

PARLIAMENT OF KENYA**THE SENATE****THE HANSARD****Tuesday, 21st October, 2014**

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

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

PRAYERS**PAPERS LAID**

The Deputy Speaker (Sen. Kembi-Gitura): Shall we proceed. It appears that in the appendix, there are some Papers to be laid. Leader of Majority! Sen. Orengo, do you have some Papers to lay on the Table?

**REPORT OF THE SESSIONAL COMMITTEE ON IMPLEMENTATION
ON THE STATUS OF SENATE RESOLUTIONS**

Sen. Orengo: Thank you, Mr. Deputy Speaker, Sir. I beg to lay the following Paper on the Table of the Senate today, Tuesday, October 21, 2014:-

Report of the Sessional Committee on Implementation Status of Resolutions of the Senate.

Thank you, Mr. Speaker, Sir.

(Sen. Orengo laid the document on the Table)

The Deputy Speaker (Sen. Kembi-Gitura): Thank you, Sen. Orengo. Leader of Majority, do you have some Papers to lay on the Table?

THE PRESIDENTIAL ADDRESS

The Senate Majority Leader (Sen. (Prof.) Kindiki): Thank you, Mr. Speaker, Sir. I beg to lay the following Paper on the table of the Senate today, Tuesday, 21st October, 2014:-

The Presidential Address delivered on Monday, 6th October, 2014 during the Special Sitting of Parliament.

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

The Deputy Speaker (Sen. Kembi-Gitura): Order, Members! Is that all?

Sen. Wako, do you have any Papers to lay on the Table of the House? There are some other Papers that are supposed to be laid. Are they ready or not? Who is supposed to lay them on the Table of the House?

Senate Majority Leader, maybe you can help us to understand what is going on here.

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Deputy Speaker, Sir, the only paper which has been brought to my attention is the one which I have just laid on the Presidential Address. My understanding is that the other papers are supposed to be laid by the various Chairpersons of the Committees involved.

The Deputy Speaker (Sen. Kembi-Gitura): You are the Senate Majority Leader and I thought that you could help me understand why no Chairperson of a Committee is rising to lay these Papers on the Table of the House. That is the reason I called you out.

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Deputy Speaker, Sir, I think that the disorganization has occurred since we have just finished our Kamukunji. But I can see Sen. Orengo---

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Orengo has done what he had to do.

The Senate Majority Leader (Sen. (Prof.) Kindiki): Sen. Wako also has a Paper to lay on the Table.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Wako says that he has no papers to lay on the Table.

Sen. Wako, can you, please, do what is right? If you have Papers to lay on the Table of the House, can you do it now?

Sen. Wako: Mr. Speaker, Sir, I beg to lay the following Papers on the Table of the Senate today, Tuesday 21st October, 2014:-

ANNUAL REPORT OF THE COMMISSION FOR THE
IMPLEMENTATION OF THE CONSTITUTION, 2013/2014

Annual Report of the Commission for the Implementation of the Constitution,
2013/2014

ANNUAL REPORT OF THE COMMISSION
ON ADMINISTRATIVE JUSTICE, 2013

Annual Report of the Commission on Administrative Justice, 2013

ANNUAL REPORT OF THE STATE OF THE JUDICIARY
AND ADMINISTRATION OF JUSTICE, 2012-2013

Annual Report of the State of the Judiciary and Administration of Justice, 2012-
2013

ANNUAL REPORT OF THE KENYA NATIONAL
COMMISSION ON HUMAN RIGHTS, 2012-2013

Annual Report of the Kenya National Commission on Human Rights, 2012-2013

ANNUAL REPORT OF THE INDEPENDENT POLICING
OVERSIGHT AUTHORITY, JULY-DECEMBER 2013

Annual Report of the Independent Policing Oversight Authority, July-December
2013

(Sen. Wako laid the documents on the Table)

NOTICES OF MOTIONS

THANKS FOR PRESIDENTIAL ADDRESS

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Deputy Speaker, Sir, I beg to give notice of the following Motion:-

THAT, pursuant to the provisions of Standing Order 24 (6), the thanks of the Senate be recorded for the Address of H.E the President delivered on Monday, 6th October, 2014 during the Special Sitting of Parliament.

AD HOC COMMITTEE TO MONITOR COURT
CASES INVOLVING THE SENATE

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

THAT, aware that pursuant to Article 96 (1) of the Constitution of Kenya, the Senate represents the counties and serves to protect the interests of the counties and their governments; further aware that several adverse orders restraining the Senate from executing its role have been issued by the courts; appreciating the need for the Senate to execute its constitutional mandate without interference; further appreciating the wealth of experience and knowledge possessed by Senators in various fields; the Senate resolves to establish an Ad Hoc Committee, with effect from 2nd September, 2014, comprising the following Senators to closely monitor court cases involving the Senate or which have an impact on the constitutional mandate of the Senate, and apprise the House from time to time and in any event report to the Senate within six months-

1. Sen. Amos Wako – Chairperson
2. Sen. Kembi-Gitura
3. Sen. (Prof.) Kithure Kindiki
4. Sen. Moses Wetang'ula
5. Sen. Kiraitu Murungi
6. Sen. Fatuma Dullo
7. Sen. Mutula Kilonzo Jr.
8. Sen. Stephen Sang
9. Sen. (Dr.) Boni Khalwale

10. Sen. Hassan Omar
11. Sen. Judith Sijeny
12. Sen. Kipchumba Murkomen
13. Sen. Ekwee Ethuro; Speaker of the Senate (*ex – officio*)

ADOPTION OF REPORT OF SESSIONAL COMMITTEE ON IMPLEMENTATION
STATUS OF THE RESOLUTIONS OF THE SENATE

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

THAT, this House adopts the Report of the Sessional Committee on Implementation on the status of the implementation of the resolutions of the Senate laid on the Floor of the House today, Tuesday 21st October, 2014.

MOTION

THANKS FOR PRESIDENTIAL ADDRESS

Sen. Khaniri: On a point of order, Mr. Deputy Speaker, Sir. With a lot of due respect to His Excellency the President, the Senate Majority Leader and the Rules and Business Committee, the Speech of His Excellency the President, according to me, is a matter that has been overtaken by time. I want to believe that this is improper use of our time. The President made a speech, travelled, came back and is continuing with his duties. I want to move that this particular Motion has been overtaken by events. We have a lot of business that is pending. We are not adding any value by discussing the Speech of His Excellency the President.

The Deputy Speaker (Sen. Kembi-Gitura): Just for the sake of good order, because I can see some requests, please, distinguish the request to address the House and the request for intervention. If you want to intervene on a point of order, it has to be through that button called “intervention.”

Sen. Billow: Mr. Deputy Speaker, Sir, looking at the Order Paper, and looking at the timelines, pursuant to Article 181 of the Constitution regarding impeachment, I would like to seek your guidance on the proposed impeachment of the Governor of Makeni County, which if we do not do it today, the timeline would have gone. I wanted guidance on what happened. Why is it not on the Order Paper?

The Deputy Speaker (Sen. Kembi-Gitura): May I propose that we deal with issues as they come, Sen. Billow. Right now, we are dealing with the Presidential Address. A point of order has been raised by Sen. Khaniri and I can see that Sen. Haji is also seeking the Floor. Can we deal with that one first?

Sen. Haji: Mr. Deputy Speaker, Sir, I wish to differ with my very close friend that discussing the Speech made by His Excellency the President has not been overtaken by time. When His Excellency the President addressed a special sitting of Parliament, there was no opportunity for Members to ventilate and air their views about what the President said. The Senate has resumed today after a long period of recess. Therefore, it

is quite in order for us to discuss this issue. It will add a lot of value to Kenyans to know and appreciate what the President said.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Khaniri, do you have something, to say, but before I call upon other Senators to ventilate on this issue, are you relying on any Standing Order in making the statement or is it a statement from where you stand? Are you asking me to find that there is no point of discussing the Presidential Address? Or are you relying on any Standing Order or precedent or other law?

Sen. Khaniri: Mr. Deputy Speaker Sir, I rose to seek your guidance and to find out if what we are doing is adding any value. It is improper use of our time and that we embark on serious matters such as the one that Sen. Billow has just raised.

The Deputy Speaker (Sen. Kembi-Gitura): Yes, but is this not a function of the Constitution that when the President addresses Parliament, a Paper may be laid on the Table of the House like it has been laid and that debate will ensue under Standing Order No. 24(5) and (6) of our own Standing Orders? This is because if it is a function of the Constitution, then it may not be upon me to say whether or not we should discuss it just because one Member thinks it may be a waste of time.

Sen. Khaniri: Mr. Deputy Speaker, Sir, the relevant Standing Order that you are referring to; which is Standing Order No. 24(6) states:

“A Senator may give a notice of Motion, that “The Thanks of the Senate be recorded for the exposition of public policy contained in the Address of the President” but debate on the Address shall not exceed three sitting days.”

This indicates that it is not mandatory. In my opinion, this matter has been overtaken by events and it is not mandatory that we discuss it.

The Deputy Speaker (Sen. Kembi-Gitura): Yes, it states so but the point I am making is that now a Senator may give notice so that what you are saying has been overtaken by events itself. The right time at which the objection would have been made would have been at the point before the Notice of Motion was given to lay on the Table of the House the Speech by His Excellency the President to be discussed under Standing Order No.24 (5) and (6). I ask you this, Sen. Khaniri, with a lot of respect because I know that you are very strict on Standing Orders. That is why I am asking you to give me a basis on which to make the direction which you seek.

Sen. Khaniri: Mr. Deputy Speaker, Sir, I did not research on this. I stand guided by you but I strongly believe that it does not change my believe that we are not adding any value. I wanted to you to find that it is not necessary and that it is not proper use of our time. However, if you so rule, then so be it.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Khaniri, I ask you that again with respect because as you know, I only referred you to Standing Order No.24 (6) which states:

“A Senator may give a notice of Motion, that “The Thanks of the Senate be recorded for the exposition of public policy contained in the Address of the President” but debate on the Address shall not exceed three sitting days.”

Are we not already beyond that point? Are we not already built that point where I can stop debate on this issue because once a Motion has been approved by the Speaker from whichever Member, it becomes the property of the House? Therefore, it could even look preposterous or presumptuous for me to then say once the Motion is before the House, that it is not properly before the House and should not be proceeded with. That is

the point I would not like to get to, where I flout the rules of the House. The Motion has been approved and it is the property of the House. It has been moved and I think it might be late in the day.

Sen. Mositet, I can see that you want to make an intervention.

Sen. Mositet: Thank you, Mr. Deputy Speaker, Sir. I am also wondering which Standing Order my colleague, Sen. Khaniri, was telling us to use so that we shelve debate on the Address of His Excellency the President, knowing very well that we have resumed business today since the very day we had a Joint Sitting of Parliament. Just yesterday, we were celebrating Mashujaa Day. I believe that this Motion was already approved by the RBC to be discussed by the House. All what it is trying to tell us is, how we can make sure that the country is really united. With the best suggestion of unity particularly coming from the Address of His Excellency the President, Members of the Senate can ventilate. Out of this, at least, we can show the country that if we are united under the institution of the presidency, the country can go forward.

I believe that maybe the Senator just wanted maybe to be seen.

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

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

The Deputy Speaker (Sen. Kembi-Gitura): Order, Sen. Khaniri! I have not called you. Sen. (Prof.) Lesan wants to intervene on a point of order.

Sen. (Prof.) Lesan: On a point of order, Mr. Deputy Speaker, Sir. I also wish to make an observation on the request made by Sen. Khaniri that the Presidential Address has been overtaken by events, I do not think that this speech has been overtaken because the time allocated is as soon as practicable. I think this is the soonest that we are able to contribute to that Address. Therefore, the issue of being overtaken by events does not arise in this case because we are still within the earliest possible time that has been allocated. For that matter, it is still quite in order. In any case, the contents of the Presidential Address have not been overtaken by events; like the existence of our forces in foreign countries. This is contained in this Address and we cannot say that it has been overtaken by events.

Thank you, Mr. Deputy Speaker, sir.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Khaniri, I will give you the last word on this issue, and then I will give a direction as you have asked me to do.

Sen. Khaniri: Mr. Deputy Speaker, Sir, before I ground my emotion on the Standing Order that I have here, I want you to find my colleague, the Senator for Kajiado County, out of order because he says that I raised this particular point of order just to be seen. I think that is imputing improper motive on me.

The Deputy Speaker (Sen. Kembi-Gitura): I already told him that he was out of order on that point. I think on that one, Sen. Mositet, you should withdraw and apologize to Sen. Khaniri. Sen. Khaniri is not known to raise frivolous points of order. I think it is important that you withdraw.

Sen. Mositet: The Senator is not just a good friend of mine but a serious Senator, I know that he is also very serious ---

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Mositet, I asked you to do something very simple. I did not ask you to make another speech.

Sen. Mositet: I withdraw and apologize.

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

Now, Sen. Khaniri, in my considered opinion, because you asked me to give my direction on this issue, my view is that when the President addresses Parliament, it is a constitutional function. The President gave his address to Parliament on 6th October, 2014. Pursuant to that, the Senate Majority Leader (Sen. (Prof.) Kindiki, has moved a Motion which has been approved by the Speaker of the Senate (Hon. Ethuro), that we should discuss that Motion under the provisions of the Constitution and our own Standing Orders No. 24 (5) and (6). Since the Motion has been approved by the Speaker, it is my considered opinion, and I am giving directions as you have sought that the Motion is properly before the House and we cannot pre-empt it and say it is a waste of time. Let us see what interest the House has, whether Senators think it is a waste of time because if they think, then they will not debate it. Let us proceed from there, that is, from a point of strength. My direction on this issue is that the Motion is properly before the House. It cannot be deemed to be a waste of time because it is pursuant to both the Constitution and also our own Standing Orders. It is so ordered.

The Senate Majority Leader, can you proceed?

THANKS FOR PRESIDENTIAL ADDRESS

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Speaker, Sir, I beg to move the following Motion:-

THAT, pursuant to the provisions of Standing Order 24 (6), the thanks of the Senate be recorded for the Address of H.E the President delivered on Monday, 6th October, 2014, during the special sitting of Parliament.

Mr. Deputy Speaker, Sir, on 6th October, 2014, the President of the Republic of Kenya, His Excellency Uhuru Kenyatta, addressed a joint sitting of Parliament. The Constitution empowers the President to address Parliament once every year or at any other time. So it is important to underscore the fact that the Constitution has given discretion to the President to address Parliament annually or at any other time when he thinks there is a matter the representatives of the people need to know.

The Address by the President, traditionally, is intended to create the nexus between the President as Head of State and the people who have placed him in that position. The only way you can address the people of Kenya in one meeting is by addressing the people who have been elected to represent the people of Kenya. So, it should not be seen as if the Presidential Address is a little matter; it is an important matter and it complies with the dictates of our constitutional order which requires that the Executive must at all times remain subservient to the will of the people because all sovereign power is vested in the people of Kenya.

So, Article 132 of the Constitution is placed in that context to allow interaction between the Executive and the people of Kenya through their representatives. It is no wonder therefore that when the President addressed the joint sitting of Parliament on 6th October, 2014, his opening remarks recognized that he is addressing Parliament as representatives of the people. That is in paragraph 2 of his Speech and he said:-

“In this respect, I am here to address you as representatives of the people on an important national matter regarding our sovereignty”

The crux of the Address of the President to Parliament revolved around his appearance in the International Criminal Court (ICC) which is not a small matter. This is not a matter that Kenyans can just read in the newspapers about. I say so because in the history of the world, since the establishment of Nation of States, no Head of State has ever been required by national or international law to appear before a court of law. So, this was something quite historic and, therefore, the President owes the people who have elected him and the people who have placed him in office an explanation; why he is going, under what circumstances and the legal context in which he was making an appearance before the ICC.

Mr. Deputy Speaker, Sir, a lot has been said about the ICC and I want to go on record and say that, initially, when the ICC was being established, I am one of the scholars who wrote extensively in support of the need for an international judicial mechanism to make sure that all persons, irrespective of their official capacity, do not abuse office and do not misuse the power they hold to traumatize, brutalize, kill and maim people. It is in this context that it is not surprising today that the International Criminal Court Statute does provide therefore, that the official position of an accused person as Head of State or Head of Government is irrelevant. That is Article 25 read together with Article 27 of the Rome Statute. In fact, it goes on for the avoidance of doubt to clarify in Article 6 that criminal responsibility before the court is individual; it is not collective or official. Once somebody is charged, he or she is charged as an individual and not by virtue of the office they occupy.

In that connection, in the strict sense of a clear reading of Articles 6, 25 and 27 of the Rome Statute, it was quite in order for the President therefore to comply with the summons that had been issued for him to appear. Some of us have had our view on this and our own view was that - I know the President touched on this issue in one way or another - the Rome Statute and the provisions of individual criminal responsibility and the inapplicability of official status is supposed to ensure that people do not commit offences and hide behind the office, so that they do not start saying; "you cannot try me or investigate me because when these things happened, I was President". I think that jurisprudence is in order. This is because it is not the work of the President to kill people. It is not the job description of a President to commit crimes against humanity and so you cannot hide behind an office as a shield against accountability for international crimes.

Mr. Deputy Speaker, Sir, what has surprised us, however, is that these provisions on individual criminal responsibility have been interpreted to mean that if you have a trial, it does not matter whether you have other public duties, you must be available to the court. This is not true because the court's own logic that they are oblivious of official capacity is self defeating to the extent that the court itself, the statute itself and the structures under the statute rely on State Parties not only in terms of drawing their authority and legitimacy, but also in terms of the legal framework, continuous amendment of the statute, the rules of evidence and procedure as well as other statutory and regulatory frameworks that the Assembly of State Parties does.

Therefore, Mr. Deputy Speaker, Sir, what the President did and that is contained in the Speech, is to say; "Look, I have been accused of committing crimes as a citizen of Kenya." As he put it in his Speech, he said; "The things I am accused of did not take place when I was the President of Kenya. Therefore, in that connection, I want you, as the people of Kenya, to know, through your representatives, that I have not gone to the

International Criminal Court (ICC) as your president. My trip to the ICC is not connected with my functions and the role you have given me as your President but I am going there as an individual Kenyan.” So, I want to take this opportunity to congratulate the President of Kenya, His Excellency Uhuru Kenyatta, for being courageous enough to balance between his obligations as an individual under international law on one hand, but also to make sure that he assures the people of Kenya that their sovereignty, authority and independence has not been assaulted by his trip to the ICC.

The other thing that the President deliberately announced in his Speech was that as he goes to the ICC, the Deputy President, His Excellency William Ruto, will be acting as president. I have heard some commentators say, one, that this was not necessary; and two, that he did not have to say it because it is automatic that whenever the President is absent, the Deputy President becomes President. That is not true. The correct position is that it is upon the discretion of the President to decide when he cedes power to his deputy. The use of the word “absent” does not mean absent from Kenya. The use of the word “absent” is not equal to “absence from Kenya”. It is a word that is used so that the President can decide what “absence” means. In fact, if you ask me, I see a situation which happened two weeks ago, when the President can actually appoint his deputy to act, not because they are absent from Kenya; but they are in Kenya but absent from work. If a president, for example, wants to go and look at his farm for three days or one week without the pressures of the presidency and the functions that go with the Head of State, he can as well appoint through a gazette notice, the Deputy President, to act as President. Why? Because the President is absent. So this notion that every time the President goes, the Deputy President is acting President is not legally true. For him to be President, there must be an instrument - as it happened on 6th October 2014 – signed by the President conveying the specific powers, the duration of those powers and what jurisdiction the DP will have.

Mr. Deputy Speaker, Sir, in ordinary circumstances, my assumption is that if the Head of State is outside the country, he may leave the Deputy President as the senior most member of the Executive. But in my view, that Deputy President, unless he has those instruments conveyed to him, is still Deputy President, and not President. The President could be in Namibia or New York and still act as the President of Kenya. It is in this context that the ceremony that took place at Harambee House happened, much to the excitement, bewilderment and confusion in some sections of the population.

Mr. Deputy Speaker, Sir, this does not happen very often and you can count cases where a President has legally appointed his deputy to act. A case in point is the case of Nelson Mandela in 1994 just immediately after the independence of South Africa. One of his arch rivals was a gentleman called Mangosuthu Buthelezi, the leader of the Inkatha Freedom Party (IFP). When Mandela became President, he made Buthelezi the Minister for Interior. After a few months, Mandela had to travel and he needed to communicate something to the country. So, he said: “I am going away and Mangosuthu Buthelezi, the Minister for Interior, is going to act as President until I come back.” Of course, the Constitution of South Africa allowed that kind of a legal scenario. In our own Constitution, the President cannot bypass his Deputy even if he wanted to.

Other than that, Mr. Deputy Speaker, Sir, I am only aware of the case of President Nixon in the United States of America (USA) decades ago, but it just does not happen. I think what the President did was a good thing. It democratizes our presidency, it

demystifies our presidency; it builds confidence in future, going forward, that those people who want to be President should not just pick anybody to become their deputies for them and once they assume power just to ignore them. So, it is a very assuring thing. It also depersonalizes the State and the presidency so that the presidency becomes an institution and not an individual. So, for me, I see what happened as a celebration of our democracy and as something that we should be proud of because our democracy is getting stronger and stronger.

Mr. Deputy Speaker, Sir, much of the Presidential Address revisited the issue of the International Criminal Court (ICC). I am a very proud lawyer today because I remember that about four years ago, I appeared as counsel in the ICC representing His Excellency the Deputy President William Ruto. At that time, he was the Member of Parliament (MP) for Eldoret North. I think he had just been sacked as a Minister for Higher Education because of these issues about the ICC. I remember that the ICC Prosecutor had, in the preceding months, created an impression that he had insurmountable evidence to try the six Kenyans that he had identified or the people he had in mind. When we went to the ICC, it came out very clearly that the Prosecutor was involved in guesswork; he was engaged in a witch-hunt and he was involved in a publicity seeking spree. I remember we told Kenyans that as far as we are concerned, we do not think these cases could work because the only things he supplied us were the Waki Report, the Kenya National Human Rights Commission Report and a few other pamphlets written by Non-Governmental Organizations (NGOs). His strongest piece of evidence was the Waki Report and I remember at that time Sen. Wako, who is seating directly in front of me, was the Attorney-General of the Republic. I remember him telling Kenyans "Look, it would be impossible to prosecute and convict anybody on the basis of the Waki Report because the report itself says 'look, this is not enough; we just need somebody to do investigations.'"

So, Mr. Deputy Speaker, Sir, when we started saying "look, this fellow called Moreno Ocampo is just a movie star" because he would come here, he gets all the trappings of power – and I hope Sen. Wako did not aid and abet that irresponsible conduct on our part. Of course, as a country, we want to entertain serious guests. Ocampo came here, then he went to the national park where he named a cheetah, he was photographed and then newspapers splashed his names in the headlines.

Mr. Deputy Speaker, Sir, I want to quote from the President's Speech what the Prosecutor herself has now said; because what happened when my friend, Moreno Ocampo – and I want to doubt that he is a good lawyer – I have tried to look at his history in Argentina and I have discovered that he was just a fellow who was making personal search for publicity and sensation all the time. His successor, Bensouda, who is a much better lawyer but has a poor case because she does not go for press conferences. Every lawyer would tell you that if you want to win your case, you will not win it in the podium. If you are a lawyer, you want to make sure that judges take every word you say seriously.

So, Mr. Deputy Speaker, Sir, the Prosecutor said this last month in September before the judges: "The available evidence is insufficient to prove the alleged criminal responsibility beyond reasonable doubt." Three years after naming six Kenyans, three of whom were acquitted, the other three are still grappling with horrendous accusations against them – President Uhuru Kenyatta, Deputy President William Ruto and poor

Joshua arap Sang. I think the time has come for Kenyans to actually make an even stronger case for Joshua arap Sang. This is because he is a small fellow. We seem to have forgotten that he is a fellow Kenyan like us and he requires justice, just as the President and the Deputy President.

Therefore, Mr. Deputy Speaker, Sir, the President, in his Speech, is saying: "I know there is no case against me; the Prosecutor herself has admitted that they have no evidence. Nevertheless, I want to comply with the international rule of law. I will go and hear what they are saying." It is very surprising! Ordinarily, a status conference is not somewhere you would expect to see accused persons – and there are many lawyers in this Senate who will bear me witness – a status conference is something for lawyers just to discuss procedural issues. So, I think this was supposed to be a trap to find out if the President would go. We are very glad that he went because they thought that if he did not go, then they will shift blame from non co-operation and non-availability of evidence to the fact that he has violated the conditions of the summons.

So, Mr. Deputy Speaker, Sir, despite the challenges we are facing in Kenya because the President and the Deputy are involved in this matter, which started way before they were President and Deputy President and therefore, which matter the people of Kenya elected them knowing that this matter is before them, the fact that the Deputy President and now the President have co-operated with the court lays the ground even for stabilizing the rule of law internally. It also lays the ground for a speedy acquittal. I do not see anything else less than acquittal because you cannot manufacture evidence that does not exist. You cannot manufacture a case that does not exist.

Mr. Deputy Speaker, Sir, I also want to address something that the Speech touches on and which is on the long-term revolves around Kenya's reconciliation and cohesion.

I have held and I still hold the view that the things that happened in 2007/2008 were deplorable. They are regrettable and they exposed the worst part of our society collectively. No amount of prosecutions will heal and correct the mess that we created for ourselves in 2007/2008. As early as three years ago, I remember I wrote an article which was saying that the only way to get out of this mess is to create an impartial, well funded and credible Truth Justice and Reconciliation Commission (TJRC). We have not done that. We misused an opportunity. We created some truth commission which had a good mandate but because of selfishness, leadership squabbles and selfish behaviour among its leadership, that TJRC ended up writing itself into oblivion. Nobody even remembers who they were, what they said and what they recommended. Why? It is because of small things around credibility. Why do I say so? I say so because if, for example, the former Chairperson of the TJRC had been courageous enough to say; look, I am the Chairman of this Commission but issues have been raised against my personal integrity. The matters that we are supposed to deal with are matters that are very grave and critical to Kenyans that I would not want to stand between the people of Kenya getting justice and reconciliation. I am innocent and therefore let me step aside and allow this process to go on". This country would be so much better today. Time has come for public servants, people who serve in the public realm to know that public service is not a right, it is a privilege.

Two days ago, the Japanese Minister for The Economy, Trade and Industry resigned because she was accused of spending campaign money on matters that were not

related to political campaigns. I think she had bought some earrings and makeup. She was told that campaign funds were not supposed to be used to buy makeup. That is a person who is being touted to be the possible first female Prime Minister in the history of Japan. She has a very good potential and I could see it. I read her speech and she said: Look, I am innocent and I want to focus on clearing my name. So she said she would step aside and let the issue be investigated. In future, going forward, I think we need some time to put the country above our own interest. That has been demonstrated very well in the case that I have just cited.

Mr. Speaker, Sir, because I do not want to talk for long but there are two other things I would like to say. One, in spite of the President complying with the court, we were treated to a debacle. Two things come to mind, one, the court is telling Kenyans that it has no evidence and it wants the accused persons to go and look for evidence. There is no justice system anywhere in the world even where there is no rule of law where the rule of the jungle reigns – and I do not know which country is like that – there is no country where you charge an accused person and then you start collecting evidence. There is no judicial system where the burden of looking for evidence is on an accused person. This is what we are saying as Kenyans. If President Kenyatta or anybody in his administration is obstructing evidence, then they are committing crimes under the Rome Statute. There is a whole section of crimes called Crimes against the Administration of Justice. Instead of the Prosecutor playing to the gallery – if somebody is obstructing evidence – she should issue warrants of arrest, arrest those people and lock them in. I think it provides for a jail term of up to five years. We have gone through the full circle of theatrics from ooh, we will set an example, then it became ooh, we have a mountain of evidence. It then proceeded on to become an issue of people obstructing evidence. He said that people were obstructing evidence and being bribed. Who is bribing them? Tell us!

Strangely enough, even in the case against Joshua arap Sang and the Deputy President, His Excellency William Ruto, the witnesses themselves were the ones saying; “Ladies and gentlemen; my name is so-and-so. I am a liar and I lied. I was coached. I was given Kshs1 million to implicate Sang and Ruto. I was forced to sign a statement and to include Ruto’s name.”

The least we expect from a fair judicial system is the arrest and imprisonment of a person who says that they are the ones responsible for lying and fabricating non-existence evidence by admitting that they are the ones who have put Joshua Sang and William Ruto in trouble. However, has anything happened? Nothing has happened. Instead, we are being treated to funny theories of how President Uhuru is powerful and that no evidence can be gathered when he is in office. He has not been the President for more than one-and-half years. The Office of the Prosecutor has been on this case for six years now. If evidence does not exist, then it does not exist.

Strangely enough, fate has a way of exposing wickedness. There is now a new prosecutor. The Office of the Prosecutor at the International Criminal Court (ICC) is trying to revamp itself after the skunk that these two cases have created courtesy of Ocampo. There was a fellow there in the prosecution who was very emotional and quite impressive. However, he let the cat out of the bag when he was pressed by the judges to say how long he wants the matter adjourned. He said he did not know how long it should be adjourned and added; “we do not know how long it can be postponed since we have run out of hooks on which to hang this matter.” That means that they were looking for

hooks. He said that the best time to deal with it is probably 2017. Does he know something that we do not know regarding what will happen in 2017? This underlies what we have been saying all along that these two cases are political.

The ICC came to Kenya to carry out politics. We have told them and warned them that they failed in 2013 and will fail again in 2017. They will fail forever and forever more. The question of who becomes the President of Kenya is an issue of the people of Kenya. This should be determined by the people of Kenya. It is a shame that some brethren in this country - people that we held a lot of respect for - are busy giving all manner of horrendous repute about Kenya and telling us how we should solve our problems as a country. The people they are talking to about the ICC have themselves refused to be part and parcel of the court.

As I end my remarks, I want to say that I am a firm believer in international justice. I am a firm believer that people should not use their offices to run away from criminal responsibility. Going by the experiences we have had as a country in the ICC, unless radical reforms are done on the Rome Statute and on the rules of procedure of evidence, the ICC has already exposed its soft underbelly. This is just a court where anything goes and where anything carries.

When the spectacular collapse of the Kenyan cases happens – because the question is when and not if – we will, in my estimation as a legal scholar, spell or put the last nail on the coffin of the ICC. This will happen unless radical reforms are done now to hold the Prosecutor accountable for the exercise of their prosecutorial powers. This is the only court where a prosecutor can say; Otieno Kajwang, Kithure Kindiki and Mutula Kilonzo are criminals and they will be charged with no evidence. Nobody would even ask the prosecutor how he arrived at that.

In national jurisdictions, there is a remedy called malicious prosecution. You can sue a prosecutor who abuses their office or who maliciously arraigns somebody in court. Unless the ICC has such a remedy, the court cannot stand on the scales of what would constitute a court of law. Who will compensate retired Maj-Gen. Ali whom the court found to be innocent? Who will compensate Ambassador Muthaura? Who will compensate Henry Kosgey, Joshua Sang, Uhuru Kenyatta and William Ruto when they are set free? They have put people under a lot of trauma. They have also used their resources and their reputations have been at stake and probably the ICC will just say; come on, you are now free but there is nothing that can be done about it.

Time has come for us to revisit the legal framework of the ICC. I hope that after this circus, Kenya will sober up and look at how it can influence a more transparent, accountable and more judicious system so that these matters are addressed.

The logic of holding the most powerful people accountable is very good. It is excellent logic and it is only then that people can know that when you elect somebody into Presidency or Premiership or Deputy Presidency, their job description does not include murder, deportation and rape. So, one cannot claim to have been the President and, therefore, cannot be tried. The logic is sound but on the other hand, it is possible, as we have seen in the Kenyan cases that innocent men have been dragged before a court, traumatized, spent their resources and have no remedy.

With those many remarks, I beg that pursuant to the provisions of Standing Order No.24(6), the thanks of the Senate be recorded for the Address of His Excellency the President delivered on 6th October, 2014 during the Joint Sitting of Parliament.

I thank you and request Sen. Billow to second.

Sen. Billow: Thank you, Mr. Deputy Speaker, Sir. I wish to second the Motion. I also want to take the opportunity to thank His Excellency the President for his Speech during the Joint Sitting of the House. The Joint Sitting was not only necessary but also timely. It addressed the anxiety that existed at the time in the country as to the status of the President with regard to the ICC and whether he would attend or not.

The Speech addressed concerns regarding the sovereignty of the nation. It clearly gave direction on the Presidency in the event that he decides to go. This was a very essential sitting and the Speech was clearly very remarkable.

It set a milestone in some of the decisions, for example, his decision to temporarily hand over the reigns of power. The Attorney-General *emeritus* knows what handing over the reigns of power means because he has been close to those places. It is not an easy thing, but he did that. However, I want to say a few things on this in seconding this Motion. One, I had opined in my column, the previous week, that, in fact, His Excellency should not go to The Hague. That was my view. But listening to the President as he made the Address, one thing that struck me was his humility and ability to come forward in front of the nation and own the problem saying: - "That is my case; it is my responsibility and my problem." Accepting to go out there to the court as a citizen of Kenya and not as the President of Kenya clearly created an understanding in some of us. We understand his position, painful as it may have been and earnest desire to clear his name, which actually was the main factor that was driving his decision to travel.

Mr. Temporary Speaker, Sir, as leaders in this House or Parliament and other institutions of leadership, there is a time that we have to accept the national calling. As leaders, we must stand up. The purported boycott of that special sitting by our friends in the CORD really undermined their status as national leaders, in my view, although, it had no effect since the Joint Sitting took place. I think it was not an appropriate decision, because this was a matter that was creating anxiety in the nation and required direction. It was important for leaders to attend and listen to His Excellency the President, because he was addressing both Houses of Parliament as the President of the Republic of Kenya, even if you disagreed with the position.

However, quite a number of us have bones to pick with The Hague as an institution. Personally, I was not in Parliament when the decision was made; that let us not be vague, go to The Hague. The strange thing in our country is that we sometimes take positions without considering what we are saying. Last year, for example, some members of the Jubilee Coalition were saying that we must boycott The Hague, and there was the build up to the African Union (AU) and United Nations (UN). Our friends in the CORD were insisting that we must go to The Hague. Early this month, when the President said that he wanted to go to The Hague, it was the other way round. Our friends in the CORD now said that he was taking our sovereignty to The Hague and that he should not go.

There is a problem with regard to our principles as leaders. Some of us have been consistent, I personally agree that African countries were right in 13th October, 2013 when they made that decision that no sitting head of state should appear before The Hague, for the simple reason that it affects the constitutional order and stability of member states. I am going to quote that statement that the African countries made on that day. They said. "To safeguard constitutional order, stability and integrity of member

states, no charges shall be commenced or continued before any international court, against any serving African Union Head of State.” That message was clear.

They were coming from the background of our freedom fighters. They looked at Kwame Nkrumah, Nyerere, Nasser and others, who had raised concern at that early time in our Independence about undermining the sovereign equality of states. This is why the whole idea of pulling Presidents before the international court is not the right decision, and we should, as nations, say no. Again, it is the lack of a level playing field. You cannot have an international court that wants to indict criminals and exclude certain countries. We have seen what happened in Israel and Gaza a few months ago. They decimated an entire society day and night. Thousands are killed and nobody would ever stand up and say: - Let us take Israel to the International Criminal Court (ICC).

When Motions were moved in the United States of America (USA) to try and get former president George Bush before an international court, none other than the head of state said: “Forget it; it will not happen during my watch.” They did not allow it. They even went into an agreement with that court that not even a soldier of the USA - forget about the president - can ever be held before an international court. Forget about other European countries and Asia; look at what is happening in Syria, Egypt and all those other countries. Six out of the eight cases before that court today are from African countries. Never mind that in 2010, our National Assembly may have faulted and said that the ICC was better. We may have faulted. They say it is only a fool who does not change his mind. At the time, we thought the ICC was better but later on, we said no, it was a wrong decision. This is because there is no level playing field in that court. It is clearly a political institution to try and man leadership sometimes in these parts of the world.

Mr. Deputy Speaker, Sir, I want to also comment on an issue that has been raised with regard to that Speech where the President said: “Look, it is not the presidency of this country that is on trial, it is Uhuru Kenyatta, and I am going there as Uhuru Kenyatta.” Why? Because when he was campaigning, he said it was a personal or individual challenge and not a national one. That issue is now being raised all the time. There is a sense when you look at this thing. We say that once you go into a position of leadership in public service, there is no private life. This is why in every country - from the USA to this one - when you are in that kind of a position, every aspect of your life is under scrutiny, because there is no distinction between what is private and what is personal. I remember a couple of years ago when President Kibaki was forced to go before the national television to announce that he had only one wife. Why was it an issue yet it was a personal matter? It is because it was raised in Parliament back then.

Mr. Deputy Speaker, Sir, when Kenyans decided to vote for the two people who had been indicted before the ICC in 2013, what was the significance of that vote? They knew the two had personal challenges; they were wanted in the ICC; they had already been indicted but they went ahead and voted for those people.

(Applause)

My reading of that is that Kenyans decided to vote for them knowing that the two had personal cases, but which would not stop them from carrying out their mandate as President and Deputy President of this country. It is that decision of the people of Kenya

that must be respected. That is the way I look at it. That vote was a sort of a referendum that, never mind the personal issues. So, if the President then comes around and says; “My personal challenge then is a national challenge today”, it is because of the statement Kenyans made by voting him in. You take over the assets and liabilities of that individual when you vote him in. That is it.

Mr. Deputy Speaker, Sir, I also want to conclude by saying that the decision of the President to hand over power temporarily to the Deputy President was also a remarkable thing. It set a precedent because literally, the Deputy President was the acting president for those 48 hours. The Deputy President, in those 48 hours actually acted with dignity and with a lot of respect. He did not misuse power. I know what some people would have done if they were given 48 hours. A lot of people have been pushing to be given even one hour. I remember in 1992 when the former presidential candidate, Oginga Odinga, came to Manderu during a presidential campaign, he said; “If you can just get me into State House even if it is just for one day, I would really appreciate.” The Deputy President acted with dignity for those 48 hours; he did not display lust for power: he did not even try to maximize it and there was absolutely no vacuum. When the 48 hours elapsed, he went to the airport to receive the President, handed power back to him quietly and came back with him. Those are the kind of leaders who deserve respect. I must say that the Speech had a lot of guidance with regard to the anxiety that existed at the time. Many of us who still think The Hague is not the best place for African leaders to go can now understand our President’s earnest desire to clear his name.

I therefore second the Motion.

Thank you.

(Applause)

The Deputy Speaker (Kembi-Gitura): Thank you, Sen. Billow Kerrow.

(Question proposed)

Sen. Haji: Thank you very much, Mr. Deputy Speaker, Sir. I support the Motion. I will not speak too much because I had one of my teeth removed this afternoon. However, let me start by saying: “Uhuru juu, juu, juu; juu zaidi tena”, because he has made us proud as a nation.

(Applause)

He has demonstrated an extraordinary leadership---

(Senator Wetangula spoke off record)

The Deputy Speaker (Kembi-Gitura): Sen. Wetangula, if you want to make a point of order, you must intervene in the correct manner.

Sen. Haji: Thank you for your leadership, Mr. Deputy Speaker, Sir. I think he should withdraw and apologise for calling me a sycophant. He said that. He is somebody I respect very highly.

The Deputy Speaker (Kembi-Gitura): Sen. Wetangula, did you call Sen. Yusuf a sycophant?

The Senate Minority Leader (Sen. Wetangula): It is on record

The Deputy Speaker (Kembi-Gitura): I do not know. We can check the Hansard.

Sen. Haji: Mr. Deputy, Speaker, Sir, if he is a leader, he should be honest enough to say I am sorry.

The Senate Minority Leader (Sen. Wetangula): Mr. Deputy Speaker, Sir, ---

The Deputy Speaker (Kembi-Gitura): Are you rising on a point of order?

The Senate Minority Leader (Sen. Wetangula): I thought you had asked me a question.

The Deputy Speaker (Kembi-Gitura): Yes, I asked you whether you called him a sycophant or not.

The Senate Minority Leader (Sen. Wetangula): Mr. Deputy Speaker, Sir, I said let him go on with his sycophancy, yes, because this idea of saying *juu, juu, juu zaidi*, first, he was flouting the Standing Orders. When you start speaking in English, you do not switch to Kiswahili. The "*juu juu juu zaidi*" are the days of sycophancy in this country, which everybody knows.

The Deputy Speaker (Kembi-Gitura): Sen. Yusuf Haji.

Sen. Haji: Mr. Deputy Speaker, Sir, that is unparliamentarily and he cannot get away with it. He should apologise and withdraw. He must!

The Deputy Speaker (Kembi-Gitura): Sen. Wetangula, is it right to call Sen. Yusuf Haji a sycophant, because that is what you have done? Whatever semantics you may want to use, you have referred to him as a sycophant. Is that parliamentary language?

The Senate Minority Leader (Sen. Wetangula): Mr. Deputy Speaker, Sir, when a Member starts contributing and within less than a minute, he says "Let me start by saying; "*Uhuru, juu, juu, juu zaidi;*" If that is not sycophancy, I do not know what you would call it.

Sen. Haji: Mr. Deputy Speaker, Sir, are you allowing that? Because if you allow that, *nitamwambia yeye pumbavu, mshenzi mkubwa*.

The Deputy Speaker (Kembi-Gitura): Order! Sen. Yusuf Haji!

Sen. Wetangula, in my considered opinion as the presiding officer, I want to state clearly that every Member has a right, like you have a right, to say what you want to say. You have the freedom of speech, particularly in Parliament where you can say anything under the privilege but even that freedom of speech has its own limits.

Order! Order, Sen. Wetangula!

Sen. Yusuf Haji, in his contribution, has said what he has said because you called him a sycophant. My understanding of the word "sycophant" must be the same understanding that you have of sycophant and I consider that to be unparliamentarily. Would you like to do the correct thing or would you insist on imputing improper motive on Sen. Haji?

The Senate Minority Leader (Sen. Wetangula): Mr. Deputy Speaker, Sir, did you hear what he said about me?

The Deputy Speaker (Sen. Kembi-Gitura): Right now, I am dealing with the allegation that you called him a sycophant.

The Senate Minority Leader (Sen. Wetangula): The Chair cannot pretend not to have heard what Sen. Yusuf Haji said while standing and facing you. He said: “*Pumbavu, mjinga.*”

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Haji, did you utter the words that Sen. Wetangula says you used?

Sen. Haji: Mr. Deputy Speaker, Sir, I am an honourable person. Yes, I said that as a result of what he did to me.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Haji, would you like to insist or withdraw?

Sen. Haji: Mr. Deputy Speaker, Sir, I insist that he has to withdraw first.

The Deputy Speaker (Sen. Kembi-Gitura): Who has a temporary card called “Temporary 2, Ongoro?”

Hon. Senators, I would like to draw your attention to the provisions of the Standing Orders, and they are clear. Sen. Wetangula, whereas Sen. Yusuf Haji may have said the words that he said, which he has admitted to having said, two wrongs cannot possibly make a right. I am neither going to allow Sen. Haji to use those words in the House nor you to use the word “sycophant” against an honourable Senator.

(Sen. Wetangula stood up in his place)

Where are you going? I think you need to respect the House also. I have not asked you to say anything. I am just pointing out that as much as I shall not allow Sen. Haji to carry through the words that he has said – and I am going to ask him to withdraw and apologize, since he has admitted using those words - I expect that you are going to withdraw the word “sycophant” and apologize. Now it is up to you.

The Senate Minority Leader (Sen. Wetangula): Mr. Deputy Speaker, Sir, I take note of the attempt to gag and curtail the right to speak.

The Deputy Speaker (Sen. Kembi-Gitura): Who are you making that allegation against?

The Senate Minority Leader (Sen. Wetangula): Mr. Deputy Speaker, Sir, in spoken English, there is fair comment.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Wetangula, I am not going to allow semantics to cloud what we are doing. You may talk about freedom of speech and I am the one who spoke about it. You are free in this House and even outside, without privileges that we have in Parliament, to say what you want to say, but it has to be within bounds. This is because we have to be within reason and the limits that we can talk about freedom of speech. All I am asking you, before I ask Sen. Haji to withdraw and apologize is: Are you going to withdraw and apologize to Sen. Yusuf Haji or not?

The Senate Minority Leader (Sen. Wetangula): Mr. Deputy Speaker, Sir, I have tremendous respect for Sen. Yusuf Haji. He has been my Provincial Commissioner (PC), colleague in the Cabinet and a close personal friend. At moments, I have been his legal advisor on certain issues. I withdraw the use of the word “sycophancy” and replace it with “wailing louder than the bereaved.”

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Wetangula, I have not heard your withdrawal and apology. You need to withdraw and apologize unconditionally. When I give you a chance to contribute, you can then talk about other things.

The Senate Minority Leader (Sen. Wetangula): Mr. Deputy Speaker, Sir, I have withdrawn the words already.

The Deputy Speaker (Sen. Kembi-Gitura): Have you apologized to him?

The Senate Minority Leader (Sen. Wetangula): Sen. Yusuf Haji, the distinguished Senator for Garissa and a great friend of mine, I apologize to you and in place of the words that I used---

The Deputy Speaker (Sen. Kembi-Gitura): I am not going to allow you to give conditions.

Sen. Yusuf Haji, like I said, two wrongs do not make a right. So, the fact that you were irked by Sen. Wetangula, you cannot use the words that you used. I expect you to withdraw and apologize both to Sen. Wetangula and the House.

Sen. Haji: Mr. Deputy Speaker, Sir, I am very sorry and remorseful. It is not my nature, but if when I am pushed to the wall, I fight back. Sen. Wetangula is a great friend of mine and we have shared a lot. I withdraw and apologize.

Mr. Deputy Speaker, Sir, on the issue of wailing, in my culture, we do not wail even---

The Deputy Speaker (Sen. Kembi-Gitura): Now you can proceed with your contribution, Sen. Haji.

Sen. Haji: Mr. Deputy Speaker, Sir, according to our culture, we do not wail or cry. If we are bereaved, we just pray for the deceased, but there are people whose culture is wailing, making noise and dancing. We leave that to them.

Mr. Deputy Speaker, Sir, I applaud His Excellency the President for the historic and very bold move that he took, first of all, to address the nation, to allay any fears that Kenyans had. As the Head of State, he demonstrated that he is a real leader who can take the bull by the horns. By addressing the two Houses and willingly going to The Hague, he clearly demonstrated that he is not a coward or guilty of any offence, despite the fact that he has been accused by people who wanted to distract his leadership. For the last 18 months that he has been in leadership, he has also clearly demonstrated that he has the interest and wellbeing of Kenyans at heart. He has traversed many parts of this country and inaugurated projects in spite of the heavy load which has been placed on him by the case at the International Criminal Court (ICC).

It is very unfortunate that even amongst us, Kenyans, there are people who are very happy inspite of this unfounded allegation to find somebody in trouble. Some of those people will hug you and call you a brother in public and similarly they would stand in public and accuse you. This has happened before. It is very good that His Excellency the President took that decision because we all know that he is not guilty and neither are other Kenyans who have been taken to that court. This case should have been terminated together with the ones for Amb. Muthaura and Gen. Ali because the accusations against them are not different from the accusations that are being made against the President Uhuru and the Deputy President, William Ruto.

Mr. Deputy Speaker, Sir, he has done well by being the first Head of State to voluntarily appear before The Hague based court. We know other Heads of States who have refused to do that. As the Senate Leader of Majority said, it is unheard of to expect an accused person to adduce evidence against himself. What Ocampo did and what the gracious lady handling this case is doing, is to change the burden of proof against the accused by the accuser by expecting the accused to do that. I am saying this because

sometimes, we read in the newspapers that Kenya is not co-operating with the court and that President Uhuru has refused to declare his wealth. President Uhuru inherited what he has from his father, the late Jomo Kenyatta. Should he account for what he inherited from his father? That is unheard of and totally wrong. I think it is a scheme by the international community through the ICC to bring Kenya down.

I was very happy yesterday when I read the speech the President gave on *Mashujaa* Day warning foreign countries that are working towards bringing Kenya down. I applaud and support him in his effort to fight terrorism and corruption. We should support and stand with him as Kenyans.

With those few remarks, I beg to support.

The Senate Minority Leader (Sen. Wetangula): Thank you, Mr. Deputy Speaker, Sir, for allowing me to contribute to the Motion. When I came to the Chamber this afternoon, I expected - although I sit in the Rules and Business Committee (RBC) - that this House would discuss important issues like paying tribute to one of the greatest scholars ever grown from the African continent; Prof. Ali Mazrui, whose passing on brings down the curtain on one of the most illustrious intellectual and academic lives ever lived in our country or even the issue of Makueni.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Wetangula, you started by saying that you sit in the RBC and you know that I am presiding on this House today and I have not seen a Motion brought by you or anybody about anything else.

The Senate Minority Leader (Sen. Wetangula): Mr. Deputy Speaker, Sir, I am saying that we are now forced to discuss---

Sen. Mositet: On a point of order, Mr. Deputy Speaker, Sir. Is Sen. Wetangula in order to imply that the Motion we are discussing is not procedurally properly before the House and that we should not even discuss it?

Sen. Njoroge: On a point of order, Mr. Deputy Speaker, Sir. Is it in order for the Senate Minority Leader to imply that what we are discussing regarding the President is not as important as discussing Prof. Mazrui's demise? Does he mean that the President is not somebody important to be discussed by this House?

The Senate Minority Leader (Sen. Wetangula): Mr. Deputy Speaker, Sir, first of all, I never said that the Motion is unprocedural. I said that it is a Motion that ought not to be here and that is different from procedural issues. Secondly, I am entitled to my opinion that this is not a Motion worth debating in this House when we have more serious issues like paying tribute to the late Ali Mazrui or discussing the confusion in Makueni County or the Bills on the Order Paper. I encourage my colleagues across the Floor to stop displaying short fuse and listen to me. I have hardly said anything!

Sen. Kittony: On a point of order, Mr. Deputy Speaker, Sir. If the Senate Minority Leader is a member of the RBC, then he has no business to criticize what we are discussing now because he should have contributed in the right place and not when we are already deliberating.

The Senate Minority Leader (Sen. Wetangula): Mr. Deputy Speaker, Sir, obviously the distinguished Senator was not listening. I said that there is nothing unprocedural about the Motion being here. What I am saying is that it is not a Motion that ought to be here in the first place because we have other priorities. Let me go on to show you why.

The Deputy Speaker (Sen. Kembi-Gitura): Order Sen. Wetangula. It is in order to criticize the Motion before the House – I hope that is not a criticism on the Office of the Speaker – for two reasons; first, the Motion is before the House and secondly, there is no Motion to discuss a very respectable gentleman, Prof. Ali Mazrui, and thirdly, you also have a responsibility as a Member that if you wanted us to discuss Prof. Ali Mazrui, you should have brought a Motion and maybe we could discuss it immediately after this one. So, whereas I uphold the freedom of speech, I think it is also important to realize that every Motion that is before the House has been brought by the Members through the RBC in which you sit.

Who is having a card under the name “Temporary Four?”

The Senate Minority Leader (Sen. Wetangula): Mr. Deputy Speaker, Sir, she is standing on a point of information which I do not need.

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

Sen. Kisasa: On a point of order, Mr. Deputy Speaker, Sir. On behalf of the Muslims, once somebody is dead, we term it as hypocrisy to come and discuss them. You will never say that they were bad; you keep on just saying the good side of them. That is why we never have any eulogy; we just bury and forget. So, the late Prof. Mazrui---

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

Sen. Kisasa: Let us allow the late Prof. Mazrui to rest in peace.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Wetangula, you may go on.

The Senate Minority Leader (Sen. Wetangula): Mr. Deputy Speaker, Sir, the distinguished lady should know that in the Lower House, they are debating a Motion in honour of the late Prof. Ali Mazrui. I actually know that after his burial, there were eulogies that were held at the Aga Khan institution in Mombasa but that is not the issue.

Mr. Deputy Speaker, Sir, I start off by wondering aloud whether it is out of order for a Senator to say that this Motion is not a good Motion. It is perfectly in order and I can say so, and I will say so. Why? The matter upon which the President purported to address the House in the joint sitting is not a matter that ought to have been there in the first place. There are very serious national issues that one expects the President to come and address the House or joint sittings of the House. That is why we, in CORD, said it was not worth our time going to attend that Address. If you read through this Statement, it is coloured with a few irrelevant issues. The message was that the President was going to The Hague to attend court and he will come back. That cannot be a matter for addressing the nation! That cannot be a matter for addressing Parliament!

Mr. Deputy Speaker, Sir, I am on record in this country as having said that Kenyan problems require Kenyans solutions; I did say that. I opposed taking any Kenyan to The Hague. Many people even called me names and you heard somebody mentioning here the monotonous statement of “Do not be vague, go to The Hague.” When the President was summoned to go to The Hague this time round – and you can bear me out or anyone of my colleagues who listen to news can bear me out – I said the President should go to The Hague. Why? Because as a law abiding citizen, he is fully aware that he has been indicted; he is an accused person before a competent court of law and he has a duty to obey any summons that this court may, from time to time, give for him to go to court. When I said that, there was a round of chorus from Members of the Jubilee congregation who said “the President must not go to The Hague.” Of course, they were speaking out of emotion and ignorance; and they went on with the chorus. But the

moment they learnt that the President was, in fact, going to The Hague, it became what you would call the height of political buffoonery. All of them turned around and said “the President is great; he is patriotic; he is going to The Hague; he must go to The Hague!” People who respect themselves do not behave like this; leaders do not behave like this because the President was not doing anybody a favour by obeying court summons to go to The Hague. He was respecting a court of law; he was respecting international law. When we now sit here, pretending and talking as if the ICC is on trial here, we should know that the ICC is not on trial. The President is innocent until proven guilty---

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

Sen. Elachi: Mr. Deputy Speaker, Sir, is the Senate Minority Leader really in order to say that Jubilee Members went into a chorus, knowing very well that the ones who are seated here said that the President must go to The Hague? Can he really tell us who went into a chorus saying that the President should not go to The Hague?

The Senate Minority Leader (Sen. Wetangula): Mr. Deputy Speaker, Sir, if you were listening to me, at no time did I say that the Senators sitting in front of me went into a chorus; I said “the Jubilee congregation went into a chorus.” Many people out there from all walks of life – Members of Parliament (MPs), some Members of the Senate and so on, and so forth – were literally scampering to outdo each other to tell the President not to go to the Hague. When they realized that he was going, they all turned around and said it is a good thing to do.

The Deputy Speaker (Sen. Kembi-Gitura): Are you not satisfied, Sen. Elachi?

Sen. Elachi: Nobody was scampering. I think the Senate Minority Leader should also know that he is a leader in his own right and he should address this issue. If you feel that you do not want to address the Presidential Speech, you should do it with decorum.

(Applause)

The Senate Minority Leader (Sen. Wetangula): Mr. Deputy Speaker, Sir, I do not know how the word “scampering” can be offensive. Scampering is a very common English word. I have not in any way said that Sen. Elachi was shouting from the rooftop; I have not.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Wetangula, you may not have said that; but, you see, you are lumping people together. Sen. Elachi has taken issue with you lumping her with people scampering; whatever that word means. I think it is that clarification that she is seeking.

The Senate Minority Leader (Sen. Wetangula): Mr. Deputy Speaker, Sir, I clarified that Sen. Elachi was not scampering.

Mr. Deputy Speaker, Sir, now that the President has gone to The Hague and come back, we are having---

The Deputy Speaker (Sen. Kembi-Gitura): What is it, Sen. Njoroge?

Sen. Njoroge: On a point of order, Mr. Deputy Speaker, Sir. Is it in order for the Senate Minority Leader to single out Sen. Elachi, leaving the rest of us from the Jubilee Coalition and confirming that the rest of us were scampering? Is he in order for him to even use that word and say that it is a popular word? Even the word “foolish” is more

popular, but you cannot just use it for the sake of using it. So, is he actually in order to imply that the rest of us here were excluded from his withdrawal?

The Deputy Speaker (Sen. Kembi-Gitura): I do not think he is in order.

Before you rise, Sen. Wetangula, I will stand with your right to say what you are saying about the Presidential Address to the end because it is your right to say it. I will stand by and guard that right. But I think it is also your duty to respect other people and use respectful words even as you disagree. Whereas you can disagree and have your own position, I do not believe you have any right at all to use derogatory terms against other people, particularly when you lump people together without seeking out to know what each individual person would have stood for in that place.

So, my request to you is that you give this debate the respect that it requires as a parliamentary debate, not because it has to do with anybody, but because it is the right thing to do under our Standing Orders.

The Senate Minority Leader (Sen. Wetangula): Mr. Deputy Speaker, Sir, do I get the impression that there is a conspiracy to interfere with my debate in this House? I never said that the word “scampering” is popular; I said it is a common word. He has used the word “popular;” the Chair was listening and I expected the Chair to correct him. You can look at our Standing Orders, the word “scampering” cannot be said to be unparliamentary; it cannot be said to be discourteous; it cannot be said to be derogatory; it is an ordinary English word---

The Deputy Speaker (Sen. Kembi-Gitura): I will leave it to you; I have stated my position, which is on HANSARD and your position is also on the HANSARD.

Let us proceed with the debate.

The Senate Minority Leader (Sen. Wetangula): Thank you, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker, Sir, before I was rudely interrupted, I was saying that the President must be seen and understood to be innocent until proved guilty. That is the common tenet of criminal law and as my senior in law, you know that. Nobody has said that the President is guilty; nobody has said that the President must be found guilty. He finds himself in a state where the ICC investigation Chamber – unlike other legal processes – it is the court itself that investigates.

It found the President to be culpable and indicted him. He told Kenyans that this was his personal matter. I respect him for that. It was not a matter of the people of Kenya. This was not a matter of the Republic of Kenya. This was a personal matter. I agree with him and respect that position. He has since been going to The Hague. This was, probably, the second time. His Deputy has gone to The Hague for as many times as you can count. How come those who stand on roof tops to praise the President for going have never praised the Deputy President, Mr. William Ruto for going to The Hague? He has been honouring the same court summons that President Kenyatta honoured. This is a duty that everybody has and which must be obeyed. This is not an issue that can cause the Head of State to cause the two Houses of Parliament to waste their time to sit and listen to.

If you look at this---

Sen. Elachi: On a point of order, Mr. Deputy Speaker, Sir. Is the Senate Minority Leader in order to say that the President was wasting his time to call the two Houses for a sitting and yet the Constitution gives him that right to do so?

The Senate Minority Leader (Sen. Wetangula): Mr. Deputy Speaker, Sir, the President has a right to address the House on weighty national issues. The issue of the International Criminal Court (ICC) is not a weighty national issue and will never be.

Sen. Kittony: On a point of order, Mr. Deputy Speaker, Sir. This is very sad. If the Senate Minority Leader is not keen to contribute, some of us are ready to do so. Therefore, he has no business misleading us and wasting our time.

Sen. Njoroge: On a point of order, Mr. Deputy Speaker, Sir. Is the Senate Minority Leader in order to mislead this House by implying that it was not important for President to call for the Joint Sitting when he was leaving the country to go to The Hague? What venue should the President have used to hand over the leadership for those days if it is not at Parliament? Is he in order to mislead the House?

Sen. Mositet: Mr. Deputy Speaker, Sir, I am wondering the law the President broke which Sen. Wetangula can refer us to. All the President did was to observe the Constitution correctly. To my knowledge, even after Sen. Wetangula gave directive that CORD Members should not attend the sitting, however, most of them still attended and I thank them. The Senator could be running on the esteem of *Okoa* and that is why he is behaving the way he is behaving on the Floor.

Sen. Elachi: Mr. Deputy Speaker Sir, I stand on a point of order just because of The Hague issue. We should not play circus in the Senate. Let us be very serious with this institution of the Senate. Most of us, seated in this Senate today, were part of the issues before The Hague today. Therefore, when one stands up to tell the country that The Hague is no longer an issue is wrong.

At that time when the issue of The Hague was addressed in this House, the Senate Minority Leader who is my leader from western Kenya, was in the PNU Coalition which was running the Government. This is the Coalition that was fighting with the same ODM. So, if he stands here and says that this is not a critical issue for the nation, then I do not know what he is talking about. He should know that it is critical for this nation. He was part of those who should have settled this matter and not even the Jubilee Government. Is he in order to say that The Hague is not an issue just because President Uhuru Kenyatta is the one faced with issues at The Hague and yet he was part of the team then?

The Senate Minority Leader (Sen. Wetangula): Mr. Deputy Speaker, Sir, it is obvious that the distinguished Senator is being emotional on an issue she was not listening to. I said that the President is innocent until proven guilty. I have said before and it is in the HANSARD, that I oppose the idea of Kenyans going to The Hague. I have said that once somebody is indicted by a court of competent jurisdiction, he has a duty to obey summons by it. These are basic facts.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Wetangula, you also said and it also in the HANSARD although I may not quote it verbatim, that His Excellency the President wasted the time of the two Houses of Parliament by calling them and addressing them on the matters that he addressed.

The Senate Minority Leader (Sen. Wetangula): Mr. Deputy Speaker, Sir, in fact, in this statement, the President says that this is a personal matter. This is on the last page. The Constitution does not confer on the President any authority to come and address the Houses of Parliament on a personal matter. He says it is a personal matter.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Wetangula, I do not want to challenge you by asking you to show us where the President says that this is a personal matter.

The Senate Minority Leader (Sen. Wetangula): Mr. Deputy Speaker, Sir, it is on the last page.

The Deputy Speaker (Sen. Kembi-Gitura): No, I am talking about the matter of the address to Parliament. I challenge you to show us where he says it is a personal matter. I also want to draw your attention to Article 132(1) of the Constitution. It says:

“The President shall-

- (a) address the opening of each newly elected Parliament;
- (b) address a special sitting of Parliament once every year and may address parliament at any other time; and
- (c) once every year-”

The Senate Minority Leader (Sen. Wetangula): The hon. Member said here that I have no right to pass a judgement on the debate. That is why it is here for debate. I am shocked. I have the right to pass a judgement.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Wetangula, I agree with you 100 per cent that you have a right to debate. However, when you say that it was a waste of time for Members of Parliament, that is your own opinion which you are entirely entitled to. However, this is negating Article 132. That is why we are getting all these interventions back and forth. As I said, everybody has a right, but we must debate in a dignified manner.

The Senate Minority Leader (Sen. Wetangula): Mr. Deputy Speaker, Sir, I am truly shocked by the conduct of some of my colleagues. I am giving my personal views as a leader of the alternative view in this country. Those who do not agree with me will have time to say the opposite. You cannot just develop a short fuse where every time the name of the President is mentioned, you jump up as if you are being electrocuted. I am simply saying what I believe to be my views on this matter. Those who are feeling electrocuted should keep cool. They will have their time to speak on this.

We, a CORD coalition, said that was not worth our attendance and I did not attend. Many others did not attend for reasons we believed; that the matter that the President was coming to address caused anxiety. He said that there should be no anxiety, but I was not anxious. I know many people who were not anxious. I said, in a public statement somewhere, that I wish the President well. Let him go through the process. If he is innocent, the court will find him so.

The Deputy President has been going to The Hague every other day spending weeks there. I wish him well as well. Why are we not as anxious and excited when Mr. Ruto goes to The Hague as we are about the President going to The Hague? They are part of the same institution, the Presidency. Ruto goes quietly and comes back, but we do not talk about it. However, what are we seeing here? We are seeing very unhelpful and untenable funfair.

When the President said that he was handing over power to his Deputy, what power was he handing over? The Constitution is very clear. In his absence, the Deputy President is the President until he comes back. That is why we moved away from a Vice President to a Deputy President. They are elected on the same ticket and exercise the

same powers, except that there is a President and his Deputy. In his absence, the Deputy President acts as the President.

Mr. Deputy Speaker, Sir, in the gimmick of handing over power, you do not hand over power to the Deputy President on the Floor of Parliament. Show me where it is in the Constitution. You do not hand over power to the Deputy President by a pronouncement. There are instruments of power that we know. If you want to hand over power, those instruments are known. Was William Ruto given the sword, the Constitution and all the instruments that former President Kibaki gave to President Uhuru Kenyatta as he handed over power? The answer is no. This was simply a pronouncement of what the Constitution already says that when the President is away, the Deputy President acts as the President. He acted and I did not even notice that the President was not in the country. I did not even notice that Mr. Ruto was acting as the President because there was no opportunity for him to act on anything.

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

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

Sen. Njoroge: On a point of order, Mr. Deputy Speaker, Sir. Is the Senate Minority Leader in order to mislead the nation by saying that all the time the President is out of the country, the Deputy President should assume the Office of the Presidency while in Article 147(1) is very clear. It says:-

“The Deputy President shall be the principal assistant of the President and shall deputise for the President in the execution of the President’s functions.”

Mr. Deputy Speaker, Sir, when the President is out of the county---

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

Sen. Njoroge: Mr. Deputy Speaker, Sir, that is where I am heading to.

The Deputy Speaker (Sen. Kembi-Gitura): State your point of order. We must distinguish this, Sen. Njoroge. You can make a point of order which is an intervention when you find that there is something that you do not agree with or something that could be misleading. On the other hand, if you want to contribute, I will give you a chance to do so. You shall make the points that you want to contribute. So, let us distinguish points of order from points of argument because points of argument are points of debate. That is why I will give you a chance when the chance for you to talk comes.

Sen. Njoroge: Mr. Deputy Speaker, Sir, I am only raising a point of order by asking whether the Senate Minority Leader is in order to mislead the nation by implying that whenever the President is out of the country, the Deputy President becomes the Acting President. Is he in order?

The Senate Minority Leader (Sen. Wetangula): Mr. Deputy Speaker, Sir, I have never known that the Sen. Njoroge speaks for the nation for him to say that I am misleading the nation. I do not know which nation he is talking about. However, be that as it may, you know as a good lawyer yourself that selective reading of the law leads to confusion. He has read Article 147 (1), but he has carefully omitted to read Article 147(3) which says:-

“Subject to Article 134, when the President is absent or is temporarily incapacitated, and during any other period that he President decides, the Deputy President shall act as the President”

Mr. Deputy Speaker, Sir, that does not have to be pronounced. The pronouncement that I am talking about on the Floor of the National Assembly was just, but a political gimmick; just to hoodwink people because as soon as the President leaves jurisdiction, the Deputy President becomes the Acting President until the President returns. However, if he wanted to hand over the instruments of power; everybody here is old enough to remember President Nelson Mandela. When President Mandela wanted to hand over power to somebody as he left the country for about two weeks, he did not even pick his Deputy who was then Thabo Mbeki. He picked Mangosuthu Buthelezi of Inkatha Freedom Party, the opposition and swore him in. Buthelezi took oath of office, was given the instruments of power and President Mandela left the country. When he came back, Buthelezi went back to his opposition bench.

This can be compared to leaving your house to travel abroad and you call your family to announce that your wife will be in charge of the family. It is neither here nor there because she is the next in command. When you are not there, she is in charge. Therefore, whenever the President leaves the country, the Deputy President is the Acting President. So, those of you who get excited that one of you was left to act as the President and that during his acting, he displayed extreme humility, what did you expect him to do? Did you expect him to walk on people? Did you expect him to start running around recklessly with the presidential motorcade to show who was in charge? Nothing happened within the 48 hours to even warrant the Deputy President to display the powers of a President. He was not anything different.

I can tell you, as a lawyer, for free, Sen. Njoroge, because you challenged me, that no instruments of power were given to the Deputy President. In fact, no instruments of power were necessary to be given to him because he is part of the team of the presidency in this country. That is why we call it "presidency." It is a collegial; it is the President and his running mate. That is why the Deputy President does not run on a ticket of his own. Nobody voted for William Ruto, people voted for President Uhuru Kenyatta. However, William Ruto was part of the package. It does not take rocket science to know this.

Mr. Deputy Speaker, Sir, what we are calling a speech by the President to the Joint Sitting of the National Assembly and the Senate is a statement that was completely irrelevant. It did not deserve summoning of the two Houses. I agree with the President that going to The Hague was a personal matter. You cannot come to address Parliament on a personal matter. Of course, he coloured it by starting to tell us that he had been in New York at the General Assembly of the United Nations. That, we know, we had seen it. He told us he had said one or two things in New York. That, we know because it had been printed in the newspapers that other people in New York had acknowledged Kenya as a peacemaker in this region. That is something everybody knows. He also said that Kenya is spearheading peace efforts in the region. He did not have to call Parliament to address us on that. The real point was; "fellow Kenyans, I am going to The Hague, and The Hague that I said was personal. I am now telling you that I am going". Do you need to address Parliament to say that now William Ruto will act as the President? Do you need to tell Parliament that he is going to do so? I say no.

Mr. Deputy Speaker, Sir, at the end of the day, we have a Motion before this House that is a complete waste of our time. It is a Motion that should have never found its way here. This is a Motion that does not deserve and merit our debate. When the President addresses the country on the State of the nation, we all stand here to applaud

what he said after discharging his constitutional responsibility. We criticize what he did not say or what he did not say properly as we are dutifully bound to say as the alternative leadership. I can assure you that if it was a CORD leadership ---

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Lesuuda, point of order?

Sen. Lesuuda: On a point of order, Mr. Speaker, Sir. I want to know whether the Senate Minority Leader is in order to contribute to this Motion when he has said the address by His Excellency the President to Parliament was a waste of time. He has been contributing all this time and yet he holds a contrary view about the speech by the President?

Sen. Njoroge: On a point of order, Mr. Speaker, Sir. Is the Senate Minority Leader in order to even try and contribute towards this Motion which, in the first place, he noted very well that he boycotted attending that special joint sitting of Parliament? Why should he continue discussing a Motion which he terms as baseless? As a Member of the "House Business Committee", is he in order to come before the House and say that he does not know how this Motion found its way into this House?

The Deputy Speaker (Sen. Kembi-Gitura): Order, Sen. Njoroge! We need to be tolerant. How would a Member say what he wants to say without contributing to it? Every Member has a right contribute. As I said earlier, I will give you a chance to contribute. At that time, you will have every right to counter and say all the things that you have stated in your point of order.

The Senate Minority Leader (Sen. Wetangula): Mr. Deputy Speaker, Sir, it is not the first time that the distinguished Nominated Senator is veering off the track. For his information, we do not have any House Business Committee in the Senate. So, I do not know which Committee he was saying that I sit in.

Mr. Deputy Speaker, Sir, I also want to caution my colleagues; that always imagine the shoe on the other leg. The International Criminal Court (ICC) has been an incredible deterrent to many misdeeds in Africa and other parts of the world. I have said and can say again that the conduct of the ICC has not been satisfactory to many, including me. I have never understood why George Bush, the former President of America and Tony Blair, the former Prime Minister of the United Kingdom (UK) have not been indicted at The Hague for the atrocities committed in Iraq. I said this even when I was the Minister for Foreign Affairs to my counterparts from those countries. I have never understood why the ICC has not even opened an investigation file against Israel for the atrocities that they commit almost as an annual event on the people of Palestine.

Mr. Deputy Speaker, Sir, the ICC must act across board. You did say that two wrongs do not make a right. The fact that one robber has gone free does not mean that arresting the other robber is wrong. The fact that one murderer has escaped the dragnet of the law, does not mean that the other murderer should be let to escape as well. In this country, people died in their thousands. My community in Trans-Nzoia, Kipkaren and Mt. Elgon lost many people. I have not said that it is the Deputy President Ruto, or President Uhuru who killed them, but the investigators said that they are culpable and should go through a trial.

Mr. Deputy Speaker, Sir, you know the history of Africa; how Idd Amin bastardized and murdered the people of Uganda *en masse*. Then, there was no ICC. You know the story of Jean Bedel Bokassa in Central Africa, Fode Sanko in Liberia, Mobutu Sese Seko in Congo and how the leadership in Angola visited untold harm on their own

people. You know the FRELIMO and RENAMO war in Mozambique and how they were even poisoning boreholes where people draw water. Men, women and children died *en masse*. The ICC has come as a deterrent. That we unfortunately find ourselves there is not an issue. We are founder signatories to the ICC. I thank the President for acknowledging that Kenya signed to the ICC. Contrary to the prophets of doom, he made no insinuation that he wants to pull Kenya out of the ICC. I am sure he did this because he knows that we are at the ICC because we see a huge cloud ahead of us. We have just walked through a thick cloud behind us. This is something that everybody must acknowledge.

Mr. Deputy Speaker, Sir, it is also not true that no sitting Head of State has been indicted. The President of Sudan, Al Bashir, has a case pending at The Hague. He has refused to go there, but that is not the way I would advise our President to do. This is because if he does not go, like you were advising him not to go, there will be a warrant of arrest and he will only be able to visit the African Union (AU) Headquarters in Addis Ababa and nowhere else.

(Sen. Kittony spoke off record)

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Kittony, you are not even in the HANSARD, because you have not even sought to intervene.

The Senate Minority Leader (Sen. Wetangula): Mr. Deputy Speaker, Sir, I have not even said that she is the one who advised.

Sen. Njoroge: On a point of order, Mr. Deputy Speaker, Sir. If you observed, the Senate Minority Leader pointed at us when he was said that we were advising the President not to go to The Hague. Is it in order for him to keep on pointing at us and claiming that we were among the people who told the President not to go to The Hague?

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Njoroge, pointing at you is not in the HANSARD and I did not see it. So, I cannot make a ruling on it.

Sen. Kittony, what is your point of order?

Sen. Kittony: On a point of order, Mr. Deputy Speaker, Sir. Could the Senate Minority Leader clarify because it is wrong for him to say that we collectively advised the President? Could he mention who advised the President? We are here for business and not to be pointed at.

The Senate Minority Leader (Sen. Wetangula): Mr. Deputy Speaker, Sir, I did not point at any Senator. I was gesturing.

The Deputy Speaker (Sen. Kembi-Gitura): We have gone through that already. Sen. Kittony is asking you to clarify---

The Senate Minority Leader (Sen. Wetangula): Mr. Deputy Speaker, Sir, I can clarify to the distinguished Senator that she is not one of those. You know how Italians speak. They speak with a lot of movement of hands. I was gesturing and not pointing at you at all. I would not point at a distinguished lady like you in a matter such as this.

Mr. Deputy Speaker, Sir, I was making my final point; that the ICC is a necessary deterrent to dictatorships world all over. If you are not a dictator, you have nothing to worry. If you respect the rule of law, you have nothing to worry. You also know that if the ICC was there in the old days, perhaps, my brothers and sisters from Pokot would never have suffered the indignities that they have suffered in the history of this country. The colonial Government would close West Pokot and move in the army which would

rape women, beat and kill people. The ICC would have been there to protect those invalids and innocent. Now that it is there, you will never see such things happen. Everybody knows that it is there and will come for you. Even those of us who want leadership know that you cannot conduct your affairs recklessly. That is why today, you see even some of our brothers in South Sudan might end up there. I have talked to my friends there and they say that the things that are going on may find some people indicted.

Mr. Deputy Speaker, Sir, if you look at Africa, you have a sigh of relief. As a student of African politics, apart from being a lawyer, I know that today Africa is conducting its affairs differently. Today, we do not have presidents in Africa who can send tanks to roll over a village because it does not support him or it opposed him. It will not happen, thanks to the ICC. That our President is unfortunately there, it is the way it is. We wish him well. Let him go through it and come back. However, I will not stand here and denounce and renounce the ICC, call it names and develop a short fuse such that every time a name is mentioned, I jump up as if I am being electrocuted. That is not how to debate in this Chamber. Let us debate soberly. Listen to me and I will also listen to you. I do not have to say what pleases you. I only say what I believe is the right thing to say.

Mr. Deputy Speaker, Sir, the address to the two Houses was misguided, unnecessary and a waste of time. It is even a bigger waste of time to bring a Motion to debate that address, when it related to a purely personal matter that has nothing to do with the nation. This is because the President of Kenya is not indicted. It is one Uhuru Muigai Kenyatta who is indicted. He rightly said that he was going there as an indictee and person. So, who are we to say that he was not, when he already acknowledges that he was indicted as a person? That is what it is. I think he is doing the right things and we hope that Kenya will go through this phase.

I want to caution some of the statements I hear from some of our colleagues here. For example, you heard the Seconder of the Motion speaking in terms like we who are seating across here are controlling the process of The Hague case. This is idle talk which is unnecessary and reckless because we have got no interest in pushing anybody into the mud. I have practiced law in this country for the last 32 years. I have acted for the good, the bad and the ugly. So have you, Mr. Deputy Speaker. A lawyer will always stand to defend the interests and the legal protection of the client; nobody is guilty until proven so. That remains the same whether you are the President or a villager in Korogocho, Pokot, Bungoma, Mombasa or Laikipia. They are all equal before the law and we shall remain and must respect the law. You can praise as much as you want, but the law remains the law. Shakespeare said that the law is an ass; it remains the law.

Thank you.

Sen. (Dr.) Machage: Thank you, Mr. Deputy Speaker, Sir. This is, indeed, a timely Motion. I am a Member of the CORD and I stood in solidarity with the Jubilee coalition when our principals called upon our membership not to attend Parliament when the President was attending the joint Houses.

Having said so, I hold a completely different view of his Speech as a statesman. I believe that we in the opposition will not score much by abrogating ourselves the duty of abusing the presidency in Parliament. I do not think that that is the way to score marks. I think we shall score highly if we pick on real issues and hold on to them to fight and win

the presidency in 2017 which I know we are able to, but only if we have facts. If the President of the Republic of Kenya addresses Parliament on whatever matter, that is his constitutional right. It is your personal opinion to label the Speech inadequate or pointless and not our party's opinion.

Mr. Deputy Speaker, Sir, at that time, the country was really in distress; the country was in dire need to know what was going on. Kenya is not only about the Jubilee and CORD coalitions, but it belongs to all Kenyans. This was a situation where the President of the Republic of Kenya had been asked to appear at the ICC to answer to a case, leaving a vacuum of leadership. As has been ably explained by the Senate Minority Leader, Article 147 of the Constitution clearly says that he did not need to have done that to abrogate his powers to the Deputy President because that is a foregone case, because the Constitution so provides. However, he made no mistake to emphasize that he had done so. He told the country that he was leaving and that the citizens should rest assured that the presidency was being left in the hands of a credible, responsible and trusted leader. There was nothing wrong with that as far as I am concerned. It was largely statemanly to do so. Who knows what would have happened if the ICC could have decided to lock him in? That gesture assured us that if that had to happen, then he had left the leadership in trusted hands and that was his wish. He made sure that even that a Kenyan or a villager who may not have read Article 147 of the Constitution is reminded what it provided. We all know they voted for it because so-and-so had said so. Therefore, they had to get to know the legal clause through which he abrogated his duties to the Deputy President.

Mr. Deputy Speaker, Sir, we should be sober when handling matters to do with parties, leadership, politics at different levels and development. These issues must be observed carefully. Recently there was a misconception in my county of Migori where the Head of State came and had the wrath of the people just because they did not like the Governor of Migori County. It has taken me so much time to try and clear that notion from our youth. The people of Migori are very remorseful for that. It is not because they want to join the Jubilee Coalition, and neither do I want to be a Member of the Jubilee Coalition, but the seat of the presidency must be respected by all and sundry. This is because when as CORD, one of our principals takes that seat; either Sen. Wetangula, hon. Kalonzo Musyoka, hon. Raila Odinga or Sen. (Dr.) Machage who may submit his candidacy when the time comes, we will expect respect from the Jubilee Coalition. That is what should be done by responsible law abiding Kenyans. That is what we call wisdom.

As I praise the President for having done that, therefore, I also praise him for telling Kenyans that, that was his own luggage or problem as a person. That was not an issue that every Kenyan had to carry. He accepted it and owned it. However, the question is: Was it that way? He was still the President of Kenya in Kenya Airways and at The Hague court even when the Deputy President was in acting capacity. This is because the Constitution does not say that when the Deputy President takes over, then he ceases to be President. The Constitution only gives certain powers that the Deputy President can abrogate himself at that time when the President is away. So he still remained the President of Kenya. That is the only falsehood that I would want corrected. The President did not abrogate his powers to the Deputy President; that is false. He was still the President of this country.

Mr. Deputy Speaker, Sir, all said and done, his Speech was timely. His reassurance of the country was timely and Kenyans understood, praised and thanked him for having taken that step to tell the country what was going on. In leadership, that is humility. I wish we could have many leaders who could behave that way, not only at the level of the President, but be it as the county representative, Member of National Assembly, Senator from this House and so on. We need to show humility in leadership because that is a sign of statesmanship.

(Applause)

That is why he must be praised; that is why he must be thanked and that is why this House is discussing his Speech as the law and as our Standing Orders provides and dictates.

Mr. Deputy Speaker, Sir, Standing Order Nos.22, 23 and 24 dictate that we do the same. If we think that there was no substance in his Speech, then we should speak less or we should not speak at all. That way, it will take only one day and the discussion will be over. I thank the Senate Minority Leader because he has taken close to one hour discussing the Speech of the President. That is very good. It means that there was substance to discuss about.

(Applause)

Mr. Deputy Speaker, Sir, the important thing here is that bad language, light language or sweet language will not change a thing. The President gave his Speech in a bicameral Parliament. It was recorded as it was delivered and that is what we are discussing here as the law provides. Whether we like it or not, it is done.

(Applause)

Mr. Deputy Speaker, Sir, let me hope this is the last time the ICC will call upon our President to go to the ICC because it causes a lot of stress to everybody in this country, be it the member of opposition or on the Government side. You will see how even businesses are so sensitive to the moves of the President. Look at the value of the Kenyan shilling before and after the President's visit to The Hague. That is a situation we find ourselves in that we should never have found ourselves in. But here we are; we are members of the ICC, whether we want to withdraw or not. Even if we give a notice of withdrawal, it will take one year before that request for withdrawal is even considered. So, let us not cheat ourselves. Therefore, the Members of Jubilee who kept on singing and telling the Head of State "You should not go; we will be at the airport to prevent you from entering the plane and all that," they are quite misguided fellows. It is good that the President told them the truth because that is not the way to do things. Respect international law because Part 2 of our Constitution so dictates. The President swore to protect the Constitution. That is the oath of leadership he took. Therefore, he had to respect the Constitution and go to The Hague. If he is called upon to go, he should go. Our prayer is that he is not indicted. Our prayer is that he is left free. Our prayer is that let justice be done.

Mr. Deputy Speaker, Sir, all said and done, what will happen to the people who suffered? I am a victim myself. In two days in Migori Town, I lost property worth Kshs25 million because I gave haven to a certain ethnic group in my constituency. I thank God that I had a little left to eat. But what of that fellow who had all his property destroyed and his body maimed? We all saw what happened in Naivasha Town. I do not think that should be forgotten.

As we think that the President did the right thing to give a speech, I want him to also make another speech on what will be done to those Kenyans who suffered. Over 6,000 Kenyans suffered. What happens to those who were not recorded, but they immensely suffered? What of the widows and the orphans who were left after the 2007/2008 skirmishes? They cannot just be forgotten. So, I pray that the President gives another Speech in Parliament. He should call for a joint sitting of Parliament to tell us how these people will be taken care of. We have seen Internally Displaced Persons (IDPs) from Mau Forest being given plots or Kshs400,000. What about the victims?

Mr. Deputy Speaker, Sir---

The Deputy Speaker (Sen. Kembi-Gitura): Order, Sen. (Dr.) Machage, your time is up!

Sen. (Dr.) Machage: Give me one more minute.

The Deputy Speaker (Sen. Kembi-Gitura): I do not have the discretion, Sen. (Dr.) Machage.

Proceed, Sen. Peter Mositet.

Sen. Mositet: Asante sana, Bw. Naibu Spika, kwa kunipa nafasi hii nichangie Hotuba ya Rais katika kikao cha pamoja cha Bunge la Seneti na Bunge la Kitaifa. Rais alifanya jambo la busara na alifuata Katiba inavyosema kwamba ikifika wakati ambapo taifa linahitaji kusikia kutoka kwake, anaweza kupitia Bunge.

Bw. Naibu Spika, Rais wetu alifanya hivyo wakati ambapo nchi nzima ilikuwa imeingiwa na baridi na hofu. Kila mtu nchini alikuwa anaangalia upande upande – wale walio katika upinzani na wale walio katika mrengo wa Jubilee – wote tulikuwa tumeshikwa hofu tukiulizana je, ICC inatutakia nini? Je, inataka Rais wetu aende ICC ilhali tumemchagua kama Rais? Kwa sababu hiyo, Rais alifanya jambo la busara sana kwa kuitisha kikao cha pamoja cha Bunge la Seneti na Bunge la Kitaifa ili azungumzie yale aliyoweza kusema. Maneno yake yaliweza kuchangia na kutupatia mwelekeo kama taifa. Maneno yake yaliweza kuunganisha taifa na tukaelewa kwamba hata kama ICC iko, taifa la Kenya litasimama wakati wowote.

Bw. Naibu Spika, Rais alisema kwamba mambo ya ICC ni mambo yake ya kibinafsi na hii ndio sababu aliyehitajika kufika mbele ya mahakama hiyo kama mtu binafsi na wala si uongozi wa nchi. Kuambatana na busara yake, alimteua Naibu Rais kuwa kaimu Rais. Alifanya vile sisi hatukufikiria. Hata nchi nzima haikufikiria angefanya hivyo. Tulifikiria kuwa Rais ataenda ICC akiwa Rais hata bila ya kusema kwamba atamwachia naibu wake usukani.

Bw. Naibu Spika, kwa wale wanaosema kwamba Rais hakufanya vile; ati ilikuwa tu ni sarakasi, hiyo si kweli kwa sababu wakati alipomuachia Naibu wake ashikilia hatamu ya uongozi. Naibu Rasi hakuitwa Naibu Rais tena, bali alitwa kaimu Rais. Kwa hivyo, ni vizuri sana tujue kwamba hakukuwa na sarakasi pale. Rais wetu mwenyewe alijishusha kabisa. Kitendo hicho kinatuonyesha kwamba Rasi wetu aliona kwamba

ilifika wakati lazima hata Katiba yetu itekelezwe vile ambavyo hatukufikiria. Kuna wakati sisi husoma vipengele vya Katiba na hatujui vile vinaweza kutekelezwa.

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

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

Kwa kufanya vile, alituonyesha kwamba kweli yeye ni mfuasi wa Katiba kabisa. Kuna wengine ambao waliwahimiza viongozi wasihudhurie. Ningependa kuwashukuru Wabunge wote wa upande wa CORD na Jubilee kwa sababu walionyesha ushujaa. Walionyesha uzalendo na wakajitokeza kumsikiza Rais. Waliona kwamba Rais anaipenda nchi hii, ana maono ya nchi hii na hajitakii makuu lakini kuna yale anayoitakia nchi hii.

Naikumbuka siku ambayo Rais alisema atampa Naibu wake madaraka ili aiongoze nchi. Niliyaona machozi yakiwadondoka Wabunge wengi kwa maana hawangefikiria kuwa maneno hayo yangenenwa na mtu ambaye ni Rais. Aliyafanya hayo yote kwa kuwa yeye ni mzalendo. Huyu ni mtu ambaye anaipenda nchi yake. Huyu ni mtu ambaye anajua utafika wakati ambapo yeye hatakuwa Rais lakini angependa kuiona nchi imesimama imara. Alifikiria na kushangaa vile nchi ingeachwa akienda huko The Hague.

Kiongozi wa Wachache alisema hakuona upanga ukipeanwa. Anafaa kujua kwamba kuna yale kaimu Rais anafaa kuyafanya na yale ambayo hafai kuyafanya. Rais pia ni Mkuu wa Majeshi. Kwa hivyo, bado alikuwa ameyashikilia mamlaka hayo. Kwa hivyo, upanga haungepeanwa. Tulishuhudia Naibu Rais akipewa madaraka ya kuiongoza nchi. Pia tuliona kwamba aliyepewa ni mtu mwenye hekima kabisa; mtu ambaye ni mpole. Huyu ni mtu ambaye anaipenda nchi yake kabisa. Tuliona viongozi ambao tunafaa kuwapigia kura.

Ningependa kusema kwamba ICC ni jambo ambalo limekuwa likitusumbua. Tumekuwa tukijiuliza mambo ya ICC na kushangaa korti hiyo inataka kutoka nchi yetu. Ukiangalia mahali tumefika utaona kwamba kama mambo ya ICC yangeendelea na kama Rais hangeshikana mikono na Naibu wake katika maombi kuhakikisha kwamba jamii zimerudiana, na kuhakikisha kwamba mikoa ya Bonde la Ufa na ile ya kati zimeungana kabisa, tungekuwa wapi? Hakuna wakati ICC imesema kwamba kwa sababu kulitokea mambo yale, wananchi wanafaa kushikana na kuwa kitu kimoja.

Nawashukuru Rais wetu na Naibu wake. Mungu aliwaonyesha kwamba ni jukumu lao kuliunganisha taifa hili. Maombi ya wale ambao wanamuogopa Mungu; mimi ni mmoja wao. Tuna Waislamu na Wakristu ambao wanaomba kabisa. Kusema kweli, tumeyaona mengi yakifanyika katika nchi hii. Haya yote yameunganisha taifa hili kabisa tukawa kitu kimoja. Tumeona ushindi mkubwa katika taifa hili.

Nikiangalia, naona ICC ilikuwa ilete udhaifu mkubwa lakini kupitia maombi, hayo yote yameshindwa. Kupitia maombi, tumeona Rais na Naibu wake walichaguliwa na Wakenya wote waliona. Kwa hayo yote, namshukuru Mwenyezi Mungu. Ningependa kuomba tuzidi kuweka maombi mbele kama taifa. Tuliona vile Rais wetu alijishusha, tuliona vile naibu wake alijishusha. Baada ya kupewa madaraka, aliyashikilia bila mchezo. Aliyashikilia vizuri mpaka Rais akarudi. Viongozi wetu wametuonyesha kwamba wao ni mashujaa na wazalendo wa nchi hii. Wametuonyesha kwamba miaka

mingine itakapokuja, hatutaangalia nyuma. Tutawachagua wale wale tu, 2017. Hata baada ya mwaka huo, tutachagua naibu wake. Tumeona hayo. Bwana Omar Hassan ni rafiki yangu. Hata yeye alijionea kwamba uzalendo ulitumika pale.

Sen. Hassan: On a point of order, Mr. Temporary Speaker, Sir. I just want the speaker to clarify that he is not trying to associate me with his views by saying that I internalized the views he is talking about.

Mr. Deputy Speaker, please, clarify--

The Temporary Speaker (Sen. (Dr.) Machage): Sen. Omar, you are asking the Speaker to clarify something, but I do think I have spoken anything about you. Could you rephrase your request?

Sen. Hassan: Mr. Deputy Speaker, Sir, I want Sen. Mositet to clarify that he is not alluding or associating me with his speech? He needs to talk independently and should not second guess or make reference with respect to his opinion.

The Temporary Speaker (Sen. (Dr.) Machage): Sen. Omar, if you went to the mosque and the preacher talked about a general gospel, you would not think he is talking about you. You do not go back to the Kadhi to quarrel him that he was talking about you.

Sen. Hassan: Mr. Temporary Speaker, Sir, he mentioned my name.

The Temporary Speaker (Sen. (Dr.) Machage): Did you?

Sen. Mositet: Bw. Spika wa Muda, nilisema Seneta Omar ni rafiki yangu na nina hakika aliona uzalendo ulioonyeshwa na viongozi wetu. Hakuna jambo mbaya kwa kusema hivyo.

The Temporary Speaker (Sen. (Dr.) Machage): I will advice that you keep your own thoughts to yourself. He may not be sharing the same thoughts with you.

Sen. Mositet: Bw. Spika wa Muda, unaweza kumkaribia mtu sana akawa rafiki yako na kuona kwamba anaweza kama unavyoweza.

Sen. Omar, utanisamehe.

Bw. Naibu Spika, Rais wetu ana marafiki Afrika nzima. Afrika yote ni rafiki ya Kenya. Kongamano la Afrika pia lilikuwa likiangalia vile Rais wetu atakavyoenda kule The Hague. Alisema amemteua Naibu wake ashikilie na kutupa nafasi na kuonyesha kwamba hatujageuka katika mambo tuliyosikizana na Afrika nzima. Rais angeenda kule lakini akamwachia Naibu wake kushikilia kama Rais wa muda hapa Kenya. Rais wetu alilifanya jambo la busara sana.

Mheshimiwa Rais pia alichangia pakubwa kwa kuonyesha kwamba demokrasia yetu iko juu sana. Viongozi wengine ambao wangependa kuchaguliwa katika ngazi hizo wana kibarua kigumu sana baada ya yale Rais alifanya. Tungependa kujivunia haya kwa sababu alitonyesha kusimama wima kama nchi. Rais alionyesha kwamba ni lazima tusimame akiwa hapa na akiwa ameondoka. Lazima taifa liendelee kusimama.

Bw. Spika wa Muda, kwa hayo machache, ninaunga mkono hotuba ya Rais.

Sen. Wako: Thank you, Mr. Temporary Speaker, Sir, for giving me an opportunity to speak on this very important Motion and to thank the President for the speech he delivered on 6th October, 2014.

Let me, first of all, start by congratulating the President for having stood on the side of the rule of law; having decided to obey the summons of the ICC to go to The Hague. This is obviously normal as expected of any law abiding citizen to obey the summons of the court. But in this particular instance, I feel I must thank and congratulate him because there was very strong pressure from his supporters that he should not go.

There was great fear amongst his supporters of what might happen if he went there. There was also pressure from his peers at the African Union (AU) level for him not to go.

Mr. Speaker Temporary, Sir, as you are aware, a resolution had already been passed by the Heads of State and Governments of the AU that no sitting Head State should go to The Hague or should answer summons from ICC. He withstood all that pressure. Even some of the Heads of State in the neighbouring countries appealed to him not to go. Therefore, for him to have withstood all that pressure, and the decision to go to the ICC, is worthy of congratulations.

Having been involved in the ICC matters, I do recollect that way back in 1979 and 1980, I was amongst the very few people who were sitting at a conference in The Netherlands who called for the establishment of the International Criminal Court. Thereafter, we campaigned for its establishment. When I became Attorney-General (AG), I was actively involved in ensuring that the Kenya Government does ratify the Rome Statute. Not only did I ensure that it happened, I also went to New York personally and deposited instruments of ratification with the Secretary General of the United Nations Organisation (UN). I came back and we drafted the International Crimes Bill to domesticate that Rome Statute. That is the law under which we are operating. That law also includes a section in our Constitution which says that a President is not immune from prosecution in relation to crimes committed under an international treaty. I was involved in all those for good purpose. I will be coming to that later.

I want to mention that on this particular case as the Attorney-General, as soon as these names came out-the famous six- I remember saying that in my view, the threshold to attract a criminal charge on an international crime had not been met under the Rome Statute. I did say that. I did also say that the Waki Commission did not say that, that threshold had been met. It said that further investigations must be done. I am still of that view up to now as I speak. That is the view I held as AG about this case, and the view I have now is still the same.

Mr. Temporary Speaker, Sir, I have been a prosecutor in charge of prosecutions for more than twenty years. However, what concerns me about this case is that when I became AG, one of the things that were attacked by the international community and the civil society, was that people were being whisked to go to court to answer criminal charges. But when they were in court, the prosecutor would then say that they should not be given bail as investigations were still going on. In other words, at the time, they were charged. However, the prosecution did not have enough evidence to prosecute them, but they were charged. They were hauled before the courts and denied bail because they would interfere with the investigations which were on going. That was yet the main criticism not only internationally, but even locally about our criminal justice system. Therefore, I took it upon myself to come up with a proper national prosecution policy hailed all over the world. It is the best prosecution policy that a prosecutor should have. We launched that policy.

That policy stated that one should never be charged criminally in a court of law where there is no sufficient evidence. In other words, the prosecutor must satisfy himself or herself that there is enough evidence before deciding to prosecute. Of course, a prosecutor may just be reading an investigation file. If in the course of a trial, it turns out that some of the witnesses' statements are being challenged successfully or are being doubted, we feel that this case cannot be proved, then the honourable thing to do

according to this prosecution policy which was also there under our Act, is to withdraw the case under what was Section 87(a) of our criminal procedure code. All these things were there.

Mr. Temporary Speaker, Sir, what concerns me is that one judge stated somewhere that the prosecution failed to properly investigate the case in accordance with its statutory obligations. In other words, the investigations were not properly done by the investigator. That is what one judge has said.

Secondly, the prosecutor now admitting that at this time, do not have sufficient evidence to prove alleged criminal responsibility. Those two statements, one coming from the judge, another one coming from the prosecutor, leads me to think that this is a case which should either be terminated or be withdrawn and when they have enough evidence, they can now bring it back to court.

One should not be burdened with a very heavy burden of carrying on that the charge is still there as the investigator is trying to find out more evidence to be able to indict him. In fact, that is more or less punishment before the case has been proved in court. That is one of the things that I think is wrong with this case. That is the best prosecution policy which we expect from an international criminal court which is supposed to set the best standards of prosecution does not appear to be acting in accordance with the best prosecution policies which should guide other prosecutors and that international criminal court was behind some of the drafting. It was to provide some standards which now the international court, prosecutors, organs should be able to adhere to. At the moment, we are not in this particular case as far as the prosecution of this case is concerned, seeing the best prosecution policies which are being done by the ICC. That is one of my major concerns about the ICC.

The other major concern, of course, is that the ICC is mostly the people who are now indicted are mostly from African countries. However, all those cases have been referred to the ICC by the Africans themselves. One should not now come around and use that as an excuse against the court. The court is there. It is true that in this particular case, there are some shortcomings. It is also true that they are only doing African cases, but that is really Africa's own fault that these cases have been referred to the ICC. But going beyond that, I still think that the ICC should do more to ensure that it internationalizes itself in terms of the cases coming before it. Many cases which deserve to go to the ICC have come. When they come from Africa, they are very quick to say: "We are going to investigate." But when it comes to other countries, they are not so quick to say: "We are going to investigate." Can you imagine what is going on in the troubled spot of the world? These things are happening on an even greater scale, but the ICC is not coming out to say: "We have to investigate those cases and prosecute them."

Mr. Temporary Speaker, Sir, the President said in his speech that internationally, our diplomacy has been driven by the desire for a level playing field on which all nations and their people are equal in respect of their sovereignty. That is why Kenya played a crucial leadership role in negotiations that led to the creation of the ICC. I am glad that I was part of that Kenyan role of creating the ICC. He even goes further to say that we were doing it with some enthusiasm, which is also true. We were doing it with some enthusiasm in view of what was going on around the world. We thought that the ICC was the only answer. He goes further to say:-

“It was because we believed then, as we believe now, that in an equal world only a common set of rules governing international conduct should keep anarchy at bay.”

That is why as much as I criticize the ICC for the way that they have behaved in this particular case, I will support their role and relevance in today’s world. If there are any shortcomings, we, as member states, can do the necessary amendments to the Rome Statute, to ensure that those shortcomings are addressed. That is the way to go and that is the way Kenya should go; not necessarily to withdraw from the Rome Statute, but to see that the ICC plays out its proper role. Of course, there is also an avenue for the regional courts. I think the African Heads of State passed a resolution that our African Court of Justice should also have a similar jurisdiction. There is no harm in doing that whatsoever, because the ICC is a complementary court to the national and regional courts.

Mr. Temporary Speaker, Sir, let me talk just briefly about the handover. I think that Article 147(3) of the Constitution is very clear that when the President is absent or is temporarily incapacitated, automatically as a matter of course, the Deputy President becomes the Acting President, without much further ado. But where, for some other reasons other than incapacity or absence from the country, the President wants to make the Deputy President the Acting President, then the President has discretion to decide on those matters. Where he has discretion to decide those matters, then it becomes necessary for there to be a proper instrument to make the Deputy President Acting President. Having said that, there is nothing in law to stop the President from doing what he did, particularly taking into account the whole background of this case, including the African Union resolutions and so on. He had to show and tell the entire world what he was doing. It was not bad for us also to know what he wanted to do.

Mr. Temporary Speaker, Sir, we do not want the ICC to play the role that the colonial government courts did during the colonial times to stifle the struggle for our Independence and the establishment of our rights. However, the ICC would now be doing it at the international level. That is why I have called for a re-examination of that, to ensure that, that does not happen.

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

Sen. Kittony: Thank you, Mr. Temporary Speaker, Sir, for allowing me to add my voice to this Motion.

I am truly proud to be a Kenyan. Allow me to say *najivunia kuwa Mkenya*. I am saying this because I have seen history happening. The President demonstrated to the whole world wisdom, unique maturity and a mark of respect by the decision that he took. There was anxiety and pain because people did not know what to do. It put some of us into a state of despair because we did not know what would come next. However, the decision that the President took left a mark that others should emulate. He exercised his democratic and constitutional right. He has earned a name for this country.

I was with the President in New York when we went for the General Assembly. He engaged in dialogue and networked with a number of people in the diaspora. Since he took office, he has also visited many other states and marketed Kenya. That is why I am proud to be a Kenyan and associated with this kind of wisdom that he has portrayed.

Mr. Temporary Speaker, Sir, the ICC has in the recent past admitted on several occasions that there is no case to answer. Charges against some have been dropped and we know them. It has been protracted and we do not know when it will end. I have sent

several text messages to the lady African judge to say that our African culture dictates that when elders have decided, the women step back and leave matters to them. We do not get involved as women. But my lady African judge has continued and I am still urging her that this case should end, so that we can allow this country and our President, whom we love very much, to develop and fulfill the Jubilee manifesto.

Mr. Temporary Speaker, Sir, the President within a short period of one year has dialogued and gone out to promote investment in the country. At the moment, our country is enjoying a very good relationship internationally. I am saying this because when I was recently in the USA, the Kenyan delegation was given a lot of respect in the hotel we were staying. We were treated very well because of what the President had been promoting during his past visits. I am happy to note that 90 per cent of Kenyans were behind the President. This case should get behind us so that we can embark on developing the nation.

Mr. Temporary Speaker, Sir, the prosecutor admitted that there was no sufficient evidence to prosecute the case labeled against our President. The President, in his Address, stated that the case should have been dropped because there was no evidence against him. That is what we are still insisting and totally agree that it should be the case. In my understanding, when there is lack of proof in a case, it simply means that the case should be dropped. I hope the judges will do so, because I am for justice being meted with forgiveness. Kenyans have already forgiven one another. We are now just trying to embark on the development of the country. I support the Speech.

As we witnessed on his return on Monday, there were a big number of Kenyans who turned out to welcome him. I know that about 100 per cent Kenyans love their President. It is time we gave him the necessary support so that he can develop and fulfill the manifesto that he had prepared for this country in the next four years. It is upon every Member to ensure that we give the President the necessary support so that our country can move forward. I am sure all of us are yearning to see Kenya in a better position than what is obtaining. If all of us join hands and work together as one country, there will be prosperity for the next generation.

I beg to support.

Sen. Hassan: Thank you, Mr. Temporary Speaker, Sir, for this opportunity so that I can respond to some of the issues that were raised by the President in his Speech. The first statement that was made by the President with regard to his attending the case at the ICC is the acknowledgement that this is a judicial process and not a political process. Whether a party, a coalition or the African Union or any other person for that matter feels that there is no merit in the case, the acknowledgement that this is a judicial process is key.

I would, therefore, like to urge those who have politicized this matter for the last many years to borrow cue and realize that the court asserted its authority and that none attendance would have had serious consequences notwithstanding our illusion to sovereignty because we have submitted to the jurisdiction of the ICC as one of the complementary jurisdiction of this court. So, by domesticating the Rome Statute of the ICC, we made the ICC part of the hierarchical structure of the Kenyan judicial structure. Therefore, until that time when we think otherwise, should that intention be brought forward, we shall oppose that Motion. I would like to urge those who have continued to politicize this process to stop it.

Mr. Temporary Speaker, Sir, in life, you have to be cordial and appreciate the broader circumstances. I keenly looked at the Kenya I case which involves the Deputy President and the Kenya II which involves the President. A lot has been said in political platforms. We have heard people say that this whole process was a result of the machinations of Raila Odinga and even others said that I coached witnesses. The whole process has been politicized. However, when you look at the cases before the trial chambers and as the defense argue their case, particularly in Kenya I, I hear different scripts of writers or coaches. However, those who have politicized this matter still have the audacity to go to political platforms and make allegations so that they can escalate partisan and ethnic anger. This is similar even in the Kenya II case.

There have been so many preliminary applications before the trial chambers. If people had evidence to that effect, that would have been the theatre to test that evidence and not the theatre of politics and platforms. That is why some of us have been very studious and remained silent on these matters. We know that whatever allegations that are being made against anybody, those are unfounded allegations. This is a critical turning point for the country. Therefore, you cannot keep on treating this country to theatrics, hostility to your political opponents and even drive your political masses to believe that it was so and so who plunged our political leaders into this plight they are in now and expect us to fumble our feet when you come to address us. There should be some decorum in life.

Mr. Temporary Speaker, Sir, as long as they respect the judicial process, we shall respect the decisions that they take. I find it strange that it is only in this country that we celebrate somebody for obeying the rule of law whereas the rule of law is the rule of law. Whether it is the President, Deputy President, Sen. Hassan, Sen. Wako or any other ordinary citizen of the Republic of Kenya, the rule of law is the rule of law. Metaphorically speaking, we have gotten used to Messi playing so well, that we get anxious when he does not play well. When you see somebody playing well and yet you are not used to seeing him playing well, you celebrate him. It is true that most of us did not expect to see that respect to the rule of law. As we laud the President for respecting the summons of the ICC and then talk passionately about the sovereignty of our country, I would also like to encourage the President to respect orders made by local courts of law.

I would like to give an example of the ship that was destroyed on sea with a haul of drugs. The High Court, the magistrate's court asserted that the ship should not be destroyed and went further to state that its destruction would tamper with critical evidence, even the Law Society of Kenya said the same, but we went ahead and destroyed it. So, even as we laud the President for respecting the rule of law simply because he responded to a process that would have been extremely adverse for him in the alternative, let us also encourage him to respect the domestic jurisdiction. When you bring yourself to Caesar, you must come with purity so that we can laud you as a law obeying President in all circles.

Mr. Temporary Speaker, Sir, we, as the Senate, went to court because we felt that the law had been breached. So, let us respect the courts when they assert themselves. If it is about respecting courts, let it be in totality. This Senate has a diminished mandate and capacity to deliver. This is because on one side the court is stopping us and, on the other side, there are court orders which have been made in favour of this Senate in terms of judicial opinions not being respected. When was the last time the Speaker of the Senate

was ever consulted on any legislative agenda? Did anybody advise the President not to assent to the Bills that he assented to?

Mr. Temporary Speaker, Sir, I think as an opposition, we have a critical mandate to see the other side of the story. In political party dominance of this nature, a lot of people like it whenever you are in power because you are very attractive and everybody rolls out the red carpet. But those who are in power today were not in power yesterday. Those who are in power today, they might not be in power tomorrow. I can tell you for a fact that you must build institutions and countries that outlast individuals and political coalitions. In the circumstances, we have right now, the most critical element for us to partake as a country is institution building. We cannot destroy the institution of the Senate. We cannot destroy the institution of the court. Neither can we destroy the institution of the presidency. We are institutional builders. That is why we support the institutional building process. However, it cannot be selective. It has to be in its totality.

Mr. Temporary Speaker, Sir, as we sit here today and celebrate, let us also locate the plight of the Internally Displaced Persons (IDPs) and the post-election violence victims. This Senate even needs to adjourn itself just to update itself on what we have done for the victims and to find out what progress has been made in terms of the overall resettlement of the IDPs. Sen. Wako reminded me that there are those IDPs who are in camps and those who have moved to live with their relatives, but they are still IDPs, but they have been forgotten. We cannot only be using one dominant narrative because we are now in power. There must always be a counter narrative so that every Government is tasted on account of what is the best practice. As Sen. Wako said, the Constitution came into automatic effect. But, again, we like to perpetuate a dominant narrative at the exclusion of all other narratives. You say that whether we came or not, it was done. Yes, it could have been done and that message was sent. But also we resist the use of public institutions of this nature to manipulate public opinion.

Mr. Temporary Speaker, Sir, I was also firmly informed that the processes for convening – and I wish Sen. Wetangula was here to give further information – special sessions were not adhered to. We have laid down parliamentary procedures which must be followed to the letter and spirit, notwithstanding the political circumstances. If we need to respect institutions, let us respect all the institutions. If we need to respect laws, let us respect all the laws. For some of us, it is normal to respect laws.

Mr. Temporary Speaker, Sir, do you think that for those of us who live on this side of the political divide, it would have been easy for us if we did not respect laws? Therefore, let there not be a temptation to make it appear like it is such an extra ordinary feat for a personal problem to metamorphose into some national euphoria, thereby telling us that it was such an act of magnanimity. I can tell you for a fact that the opposition were the first people to say that President Uhuru should attend to court because the opposition was cognizant of the dire consequences, not only on his person and, probably, even in terms of Kenya, in terms of its framework of international relations.

Mr. Temporary Speaker, Sir, just because an issue appears popular at a point in time in our history, it does not make it right. Today, some of the greatest jurists, lecturers and people who we made reference to their work in this country when we were in school are today calling the ICC a western court to victimize African leaders. When the west gives you money for your coffers, they are your partners. When they ask you for

accountability like every other community or well meaning people within the fraternity of human rights and international justice, they become neo-colonialists.

Mr. Temporary Speaker, Sir, I have stood up and sought this opportunity to address one or two issues that I think, in the realm of what you call a “meeting,” is what you call “matters arising.” Therefore, the matters arising from the President’s speech is that, then, it should also serve as a public policy message to stop the politicization of this process; to make the ICC the theatre to test your facts. Thirdly, to ensure that we respect all laws, particularly those laws that binds us within the jurisdiction of the Kenyan State. Sovereignty is not about floating your own Constitution and laws. First and foremost, sovereignty means you bear principal allegiance to your own. Therefore, if it is matters of sovereignty, this issue has also been dealt with in matters of international law. You cannot bring matters of sovereignty on matters of accountability and what we call crimes that shock the conscience of humanity; that is, the crimes against humanity or crimes that are referred to in the Rome Statute of the ICC.

Mr. Temporary Speaker, Sir, therefore, whether we like it or not, these actions have become deterrence. Never again shall this country be put through the theatre of violence that we saw a few years back. That should be a warning to any political leader. If you organize or if you are alleged to organize, we will seek you and we will punish you. I think that will bring sanity to Kenyan politics. I hope that the Kenyan Judiciary and the Kenyan prosecutorial service will rise to that occasion so that we avert this pet talk about how Africans are still being humiliated. It is a pity 50 or 100 years after Independence, we are still talking about the western powers sitting on you. Something must have gone wrong at the advent of Independence.

Mr. Temporary Speaker, Sir, it is about time we start to debate these issues very seriously, including the fact that we cannot use the same narrative again and again – *Wazungu, Wazungu, Wazungu! Wazungu* shipped off a long time ago. We should ask ourselves what we have done for our country in the last 50 years instead of marveling at the development of others. Look at their roads. They are flying over each other. We hate their appetite for accountability, but love their appetite for development. We want to translocate everything and bring it here.

Mr. Temporary Speaker, Sir, let us bring sanity to the debate here. Let us test the facts. If the courts say that there is no sufficient evidence to withstand the prosecution of the President, then so be it. We shall all celebrate; but let it be within the prism of the courts. Let us not come here and all the time politicize matters that are purely judicial. Let us also then build the capacity of our police service to investigate these types of matters. In the future, we want to have the full capacity because the ICC only intervenes when the state is either unwilling or unable. At this point in time, we might be willing or we might be able. However, at some point in time, we were unwilling, yet we were able.

Mr. Temporary Speaker, Sir, I think it is that public policy message that must go out there. I am one of those persons who are extremely reluctant to believe that there are values for white people that are based on universal rights, and there are values for black people. I do not believe that there are values for Africans and there are values for Europeans. Human rights and justice attain to the same values. Even this law and even the processes that we use in this Senate were not developed somewhere in Old Town, River Road or in Nyanza because they were developed as common law systems and practices within the institutions.

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

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

Mr. Speaker, Sir, thank you very much.

Sen. Njoroge: Asante, Bw. Spika, kwa kunipa nafasi hii ili niunge mkono Hoja iliyoko mbele ya Seneti. Kwanza, napenda kuunga mkono Hotuba ya Rais iliyotolewa tarehe sita Oktoba. Rais alionyesha ujasiri mkuu na heshima yake kwa Bunge letu – lile la Kitaifa na pia Bunge la Seneti.

Bw. Spika, ujasiri ulioonyeshwa na viongozi wetu, haswa Rais wetu, kwa kukubali kuelekea kule The Hague kuhudhuria kesi katika mahakama ya ICC ilikuwa jambo la busara sana. Lakini hata wakati ninapofikiria kuondoa siasa katika ile korti kuhusiana na mashtaka yanayomkabili Rais, pia ninashawishiwa na lile korti ama kiongozi wa mashtaka alipokuwa anaendelea kutoa ombi lake kwa majaji ili waweze kuahirisha ile kesi inayomhusu Rais.

Bw. Naibu Spika, nakumbuka wakati mmoja ambapo kiongozi wa mashtaka aliwaeleza majaji wapeane muda kwa sababu mwaka wa 2017 unakuja na kutakuwa na uchaguzi hapa Kenya. Kwa hivyo, upande wa mashtaka ni kama ulikuwa unaahidi kwamba tukiingia katika uchaguzi wa mwaka 2017, Rais asipochaguliwa tena, pengine watapata ushahidi waliokuwa wakitarajia.

Upande wa The Hague ulijaribu kushawisha majaji kwamba jambo hili linahusishwa na siasa. Licha ya hayo, niliona kwamba upande wa mashtaka umeahidiwa na watu fulani kwamba Rais akiondoka katika mamlaka, watapeana ushahidi katika The Hague. Walijaribu kuwasawisha majaji ili wakubali kuhahirisha kesi wakitarajia kwamba uchaguzi ukija katika mwaka wa 2017, kutakuwa na kiongozi tofauti na si Rais Uhuru Muigai Kenyatta.

Bw. Spika wa Muda, viongozi wameonyesha ujasiri mwingi ambao ni wa hali ya juu. Pia, ningependa kuwaunga mkono. Kama vile tumesikia mali ya Seneta mmoja ya dhamana ya Kshs25 milioni iliharibiwa huko Migori. Ningependa kujiuliza kama mambo hayo yalifanywa na Rais na Naibu wake. Ni Rais na Naibu wake ambao walienda Migori kuharibu mali? Tumesikia kwamba huko Kisumu na kwingineko kama Mombasa kulikuwa na ghasia. Vile ninavyoona, jambo hili lilienda kisiasa. Nashangaa kwa sababu wale waliofanya kitendo hicho hawakushatakiwa. Wao walibaki wapi wengine walipokuwa wakishtakiwa?

Mimi kama mkaaji wa Naivasha, sehemu moja ambayo Rais anatajwa kuhusika nilishangaa kwa sababu hakuna wakati Rais alikuja Naivasha. Ni jambo la kusikitisha wakati Rais anatajwa katika mambo ambayo hayawezi kuthibitishwa kortini. Licha ya hayo, ni jambo la kushangaza na kilio kilichokuwa katika upande wa mashtaka. Walikuwa wakitaka kujua kama mshtakiwa angewasaidia na ushahidi. Hilo ni jambo ambalo katika sheria halikubaliwi. Mtu hawezi kumshtaki mtu, bila ushahidi halafu kuanza kumtisha mshtakiwa kutoa ushahidi ili aweze kuendelea na mashtaka. Hilo ni jambo la kushangaza sana. Ninaamini pia viongozi wetu ni wacha Mungu. Hiyo ndio sababu wale ambao wamewashtaki hawana ushahidi.

Ni jambo la kufehedhesha kusikia kwamba kiongozi wa Mashitaka alishawishi majaji ambao walikuwa wakisikiliza kesi kwamba katika mwaka wa 2017, watapata

ushahidi ambao watakuwa wakitaka. Wale tuliokuwa katika korti tulishangaa ni nani atakuwa kiongozi katika nchi hii. Watu wengine katika mrengo wa upinzani ambao walikuwa wakitaka Rais aende koti la The Hague walitarajia kwamba hangerudi. Walishangaa sana waliposikia kwamba Rais angerudi Kenya bila shida yoyote. Kwa hivyo, wale ambao walikuwa wa kwanza kusema aende The Hague, tunajua wazi hawakuwa na nia nzuri. Walikuwa wakidhani kwamba Rais Uhuru hangerudi nchini.

Ningependa kumpongeza Makamu wa Rais ambaye alipowachiwa mamlaka kwa kuongoza nchi hii kwa masaa 48. Alionyesha ujasiri na ungwana kwa kumrejeshea Rais kiti chake aliporudi nchini. Wakati Rais alipofika huko Netherlands, Wakenya walimuonaje akiingia huko kama raia.

Hili ni jambo ambalo litakuwa funzo kwa Wakenya wote. Utakumbuka pale mwanzo ambapo bahasha ilienda na Bw. Kofi Anan. Wakenya walimruhusu yeye kwenda na hii bahasha hata kama hatukujua ilikuwa na majina ya akina nani. Wale ambao walimsawishi Rais kukubali bahasha kutoka Kenya bila kukaguliwa kilichokuwa ndani walifanya makosa. Kulikuwa na dosari hapo. Mambo ambayo tunayaona sasa si mazuri. Kiongozi kupelekwa mpaka The Hague bila ushahidi ni jambo la aibu. Hili ni jambo ambalo hatungekuwa nalo wakati huu kama bahasha hiyo haingetoka nchini bila kukaguliwa na kuona uongo uliokuwa ndani. Tumesikia wengine wakisema vile walihongwa na vile waliahidiwa mambo makubwa ili watoe ushahidi wa uongo.

Bw. Spika wa Muda, naunga mkono Hotuba hii.

Sen. Kembi-Gitura: Mr. Speaker, Sir, thank you very much for giving me this opportunity. As a lawyer and citizen of this country, I have tried to follow the case in the ICC pertaining to our President and his Deputy, His Excellency, Hon. William Ruto. On 21st September, 2014, when we got a disaster at Westgate Mall when the Deputy President applied through his lawyers to come back to the country to assist the President during that very difficult time when we lost many Kenyans. The judges allowed that adjournment. I remember the prosecutor, Mr. Steinberg, said openly to the whole world that the Deputy President did not have to be in Kenya at that time and that he could appoint somebody else to act in his place. Everybody was in that courtroom, including the judges and the prosecution side. It was with disbelief that somebody enjoined with such an important task as prosecuting a case at the ICC was so ignorant. One of the judges, Judge Osuji asked the prosecutor whether he had read or aware of what the Constitution of Kenya says about that position and he said he had not read. I could not believe that somebody could be so ignorant. This is a lawyer who is purporting to prosecute such an important case.

I say this because following the case at the ICC, one notices quite clearly that the prosecution does not know where it is going, assuming it knows where it has come from. For the very first time, unlike what we were taught in first year law that you cannot self-incriminate, you are not expected to give evidence against yourself and so on. In fact, your spouse cannot be forced to give evidence against you. In the same vein, you cannot self-incriminate. This is the first time in the history of law, as far as I am concerned, that I have heard a prosecutor stand up and say that he has no evidence to sustain the case and requesting the case to be adjourned *sine die* so that he can go and look for evidence. I have never heard anything like that. I have heard it for the first time at The Hague. The judges asked whether the prosecutor had anything to show that the Republic of Kenya or the President himself had acted in any way to ensure that no evidence got to the court.

The prosecutor said that they do not have evidence to show that Mr. Kenyatta, as they called him, had acted in any way to make sure that there is no evidence. At that moment, I expected the President to be acquitted. I expected the judges to say that the case is unsustainable. That was enough ground for the lawyers to apply and say that if the accused person has nothing to do with the lack of evidence, then the court cannot keep him indefinitely there.

Mr. Speaker, Sir, it is common ground that there is absolutely no evidence against the President, against his Deputy or anybody accused at the ICC as regards to the Kenyan cases. Nobody says that what happened in 2007/2008 did not happen because we are Kenyans and we saw it. All of us are very remorseful about what happened. We know there are victims and we feel very strongly about them hoping that they will get recompense much sooner than later, the fact that they are victims does not connote that a particular person must be the one to take that responsibility because this is not political responsibility, but criminal responsibility. Therefore, I believe that it is important to distinguish between the presidency, the country Kenya and the victims. It means that we should look at this case dispassionately. If we agree like Bensuda says that there is no evidence, we expect that His Excellency the President is going to be acquitted.

Mr. Speaker, Sir, we are discussing this on 21st October, 2014 immediately after celebrating our own Mashujaa Day. This case reminds me of the Kapenguria Trial of the six Kenyans in late 1950s for founding, aiding and abetting Mau Mau in the struggle for freedom. They were six just like the six in The Hague. Everybody recalls that in the Kapenguria Trial, the judge himself is said to have been bribed by the British Government with Sterling pound 20,000 so that he could find Kenyatta guilty. That is a matter of history. It is also history that a Kenyan, Mr. Macharia, was bribed with great things to go out of the country and the education of his children as long as he gives false evidence against Kenyatta and the others. He did so. However, as Judas, he did not take too long before he recanted. He confessed that he perjured and lied because of being bribed. That is the same thing we are getting today.

The biggest thing about this trial is that the witnesses who made it possible for the prosecutor to confirm the charges or make the indictment are the same ones. It was witness No.12 and another one who confessed that they were bribed to lie. This case should have ended at that point.

What is the point of His Excellency the President coming to talk to us in Parliament? Two things come out. First and foremost, he came to Parliament as the President of the Republic of Kenya as allowed by the Constitution. I want to commend and laud Members of the opposition who refused to listen to the entities by their leaders to boycott the joint sitting of Parliament. They came because the President had asked them to come and listen to him. They also said that they were not going to pre-empt date because they did not know what he was going to talk about. I respect them and I admire them. I respect the fact they defied their leadership.

Mr. Speaker, Sir, the other important thing coming from the President's Address was the issue of sovereignty. That shall go down in history. He said that he was going to The Hague not as the President of the Republic of Kenya. He did not want to compromise the sovereignty of the country and the 40 million Kenyans who had elected him. That is the point that most of us have missed this afternoon while talking about Article 147(3) of the Constitution. It says clearly that when the President is away or during any other

period that he decides--- This is the period that the President decided that he was going to be a civilian for 48 hours so that he does not compromise the sovereignty of our Republic. That is what is contemplated in Article 147(3). He went as a private individual. What is sovereignty? I am shocked to hear some Senators talk about what we have done for ourselves in 50 years. It is a shame that a Kenyan can question our sovereignty and stand here and tell us that *mzungus* should continue telling us what is good or bad for us. Does it mean we cannot determine what is good for us? I am ashamed that there is a Member of the Senate who can talk like that. This is our country and we must be proud of ourselves.

Mr. Speaker, Sir, in 1963, when we got Independence, he said that we may be poor and lack many things, but we are proud people who are proud our heritage. President Jomo Kenyatta in 1963, when we got Independence said – and I remember very clearly – that we may be poor and may lack many things, but we are proud of our heritage. That for me is talking about sovereignty. We are proud people; proud of our heritage. We must underline and underscore our heritage and say that what is good for the goose must be good for the gander. It cannot be that this ICC is a court which cannot listen to the African Union (AU) even for intervention, deferral and deferment, even after entities by Heads of State and governments of Africa. The United Nations Security Council has never entertained the AU petition to put this matter in deferral until we are able to find a solution. That is disrespect, condescension and an abuse to our sovereignty.

There are other countries in Europe, North America and South America with so many abuses of human rights and other things. However, because they are not African countries, they are beyond what can be taken to the ICC. We do not condone impunity or crime against humanity, but what we cannot stand is that even when there is no evidence, we are still told:- “You must appear before us.” Those who went to The Hague saw that there was absolutely no reason for the President to be asked to go there. This is so because in normal parlance in the legal cycles, a status conference is what in the High Court of Kenya would call a summonse for directions. This is where lawyers go to decide and agree on the way forward for the cases of their clients and do not go with our clients. However, if a court was to show that it is very powerful and can summon presidents, particularly when the case has no legs to stand on, they summon our President.

Mr. Speaker, Sir, it was a great show by our President; shading his own presidency for 48 hours and leaving an Acting President, so that the sovereignty of the more than 40 million Kenyans would not be compromised. That must be respected. It also showed something great; that the presidency is the presidency. It also showed the bond between our President and his Deputy President; that together they have a long way to go. We have a journey travelling together until we achieve the goals that we want to achieve as a nation.

Mr. Speaker, Sir, the knife of justice or sword of justice cuts both ways. The false witnesses who now go to The Hague wearing masks, so that we do not see them, one day, sooner than later, should be unmasked so that we can see the people who chose, maybe through coercion from others, to agree to sell the sovereignty of our country for 30 pieces of silver.

I thank you, Mr. Speaker, Sir.

Sen. Chelule: Thank you, Mr. Speaker, Sir. I also want to add my comments to those of the other Senators who have talked about the President’s speech.

I support and thank our President for having convened a meeting for both Houses. I was surprised to hear Sen. Wetangula say that it was a waste of the time for the Members of the two Houses to attend. I do not know whether he was talking on behalf of us as Members of Parliament. To me, it was not a waste of time. It was a very good process. It was the only process that the President could use to communicate to Kenyans. He was communicating through representatives of this country. He did a very good thing. I am, therefore, very proud that he was able to communicate to Kenyans.

I want to take this opportunity not to talk about the process in the ICC because I can see God working and prevailing. I want to thank my fellow Kenyans for praying for the President. I also thank all Kenyans who came to welcome our President when he was coming back from The Hague. What he did was good to all of us and it was the right way to communicate to Kenyans.

Thank you. I support the speech.

ADJOURNMENT

The Speaker (Hon. Ethuro): Order Members! It is now time for the interruption of the business. The House, therefore, stands adjourned until tomorrow, Wednesday, 22nd October, 2014, at 2.30 p.m.

The House rose at 6.30 p.m.