

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Thursday, 28th May, 2015

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

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

PRAYERS

PAPERS LAID

REPORT ON THE TOBACCO CONTROL REGULATIONS, 2014

Sen. Sang: Mr. Speaker, Sir, I beg to lay the following Paper:-
A Report on the Tobacco Control Regulations 2014.

(Sen. Sang laid the document on the Table)

The Speaker (Hon. Ethuro): Sen. Fatuma Dullo, I am told that you have some business to transact. However, you have not indicated any interest on my screen.

Sen. Adan: Yes, Mr. Speaker, Sir. I beg to lay the following four Papers on the Table:-

COPIES OF RULES OF INTER-PARLIAMENTARY GAMES TOURNAMENT

Copies of Rules of Inter-Parliamentary Games Tournament attached as an annex.

PROPOSED AMENDMENTS TO THE TREATY BY EALA

The other one is Proposed Amendments to the Treaty by EALA attached as annex II.

RESOLUTION OF NANYUKI III

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The Third one is a Resolution of Nanyuki III attached as annex III.

REPORT ON THE COUNTY GOVERNMENT
DISASTER MANAGEMENT BILL, 2014

The Fourth one is a Report of the County Government Disaster Management Bill, 2014.

(Sen. Adan laid the documents on the Table)

ANNUAL ESTIMATES OF REVENUE AND EXPENDITURE FOR THE
NATIONAL GOVERNMENT, JUDICIARY AND THE PARLIAMENTARY
SERVICE COMMISSION FOR THE FINANCIAL YEAR 2015/2016

Sen. (Prof.) Anyang'-Nyong'o: Hon. Senators, I would like to lay the following Paper on the Table:-

Report of the Standing Committee on Finance, Commerce and Budget on the Annual Estimates of Revenue and Expenditure for the National Government, Judiciary and the Parliamentary Service Commission for the Financial Year 2015/2016.

(Sen. (Prof.) Anyang'-Nyong'o laid the document on the Table)

REPORT ON THE CLIMATE CHANGE BILL
(NATIONAL ASSEMBLY BILL NO.1 OF 2014)

Sen. Kivuti: Mr. Speaker, Sir, I beg to lay the following Papers on the Table:-

Report of the Standing Committee on Land and Natural Resources on the Climate Change Bill, 2014, (National Assembly Bill No.1 of 2014)

(Sen. Kivuti laid laid the documents on the Table)

Sen. Adan: On a point of order, Mr. Speaker, Sir. I have a response to an issue which is in today's Order Paper. I am also supposed to give a response on the Forthcoming State Visit by the President of the United States, Mr. Barack Obama. I do not know which one to begin with.

COMMUNICATION FROM THE CHAIR**RETREAT OF THE SENATE WITH THE
TRANSITION AUTHORITY**

The Speaker (Hon. Ethuro): We are not there yet. You may need to approach the Chair first.

Order, hon. Senators! Before we commence Order No.7, I have two communications to make. The first one is about the retreat for the Senate with the Transition Authority.

The Transition Authority, in collaboration with the Senate, has organised a two-day retreat for the Senate from 18th June to 21st June, 2015. The retreat is aimed at sharing experiences in the transition to devolved Government, taking stock of what has been done and how much remains to be done for the full transition to a devolved Government.

The retreat will afford Senators an opportunity to critically discuss issues that have impeded the realization of devolution. The expected output of the retreat is to define the next steps, determine the type and kind of support required to complete the unfinished work and an exit mechanism.

Additional information can be obtained from the Office of the Clerk. I wish to take this opportunity to request all Senators to attend and participate in this very important workshop.

I deliberately did not communicate the venue. It will be communicated through the Office of the Clerk. The most important thing is for you to mark your calendar.

**SPEAKER'S COMMENDATION TO SENATORS FOR
DILIGENTLY DISCHARGING THEIR MANDATE**

The second communication is on the discharge of our legislative mandate.

Hon. Senators, I take this opportunity to highly commend you for your diligent participation and discharge of your constitutional mandate over the last two months where the Senate passed seven Bills out of which five were subject to a constitutional deadline of 27th May, 2015, against great odds.

The first one was The Public Service Values and Principles Bill (National Assembly Bill No.29 of 2014). The second one was The Environmental Management and Co-ordination (Amendment) Bill (National Assembly Bill No.31 of 2014). The mediated version was passed on 26th May, 2015 and transmitted to the National Assembly.

The Third was The Public Audit Bill (National Assembly Bill No.38 of 2014). The mediated version was passed yesterday and transmitted to the National Assembly. The fourth one is The Public Procurement and Asset Disposal Bill (National Assembly No.40 of 2014). The Fair Administrative Action Bill (National Assembly Bill No.10 of 2015); The Potatoe Produce and Marketing Bill (Senate Bill No.22 of 2014); and The Public Fundraising Appeals Bill (Senate Bill No.28 of 2014).

I note with great satisfaction and commend you, hon. Senators, for considering and approving the Report of the Mediation Committee on the Division of Revenue Bill (National Assembly Bill No.11 of 2015) yesterday.

Hon. Senators, this is highly commendable. The onus is now on the National Assembly to expedite the approval of the Mediation Committee Reports. Both Houses were able to agree on the mediation process.

Hon. Senators, let me point out that the debate was also concluded on several other Bills which are now due for the Committee of the Whole. One of which, is listed under Order No.9 for consideration today.

I would like to go on record by saying that the Senate has risen to the call of duty and effectively discharged its legislative mandate, particularly with regard to passage of Bills with Constitutional deadlines despite the very short timelines this House had as a result of the late submission of the said Bills to the Senate.

I thank you.

Sen. (Dr.) Khalwale: On a point of order, Mr. Speaker, Sir. I would like to lead the rest of my colleagues in graciously acknowledging the compliments that you have accorded us today. However, in respect of the report on mediation on the Division of Revenue Bill, the consequence is that counties will get more resources. This calls for even greater concern by this Senate on how the increased resources will be spent by the county governments.

As you know, the matter lying at the High Court has made it difficult for the Committee on County Public Accounts and Investments to discharge its mandate. Is there any way that your office can find out what is going on at the Judiciary? If possible, use the counsels that were representing us to ensure that the urgency of the matter is put before the Judiciary.

Sen. Mutula Kilonzo Jnr.: On a point of order, Mr. Speaker, Sir. I join you in thanking our colleagues for living up to the expectations of the Republic of Kenya. However, I am only concerned about one issue which was raised by Sen. Muthama yesterday.

Under Article 114 of the Constitution, the Mediation Committee Report must be taken for assent within seven days of being passed. Considering that we passed the mediation report yesterday, and that our colleagues in the National Assembly have taken a break or adjourned without giving a specific date of coming back, it is only fair that the country is informed of the direction that this matter will take if this is not done within the seven days contemplated under the Constitution.

Sen. Kagwe: Mr. Speaker, Sir, as you appreciate the work that the Senators have done, and we thank you for it, it is only right that we too, as the Senate, appreciate that these things are also done under your leadership as the Speaker, Deputy Speaker and those who sit in the Speaker's Panel.

The Speaker (Hon. Ethuro): As we conclude, I want to thank all of you for the support. Sen. (Dr.) Khalwale, we have taken note of your issues.

As for Sen. Mutula Kilonzo Jnr., of course, you know that we only deal with our business and expect everybody else to do theirs. The country is watching.

What is it, Sen. Wetangula?

The Senate Minority Leader (Sen. Wetangula): Mr. Speaker, Sir, since I do not see my counterpart across the Floor, on behalf of the leadership of the House, I want to join you in congratulating the distinguished Senators who have availed themselves everytime we have needed them. They created the necessary quorum by not only casting votes, but being very critical in analyzing, debating and arriving at a consensual position on every Bill.

On behalf of the leadership, I thank and congratulate all the Senators. I urge them to redouble and rededicate their efforts as we move on to the next phase of asserting, not only our authority as a House, but our relevance and positive contribution to the entrenchment of devolution in this country.

The Speaker (Hon. Ethuro): Sen. Billow, you keep appearing and disappearing from my screen.

Sen. Billow: Mr. Speaker, Sir, I also want to thank you for those kind remarks on the performance of the Members. I also thank your team and the leadership for that effort. I think we have done more in this Session than in the other Sessions.

I want to highlight the issue raised on the Division of Revenue Bill. These issues have timelines. So, I want to urge our colleagues in the National Assembly to take the opportunity to stand up with the people of Kenya and pass that Bill expeditiously, so that counties do not get into crisis. There is a thought going on in some of the Executive circles that the national Government will have 50 per cent of the Budget to spend and that the counties will not have money. However, let it be known to all and sundry that the national Government of Kenya will take responsibility if the county governments will not have money. As it happened last year, law or no law, they will look for money in the interim because it really does not help anyone to deny counties what is rightfully theirs.

It is important to note that this Bill was passed after it had been negotiated through a mediation process. It is important that we pass that message to our colleagues that they need to live up to the expectations of Kenyans, as this House has done.

STATEMENTS

The Speaker (Hon. Ethuro): Let us take Statements. We have been deferring Statements, but today we will take as many of them as possible. However, in order to do so, I will also be a bit hard; that you seek specific clarifications, not making another statement of your own. We will start with requests.

Sen. Kagwe.

DEPRECIATION OF THE KENYA SHILLING AGAINST OTHER MAJOR CURRENCIES

Sen. Kagwe: Mr. Speaker, Sir, I rise pursuant to Standing Order No.45(2)(b) to seek a Statement from the Chairperson of the Standing Committee on Finance, Commerce and Budget, regarding the depreciation of the Kenya Shilling against other major currencies.

In the Statement, the Chairperson should address the following, among others:-

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1. What is the cause of the depreciation of the Kenya Shilling?
2. What are the mitigating measures that the Government is taking to address the issue?
3. Giving figures, what is the impact of the depreciation to the foreign loans repayment programme that we might have?
4. What plans does the Government have to hedge our foreign borrowings against adverse exchange rates in the future?

The Speaker (Hon. Ethuro): Mr. Chairman, Committee on Finance, Commerce and Budget.

Sen. Billow: Mr. Speaker, Sir, that is a very important question. The issue of the depreciation of the Kenya Shilling is a matter that is of concern to many Kenyans. In the last few weeks, the Kenya Shilling has depreciated to almost Kshs99 against the Dollar. In fact, on the counter it is slightly over Kshs99. That is a matter that we are all worried about.

Yesterday we raised this matter with the Treasury. We should be able to give a comprehensive Statement the first Thursday after we come back from recess.

In the meantime, I want to urge the Treasury to take whatever measures are necessary to stall the further depreciation of the Kenya Shilling. It is really affecting adversely, not just those who are paying fees and importing, but also the cost of living in the country. We all know that our imports far exceed our exports. This is a matter that the Government needs to take seriously even as we wait to address it comprehensively.

Sen. (Prof.) Lesan: Mr. Speaker, Sir, I want to add a rider on the question asked by Sen. Kagwe. To date, there is no substantive Governor of the Central Bank of Kenya (CBK). We would really like to know when we are going to have a substantive Governor of the CBK who will go a long way to stabilize the depreciating Shilling. We want somebody who will give direction.

Sen. Mutula Kilonzo Jnr.: Mr. Speaker, Sir, one of the problems with the currency is the CBK Act which has not been enacted. It is stuck somewhere in the pipeline. Could the Chairman in the process, clarify to the nation the status of the proposed CBK Act which should have been enacted immediately after the commencement of the new Constitution? The Act is expected to dictate how the Governor of CBK will be appointed. This crisis appears to be premeditated or orchestrated.

Sen. Machage: Thank you, Mr. Speaker, Sir. In response, could the Chairman also highlight whether this trend of devaluation of the Kenya Shilling is at the same rate of devaluation of the Tanzania, Uganda, Rwanda and Burundi shillings?

The Speaker (Hon. Ethuro): We expect a response on the first Thursday after we resume from recess.

Is there any other request?

Please, proceed Sen. Mutual Kilonzo Jnr.

LIFTING OF THE MORATORIUM ON TIMBER
HARVESTING BY THE CS FOR ENVIRONMENT,
WATER AND NATURAL RESOURCES

Sen. Mutula Kilonzo Jnr.: Thank you, Mr. Speaker, Sir. I need a clarification. You had made an order for a Committee of the Whole on the lifting of the moratorium on timber harvesting. It appears as if the Committee on Land and Natural Resources has either ignored or forgotten. I can see the Vice Chairperson here.

The Speaker (Hon. Ethuro): Chairperson!

Please proceed Sen. Khaniri

Sen. Khaniri: Thank you, Mr. Speaker, Sir. I have no brief on this particular one. We will consult in our next meeting and report back to the House on the first day of Sitting after recess.

The Speaker (Hon. Ethuro): So ordered.

Please, proceed Sen. Dullo. You had a response yesterday. You may start with that one.

FORTHCOMING STATE VISIT BY THE PRESIDENT OF
THE UNITED STATES, MR. BARACK OBAMA

Sen. Adan: Thank you, Mr. Speaker, Sir. I managed to use the time given to me so that I could discuss further the issues raised in the House regarding the visit by the President of the United States of America (USA). I had a meeting this morning with the representative of the Ministry of Foreign Affairs who sits in that committee. I shared with them all the concerns raised in the House. One of the concerns was how our youth should be considered in the coming of the USA President in terms of entrepreneurship.

With regard to his address to Parliament, I wish to share with you that at this stage, we are unable to have a final programme of the visit. We also do not have any information yet on the visit to Kogelo. However, they said that if anything will be brought up in that discussion, they promised to let us know in due course.

On the issue of pulling out of Kismayu, that is out because we had an objective why we went there, in the first place. There is no way that we can pull out of Kismayu for now. Security is on top of the agenda during the USA President's visit. It is a matter that will be discussed when he visits us.

On the issue of the Senate's involvement in the conference; that is something that I shared with the committee. They said that they will discuss with the full committee and see how the Senate will be involved in that process, especially with regards to entrepreneurship that is going to affect devolution in this country.

About the dual citizenship of President Obama, it is something that has to be generated by the President himself. If he will make a request, we have no objection, but to comply.

Thank you.

The Senate Minority Leader (Sen. Wetangula): On a point of order, Mr. Speaker, Sir. When the Vice Chairperson says that pulling out of Kiamayu is out, is that

her personal view or the Government's position? This is because that is a very dangerous statement. The USA itself went to Somalia on "Operation Restore Hope", and when things did not work out as planned, they pulled out. The USA went to Iraq and Afghanistan and pulled out. The arrogance of the Government telling us that "pulling out of Kismayu is out" does not help anyone. In fact, we have been saying that when we went to Somalia, it was on "Operation *Linda Nchi*." However, now it has turned into "Operation *Choma Nchi*" from what we are seeing.

Mr. Speaker, Sir, can the distinguished Senator tell us whether the arrogant statement that she has made here is an official Government position, so that we can know how to take issue with it. This is because---

The Speaker (Hon. Ethuro): Order, Sen. Wetangula! You have made your case.

Please, proceed Sen. (Dr.) Machage, so that she can respond at once.

Hon. Senators, remember that she was responding to the clarifications you sought yesterday.

Sen. (Dr.) Machage: On a point of order, Mr. Speaker, Sir. As the country cries and weeps every day, including yesterday, how much more lives does the Government want us to pay as cost to convince them that it is time we moved out of Somalia?

Sen. Billow: Mr. Speaker, Sir, I want her to clarify because the statement that she made does not go down well with many Kenyans. Initially, this was "Operation *Linda Nchi*". However, three, four or five years later, it has turned into something else. The Government should evaluate our presence there and what the benefits are, so that they make an informed decision. Have we really reduced the incursions from the across the border? Can she give us an indication on when the Government plans to exit? If they do not plan to exit, what is the benefit? Could she also share with us whether there is any impact assessment by the Government on the presence of these people in Kismayu?

Sen. (Prof.) Lonyangapuo: Mr. Speaker, Sir, further related to yesterday's case that happened in Yumbis, the northern part of Kenya, we saw disconnected communication from the Government as to what really took place. Could the Chairperson give us the true Government position, relating to how crime is being handled in that region, rather than to mislead Kenyans with one version after the other?

The Speaker (Hon. Ethuro): Please, proceed Sen. Mutula Kilonzo Jnr. and then finally, Sen. (Dr.) Khalwale will seek clarifications.

Sen. Mutula Kilonzo Jnr.: Mr. Speaker, Sir, since Sen. Dullo spoke with such finality, it would be nice to know how many of our troops are in Kismayu. What exactly are they doing? How exactly are they protecting Kenya by being there, so that we can understand the finality in the statement?

Sen. (Dr.) Khalwale: Thank you, Mr. Speaker, Sir. Kenyans do not know whether the Jubilee Government reads reports by international institutions. It is only last week, when the United Nations released a report which said that trade in charcoal in Kismayu and the profits now made by Al Shabaab have gone up compared to where it was before our soldiers went there. Could the Chairperson tell us whether the Jubilee Government has blessed the trade in charcoal by our generals in Kismayu?

Sen. Adan: Thank you, Mr. Speaker, Sir. I would like to respond by saying that some of the issues that have been requested by Senators are new to me in terms of

evaluation of what the soldiers are doing in Kismayu. I will make further clarification on this particular issue, especially on what has happened, where we are and how we should progress from there.

On the issue of how many soldiers or troops are in Kismayu and what they are doing, that is a matter that I also need to consult and bring the reply to this House.

On blessing of the profits made by Al Shabaab on charcoal sale, this is a matter that I do not have information on. So, I cannot confirm that.

Thank you.

The Speaker (Hon. Ethuro): Order, Senators. I think we have exhausted this matter. Sen. Adan Dullo, maybe you could give a clarification as to how longer we shall be in Kismayu in comparison to Operation *Linda Nchi*.

Sen. Adan: Mr. Speaker, Sir, I would be lying if I say that they are going to be there for two or three years. I have said that this is a matter that we need to discuss with the relevant authorities and give feedback to this House. That will depend on the request that has been made by my colleagues in terms of evaluation. That would also be relevant to the objective of going to Kismayu.

The Speaker (Hon. Ethuro): Hon. Senators, it might also be useful to know that the Committee has organized for a *Kamukunji* on Tuesday, next week, where the responsible Cabinet Secretaries would be present. That is a good opportunity for you to interrogate further the matter. The meeting will start at 11.00 a.m.

Sen. Adan, do you have another response?

CIRCUMSTANCES LEADING TO THE ROAD ACCIDENT AT DARAJA MOJA IN KISII COUNTY

Sen. Adan: Mr. Speaker, Sir, this is a Statement that was requested by the Senator for Kisii, Sen. Obure regarding the recent road accident near Daraja Moja in Kisii County involving a truck and a trailer registration number KAD 162N. The hon. Senator requested to be informed why a police officer was driving the truck at the time of the accident and whether he is licensed to drive this class of motor vehicles.

Further, he wanted to know why security officers failed to stop the riots in time and maintain law and order. He also wanted the Committee to confirm whether the Government will compensate members of the public who suffered injuries and those who lost their property as a result of the breakdown of law and order.

Mr. Speaker, Sir, I beg to state as follows:-

On 14th May, 2015, at around 6.00 p.m. traffic police officers intercepted a Mitsubishi lorry, KAD 162N along Keroka-Kisii Road. The lorry was loaded with 42 electricity poles which were protruding dangerously. Mr. Lucas Okello, No.8655 police constable, was assigned to escort the lorry to the police station. The vehicle was being driven by Mr. Stephen Mureri Raini, holder of driving licence No.C of C No.J67930222 authorised to drive Class A, B, C and E.

On reaching a point near Gusii Institute of Technology, the driver lost control of the vehicle which veered off the road fatally knocking down two pedestrians, Teresia Kwamboka aged 35 years and Mercy Barong'o aged 28 years, both employees of the

college. The driver and his turn boy fled from the scene immediately after the accident leaving behind the injured police officer. Members of the public proceeded to attack the officer, but he was saved by a *boda boda* operator who took him to Rhamu Hospital where he was admitted. The members of the public had assumed that the vehicle was being driven by the police officer.

Subsequently, students engaged police officers in running battles, burnt the lorry and completely barricaded the road with logs, stones and burning tyres. Attempts by police to disperse them proved difficult and the rioting students engaged police throughout the night making the section of the road inaccessible. The police officers were unable to access the scene of the accident to collect the bodies. As darkness set in, police had to hold ground at a safe distance to wait for reinforcement since it was dangerous to engage the rioters in darkness.

On the following day, the Officer Commanding Police Division (OCPD) received reinforcements and was able to remove the bodies and prevent a spill-over of the riots to the town. The rioting persisted and seven vehicles which were parked at a petrol station near the point of accident were set on fire.

In the course of quelling the riots, six police officers were injured and a firearm, ceska pistol No.G0360, was robbed from a police officer and thrown into a burning lorry. The rioting students were violent thus forcing police officers to use live bullets. Consequently, six rioters sustained bullet injuries. Unfortunately, one of them, succumbed while undergoing treatment at Rhamu Hospital.

Lastly, the Government will not compensate members of the public as it cannot be held liable for the riots since the rioters took the law into their hands. However, investigations are ongoing. Any person who will be found culpable will face the full force of the law.

Sen. Obure: Mr. Speaker, Sir, first of all, I want to say that sometimes I feel very sorry for the kind of answers which are brought to this House.

You have heard that police officers intercepted this truck which was loaded with electricity poles which were dangerously protruding and, therefore, posing a danger to the public. This vehicle was intercepted at a place called Kegati along Keroka-Kisii Road---

The Speaker (Hon. Ethuro): Sen. Obure, concentrate on the clarification because all of us heard the story.

Sen. Obure: Mr. Speaker, Sir, why would police officers allow this vehicle to proceed from the point where it was intercepted for another 12 kilometres when it was clearly posing danger to the public?

I have also spoken to the driver of this truck and he confirmed that he was not driving the vehicle. I have also spoken to members of the public, including those who rescued the police officer after he sustained injuries. They also confirmed that it was the police officer who was driving the vehicle. I also spoke to the person who had hired the vehicle and he confirmed the same.

Therefore, I seek your direction; where do we go from there when we are certain we are not being told the truth.

Sen. Khaniri: Mr. Speaker, Sir, the Chairperson has told us that in trying to quell the riots, police used live bullets or ammunition on citizens. I want to know what is the

Government policy on use of live bullets or ammunition on its own citizens. The other issue is that one person among the dead was killed by this live bullets. The Chairperson says that there would be no compensation. Does that also apply to the victim of police killing?

Sen. (Dr.) Machage: Mr. Speaker, Sir, my questions have been well executed by Sen. Khaniri.

Sen. Adan: Mr. Speaker, Sir, the information I have about whether the police officer was the one driving the vehicle or not, is that he was not the one driving. However, this is a matter that I would put to the relevant authorities and get further clarification and then give the true position.

Regarding the issue of the use of live bullets, the answer is that; they were used by the police to quell the riots. The policy of the Government is that one cannot use a live bullet on a citizen unless their lives are actually in danger. However, in this circumstance, we really do not know why they used live bullets unless, maybe, their lives were in danger. I will ensure further investigations are done to make sure that those who are responsible are held accountable.

Sen. Obure: Mr. Speaker, Sir, the Chairperson has not stated whether the policemen who were responsible for shooting members of the public will be prosecuted.

Secondly, as I speak, I am very sure that this driver is at the police station recording a statement. He has told me he was not driving the vehicle. In the circumstances, could you provide directions as to what should happen?

The Speaker (Hon. Ethuro): Let me start from there. The report says in part:

“However, investigations are ongoing and any person who will be found culpable will face the full force of the law.”

You just need to encourage all those witnesses to go and record statements with the police.

Could we now have the Statement we deferred for Sen. Wetangula?

BOUNDARY CONFLICT BETWEEN RESIDENTS OF VIHIGA AND KISUMU COUNTIES IN MASENO

Sen. Sang: Mr. Speaker, Sir, I have two Statements to give. One is a Statement sought by Sen. Khaniri which I gave commitment to give some progress today. I have talked to the Senator for Vihiga. The Statement sought by him had two components; one relating to ---

The Speaker (Hon. Ethuro): Order! Sen. Sang, could you be relevant to the issue?

Sen. Sang: Mr. Speaker, Sir, I am going to be relevant and I am relevant.

The Speaker (Hon. Ethuro): We have not reached the matter of Sen. Khaniri. You know he is usually very clear and alert. I am wondering why he is not here today.

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

Sen. Sang: Mr. Speaker, Sir, Sen. Wetangula had requested for a Statement from the Chairperson of the Standing Committee on Legal Affairs and Human Rights on the Government's plan to open more consulates to be used as polling centres by Kenyans living in the USA during the 2017 General Election. The Senator sought to know the following:

First, is the role of the Executive in setting up the polling stations. The Independent Electoral and Boundaries Commission (IEBC) is vested with the sole mandate of setting up polling stations as set out under Article 182 of the Constitution. Therefore, the Executive has no role in that regard unless so requested by the IEBC to assist where need be.

The second issue is whether the Ministry of Foreign Affairs and International Trade has set up a taskforce on this matter which is not within the Ministry's mandate.

The Cabinet Secretary (CS) has established a taskforce on the implementation of the Constitution of Kenya 2010 to facilitate voting in the general elections and referenda by Kenyans in the diaspora, pursuant to the Cabinet's decision/ OP/CAB584A of 2nd December, 2014.

The Cabinet directed the Cabinet Secretary (CS) for the Ministry of Foreign Affairs and International Trade, the Attorney-General and the IEBC to constitute a taskforce to facilitate voting by Kenyans in the diaspora in line with the Constitution. In compliance with the directive, the Cabinet Secretary (CS), in consultation with the Attorney-General and the IEBC, published the appointment of a taskforce in the Kenya Gazette Volume CXV7 No.17 of 20th February, 2015, through Legal Notice No.1090 of 4th February 2015. This is in appreciation of the unique nature and the position that the Ministry finds itself in dealing with matters outside the Kenyan territory.

The taskforce membership is drawn from various institutions as follows:

1. Washington Oloo – Ministry of Foreign Affairs and International Trade, Chairperson
2. Immaculate Kassait – IEBC
3. Karen Rono – Attorney-General's Chamber
4. Kariuki Kimemia – The National Treasury
5. Peter Oduge – Directorate of Immigration and Registration of Persons
6. Scholastica Ndambuki – Ministry of Labour, Social Security and Services
7. Joseph Kanyili – Ministry of Interior and Coordination of National Government
8. Gregory Somba – Ministry of Interior and National Coordination
9. Mrs. Lucy Kiruthu – Ministry of Foreign Affairs and International Trade
10. Denis Muhambe – Ministry of Foreign Affairs and International Trade

The mandate of the task force is purely advisory and includes;

1. To advise on the profiling of Kenyans in the diaspora and eligibility to vote;
2. To establish the extent to which Kenyans living abroad can progressively participate in general elections and referenda.

3. To advise on possible registration and polling centers on Kenyans living abroad.
4. To advise on the modalities of sensitizing Kenyans living abroad on voting, and;
5. To advise on any other matter incidental to their mandate.

We recognise that the supreme law of the land is the Constitution. The exercise is in no way intended to usurp the mandate of the IEBC; a fact dully acknowledged by the IEBC itself. Indeed, the outcome of the taskforce findings shall only remain advisory without any obligation to the IEBC.

Regarding whether the IEBC was consulted in the plans to set up the polling stations, there are no plans, whatsoever, by the Ministry to establish polling stations anywhere.

The taskforce established by the Cabinet Secretary (CS) for Foreign Affairs and International Trade is a Governmental team whose outcome is advisory, which may be considered in informing the eventual formation of the policies and regulations necessary for the conduct of diaspora voting.

In that regard, the Ministry shall use the diplomatic missions abroad to raise awareness of the Commission's diaspora mapping tool in collaboration with and as may be requested by the IEBC.

Mr. Speaker, Sir, I must state that the use of our missions abroad by Government bodies, constitutional commissions as well as the private sector to advance Kenya's and her people's interest is a well-established norm. Therefore, advancing the actualization of the provisions of the Constitution through raising awareness as espoused by the Kenya Diaspora Policy, is not seen as conflictual to the supreme law.

Just to re-emphasize; the decision as to when and where polling stations will be established remains the sole prerogative of IEBC. The other arm of Government tasked with the duty to allow progressive registration of citizens residing outside Kenya and the progressive realisation of their right to vote is Parliament.

Mr. Speaker, Sir, (d) was about why this would be confined to the United States of America (USA) only and yet, there are many other Kenyans living in other countries.

As mentioned, the establishments of consulates have no correlation with the mandate of the IEBC. The decision on where to locate polling stations is for the IEBC to determine, either in Kenya or abroad. The exercise of opening consulates is a routine and continuous exercise by the Ministry. At the moment, the Ministry is in the process of evaluating recommendations for the appointment of over 25 honorary consuls in 20 countries, including the USA.

Next is about what informed the decision of the proposed consulates within the USA. The process of determining when and where to establish consulates is guided by a well-established policy geared towards enhancing accessibility of Government services to the citizens abroad as well as to tap into the economic and socio-cultural opportunities in those locations. In order to expand the Ministry's tentacles and reach abroad as manifested in its strategic plan, the Ministry intends to progressively continue to open consulates as and when need arises.

In the USA, the Ministry plans to appoint honorary consuls in six cities namely: Boston, Dallas, Seattle, Minneapolis, Atlanta and Chicago. Generally, the key factors that

guide the Ministries decision while considering opening of consulates, include the size of the Kenyan population in the city and economic and socio-cultural potential, among others. These facts apply even in this instance.

Finally, Mr. Speaker, Sir, there was the issue about the population of Kenyans eligible to vote in the selected states. The numbers are not known. Probably, the report by the taskforce shall bring this out. It may be deduced purely on age and in preclusion of other legal provisions.

I thank you, Mr. Speaker, Sir.

The Senate Minority Leader (Sen. Wetangula): Mr. Speaker, Sir, this is a clear case of what the Kenya Power (KP) calls “*Mulika mwizi*.” You can see the attempt to run away from a mischief that the Government was trying to do.

In the Statement, Mr. Speaker, Sir, the distinguished Senator says – on page 1 – that the mandate of setting up polling stations belongs to the IEBC under Article 182 of the Constitution. In fact, Article 182 of the Constitution deals with vacancy in the office of the county governor. It has nothing to do with polling stations or the mandate of the IEBC.

Mr. Speaker, Sir, the IEBC is part of independent commissions under Article 249 of the Constitution. Article 249(2) of the Constitution states very categorically that:-

“The commissions and holders of independent offices –

- a. are subject only to this Constitution and the law; and
- b. are independent and not subject to direction or control by any person or authority.”

Mr. Speaker, Sir, at the beginning, we were told that the Cabinet directed the Ministry to set up a taskforce to interfere with the mandate of the IEBC. In a taskforce of 10 members, there is only one person from the IEBC. From the Statement, there is nowhere indicated that the IEBC sought assistance from the national Government to set up such a taskforce or embark on what they say and what they wanted to do.

Mr. Speaker, Sir, we are ready to give the Chairperson time to look for more facts. In the meantime, could he tell us why the Cabinet of the Jubilee Regime is interfering with the mandate of the IEBC by, not only setting up a taskforce, but also directing it to do what the IEBC ought to do, contrary to the provisions of Article 249 of the Constitution as read with other Articles that establish the IEBC? That is Article 88, among others.

Finally, Mr. Speaker, Sir, could the Chairman tell us why there is this contradiction? You have already established six centres in the USA to set up consulates which may be used as voting centres, but you do not even know the population of Kenyans in those consulates. That is what he said in (f) on the last page. The numbers of Kenyans in those consulates are not known. Therefore, on what basis are you identifying the six cities to set up consulates when you do not even know how many Kenyans live there?

Sen. (Dr.) Machage: Mr. Speaker, Sir, is the Chairman aware that in the history of elections of Kenya since Independence, positioning of electoral centres has been used as a tool for rigging elections?

(Applause)

Mr. Speaker, Sir, is it true that the taskforce was carefully chosen avoiding any member who may have any inclination or even a slight smell of the Opposition inclination?

(Applause)

Mr. Speaker, Sir, could you save me from---

Sen. Murkomen: Point of order, Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): Order, Sen. Murkomen!

Sen. (Dr.) Machage: Mr. Speaker, Sir, is it, therefore, true that one of the cardinal duties of the taskforce was to lay the ground for rigging?

Sen. Murkomen: On a point of order, Mr. Speaker, Sir. Did you hear Sen. (Dr.) Machage say that there is “a distinct smell of the Opposition”? Could he explain how they smell and how one can distinguish civil servants in the Opposition and one for the Government? I thought civil servants serve everybody.

The Speaker (Hon. Ethuro): That is the most substantive one.

Hon. Senator: Point of order, Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): Order, Senator.

I normally have a problem when it comes to statements and seeking clarifications. I would want to give the first opportunity to the Chairperson. On that basis, the rest of you can then have a bite.

Clarifications are being directed to the Chair. Let the Chairperson confirm whether there is such an instrument that can smell or not.

(Laughter)

It is supposed to be an instrument to smell not a smelling instrument.

Proceed, Sen. (Dr.) Khalwale.

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, the Chairman has told us one reason they are opening consulates is because of considerations of commerce. Vietnam is number five on the top 18 countries where we source tourists from. In fact, in the year 2013, we got 1.7 million tourists, having gone up by 25.2 per cent. This is the fastest growing. Could he tell us why he has not considered having a consulate in Vietnam for that reason? More importantly, could he tell us how many polling centres he will open in Uganda, the United Arab Emirates, Saudi Arabia, Rwanda and Tanzania because we have a heavy presence of Kenyans in those countries?

Finally, Mr. Speaker, Sir, could the Government tell us how it intends to level the playing ground for presidential candidates given that candidates might lack the capacity to go and look for votes abroad? Is this a deliberate effort to help the incumbent President to use state facilities to reach voters at the expense of his opponents the way the Nyayo Government used District Commissioners (DCs) at the expense of its opponents?

Sen. Khaniri: On a point of order, Mr. Speaker, Sir. In the response by the Vice Chairperson, he says:-

a. The IEBC is vested with the sole mandate of setting up polling stations as set out under Article 182 of the Constitution.

I have a copy of the Constitution and Article 182 is about a vacancy in the office of the Governor. I do not know which constitution the Vice Chairperson is referring to. Could he tell us which constitution he is referring to because, certainly, it is not the Constitution of the Republic of Kenya?

Sen. Sang: Mr. Speaker, Sir, I appreciate the fact that the Article of the Constitution being referred to in the Statement does not really refer to the exact Article. I want to believe that that is a typo. The right Article is 88.

It is important to note that the Government has the overall responsibility of supporting all institutions, including constitutional commissions. The budgets of the various constitutional commissions are still generated by the Executive though they are subject to parliamentary processes. The national Government---

Sen. Khaniri: On a point of order, Mr. Speaker, Sir. The Vice Chairperson should get serious about this matter. He is now telling us that it is not Article 82, but 88. Could he read Article 88 to see if it meets the provisions that he has just stated in his answer? It is not true.

Sen. Sang: Mr. Speaker, Sir, Article 88 refers to the establishment of the IEBC and gives its functions over and above the Articles quoted by the Senate Minority Leader on the independence of constitutional commissions. The other element is establishing polling stations. I will verify and give the right answer. Let me seek the indulgence of the Members to get the exact Article. It is important for Members to appreciate that we will get the exact Article and I will share with you.

Hon. Senators: No! No! No!

The Speaker (Hon. Ethuro): Order, hon. Senators! Let the Vice Chairperson proceed. He will get the Article at the end of his Statement. Failure to cite an Article does not make your arguments irrelevant because it is somewhere in the Constitution.

Mr. Sang: Mr. Speaker, Sir, we have several clarifications sought by the hon. Members. I request the Chair to allow me to address the others then I can revisit this particular one.

The Speaker (Hon. Ethuro): Those are my directions. I hope your team is assisting you to get the correct information.

Mr. Sang: Mr. Speaker, Sir, I am informed that it is Article 82(1)(e). I will be able to come back to that.

Sen. Wetangula wanted to know on what basis the Cabinet Secretary or the Ministry is establishing consulates in the five areas and yet, we do not know the population.

It is important to note that the Senator asked what the population of Kenyans eligible to vote is and we said that we cannot tell the population of Kenyans eligible to vote. However, we can get the population of Kenyans living abroad. Therefore, I think that should be clear for the Senator.

On the other element of how many polling stations will be established in Uganda, the United Arab Emirates and all the other countries, I want to state that that is the responsibility of the IEBC. We were not able to get that information from the Ministry. That is a new Question that should be directed to the IEBC.

With regard to providing a level playing field, again, that is not the responsibility of Government. It is the responsibility of the IEBC to ensure that we have a level playing field when it comes to elections. Therefore, being an independent institution, we should be able to allow them through the election rules and any other legislation that this House may deem fit to enact that will ensure that we have a level playing field in the next elections.

Mr. Speaker, Sir, on the aspect of some Government employees being Jubilee and looking at the taskforce to ensure that we have a representative of the opposition, I want to state that public servants serve all Kenyans. Therefore, we cannot identify who is an opposition or Government employee. All Government employees are supposed to be neutral. They are supposed to discharge their responsibilities equitably to all Kenyans irrespective of their political affiliation.

On the element of an attempt to rig elections, if you look at the Statement, it is very clear that what the national Government is doing is to provide the necessary support just like it has provided to all other independent constitutional commissions in this country to execute their mandate. We have on several occasions requested national Government to provide support to all institutions. This is a clear indication of good working relations between the office of the Attorney-General, the IEBC and the Ministry in ensuring that the constitutional provisions relating to diaspora voting by Kenyans is achieved. This is a clear attempt by the national Government to facilitate that process.

Mr. Speaker, Sir, as captured by the Statement, the taskforce mandate is purely advisory. The outcome of the taskforce shall remain advisory. The IEBC may tap into it and be able to utilize it. If the IEBC thinks that they do not need the information from the task force, that will be left to the Ministry. If you look at the mandate of the taskforce, a lot of it does not relate to just the mandate of the IEBC. Generally, their mandate is to try and help the national Government in its responsibility to ensure that the Constitution is fully implemented. The role of implementation of the Constitution lies with the various institutions of Government and various constitutional commissions. That should be understood in that sense.

Mr. Speaker, Sir, I have captured most of the issues the hon. Senators had raised.

The Speaker (Hon. Ethuro): Order, Senator! You were to give the Article.

Sen. Sang: Mr. Speaker, Sir, it is Article 82(1)(c) and (e). That is the advice from the senior Members of this House.

The Senate Minority Leader (Sen. Wetangula): Mr. Speaker, Sir, before I go to the main issue, Article 82(1)(c) deals with continuous registration of citizens as voters and part (e) deals with the process of registration of citizens residing outside Kenya, and the progressive realization of their right to vote. This has nothing to do with establishing voting centres at all.

(Applause)

I want the Chairperson of the Committee to know, because he is a lawyer, that you can actually lose your case in court by citing the wrong law.

An hon. Senator: He has lost it!

The Senate Minority Leader (Sen. Wetangula): Mr. Speaker, Sir, more importantly, on page 1, the point that he has avoided to answer – Article 249 on Independent Commissions is very clear: They shall work at the direction of nobody.

On page 1, the last paragraph, the Cabinet directed the Cabinet Secretary (CS) for Foreign Affairs and International Trade, the Attorney General (AG) and the IEBC which is contrary to the provisions of Article 249.

Further, the Chairperson is telling us that the mandate of the task force was broad and the electoral issue was only one of them. In fact, the mandate of the task force is exclusively on electoral matters as listed from page 2:-

- (1) Profiling of Kenyans in the diaspora eligible to vote.
- (2) Establish the extent to which Kenyans living abroad can progressively participate in General Elections.
- (3) To advise on possible registration and polling centres.
- (4) To advise on modalities for sensitizing Kenyans living abroad on voting.
- (5) To advise on any other matter.

When the Chairperson tells us that the mandate was broad and the electoral matter was only part of it, he is not telling us the truth.

Mr. Speaker, Sir, we must be very serious on this. This country has gone on fire because of mismanagement of elections. We are trying to forestall this by what I call, *Mulika Mwizi*, to use the language of Kenya Power (KP). This Jubilee Government fraudulently sneaked into power and they want to perpetuate themselves in a similar manner. We will stop this, monitor and ensure that this does not happen by usurping the powers and responsibilities of IEBC. Could he tell us why the Cabinet is directing IEBC?

Sen. Kembi-Gitura: On a point of order, Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): What is it, Sen. Kembi-Gitura?

Sen. Kembi-Gitura: Mr. Speaker, Sir, is it in order for the Senate Minority Leader to continue misleading the House on this issue? Is it not obvious that voting of Kenyans in the diaspora cannot be done in vacuum? There have to be places for them to vote. Is the Member not aware that IEBC has no capacity or mandate to create consulates? This can only be done by the Government to give an enabling environment for voting by Kenyans in the diaspora.

If you look at the answer here, it says clearly---

(Sen. Wetangula spoke off record)

Order, I am on a point of order.

(Loud consultations)

The Speaker (Hon. Ethuro): Order, Senators! All of you are and will be, on points

on of order. Just mark yours somewhere.

Sen. Kembi-Gitura: Mr. Speaker, Sir, we can continue discussing this issue. However, if you look at the answer, the Cabinet directed the Cabinet Secretary for Foreign Affairs and International Trade, the Attorney General and the IEBC to constitute a task force to facilitate voting of Kenyans. Kenyans in diaspora will not be able to vote unless there is a facility for them to do so. Therefore, we must agree from the outset, that the IEBC cannot possibly be the one creating consulates; places where Kenyans will vote in the diaspora. It looks to me very obvious.

The Speaker (Hon. Ethuro): Order, Sen. Kembi-Gitura! Now you are answering on behalf of the Chairperson.

(Sen. Wetangula spoke off record)

Order, Sen. Wetangula! You have made your case. I am sure that other Members might also support your case. I thought Sen. Kembi-Gitura would read, "To facilitate voting by Kenyans in the diaspora in line with the Constitution." I thought that was also significant.

Proceed, Sen. Mutula Kilonzo Jnr. Members, let us be specific.

Sen. Mutula Kilonzo Jnr.: Mr. Speaker, Sir, I am always specific.

The Speaker (Hon. Ethuro): Indeed, you are.

Sen. Mutula Kilonzo Jnr.: Mr. Speaker, Sir, the Vice Chairperson is a good lawyer, but I think he did not interrogate the answer that he was given. Somebody is trying to mislead him. My leader is correct. The Cabinet has no mandate whether in law, imagined or otherwise, to attempt to create polling stations anywhere. The question of capacity does not arise at all. In fact, if my Vice Chairperson went back to the Constitution, it contemplated that there would be an Act of Parliament. That is what I want to read so that we can have continuous education on these things.

The Speaker (Hon. Ethuro): Order, Senator! If you just cite Article 82, we will appreciate. We shall read for ourselves.

Sen. Mutula Kilonzo Jnr.: Mr. Speaker, Sir, I am sure you do not know this one.

(Laughter)

Section 34 of the Elections Act says as follow:-

"The commission shall at regular intervals publish the names of countries in which registration and voting is scheduled to take place, a decision by the Commission to register--"

The Speaker (Hon. Ethuro): Order, Sen. Mutula Kilonzo Jnr.! Which Article are you reading?

Sen. Mutula Kilonzo Jnr.: I am reading the Elections Act and I qualified it.

"The decision by the commission to register Kenyans citizens residing outside Kenya or to conduct elections outside Kenya shall be based on the presence of a Kenyan Embassy, High Commission or Consulate."

Before you determine that the United States of America (USA) is one of those

places where you want to do gerrymandering, you must, first of all, publish the names of those countries. It is not a question of a taskforce. This taskforce was just put in together to squander public money and do things that are already in the Act and are mandated by the Constitution.

Mr. Speaker, Sir, I want to remind the national Government to stick to its lane and give the IEBC their work under the Constitution.

Sen. (Dr.) Machage: Mr. Speaker, Sir, may I remind the Vice Chairperson of this Committee, who declared himself to be one of the most senior and powerful members of the Jubilee Government; Chapter 1, Article 2 (2) of the Constitution states:-

“No person may claim or exercise State authority except as authorised under this Constitution.”

This Constitution as per Article 2(1) is supreme. Your answer is totally breaching Article 249 (2) of this Constitution which only mandates the IEBC to do, not what you desire to do using the Cabinet. You need to apologise to the country for violating the Constitution.

Sen. Mugo: On a point of order, Mr. Speaker, Sir. The Senate Minority Leader claimed that the Jubilee Government came into power fraudulently. Could he substantiate or withdraw? They went to court and the court gave its verdict. Do you have your own mechanism of determining that this Government came into power fraudulently?

Sen. Elachi: Mr. Speaker, Sir, are we in order to discuss this matter now when we know very well that in 2013 we had the diaspora in Uganda, Tanzania and Rwanda voting? Indeed, during that time the gerrymandering was done by none other than the former Prime Minister, promising Kenyans in the United States and United Kingdom that they will vote through the consulate. What has changed today for us to start thinking about the law? What law did we use at that time to identify those consulates?

The Speaker (Hon. Ethuro): Sen. Wetangula, you have been challenged by Sen. Mugo.

The Senate Minority Leader (Sen. Wetangula): Mr. Speaker, Sir, I will start with Sen. Elachi, before I go to the challenge. This is the danger you run into and the possible embarrassment you suffer, like you are now, in jumping into a debate that you did not follow. This is because if you read the questions that I asked, the incompetent answers we received and the rejoinders we have made, then you would not stand up and irrelevantly bring the name of Raila Odinga into a debate that he has nothing to do with.

Sen. Elachi: On a point of order, Mr. Speaker, Sir. I understand the debate and I know he was the Minister for Foreign Affairs at one point. Is he in order to tell the country that when we did the elections in 2013, we never followed the law? We wanted Kenyans in diaspora vote, but they could not because we did not have enough resources.

The Senate Minority Leader (Sen. Wetangula): Mr. Speaker, Sir, again, that goes into deeper irrelevance. The diaspora vote will be achieved progressively and it is the exclusive responsibility of the IEBC. We have diaspora in Somalia. If you go to Somaliland, we have more than 10,000 Kenyans working there. Why are we running to the United States and not Somaliland?

Since I do not want to go into some areas, let me respond to Sen. Beth Mugo. If she does not know that the Government she is serving came into power through fraud,

then she does not live in this country. Let her go and read the content of the election petition that we filed in the Supreme Court, which are public documents, and she can answer herself.

Sen. Billow: On a point of order, Mr. Speaker, Sir. Is the hon. Senator, who is the Senate Minority Leader, in order really to insinuate that it is the contents of a petition that was thrown out and trashed by the Supreme Court, which should actually be a subject of discussion in this august House?

Secondly, is he in order to suggest that it is wrong to have the IEBC to organize elections in the consulates in United States, but he has no problem with all the other areas? Why is there a lot of concern on the law for these consulates? It was done in the other countries without a law, but just through a gentleman's agreement in the National Accord. To him, it was not a problem?

The Speaker (Hon. Ethuro): Order, Senators! Senate Minority Leader, you need to be fair to your fellow Members. I think what Sen. Elachi was just asking is a matter of fact. She had knowledge to believe, which you all do, that maybe you were even in a better position.

The Senate Minority Leader (Sen. Wetangula): Mr. Speaker, Sir, in fact, I brought this question to the Floor because of my superior knowledge in the matter and some things that I may not wish to say here.

I did ask the distinguished Senator for Nandi, in execution of its mandate, whether there is any document, communication or evidence that the IEBC requested the Executive to assist it to set up these consulates, so that they can be polling centres. There is none.

Mr. Speaker, Sir, you have done better than lawyers in this Chamber, by the way, and I dare say this. The point of contention is Article 249(2)(b) of the Constitution which says that the IEBC shall act in its duties without the control and direction of any person or authority. Here we are told that the Cabinet directed the Ministry of Foreign Affairs, the Attorney General and the IEBC. This is a violation of the Constitution. We can pontificate on anything else.

The Speaker (Hon. Ethuro): Order, Senators! By the way, this is a fairly straightforward matter. The Vice-Chair did not actually respond to that fundamental issue. When the response says that the Cabinet directed the Cabinet Secretary, Attorney General and the IEBC, then really the Senate Minority Leader has a big issue; a constitutional issue, which you need to respond to, in light of Article 249 of the Constitution. But, the Senate Minority Leader, you also owe us the truth; that the contents of a petition that did not succeed cannot be the basis on which you can say that we can confirm something. Let us remove the politics and deal with the facts.

Proceed, Vice Chairperson.

Sen. Sang: Mr. Speaker, Sir, whereas I appreciate that the words "directed the Minister, Attorney General and the IEBC" gives the impression that, that was clear interference, if you look at the mandate of the taskforce, it is purely to advise. Therefore, the IEBC has no obligation whatsoever to take the advice given by the taskforce. As far as the Government is concerned, we appreciate that IEBC is an independent Commission.

(Loud consultations)

Mr. Speaker, Sir, let me finalize this.

The Speaker (Hon. Ethuro): Let us hear the Vice-Chairperson first.

Sen. Sang: Mr. Speaker, Sir, on several occasions we have seen the IEBC paying a courtesy call to the President. Therefore, we need to appreciate that the IEBC and other constitutional commissions do not live in a vacuum. However, the task force has only an advisory role. As much as it appears as if they were directed, they are advisory.

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

Sen. Sang: Mr. Speaker, Sir, I will take the point of information.

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

Sen. Billow: Mr. Speaker, Sir, I want to inform my colleague that the directive here is a passive direction, similar to the one the President gave to the Ethics and Anti Corruption commission (EACC), to complete an investigation in 60 days, to which we gave a standing ovation.

(Loud consultations)

The Speaker (Hon. Ethuro): Order, Senators! That is not very useful information to the Vice Chairperson.

Sen. Sang: Mr. Speaker, Sir, for the very fact that IEBC appreciated the importance of the task force by sending a member of the IEBC to sit in that task force---. I also want to make it clear that the task force does not relate to only the new consulates in the USA. The task force is to advise on all consulates, including Tokyo in Japan and any other embassy in any other place. It is, therefore, important to note that the task force was going to advise not only on the aspect of voting within the USA, but across the globe.

The Senator for Makueni read a section of the Elections Act. I appreciate that the Elections Act talks about polling stations and in the task force, there is no reference to polling stations. We are not talking about polling stations. We are talking about the general process of appreciating and advising Kenyans.

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

Sen. (Dr.) Machage: On a point of order, Mr. Speaker, Sir. It is evident that the Vice Chairperson, an eminent lawyer and Senator in this House, may not have read the Statement that he was given to execute on the Floor of this House. It is also evident that matters of the Constitution and its violation are evident. Will I, therefore, be in order to request that the Vice Chairperson is given another chance to relook into the Statement and give us a proper one befitting his status as we know him in this House?

Sen. (Dr.) Khalwale: On a point of order, Mr. Speaker, Sir. In line with what the Senator for Migori County has said, could the Chair further direct that even after being given an opportunity to have a second chance to answer, the current answer be completely withdrawn and struck out of the record for the following reasons? One, something seems to be happening in East Africa. Today, Burundi is burning because of elections. This week, two million people gave signatures in Rwanda so as to change the

Constitution to perpetuate President Kagame. Now, in Kenya, polling centres are being opened in the USA to, again, perpetuate the Jubilee Government.

Our country burned because of elections. Therefore, we will not allow the Floor of this House to be used to give credibility to a very faulty answer, especially given that none other than the Supreme Court has told the Okoa Kenya initiative and the Committee on Auditing the constitution that they would have rather had 30 days to hear the petitions for the 800 pages document of evidence and that further, the commissioners have been found culpable in the United Kingdom (UK) of having been involved in Chicken Gate scandal. These are practical issues that should be at the core of all the politicians of this country, if we want to nurture a Republic called Kenya.

Sen. Wamatangi: On a point of order, Mr. Speaker, Sir. I rise under Standing Order 94(1) which is express. As I read it, the rules of engagement in this House apply equally and seriously with equal weight to all of us, as Senators. This Standing Order reads clearly that:

“A Senator shall be responsible for the accuracy of any facts that the Senator alleges to be true and may be required to substantiate any such facts instantly”

Mr. Speaker, Sir, the Senate Minority Leader stood on the Floor of this House and alleged that the Jubilee Government came into power fraudulently. When asked further, he stated that it was on the basis of a petition that was trashed by the Supreme Court. It is a fact---

(Sen. (Prof.) Anyang’- Nyong’o stood up in his place)

Mr. Speaker, Sir, I am on a point of order.

The Speaker (Hon. Ethuro): Order, Sen. (Prof.) Anyang’- Nyong’o. The Member is on a point of order.

I will allow you to speak after him.

Sen. Wamatangi: Mr. Speaker, Sir, under Standing Order 94 (1), the Senate Minority Leader has a responsibility to this House to substantiate that allegation or withdraw it. We will be setting a very bad precedent---

(Loud consultations)

Mr. Speaker, Sir, I will be heard

The Speaker (Hon. Ethuro): Order, hon. Senators. Let us listen to the Senator for Kiambu County.

Sen. Wamatangi: Mr. Speaker, Sir, we will be setting a very dangerous precedent for debate in this House if a Member can rise to make such allegations, sit down, trash it and get away with it. We cannot allow that.

The Speaker (Hon. Ethuro): Order, Senator! You have made your point.

Sen. Wamatangi: Mr. Speaker, Sir, let the Senate Minority Leader substantiate or apologise and withdraw.

The Speaker (Hon. Ethuro): Please, proceed Sen. (Prof.) Anyang’- Nyong’o and then the Senate Minority Leader will contribute after that.

Sen. (Prof.) Anyang'- Nyong'o: On a point of order, Mr. Speaker, Sir. I have been sitting here quietly listening to the conversations in this House---

(Sen. Hassan consulted loudly)

The Speaker (Hon. Ethuro): Order, Sen. Hassan! There are many people who want to contribute.

Sen. (Prof.) Anyang'- Nyong'o: Mr. Speaker, Sir, I am getting extremely worried. Is it really in order for Hon. Senators to call a decision of the Supreme Court as trashing a petition? I do not think that the Supreme Court in law could ever trash anything. Let us avoid using inflammatory language in this House, especially when it comes to a very august institution like the Supreme Court. We can disagree on decisions of the Supreme Court, but we cannot in any way say that the Supreme Court "trashes" anything. That is an extremely irreverent and irresponsible reference to our legal system.

The law is very clear on independent commissions like the IEBC and you cannot bend the law otherwise. Would it be in order for the Vice Chairperson to go back and consult the relevant Government agencies, to state whether they are aware that the IEBC has the powers to determine where people vote anywhere on this earth? If the Government wants the IEBC to do anything, the commission can then undertake such a responsibility, asking the Government to help rather than the Government directing the commission to do something.

Sen. Hassan: Mr. Speaker, Sir, first of all, the position that Jubilee won fraudulently is a position that--- even the CORD Coalition is under no obligation to agree with the decision of the Supreme Court. We respected the position of the Supreme Court as strongly as we disagreed with their position. Therefore, our position that you rigged the election and were elected fraudulently is a decision that continues to be our position. Therefore, the Senate Minority Leader was totally in his premise to articulate the position that the CORD Coalition holds that the elections were fraudulently won by Jubilee.

Secondly, I want to advice Sen. Sang that I am a commissioner and I used to work as a commissioner. The Government does not advise commissions, it is the commissions which advise the Government. It is for the commission to undertaken its work then ultimately advise the Government as a principle adviser on matters election on where they think foreign polling stations should be.

Could you, please, go back to that Government and ask them whether they know if there are provisions of the Constitution that exist? Often times, even the President has made pronouncements *ultra vires* to the provisions of the Constitution.

Sen. Wamatangi: On a point of order, Mr. Speaker, Sir. The Senator for Mombasa, Sen. Hassan, in his point of order has stood up and told this House the position of CORD as far as elections is concerned. This is the Senate and not a platform for CORD. The opinion of CORD is irrelevant in this House. Senators in this House prosecute debate on the basis of the rules of this House and the Constitution.

In this House, we have more than five political parties represented through Senators. Therefore, there is no way the debate and decisions of this House can be guided

by the opinion of a political party. Is the Senator in order to allege that CORD's position can be propagated in this House and claim to get away with it? It is out of order.

The Speaker (Hon. Ethuro): Order, Members! I want to proceed along these lines. I will give one opportunity to Sen. Billow and another one to the Senate Leader of Minority in view of Standing Order No.94(1).

Sen. Billow: Mr. Speaker, Sir, I want to address the issue of the directive which is the main borne of contention. When Hon. Raila Odinga was the Prime Minister, he gave a directive to the IEBC in broad daylight regarding the Biometric Voter Registration (BVR). Why was that directive not interfering with the functions of an independent commission and yet the directive being given now is the same?

(Loud consultations)

The Speaker (Hon. Ethuro): Order, Senators! This House cannot be turned into something else.

The Senate Minority Leader (Sen. Wetangula): Mr. Speaker, Sir, before I respond, I want to truly thank the Chair for giving enough time to this issue because of its significance and importance to the future of this country. I want to say what I said earlier. This country nearly burnt up because of a bungled election. We are trying to forestall this by constantly reminding everybody, including the executive that we must and we owe this country a duty to do things right. We must avoid any issues, conduct or any behaviour that tend to indicate that we are interfering with the conduct of one of the most critical independent commissions in this country, the IEBC. Therefore, the very idea that IEBC has been directed, even if the commissioners were directed to go and have tea, it will be a violation of the Constitution.

Now to respond to the issue raised by Sen. Billow, if a wrong is done, you do not right it with another wrong. Two wrongs do not make a right and they never will. We are together in this. We have the capacity to tell you here and now that we are able to chastise ourselves where we see that we are doing wrong. We are not seeing the wrong that you are doing only. When anybody on this side does wrong, we will say so, because we mean well for this country.

More importantly, I want to remind the distinguished Senator for Kiambu that if he believes and thinks that he is coming here to stifle debate or gag Members, the Constitution is here. There is freedom of thought, freedom of expression, freedom to hold opinion and so on. It is my opinion that the elections were won fraudulently. That is my opinion. The Constitution guarantees me to hold my opinion. You can hold yours that it was not fraudulent, you are entitled to it. I will stand with my opinion that you won elections fraudulently until the chicken comes home to roost.

Mr. Speaker, Sir, knowing how fair you have been, I want to encourage you to walk in the footsteps of the great, the late Jean Marie Seroney. He ruled that a Member shall not be called upon to substantiate what is obvious.

Sen. Wamatangi: On a point of order, Mr. Speaker, Sir. This is a House that we must honour and respect by setting precedence that we shall be proud of when we leave. We cannot use the Floor of this House to justify or trash the provisions or the rules of the

House. In all fairness to the standards we have set in this House, is it in order that the Senate Minority Leader of this House can stand here in front of the nation and argue that I have come here to stifle debate by citing what is expressly provided by the rules that guide debate.

If the Senate Minority Leader can try to convince this House that he can make blanket statements which constitute heavy implications, not only to the independence of our mind of thought, but also to the rules and how we respect them---. Why would this House allow the Minority Leader to make statements and get away with them? I want to make this request; this House cannot be used by us to express opinions that we cannot stand up to, in fact, and principle?

The Senate Minority Leader has made statements in this House. There are clear rules in Standing Order No.90 (1) that he cannot run away from the responsibility of standing by what he says and proving it as a fact. The only thing he can do is either to substantiate it or withdraw it. He can come and make those claims when he has facts that he can prove.

The Speaker (Hon. Ethuro): Order, Senators!

Sen. Sang: On a point of order, Mr. Speaker, Sir. Regarding the element of substantiation, whereas we appreciate the freedom of thought and expression and the rule on opinion, some of the Members raising these issues have had their names dragged through serious scandals. When they were cleared by processes, we were bound by that clarity that they were cleared by constitutional and legal organs and we no longer mention Tokyo scandal and others. Whether or not, he believes that the Jubilee Government won the elections, when the Supreme Court pronounced itself on that matter that brought it to a close.

I have always held Sen. Wetangula as a Senator who was cleared of some of those serious scandals that were mentioned against him. Is he in order to suggest that this Government won fraudulently when we were cleared by the Supreme Court and fail to substantiate?

(Loud consultations)

The Speaker (Hon. Ethuro): Order, Members! One thing I will never allow is for us to use this House for issues that are not relevant to the debate on the issue at hand.

Secondly, if you have been asked to substantiate an allegation, it is very simple; you either substantiate or withdraw. There should be no debate about it.

May I ask the Senate Minority Leader that if he has something to substantiate let him do so. If there is nothing, let him withdraw and we proceed. Since you are given the next sitting day to do so, I will look at the HANSARD and – let me pronounce from where I stand – make a ruling that will be definite. I will look at all those sources and also seek the necessary actions in terms of disorderly conduct.

The Senate Minority Leader (Sen. Wetangula): Thank you, Mr. Speaker, Sir, for that clarity. Before I deal with that, let me tell the Senator for Nandi that in the entire afternoon I have been debating issues. I have been talking about the Constitution, the law and the inadequacy and his failed ability to answer a simple question that we brought

here. If he thinks that he is going to debate my person, character and standing, let him bring a Motion here as the Standing Orders say and we will “chew him alive” here in English or Kiswahili.

(Laughter)

These are diversionary tactics. You know some of us have been in public life for a very long time and we know ---

Sen. Sang: On a point of order, Mr. Speaker, Sir. The Minority Leader is a respected Member of this House. As a seasoned Member of Parliament, he understands the rules of engagement in this House. Is it parliamentary to say that he will “chew”? Is he carnivorous? What kind of a human being is this?

(Laughter)

The Senate Minority Leader (Sen. Wetangula): Mr. Speaker, Sir, I take absolutely no responsibility for the young Senator’s inability to comprehend the English language.

On the issue that you directed me ---

(Laughter)

The Speaker (Hon. Ethuro): Order, Senators! By the way, the Senate Minority Leader, he respects your profession and that you are certified and qualified. I am sure that even professionally, you owe him that acknowledgement.

In fact, Sen. Sang has been so generous to you that if you have the capacity to chew, you can be a carnivore. I would have attributed something else like cannibalism.

(Laughter)

The Senate Minority Leader (Sen. Wetangula): Mr. Speaker, Sir, I think if elections came again, we shall vote for you. I do not know if they will.

(Laughter)

Standing Order 94(1) is very clear on being challenged to substantiate. The statement that I made from the Dispatch Box that elections were won fraudulently is my opinion. Unless the Chair is telling this House that Senators cannot hold opinions. We are entitled to our opinions. Somebody can stand up and say Sen. Billow is handsome and I can say he is the most horrendous looking character. That will be my opinion and I am entitled to it.

From what I said, I did not disparage or cast aspersions on anybody. I simply said the Jubilee regime won elections fraudulently. That is my opinion and they can hold a contrary opinion to what I hold. That is what debate is all about; that you have an opinion

and somebody else has another one; whether you convince each other or not, you leave it for another day.

The Speaker (Hon. Ethuro): Order, Senators! This matter cannot be exhausted through exchange of opinions. There will be one opinion which will matter and will be binding. That will be my opinion. I will look at the HANSARD of today. You can go on recess knowing that you will come back and you will meet the full force of the Chair.

Sen. (Dr.) Machage: On a point of order, Mr. Speaker, Sir. I beseech that you also look at Standing Order No.94(2) as you make your ruling because Sen.Sang also has a duty to convince you that actually Sen. Wetangula was mischievous in the House.

The Speaker (Hon. Ethuro): Order, Sen. Machage! You serve in my panel and I have said I am going to look at the HANSARD and raise all issues, including, may be for your purpose, words like “trash” or “trashing” and “chew”. Those are the words I will be looking for.

I will also check whether the opposite of beautiful is horrendous or ugly. Whatever was said, I will look at them with a tooth comb. I will also look at what has transpired before because I think it is time that we bring some things to finality. From there henceforth, we will not entertain any other contrary opinions to that particular opinion, just to use the same word known as “opinion”.

On the matter of Sen. Sang, I think there are many gaps in that particular Statement. Elections are an extremely important matter. That is the process through which you came here. We must deal with it accordingly. We will give you the opportunity to interrogate the matter further and then I will give you an opportunity to raise the issues.

DELAYED SUBMISSION OF AUDITED ACCOUNTS OF COUNTY GOVERNMENTS FOR FINANCIAL YEAR 2013/2014

Sen. Kembi-Gitura: Mr. Speaker, Sir, I rise under Standing Order No.45(2)(b) with your permission to seek clarification on a point that has been going on for some time now.

Mr. Speaker, Sir, as all of us are aware, the major role of the Senate is to protect the interests of counties and their governments. We have the County Public Accounts and Investments Committee (CPAIC) which is chaired by Hon. Sen. (Dr.) Khalwale. We have been doing a follow up to know when the audited accounts of counties will be made available. Sen. (Dr.) Khalwale has been telling us that he is in consultation with the Auditor-General and that the audited accounts will be made available as soon as possible. This has been going on since December last year.

Mr. Speaker, Sir, we shall be negating our duty – as Senators and the people with the oversight role over counties – if we are caught up with another financial year before we have seen and interrogated the audited accounts of the counties. However, we know – I say this with the privilege of being in the Senate – that audited accounts can be manipulated. We would like to have those accounts as soon as possible so that we interrogate them through the Committee chaired by Sen. (Dr.) Khalwale and in this House.

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Mr. Speaker, Sir, the direction I would like to get from you is about what the Committee is doing to ensure that the audited accounts are made available to this House without any further delay so that we continue to pursue our major role as protectors of counties.

The Speaker (Hon. Ethuro): Sen. (Dr.) Khalwale, I had actually approved your request almost along similar lines. Would you like to proceed with it?

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, I am glad that the Deputy Speaker has raised this matter. I would like the House to know that I have pursued this matter with the seriousness that it deserves to this extent. As recently as two weeks ago, I was informed by the Senior Deputy Director at the Kenya National Audit Office (KNAO) that the accounts have been audited. They have come from the counties and are at the Anniversary Towers merely awaiting the Auditor-General to append his signature. He told me that it would not take more than seven days. However, seven days have passed.

Mr. Speaker, Sir, if you will not be decisive, let it be known that allowing audited accounts to remain unsigned opens up the possibility of the auditees, who have been mentioned adversely, to manipulate those documents. Some of the auditees who have been mentioned adversely include governors. These days, governors control billions of shillings. Some of them have even been cited as possible candidates for investigation on matters of corruption. You cannot leave billions of shillings in the hands of people with that kind of possible history and expect that they will not use the same money to sanitize themselves.

Mr. Speaker, Sir, I request that you speak authoritatively. I also request – as I had said earlier this afternoon – that the pending issue with the High Court be unlocked. This is because even if the documents will be tabled here, we will not interrogate those governors. That is all that I have to say for now. However, if I am expected to say more, I will do so at the next sitting of the House.

I thank you, Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): Sen. (Dr.) Machage, please be brief.

Sen. (Dr.) Machage: Mr. Speaker, Sir, it is indeed disheartening and very discouraging to hear this kind of report from our own Chairman of a very relevant committee in this House that audited reports have been left unsigned for a period that exceeds what he thinks is normal and acceptable in that regard. The Committee has also powers like the High Court to order that the reports to be signed and delivered to this House. Would I, therefore, be in order to beg that this Committee exactly does that, then you execute whatever reality of eventuality will be thereafter if they refuse to sign and deliver the reports to the House?

The Speaker (Hon. Ethuro): Hon. Members, the Chair of the Committee brought to the attention of the House, previously, the predicament he has seen in terms of these reports and various court orders that have been given. The Deputy Speaker has also brought that to our attention. He said if the process is not expedited, it could lead to tampering of the reports and other issues.

First, I want to say that my position has been clear. Any matter that is before the Committee must be prosecuted according to the Standing Orders. The matter of *sub judice* is covered in Standing Order No. 92. Whoever thinks that a matter is *sub judice*

must come before you, as the Chairman of the Committee, to prove that proceedings are active; both civil and criminal. Standing Order No.92(5) states that:-

“Notwithstanding this Standing Order, the Speaker may allow reference to any matter before the Senate or a Committee.”

At the Committee level, you have my entire powers. Just make sure that they do not go beyond the sitting of the Committee. If a matter comes here and it is canvassed as *sub judice*, you must produce the particulars after you have looked at them and then will proceed if you find that it is not warranted. That should be our position for now. However, I will look at all the material facts around the issues you have raised and I will give a proper direction when we resume next. Thank you.

OUTBREAK OF CHOLERA IN THE COUNTRY

The Speaker (Hon. Ethuro): I had promised to allow Sen. Mugo to respond to a Statement on cholera outbreak. Is it ready?

Sen. (Dr.) Machage, you may respond to the Statement about the cholera outbreak.

Sen. (Dr.) Machage: Thank you for the opportunity, Mr. Speaker, Sir. On behalf of my Chair and the Vice Chairperson who is in the House but could not read this Statement because she has lost her spectacles. I take this opportunity to execute the same. I will give the background on the cholera situation in the country as per now.

The cholera outbreak that started on 26th December, 2014 in Nairobi County has so far affected 11 counties. The total number of cases as at 17th May, 2015, was 3,135 with 61 fatalities. Therefore, the case fatality ratio is 1:95. The national distribution is as follows:-

Nairobi had 371 cases with 16 deaths, which is about 4.3 per cent.

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

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

Migori has had 15 cases with 12 deaths, which is about 1.3 per cent Case Fatality Rate (CFR). Homa Bay has had 377 cases with five fatalities that is 1.4 per cent CFR. Bomet has had 272 cases and two deaths which is 1.5 per cent CFR. Mombasa has had 99 cases and five deaths, which is 5 per cent CFR. Murang'a has had 567 cases and four deaths, which is a 0.7 per cent CFR. Nakuru has had 210 cases with 16 deaths, which is a 7.6 per cent CFR which is the highest. Kirinyaga has had 253 cases with no deaths. Kiambu has had 39 cases and one death which is a 2.6 per cent CFR. Embu has had 13 cases and no deaths. Baringo has had 19 cases and no deaths. The total is 3135 with 61 fatalities.

The outbreak seems to be spreading fast and even affecting some counties that have not traditionally been affected, such as Kiambu, Murang'a, Kirinyaga and Embu. Most of the health functions have been devolved including the health workforce, the county health facilities and primary healthcare. Therefore, key prevention and response

intervention such as public education on hygiene and sanitation, provision of safe water systems and management of cholera cases is primarily the function of the county government because this is a devolved function.

As the national Government, the Ministry has continued to play its role which is mainly confined to coordination, technical assistance upon request by the counties, provision of guidelines and policy direction, provision of medical supplies and laboratory confirmation services. As part of the national government support, the Ministry has sent technical teams to all affected counties. It has also supplied medical and laboratory supplies to the affected counties. However, due to the high number of counties affected, more supplies and contingency funds are needed at the national and county levels.

On whether devolution of health services in the county could be attributed to the rising cases of cholera, this is what the Ministry says: While devolution of health services promises to improve health care delivery in the country, its implementation has faced several challenges in many of the counties due to lack of proper implementation structure. This has led to a demoralized workforce that has partially led to lack of focus in building better health systems. It is possible that this could have contributed in a way to the cholera outbreak in some counties.

On whether the devolved units have the prerequisite capacity to manage such health problems, devolution of health services needs time to be carefully operational. While some counties seem to be doing well, it is evident that some of the counties have challenges in managing the health services at the moment. The national Government is, therefore, however, optimistic that this will improve with time.

On the circumstances leading to the emergence of cholera cases in areas that have been affected by the disease in the past, the Statement states that the current cholera outbreak is attributed to the dry spell that was experienced in most parts of the country at the beginning of the year. This resulted in scarcity of safe and clean water, hence forcing communities to use water from contaminated sources including shallow water wells and dams. Besides scarcity of safe drinking water, illegal water connections and informal settlements in Nairobi have been identified as a major risk factor to the current outbreak in the city.

With the over-flooding due to the heavy rains, toilets have burst and caused a lot of contamination in the springs and wells and hence the propulsion of the cholera scourge. Other risk factors of the outbreak include widespread movement of people, floods in some parts of the country, poor hand hygiene, low use of latrines in some of the affected communities and eating food in unhygienic environments. Health indicators have also been noted to decline in some of the counties since the onset of devolution. This could also be contributing to the outbreak.

In counties that have reported outbreaks, emergency funds have not been readily available to the rapid response teams. As part of trying to seek the solutions to the outbreak, the Ministry of Health will hold a major stakeholder meeting on 21st May, 2015 – this has already taken place - with representation from all the 47 counties and other stakeholders. Each county was to be represented by the County Director of Health and County Disease Surveillance Coordinator.

Thank you.

Sen. Mugo: Thank you, Mr. Deputy Speaker, Sir. I want to thank the Senator for Migori County for that answer which he read on behalf of the Chair. I appreciate the answer. I think we all have seen how bad this situation is. The reasons given here are definitely obvious, but we have had drought in the past and we had somehow managed to control cholera outbreaks in this country for quite some time now.

Whereas I appreciate the explanations, I do not see other than that stakeholder's meeting, what other interventions are going to be done so that we do not continue to have the spread of cholera. Cholera is very bad for us, as a country, and worse still if the World Health Organization (WHO) puts Kenya on the corridor of cholera; which would mean that when Kenyans travel they have to produce a cholera vaccination and when people come to our country the same thing is done.

I am part of this Committee and I know that the Members have tried but if we could go further and ask what interventions would be done so that we do not continue getting this outbreak. I know that prevention and response interventions such as public education, hygiene and sanitation--- we understand that there are some counties which are not well equipped or have the capacity to do this. Is this a function that we could propose that the Ministry of Health continues to perform and empower the counties to take such responsibility? We cannot watch as the people continue to be killed by cholera outbreak until they improve.

There are those counties which are able prevent cholera outbreak; only that it did not get to their counties. It is alarming that counties which have never had cholera before now have cholera. I think we should go back to the drawing board and see whether there are counties which might need support from the health Ministry, especially where disease surveillance and prevention is concerned.

Thank you.

Sen. (Dr.) Machage: Mr. Deputy Speaker, Sir, cholera epidemic is an end product of many of several system failures including environmental management, sewage disposal and poor dissemination of funds when emergencies occur. To say that this epidemic is a fact that the county level health services are failing, is being a little bit myopic. Especially so, taking into cognizance the fact that a lot of funds in our budgeting system that are supposed to be disseminated directly to the counties, are held by the national Government. I would have thought otherwise but if you listen to the answer from the Ministry, apart from supplying a few personnel, no money was given to the counties to manage the epidemic. Is it sabotage from the national Government to the county governments? I think so. Cholera is a primary health issue. It is a disease that occurs because of:-

1. Poor knowledge and practice.
2. Poor water supply.
3. No facilities to manage and maintain the situation as early as early cases are identified.

Therefore, what is necessary is not to return these services to the national Government but to fully move the policy and financial support to that level of primary health care, that is, the county. Give them the facilities and educate the people. Let people have latrines at that level and use them. They could have latrines and they do not use

them. Let us have clean water supply to those communities and cholera will be something that will never be seen in Kenya again. To get cholera, it simply means that you drink or eat somebody's faeces. That is all. That is something that I think the national Government can manage.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Mugo, are you satisfied?

Sen. Mugo: Mr. Deputy Speaker, Sir, I concur with some of the sentiments from the Senator for Migori but I think capacity building also takes time. Even if you give all the money you can give; without capacity, know-how and adequate staff who are properly trained in that area, I do not know if we will win the war. That it is something that needs to be discussed between the two levels of Government.

The Deputy Speaker (Sen. Kembi-Gitura): Thank you. That appears to be the end of Statement time. There are no other requests.

Proceed, Sen. (Prof.) Anyang'-Nyong'o.

Sen. (Prof.) Anyang'-Nyong'o: Mr. Deputy Speaker, Sir, I want to add one or two things on this issue of preventive healthcare or public health that my colleagues, Sen. Mugo and Sen. (Dr.) Machage have been discussing. It is true, as Sen. Mugo said, that we need capacity at the local level; in villages, townships and so on to deal with cholera. You will find out that the geographical occurrence of cholera is usually in the highly populated rural or urban communities, where, as Sen. (Dr.) Machage said, certain environmental and sanitation issues arise.

One of the most dangerous things in Kenya and I have always said so, is this continued reliance on pit latrines in places like Kibera, Mathare and in rural areas. As population increases, more people will inhabit very small pieces of the earth. Therefore, digging pit latrines raises the danger that when it rains or when people build, you will expose yourself to the faeces.

First, these environmental and sanitation practices can be stopped by law and application. Secondly, they could be stopped by better infrastructural development in terms of having no pit latrines but modern ways of getting rid of faeces. If you look at small countries like Cuba, Costa Rica and even Rwanda for that matter, with what I call less developed economies but better local governance, respect and implementation of law, you will find that they do not easily become predisposed to problems of public health or sanitation.

Mr. Deputy Speaker, Sir, if you focus your mind back to colonial times, you will find that the chiefs had a lot of power. This was not devolution; it was deconcentration. Power was deconcentrated from the top to the grassroots. The chief had a lot of power. He or she implemented public health and sanitation laws. The chief's word was final. You had to do what he said. This was the colonial way of making sure that public health and sanitation in rural areas and in popular cottiers were respected. What we need now is to make sure that this responsibility for water resources, land use, health, sanitation and so on are fully handled at the local level the way the chief handled it in colonial times and the way it is handled in such societies, for example Costa Rica, Cuba and so on where systems of local governance like we have here, which is now devolution, are properly and effectively put in place.

When I look at the number of people that we have trained through the Kenya Medical Training Colleges in this country, and Sen. Mugo would remember, they are many and waiting to be employed. In the past, the Government has not been able to employ these people because money was not available to employ all of them. This is the time to mobilise these people who are looking for work to be employed as public health officers at the grassroots level and be given responsibility---

The Deputy Speaker (Sen. Kembi-Gitura): Order, Senator. Please conclude. This is Statements time. Just seek a clarification. The reason why I allowed you to continue is partly because of your personal experience about the issues and the importance of the issue.

Sen. (Prof.) Anyang'-Nyong'o: Mr. Deputy Speaker, Sir, let me conclude. You are right; I think I am going on for too long. I just want to emphasize the two points we are making. I believe that we have the personnel, the human resources because they are out there and they have never been employed. I believe that if they are effectively put in place and effective laws are put in place, we can do it. We are in a position to do it and we have not just done it because of mistakes of omission.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Muthama, are you seeking a chance on the issue of cholera?

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

The Deputy Speaker (Sen. Kembi-Gitura): Please remember that it is clarification. Like I said, the reason I allowed Sen. (Prof.) Anyang'-Nyong'o and Sen. Mugo to talk more than seek clarification, was mainly because of the unique position and knowledge about this having served as Ministers for Health in their respective times.

Please, proceed and seek a clarification.

Sen. Muthama: Mr. Deputy Speaker, Sir, this issue is of great concern to many Kenyans. The Chair has said that in the last three months we had 3,000 victims, out of which 61 lost their lives. We are just concerned by what is happening in the whole country, especially when it comes to the issue of Cholera. We know very well that it is spread due to lack of coordination.

Recently I moved a Motion on the Floor of the House seeking to have Athi River and Tana River water protected from pollution. We went with the Chairman of the Committee on Implementation to the main reservoirs at Kasarani and Ruai. We saw and heard a lot there. The experts will tell you that all the sewage in Mathare is dumped into the river. The same applies in Mukuru Kwa Njenga. Despite all this happening, Kenya is still rated one of the best countries in the African continent.

Also, we have no medicine in hospitals. The Kangundo District General Hospital does not have medicine; not even panadol. When the President visited Machakos the day before yesterday, about 20 dead bodies were dropped by the roadside, in an attempt to dispose them before the President inspected the hospital. The mortuary was built to preserve dead bodies, yet somebody gave instructions for the bodies to be taken away and disposed so that the President could find an empty mortuary.

Therefore, the Chairman has a lot of work to do. We talk about the environment and many other things, but unless Kenyans are committed to work round the clock for the

service of their country, we will not move away from these problems. That is my advice to the Chairman.

The Deputy Speaker (Sen. Kembi-Gitura): Thank you. Sen. Machage, do you have a further statement on this issue?

Sen. (Dr.) Machage: Mr. Deputy Speaker, Sir, I appreciate the sentiments and comments expressed by my colleague. The one thing that I have to seek the Senate to be aware of is the necessary bottlenecks that may be put in the path of the management of health services at the county level. I also believe that there are certain legislative issues that need to be looked at. The Waste Management Act was last amended in 2006 and does not address the population increase and the increased industrialization in this country. That needs to be looked at. The Food and Drugs Act that manages food might not be fully implemented because of the apathy of officers at that level due to issues of payment of salaries for health staff at the county level. Once money flows well to the counties, we will have a more effective way of managing our health environment.

Thank you, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. Kembi-Gitura): Thank you, Senator. That marks the end of that Statement.

Sen. Mungai, I can see that you are seeking the Floor.

CLOSURE OF THE ROAD TO LAKE
NAIVASHA BY A PRIVATE DEVELOPER

Sen. Mungai: Mr. Deputy Speaker, Sir, I rise under Article 40 (2) (b) of our Constitution---

The Deputy Speaker (Sen. Kembi-Gitura): Is it the Constitution or Standing Orders?

Sen. Mungai: Mr. Deputy Speaker, Sir, it is Standing Order No.45. It also touches on our Constitution, under Article 40 (2) (b).

As the House is aware, there have been skirmishes in my county, in the south of Lake Naivasha which have led to destruction of property. This morning, the road to the south of the lake and to most flower farms was closed. The Maai Mahiu Road was also closed by residents who are annoyed due to the fact that a corridor leading to Lake Naivasha has been closed by a private developer.

Mr. Deputy Speaker, Sir, this is not the first time that this is happening. Within that area, there have even been deaths that are associated with this problem. Lake Naivasha hosts a lot of floricultural companies that bring a lot of money to our country in terms of foreign exchange. So, the disruptions yesterday and this morning have cost our economy immensely. In this matter, the police have been used to suppress the local people who have a right under the Constitution to access the lake. If this matter is not addressed, it can spill over and lead to serious disruption of activities in Naivasha and the surrounding shopping centres.

I would like to urge the Government to realize that the sovereignty of this country lies with the people of Kenya. When the citizens feel that they are being alienated from their rights, the Government's popularity becomes dented. It is, therefore, important that

the Government addresses this matter and realizes that the economy of this country and my county relies so much on what happens around that lake.

Almost 150,000 people are employed by the farms there. So, those farms create many jobs. Karagita houses almost 70 per cent of this population. Therefore, denying such a huge population access to the lake to go and relax and the fishermen to do fishing is the mother cause to the skirmishes. No part of Nakuru County should be in the newspapers or in the televisions news in this country for the wrong reasons.

Mr. Deputy Speaker, Sir, thank you for giving me this opportunity. I hope that this has been heard.

The Deputy Speaker (Sen. Kembi-Gitura): Thank you, Senator. We hope that a solution to that problem is going to be found much sooner than later.

Hon. Senators, we still have a Motion for adjournment which is coming later. I would like to rearrange the Order Paper for today, so that we are in time for all those things. We will skip the Motion at No. 8 on the Order Paper so that we deal with it when we resume, if we actually go on recess.

We are also going to skip the Natural Resources (Benefit Sharing) Bill (Senate Bill No. 34 of 2014), Order No.9. We will then take Order No. 10 on the Order Paper, the Reproductive Health Care Bill (Senate Bill No. 17 of 2014), which is a resumption of debate interrupted on Tuesday, 26th May 2015.

MOTION

ESTABLISHMENT OF SELECT COMMITTEE TO LOOK INTO THE AFFAIRS OF THE KENYA AIRWAYS LIMITED

THAT, aware that the Government of Kenya has a 29.8 percent shareholding in Kenya Airways Limited thereby being the largest single shareholder in the company;

COGNIZANT of the fact that Kenya Airways Limited, the national flag carrier, has been experiencing tremendous delays and cancellation of flights;

AWARE that each delay and or cancellation has led to grave losses to the airline thereby worsening the debt burden of the corporation;

REALIZING that the airline is now in debt to the tune of Kshs18 billion;

FURTHER AWARE that the current business plan of the airline does not seem to take into full account necessary measures to turn the company around;

CONCERNED that the situation, if left unchecked, may lead to the collapse of the company and great loss to the nation, investors and the Kenyan taxpayers;

NOW THEREFORE, the Senate resolves to establish a select committee to conduct an inquiry into the affairs of Kenya Airways Limited and its subsidiaries, and report to the Senate within three months, taking into account the following-

- (i) The leasing and buying arrangement of aircrafts since 1996;
- (ii) The role of off-shore companies in the investment affairs of the airline;

- (iii) The identity of the share holders of these off-shore companies and their relationship with the management of Kenya Airways Limited;
- (iv) The employment policies and practices of personnel, including engineers, pilots, cabin crew and ground personnel;
- (v) The reason for delayed and cancelled flights, their frequency and the magnitude of losses attendant therein; and
- (vi) Any other matter that may shed light on the financial and management crisis currently facing the airline;

AND FURTHER that the Members of the Select Committee are:-

1. Sen. (Prof.) Anyang' Nyong'o
2. Sen. Mutahi Kagwe
3. Sen. Hassan Omar
4. Sen. Daniel Karaba
5. Sen. (Dr.) Boni Khalwale
6. Sen. (Dr.) Agnes Zani
7. Sen. Lesuuda Naisula
8. Sen. Peter Mositet
9. Sen. (Prof.) Wilfred Lesan
10. Sen. Billow Kerrow
11. Sen. James Orengo

(Motion deferred)

COMMITTEE OF THE WHOLE

THE NATURAL RESOURCES (BENEFIT SHARING) BILL
(SENATE BILL NO. 34 OF 2014)

(Committee of the Whole deferred)

The Deputy Speaker (Sen. Kembi-Gitura): We will proceed to Order No. 10. Sen. Muthama was on the Floor and still has 12 minutes.

However, but before we do that, please, proceed with your point of order, Sen. Muthama.

Sen. Muthama: On a point of order, Mr. Speaker, Sir. I rise to refer the House to the Standing Order No.45. There is a Statement that has been prepared by the Senate Majority Leader. Since he is not in the House, I can read it on his behalf.

STATEMENT

BUSINESS FOR THE WEEK COMMENCING
TUESDAY, 2ND JUNE, 2015

Sen. Muthama: Mr. Speaker, Sir, I rise under Standing Order No.45, to present to the Senate business for the coming week. As Senators will note in the Order Paper, Order No. 19, the Senate Majority Leader will move the Motion for the adjournment of the Senate, in accordance with the Standing Order no. 28(3), and as per the Senate calendar, for the House to adjourn for approximately two weeks until Tuesday, 16th June, 2015.

Consequently, allow me to take this early opportunity to sincerely thank and commend you for your diligence and commitment in executing the constitutional mandate of the Senate, particularly in ensuring that the five Bills with a constitutional deadline of 27th May 2015 were passed within the stipulated timelines and that the business of the Senate ran as planned. It is also worth noting that the all important reports on the mediated version of the Division of Revenue Bill (2015) was approved yesterday thereby affirming the fact that devolution is here to stay and that the Senate, the guardian angel of devolution, is there to ensure that it is well.

Hon. Senators, as we proceed for the short break, I take this opportunity to wish you a fruitful recess as you connect with your constituents. I also appeal to you to spare time and travel around the country to witness firsthand the transformation taking place in the counties.

I thank you and hereby lay the Statement on the Table.

Signed by, the Senate Majority Leader, Sen. (Prof.) Kindiki.

(Sen. Muthama laid the document on the Table)

The Deputy speaker (Sen. Kembi-Gitura): Thank you, Sen. Muthama.

PETITION

MARGINALIZATION OF KOLA WARD BY
MACHAKOS COUNTY GOVERNMENT

The Deputy speaker (Sen. Kembi-Gitura): Hon. Senators, before we proceed to Order No. 10 on the Order Paper, there is a Petition to the Senate that I want to put before you so that it is committed to the appropriate Committee. It is a Petition to the Senate by Hon. Festus Ndeto, Member of the County Assembly (MCA) representing Kola Ward in Machakos County, concerning marginalization of his ward in the implementation of development projects by the Machakos County Government.

Pursuant to Standing Order Nos.221 and 225(2)(b), I hereby report to the Senate that a Petition has been submitted through the Office of the Clerk of the Senate by Hon. Festus Ndeto, Member of the County Assembly (MCA) representing Kola Ward in

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Machakos County, concerning marginalization of Kola Ward in the implementation of development projects by the Machakos County Government.

As you are aware, under Article 119(1) of the Constitution says:-

“Every person has a right to petition Parliament to consider any matter within its authority, including to enact, amend or repeal any legislation.”

Hon. Senators, in his Petition, Hon. Festus Ndeto states as follows:-

(a) that in the approved budget for Machakos County for the Financial Year 2013/2014, a number of projects were earmarked for development in Kola Ward as follows;

- (i) construction of three roads each at a cost of Kshs5 million;
- (ii) construction of early childhood development classrooms;
- (iii) construction of two water projects namely, Lumbwa Water Project and Kitunduni Water Project at a cost of Kshs9 million and Kshs6 million respectively;
- (iv) drilling of four boreholes and dams
- (v) disbursement of Kshs4 million set aside for the elderly, physically challenged and youth groups;
- (vi) disbursement of Kshs2 million set aside for bursaries;
- (vii) construction of Mumandu Market drainage system;
- (viii) construction of Mumandu Market shades at a cost of Kshs5 million;
- (ix) construction of a health center in the ward at a cost of Kshs12 million;
- (x) supply of 10,000 litres water tanks for each primary school in the ward;
- (xi) purchase of land for public utilities;
- (xii) construction of ward administration offices; and
- (xiii) purchase of two ambulances for the ward.

(b) THAT, of the above projects, only the two ambulances, the water tanks for the primary schools, one road and health center, which is only partly constructed have been implemented;

(c) THAT, of the projects earmarked for Kola Ward in the Financial Year 2014/2015, no single project has been implemented; and

(d) THAT, the Governor of Machakos County has stated through allies that he will not do anything for Kola Ward due to the petitioner’s political persuasion and stand against corruption and the petitioner believes that this is the reason why the electoral ward he represents has been marginalized when it comes to initiation and implementation of development projects in Machakos County;

(e) THAT as a result of (d) above, the Governor has acted in contravention of Article 27 of the Constitution on equality and freedom from discrimination, by denying the public resources to Kola Ward, thereby disadvantaging Kola Ward residents who are loyal taxpayers; and

(f) THAT unless something is done to reverse this unfortunate trend, the residents of Kola Ward will be denied the right to enjoy the gains of devolution whose prime objective is to bring services and development closer to the people.

(g) THAT the petitioner has brought to the attention of the relevant county departments, relevant County Assembly committees and also sought the intervention of the County Assembly through statements without a solution.

(h) THAT the issues in respect of which this Petition is made are not pending before any court of law, constitutional or legal body.

The petitioner consequently requests the Senate to investigate the matters raised in the Petition in order to ascertain why the people of Kola Ward have been sidelined in the implementation of development of projects by the Machakos County Government during the Financial Years 2013/2014 and 2014/2015; to establish where the funds earmarked for the said projects were spent. Further to intervene and resolve the matter relating to the skewed development in Machakos County to the disadvantage of Kola Ward.

Hon. Senators, pursuant to Standing Order 226, I shall now allow comments, observations or clarifications in relation to the Petition for not more than 30 minutes.

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

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Orengo, is it on this point?

Sen. Orengo: Yes, Mr. Deputy Speaker, Sir. One of the principles of this Constitution, not just on devolution but across the national and county spectrum, is the principle of non-discrimination and equitable sharing of resources both at the national and county levels. Through various mechanisms, Parliament in the distribution of resources, both at the national and county levels, tries to make a determination on the share of these resources based on those principles, particularly the one to do with equity and additionally to make sure that no communities are marginalized or do not access resources for their empowerment and upliftment in life.

To that effect, there are devolved funds also at the national level that have made it possible for national resources to get to the counties including the Constituencies Development Fund (CDF). That Fund as you are aware, although it is under challenge, but it has made sure that national funds, for purposes of certain targeted development projects take place across the country and in every constituency and ward.

Mr. Deputy Speaker, Sir, similarly, counties and county governments must have an equal responsibility to make sure that development reaches all the people in the county and that resources are also equally shared in the county. Indeed, without pre-empting debate on this matter, in the Bill that relates to the anticipated referendum by the CORD Coalition, one of the proposals is to make sure that wards just like constituencies get certain funds to ensure that they are not left behind in development.

Therefore, if what is contained in that Petition is true and correct, then I would wholly support the directions to be given by the Chair so that the Senate can fully, again through appropriate procedures look at it and determine whether or not what is being alleged is correct. If it is correct, what steps can be taken to ensure that no Kenyan and no community can suffer on accounts of their political beliefs or their standing in society or on any other grounds that would offend the Constitution of Kenya.

Mr. Deputy Speaker, Sir, even in the most developed nations of the world, sometimes you may find pockets of people who are living a life that is not comparable to the status of that country. Equally, and in fact, the correct position is that there are some other people in Kenya who are still living in conditions that pre-date our Independence. We cannot allow that to happen. Machakos being a county that has been open to development right from colonial times, in fact the first capital of this country in the

colonial days was Machakos. Therefore, it would be wrong that any ward or any part of that county is not receiving its fair share of the resources.

That is one of the issues that this Constitution wants to address. That is the reason behind devolution. The principle of devolution should not just be seen as an obligation on the part of the national Government; even the county governments have an obligation. We have gone to several counties in this country and you will find areas where governors or elected officials feel that they did not get votes or support of a particular community. Therefore, without the intervention of this Senate, you may find that we are doing our job correctly by making sure additional funds go to the counties, like we have just done with the Division of Revenue Bill, but when those funds get to the counties, they are used in a manner that does not entail equity and social justice to the citizens.

Mr. Deputy Speaker, Sir, I commend the Petition without prejudging it and wait for your directions on this matter.

The Deputy Speaker (Sen. Kembi-Gitura): Thank you, Senator. There is some interest on this matter and like I said, you cannot exceed 30 minutes. I am going to allow a maximum of five minutes so that everybody can have something to say.

Sen. (Prof.) Anyang’-Nyong’o: Mr. Deputy Speaker, Sir, I just wanted to speak very briefly on this issue. I am the Chairman of the petitions sub-committee of the Committee on Finance, Commerce and Budget and we have realized that we are going to get more and more of these petitions, the reason being that there seems to be no understanding in counties that these are governments just like the national Government. In this Senate, we come from various parties and coalitions but when we make decisions about counties, we do so in the interest of those counties where the people of Kenya live. It looks as if some counties, when it comes to making use of public resources, public officials begin taking into account political sympathies or affiliations, which is completely undemocratic because all these people are taxpayers.

Mr. Deputy Speaker, Sir, I want to propose that we should look at possibilities as quickly as possible of making sure that Ombudsman’s offices are in every county so that when things like these happen, residents have an office they can run to, to complain about the conduct of public officials. This may help mitigate this tendency in counties of people getting punished because of their political views, support for governor or ward representatives, or lack of support therein.

Therefore, one of the things we should consider is to have the Ombudsman’s offices located in all counties so that people can have a place to run to. More importantly, as you can see, these petitions are increasing.

The Parliamentary Service Commission (PSC) should really think very seriously about capacity building or having special services to support petitions. For example, I am currently handling two petitions; one from Kisumu and another from Vihiga. I have realised that the staff that we have lack the capacity to help us handle these petitions expeditiously. So, we may find that these petitions, for them to come, we need to send a quick fact finding mission on the ground, not the Senators themselves but maybe civil servants from the Senate who will go and establish the facts like Sen. Orengo said and verify what is on the ground so that it shortens the time of listening to these petitions. Sometimes, certain facts can be exaggerated or understated but if you have a quick

auditing unit in the Senate that can go and verify what is said in the Petition, then our committees can do a much more efficient job than we are capable of doing at the moment.

I am sorry at the moment, we may take longer listening to petitions, verifying them and making decisions just because we do not have proper capacity in the Senate to do some due diligence on the complaints made and inform the particular committee handling a petition so that we do our job more effectively.

Sen. Muthama: Thank you, Mr. Speaker, Sir. This Petition originates from my county. It is not different from other petitions which have been lodged in this House by Kenyans from other counties. I do not want to say much because it is on record that probably I am one of those who are not satisfied with the operations of my county. For that reason, I refer the House to Article 96(1) which says:-

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

The people of Machakos through MCA Ndeto, the writer and the Petitioner, are coming before this House to present their grievances and problems to the Senate so that they can be listened to.

I request the concerned committees that these petitions are going to be very many. There is no one county that is not raising issues. It is said that justice delayed is justice denied. For that reason, the committees must work with the fastest speed possible to ensure that the life of this House does not expire and leave pending issues. The hope of Kenyans wherever they are when it comes to devolution is on this Senate.

I do not want to say much. I wish the Committee the best of luck and ask them to work to fulfill the expectations of Kenyans. There is no other place where these petitions can be dealt with other than on the Floor of this House. As I said, since they are going to be too many and in big volumes, it is up to the committees to work round the clock to make sure that they deliver justice to Kenyans.

Sen. Sijeny: Thank you, Mr. Speaker, Sir. I also wish to commend the petitioner because he is resorting to peaceful means of solving a problem which is so dear and crucial to not only him but the people of Machakos and Kenya. Devolution is still new, and I believe that these are teething problems and that is why people are still not guided on the right way of including all Kenyans.

I heard one leader who comes from one of the marginalized areas say that for the first time, they can actually say that Kenya has achieved Independence. This is because resources are now trickling down to the marginalized and remote areas. It is not only Nairobi and a few selected areas that benefit. It is very key and crucial that leaders deal with these aspects of devolution carefully. We should not allow a situation where a leader – I may refer to the Governor of Machakos and others – may feel that the power of whatever resources within his or her control can be used as he or she wishes. There should be rules, regulations and guidelines.

This Petition will give a proper guideline which may be utilized in other areas, especially in these petitions that have already been received. That way, as the Senate, we can disseminate through every aspect down to everybody. The MCAs should also know that once they get the resources that we are fighting so dearly for, they should share

without fear, discrimination or favour. We need to go into the nitty-gritty as to why such things are happening and this is surely the right place. I commend the person who has approached the Senate. He believes in us and it shows that Kenyans truly know that the Senate is here for them and it shall definitely articulate all the issues brought to it.

Sen. (Prof.) Lonyangapuo: Thank you, Mr. Deputy Speaker, Sir. This Petition reveals a lot of distress that some wards and counties are going through as a result of some decisions that are one man or woman show in the counties. Some MCAs have been made to kneel down before some governors for their wards to be given their share. This is very strange because the funding that goes there has never been sourced and delivered by a governor. The Senate sits here and toils to the extent that even as late as yesterday, there was still an attempt to add more money to the counties. When it reaches there, we are quickly shut off and the people who voted for us are made to look like they have to be in favour of one person. This is a story that is told in all the counties.

I join my colleagues in thanking this MCA who was bold enough to come all the way to bring this Petition to the Senate.

Sen. Orengo: On a point of information, Mr. Deputy Speaker, Sir. It is not really the people who voted for us. In this particular respect most of the time it is the people who we campaigned for. In Siaya County it is the person I campaigned for. They are the people who are doing these things.

Sen. (Prof.) Lonyangapuo: Mr. Deputy Speaker, Sir, Sen. Orengo is very right. On the ground, you may find some of the Members of County Assembly (MCAs) we campaigned for dishing out money. They said that the Senator carried them on their back. Suddenly, they turn out to be monsters and start doing things that do not make sense. In my county – the same applies in almost all counties – if an MCA has a bad relationship on phone or otherwise with a Senator, the Senator discriminates against the ward which the MCA represents.

Mr. Deputy Speaker, Sir, these are some of the things that are painfully found on the ground. There exists a County Assembly Service Board (CASB) which is chaired by the Speaker. Is there no way such an issue could be raised in the board where the minority leader, majority leader and one extra member sit? We want to see how the Senate could give teeth to the Board so that it intervenes in the matters before they rise to this extent.

Mr. Deputy Speaker, Sir, I am aware of some governors, including mine, who went boldly to say that Senators have been given money for oversight in the next financial year; that is money wasted. Article 96(3) talks about oversight. The oversight is done day and night. The money for oversight is supposed to be obtained from the funding that goes to counties and is voted by this Senate. However, because they have amalgamated the funds, it is time we go full throttle in dealing with such petitions. We need to encourage counties that are suffering to bring petitions as fast as possible. The Senate is capable of doing its work especially now that we will be given some little amount of money to get fuel in order to run faster around the counties. I know the money is not enough but we can do that.

Mr. Deputy Speaker, Sir, I do not agree that this is the way forward.

The Deputy Speaker (Sen. Kembi-Gitura): Thank you. I think that is about it.

(Sen. Orengo spoke off-record)

Order, Sen. Orengo!

Hon. Senators, having listened to your interventions and pursuant to Standing Order No.227(1), the Petition stands committed to the relevant Standing committee. In this case, it is the Standing Committee on Finance, Commerce and Budget.

In terms of the Standing Order No.227(2), the Committee will be required, in not more than sixty calendar days from the time of reading the prayer – that is from today – to respond to the petitioner by way of a report addressed to the petitioner and laid on the Table of this Senate. Therefore, Sen. Billow, you may want to look at the HANSARD and the Petition. Thank you very much.

Hon. Senators, as I had said earlier, I re-organised the Order Paper. I said that we will move to Order No.10 which is the Reproductive and Health Care Bill (Senate Bill No. 17 of 2014). However, I have noted that it is 10 minutes to Six O'clock but we still have Order No.19 which is a Motion of Adjournment. So, I am again re-organising the Order Paper. Therefore, we will suspend Order Nos.10, 11, 12, 13, 14, 15, 16, 17 and 18 until they again appear on the Order Paper. That is so ordered.

Second Readings

THE REPRODUCTIVE HEALTH CARE BILL
(SENATE BILL NO. 17 OF 2014)

(Sen. Sijeny on 21.5.2015)

(Resumption of Debate interrupted on 21.5.2015)

(Bill deferred)

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

(Bill deferred)

THE COUNTY EARLY CHILDHOOD EDUCATION BILL
(SENATE BILL NO. 32 OF 2014)

(Bill deferred)

THE COUNTY ASSEMBLY SERVICES BILL
(SENATE BILL NO. 27 OF 2014)

(Bill deferred)

THE UNIVERSITIES (AMENDMENT) BILL
(SENATE BILL NO. 31 OF 2014)

(Bill deferred)

THE COUNTY HALL OF FAME BILL
(SENATE BILL NO. 33 OF 2014)

(Bill deferred)

THE INTERGOVERNMENTAL RELATIONS (AMENDMENT) BILL
(SENATE BILL NO. OF 36 OF 2014)

(Bill deferred)

MOTIONS

ISSUANCE OF IDENTITY CARDS TO ORPHANS AND VULNERABLE
CHILDREN ON ATTAINING 18 YEARS OF AGE

THAT, cognizant that Article 12 of the Constitution guarantees a right to citizenship; noting that it is the right of every Kenyan attaining 18 years to register and be issued with a National Identity Card ; further noting that the National Identity Card is at the core in determining the extent to which an individual enjoys his or her fundamental rights and freedoms; concerned that Orphans and Vulnerable Children attaining the age of 18 years in children's homes have difficulties obtaining the National Identity Cards, the Senate urges the National Government to take remedial, policy, administrative and legislative measures to improve and expedite the process of registration for National Identity Cards especially for the Orphans and Vulnerable Children who live in children's homes and have attained 18 years of age.

(Motion deferred)

ESTABLISHMENT OF NACC COUNTY OFFICES

THAT, cognizant that the core mandate of the National AIDS Control Council (NACC) is to develop strategies, policies and guidelines relevant to the prevention and

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control of HIV and AIDS in Kenya; noting that the operational structure of NACC has not been aligned to the Constitution of Kenya 2010; acknowledging the objects of devolution as set out under Article 174 of the Constitution; recognizing that under the Fourth Schedule, the health function has been devolved except for the health policy and referral hospitals; concerned that an estimated 1.2 million Kenyans are infected with HIV/AIDS and a 100,000 are infected annually; recognizing the need to achieve an “AIDS free society” by stepping up the fight against the pandemic at the County level, the Senate urges the National Government to set up the National AIDS Control Council (NACC) County offices in all County Headquarters with the National Headquarters providing overall coordination and that the resources allocated for the fight against HIV/AIDS be disbursed and managed at the County level

(Motion deferred)

The Deputy Speaker (Sen. Kembi-Gitura): Next Order.

MOTION FOR ADJOURNMENT

ADJOURNMENT OF THE HOUSE PURSUANT TO THE APPROVED CALENDAR FOR THE 2015 SESSION

Sen. Billow: Mr. Deputy Speaker, Sir, I beg to move:-

THAT, this Senate adjourns until Tuesday, 16th June, 2015.

Mr. Deputy Speaker, Sir, the Speaker – at the beginning of this afternoon sitting – commended this House for the remarkable work we have done in this particular session of the House. Several useful Bills have been passed by this Senate including those that had constitutional deadlines. However, more relevant to this House were Bills that touch on the core mandate of the Senate like the Division of Revenue Bill and the Public Audit Bill which are fundamental for good governance. It is, therefore, appropriate to give Senators time to focus for the next few weeks on oversight functions in their respective counties and attend to other issues of representation by their constituents.

Mr. Deputy Speaker, Sir, some of the Bills that we have passed like the Division of Revenue Bill – I want Members to be alert to the fact that – the National Assembly has adjourned without debating it. They will, probably, come back next week to discuss it. The information already filtering to us is that some Members of the National Assembly feel that the Division of Revenue Bill is a money Bill. For that matter, they argue that a money Bill should not come to the Senate. That is the decision they are selling to various quarters to justify why they may not agree to the mediated version of the Bill.

As we go to our respective counties, Members should continue emphasizing, especially to the counties, that they should strongly come out to demand that the Bill be processed and signed because the mediated version of the Bill was signed by the Chairman of the Mediation Committee from the National Assembly. That was done in the context of the Constitution. The National Assembly, more than anyone else, has a responsibility of complying with the Constitution. It is a constitutional requirement for a

Bill to be brought here but not our choice. The courts have ruled that this House has a mandate in making sure that it contributes in the passing of that Bill.

We have to come out very strongly. Yesterday, we cautioned the Executive that any delay or rejection of that Bill will put counties into a serious financial crisis which will affect service delivery. The Government needs to think twice. Money that we have demanded and negotiated quite successfully should have gone to counties on the basis of functions that have been transferred. This is money that should have gone to the counties. Therefore, that is a matter that Members should be alert to.

Yesterday, we also approved the Public Audit Bill; a very important Bill that deals with the Auditor-General's Office. We made sure that in terms of his independence, both financially and functionally, that is guaranteed in the Bill. The National Assembly also passed the Bill yesterday. However, I have heard that even after it was passed, there may be something up the sleeves of Members of the National Assembly. We also need to come out very strongly and defend the need to ensure that the Bill is signed into law.

Mr. Deputy Speaker, Sir, this House did quite a bit on the issues of Petitions and Motions and I think we successfully concluded the Petition relating to Narok County. The fact that there are many petitions that have this particular Session; I think five or so new Petitions, I think it is a clear indication that all is not well in our counties. In particular, I want to emphasize the role of the MCAs. If the MCAs carried out their mandate effectively, some of those issues that have been brought to this House would not have been brought. In fact, two of the petitions; the one from Vihiga, Kisumu and the one that was read are actually by the MCAs themselves. It is the MCAs who have not been able to find a solution to this matter within the Assemblies.

I think it is important that we emphasize to the MCAs that there is need for them to build capacity and this is why when we come back, there is a very important Motion that will come to this House regarding the budget ceilings for the county governments. This financial year, our Committee on Finance, Commerce and Budget is working to ensure that MCAs get adequate funding so that in terms of financial capacity, they have no excuse whatsoever for not being able to deliver their mandate. There are also very many petitions that we will deal with when we come back.

Mr. Deputy Speaker, Sir, these two weeks will actually give some committees time to focus on some of these issues that have been pending before their respective committees. The Senate has had a pretty high profile this Session in particular because during this Session, the National Assembly got a lot of negative publicity when the Public Accounts Committee (PAC) headed by the able Member of the party that is sitting across was actually dissolved because of questions of integrity. There were also problems with the Committee on Agriculture and so on.

I think it is important to emphasize that this House has continued to enjoy the confidence of Kenyans in terms of integrity and the performance of the Members and we need to continue with that good profile.

Mr. Deputy Speaker, Sir, I think the Executive needs to respect the Senate because this particular Constitution introduced a bicameral Parliament. I think we must internalize this bicameral system that has been brought in by this Constitution. I think there are still people in Government who think that this is accidental or probably the

Senate is not relevant. It is important to point out that the Senate has a very clear mandate in the Constitution and if for no other reason, to ensure quality control.

We have seen the kind of legislation that has come out. In the Social Economic Audit that was ordered by the National Assembly and conducted by the Auditor-General and published last week, one of the issues he raised was the weak legislation that was coming out of the National Assembly before 2013. That is still happening today. This “Upper House” is supposed to provide quality control so that whatever comes here is subjected to further analysis and amendments so that we do not have very poor legislation going out.

Therefore, it is important that they bring Bills to the House in the same way they take it to the other House. It is also important that they respect the amendments which are passed by this House. We have heard and we have seen media reports this week that the National Assembly intends to accept some of our amendments the way they are but advice the Executive to return the Bill so that when it is returned with those specific clauses that they do not want, it can then be passed by the National Assembly without further amendments. I think this is circumventing the law. This is nothing but subversion of the Constitution and we should not allow it. I want to appeal to Executive to ensure that whatever the Senate does is respected in the same way the other House does it so that we can then claim that indeed the Executive respects the Constitution of the people of Kenya.

I want to conclude by urging the Members to go out and preach peace. In particular, I want to conclude by saying that the issue of security is an important one and we want to urge the Government, as much as possible, to address this issue of insecurity in various parts of the country particularly in the northern parts of the country where today education is paralyzed, institutions have been shut down and lives of Kenyans are at risk. I want to encourage Members, as they go out to their areas to also continue with Committee work so that some of the pending issues can be resolved.

I beg to move and urge the Senator for Siaya County, Sen. Orenge, to second.

The Deputy Speaker (Sen. Kembi-Gitura): Hon. Senators, before Sen. Orenge seconds, there is a lot of interest in this matter and so in fairness to everybody – I heard Sen. Orenge saying *tuachie time kidogo* – I am going to control the time. It is going to be five minutes for each Member contributing. Sen. Orenge you have five minutes within which to second the Motion.

Sen. Orenge: I thank you, Mr. Deputy Speaker, Sir, and the Senator for Mandera, for giving me the opportunity to second this Motion which I support. I want to begin by urging the Membership of this House that belongs to the Jubilee Coalition Government that it would appear like we are whining. I would like to appeal to them that since now we have a decision by the Supreme Court on the question of which Bills must come to the Senate and what is the procedure for enactment of legislation, it is no longer a question where we should be begging but it is a question of the rule of law which is the principle of our Constitution and that indeed, the membership of the Senate on the opposite side have the responsibility to bring to the attention of the Executive that they would not be seen in good light if they are seen to be acting contrary to the decision of the supreme judicial organ in the country, which is the Supreme Court and secondly, the

Constitution itself and thirdly even from its membership in the Senate. We are not saying this because we have any mischief, but we want order to prevail and things to be done in the correct way.

I would also like to appeal to the leadership of the Senate which entails the office of the Speaker that this matter must be taken at that level. History has shown that in other jurisdictions like in the House of Commons, it is the Speakers of those legislatures who stood against the King to ensure that parliamentary supremacy prevailed in that particular country. I would, therefore, call upon the office of the Speaker to try to be more assertive on this matter. Otherwise, at the rate at which we are going, it means that when a Bill ends here, it is by sheer luck and that our responsibility is not very well pre-determined in the manner in which it is spelt out in the Constitution.

Finally, the point I want to make is that it looks like in parts of this country, the Government is on the run. It is not that they are running the country, but they are running away from securing the lives and property of people in those parts of the country; like in Mandera, Wajir, Baringo, Garissa and in so many counties which we have visited. It is appalling to be told that in some areas, schools are closed and nobody knows when pupils and students will go back to school. We were in Baringo recently and we were told that more than 100 people had been killed, in fact, 181 people and nearly 30 schools have been closed and nobody knows when they are opening.

If this Government cannot secure these important areas, which are part of the territory of the Republic of Kenya, you never know; if you run away from your responsibility - you may be dealing with external aggression but very soon, you may begin to deal with an insurgency in the northern part of the country. When the Government is missing, then some people fill that void.

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

(Question proposed)

The Deputy Speaker (Sen. Kembi-Gitura): As I had said, there is quite some interest in this matter. For now, I will grant you five minutes. I could change that with your consent should the need arise.

Proceed, Sen. G.G. Kariuki.

Sen. G.G. Kariuki: Mr. Deputy Speaker, Sir, I also rise to support the Motion of Adjournment of the House until 16th June, 2015. While I do that, I want to also add my voice to what others who have spoken before me have said. As a Senate, we need to assert our position. You find that it is so easy for us to talk about the national Government which is outside our responsibility. As politicians and leaders of this country, we have a right to air our views and correct the national Government whatever the case but our main responsibility is to speak for the county governments. We seem to be running away from that responsibility all the time with the excuse that we have no money for oversight.

Mr. Deputy Speaker, Sir, it is time we accepted our responsibility which is not so easy. As we do not have enough time, I would like to suggest that when we come back, we should think about areas of concern. For instance, if we think that Siaya County is not

doing well as a County Government, we need to send two or three Members to visit Siaya to find out what the problem is. We should not just sit here and expect a Senator to come and tell us the problem. We are politicians and we know that we are fighting at home. Some Senators do not see eye to eye with their governors and some Members of Parliament (MPs) do not see eye to eye with their governors. We can be driven by propaganda.

Therefore, time has come when we need to go to Machakos or Laikipia, for example; Sen. (Dr.) Khalwale, Sen. Orenge and I should go and talk to the county assembly. Let them tell the Senate what they feel about their Government. We are acting from outside when we are supposed to be acting from inside. It is a pity, for example, that we do not know how Kakamega County Government is being run. We just wait to hear a voice from the “bullfighter” or from me in the case of Laikipia County. It is not enough. It will be enough when we visit Sen. (Prof.) Lonyangapuo’s place to understand the kind of statement which he made a few minutes ago. We should run the county governments the way the Constitution says. Let us not hide behind the political parties or the view: “I come from such and such a place and therefore nobody knows more than I do.”

Mr. Deputy Speaker, Sir, the other issue is about the debate in this House. We spend a lot of time on the issue of statements. I do not want to challenge anybody but when Statement time takes up to three hours - I have never seen this kind of situation in the time that I have been in Parliament. There must be a certain period of time that the Statement time must end. We perpetuate talking and create more problems yet we do not want to bring back our people to the point - we just depart from what we are supposed to do and we accept what is going on.

Finally, Mr. Deputy Speaker, Sir, is the debate that we are being rushed into, especially voting. Voting in this House has been a crash program. That needs to stop. We have been here all the time, why should we be rushed through debates, that, we have to vote today, tomorrow or the day after, we have no time---

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

Proceed, Sen. Obure.

Sen. Obure: Mr. Deputy Speaker, Sir, first, I support this Motion of Adjournment. Secondly, I share the sentiments expressed earlier on by the hon. Speaker in appreciating the work of the Senators particularly this time round. We laud the commitment demonstrated and the concentration in the House which has enabled us to accomplish so much more than we have been able to do in the past. I, therefore, feel that we deserve this recess to go out there and reenergize, have the opportunity to consult with the citizens in our counties and refresh ourselves.

Mr. Deputy Speaker, Sir, it is clear that there are many challenges which are emerging in the counties, some of which are very huge; challenges to do with sections of counties being denied devolved resources, Members of County Assemblies (MCAs) being intimidated for whatever reason, mismanagement of county resources and so on; all that is demonstrated by the kind of petitions which are beginning to come to this House. I guess that in the days ahead, the number of those petitions will be on the increase. Out there, the hope of the citizens in the counties is vested in this House. There is a lot of

expectation and real hope that only this House is the institution of last resort in trying to resolve some of the frustrations that the people are going through.

Mr. Deputy Speaker, Sir, looking at the way we work through Committees, I am getting a little worried that the committees do not have the time and capacity to investigate these complaints fully. I appeal seriously that the Parliamentary Service Commission (PSC) does something quickly to facilitate capacity building particularly for staff serving in the committees. We should develop mechanisms to deal with some of these issues which are beginning to frustrate citizens in our counties. Further, Members of this House should be facilitated more often to visit counties on the basis that Senator No. 1, Sen. G.G. Kariuki, has just proposed.

They should be facilitated to go out there, deal with the issues on the ground and then come back here and make recommendations quickly. I think that is the only way that we can go. If we do not build our own capacity, very soon we will not be able to do anything and people will start losing hope in this institution. I, therefore, feel that this is important and the Parliamentary Service Commission should be able to take this up.

I support this Motion for Adjournment.

Sen. (Prof.) Lonyangapuo: Mr. Deputy Speaker, Sir, I also join my colleagues in supporting this Motion for Adjournment. With your permission, Sen. Leshore of Samburu County, Sen. Munyes of Turkana County, Sen. Moi of Baringo County and I have been away for almost two weeks now, literally because of the issues of cattle rustling that we have in the common border. We are dealing with a security matter, which essentially is a function of the national Government. We were forced to use the little resources in the county to hire choppers. Every county hired one chopper to move around and we saw a lot of challenges. Our people trust the Senators most. Wherever we went with the Governors, people wanted to listen to the Senators, because that is where their hope is. Some of the governors are facing petitions regarding the way they are spending money. If we had money and support as Senators, we would have utilized the coming two weeks to address some of the issues that are emerging in the counties. But I face a challenge moving with my car up to the tip of the Pokot-Turkana border.

Secondly, this is also a time to sit down and listen to some of the fairy tales of how the monies that we have allocated to the counties are benefiting or not benefiting our people in the counties. I would also love to be invited by my boss, Sen. Obure, for a visit. When I was his Permanent Secretary, he used to call me “the only one,” because we had no other Permanent Secretary. Last time, you invited me it was very good talking to your people. We also visited Sen. G.G. Kariuki’s county although we did not reach his home. It is an opportunity that we can utilize quite well.

This is the time that the Kshs170 billion that the Minister for Interior and Coordination of National Government has should be used. Given the challenges in north eastern, how do we expect Sen. Billow to move around without support? It would be brilliant and great that we utilize this opportunity to the best of our abilities, but some of us will not be able to move because we do not have the means.

Given what happened yesterday, we are hearing about chest-thumping in the “Lower” House; that they do not approve of that little money that was increased in the budget for counties and agreed on by the meditation team from the two Houses. When

they come back next week to consider the issue, we will be watching keenly from wherever we will be. Even when Sen. (Dr.) Khalwale will be coordinating bullfighting, he should watch what will be happening. Kenyans should be told where the problem lies. It is not in this Senate, but in the other House. Rumour has it that they do not want to pass the mediation report, yet we have enough problems in the counties.

Mr. Deputy Speaker, Sir, because of time, I beg to support, so that I can give my colleagues a chance to also contribute.

Sen. Muthama: Mr. Deputy Speaker Sir, I rise to support this Motion of Adjournment. I concur with the Chairperson, Sen. Billow, that the Senate has done a tremendous job more so, when I remember the 2013/2014 Financial Year when we had a lot of difficulties in this House on how to increase funds to the counties. In the 2014/2015 Financial Year, we also had a lot of difficulties where proposals were made on the Floor of the House. The Committee itself could not manage to move an inch towards increasing the funds.

However, I am so happy that for the first time, in this Financial Year 2015/2016, the Chairman, together with the Mediation Committee that we appointed, has succeeded to negotiate and come out with something. Although they did not get the Kshs 7.7 billion that we wanted, we got close to what we wanted. This is a very clear demonstration that we are moving out of what Sen. G.G Kariuki termed as “political parties’ politics” and also the regional alignments of our country.

I want to remind those who doubt the ability of this House’ work to refer to Article 96(3) of the Constitution which says:-

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

The words are not “the Senate will” or “the Senate shall”, but it is involved in determining. It is therefore our responsibility to make sure that it is done and the funds are given to the counties.

Mr. Deputy Speaker Sir, as we adjourn to go on recess, we are going out there to face a lot of challenges that will be posed to us by the people who sent us here. The one challenge that all of us will face is the issue of insecurity in the country. When you go to church, mosque or any other gathering, wananchi raise the issue of insecurity. When you address them, you say: “I want to ask the Government”. We have lived with those words since 1963 to date. Fifty years down the line, we are still issuing such statements to the people who elected us. The Common mwananchi does not know the difference between a Senator and the President when it comes to issues of insecurity. They do not know what the difference between the Executive and Parliament is.

Mr. Deputy Speaker Sir, time has come for the leaders in this country to go by what was said by Sen. G.G Kariuki; that it is about Kenya, our children and grand children. We need to face the challenges of this country with the truth. If you look at the opinion polls that came out, which we read in the newspapers today, one of the issues that is bringing President Uhuru Kenyatta’s popularity down is the failure to cope with criticism. Criticism must be accepted. For now, we do not want to be seen circumventing criticism, as politicians, Senators and leaders.

One health care, although money has been allocated now, I want to give a good example of what happened in Machakos County when the President went there. The Governor gave instructions for dead bodies to be removed from the mortuary and thrown into the river, just because the President was going there. He wanted the President to find the mortuary clean and well kept with no dead bodies, yet the purpose of that mortuary is to keep dead bodies. The bodies were dropped by the road side and were later picked at night.

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

The Deputy Speaker (Sen. Kembi-Gitura): Please, proceed Sen. (Dr.) Khalwale.

Sen. (Dr.) Khalwale: Thank you, Mr. Deputy Speaker, Sir. I rise to beg this House that we oppose this Motion. I know people are fatigued and there is a lot of pressure from committees but this is not the time to go on recess. For the love of Kenya, the ship is rocking. How can you go on recess when we are still asking the Executive what is happening to the Kenya shilling? The Kenya shilling is sliding, it is now Kshs100 against the dollar. We are headed the Zimbabwe way where the exchange rate was not controllable. This is happening when there is nobody to ask the President to give us a governor, deputy governor and the chairman for the Central Bank of Kenya (CBK).

Who is in charge? Who is determining the monetary policy of this Government? With all due respect to Sen. Billow, who knows these things better than me, every morning, the monetary is supposed to be made. Who is directing the economic policy of the country if the CBK Governor is not there to advise the National Treasury?

Mr. Deputy Speaker, Sir, we should not go home because we are now witnessing nauseating wasteful expenditure of state resources as evidenced, a few days ago, by 13 private helicopters being hired to airlift Cabinet Secretaries, Principal Secretaries and supporters to accompany the President to Taita-Taveta, at an average of Kshs800,000 per helicopter. You can do the arithmetic and see how wasteful this Executive is. We have just been told, thanks to the members of fourth estate, that the President intends to go to Lagos to witness the swearing-in of *Shujaa* Buhari accompanied by 94 members of the Government, friends and relatives. All these expenses will be underwritten by the taxpayers.

We must be here, insist and bang this Table to ensure that this is cancelled. We only want five people to go to Nigeria; the President, the Deputy President, Hon. Raila Odinga, Hon. Kalonzo Musyoka and Sen. Moses Wetangula. Why? So, that they can see how graceful it is, for somebody to be defeated. They should see how graceful it is to hand over power after you have accepted defeat.

Mr. Deputy Speaker, Sir, today, we have fights all over in the counties but the one which has been very persistent is in Kisumu. The Speaker has congratulated us for doing well but where is the Committee on Devolved Government? Why has Kisumu been left unvisited by this Committee? We only see ODM officials trying to intervene. We have even seen the former Prime Minister trying to intervene. The fact that hon. Raila Odinga is doing Senate's work is a big statement on our failure to intervene in Kisumu. It is wrong. What message are we sending that the capital and commercial city where the Prime Minister was born and bred should just be left "like that"? Are we saying that we

do not want them to succeed? The Luos of this country have suffered for 53 years. They need this Senate to ensure that they enjoy equity.

Mr. Deputy Speaker, Sir, it must not be lost on Kenyans that some of the heroes for the struggle for a better Kenya have come from this particular community. If we are rising to the national challenge, Tom Mboya and Jaramogi Oginga Odinga, so that they may rest in peace, they should know that there is a Senate today in Kenya that makes sure that the money meant for development in their community and region is actually doing exactly that.

Mr. Deputy Speaker, Sir, I cannot end in opposing this Motion of Adjournment without mentioning the mediation process. It was difficult but successful. However, I want to appeal to Members of the National Assembly, that as they refuse a paltry Kshs3.3 billion, they should be guided by looking at those estimates which they have now tabled. There is Kshs50 billion for the national Treasury, which has no branch anywhere in the country, what will they be using that money for?

I oppose.

ADJOURNMENT

The Deputy Speaker (Sen. Kembi-Gitura): Order, Senators. It is now 6.30 p.m. It is time to adjourn the Senate. The Senate, therefore, stands adjourned until Tuesday, 16th June, 2015 at 2.30 p.m.

The Senate rose at 6.30 p.m