicated where the Kshs7.7 billion would come from. When we were debating in the Senate we realigned the Budget and agreed where the amount would come from. I remember Kshs2.5 billion came from the national irrigation. Therefore, when we sent our Message to the National Assembly, the leadership of the National Assembly edited our report. They did not table the exact report that we sent them. This is because I remember most Members of the National Assembly asking why there was a budget without reallocation. We sent our Message indicating the reallocated budget.

Thank you, Mr. Speaker, Sir.

**The Speaker** (Hon. Ethuro): Hon. Senators, I had indicated that those would be the last three, but I see that there is a bit of interest, including some of the Senators that

we have sent on the mediation. They may want to assure us after hearing from others. I will just allow a few more and limit their time strictly to not more than two minutes. We will have Sen. Billow and, finally, Sen. Kagwe.

**Sen. Billow:** Mr. Speaker, Sir, obviously the Members of the National Assembly are up to mischief because in the Report by this Committee we provided the actual sources of the money; the Kshs7.7 billion. We did not leave it in the air. We specified why and gave reasons. That report is available to them. It is just a question of not willing to allow more money to go down to the counties. That is not acceptable because as more and more services and functions are devolved, it is important that we allocate more.

In the last Devolution Conference which was held in Kisumu, one of the key issues that people raised was agriculture. Since it is fully devolved we expect more money. One of the things we did was to reduce the allocation for irrigation, fertilizers and so on; Kshs12.5 billion. There is hardly any activity going on in some of those big irrigation schemes that have been planned. We agreed that some of that money should go. Now we have a crisis in a number of counties due to floods. So, we actually agreed that the national Government rarely allocates money. So, we were very clear on what we wanted and where the money would come from. I hope that the Mediation Committee will be up to the task and ensure that, that money goes through.

Thank you, Mr. Speaker, Sir.

**Sen. Kagwe:** Thank you very much, Mr. Speaker, Sir. First of all, I want to thank the House for the confidence that they have shown through the appointment of Sen. Elachi, Sen. Khalwale and I.

Even though some people in the other House or this House will get annoyed, what we are trying to address here is who is going to be responsible for hospitals not running, emergencies in the counties or not being addressed and MCAs not being paid their salaries.

We do not want to be held responsible for calamities happening and there is no money, for hospitals not having medicine. We want the Members of County Assembly (MCAs) to get some money. That is why we have agreed to be Members of this Committee. There is nothing else we are going to negotiate for. Those are the three sectors we need to address ourselves to. Members of Parliament are members of a county and they are supposed to be responsible for what is happening in their counties.

Mr. Speaker, Sir, we must never have so much egos here in the Senate and in the National Assemblies, particularly the chairmanship of Committees. We should not begin to bite the hands that feed us in the counties. I do not think we need to start biting noses to spite our faces. Therefore, as we go to the negotiating table, we do so from the strength given by this House and realizing that we negotiate from good faith; we will never negotiate out of fear, but we will never fear to negotiate.

**The Speaker** (Hon. Ethuro): Order, Senators! I allowed a bit of this because the issue is of immense public interest. However, we must acknowledge that there was really no forum for such ventilations and that some of you exceeded your brief. It is not fair to accuse another person and go ahead to commit the same crime. The issue raised by Sen. Musila was an appropriate one and made it clear that each House has a responsible to believe that we act in good faith. That is the message that should come out from Parliament. That all act in good faith. This is why in the contents of speeches under, our Standing Order No.90(3), it is very clear. Standing Order No.90(3) states as follows:-

“It shall be out of order to use offensive or insulting language whether in respect of Senators or other persons.”

Standing Order No.90 (4) which is more applicable states that:-

- (4) No Senator shall impute improper motive to any other Senator or to a Member of the National Assembly except upon a specific substantive Motion of which at least three days' notice has been given, calling in question the conduct of that Senator or the Member of the Assembly”
- (5) It shall be out of order for a Senator to criticize or call to question, the proceedings in the National Assembly, a County Assembly or the Speaker's Ruling in the National Assembly but any debate may be allowed on the structures and roles of County Assemblies or the National Assembly.”

Those are the grey areas that you have been trying to tread on; the difference between structures, roles and proceedings. First, I will need to look at the HANSARD to know exactly what transpired in the National Assembly, so that we can entertain the pleadings by Sen. Mutula Kilonzo Jnr. in terms of the responses by Parliament and, of course, taking into account our own proceedings this afternoon.

I want to emphasize the point which you have made, that it is time that we appreciated the role of each other; that whatever one House does, does not mean; or is not intended to spite another House. There is serious wisdom in the way a bicameral Parliamentary system was conceived. It was to address certain historical challenges. In the case of the Senate, it was to confirm the equality of the vote and to ensure as per Article 96(1) that we promote, protect and represent the interests of counties. The Constitution has been very generous in terms of the objects of devolution in Article 174 and particularly Article 175. Of the three, one of them in Article 175(2) will tell you that our job is to ensure that there are enough revenues allocated to counties to enable them govern and deliver services effectively. By virtue of the nature of our calling, the Senate interacts more with the counties than any other branch because that is what we are intended to do.

Sen. Wako, I thought you would say that the issue is not where the source of money is coming from; the Constitution says a minimum of 15 per cent. So, actually the division of revenue of whatever resources envelope that is before you, irrespective of the magnitude, there is already a divide of constitutionally 85 and 15 per cent. You can decide because that is the constraint that we have on the lower level- those of us who did a bit of physics and mathematics - I am sure that Sen. (Dr.) Khalwale will appreciate, once you have bound boundaries, then you have a lot of room to play, you can actually decide to allocate a maximum of 80 per cent. There is nothing that is unconstitutional about it, it will be so constitutional.

I want to believe that our team must be reminded that we are going for mediation. I am sure that you know the rules of mediation. As Sen. Kiraitu will always say that in the constitutional review process, you cannot stand on position “A” and you go to mediation expecting to remain on position “A”. A mediation is a mediation. I want to believe that with all the submissions that you have made, may be, some of those issues are matters of information and have to do with ignorance or because you have not read the Finance Report that was passed by the House. I took the trouble of reading it.

You will really appreciate the way they looked at how you can avail that kind of money which, to me, should not have been their business because that is why we have

division of revenue. It is now the Parliamentary process to see what goes where from the same envelope. So, we are not looking for additional resources, we are saying what goes where for whatever resources that are available and that is the constitutional duty that the Houses must perform.

Therefore, for you to want to curtail that debate on the basis of where the money is coming from or even telling Kenyans that you are going to raise taxes, we are talking about the taxes that are already available and which have been raised. With some of those issues, we will bring this matter to an amicable solution. I am personally persuaded that of the two occasions where we have involved the Mediation Committee, we have reached an amicable solution as to the two Houses of Parliament. I do not expect us to depart on this particular case as we have already proven. Let us give the mediation process an opportunity and I hope this matter will be concluded to the satisfaction of both Houses.

Hon. Senators, before we move to the next Order, we will defer Order No.9 to tomorrow. You will remember that we do voting on Wednesday, so make sure we whip Members so that we can have that Business at the very beginning.

### COMMITTEE OF THE WHOLE

THE ALCOHOLIC DRINKS CONTROL (AMENDMENT) BILL  
(SENATE BILL NO. 5 OF 2014)

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

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

*(Committee of the Whole deferred)*

**The Speaker** (Hon. Ehturo): Hon. Senators, Order No. 11 is also deferred to next week. We can now proceed with the rest of the Orders.

### BILLS

#### *Second Readings*

THE PARLIAMENTARY SERVICE (AMENDMENT)  
BILL (SENATE BILL NO. 21 OF 2014)

*(Bill deferred)*

THE PUBLIC APPOINTMENTS (COUNTY ASSEMBLY  
APPROVAL) BILL (SENATE BILL NO. 20 OF 2014)

**The Speaker** (Hon. Ehturo): Where is the Chairperson of the Standing Committee on Labour and Social Welfare? Sen. Madzayo? Vice-Chairperson or any

Member who has been given the mandate by the Committee?  
Let us proceed with the next Bill.

*(Bill deferred)*

THE NATIONAL GOVERNMENT COORDINATION (AMENDMENT)  
BILL (SENATE BILL NO. 30 OF 2014)

**Sen. (Prof.) Lonyangapuo:** Mr. Speaker, Sir, the National Government Coordination (Amendment) Bill (Senate Bill No. 30 of 2014) seeks to amend the National---

**The Speaker** (Hon. Ethuro): Order, Senator! You need to move the Bill; you have not moved the Bill.

**Sen. (Prof.) Lonyangapuo:** Mr. Speaker, Sir, I beg to move that The National Government Coordination (Amendment) Bill, 2014---

**The Speaker** (Hon. Ethuro): Order, Senator! Just read it as it is; "I beg to move"

**Sen. (Prof.) Lonyangapuo:** Mr. Speaker, Sir, I beg to move:

THAT, the National Government Coordination (Amendment) Bill (Senate Bill No. 30 of 2014)---

**The Speaker** (Hon. Ethuro): Order!

**Sen. (Prof.) Lonyangapuo:** Be now read a second time.

**The Speaker** (Hon. Ethuro): Just revisit it. You have missed the word "Senate."

**Sen. (Prof.) Lonyangapuo:** Mr. Speaker, Sir, I beg to move:-

THAT, the National Government Coordination (Amendment) Bill (Senate Bill No. 30 of 2014) be now read a Second Time.

*(Laughter)*

**The Speaker** (Hon. Ethuro): You have now outdone yourself, proceed.

**Sen. (Prof.) Lonyangapuo:** Thank you, Mr. Speaker, Sir. This Bill that is before the House seeks to introduce some amendments. The amendment that is, indeed, mentioned here says that Section 15 of the National Government Coordination Act, 2014, which is the principal Act is amended by deleting the word "and" appearing at the end of paragraph "c" and inserting the following new paragraph immediately after paragraph "e" which is that

"a village elder in respect of every village unit"

As we know, pursuant to Section 1 of the Public Service Commission Act, the list of all the officers that fall under the National Coordination are given. I will start by giving the list of all of them. It says:-

"(a) the County Commissioner in respect of every county is the head of the county in the National Government coordination" followed by

(b) A deputy County Commissioner in respect of every sub-County

(c) An Assistant County Commissioner in respect of every ward

(d) A Chief in respect of every location

(e) An Assistant Chief in respect of every sub-location and

(f) Any other national Government administrative officer in respect of a service delivery unit established under Section 14.”

This is what we seek to add here, that instead of after “e”, we are introducing a village elder falling immediately after an Assistant Chief. There are so many villages that are found in a sub-location. Depending on the number of those villages, so shall the number of the village elders be. We sought to introduce this additional responsibility in light of what is taking place currently in Kenya and the world over. In Kenya, for example, we have had some threats to the security of our people.

Security is not a devolved function, it is still a function held by the national Government. So, for every unit or village to be felt, there must be a responsible person who collects information that monitors and keeps data of all the persons who enter into every village and hence into every part of this country. Whether that person has any good or ill motives, that person should be certified. It is very difficult for one officer called an Assistant Chief who is underpaid. If you look at their salary scale, an Assistant Chief earns between Kshs12,000 and Kshs14, 000, yet you expect that we can deal with some of this criminality that we see encroaching.

The Bill seeks to make the presence of the national Government be felt at the grassroots level. Somebody was challenging this by saying “what about the village administrator that the governors use?” Those are parallel governments; we are dealing with a government that is supposed to secure the people of Kenya in terms of security. Somebody was also saying “where are we going to get salary for them?” We are also saying that this is not a money Bill as indicated, but an honoraria can be given to them. We do not have to struggle to get that money if the national Government in the Office of the President where they all belong can easily identify a small fund that may not necessarily be a salary that can be used on them.

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

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

Mr. Deputy Speaker, Sir, we have 8,300 sub-locations in the Republic of Kenya. If we look at the problems we have been encountering of late, they come through the borders of Kenya. Suppose we had somebody “planted” very close to the borders; and that is where most of these people are and those are villages. In this, I am proposing that we should have these people clearly vetted and identified not necessarily by the Assistant Chiefs and Chiefs, but by the people.

In the same way we conduct our elections, we should go to every village and ask the people there to give us a person of certain characteristics. We should get somebody who is honest, dependable, reliable, and patriotic and who is willing to lay down his or her life for others. These are the people we are looking for.

Mr. Deputy Speaker, Sir, in West Pokot, for example, for a long time, village elders have been assisting to trace cattle rustlers. However, overtime, nothing has ever come out of the national Government. We now have the county government and, so far, we have had nothing coming out of it. Should somebody’s animals be stolen, these are the people who would identify the culprits. They work closely with the National Police

Reservists (NPR). They also work closely with elders and can easily follow the criminals around.

Suppose we work with the sub locations that we have around? We should assign about ten elders to work with the chiefs. They should not necessarily be old. Even the youth can be given responsibilities as village elders. It is very easy to use such units to run Government programmes at any level. For example, given what has been happening recently, if these units existed and a decree was given by the national Government to the lowest level, people would name all the people who have visited the village in the last 24 hours. Other government departments would also rely on them when they want to ensure that every child goes to school.

The terrain of some parts of Kenya like Mandera is bad. People now fear to go into Mandera and they want to be on the highway. They want the police to be travelling with them in buses. How do you get to the interior? Those are the areas that should be manned by the smallest units and these are the village elders.

As I was developing this Bill, I got interested to know how countries which have become successful like Rwanda had dealt with these kinds of problems. This is a country where people were massacred. It was not easy to tell how guns would be removed from the hands of criminals. I decided to visit Rwanda and stayed there for three days. I was thoroughly convinced that if we wanted to eradicate some of the problems we have, we should not fear copying what our neighbours have done.

In Rwanda, every village elects a leader of everything. With regard to security, they have a village elder. If they want to introduce a government sponsored programmed regarding agriculture, they get someone to be in charge, whom they can rely on to disseminate information. This also applies to issues regarding provision of water.

I was particularly interested in this area. If we are to get rid of the malpractices that exist, we should find a way of benefiting villagers. How do we pay them? Some countries do not pay them in the form of money. For example, in Rwanda, they are given health insurance. They are guaranteed in terms of health. When you become unwell, you walk to the nearest dispensary or hospital and you are taken care of. These people are also given free phones so that any time they have some important information, they pass it. This is done on a daily basis before 10 a.m. every day.

I had visited Rwanda and the hotel reported that I was a guest. We used to praise ourselves and our country Kenya and call it an island of peace until we forgot to act thoroughly in some of these things. Rwanda took that direction. Some village elders give information regarding how many people have visited a particular area. That number is given to some security officers at the top. This is public policing which is very easy to manage.

They told me a story of one time when some aliens came from Ethiopia and passed through Kenya unnoticed. They also passed through Uganda unnoticed. However, they went to scramble in a very tiny room and in a very few minutes, they had been known. This did not happen because Kenya allows such people to be around. However, it was noticed in Rwanda because of the security management system that is in place.

When issues of insecurity started last year, as all of us know, the Government came up with the *Nyumba Kumi Initiative*. When we asked what this was all about, we were told that it was a concept that the Government was going to implement. I have asked people in my village whether they understand what the initiative is all about. They

tell me that they think it has to do with counting ten houses. How do you count houses which are exceedingly populated?

This concept may work in some towns like Nairobi where there are estates or even a block of flats where there are many houses. However, it cannot work in an area where people are sparsely populated. People should be allowed to talk about the problems they encounter in their villages and how they want to sort them out. Whether they sort them out or not, they should have somebody that they rely on. All of us were voted in. We did not walk in here. We were either voted or nominated. That is how we should deal with this issue at the lowest level.

At the moment, whether we like it or not, these people exist. Somebody was saying that we should not have them. However, they exist. Some chiefs have already anointed some of them. Some are their friends. Some are used for different issues. If villagers were allowed to elect them, you would see a serious change in the way things are done. Sometimes some chiefs' offices are used as distribution points for relief food in the northern part of Kenya where there is no food. Occasionally, some of the officers in charge of those offices, sub chiefs, chiefs and so on, because they have elected and chosen their own pretending to be village elders end up eating into the allocations that have been given. If you ask the villagers what they feel about the situation, they will tell you that if they were given the mandate to elect representatives, they would know who to trust.

As we get into a time when security is such a big challenge, we have to use every available means, including getting legislation such as this. If we have 10 village elders in a sub location, that makes 83,000 elders in total since we have 8,300 sub locations. We should consider applying the one-third gender rule and also ensure that some of the positions are given to the youth. The remaining positions should be given to men.

Mr. Deputy Speaker, Sir, even if we assign honoraria for them to be given every quarter, just as we give elders who are above 65 years of age--- I am told that they are given about Kshs2000 per month which is summarized quarterly, so they get about Kshs10,000 after five months or so. We should be able to coin up something to give them including uniform, in order to make our village elders support efforts by the Government. In Kanyarkwat Location where I come from, and so many other locations bordering Trans-Nzoia and Uganda, we empowered them. I personally led a team into five locations and bought uniforms. They chose their own uniforms which were not necessarily the same as those of village elders who are found in another location or sub-location.

Whenever there is a *baraza* or meeting which has been called for people to participate, you will see them strategically seated in the meeting and there is order in that meeting where they normally speak. When I asked why they wanted to take that direction, they told me to go and see what Uganda had done. I crossed over to Uganda and saw what had been done. When the President of the Republic of Uganda goes to a village, before he talks to the people, the village elder must speak first to assure him of security, then permission is given to whomever next to proceed with the meeting. Without that, no meeting takes place there.

What does it cost us to go that direction? We would have arrested some of the characters that came last year and bombed Westgate Shopping Mall. We would have arrested the fellows who killed 148 of our children. I am told that they were four people



who killed people in Garissa. Those people would have already been caught by the elders but we have to train them until they know what to look for in order to easily catch them.

Mr. Deputy Speaker, Sir, we read in the newspapers yesterday that the Cabinet Secretary for Education, Science and Technology and some college principals in Migori were telling students to go home because there is a terror alert. Which terror alert has gone to Migori? If we had these types of village elders, it would be very quick and easy to capture the terrorists. We should not succumb into closing every school. We are opening schools next week and every primary and secondary school must be opened. We must proceed. We should close every loophole that may be necessary to make our security firm and rely on village elders to do that.

**An hon. Senator:** But we are going to incur expenses.

**Sen. (Prof.) Lonyangapuo:** Somebody is saying that we are going to incur expenses. However, which one is better? We should incur a little cost and save lives. Sen. Musila was a Provincial Commissioner ((PC), he knows that he would chose to spend a little money and save lives. However, we should make our people very responsible to take care of themselves.

Mr. Deputy Speaker, Sir, this is a straightforward Bill. It is coming at a time when we want to look for every avenue to strengthen the security and the support that we require to help the Government have a firm grip on its people, how we move and how our economy is supposed to develop. We are being derailed today from the Vision 2030 and the miles we had gained. Last year, we declared that we are now a middle income country, but with this type of insecurity that we are facing, people are scared. These are the people that can easily assist us. We could also utilize the presence and support of the Kenya Police Reservists (KPRs) in some of those areas.

This can work even where we stay here in Nairobi. We can choose to have some village elders in our estates. We have retired officers who live in our estates, but are not tired. They can easily take up some of these responsibilities and roles and assist us.

I beg to move and seek that colleagues speak to it so that we can pass this Bill and make it a reality.

**The Deputy Speaker** (Sen. Kembi-Gitura): Thank you, Senator.

Who is seconding the Bill?

**Sen. (Prof.) Lonyangapuo:** Sen. Musila will second my Bill.

**Sen. Musila:** Thank you, Mr. Deputy Speaker, Sir. I also thank the distinguished Senator for West Pokot for giving me the honor to second this very important Bill. This is a matter that has been pending for a long time. I remember that during the 10<sup>th</sup> Parliament, we passed a Motion requiring the Government to recognize village elders and pay them. Whenever we come to huge national exercises, like the census or elections, these are the people who are relied upon by the Government to do the work that is at the rural level.

These people exist in every community in this Republic. In my community, we call them *atumia ma thome*. In Machakos, they have even advanced and given them a bigger title; they call them managers. Nothing goes on in Machakos, Kitui or Ukambani without these people. I know that in the former Western Province, they are called village *liguru*. In every community, these people have existed since colonial times including the former Central Province. It is only that we have been extremely unfair. We have been

receiving services from these people without recognizing them officially or even giving them a token of appreciation for the work that they do.

Mr. Deputy Speaker, Sir, I will give another example in my community. They are paid what they call 'porridge'. After arbitrating over a case or doing some service, you are given something they call 'porridge' which is in terms of money. For how long is this country, 52 years after Independence, going to continue receiving valuable service from people, yet we do not recognize them?

Our chiefs do not do any work without these people. If a Cabinet Secretary, Senator, or Member of Parliament wants to meet the community, the chief will ask the village elder to mobilize the people. He is the one who is known by the community and receives the respect of the community. He is the port of first call when there is a dispute in the village and the first one to be called even when there are family disputes. These people have served us well. Unfortunately, they have served us, retired and even died without getting recognition or remuneration. I think that this is a timely Bill that has come so that we can redeem this problem.

Clause 15 which is meant to be amended to create the position of a village elder, lists a number of administrative officers that are already recognized; the county commissioner, the deputy county commissioner, the assistant county commissioner, chief and assistant chief. I think we made a gross error when we were enacting this law. That is the time that we should have put the village elder next to the assistant chief. If I were to be asked today out of all these, I would say that we should get rid of the county commissioner and substitute with a village elder, because they are immensely useful.

Since the point is not to get rid of some and substitute with others, I want to put a very strong case for the Bill as proposed by the distinguished Senator for West Pokot. We should have this new position of the village elder. This is not new because it exists; only that it is not formal. We want to formalize this position and give some recognition to people who have given their time and their lives to the service of a nation.

These people are called when crimes are committed and in the process, some are injured or even killed yet they are not remunerated. When a chief is told of a problem, he sends the elder to go and deal with it. Therefore, we want to put a stop to this unfairness and unfair treatment of Kenyans and create this position. We should ensure that they are officially recognised. We should stop this culture of giving them porridge and give them proper tokens of appreciation in terms of money or allowances. We should recognise these people and give them morale and authority to do their work.

The issue of recruiting them in the Public Service Commission as is in the Bill, causes a lot of challenges. I know even in the Public Service Commission Act, there is room for delegation. It is only fair that when the Public Service Commission is recruiting elders, it should delegate that authority to chiefs and even the public so that the public may decide. Today, if you appoint a village elder who does not receive the support of the public, he would not be of any use. There must be an element of the participation of the community, unlike the appointment of chiefs. That way, the community would be at ease to approach the village elder to solve their domestic problems and any other problems that may arise in the village.

I hope that if this Bill is passed, the Public Service Commission should employ a system of consultation of the community at the locational level. This will make sure that the people appointed to this commission are acceptable to the community and would get

all the support and it would be easier for them to tackle crime as opposed to chiefs who are seen as people imposed on the public by the Government.

I thank and commend the distinguished Senator for West Pokot. This is a matter that has been bothering us. I want to confess here that whenever I go home, I receive delegations from elders asking whether we have done something or not. I am now happy that when they come to me this Saturday, I will inform them that we have done something. Therefore, I urge the House to honour these people who have served this country without remuneration by making them formal employees by recognizing them in the law.

With those few remarks, I beg to second.

*(Question proposed)*

**Sen. Wako:** Mr. Deputy Speaker, Sir, thank you for giving me this opportunity to speak on this very important Bill. First of all, I want to thank the Mover of this Bill, Sen. (Prof.) Lonyangapuo, because all his proposals for amendment of the Bill and all his Motions are focused on one thing; security. I believe that this is informed by the area which he represents in this Senate. Therefore, when he brings this Motion, as a professor, he has gone through it and has seen that it can improve security in Kenya.

The concept of elders has been with us for quite some time. As Sen. Musila said, we have elders everywhere. In Western Province, we call them *ligurus*. These people perform good service but that function is multifaceted. In other words, they are not confined to issues of security. In fact, in security and investigations, they merely assist in a very peripheral way. I hope when this Bill is passed, the issues of security will come to the fore of their functions. They have mainly been concerned with disputes in the village. They are concerned with issues of land disputes, family disputes, petty crimes here and there.

They have also been concerned with supplying the necessary information, when asked to do so by the Criminal Investigation Department (CID). So, far, they have not been proactive on issues of security. When this is enacted, I hope that they are going to take a proactive approach on issues of security. They should know who has come in the village as it is done in Rwanda. This is to keep a close eye on what is going on within the village.

Mr. Deputy Speaker, Sir, as they got concerned with other issues, not all the elders behaved like elders. For example, in land disputes, we have very many reports where particular elders can be bribed by one side to decide in a particular direction and so on. This is becoming more common. That is why the issue of how they are appointed becomes very critical. A village elder must have the absolute confidence of the members of the village, if he has to be successful. Even if the Public Service Commission delegates to the chief, it should not be seen that the chief is the boss of the village elder by appointing and making recommendations to appoint so and so. A system must be devised in which the villagers have a say on who should be a village elder. They know themselves very well who to appoint as the village elder.

Mr. Deputy Speaker, Sir, what this Bill is trying to do is what we did in the National Assembly; to try and give these village elders some token for the important work that they do. Proposals have been put here, and I am sure that if the Commission on

Salaries and Remuneration (CSR) did its work properly, they should come with a scheme, where they will lower the salaries of some of us in the executive, in Parliament and in the Judiciary, and let the savings pay the people who matter at the grassroots level, that is, the village elders.

In amending Section 15 of the Act, you can see that each of the officials there are not just confined to matters of national security. That is the County Commissioner, Deputy County Commissioner, the Assistant County Commissioner and the assistant chief. They are not just concerned with matters of security but also matters of national functions. Of course, when you put the village elder there, he will also be concerned with matters of national functions.

It may be that at that level in the village, there may be an elder – from what I heard on the practice in Rwanda – who is responsible for security issues. There may be another elder who is responsible for the management of a particular project in the village and whom people trust because of his education and other issues that he can manage that particular project. There may be another elder who is just responsible for land disputes and whom people know that he has expertise in this area. Let us not assume that there can only be one village elder per village. In as much as the County Commissioner has people who man the various national functions reporting to him, the village elder also has to have a system of dealing with the various aspects in the village and it cannot be like the County Commissioner where people report to him. It can only be, may be, by appointing another village elder to deal with the various specialized work that goes on in the village.

Mr. Deputy Speaker, Sir, I support this Motion because when I was campaigning to be the Senator, I met everybody even the chiefs and sub-chiefs. The sub-chiefs came to me and said that I was forgetting the most important component of our administration and that is the village elders. I was supposed to meet village elders of the various areas in Busia County. One request that they made was that they be recognised. I hope they are listening and by supporting this Bill by Sen. (Prof.) Lonyangapuo, I have fulfilled my manifesto when I said I will go there and fight for you to be recognised and be given *kitu kidogo* for the good work that you are doing. I hope that the Senate will approve this amendment unanimously.

Thank you.

**Sen. (Prof.) Lesan:** Thank you, Mr. Deputy Speaker, Sir. I thank Professor for bringing this amendment and I support it for various reasons. One of the weakest areas in which we are failing security in our country is the way we handle information; the way we collect, evaluate and utilize that information. I am sure that the presence of a village elder is going to solve this main problem of collecting information because the current state of insecurity and the greatest threat that people have is terrorism. Insecurity affects the very simple members of society who do not have any other form of protection except collect information and protect themselves.

I see several advantages in having the village elders and this must be made clear so that we are able to support this amendment with good reasons. First of all, a village elder has the first advantage in that they understand the language of the community where they come from. Therefore, they get this information, first hand, in the language of the people where they come from. I believe in most cases especially in rural communities, these village elders are going to come from the communities where they can communicate in their own language.

Mr. Deputy Speaker, Sir, the village elder is also physically present in the area of their jurisdiction or areas where they are likely to collect information. Without having to be called or using a vehicle to go to the site, the village elder is already present on the ground and this is an advantage and a useful thing to suggest.

Thirdly, the village elder has a motivation because it is his or her own village and, therefore, without having to expect a reward or payment for working, the first thing that inspires the village elder to work is that they are defending their own territory. They are motivated to work within their village. They are the best people that we can use.

Lastly, the village elder in terms of economics is the cheapest personnel that we could require or use in these areas. They are a manpower that is easily attained and can be paid very easily, not necessarily using monetary but using tokens and other things coming from within that community. In terms of affordability, the village elder is fairly cheap.

Mr. Deputy Speaker, Sir, of late and, in fact, since the new Constitution came into place, attempts have been made to take the Government to the people, and I am sure this is where the Government meets the people. This is the lowest member coming from the community to meet the Government. As part of our devolution process, this is currently the right thing to do; to have a point at which the national Government or even county government meets the people at the village level. I am sure it is the village elder that is the person that is going to make this connection.

I support this amendment, and I hope Senators will also support it so that this can be applied both in the rural communities and even more so, now, as we know it can also be applied in urban communities as we implement what we suggested as the *Nyumba Kumi* Initiative that we are going to use. I think the village elder is going to be useful.

Thank you.

**Sen. (Dr.) Zani:** Thank you, Mr. Deputy Speaker, Sir. From the outset, I stand to support this Bill and congratulate Sen. (Prof.) Lonyangapuo for going down to the most basic level especially putting into consideration the complexity of running any entity, let alone a country and all that it entails. You need as many administrative and managerial boundaries as there are possible so that within each, you can cascade from the highest level to the lowest level. In the formulation that we have had where we are going to the lowest, to an assistant chief, I think we have missed the village elder who is the closest to the people.

I do not think in any village you will go and ask who the village elder is and be misled. In fact, I think somebody should go into the philosophy and the dynamics of how village elders come to be because there seems to be some sort of coordination and synchronizing that happens so naturally that a village is able to identify certain very wise people who really know about the village, its history, how they have transformed themselves from one point to another. So, they become very key.

This proposed amendment is taking us to another probably lower administrative level that is very important. If we are to be in a position to coordinate national Government functions and perform them, it is critical that we have them.

Mr. Deputy Speaker, Sir, we are talking about a country that is growing very fast. We are at 40 million people with a projection of increasing to 45 million people. Therefore, the dynamics of managing people, giving administrative positions and administering right services becomes very critical. We are also talking, in a dispensation after the Constitution of 2010, where we have a national Government and county

governments and the need to synchronise the two. As much as we may be paying attention to county governments in terms of the hierarchy and cascading from the county governor up to the lowest levels of administration, we need to turn our lens and eyes into the national Government; which is what this amendment is trying to do.

This is because at the end of the day, services must meet the people. Therefore, if we look at the specific section; the recruitment and appointment of the national Government administrative officers, county commissioners, deputy county commissioners, assistant county commissioners, chiefs and sub-chiefs were taken into consideration. However, the key essential village leader was left out.

Looking back at the importance of a village elder in terms of putting everything together, already, they are very well structured within the communities, societies and the villages they live in. So, they know a lot. They know the social and cultural background of individuals. As Sen. (Prof.) Lesan said, they can pick out new elements that go into the village.

People tend to consult them all the time. Therefore, they have a sense of getting a lot of information without seeking for it. That places them in a position of knowledgeability. They also tend to be almost like counsellors. Therefore, they can see things from a slightly different lens and are wise in the way they make their decisions. They also tend to, already in their format, work closely with chiefs and sub-chiefs. So, already within a hierarchy that has been presented, it is very easy for them to pass information to chiefs and sub-chiefs and even the county commissioner within that particular structure.

Mr. Deputy Speaker, Sir, for the last few months, we have been shaken as a country in terms of security; everybody now wants to know who their neighbour is, not necessarily in the conception of the *Nyumba Kumi* Initiative as it has been put because it has its own difficulties, however, from an argument point of view, from knowing who is who and what they are doing next to you. More and more, everybody wants to tell who is close to them or near their space and what their agenda is.

Mr. Deputy Speaker, Sir, more recently, I have seen adverts that tell us to be a little bit more alert about the person next to us who comes and puts a bag in a corner and leaves it. Maybe, that bag might have a detonating device. So, it is important in this particular structure, especially on matters security. We cannot talk about matters security without talking about the impetus of a village elder who already, by virtue of his position, knows the people, what they are coming to do and he or she can give information very quickly and even mobilise people to look at the newcomer and find out exactly what it is they are doing within their midst. Since they know that, know everybody and know what is happening, the skills are already put into place. In fact, in a way, they already have vetting mechanisms in place that do not need to be taken to the next level.

Mr. Deputy Speaker, Sir, the issue of having them formally recruited within the Public Service Commission (PSC) can be tricky because of the monetary implications. However, Sen. (Prof.) Lonyangapuo has looked at this and devised, in a previous clause, that a fund be established that consists of money specified specifically under sub-clause 1. There is also the possibility of funding such a venture through gifts, grants, donations and monies that might be provided in the future by the National Assembly.

Mr. Deputy Speaker, Sir, I am worried about a trend by Members of the National Assembly where they always look for any Bills coming from the Senate and because they

want to disregard them say that they are money Bills. Therefore, this provision becomes very critical. At the end of the day, we are trying to ensure that counties have the hinge of devolution that is required for them to develop and provide services in areas that, hitherto, had not been touched in terms of services. Therefore, in terms of encouraging and building capacity in the village elders, it will be very sad if this amendment does not pass through because we considered it as a money Bill.

Indeed, Mr. Deputy Speaker, Sir, the Senator has in Clause 15(b) said very categorically that this is a non-money Bill because it does not touch on taxes and imposition of charges. Indeed, the Senator has done this clause in a way that allows a delegation, as Sen. Wako said, the authority to receive monies that go to them rather than directly so that they can be processed in that manner and they can do their work.

So, Mr. Deputy Speaker, Sir, their recruitment and appointment needs to be looked into probably, a little bit more. More importantly, we need to move to creating a formality for them. That is very key and essential. I was listening when Sen. Musila was contributing to this amendment Bill and he said that we have taken them so much for granted. They have worked for long without being given any pay; they seem to be already engaged in the work. Therefore, it is important, through such an amendment, to give them the formality that will come with other aspects that will enhance the job. It will give them some sort of more respectability within the communities and villages and more authority and assertion about how they go about doing their work. It will also give them an identity that is very critical even as they move on into that particular structure.

That goes along generally about empowering people and communities. Another area is community policing and enhancing community policing within communities. This has helped us a lot because we have empowered people from specific communities who know the community well and can quickly act on various assertions that might come even at the last minute and make a difference.

Therefore, bringing on board such initiatives that are already entrenched, so to speak, in a social unit framework becomes very critical for this particular Bill. Therefore, at the end of the day, the whole idea of coordinating the national Government functions and performing them in a more formal and efficient manner becomes very critical. This is the time we must remember our village elders and capacity build so that they can do what we expect them to do and especially for Kenya at such a time when we need drastic changes especially in the areas of security.

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

**The Deputy Speaker** (Sen. Kembi-Gitura): Thank you.

**Sen. Ndiema:** Mr. Deputy Speaker, Sir, from the outset, I support this amendment Bill and thank Sen. (Prof.) Lonyangapuo for coming up with this idea that we all have been grappling with.

Mr. Deputy Speaker, Sir, the village elders, as we all know them, have been there since time immemorial. They have been doing very many things to the communities. They are not only the administrators but they have also been involved in dispute resolutions. They have been in tribunals; whether on matters of land, family matters and also in all issues, disseminating Government policy, protecting Government property and also dealing with prevention of crime.

There have also been attempts to involve them in settling cases in a manner that ensures cohesion and forgiveness within the community. This role has been done by

elders for all this time but the Government has never found a way to recognize them in terms of compensating them for the hours they put in. I want to thank the Senator for West Pokot for coming up with this idea of ensuring that they are remunerated to some level.

Mr. Deputy Speaker, Sir, village elders come in very many names in this country. In some parts, they are called village elders, *wazee wa mtaa*, *Apondet apkok* in the Rift Valley, *Mukuru*, headman, *Mukasa*, *Mutureti*, *et cetera*. I think as we seek to amend and assign a name, I do not know what we can do. Perhaps we should have an amendment whereby they do not lose that identity; the local name. This should continue because then they will carry along that status.

The way such elders were identified was not through perhaps an interview process or appointments by the Government. One had to naturally grow, prove himself and assume that position naturally. The community would grant you that position depending on your conduct, particularly your behaviour and so forth. At the Committee Stage, somebody should come with an amendment to ensure that the method of recruitment is not the usual recruitment that is done through the Public Service.

Perhaps it is necessary that the elders nominate this person through some form of electoral college or direct election depending on the area so that they come from the community. The qualification should never be tied to academics. There are some elders who are very respectable in the way they speak and resolve issues yet they never saw a door of a classroom. By amending this Bill, we should not disengage those who are already engaged as elders. In fact, we should reward them.

Mr. Deputy Speaker, Sir, in a village, there is not one elder; they are quite a number. Perhaps we can leave the elders as elders but elevate one in a village to be the one in charge. He could be called the coordinator or the chairman. We should have the chairman of the elders in every village. If numbers are not assigned, then everybody will be an elder and I do not know whether we shall be able to handle them in terms of remuneration. Perhaps it would be necessary that the elders identify one of them to be the chairman so that he can be the one in charge.

Public participation is very important in this exercise. It is also important that the relationship between this elder and the village administrator is defined so that their roles do not conflict. In fact, they should be complementary because the village administrator will be recruited by the county government. It is important that at the village level, they should work closely. In addition to this, the fact that we have not recognized village elders and we even seem not to recognize the chiefs and the assistant chiefs, most of them are idle and they do not know what their roles are.

It is very important that we redefine their roles clearly because at the village level, it will be difficult to restrict a chief to national functions. You cannot tell, for example, the chief not to act when there is vandalism on a water project in the village. A chief in some cases is not supposed to constitute a committee because that is now a function of the county government and it is no go zone. I think when we get to that level, we should have somebody who cuts across national and village duties.

Mr. Deputy Speaker, Sir, the elders, chiefs, assistant chiefs and county commissioners are without an enforcement arm because a greater part of their responsibility is dealing with criminals and dispute resolution. I think at the moment, we have exposed them so much – they are very insecure and they cannot implement some of



the programmes that they are supposed to implement because of fear of attack by criminals. You have often heard county commissioners threatening to sack chiefs because there is high intake of *chang'aa* in their areas, stock theft or presence of illegal arms and yet they do not have any security back up.

Initially, the Administration Police who were known as tribal police were responsible for community policing and their commander was the chief. In fact, the chief is the one who identified them and recruited them from the community. They were trained and posted back to the same locations. At the moment, the Administration Police are carrying out duties like the other regular police officers. They are recruited and posted to other areas. In fact, Administration Police are not posted to their own areas and that is why the public view the security arms as consisting of persons who are strangers to them.

Mr. Deputy Speaker, Sir, in the past, it was unheard of for the public to attack police officers because within that area were their boys and girls. The advantage of the Administration Police being posted to the local areas was because they knew the area since they had been born in that area. Even when livestock was stolen, perhaps some of it would be theirs and they would make sure to track the animals. If, for instance, livestock was stolen from Turkana and taken to the Pokot area, the police officers in Turkana did not need to cross the border. All they needed to do was to communicate with the other side to retrieve the animals. It is very important that the elders are appointed and given support in terms of police officers to reinforce their work.

When it comes to qualifications – I had mentioned it earlier – an elder by virtue of being called an elder should not have an age limit. Somebody can become an elder at any age and should not retire until the community decides that you are no longer able to deliver. Once you open this position to be competitive and people apply on the basis of certificates and so forth, you will lose the local touch.

I fully support this Bill and hope that amendments will come at the Committee stage to enrich this idea. In places like Trans Nzoia, for instance, they have been doing a very good job of ensuring there is cohesion. Trans Nzoia is a place where we have all the 42 tribes of Kenya. Therefore, in a village, you will have to get an elder to represent each ethnic group for it to be well constituted. I believe that, that provision will also be made to ensure that there is representation, cohesion and participation as required in the Constitution.

This will also ensure that the articles in the Constitution that require inclusiveness and participation are adhered to. Through the elders, we shall have made sure that the community is involved in whatever is happening in the counties. But the county government also has to be involved in some way. It should be involved in the tapping of the input of these elders whenever programmes and projects have to be implemented. Given the way public participation is being done now in the counties, I am afraid that these are just rubberstamping decisions that the executive has already decided and it is not being done in a fair manner.

First, meetings are called at very short notices. This does not give members of the public time to prepare and make reasonable and well thought out considerations and contributions. It is very important that, perhaps, at some stage, we legislate as the Senate on how public participation fora have to be run. Unfortunately, when we wanted to have it for leaders, we were not able to do it despite the fact that we had enacted the Bill. Let us leave it at that because the matter is in court.

At the local level, there must be public participation fully. You will recall that in the various fora that we had with the speakers of the county assemblies in Mombasa and the latest one on devolution in Kisumu, the issue of public participation came up very well. There is need for all interested parties to be involved in whatever happens in the counties.

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

Sen. Hassan, just to caution you that we will have a Motion for Adjournment at 5.30 p.m but that will not take away your time. It will be saved for tomorrow when debate resumes.

**Sen. Hassan:** Mr. Deputy Speaker, Sir, I rise to support this amendment and also congratulate Prof. Lonyangapuo who has shown unequivocal commitment, particularly to ensuring that we mainstream public administration.

I think that this also is inspired by the fact that Sen. (Prof) Lonyangapuo, like many other Kenyans, comes from an area where the village elders are almost a grassroots movement that helps in public administration, in ways that add so much value to us. I do recall even during my time when I was at the Kenya National Commission for Human Rights (KNCHR), we constantly had to go to areas of distress to respond to certain calls of duty. Whether through cattle rustling or other forms of insecurity, the village elders played an extraordinary role.

Therefore, if we have legitimized their position in terms of existence and by virtue of tradition, it has grown into a position that is recognized even in public administration, it is only right to legalize what we have already legitimized. The village elders give enormous input in terms of the management of various areas of security and public administration. In fact, they are an extremely critical arm of the provincial administration as it were then, which is now still referred to as the provincial administration, but under the National Government Coordination Act.

I think it is quite immoral for us, as a country, to continue to indefinitely expect voluntarism in the management of our public affairs. It beats logic when you have a whole structure of administration in a county; a county commissioner, deputy county commissioners, chiefs and sub-chiefs who all are under the arrangement of the Government system. Ours is to constantly expect all these village elders' volunteer work. We must also device very creative ways. This Bill is trying its level best, based on the financial implication to shy away from proposing that these people shall be paid. A fund is, therefore, created that does not necessarily demonstrate it shall receive financing. It talks about grants and gifts. It is not that easy to just get grants and gifts. We must make an unequivocal statement. If we want to continue having village elders, then we do not have much of a choice; we must provide for avenues where they are paid.

When you go to the level of administration of villages in the counties, you will find that it is more than just one elder. As much as this amendment talks about a village elder, as my colleagues have said, we might want them to elect from amongst themselves one through an electoral college process. I know that even some of our parents sit in what is called *Wazee wa Mtaa* fora. Therefore, they become village elders in some ways.

I do believe that we must set a bar as to what village elders must be. I associate myself with the views of Sen. Ndiema, but also realize that the elders of yesterday will not be the elders of tomorrow. Issues about elders are extremely evolutionary. There was a time when my parents were young and were probably some of the very few people who

had gone to secondary school. Now, many people have gone to universities. So, it is likely that when we become elders, we will probably be people of greater learning in the sense that literacy levels have been increasing. Therefore, it is likely that in the next 50 years most elders will probably have benefited from schooling and the society will have evolved so much that the whole institution of public administration will have been revolutionalized.

*(Sen. Hassan resumed his seat)*

**The Deputy Speaker** (Sen. Kembi-Gitura): Is it 5.30 p.m.?

**Sen. Hassan:** I saw the red light on and my assumption was that you were warning me that my time is up. Is that the case, Clerk?

**The Deputy Speaker** (Sen. Kembi-Gitura): You cannot communicate with the Clerk-at-the-Table. I am sure you know better than that. That is a clear abuse of process. Do you not know that? You have one minute.

**Sen. Hassan:** Mr. Deputy Speaker, Sir, we cannot continue having village elders creating quorum in our meetings. I do recall every other time we have a security issue in some locations or sub-locations in Mombasa, we ask village elders to attend certain meetings. Therefore, they have been a very integral part of public administration and understand and appreciate the pulse of the society. Therefore, they bring very rich knowledge, culture, diversity, experience and wealth of information. In fact, I have sat down with village elders before and the level of information that I have gotten from them in terms of what we can call raw intelligence is sometimes so important and vital in the management of public security and affairs.

I want to commend Sen. (Prof.) Lonyangapuo for having taken the trouble to formalize this whole idea of village elders because I think we must appreciate the monumental responsibilities that most village elders undertake.

Mr. Deputy Speaker, Sir, once we formalize and recruit village elders through a competitive process---

**The Deputy Speaker** (Sen. Kembi-Gitura): Order, Sen. Hassan, it is now 5.30p.m and we shall now move to the Motion of Adjournment. You have expended five minutes you have another----

*(Sen. (Dr.) Khalwale rose in his place)*

**The Deputy Speaker** (Sen. Kembi-Gitura): Order, Sen. (Dr.) Khalwale.

Sen. Hassan, you have expended five minutes, you have ten more minutes when this debate resumes tomorrow or whenever it is going to resume. This debate is stood over now until when it appears next on the Order Paper.

Sen. (Dr.) Khalwale, the Speaker allowed your Motion of Adjournment, so you may proceed.

**Sen. (Dr.) Khalwale:** Mr. Deputy Speaker, Sir, I rise under Standing Order No.33(1) to seek leave---

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. (Dr.) Khalwale, you know that when you moved this Motion earlier in the afternoon, when you sought leave, you

brought it under Standing Order No.31(1), for the record, it is important that you make correction of the proper Standing Order under which you are bringing this Motion.

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

STATE OF SECURITY IN PARLIAMENT  
AND IN THE UNIVERSITIES

**Sen. (Dr.) Khalwale:** Mr. Deputy Speaker, Sir, in fact, that is what I was doing. I rise under Standing Order No. 33(1) to seek leave to move that the Senate now adjourn. This is to enable this Senate to debate the state of security in Parliament and in our universities, given reports that these institutions have become the focus and targets for attacks by Al Shabaab.

I want to thank Members and the House for giving me this leave. I want to commence by remembering what---

**The Deputy Speaker** (Sen. Kembi-Gitura): So that you organize yourself, you appreciate that you only have ten minutes, right?

**Sen. (Dr.) Khalwale:** Yes, Mr. Deputy Speaker, Sir. I want to start by remembering the words of the former President of Tanzania, the late *Mwalimu Nyerere*, who told Tanzanians that; “*mfichaficha uchafu, mwishowe ugonjwa humfichua*”

I use these words of the former President to request Senators to know that the threat of *Al-Shabaab* has been around for a long time, in fact since 2007; and we do not talk about it because of the various sensitivities associated with it. But as we continue doing this, *tunaficha ficha uchafu na ugonjwa kupitia kwa maafa, umeanza kutufichua*. Bombing of Parliaments in the world is a reality; the first such occurrence took place in the Palace of Westminster during the Second World War when the Houses of Parliament were bombed a total of 14 times. It happened in the Indian Parliament where 14 people died in 2001.

It happened in Libya in the City of Tobruk; it happened in Somalia on 5<sup>th</sup> July 2014 where a suicide bomber killed four people including Members of Parliament (MPs). It happened with devastating effects on 6<sup>th</sup> April 1994, in the Parliament of Rwanda, when it was bombed severally after a plane carrying President Habyarimana of Rwanda together with President Ntaryamira of Burundi was shot down. So, to hear that our Parliament is under threat is a reality which we must rise to and say nothing but the truth.

Mr. Deputy Speaker, Sir, it is sad that as I move this Motion, I have been prompted to do so because of two things; one, is the killing of 148 innocent university students in Garris and the arrest of a member of staff working in the HANSARD of the Senate on suspicion of being a possible sympathizer of Al Shabaab. It calls and begs for several questions because this man was first mentioned by a United Nations (UN) Monitoring report in 2011. This matter even came on the Floor of the last Parliament where I was privileged to attend.

This man's name was mentioned together with the name of a former Minister from Coast Province who is currently a Cabinet Secretary. It was mentioned on the Floor of the House in the Report together with a female nominated MP in the last Parliament who is still a Nominated MP again. It begs the question, as we played Mr. nice,

gentleman and lady; what did the Parliamentary Service Commission (PSC) do from that time? What has the Chairman of the PSC, the Clerk of the Senate, the Clerk of the National Assembly and the two Speakers done? We must demand that these officers should tell Kenyans why they have had an officer who was under the radder for all these years and why they have not come out publicly to tell us what they are doing about it.

This officer, who has been arrested, according to the Report in 2011, belongs to the Muslim Youth Centre in Pumwani, also called the Pumwani Youth Centre and is a Vice Chair of a mosque there. We need the security organs to tell us what they have done all this time, whether they have been keeping this young man under the radder deliberately or whether they just wished it off. It is important that we know.

This particular youth centre is registered as a Community Based Organization (CBO) and gets funding. Some of the politicians that I have mentioned at the beginning of my speech were actually named because they were suspected to be channeling money through that CBO. We want the security forces to tell us what kind of statements they have taken from these politicians.

Even more recently, we have been told that two Senators and five MPs are suspected to be involved in this. We are now in a House of privilege. This is the time if any Senator thinks he is one of those two Senators in this August House, he should come out and clear his name because it cannot be right that our children or any Kenyan should die for whatever reason. You have seen that in the Lower House, the leadership of Jubilee has put pressure on the Leader of the Majority to come clear and say what exactly they meant when they said they just needed a few days to name the people who are sympathizers, funders and financiers of Al Shabaab. Did they have to wait for those 30 days with our permission to tell us instead of pre-empting it so that our children did not have to die? These are hard questions and we must ask them.

The PSC has leadership and we want to know what the Chairman, Hon. Keynan and Commission Dr. Ali, who was my junior in the medical school and who I supported vehemently to join the Commission, what they know because the truth is this and I have done my research, I have found that in the last few years, the proportion of Somali youth who have been recruited into the PSC is not proportionate to their rightful quota as per the statistics of the population of Kenya. Is it that these two senior officers, hon. Keynan and Dr. Ali are making it easy---

**The Deputy Speaker** (Sen. Kembi-Gitura): What is your point of order, Sen. Hassan?

**Sen. Hassan:** Mr. Deputy Speaker, Sir, since Sen. (Dr.) Khalwale has said that he has done his research, is it in order for him to provide facts to demonstrate the proportionality or otherwise of the imbalance that he is alluding to about young Somalis being recruited here? Could he provide statistics and real facts?

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. (Dr.) Khalwale that challenge is directed to you.

**Sen. (Dr.) Khalwale:** Mr. Deputy Speaker, Sir, indeed, I am a scientist; I speak from a point of knowledge. According to Standing Orders, I will come here tomorrow to table the list of the new recruits because I will get the list from the Parliamentary Service Commission in the Office of the Clerk. I will serve you with that list; there is no question about it. I have nothing against youths from any community getting jobs but I am just asking---

**The Deputy Speaker** (Sen. Kembi-Gitura): You see, Sen. (Dr.) Khalwale, normal practice is that when a challenge like that one comes, you should be able to substantiate immediately. Is that right?

*(Sen. (Dr.) Khalwale resumed his seat)*

I did not ask you to sit. Are you undertaking to table that information tomorrow morning?

**Sen. (Dr.) Khalwale:** Yes, Mr. Deputy Speaker, Sir, at the next sitting, I will table it because according to the Standing Orders, I can table them within 48 hours.

**The Deputy Speaker** (Sen. Kembi-Gitura): I am asking you for the HANSARD record, to state that you are giving that undertaking.

**Sen. (Dr.) Khalwale:** Yes, I am giving that undertaking. I will go to the Office of the Clerk to get it.

**The Deputy Speaker** (Sen. Kembi-Gitura): Failure to which I will require you to withdraw and apologise.

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

**The Deputy Speaker** (Sen. Kembi-Gitura): It is so ordered, proceed.

**Sen. (Dr.) Khalwale:** My final point, and with all due respect to all Muslim political and religious leaders, is that they can do us a favour by being patriotic. I remember that a few years ago, we had the threat of *Mungiki* and the Kikuyu politicians were right on the forefront and the menace of *Mungiki* went away. We are all very grateful; normalcy has been restored.

*(Sen. Hassan spoke off record)*

I insist that political and religious leaders from the Muslim community must be at the fore front in helping us to eliminate Al-Shabaab because radicalization of our youth does not take place in churches; it takes place in mosques.

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

**The Deputy Speaker** (Sen. Kembi-Gitura): What is your point of order, Sen. Hassan?

**Sen. Hassan:** Mr. Deputy Speaker, Sir, I have enormous respect for Sen. (Dr.) Khalwale but when he tries to challenge the patriotism or otherwise of Muslim leaders, is he in order?

**The Deputy Speaker** (Sen. Kembi-Gitura): I do not think he has; he is just setting a foundation. He is saying that it is incumbent upon everybody.

**Sen. Hassan:** Absolutely, then he should just---

**The Deputy Speaker** (Sen. Kembi-Gitura): It is upon everybody that if radicalization is an issue, to help end radicalization. I think that is the impression I got.

**Sen. (Dr.) Khalwale:** Mr. Deputy Speaker, Sir, thank you for hearing me in exactly what I meant. If my brother Sen. Hassan has any doubt, statistics of the incidences will bear me out. I am again repeating that we all have a moral duty. I started by citing the case of Kikuyu leaders led by none other than former President Kibaki and the late Mr. John Michuki. We are demanding that Muslim leaders must do it unless we end up in a fist fight.

It is not a child's play; it is one thing to feel bad that somebody is asking you to exercise a moral duty and a totally different thing to attend a funeral of children because somebody was having fun, trying to advance their personal agenda. This cannot be allowed; not in Parliament, not in our universities and not anywhere in Kenya. The issue of Al-Shabaab, an extension of Al Qaeda, is not acceptable anywhere in the world. If people want us to live in this world of God, then we should condemn that which is bad and embrace that which advances the interest of mankind.

I beg to move.

**The Deputy Speaker** (Sen. Kembi-Gitura): Thank you. I want to believe that a Motion of Adjournment is not one that requires secondment.

**An hon. Senator:** No!

**The Deputy Speaker** (Sen. Kembi-Gitura): That is my basic understanding of that; should I be wrong, Sen. Musila is here and I am sure he will correct me.

Now, each one of you has five minutes to contribute because that is what the Standing Orders provide. Should you find the need – if you look at Standing Order No. 33, it says “unless the Senate provides otherwise” so, it is not the Speaker, it is the Senate so that would be a Motion for extension of that five minutes. So it is five minutes each.

Proceed, Sen. (Prof.) Lonyangapuo.

**Sen. (Prof.) Lonyangapuo:** Mr. Deputy Speaker, Sir, I stand to contribute to this Adjournment Motion because we recall, when this issue was mentioned yesterday, that an employee of the Senate is a member of a group that is outlawed and is engaged in terror activities in the country, it was a shock. Again, today in the newspapers, we were made aware that for over ten years, the said officer has been under surveillance, which means that the leadership of the Senate, Parliament and of this country possibly were aware. We have come through a series of deaths that have shocked our nation.

In 2013 we lost innocent people at the Westgate Mall terror attack. These are people who walked to the shopping mall to buy goods, food stuffs for their children and do the normal shopping. Recently, a group of innocent students in a university in Garissa – Garissa is in Kenya and we would want to “plant” a university in every county as we passed in this Senate - you recall that last year we resolved that every county has to have a public university funded by public coffers. For the first time, the former North Eastern Province was going to have the first inaugural university, a public university that was mentored by Moi University, but lives of innocent children were lost because of the Al-Shabaab.

Mr. Deputy Speaker, Sir, we should not take it for granted when information has been passed. I do not know whether our officers take it seriously because we hear that information had been given to Garissa University that an attack could have happened any time and it was just ignored. We are now reading that for some time, this said officer has been on radar. Whose radar? If it had actually been known that he was associated with that, what were we waiting for? As Kenyans we must wake up and forget the cocoons where we are hiding and begin to treat our people properly. This officer was supposed to be rescued many years ago and reformed, if he is a Kenyan. Completely reformed by detox – removing bad manners from him or her. “Detoxination,” that is what we are supposed to have done.

**The Deputy Speaker** (Sen. Kembi-Gitura): Order! There is no such word as “detoxination”

*(Laughter)*

**Sen. (Prof.) Lonyangapuo:** Something close to that.

**The Deputy Speaker** (Sen. Kembi-Gitura): I am sure you mean detoxification.

**Sen. (Prof.) Lonyangapuo:** Thank you, Mr. Speaker, that one. This officer was supposed to have been rescued. We do not know how many he has “affected” and “infected” with his or her doctrines. I think it is time we looked at ourselves as Kenyans thoroughly and without fear or favour, come out as leaders. There is no other leadership that is beyond the people that were elected on 4<sup>th</sup>, March 2013, the President of the Republic of Kenya, Uhuru Kenyatta, and all of us who are seated here have a mandate to assure Kenyans of their safety.

As I was watching news yesterday, I realised that when there was a terrorist attack in France, over 180,000 police officers went to rescue the victims. You will recall what happened in Garissa. Officers who were supposed to give orders are the ones who went to spectate as students were being killed. Those who carried out the rescue operations went there on foot many hours later. This type of lazy behaviours has to come to a stop. If any officer who is in charge of people’s lives is taking his work lazily, that officer should be given marching orders. We should remove people who are incompetent.

I support.

**The Senate Minority Leader** (Sen. Wetangula): Thank you, Mr. Deputy Speaker, Sir. I thank Sen. (Dr.) Khalwale for moving this Motion of Adjournment and the Chair for allowing us to debate this important matter. It is disheartening to see the Government benches vacant when we are discussing such a critical matter.

I saw a picture of a young man on the front page of one of the papers. This is a young man I have seen around and I know him. If this is a question of mistaken identity, then I pity him. However, if this is founded on information, then we are living in very dangerous times. Even the information available as to how the police have handled the matter is frighteningly incompetent.

The police have been regularly requesting the administration of Parliament whether they should arrest the young man or not. In a matter such as this, it does not matter whether it was me, the Speaker, a Senator or anybody else. Where lives of Kenyans are in danger or imminent danger, you do not need anybody’s permission to arrest or interrogate somebody. This is very shocking. I hope this is not a case of mistaken identity.

In 1975, in Lebanon, a terrorist drove a truck into Parliament, bombed it and killed everybody including my friend, Amin Gemayel, who would have become the President of that country. The entire Members of Parliament died with one stroke.

In Iran, you may recall, that the only survivors who escaped the bomb was Rafsanjani, who had walked across the street with some three Members for tea. Everybody else died. Somebody drove a truck full of Carbon IED explosives and bombed Parliament and everybody died. The terrorists here have now almost exhausted soft targets. They have hit shopping malls and killed women and children while shopping. They have hit universities and killed innocent children. Now, they must be looking at serious targets and what better target than Parliament; the seat of leadership.



We have been saying, from the alternative leadership in this country and good people like Sen. G.G. Kariuki have agreed with us that the management of our security structure is not what it used to be. People are playing games with security. We discussed here, this afternoon, how you can allow a Presidential plane fly into a war zone and cowardly turn back. We have been crying and saying that the Government should invest in intelligence.

The mishap of the Presidential plane was due to lack of intelligence. Even a fool knows that there is war going on in Yemen. However, if that is not the reason, because I know that the same night the President was also flying to the America, my son took a plane to Dubai onwards to Australia to school. They flew over Yemen and, therefore, we need to be told what was wrong with the President's plane. Did somebody try to assassinate the President the same way the Ukrainians shot down the Malaysian plane?

If the President was shot down, who would have benefited from this? You guys of Jubilee must tell us. What games are you playing with this country?

**The Deputy Speaker** (Sen. Kembi-Gitura): Order, Sen. Wetangula. There are no "guys" of Jubilee here. You need to withdraw because everybody is a Senator.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Deputy Speaker, Sir, I withdraw and apologise. You Senators from Jubilee, staring at me, who was going to benefit from this?

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

**The Senate Minority Leader** (Sen. Wetangula): Save my time.

**Sen. (Prof.) Lonyangapuo**: Is the Senate Minority Leader, Sen. Wetangula, in order to shout at the opposite side of the House referring to us as guys?

**The Deputy Speaker** (Sen. Kembi-Gitura): Order. I already ruled on that. The Senate Minority Leader has also apologised.

Sen. Wetangula, you should appreciate that you have five minutes which are almost ending now.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Deputy Speaker, Sir, I thought you gave me 10 minutes?

**The Deputy Speaker** (Sen. Kembi-Gitura): No, I did not give you 10 minutes. You know, as well as I do, that everybody has five minutes except the Mover.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Deputy Speaker, Sir, give me three minutes. I must wind up.

This country is going through problems. People must wake up. My friend, hon. Nkaissery, is a new Minister in the Ministry of Interior and National Co-ordination. We implore him to wake up. This is not business as usual.

The more I look at the Inspector-General of Police, the more he talks, the more unbelievable he appears to be. Who is handling our security? We need to give Kenyans hope and security.

Finally, the Government has let down the people of Kenya. The recent Garissa massacre of students, you may recall, was the third largest number of students killed by terrorists in the world. The first one was in Bedlam School in Chechnya where 286 students were killed. The second one was in Peshawar, Pakistan where 187 students were killed. The third one was in Kenya where 148 were killed. We did not even have a state funeral. We expected the leadership of this country, regardless of affiliation, to go to Uhuru Park, honour these children and tell the world enough is enough.

Recently, in France, three journalists were bombed and killed and eight African Presidents took planes to France. They went to condole the French for this cowardly and untimely terrorist attack. When we lose 148 people, not even our own President went there. Not even the Deputy President went there. Nobody went there. The children were left with their families to identify bodies and carry them home for burial with a paltry Kshs100,000. What can one do with Kshs100,000 with a dead body which is supposed to be transported from Garrisa to Bungoma, Kisii or Trans Nzoia?

The Government must style up.

I beg to support.

**Sen. Hassan:** Thank you, Mr. Deputy Speaker, Sir. I got very worried when the Mover was speaking. However, my fears were allayed after Sen. Wetangula spoke. I am also one of those who believe that the due process must follow its course and not apportion guilt by association.

If I recall, the young man was in Moi University, about two years behind me, at the time that I was in the university around the late 1990s. Pumwani Riyadh Mosque is associated with a young Eng. Ahmed Iman, who is the head of Al Qaeda or Al Shabaab Kenyan cell in Somalia. I think these are matters well within the domain of those who seek this information. Just because the young man is the vice chairperson of that Mosque where Ahmed Iman was once a youth leader, will require investigations into establishing whether he is connected in a tangible way or not.

The United Nation (UN) Monitoring Group on Eritrea and Somalia once produced a report that mentioned a number of Cabinet Ministers who were serving then and all that is in the public domain. Hon. Balala and Hon. Amina Abdalla were mentioned in that report, because they had contributed to a fundraiser for the completion of the Pumwani Riyadh Mosque. So, this is guilt by association and the stereotyping of leaders from a certain faith. It is too easy lately to stereotype a Muslim. All you need to do is see somebody with a Muslim garb and raise alarm that you think there is a suspected terrorist taking photographs.

We should desist from this stereotypical behavior. I know that this country is facing a very difficult moment, but the United States of America (USA), which has faced similar challenges, has had to ensure that they extent collaboration and partnership with some of the constituencies and stakeholders that are critical in this war against terror.

Personally, I do not believe that there can be a Senator seated here who is supporting terror. For anybody to pick up media reports and try to continue with the strategy of profiling other people is beneath any critical mind. I was happy to hear Sen. Wetangula say that this young man has worked here for ten years. If it is true, then we live in very interesting times. Sen. Wetangula, being a lawyer, also said that we hope that it is mistaken identity. However, there can never be any guilt by association.

Mr. Deputy Speaker, Sir, Ahmed Iman was a member of Pumwani Riyadh Mosque and Muslims pray in all mosques in this country. We know that there are certain young men who mean no good. However, the young man's colleagues can attest to his credibility. If he has worked for ten years, why would he have waited for that long? There are also so many other begging questions that require us to be more critical with information that we receive. I wish that our intelligence will do their work, rather than continue to arrest Muslims everywhere on all kinds of suspicion. Some people in shopping malls raise alarm whenever they see other people dressed in Muslim garbs.

We are in this country by right. I feel pained when some of the most senior citizens of this country who hold the core of reforms, can today stereotype without criticalness. In times of this nature, we require the grit of leadership and courage. That is why when the northern Kenya Members of Parliament offered to produce those names, they did not necessarily offer to make them public. They have probably produced those names. It is, therefore, not right to constantly continue profiling people on account of the fear that we have generated. We are in a state of fear and when in such a state, we trample on rights. Some of the greatest countries in the world have done it, but they have had to take a step back to ensure that they take stock.

I believe that we must strengthen our intelligence and security, but it is wrong for us to come here and say that the young man did this or that. He is under custody right now and the presumption of innocence is an ideal we hold in this Constitution. That is probably why the Parliamentary Service Commission has nothing to hold against him. Therefore, let us not become too lay persons to a point---

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. (Prof.) Longangapuo, do you have a point of order?

**Sen. (Prof.) Lonyangapuo:** On a point of order, Mr. Deputy Speaker, Sir. The Senate is in a state of shock and nobody is condemning anybody. Is Sen. Hassan, my former student, in order to think that other Senators are condemning others? We are discussing a Motion of Adjournment where one of our employees has been mentioned in relation to terrorism.

**Sen. Hassan:** I have not condemned anybody. I have said that as leaders of this country---

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. (Prof.) Lonyangapuo, I will allow Sen. Hassan to have his opinion on the issue because we are dealing with the Motion of Adjournment and I am not going to stop anybody as long as they keep within the Standing Orders in giving their view or their position on this issue.

You have 20 seconds to finish your contribute.

**Sen. Hassan:** Therefore, I am asking this Senate to let the law take its course. The United Nations (UN) Monitoring Group Report has been active in the public domain for the last three or four years. The same report has accused the Kenyan forces in Somalia of trading in charcoal. All these reports need to be investigated in good faith but we must stop the strategy of profiling every Muslim and whenever you want any Muslim to be under pressure, you fabricate any charges. I hope the intelligence will come out clear on these matters and resolve them conclusively.

**Sen. Karaba:** Mr. Deputy Speaker, Sir, thank you for allowing me to contribute in support of this Motion. Our worries in the Senate were highlighted when we read in the papers that one of our employees, who has been working here for a long time, is a suspect. We do not know if there are others who are yet to be arrested. That makes us afraid to even to come to this Senate. We are afraid because we are human beings, especially after the Garissa attack.

We have had several Motions of Adjournment to discuss security matters in Mandera, Wajir, Garissa and other places but nothing much has come out of our discussions. We just talk and that is all. I hope this will not be the usual story where we talk, air views and nothing happens. We hope that security will be reinforced in Parliament and especially in the Senate.

When you go to Canada, Ottawa, to get to Parliament you are not allowed to drive there. You are taken there in a specialized vehicle. The search starts from very far. That is the practice everywhere. When there was a problem in New Delhi with the Pakistanis, security was taken seriously. In our country, even after several experiences in North Eastern region, we do not seem to learn. Recently, in Kapedo, 40 police officers were killed and it was very hard to get to that place. We are wondering what happened to our sharp shooters. Where are our helicopters?

We read that the helicopter that was to fly to Garissa on the fateful day had taken somebody to Mombasa and on its way back, it was impossible to take the Recce Squad from Ruiru to Garissa. It had to take a whole day. Why were those terrorists in the university from 5:30 a.m. up to 5:00 p.m. holding students at ransom? This is something that we need to question. Is there something serious? Are our soldiers serious with what they are supposed to be trained on? Do we train serious people to also defend us? Are we safe when we are here or walking about? How many other times are we in such similar circumstances that can generate a lapse in security and we find ourselves dead? This is something that should teach us a lesson.

Since the bombing of the Twin Towers in the United States of America (USA) on September 11, 2001, America has changed. They changed to a point where even for a foreigner to get to some of the public offices is impossible. Here, we have not learned any lesson even after we have had such cases. It is up to us to learn lessons from the past, although bitter, and ask ourselves what next.

Mr. Deputy Speaker, Sir, we have had schools closing. Garissa University closed  
---

**The Deputy Speaker** (Sen. Kembi-Gitura): Your time is up, Senator. I have six requests and I have 20 minutes. I would like each of you to contribute. This is not a Motion that we need the Mover to reply. I think it is fair that I give each of you three minutes so that I give everybody a chance because I have six requests on the table. Is that correct?

**Sen. Musila:** Thank you, Mr. Deputy Speaker, Sir. I think this is perhaps the fourth Adjournment Motion we have had over insecurity in the country.

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. Musila, I see the interest has gone down so I will give you five minutes.

**Sen. Musila:** Mr. Deputy Speaker, Sir, everyone is concerned about the amount of insecurity in this country. The adjournment Motion by the distinguished Senator for Kakamega, if it was about the incident of yesterday, I would like to say that it is premature because the issue of surveillance of a person is a process. It is possible that all of us sitting here are under the radar of the intelligence organs of the State for one reason or another. So, the question of blaming the Parliamentary Service Commission (PSC) for having not taken action against this man, I think, is premature.

First and foremost, as it has been said, no one even knows for certain whether this man has any case to answer. I say this because the arrest was based on intelligence information. It would be doing justice to this man if we did not even get involved in the discussion of his matter because he is just a suspect who has been arrested and we do not even know whether there is evidence or not.

The issue of this young man has been known in security circles for a long time but he could not be arrested. It is only this time that they thought they had information to

warrant the arrest. The problem is that the manner in which the police handled this matter was not professional. After the Officer Commanding Station (OCS) was informed of this intelligence, he proceeded to photocopy the letter that informed him and the letter was given to staff of Parliament who in return circulated it through *WhatsApp* to various friends and caused unnecessary panic. I think it was unprofessionally done and no wonder investigations are being bungled by the security forces in this country because our biggest problem lies with the security forces.

Mr. Deputy Speaker, Sir, with tremendous respect to the distinguished Senator for Kakamega County, he has imputed improper motive on two of colleague commissioners in terms of recruitments. He might as well substantiate, as he has promised, tomorrow; giving the numbers employed *vis-à-vis* the populations throughout the country. As the Parliamentary Service Commission (PSC), we tried to ensure that every community in this Republic is represented in the employment of the PSC.

Mr. Deputy Speaker, Sir, we are in this situation; we are in a dangerous situation in Parliament, schools, universities, shopping malls and everywhere in this country. Therefore, we must cooperate with security forces. For example, in this institution, we have a serious problem of hon. Members intimidating policemen at the gate when they check those who enter. I believe that if we cooperate with the security forces, we will see a lot of improvement in the next few days because people will not be allowed to bring in passengers unchecked. People will be required to alight at the gate instead of coming in while driving.

So, Mr. Deputy Speaker, Sir, I want to confirm, as a Member of the PSC, that yesterday we instituted certain strict measures which if implemented, will go far in ensuring that the security of Parliament is put right. However, we will need the cooperation of all of us so that security, as it is said, is not the police or the PSC but all of us. However, I appreciate that unless serious measures are taken, unless the police improve on the way they do their work not only in Parliament but throughout the country, we are headed nowhere. On the highways, people move into this country illegally without any action being taken.

Therefore, Mr. Deputy Speaker, Sir, let us look at this in a holistic manner---

*(Sen. Musila spoke off record)*

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

Sen. G.G. Kariuki, you have three minutes.

**Sen. G.G. Kariuki:** Mr. Deputy Speaker, Sir, three minutes is too short. However, I would like to say the following. When the National Assembly and the Senate deal with matters of security, they need to be extremely careful. This is because we appear as if we know too much, more than those who do investigations. Unless we support those people, it will be a big problem. Some of them will fear to arrest any person, particularly those connected to a Member of Parliament or a “big person”, because it could be an issue.

Mr. Deputy Speaker, Sir, having said what has been said, let us be prepared. If we raise issues like the one we have just raised, prematurely, we will be raising the matters almost every day. We have had these people with us all the years, from the Muslim fundamentalism many years back and also the *Jihad*. These people are still recruiting and

they have their supporters. Their aim is to get as many people as possible. We should be worried as members of the Armed Forces, Members of the National Assembly and the Senate; whether we are doing anything to control the radicalisation to our youth.

Mr. Deputy Speaker, Sir, the word 'radicalisation' is now becoming a major issue---

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

Sen. Mutula Kilonzo Jnr., you have three minutes.

**Sen. Mutula Kilonzo Jnr.:** Mr. Deputy Speaker, Sir, I am happy that the information is out in the public. I had a letter on WhatsApp which I circulated to the CORD Senators even before it was reported. That shows the manner in which we have treated this issue casually because I had the information.

Mr. Deputy Speaker, Sir, I also had the letter that was written to the University of Nairobi regarding security way before the Garissa attack. It is a good thing that we are debating this issue. Whether the young man is guilty or not, the fact is that there is smoke; we must look for the fire. I have no hesitation, particularly from the experience of the people we buried in Makueni, to say that everybody in this Parliament must be vetted. We must check because the implication of not doing anything would result in what we saw in Garissa.

This is the only place you can walk in, walk out, there is no record, there is no CCTV and nobody knows anything and yet this is an institution where leaders are seated and where the President comes to address the nation. We have no security measures in place. Simply frisking people at the gate – I would like to tell Sen. Musila – is not good enough and can never be good enough. If, for example, a person was to stand at the gate of the KICC with a rocket propelled hand grenade, it would get right into this building.

Why are we so concerned about somebody passing through the gate and yet from KICC across the road, this building can be bombed? If a person was on Parliament Road in a traffic jam and decided to turn their vehicle and ram into this building, they would end up at where the Speaker is seated. That is what I am calling negligence of the highest order.

In contributing to this Motion, I want to say that our students are in danger; colleges in Migori and Nairobi are closing and, one time, nobody will go to school because of these people. We must as the Senate start taking action and vet everybody. If this gentleman is involved with a terror organization, he must be ruthlessly dealt with together with his associates. Whether he is a Muslim or not, all of us have the right to life and, therefore, the fact of religion does not supersede that provision of law that gives us the right to live in this country until God decides otherwise.

**Sen. Mositet:** Mr. Deputy Speaker, Sir, let me congratulate Sen. (Dr.) Khalwale for gaining the courage to move this Motion. It is really sad that only the other day we had a terrorist attack in Garissa and this happened at the heart of a community which is 100 per cent Muslim.

I think, as leaders, we have been running away for the real problem facing this country. Our Muslim brothers need to do more as leader than just holding press conferences. It is true that we have radicalized youth and time has come when we must call a spade a spade. Though I am a Christian, I have seen mosques coming up in my county and we have not had problems with them. I would really hate to hear that any youth who is associated to *Al Shabaab* is a Muslim.

Mr. Deputy Speaker, Sir, to me, the next question is how we can vet them to be sure that the Muslims we have are genuine. We can only do this with the help of the Muslim leadership and those who testify to be Muslims. They must not only speak against the youth who have been radicalized, but make sure that those teachings do not continue. We are reliably told that we have the so called *madrassa*, whereas I thought Muslims only rely on the Quran. I am told that Muslim youths are also educated through *madrassa*. If it is through the *madrassa* teachings that we are having problems, then as a country, we can outlaw *madrassas* so that they can stick to the Quran that we know just the way Christians rely on the Bible.

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

**The Deputy Speaker** (Sen. Kembi-Gitura): I will not allow any more points of order. We only have five more minutes and there are people interested in talking.

**Sen. Mositet:** Mr. Deputy Speaker, Sir, I am saying this out of pain.

**Sen. Hassan:** On a point of order, Mr. Deputy Speaker, Sir. When we speak here, let us make statements that we have sound knowledge of. I have deep respect for the Senator, but we should not speak without research. Before you speak go and research before you make such wild pronouncements.

**The Deputy Speaker** (Sen. Kembi-Gitura): That is not a point of order. Is it?

**Sen. Hassan:** I have made my point.

**Sen. Ndiema:** Thank you, Mr. Deputy Speaker, Sir, for allowing me to contribute to this Motion of adjournment.

**The Deputy Speaker** (Sen. Kembi-Gitura): Order! Sen. Omar, I hear you saying that you have made your point. Maybe you think that you have made your point, but when I say that I will not allow frivolous points of order, I hope you understand what I mean. It is not about making a point but following the procedure that we must follow in this House, with respect to other Members of the House also.

**Sen. Ndiema:** Mr. Deputy Speaker, Sir, the threat of Al Shabaab is real and we should accept that no place is safe. In the past, we have seemed to live in denial, assuming that the threat will just go away. The way to go about the issue is to accept that the threat is there and take every possible measure, as a country, to deal with it.

It is even worrying that Parliament itself is suspected to be the target of a terrorist attack. We all need to do everything possible to ensure that Parliament is safe. The aim of Al Shabaab is to cause terror and publicize it. In so doing, it can take advantage of religious, community or ethnic differences to gain their interest. At this time, all citizens of this country, regardless of their ethnic communities or religion, need to come together, to demonstrate to Al Shabaab that we are one nation.

When France was attacked, there was a big demonstration. I hope that sooner or later, we shall also have demonstrations throughout this country to show the Al Shabaab that we are one country and ready to face them. When Nairobi was attacked, it did not gain anything. When Garissa was attacked, I believe that its residents are the losers. This is because the only university that they had was closed. I do not think that anybody in Garissa would be pleased with that.

Mr. Deputy Speaker, Sir, on security, I believe that this is the right time now for every citizen to be sensitized and educated on the basic skills of self-defence, so that in the event of an attack, at least, one will know how to protect himself. We have done this

whenever we have had calamities, like during the outbreak of cholera. This is also a disaster in waiting and we should make all our citizens ready to face it.

On the issue of the police service and other security arms, they should be trained on all aspects of terrorism, so that they can face any challenge. We should not rely only on special units like the *Recce* Company to be deployed during attacks. All units should undergo the same training as the *Recce* Company, so that they can react immediately. This is because I see a danger that even the police want to shy away from doing what they are supposed to do, in the name of waiting for specialized units. It started with the Flying Squad. Whenever there was a robbery or carjacking, it was only the Flying Squad which could handle the matter, yet all policemen are trained to handle those situations.

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

### ADJOURNMENT

**Mr. Deputy Speaker** (Sen. Kembi-Gitura): Hon. Senators, it is now time to adjourn the House. The House, therefore, stands adjourned until tomorrow, Wednesday 29<sup>th</sup> April, 2015, at 2.30 p.m.

The Senate rose at 6.30 p.m.