

# PARLIAMENT OF KENYA

## THE SENATE

## THE HANSARD

Tuesday, 5<sup>th</sup> July, 2016

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

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

### PRAYERS

### PETITIONS

#### PETITION BY THE COUNCIL OF ELDERS OF THE KIRINYAGA *MIHIRIGA* *KENDA* REGARDING THEIR CLAIM TO THE MWEA TRUST LAND

**Sen. Karaba:** On a point of order, Mr. Speaker, Sir. I presented a Petition on behalf of the Kirinyaga *Miherega Kenda*; that is the nine clans, concerning the border dispute between Kirinyaga and Embu counties in respect of the 54,000 acres known as Mwea Trust Land. The Petition was thereafter committed to the Standing Committee on Legal Affairs and Human Rights which pursuant to Standing Order No.227 was required to respond by way of a report addressed to the petitioners and laid on the Table of the Senate in not more than 60 calendar days.

My point of order relates to the time it has taken to have the Petition heard and determined by the said Committee. Under Standing Order No.227(2), the report of the Committee should have been tabled before the Senate on or before 13<sup>th</sup> July, 2015. It is now one year from the date the report was due. I have no indication when the Committee will consider the Petition and present its report as required by the Standing Orders.

This matter is very important to the people of Kirinyaga. When I presented the Petition on 13<sup>th</sup> May, 2015, I informed the House that tension in the affected area was rising by day as a result of rival claims to the land by the *Miherega Kenda* people of Kirinyaga County on one hand and the Mbeere and the Kamba people of Embu County, on the other hand. This was primarily on the question of adjudication and demarcation of the land which the Embu County Government had commenced unilaterally; an act that would alienate the people of Kirinyaga from their ancestral land.

The situation on Mwea has continued to worsen as the Embu County Government is now processing and issuing title deeds to the people of Embu and Mbeere only. The Kirinyaga people are now angry about this as their ancestral land is being taken away from them. This issue was even covered in yesterday's newspaper which noted that the land is being subdivided and allocated by the Embu County Government. Therefore, it is important that something is done urgently to prevent the situation from escalating further.

I propose that the Committee on National Security and Foreign Relations visits the area to assess the situation as it is now very tense. I raised this issue in November last year when the adjudication process was starting and the Speaker promised to check the position on the Petition and give directions. However, these directions are yet to be given. I, therefore, seek your direction.

**The Speaker** (Hon. Ethuro): Could we hear from the Chairman of the Committee on Legal Affairs and Human Rights or any Member of the Committee?

**Sen. Mutula Kilonzo Jnr:** Mr. Speaker, Sir, you know the issue of county boundaries is very close to my heart. The Petition by the people of Kirinyaga was actually determined by the Committee. However, the Committee was of the view that in view of the Bill that emanated from the Committee and recognizing that there was no mechanism for resolving county boundaries under the Constitution, we proposed that the Petition by hon. Karaba should await the Bill that was published. We are aware that this Bill is pending because of some internal issues between the House Business Committees. The direction should be on what we should do with that Bill because the Petition on the question of boundaries cannot be determined until a mechanism is found in the law. Right now, there is no mechanism.

Demarcation can be dealt with under other normal processes. Unfortunately, a county boundary is a matter that we cannot deal with. No person can deal with this matter outside the provisions of the law. We know the circumstances under which the Meru-Isiolo issue escalated into warfare. This was simply because of a task force which was appointed outside the law which never resolved the issue. When the Motion was brought here, the contention was that there was no issue. However, when they went on the ground, it ended up with people dying.

**The Speaker** (Hon. Ethuro): What is it, the Senate Majority Leader?

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): On a point of order, Mr. Speaker, Sir. I rise in full support of the follow up of the Petition by hon. Karaba, particularly on the Mutula Kilonzo Jnr. Bill. The earlier that Bill is disposed of, the better. It is important to note that several counties are similarly restituted. As we go to elections, some politicians, who may not be doing very well, may take advantage of these tensions among communities to stalk violence and animosity. I have in mind the case of the boundary between Meru and Tharaka-Nithi counties which continues to evoke a lot of tension. It is at such a time that the Senate can stabilise this country by hopefully processing the Mutula Kilonzo Jnr. Bill as we even look at the petitions that are coming, including the Petition on Kirinyaga and Embu counties.

**Sen. (Dr.) Machage:** Mr. Speaker, Sir, the concern by the Senator of Kirinyaga is so clear. It is about the lack of response by the Committee as per the Standing Order No.227. The Committee should have tabled the response on the Floor of this House whatever the findings were. If they were not able to write a report for some reasons, which the able Senator for Makueni has tried to present, then that should have been the report to be tabled before this House. Is he in order?

**Sen. Mutula Kilonzo Jnr:** Mr. Speaker, Sir, I have severally complained but you have mentioned that I should not complain because of the internal processes of the Senate. The Committee finalized this report which includes a report by Vihiga County on the petition by Sen. Khaniri. I am not sure if I should ask the Speaker whether there is

somebody from the Directorate who should respond. However, the report is pending approval somewhere in the Senate, but it was done last year.

My Bill was also published last year---

**The Speaker** (Hon. Ethuro): Order, Sen. Mutula Kilonzo Jnr. I know that is where you like rushing to and rightly so, but can we just get this one right? Did your Committee finalise the Petition by Sen. Karaba; was the report presented? If so, where is it?

**Sen. Mutula Kilonzo Jnr:** Mr. Speaker, Sir, the report was finalized. We, as a Committee, signed it and it was supposed to be tabled. However, I cannot tell what happened between the Committee of Legal Affairs and Human Rights and the tabling of the report before the Senate. Now it is out of our hands because I signed my portion. Sen. Sang is here, he did the same and signed his portion. Therefore, we finalized it a long time ago. We could find out tomorrow where it is stuck if you allow us.

**The Speaker** (Hon. Ethuro): You will not find out tomorrow; you should find out today and bring it tomorrow. At the rate at which you are moving, if you find it tomorrow you might tell us the findings next year.

**Sen. Mutula Kilonzo Jnr.:** Mr. Speaker Sir, we will find out where it is stuck and tell you in a few minutes.

**Sen. Karaba:** Mr. Speaker, Sir, it is astonishing that some people can escape the rules of the game. In the Senate we have the 60 days period that is provided for in our Standing Orders, which are our guiding principles. What exempts the Committee on Legal Affairs and Human Rights from abiding by the 60-days rule? There must be a ruling from the Speaker telling us whether there are some Committees which are superior, to the extent of taking the Senate for granted.

Secondly, there is allocation and demarcation of land that is going on and one of the prayers of the people of Kirinyaga is that it should stop. Now that it is going on, it means that by the time the report comes, the title deeds would have been issued to the people. Could we stop the issuance of the title deeds to the affected areas, so that we can be seen like we are taking some action?

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

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

**Sen. (Dr.) Khalwale:** No, Mr. Speaker, Sir.

**The Speaker** (Hon. Ethuro): Let us first dispose of this one and then I will give you the opportunity.

Sen. Mutula Kilonzo Jnr., do you wish your Vice Chair to respond?

**Sen. Mutula Kilonzo Jnr.:** Yes, now that he is here.

**Sen. Sang:** Mr. Speaker, Sir, if I had a choice I would not have accepted that I respond because he has answered the questions. I want to apologize to the House because this report has not found its way to the Senate. As you have directed, we will find the report and table it tomorrow. Sen. Karaba should have a copy of the report by tomorrow. We apologize for that.

In law there is a maxim that says that he who comes to equity must come with clean hands. I hope that when we get to the issues that are pending before the Committee on Education, he will respond with the same enthusiasm that he has used to pursue this particular matter.

**The Speaker** (Hon. Ethuro): Order, Sen. Sang. You should be the last person to use that maxim. It should apply to you. You cannot take it to Sen. Karaba when you have already owned up.

*(Laughter)*

Hon. Members, this is a serious matter which first appeared in 2015 and a reminder was made in November. It was supposed to have been due by July. Today is 5<sup>th</sup> July, 2015. Surely, I do not understand how you get to know all those maxims and not know the timelines. Unlike you, I will trust my Committees, including yours. You now know what has been agreed on. I direct that the report is tabled tomorrow.

*(Sen. Sang consulted with Sen. (Prof.) Kindiki)*

Order Sen. Sang. Are you the Vice Chairperson of the Committee or should I look for another one? Please, listen when directives are being given. The Senate Majority Leader was not on the Floor when you were prosecuting the agenda and so, he can easily be excused. The responsibility is yours. I will not entertain that as another excuse to delay the report. Look for the report today so that I can approve it for tabling tomorrow.

For the purposes of Sen. Mutula Kilonzo Jnr.'s Bill, first, he was connecting what was not necessary because he has confirmed that the report is ready. The issue of the Bill is another matter; you should have just dispensed the Petition as it came. Through petitions and other transactions that you carry, that informed the formulation of the Bill. You know the issues around the Bill and I have had the opportunity to share with you. However, I also want to agree with you that some of these consultations must come to an end.

In the absence of further interventions, I will also expedite your matter.

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

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

**Sen. Karaba:** Mr. Speaker, Sir, the key issue is that the County of Embu is issuing title deeds to people living in the same area that is under dispute. Could I request that an order be imposed so that they stop the process?

**Sen. Sang:** Mr. Speaker, Sir, I am not sure if this House or the Committees of this House have the powers to issue such orders. I am also not aware that the county government has the responsibility and legal mandate to issue title deeds. That is not possible. I persuade the Member to be patient for today and look at the contents of our report. You have almost alluded to the findings of our report. We realise that certain things cannot be done before certain things are achieved. Since ten or so title deeds cannot be given between now and tomorrow, I request that the Member waits until tomorrow. We have considered that Petition and we gave it our best shot. We request that he be patient until tomorrow.

**The Speaker** (Hon. Ethuro): Sen. Sang, do you also know of a maxim about the equity not favouring the indolent?

*(Laughter)*

Sen. Karaba, let us wait for the report of the Petition tomorrow. But I would also encourage the Vice Chairperson and the Committee that these issues are related and are of concern to the counties. Therefore, even on your own Motion, you can see what else you can do. Definitely, Sen. Mutula Kilonzo Jnr. had mentioned that when there was that taskforce that could not operate, people died. We do not want to see a repeat.

Sen. Mutula Kilonzo Jnr.

**Sen. Mutula Kilonzo Jnr.:** Mr. Speaker, Sir, for information sake, the question of issuance of titles will have nothing to do with the report. Therefore, Sen. Karaba is advised that if there is a particular complaint on the issuance of title deeds, that matter can be handled easily by the High Court and the Lands Division. The report will not handle that issue because it is beyond it. Issuance of titles was not one of the issues that we were considering, and it will not be answered tomorrow. It is fair that I say so.

LEASING OF BUFFALO SPRINGS AND SHABA GAME  
RESERVES BY THE COUNTY GOVERNMENT OF ISIOLO

**Sen. (Dr.) Khalwale:** Mr. Speaker, Sir, I rise to present a Petition on behalf of residents of Isiolo County, pursuant to Article 37 and 119 of the Constitution of Kenya and the Senate Standing Order Nos.220 and 223. This Petition is in respect of the important and urgent matter of the leasing of Buffalo Springs and Shaba Game reserves by the Isiolo County Government.

Allow me to put it on record that this Petition is in respect to a matter which lies before the County Assembly of Isiolo. They made a decision that the lease of these two game reserves be stayed, but the executive has ignored. For the record, this matter is also before the Ethics and the Anti Corruption Commission (EACC). Since time immemorial, the game reserves are a permanent asset of the local community. It is the pride and natural heritage of the county and it contributed to 90 per cent of the local revenue during the defunct Isiolo County Council. It is, therefore, the backbone of the economy of Isiolo County.

The matter of leasing of both Buffalo Springs and Shaba Game Reserves was brought to the attention of the Assembly for thorough scrutiny and ventilation by Hon. Hassan Guyo Shano through the request for statement early this year. However, the written response by the County Executive Committee (CEC) Member for Tourism was not satisfactory. It failed to convince Members of the County Assembly (MCAs) because it was too shallow and hollow. In a nutshell, the response was devoid of substance and any merits.

After lengthy deliberations, it was resolved that the matter be referred to the Public Accounts Committee (PAC) of Isiolo County Assembly for further investigations and report back to the Assembly with a comprehensive finding within a stipulated timeline which did not materialize until today.

Mr. Speaker, Sir, it is, therefore, a humble request by the petitioners through me that:-

i. The Petition be dealt with immediately in view of the urgency of this matter that the seriousness of the issues raised.

ii. The Hon. Speaker of the Senate invokes his mandate and duty to compel the PAC of Isiolo County Assembly to table the report of their findings within three weeks and direct the Isiolo County Government to stop any further transaction on the lease of the afore said game reserves.

iii. The residents of Isiolo County cry for public participation on the lease of Buffalo Springs and Shaba Game Reserves be upheld by the Senate.

iv. The Senate:-

(a) Directs the executive arm of the county government to provide members of the public with sufficient information pertaining to the extent and the impact of the lease of the game reserves to enable them fully and meaningfully participate in providing their input;

(b) The relevant departmental committee in the Senate must undertake a countywide process of seeking public views in regard to the lease of the game reserves;

(c) The petitioners demand and pray for an immediate hold of the lease process of the reserves, discussions, negotiations, consultations and agreements in any matter whatsoever deemed as *ultra vires* and against public interests; and

(d) The petitioners further pray the leasing of the game reserves will seriously prejudice national security interest, conservation and biodiversity interest, tourism and wildlife management interests and all pertaining to public good and welfare of the county.

Mr. Speaker, Sir, finally, the petitioners, through me, do pray that the hon. Members of the Senate shall stand up and be counted on the right side of history.

In conclusion, I would like to put it on record that I have made attempts purely out of courtesy to bring this matter to the attention of the distinguished Senator for Isiolo County, but I could not reach him and the nominated Senator from Isiolo is also out of the country. Therefore, they should not read anything out of it. I am just being a good servant of the people of Isiolo who approached me.

Thank you, Mr. Speaker, Sir.

**The Speaker** (Hon. Ethuro): Sen. (Dr.) Khalwale, you have absolutely no apologies to make. The residents of Isiolo County are citizens of the Republic of Kenya and this House is a national organ. However, it is good manners, of course, to deal with your colleagues when they are available. All in all, you are perfectly in order.

Hon. Senators, pursuant to Standing Order No.226, I shall now allow comments, observations and clarifications in relation to the Petition for not more than 30 minutes.

**Sen. Abdirahman:** Mr. Speaker, Sir, I thank my colleague, Sen. (Dr.) Khalwale, for raising the concerns of the people of Isiolo County. As you have rightly put it, he has no apologies to make. This House is viewed as the voice of the voiceless, particularly from the marginalised counties.

I appreciate this particular Petition and many others that have been brought to this House in the past. Communities now know their rights by the fact that they are able to petition gives them an opportunity to raise the issues that cannot be handled at a lower level. What we always see is the tip of the iceberg. Quite a number of them are on the way ranging from the mismanagement of public resources as we have seen in the past to issues that touch on the lives of the ordinary citizens in this country.

Mr. Speaker, Sir, public participation is an essential pillar in the Constitution. Our county governments have taken the Constitution in total disregard of relevant laws that

exist in this country. The game reserves are an important community resource. Without the consultation of the community, they cannot lease. Governors must be held responsible. Unfortunately, our county assemblies have not been strong enough to defend the interest of the counties just because the executive manipulates them all the time by giving them contracts here and there. I urge the county assemblies to stand firm as we approach the final year before election. I urge the county assemblies to be vigilant with the management of resources. A number of county assemblies have stood firm, particularly with regard to the budgeting process.

A number of budgets were rejected in a number of county assemblies. Some of those that went through did so through manipulation. I urge the communities that feel aggrieved to come forward like the people of Isiolo and bring the petitions to the Senate. I also urge the relevant Committee that will be assigned this to speed up and make sure that we get the report on time and follow it up. Our secretariat must follow---

**The Speaker** (Hon. Ethuro): Conclude, Senator.

**Sen. Abdirahman:** Mr. Speaker, Sir, in conclusion, it is only recommendations that come from this House that the relevant state agencies, including the Office of the Director of Public Prosecutions (DPP), the Ethics and Anti-Corruption Commission (EACC) *et cetera* should act on.

**Sen. Adan:** Mr. Speaker, Sir, I rise to support this Petition. I wish to confirm to the House that I was out of the country last week. It is proper for Sen. (Dr.) Khalwale to present this Petition on behalf of Kenyans. At the end of the day, we will work together as a House to achieve the objective.

The issue of the parks in Isiolo has been pertinent. It has been ongoing for a very long time. From the information that I have, proper consultation has not been done. In this era, with the provision of the new Constitution, it is important for Kenyans to know their rights and how their property is invested. This park has been generating revenue and creating employment to quite a number of people. It is important for them to be consulted so that they can know what their fate is once this changes hand.

Mr. Speaker, Sir, I support this Petition. It is important for the process to be fast-tracked. I am sure the Senate will work on this and make sure that justice is done.

**Sen. Wamatangi:** Mr. Speaker, Sir, I rise to support the Petition and encourage the people of Isiolo. That is the way to go. Of late, there seems to be a trend by county governments to lease either public or other properties that are bestowed on their hands. Just recently, we had a big demonstration in Karura Forest, where the Kenya Forest Service (KFS) had sought to lease a big junk of that land to a private developer to build a hotel. The same is replicated in my County of Kiambu. The KFS had similarly allocated a huge junk of Kieni Forest for the development of a hotel without adequate consultations with the people.

Going by what has been happening - I remember when we had a Petition from the residents of Narok - the revenue earned by these reserves goes a long way to serve the interest of the people of these counties. I believe that what the Public Accounts Committee of the Isiolo County Assembly cannot do, can be done here at the Senate. It should be fast-tracked. The statement from this House must be simple and clear. Impunity will not be allowed at any level; not even in leasing of public property by county governments.

**Sen. Muthama:** Bw. Spika, namshukuru Sen. (Dr.) Khalwale kwa kuwasilisha masaibu ya watu wa Kaunti ya Isiolo katika Bunge la Seneti. Nchi hii inaelekea ukingoni; taifa karibu liporomoke. Leo, ni wazi kwamba magavana wote na watumishi wengine wa serikali wanapora na kuharibu mali ya taifa hili. Imechukua miaka nenda miaka rudi kabla mmoja wao kupelekwa kortini. Polisi wa Kenya wana uwezo mkubwa sana wa kukimbizana na mtu ambaye amesimama mkutanoni na kusema kwamba kuna wezi katika taifa hili. Huyu mtu anakamatwa 6.00 p.m.; 6.00 p.m. yuko kortini na 7.00 p.m. amewekwa ndani bila mashtaka. Lakini wezi na waporaji wanatembea barabarani huru bila kusumbuliwa na mtu yeyote. Wakati umefika tutetee na kusimamia maslahi ya Wakenya.

**Sen. Leshore:** Mr. Speaker, Sir, I thank you for giving me this opportunity. I thank the Senator for Kakamega for bringing this Petition to this House. It is not only Isiolo which has started leasing game parks. Samburu County is in the process of bringing a similar Petition to this House. I support that Petition. I encourage the people of Kenya to participate fully in the use of their natural resources.

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

**Sen. (Dr.) Machage:** Bw. Spika, hekaya za Abunwasi sio vile zimeandikwa tu katika kitabu cha *Alfu Lela Ulela*. Hekaya hizi zapatikana hata kwa wajibu uliopewa magavana na serikali za kaunti. Linalotendeka Isiolo ni jambo la ajabu kwa sababu bunge la kaunti ya Isiolo kujadili mambo haya na kupitisha uamuzi wao na kudharauliwa na serikali iliopo huko hadi haya mambo yakafika kwa Bunge hili, ni jambo ambalo tunastahili kuliangalia na kuanzisha labda sheria itakayowapa wabunge wa mashinani uhuru na nguvu za kutekeleza wajibu wao kwa jambo kama hili la dharura.

Naunga mkono kilio hiki kilicholetwa kwa Bunge la Seneti na Sen. (Dr.) Khalwale.

**The Speaker** (Hon. Ethuro): Proceed, Sen. (Prof.) Lonyangapuo. Please be brief and swift. That is the trend.

**Sen. (Prof.) Lonyangapuo:** Mr. Speaker, Sir, I support this Petition. It is absurd and sad that the people we have entrusted to take care of the counties are becoming problems. How can you lease a resource without consultation? This is happening in the majority of the counties in the pastoralist region. It is important that this is resolved so that others who are in the process of doing the same are warned in advance. My county is engaged in the same business where some of them are presidents of some companies purporting to lease without the knowledge of some elected leaders and the community. This is not good. We also need to come up with stringent measures to curb malpractices. For instance, this year, the last year to elections, some county governments may go overboard; begin to sell property or misappropriate funds. We should put precautions to stop these engagements so that they do not mess up counties before the new ones come.

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

**The Senate Minority Leader** (Sen. Wetangula): Mr. Speaker, Sir, I congratulate the Senator for Kakamega for bringing this matter concerning public property in Isiolo County. This matter can be replicated in many other counties. Governors do not seem to differentiate between public and private property. Article 1(1) of The Constitution of Kenya, 2010 vests the power of this country in the people of Kenya. Any governor or individual who goes counter to the interests of the people of any village, county, sub-



county and the country does so at their own risk. We have lost a lot of public property in the country in this manner.

*(Sen. (Prof.) Anyang'-Nyong'o, Sen. Elachi, Sen. Lesuuda and Sen. Mohamoud remained standing as Sen. Wetangula made his contribution)*

The people of Isiolo are justified to resist attempts to clandestinely lease out resources that contribute close to 90 per cent of their revenue. Many cases like these have happened, where they start by secretly leasing and eventually you learn that they have secretly sold the assets. I want to urge that the Committee interrogates this matter fully and if anybody is found culpable, it is a clear case that can lead to the impeachment of whoever is responsible, if it is the governor, his deputy or whoever it is. Public property must be protected for the interest of the people of each county and this country.

*(Loud Consultations)*

**Sen. (Dr.) Khalwale:** On a point of order, Mr. Speaker Sir. I rise under Standing Order No. 107. You noticed that when Sen. Wetangula was speaking, Sen. (Prof.) Anyang'-Nyong'o, Sen. Elachi, Sen. Lesuuda and Sen. Mohamoud were on their feet. Are they in order or is this the new meaning of order in this Senate where five Senators stood on their feet, when the Senator for Bungoma was addressing the House?

**The Speaker** (Sen. (Ethuro): Order, Sen. (Dr.) Khalwale. Which Standing Order are you referring to?

**Sen. (Dr.) Khalwale:** Mr. Speaker, Sir, Standing Order No. 107 which says:-

“Except when passing to and from his or her seat or when speaking, every Senator when in the Chamber shall be seated, and shall not at any time stand in any of the passages and gangways”.

*(Laughter)*

**The Speaker** (Sen. (Ethuro): Order, Sen. (Dr.) Khalwale. Who were those culprits?

**Sen. (Dr.) Khalwale:** Mr. Speaker, Sir, I will start with the youngest, who should know better, Sen. Lesuuda, Sen. Elachi and Sen. Mohamoud. I will forgive Sen. (Prof.) Anyang'-Nyong'o because of his age.

*(Laughter)*

Apparently it is only the female Senators who seem to be oblivious of Standing Order No. 107.

**The Speaker** (Sen. (Ethuro): Order, Senators. I do not know why you are protesting. Those are the facts. The Standing Order is very clear. I saw for myself. Even now as I am standing, some are still standing and that is proof.

*(Laughter)*

It is fair to concede some of these things learn from it and move forward. Sen. Mutula Kilonzo Jnr.

**Sen. Mutula Kilonzo Jnr:** Mr. Speaker, Sir, it is difficult not to admire Sen. (Dr.) Khalwale because he is the only one who comes up with a petition from a county other than his, and does it with a straight face. However, Sen. Ntutu raised a similar issue in similar circumstances, but in the case of Narok, the matter went to court where there was no public participation. It was nullified. The unfortunate bit is that we never gave Sen. Ntutu's findings and the Petition that he brought to the Senate with such voluminous documents, the prominence it deserved. As a result, we never learnt a lesson.

I want to first of all congratulate Sen. (Dr.) Khalwale, but tell him that there is precedent from Sen. Ntutu and there are findings of a court. In fact, the word, "window dressing" in respect of public participation is from a ruling which was presented to this Senate by Sen. Ntutu. If it was a rally, I would have asked you to clap.

*(Applause)*

Mr. Speaker, Sir, therefore, I support the Petition, but we also as a Committee on Legal Affairs and Human Rights coming up with legislation on public participation. However, for some reason, that legislation has been taken over by our sister House and the one we developed has disappeared somewhere in the process. One of the things that Kenya will fault us for is not coming up with a framework on what public participation is.

**Sen. Karaba:** Mr. Speaker, Sir, I sympathize with Isiolo residents because one person can decide the destiny of a whole county. I have been to the famous Buffalo Springs in Isiolo. That hotel collects a lot of money, going by the look of things and even its location. It is prudent that we must be able to come up with measures of trying to prevent governors of this kind of nature to the interest of the residents who are the majority. That is why we are called the Senate.

This one should take the minimum time required, that is, 60 days. If it takes more time like it has taken for Kirinyaga County, it may attract more sympathies again, because it might not even be solved. I was of the opinion that the Committee should take exactly 60 days or less and let us be seen like we are making a final decision. We should not make a decision and wait for further action to be taken by another House. We should be seen as the final House and the same should also apply for the Kirinyaga Petition on the Mwea Trust land.

**The Speaker** (Sen. (Ethuro): Hon. Senators, pursuant to Standing Order No. 227(1) which says that:-

“Every petition presented or reported pursuant to this part, shall stand committed to the relevant Standing Committee”.

In this case, we are referring to the Committee on Land and Natural Resources. In terms of the same Standing Order 227(2), when a petition is committed to a Standing Committee, the Committee shall, in not more than 60 days from the time of reading the prayer, respond to the petitioner by way of a report addressed to the petitioner and laid on the Table of the Senate”

Next Order, Sen. Mutula Kilonzo Jnr.

**Sen. Mutula Kilonzo Jnr:** Mr. Speaker, Sir, I notice that you are not wearing a purple ribbon like me, but I will ask you another time. I beg to---

**The Speaker** (Sen. (Ethuro): Order, Senator. In fact, I had at one time contemplated that you give me one.

Proceed.

### PAPER LAID

#### THE 2009 KENYA POPULATION AND HOUSING CENSUS AND ANALYTICAL REPORT

**Sen. Mutula Kilonzo Jnr:** Mr. Speaker, Sir, I beg to lay the following Paper on the Table of the Senate today, 5<sup>th</sup> of July, 2016:-

The 2009, Kenya Population and Housing Census Analytical Report.

*(Sen. Mutula Kilonzo Jnr laid the Paper on the Table)*

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

**Sen. (Dr.) Khalwale:** Mr. Speaker, Sir, the 2009 census was disputed. In fact, the matter went up to the High Court and the Court of Appeal. Could we be guided on whether it is the raw data that was archived from the field or what the former Minister, Hon. Oparanya called the “smoothened”? Is it the “smoothened” or is it the data containing the decisions of the High Court, Court Of Appeal and Supreme Court? We need to be guided because the document is now going to be public. The public must know what they are consuming.

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

**The Senate Minority Leader** (Sen. Wetangula): On a further point of order, Mr. Speaker, Sir. You may be aware, if not take judicial notice, that this matter went to the court, which declared parts of the census annulity. It even ordered a repeat that was never done. We do not want this House to rubberstamp public fraud. We have a circle of census that is coming in another three years. I have looked at the census document that has been tabled and remember very well the former Minister for Planning and National Development saying: “We have finished the census; now we are smoothing the figures.” That is a language of fraud. How do you smoothen figures? They are either figures or not figures. As the distinguished Senator for Makueni tables that document, I want us to note that this is a document which is highly questionable and disputable. It remains a questionable document and is not an authority on the demography of this country.

**Sen. Elachi:** Mr. Speaker, Sir, I want to add that even when we do allocations to counties, we still have conflict because of the same census. Therefore, it is important for the courts to conclude these cases so that we know the way forward regarding the matter that has been pending since 2009. I think we need to close the chapter on census.

**Sen. (Dr.) Machage:** Mr. Speaker, Sir, a document has just been tabled in House that we are not privy to and have not read. Are the Members, therefore, in order to debate or dispute a document that we are yet to see?

**Sen. Karaba:** Mr. Speaker, Sir, this document arises out of what we knew one time; that there was no proper census taken. If that is true, the document is fraudulent. Some of the figures that are in that report are used to allocate money from the national kitty. It is, therefore, important that we get serious about the figures that we have. The figures for some pastoral areas purport to be even more than those of Kirinyaga. We need to know whether those figures are correct and authentic.

**Sen. (Prof.) Lonyangapuo:** Mr. Speaker, Sir, I wish to join my colleagues in wondering how this document has come to the House. If it is not official why have we been using these figures to allocate funds to the counties? We should use the old figures of 1999 and not the disputed figures of 2009. It is not proper to allocate 45 per cent of resources proportion to the population, using figures that are still contested. The Committee should bring a document that reflects 2019 and not this one. In fact, we have been illegally allocating money based on the figures that are contested.

**The Speaker** (Hon. Ethuro): Sen. Mutula Kilonzo Jnr., what is your response to all the issues that have been raised?

**Sen. Mutula Kilonzo Jnr.:** Mr. Speaker, Sir, I appreciate the comments made and will not defend the document. However, we discussed this matter in the Committee of the Senate when we were dealing with the county revenue allocation. The question at the time was whether we can continue allocating revenue based on the population figures that are available on record. Speaking for myself, I think the Senate now has an avenue; that this is the basis upon which Senators can then move to ask for those documents that are in the Court of Appeal and the correct figures, so that by the time we are dealing with the formula, we can correct it because the basis is already at the Senate.

I agree that this matter was pending in court and the court determined in favour of the persons who had challenged the census in various places. Directions were given to the court, but they cannot amend this document. But it provides an opportunity for any Senator or person who is interested to then move for this document to be changed by the persons who have prepared it. For purposes of our basis, it lays a foundation for the things that I am talking about.

Thank you.

**Sen. (Dr.) Khalwale:** On a point of order, Mr. Speaker, Sir. Did you hear the Acting Chairperson of the Committee state that the ruling by the Court of Appeal, which was in favour of the people who challenged those figures, has now left any Kenyan with the option to go and ask for the figures to be amended? Could he clarify whether that decision was not directing the Government to go and make those amendments to the figures? Those figures favour certain areas in this country to get resources that they do not deserve, and the Court of Appeal has made a decision. Could you make it clear or do you want me to go to court, because I represent the second largest county with two million people?

**The Speaker** (Hon. Ethuro): Order, Sen. (Dr.) Khalwale. You cannot be a champion of Standing Orders at your convenience. You do not address another Member, leave alone a standing one.

Sen. Mutula Kilonzo Jnr.

**Sen. Mutula Kilonzo Jnr.:** Mr. Speaker, Sir, what I said is that this document was prepared, from my own reading, before the Court of Appeal judgement. Therefore, in sequence, this document came first and the Court of Appeal document came second. The

leaders who have an issue with the document have an opportunity to challenge it based on the Court of Appeal ruling. The tabling of that document in the Senate, in my own view and I could be wrong, lays a foundation for the leaders of the Senate to say: "Now we have the wrong document that has caused us problems. This is because we did not have a document that we could use."

**The Speaker** (Hon. Ethuro): Sen. Mutula Kilonzo Jnr., just help me for my own understanding. Was the decision of the Court of Appeal never challenged?

**Sen. Mutula Kilonzo Jnr.:** No, it was just a month ago. There is no court that has overturned the Court of Appeal ruling. For now that ruling stands.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Speaker, Sir, this is an opportunity for you, as the Speaker of this House, to guide the country. That document contains disputed and disputable figures. The matter has gone to court and the court of first instance, in fact, ordered for a repeat of census in various places, which was never done. The Court of Appeal has said that, that census was inaccurate in every material particular. It is the document that we are purporting to use as if it is factual.

You as the Speaker of the Senate that protects the interests of counties and their governments – and it is the basis upon which revenue is distributed – can give a direction to the country. Although we have a ten-year cycle to carry out census, the census of 2009 having been carried out Nigerian style, where every county and region inflates figures for purposes of attracting revenue, to the extent that you can never tell how many Nigerians there are in Nigeria, because of fraudulent figures whenever they do their census, it would be desirable for you, as the leader of this House and our Speaker, to direct the country that the figures of the census of 2009 having failed to convince anybody because of the frauds committed--- In the words of the Minister of the day – and he said this many times, including in Cabinet, where my brother, Sen. Kiraitu and I were sitting: "We have got the figures and we are smoothening them before releasing them." This in itself tells us a story.

You can direct the country to prepare for a census earlier than 2019, so that we have correct figures to determine how revenue and other interests of equity in this country are determined.

**The Speaker** (Hon. Ethuro): Order, Senators. The difference between the Speaker and the Senate Minority Leader is that I also happen to be a statistician. Therefore, these are matters I am at home with, including the use of the word "smoothening." It is not necessarily bad and I can read from what the then Minister said.

"Data capture was done using scanning technology and the process was highly integrated with tight controls to guarantee accuracy of results to achieve internal consistency and minimize errors, rigorous data editing, cleaning and validation."

These are things that we always do when we get the letter done. For a layman, "smoothening" might mean other things, but that is not my point.

Admission of documents is based on authenticity; that is, the source of the document, who the author is and whoever signed it. That is the time honoured practice of Parliament. Regarding this document, you cannot be in any doubt. Just look at the way it is glossed very nicely; this is an authentic document. What you are challenging about this document is the content, which you are at liberty to do. But to ask your Speaker to engage in a process that I would consider an exercise in futility--- I think the House is not

better placed to deal with these things. Already there are people who have petitioned the Court of Appeal; let them proceed along those lines. This is 2016 and the next census will be 2019. It is a massive exercise that shall remain contentious. Prepare well for the next one and learn from the mistakes of this one, if there were any.

I rest my case. By the way, it is a very old document. It is Volume 13 dated March, 2012.

Let us move on to the next Order.

### NOTICE OF MOTION

#### APPROVAL OF SENATORS TO SERVE IN THE PROCEDURE AND RULES COMMITTEE

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

THAT, pursuant to Standing Order No.176(a), 177 and 179, the Senate approves the following Senators nominated by the Senate Rules and Business Committee (RBC) to serve in the Procedure and Rules Committee:-

- (1) Sen. David Ekwe Ethuro – Speaker of the Senate and Chairperson;
- (2) Sen. Kembi-Gitura – Deputy Speaker;
- (3) Sen. Elizabeth Ongoro – Member, Chairpersons Panel;
- (4) Sen. Peter Mositet – Member, Chairpersons Panel;
- (5) Sen. (Dr.) Wilfred Machage – Member, Chairpersons Panel;
- (6) Sen. Stephen Sang – Member, Chairpersons Panel;
- (7) Sen. Martha Wangari;
- (8) Sen. Naisula Lesuuda; and,
- (9) Sen. Judy Sijeny.

Thank you, Mr. Speaker, Sir.

**Sen. (Dr.) Khalwale:** On a point of order, Mr. Speaker, Sir. I would like to draw your attention to the order of today. The Motion that the Senate Majority Leader has given notice to is not on the Order Paper.

**The Speaker** (Hon. Ethuro): Order, Sen. (Dr.) Khalwale. You should argue with passion when you have established all facts. First, this is a notice of Motion.

Secondly, it is good practice to make it obvious when it is possible but with leave of the Speaker, you allow certain notices to be given. We are not prosecuting the Motion. It is still good notice for you between now and when the Motion will appear on the Order Paper because it also depends on the gravity of the matter. This is a Motion that you are actually fully aware of.

Sen. (Dr.) Khalwale, proceed because last time you prosecuted the other matter very well.

**Sen. (Dr.) Khalwale:** Mr. Speaker, Sir, I agree with you that he can do so with the leave of the House. If that is the case, then he should have informed the Senate that he is proceeding with the leave of the Speaker. Otherwise, we cannot just sit here and see the

rules of this House being trampled upon by none other than a professor of constitutional law.

**The Speaker** (Hon. Ethuro): Order, Sen. (Dr.) Khalwale. Which Standing Orders are you quoting? Every time you rise with a book but this time round you have not.

**Sen. (Dr.) Khalwale:** Mr. Speaker, Sir, I rise under the Standing Order that speaks to the sequence of events---

**The Speaker** (Hon. Ethuro): Is it Standing Order No.39?

**Sen. (Dr.) Khalwale:** Yes, Mr. Speaker, Sir. If he had gotten your leave, he should have informed us that he has your leave.

**The Speaker** (Hon. Ethuro): Order, Sen. (Dr.) Khalwale, you are completely out of order. I think you are too busy preoccupied with who is on the passages and the gangways.

*(Laughter)*

This is Order No.6 on the Order Paper. That particular Order is about Notices of Motion. The Senate Majority Leader has given a notice of Motion under that particular item. So, how can he be out of order?

Under that particular Standing Order, I have power to allow a Member to even come at any one time depending on how he convinces me and we have always allowed that. So, regarding that one, just relax Sen. (Dr.) Khalwale.

**Sen. Mutula Kilonzo Jnr.:** Mr. Speaker, Sir, I am glad that you are also studying law like most of us. However, in Standing Order No.48 where Notices of Motion is contained, the leave you are talking about is not there. Standing Order No.48(2) states that:-

“Before giving notice of a Motion, the Senator shall deliver to the Clerk a copy of the proposed Motion signed by the Senator, and the Clerk shall submit the proposed Motion to the Speaker.”

The exception are in Standing Order No.48(3). I have checked and I can---

**The Speaker** (Hon. Ethuro): Sorry, Sen. Mutula Kilonzo Jnr., which Standing Order is that?

**Sen. Mutula Kilonzo Jnr.:** Standing Order No.48.

Mr. Speaker, Sir, we are just doing this for record so that next time we know what we should do. Standing Order No.48 is about Notices of Motion. Standing Order No.48(2) and (3) state:-

“(2) Before giving notice of a Motion, the Senator shall deliver to the Clerk a copy of the proposed Motion signed by the Senator, and the Clerk shall submit the proposed Motion to the Speaker.

(3) If the Speaker is of the opinion that any proposed Motion —

(a) is one which infringes, or the debate of which is likely to infringe, any of these Standing Orders;

(b) is contrary to the Constitution or an Act of Parliament, without expressly proposing appropriate amendment to the Constitution or the Act of Parliament;

(c) is too long;

(d) is framed in terms which are inconsistent with the dignity of the Senate; or

(e) contains or implies allegations which the Speaker is not satisfied that the Mover can substantiate—

the Speaker may direct either that, the Motion is inadmissible, or that notice of it cannot be given without such alteration as the Speaker may approve.”

Mr. Speaker, Sir, all the way to Paragraph 6, there is no portion where there is leave to move without necessarily giving the notice. Maybe, the Senate Majority Leader should have said that he has given you the notice of the Motion and you have approved it under Standing Order No.48.

**The Speaker** (Hon. Ethuro): Order, Sen. Mutula Kilonzo Jnr. You should not argue with me.

*(Laughter)*

The report on the petition which we will bring tomorrow will not be presented as having been approved by the Speaker. That is standard procedure and practice. Why do you want to waste valuable time of the plenary dealing with things that are obvious?

*(Several hon. Senators stood up on points of order)*

**The Speaker** (Hon. Ethuro): Order! Members, this matter is very simple. Let us proceed because we have a lot of business before us.

Let us have Sen. (Dr.) Machage and then Sen. (Dr.) Khalwale.

**Sen. (Dr.) Machage:** Mr. Speaker, Sir, either intentionally or otherwise, Sen. (Dr.) Khalwale and the rest have all avoided reading Standing Order No.39(2) which states that:-

“Business shall be disposed of in the sequence in which it appears in the Order Paper or in such other sequence as the Speaker may, for the convenience of the Senate, direct.”

**An hon. Senator:** But we are not disputing the sequence.

**Sen. (Dr.) Machage:** Mr. Speaker, Sir, you decided that the sequence should include that notice of Motion. You have that mandate from the Standing Order.

**The Speaker** (Hon. Ethuro): Sen. (Dr.) Machage, I know you have a duty to help the Chair but you absolutely do not need to exercise it on this one. That matter is what Sen. (Dr.) Khalwale tried to bring and I told him he was completely out of order.

**Sen. (Dr.) Khalwale:** Mr. Speaker, Sir, before I concede that I am completely out of order, I would like you to help me in interpreting Standing Order No.48(6) which says that:-

“Notice of an approved Motion other than those under paragraph (5) may be given to Senators by means of a list to be published in such manner as the Speaker may from time to time direct and the Senator giving such notice shall state its terms to the Senate when the Motion has acquired precedence in accordance with Standing Order 51 *(Time for*



*moving Motions*), but at least one day before the Motion appears on the Order Paper.”

Mr. Speaker, Sir, that is exactly what I was disturbed by. The Senate Majority Leader read a Motion that has not met the provisions of Standing Order No.48(6).

**The Speaker** (Hon. Ethuro): Order, Sen. (Dr.) Khalwale, paragraph 6 applies but other than those Motions under paragraph 5. This one is under paragraph 5. It was approved by the Rules and Business Committee (RBC) and the Speaker. Nothing comes here out of thin air. The names were proposed and approved by the RBC today. None other than the senior most Senator is the one giving notice. That should show you where the Motion has come from and its importance. It does not meet the requirements of paragraph 6. Do you now wish to concede?

**Sen. (Dr.) Khalwale:** Yes, Mr. Speaker, Sir. I do concede but wish to point out that Sen. (Prof.) Kindiki is not the senior most Senator in this House. In fact, he is junior than me. Seniority of a Senator in this country is not based on the office that the Senator occupies. The definition is very clear. He is only four years old in politics. He started walking the other day.

**The Speaker** (Hon. Ethuro): I will not be drawn into that temptation. I will invoke the Lord’s prayer not to lead me into temptation. In terms of the processing of business, you are only limited to 15 minutes. In fact, before you reach the Majority Leader, you must come through the Minority Leader. So, you have a long way to reach where Sen. (Prof.) Kindiki is, although I know that in parliamentary practice, longevity matters. That is for purposes of allocating you an office when the allotments are done but the office of your bosses are usually assumed and not allotted. That should be enough for now.

*(Laughter)*

Next Order!

### SENATORS’ GENERAL STATEMENT

EXTRA-JUDICIAL KILLINGS OF LAWYER WILLIE KIMANI,  
JOSEPHAT MWENDA AND TAXI DRIVER JOSEPH MUIRURI

**The Senate Minority Leader** (Sen. Wetangula): Mr. Speaker, Sir, thank you very much for being magnanimous to me, the House and the country by allowing me to make a statement under Standing Order No.45(2)(a) on a matter of county issue and an issue of general topical concern.

Mr. Speaker, Sir, I am making a statement in relation to the extra-judicial killings of a young advocate and colleague, Mr. Willie Kimani, his client Josephat Mwenda and the taxi driver who was driving them, Mr. Joseph Muiruri. The facts emerging about the death of those people are chilling, to say the least. These are Kenyans who, according to the Inspector-General of Police, were abducted by police officers. The Inspector-General, has consistently issued statements to the effect that the police abducted them. The details coming out of the post-mortem are so frightening that even mafia criminals do not kill

their victims like that. Wille and his colleagues, were brutalized in a manner beyond comprehension, their bodies decapitated, loaded in gunny bags and dumped in a river.

Mr. Speaker, Sir, if the police can do this, my colleague lawyers will tell you that there is Marxism; who will watch the watchers. The police are vested with the authority to protect lives and properties of the people of this country.

The new Constitution transformed the police from a force to a service but we are quickly degenerating back to an even more brutal force than a service. We understand that the suspects have been arrested and I hope that the arrests are not a ploy to hide the truth because that is also possible. There is a possibility to pick on junior officers. An AP constable is unlikely to have an issue with a lawyer to an extent of arresting, capturing, abducting and brutalizing Mr. Kimani the way it happened. There must be some hidden big force somewhere.

Mr. Speaker, Sir, I want to stand here on the Floor of the Senate and denounce this heinous act with the strongest terms possible. I also demand proper and thorough investigations. We need people to bear responsibility.

As I finish, I would like to say that in Northern Island during the days of the height of IRA revolt, the police were looking for an IRA suspect who had killed the person. He was eventually found hiding in the servant's quarters of the Attorney-General. There was clear evidence that the Attorney-General did not know that this suspect was in his compound. The Attorney-General promptly resigned and left office. With these happenings, in civilized societies and I hear our leadership constantly boasting of our high level of civilization, somebody must take responsibility. That somebody is none other than the Inspector-General of Police and the Minister for Interior and National Coordination. Whether they were involved or not is not the issue. I have no doubt that Maj-Gen. Nkaissey or Boinet could not do this, but taking responsibility does not mean being guilty. It means you are conscious of the fact that when you are given a job to do, the buck stops on your table.

It is a sad day for this country and the law profession. It is also a sad day for the ordinary man in this country including an innocent taxi driver who was simply hired to earn a living for his family to meet death in such a brutal manner. I join the legal fraternity and laud them for the peaceful demonstration that they carried out around the country yesterday. I am also in full solidarity with the boycott of courts this week.

Thank you, Mr. Speaker, Sir.

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

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

**The Senate Majority Leader** (Sen. (Prof.) Kindiki: Mr. Temporary Speaker, Sir, I take this opportunity to laud the Minority Leader, Sen. Wetangula, for rising on this very important matter. Mr. Willie Kimani was a lawyer like some of us in this House. He was also my former student. I personally taught him law at the University of Nairobi. The pain that I express here today is not only personal but it is also personal in another way. The client, Mr. Josephat Mwenda was a young man who had been doing business in Kitengela. He came from Marimanti, in Tharaka Constituency, Tharaka Nithi County. Therefore, that is even a more compelling and personal loss. Mr. Joseph Muiruri on the

other hand was an honest Kenyan who was conducting his taxi business and I do not think that he should have met his death in such a cruel and barbaric manner. As a lawyer and as a person who has lost a constituent and a fellow Kenyan, I join the Senator for Bungoma and Minority Leader in condemning the barbaric act of murder that has been done on these Kenyans.

What is surprising many of us is that the police have admitted that those who are suspected to have committed this crime are police officers. I, therefore, would like to also demand that some form of personal responsibility has to be taken in terms of the people who did this. Administrative responsibility has to take place also because when you are presiding over an institution that goes amok, then you must take personal responsibility.

Mr. Temporary Speaker, Sir, I want to congratulate fellow lawyers for the peaceful demonstrations across the country. I appeal to my brothers and sisters in the Opposition to learn from the lawyers on how to organize and conduct peaceful demonstrations so that you do not have destruction of property and deaths.

Finally, those who live by the sword die by the sword and cursed is the man who sheds innocent blood.

I strongly condemn.

**Sen. Mutula Kilonzo Jnr.:** Mr. Temporary Speaker, Sir, this is a sad event but it is a sequence of many things. I am one of the people who visited Sen. Muthama in Pangani. Sen. Muthama and several colleagues were detained for three days and denied basic things. That is called impunity. When police officers arrest and detain a lawyer and his client on their way from the court, this is called impunity. These policemen went further and deleted records. I am surprised that the person who is charge of Syokimau AP Post has not been arrested. This is because if it was not for the wisdom of Willie Kimani to write a small note and push it into a small pocket, we would never have known what happened because the records had disappeared.

The three constables, just like Sen. Wetangula has said, have never been arrested or arraigned in court and nobody is taking responsibility. We have allowed impunity to foster. We have allowed them to deprive people of basic things and we are now going to allow them to take away life. In-between, there is nothing. These people have gone to the worst. In a country where law enforcement is supposed to guide enforcement and government--- I am surprised, I have not heard a single comment from the Jubilee Administration. There are some fellows who are famous for writing press statements about anything under the sun, even when the sun refuses to rise but in this case, they have said nothing. This is not about tribe or parties---

*(Sen. Wetangula consulted loudly)*

**The Temporary Speaker** (Sen. (Dr.) Machage): Order, Sen. Wetangula. You are too senior for that.

Proceed, Sen. Mutula Kilonzo Jnr.

**Sen. Mutula Kilonzo Jnr.:** Mr. Temporary Speaker, Sir, it is the Kenyan people who wear a Coat-of-Arms and are given ammunition who are turning against Kenyans, yet we pay them to provide protection.

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): On a point of order, Mr. Temporary Speaker, Sir.

**The Temporary Speaker** (Sen. (Dr.) Machage): What is it, Sen. (Prof.) Kindiki?

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): Mr. Temporary Speaker, Sir, is the Senator for Makueni in order to take advantage of such a solemn and grave matter, which we are all sharing as Kenyans, to bring incorrect information by alleging that those of us in the Jubilee Coalition have not spoken against it? I have just spoken in this Parliament and did so elsewhere. We all condemn and demand responsibility for what happened and it is in the HANSARD. I spoke about this issue two minutes ago. I have repeated this for the whole world to know; that the Jubilee Government condemns in the strongest terms possible what has happened. There is no better representative of the Jubilee Government in this House than myself. I know that I speak for all my colleagues. Nobody will come here to support impunity.

**The Temporary Speaker** (Sen. (Dr.) Machage): Order, Sen. (Prof.) Kindiki. In this country, we have many communities and each of them has its own ways of crying. Others shout, others sing, others produce tears and others do not. So, allow people to cry in their own way.

**Sen. Mutula Kilonzo Jnr.:** Mr. Temporary Speaker, Sir, sometimes, the Senate Majority Leader confuses his responsibility to extend to the Executive. In the new Constitution, he is not the Executive and does not speak for the Executive.

**The Temporary Speaker** (Sen. (Dr.) Machage): Order, Sen. Mutula Kilonzo Jnr. I thought I saved you; do not go to that level. The question is: Does the Jubilee administration exclude the Senate Majority Leader?

**Sen. Mutula Kilonzo Jnr.:** Mr. Temporary Speaker, Sir, my statement was in context. He is talking about two minutes ago and I was talking about the past tense, which is so many days.

**The Temporary Speaker** (Sen. (Dr.) Machage): Two minutes ago is also past tense.

**Sen. Mutula Kilonzo Jnr.:** Mr. Temporary Speaker, Sir, it is past tense to the extent that it is just immediately. That is what is called "kneejerk."

When Sen. Njoroge said something so basic, there was condemnation from everywhere. But this is this is a matter of concern, where somebody's eyes are gorged out, put in a gunny bag and thrown into a river, ostensibly to hide evidence. This is how we have lost Kenyans. This is how cases collapsed at the International Criminal Court (ICC). We must continue to condemn these actions.

Thank you.

**Sen. Murungi:** Thank you, Mr. Temporary Speaker, Sir. This is a very sad occasion that we must not trivialize. I would like to advise my younger brother to remove the log in his eye before he can see the speck in his brother's eye.

I want to thank our colleague, the Senate Minority Leader, for bringing this matter to the attention of this House. We are all shocked maybe even more than those who are shouting. This is because some of the victims are people we know. You have heard that the *boda boda* business person is from Tharaka-Nithi in Meru and is personally known to the Senate Majority Leader. The fact that he has not shouted it out does not mean that he is not feeling it. We all have many ways of mourning. Where we come from we mourn in silence.

Mr. Temporary Speaker, Sir, we do not have the words to condemn this inhuman, brutal, degrading and barbaric act perpetrated by the members of our own police force. I

do not imagine what kind of punishment these criminals deserve when found guilty. The tragedy we have is that the law says that justice must not only be done, but must be seen to be done. In this case, where the police are investigating police criminals, it becomes very difficult to know whether every stone will be turned. The clamour that was there during the making of the Constitution is that time has come for this country to have what is called 'independent prosecutor' like in the United States of America (USA). It is somebody appointed by the State and not an employee of the State; an independent prosecutor to be investigating cases which involve Government functionaries. Time has come for us to introduce such an amendment, so that a case like this should not be investigated by the police but by an independent investigator.

Mr. Temporary Speaker, Sir, our condolences go to the families of the deceased, but we must also insist that in this case, it is the police who are on trial. We want to join our colleagues who are on the streets to protest against this inhuman act. As a lawyer and one of the neighbours from Meru, I express my sincere and painful feelings about this act. This is not about Jubilee and CORD; it is about whether or not these people are human beings. Let us not trivialize it.

**The Temporary Speaker** (Sen. (Dr.) Machage): I see a lot of interest on this and we also have to execute Order No.8, which is equally important. I will limit the time to only two minutes for the subsequent speakers. It is so ordered.

Sen. Sijeny.

**Sen. Sijeny:** Mr. Temporary Speaker, Sir, first and foremost, I wish to extend my heartfelt condolences to the families of the bereaved. To lose a loved one in that particular manner is shocking.

I once attended a conference in Harare, Zimbabwe in 2008 and watched a video on extra-judicial killings and police brutality in Kenya. I protested because I saw things that I could not imagine could happen in my country. However, after this incident I am left quiet, embarrassed and ashamed. This is not something that can be tolerated.

I support Sen. Murungi in saying that an independent body should take charge of the investigations. It should not be the same culprits; it is normally easy to support one another. The Constitution of Kenya is very clear that every Kenyan has a right to legal representation. Therefore, one should not be condemned for doing their job. Whatever it is, the law should take its course. If we do not take proper steps or condemn this act in the strongest terms possible, doctors may start to be killed for saving lives. People should not be condemned for doing the right thing.

Therefore, I urge that the necessary steps are taken. Since I also represented the 'Muthaiga two' when they were taking their statements, does it mean that I could have been followed, killed and put in a gunny bag?

I condemn this act in the strongest terms.

**Sen. Karaba:** Mr. Temporary Speaker, Sir, the incident that happened to the three victims at Athi River is unfortunate. This is not the first time that we are discussing the brutality of the police. It has happened in some of our counties before. Last month, a police officer killed a civilian in a bar in Kiangwaci, Kirinyaga County. The only disciplinary action that was taken against that officer was to transfer him to an unknown destination. The other month, a police officer killed another person in a bar. It was taken as a normal incident and the police officer was also transferred. We now have three victims of the Syokimau Police Post. If the police officers concerned will only be

transferred, this House must rise up and ask for serious action be taken against them. This is a very serious incident.

If it was in the United States of America (USA), someone would have resigned by now; either the police boss or the Cabinet Secretary in charge. We all saw what happened in Britain after Mr. David Cameron lost in the referendum. He stepped aside. We should emulate other countries and be seen as a serious country. Serious measures should be taken against the police officers who meted these crimes.

**Sen. Ong'era:** Mr. Temporary Speaker, Sir, thank you for giving me the opportunity to condemn and protest the barbaric killing of Mr. Wille Kimani, a young man at the age of 31 who had not even tasted the sweetness of marriage. I also condemn in equal breadth the brutal killing of his client, Mr. Josephat Mwenda and the taxi driver, Mr. Joseph Muiruri, whom I am told is a constituent of the Senate Majority Leader.

These people were not arrested. If I may borrow the words of the Senate Minority Leader, they were kidnapped. They screamed as they were kidnapped. I am sure many other police officers saw what happened, but they chose to keep quiet. They chose to pretend that nothing had happened. This kind of impunity is what we in CORD are saying no to. We stand against this kind of impunity. We demand that the killers and perpetrators be brought to justice.

I have just heard one of my colleagues requesting that the Federal Bureau of Investigation (FBI) looks into this matter. In the same breadth, I also demand that the FBI should investigate the murder of Mr. Jacob Juma who was killed in very mysterious circumstances and nothing has been said or done about it.

Finally, I condemn the kind of killings that the police are perpetrating because it means had the "Muthaiga two" not been Members of Parliament; they would have met the same fate that met the lawyer, his client and the taxi-driver. I stand with my colleagues to condemn that act.

**Sen. Wangari:** Mr. Temporary Speaker, Sir, I join the Senate Minority Leader and my colleagues in condemning the despicable act. As I watched the young widow who has a very young son and been left by Mr. Wille Kimani, the young lawyer, all that was running through my mind was that all this could have been avoided. It is a pity this young son will grow up not knowing his father because of an incident that could have been avoided. I have no words to describe what the families of the three young men are going through. Looking at the scenario and the circumstances under which they were killed, we cannot even start imagining what happened to them. The postmortem and the autopsy report was quite a sad story. We can only imagine what they went through.

The right to life is not negotiable. That is in the Constitution. We must see justice. I join the lawyers in standing with one of their own. I know that they had peaceful protests in Nakuru County and other counties. That is commendable because we need to show leadership in whatever position we occupy. That leads me to the leadership of the Senate Minority Leader, who has brought this matter to the Floor of the House. Just because some of us are quiet, does not mean that we do not have an opinion. We feel touched that their young children will grow up without fathers. The mothers will have to explain what happened to their fathers. That is the worst thing that can happen to any woman. It is quite a painful experience. I hope justice will be served.

**Sen. (Dr.) Khalwale:** Mr. Temporary Speaker, Sir, as a parent, I would like to condemn the killing of these young people. I had an opportunity today to speak with the

Government Spokesman over lunch time and I challenged him to explain what is going on. As Sen. (Prof.) Kindiki and Sen. Wangari have said, he told me that we in the Opposition, are demanding that the Inspector General (IG) be sacked yet he also has a family to feed. That took away my appetite today. I could not believe that. I, therefore, appeal to the IG to take a trip to Kigali. There, when you are driving and the police officers stop you, they do not start by checking the driving licence, but whether you have put on a safety belt because they are protecting your life.

In this country, the police officers who wear uniforms and put on the coat of arms kill our children. Shame on those of us who want to belittle the great course that we pushed for at the risk of our lives, limbs and others who lost their lives to push the Independent Electoral and Boundaries Commission (IEBC). It is unfair for them to think that that it was child's play. How I wish you were there when people who thought as you are now were laughing at the late Masinde Muliro, Martin Shikuku, Kenneth Matiba, Raila Odinga and Sen. Orengo here during the push for the repeal of Section 2(A). This is not a child's play. You are in this Chamber to push for the agenda of the common *mwananchi*. I would like the Director of Criminal Investigations Department (CID), Mr. Ndegwa Muhoro---

**The Temporary Speaker** (Sen. (Dr.) Machage): Order Senator! Your time is up. Please, proceed, Sen. Lesuuda.

**Sen. Lesuuda:** Mr. Temporary Speaker, Sir, I thank the Senate Minority Leader for bringing this serious matter to the attention of this House. What happened is very unfortunate. I would like to pass my condolences to the three families. It is sad to see young people lose their lives as they seek justice. The initial case that the young lawyer was following on *pro bono* was also against police officers for the rogue act that they had done. To add salt to injury, the same people came to finish the three victims totally. That is a very unfortunate incident and it does not matter whether we are in Government or the Opposition.

This is a matter that every Kenyan is condemning. This is not the first time that this is happening and it raises a lot of issues that we look into. The issues of the Independent Policing Oversight Authority (IPOA), witness protection and people who are seeking justice against the system because we have witnessed in our counties the police officers kill people in a manner that is unlawful. To date, some of them have not been heard in courts. We must be a country that takes care of its people and not the other way round, especially for people who are seeking justice. I hope that this is not just about statements that we will forget. The three families have to get justice for what happened.

**The Temporary Speaker** (Sen. (Dr.) Machage): Please, proceed, Sen. Muthama.

**Sen. Muthama:** Mr. Temporary Speaker, Sir, I request you to add me two more minutes.

**The Temporary Speaker** (Sen. (Dr.) Machage): Order, you have two minutes only.

**Sen. Muthama:** Mr. Temporary Speaker, Sir, I am the last born child to be baptized with police brutality. I am asking for two minutes to explain this to Kenyans and four minutes to explain what happens in this country.

First, I was surprised to see the Director of the Criminal Investigations Department (CID) before a magistrate. He said that this country has brought the Federal Bureau of Investigation (FBI) to assist with the investigations. This is evidence that

Kenyans have lost confidence in the police service in this country. For him to tell Kenyans that foreigners are coming to assist us with simple killing that took place here around the corner this early is worrying. I do not take this lightly. They involve big entities in small issues.

In this country, the police frame charges against innocent Kenyans, arrest them, take them to the cells and lock them up. These instructions are given by people who are supposed to protect the rights of Kenyans. This country is collapsing. Who will trust the police when they come to arrest you? I was arrested without a warrant of arrest by 35 police officers like a criminal yet I am an elected Member of this House, a businessman and a whip in this House. What will guarantee Kenyans if a police officer walks to your compound and says they want to arrest you? It will be a battle. I tell Kenyans to arm themselves not against fellow Kenyans but against the Government that is in power. They pretend, for instance, that they are arresting Sen. Wamatangi but at the end of the day, they are doing so to eliminate him. These three Kenyans were taken away in a GK vehicle. They were told: "Stop, you are under arrest, get into this vehicle." I wish to tell Kenyans that anyone who comes to arrest a Kenyan without an arrest warrant should be fought to the end. That is why I am being accused.

**The Temporary Speaker** (Sen. (Dr.) Machage): Order, your time is up. However, as we discuss this sensitive issue, let us be careful not to abuse our privileges as Members of this House.

**Sen. Muthama:** Mr. Temporary Speaker, Sir, I conclude by saying---

**The Temporary Speaker** (Sen. (Dr.) Machage): Order, take your seat.

**Sen. Muthama:** Mr. Temporary Speaker, Sir, I am concluding. I will sit down. I am just giving the last word. We want fairness. We want those people to be prosecuted without delay.

**The Temporary Speaker** (Sen. (Dr.) Machage): Do you want to add more?

*(Sen. Muthama spoke off record)*

Okay, order! That is enough.

We appreciate what you have gone through. I also appreciate that you needed more time but do not forget that the current Chair was also accused on the same law that you are being accused now.

Let us give other Members an opportunity to contribute.

Proceed, Sen. Gwendu.

**Sen. Gwendu:** Mr. Temporary Speaker, Sir, I thank you for giving me this chance to add my voice in condemning these barbaric acts and painful occurrence that has happened to our fellow Kenyans.

I am a Christian. I believe that no human being has the right to take the life of another. So, whoever thinks or believes that because they are a police officer or Government official, they can take away the life of another Kenyan is wrong at all levels. This is not an issue of Jubilee or CORD. It is about protecting the lives of Kenyans. As leaders in this Parliament, who will we lead if people keep dying or we keep encouraging the loss of lives of these Kenyans? We are leaders because we are leading Kenyans. So, we need to join forces not as Jubilee but as Members of Parliament (MPs) and leaders in



this country to condemn the killing of fellow Kenyans who we are supposed to represent and lead towards the right direction.

**The Temporary Speaker** (Sen. (Dr.) Machage): What is it, Sen. Wangari? Are you on a point of order?

**Sen. Wangari:** Mr. Temporary Speaker, Sir, I was earlier during Sen. Muthama's contribution.

**The Temporary Speaker** (Sen. (Dr.) Machage): Very well. Proceed, Sen. Gwendo.

**Sen. Gwendo:** Mr. Temporary Speaker, Sir, in our line of protecting these Kenyans, we have to ensure that something serious is done to these police officers to serve as a lesson to other police officers. The badge that they wear which is written, "*Utumishi kwa Wote*," - *Utumishi* is supposed to be in the right way, not to kill us, end our lives and make us fear them. You should not drive around and when you see a police officer, think you will die or wonder which mistake you have done. We see what they do. Sometimes you are stopped on the road and an offence just comes to their mind. All of a sudden you have just committed an offence; for instance, you do not have your driving licence. I need to see a police officer and feel safe around him or her; not to fear.

Therefore, I condemn this act. As leaders, we should come together and ensure that justice is served to these families that lost their loved ones.

**Sen. Orengo:** Mr. Temporary Speaker, Sir, I am coming at the tail end. It is tragic that in Kenya, death brings us together but the fight for freedom never brings us together. It is better to remember that the fight for the living is as important as fighting for the dead. Unfortunately, even if we come together in death, we are not always coming out fairly. I am sorry about the death of my colleague who is a lawyer. This is a tragic affair.

When Mr. Jacob Juma died, he was just a statistic and is gone. He died in similar circumstances yet now we are being told about the FBI. What about FBI for Mr. Jacob Juma? I am happy that this matter in a way has brought us together in terms of the fact that judges, magistrates and lawyers have come together. In death, you must remember that when Mr. J.M. Kariuki died, it was hon. Masinde Muliro who stood up in Parliament and said that independence was not one to kill another. For that he lost his job.

I am appealing to this House, that when the leadership of these institutions that we put in place is not accountable, these things will continue to happen. One thing that I liked about former President Mwai Kibaki is; when Mr. Alston brought a report about extrajudicial killing, he was the first to accept that, indeed, there was extrajudicial killing. A way was to be found out how to deal with it. I do not want to take a partisan position on this matter. However, I take it seriously that nobody in the Executive at the highest echelons of Government---

**The Temporary Speaker** (Sen. (Dr.) Machage): Please conclude. You have 30 seconds.

**Sen. Orengo:** Mr. Temporary Speaker, Sir, it has become evident that police kill in two ways. In the earlier years, there was a mafia kind of killing; killing first Mr. Tom Mboya, Mr. Pio Gama Pinto and so on. There is a new pattern like perfect crime, for instance, the case of Mr. Robert Ouko and Mr. J.M. Kariuki; kill someone and take his or her body somewhere else. You can see this pattern. You can tell who has killed. I am appealing to the Government to the extent that they can carry out a judicial commission

of inquiry over these extra judicial killings. If this is handled just as a simple crime, it will never solve the problem. We need a judicial commission of inquiry into extra judicial killings in the last five or six years.

**The Temporary Speaker** (Sen. (Dr.) Machage): I see a lot of interest. We also have an equally important Motion to deliberate on. Therefore, try to save time. I have given you two minutes but if you can save one, I will be happy.

Proceed, Sen. Sang.

**Sen. Sang:** Mr. Speaker, Sir, I want to take this opportunity to thank the Senate Minority Leader for bringing up this Statement. Willie Kimani is personally known to me. He was one year behind me in campus. When we were in school, we were student leaders together. Looking at the organisation he worked for, this is somebody who believed in justice. In this, he was handling the case not because he wanted to be paid but because he believed in the rule of law and respect for human rights. It is unfortunate that such kind of an individual would find himself in the situation he found himself in.

Mr. Speaker, Sir, what is more saddening is that we have no doubt that this was done by police officers. As we speak, we are only hearing of three police constables. What about the Officer Commanding Police Station (OCS)?

We are told that the three gentlemen were kept in a police station container the whole day. Where were the other police officers? Even as we ask for proper investigation, administratively, political responsibility must be taken. Even if it means going to sit with the police as a whole and the Cabinet Secretary (CS) in charge, we must be able to bring this to an end.

Mr. Speaker, Sir, back in Nandi, there is a growing trend where police officers are colluding with criminals. When you get a situation where a thief colludes with a watchman or the person who is supposed to protect you colludes with the person who intends to harm you, where shall we head as Kenyans?

**The Temporary Speaker** (Sen. (Dr.) Machage): Sen. (Prof.) Anyang'-Nyong'o

**Sen. (Prof.) Anyang'-Nyong'o:** Mr. Speaker, Sir, I want to be very brief and to tell this House that nothing is going to happen because the trend is that nothing happens when there are extra-judicial killings. For example, during the post-election violence, a young man called Peter Adiyio in Langas was shot by a police man who took him to hospital and followed him there to finish him. He was seen and a rescuer brought him to Nairobi. Eventually he died because of that shot. The policeman was transferred to Ongata Rongai. He is still working with the police force to this day.

Secondly, Maina Njenga's wife and the people who were going to Naivasha to see Maina Njenga, on reaching Limuru, were gunned down gangland style. Nothing has happened to this very day.

Thirdly, Onyango Kwegu was gunned down by policemen riding on motorbikes at 10.00 a.m. in Kisumu. Up to this very day, nothing has happened. So, how do you think that something is going to happen this time? Nothing! This is because people in high echelons of Government have their hitmen in the police force. They use them to settle scores and steal. That is exactly what happened to Juma. It is a pattern that is there, and unless we are prepared to clean this system of *mafia*-style governance, nothing is going to happen. So, we are here shouting like wolves, in a Government that we know is rotten to the core and we think that something is going to happen. Nothing g will happen.

**The Temporary Speaker** (Sen. (Dr.) Machage): Fortunately, no Member of this House has the capacity to shout like a wolf.

**Sen. Chelule:** Mr. Speaker, Sir, I join my colleagues in condemning what happened to the three people who were killed in the last five days. It is a surprise to me because a policeman who is supposed to give you security is the same person who will turn around and brutally kill you like what they did a few days ago.

I give my condolences to the families of these three men who died in a terrible way. We condemn this and I hope this act is an individual act and it is not about Jubilee, Orange Democratic Movement (ODM) or any other party. It is about all of us, as leaders to come up, stand up and condemn the act. I hope justice will be done and I believe now that they have been arrested, proper investigations will be done and justice will be seen to be done. I rest my case and condemn it.

**The Temporary Speaker** (Sen. (Dr.) Machage): Sen. Obure.

**Sen. Obure:** Mr. Speaker, Sir, First, I want to convey my personal condolences to the families of the three. Secondly, this brutal and barbaric action has provoked the anger of the nation. This is not the first time this is happening. This issue of abductions is a common occurrence. On this particular occasion, I believe that the matter has received widespread condemnation because it involved a prominent human rights lawyer.

About four years ago, a *matatu* driver was asked to stop by traffic police officers near Kamkunji Police Station and then the policeman took away his driving license. Later on, he discovered that that the police officer who had taken his licence came from Ruiru Traffic Base. The following day he went to collect that licence and upon doing so, was requested to give a bribe. He did not have the money and did not see the sense of giving a bribe.

The following day he went and reported the matter to the then Kenya Anti-Corruption Authority (KACA). A trap was laid and the policeman arrested. The matter went to court and a date of hearing was set in which this young man was going to be one of the key witnesses. The young man stayed in Eastleigh and kept going to the High Court in Nairobi where the hearing was taking place, the young man then disappeared.

**The Temporary Speaker** (Sen. (Dr.) Machage): Sorry, it is long. I wish you could conclude it in ten seconds.

**Sen. Obure:** Mr. Speaker, Sir, the man has since disappeared. The family has visited every morgue, police cell in the Republic and the young man has not been traced. We condemn these kinds of actions and we demand justice for the victims.

**Sen. Wamatangi:** Mr. Speaker, Sir, I rise to support the Motion. From the onset let me send my condolences to the families and declare my interest. The young lawyer, Willie Kimani is my constituent, in my neighborhood in Kikuyu.

Recently, there was a time the most dangerous thing to do in this country was to ride in a *matatu*. If you did so, more than five *matatus* would be carjacked in a day. When a probe was ordered, it came out that the hijackers were policemen. I have been a victim.

I was walking one day with a friend who works with the *Standard* Newspapers just behind NIC Bank. I told him: "Let me go and buy you lunch." As we were crossing the road at 1.00 p.m., fellows came in a vehicle, stopped in front of us, came out with AK47's, pointed at us and ordered us to lie down. They ransacked us and other people and left.

Mr. Speaker, Sir, three weeks from that date, about six years ago, I went in the morning to report a traffic problem at Lang'ata Police Station. When I stood outside the police station, the guy who came out of the police station was the one who had ordered me to lie down with a gun and robbed us. That is the rot that has been in the police. We must say this clearly, that there is a serious problem and unless it is addressed soberly, truthfully and properly, there will be an explosion.

I say to the Inspector-General of Police (IG) that unless he does what his predecessor---

**Sen. Madzayo:** Asante Bwana Spika wa Muda. Naunga mkono Maseneta wenzangu, na wakili wote Kenya nzima. Natoa rambirambi zangu kwa familia ya wakili Willie Kimani. Nashtumu vikali sana ya kwamba ilikuwa ni makosa, kinyume cha sheria kuweza kumchukua wakili, mteja wake na dereva wa texi na hatimaye tumeona ya kwamba kitendo kilichotendeka hapo, kilikuwa cha kinyama sana.

Bw. Spika wa Muda, hili ni jambo la taharuki sana katika Kenya yetu. Tumeanza kushuhudia uzembe katika idara ya polisi na hii si mara ya kwanza, ya pili wala ya tatu. Ni lazima hatua ichukuliwe ili idara ya polisi irekebike vilivyo kulingana na sheria za Kenya. Tunategemea polisi kulinda maisha ya mwananchi. Kwa hivyo, hatutarajii polisi wauwe mwananchi ambaye wanatakikana kumlinda. Ni nani atakayelinda mwingine ikiwa *Utumishi kwa Wote* sasa umekuwa utumishi wa kuua wananchi wa Kenya? Ikiwa wakili anafanya kazi ya kutetea mteja wake na kufungwa mikono nyuma na miguu, akapigwa na kuawa kisha akatupwa ndani ya gunia na hatimaye akakatwakatwa na mwishowe mwili wake ukapatikana ndani ---

**The Temporary Speaker** (Sen. (Dr.) Machage): Sen. (Prof.) Lesan.

**Sen. (Prof.) Lesan:** Mr. Temporary Speaker, Sir, first, I also join my colleagues in sending condolences to the bereaved families of those very brave Kenyans who met their death in very unfortunate circumstances. I believe the people who did that heinous act are cowards. This is because their target was the human rights lawyer but to conceal the evidence, they killed the taxi driver and the other person. That was deliberate in order to conceal the evidence. As the case continues, I am sure there will be further dillydallying in trying to conceal evidence for others who will be implicated.

Mr. Temporary Speaker, Sir, with technology and forensics, we really wish that the case will go to the extent that we will identify the killers. I thank Safaricom so far in that they are giving us evidence. I am sure the evidence will go a long way to reveal and convict at least one person who has been committing heinous crime in this country.

Mr. Temporary Speaker, Sir, I condemn the act of killing of the three Kenyans by the criminals.

**Sen. Elachi:** Mr. Temporary Speaker, Sir, I also rise to condemn the killings. Today, this country is sad that when young people want to stop mafias or cartels in land and businesses of tendering, they are killed. We must stand and condemn that completely. We must tell Kenyans that time has come where issues that we used to have those days where people found themselves in a court for nine or 10 years are no more. Cases of succession take too long to be settled. You will find some cases going on for 15 or even 30 years and that is why families start using the police to kill each other. The lawyers would wish to end such cases but they are caught in between.

Mr. Temporary Speaker, Sir, it is sad for the families of the lawyer and the taxi driver. This is something that we need to go beyond. It is not just about the *bodaboda* or--

- I think there is something deep in this issue that we do not understand. It might be a case involving somebody very senior in this country who decided to use our young policemen who have no idea to kill someone and hire somebody to dump the bodies in the water and they are found in all this mess. I hope the lawyers will go deeper than what we are seeing and unravel what happened. This will also help to stop what others might be thinking to do.

**Sen. Adan:** Mr. Temporary Speaker, Sir, first, let me pass my message of condolences to the families of the three who were killed brutally by the police. This is really very sad. It is taking us back to the dark days of this country which is unacceptable. The police are supposed to protect the lives of Kenyans and deal with criminals. In this particular case, these were not criminals but Kenyans who were going about their business to work for their lives.

Mr. Temporary Speaker, Sir, we always make noise when such things happen but I believe after this, the families will be left alone. I wish to appeal to the Law Society of Kenya (LSK), where I also belong, to do something to take care of the families and moreso the child that is left behind by Mr. Kimani. This is very sad and we should not accept it.

Mr. Temporary Speaker, Sir, secondly and finally, the police are investigating themselves. We raised such an issue when I was at the Kenya National Commission on Human Rights (KNCHR). We cannot allow people to investigate themselves in this country. No evidence will come out and everything will be concealed. We need independent bodies to investigate these matters and make sure that justice has been done. This is really very sad and very serious and it will make young lawyers who are coming up to fear to carry out very serious cases like this. This is killing a profession.

Mr. Temporary Speaker, Sir, we need to---

*(Interruption of Senators' General Statement)*

## COMMUNICATION FROM THE CHAIR

DEMISE OF MR. LEONARD PATAI NDIEMA;  
SON OF SEN. NDIEMA

**The Temporary Speaker** (Sen. (Dr.) Machage): Order, Senators, I have this important communication to make.

Hon. Senators, it is with a heavy heart that I bring to your attention the demise of the late Leonard Patai Ndiema, the firstborn son of hon. Henry Tiole Ndiema, Senator for Trans Nzoia County. The late Leonard Patai was born in 1985 and prior to his death, he had engaged in agribusiness. The late died on 27<sup>th</sup> June, 2016, after a short illness.

The requiem mass for the late will be held on Thursday, 7<sup>th</sup> July, 2016, at AIC Milimani Church, Nairobi, starting at 10.00 a.m. He will be buried on Saturday, 9<sup>th</sup> July, 2016, at his father's farm in Sholim, Endebess, Trans Nzoia County.

Hon. Senators, I request you to stand with our colleague at this trying moment. On your behalf, allow me to pass our condolences.

Thank you Senators.

Next Order.

*(Resumption of Statements)*

### STATEMENTS

**The Temporary Speaker** (Sen. (Dr.) Machage): Hon. Senators, because of the importance of a very important Motion which is Order No.8, I will defer all statements until we conclude that Motion.

CAMPAIGN AGAINST MANUFACTURE AND CONSUMPTION  
OF SECOND GENERATION ALCOHOL

HARASSMENT OF *BODA BODA* OPERATORS IN  
KAKAMEGA COUNTY

COMPENSATION OF LAND OWNERS ALONG THE STANDARD  
GAUGE RAILWAY (SGR) ROUTE

*(Statements deferred)*

### MOTION

ESTABLISHMENT OF A JOINT SELECT COMMITTEE OF PARLIAMENT  
TO INQUIRE INTO ALLEGATIONS AGAINST THE IEBC

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

THAT, ACKNOWLEDGING that the sovereign power of the People of Kenya may be exercised directly or indirectly through their democratically elected representatives and that the Peoples sovereign power shall be exercised---

*(Technical Hitch)*

**The Temporary Speaker** (Sen. (Dr.) Machage): Order, this is an important Motion. What is happening with the technicians?

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): Mr. Temporary Speaker, Sir, I will not allege sabotage because this is a bi-partisan Motion. I am sure it is an ordinary disruption. Please, allow me to repeat.

I beg to move to move the following Motion:-

THAT, ACKNOWLEDGING that the sovereign power of the people of Kenya may be exercised directly or indirectly through their democratically elected representatives and that the people's sovereign power shall be exercised only in accordance with the Constitution;

RECOGNIZING that through pronouncements, sections of the Kenyan society have raised issues on the credibility, impartiality, integrity

and independence of the Independent Electoral and Boundaries Commission (IEBC), the electoral processes and the electoral law;

APPRECIATING the need to have the August 2017 general elections conducted by a body enjoying the broad confidence of most Kenyans;

NOW THEREFORE in accordance with the provisions of Article 1(1) and (2) of the Constitution of Kenya and Rule 9 of the Houses of Parliament (Joint Sittings) Rules, the Senate resolves that:-

(1)The two Houses of Parliament establish a joint select committee consisting of 14 Members, seven each from the two coalitions in Parliament.

(2)The mandate of the said joint select Committee shall be to:

(a) Inquire into the allegations against the IEBC commissioners and the secretariat;

(b) On the findings of (a) above may recommend legal mechanisms for the vacation from office of the current commissioners of the IEBC and secretariat in accordance with the Constitution;

(c) Recommend legal, policy and institutional reforms to strengthen the IEBC and improve the electoral system and processes so as to ensure the August, 2017 elections are free and fair and are administered in an impartial, efficient, simple, accurate, verifiable, secure, accountable and transparent manner; and

(d) On the basis of the findings and recommendations in (a), (b) & (c) prepare a report and a draft Bill or draft Bills.

The senate further resolves that:-

(3)The joint select Committee shall report to Parliament within 30 days;

(4)The leaders of the two coalitions agree to issue statements separately to support the final report and draft Bill or Bills;

(5) The Majority and Minority leaders in Parliament will signify the approval of the final report and draft Bill or Bills by affixing their signatures thereon prior to presentation to Parliament;

(6)The joint select committee shall have two Co-chairs each appointed by the respective Coalitions;

(7)The coalitions shall provide joint rapporteurs to the Joint Select Committee, but the official record will be the parliamentary HANSARD;

(8)The Joint Select Committee and each coalition may engage experts, professionals and such other technical resource persons as they may deem necessary;

(9)The parliamentary Clerk's Office shall provide secretarial services in accordance with the Standing Orders;

(10)The Committee shall receive views from experts, members of the public, the business community, civil society, religious groups, political parties, county governments and any other persons on matters relating to IEBC and the electoral process;

(11) Each member of the joint select committee shall have one vote. Decisions in the select Committee shall be made by two-thirds majority vote;

(12) The Committee shall formulate its own rules of procedure; and

(13) The Joint Select Committee shall comprise the following members drawn from the two coalitions in Parliament:

1. Sen. Kiraitu Murungi (Co-chair)
2. Sen. James Orengo (Co-chair)
3. Sen. Kipchumba Murkomen
4. Sen. Beatrice Elachi
5. Sen. Johnson Muthama
6. Sen. Mutula Kilonzo Jnr.
7. Sen. (Dr.) Boni Khalwale
8. Hon. (Dr.) Naomi Shaban
9. Hon. Jimmy Angwenyi
10. Hon. Moses Kuria
11. Hon. (Eng.) Mohamud Mohamed Maalim
12. Hon. Junet Mohammed
13. Hon. Mishi Mboko
14. Hon. (Dr.) David Eseli Simiyu

Mr. Temporary Speaker, Sir, this is a very important Motion. It is a culmination of protracted political discussions involving the highest level of political leadership in our country during the past few months. In particular, issues have been raised with regard to the acceptability and the legitimacy of the IEBC in the eyes of some sections of the Kenyan society. Given that IEBC plays an important role in advancing our democracy and considering further that the IEBC, as a referee in elections, should be acceptable to the vast majority of the people of Kenya, it has been decided by the leadership on the Government side and the opposition, that it is important to inquire whether or not there exist a basis for removing from office the IEBC commissioners or changing the secretariat.

The assumption here is that any person who has been accused must be given a fair hearing in accordance with the rules of natural justice. In that connection, the select Committee is hereby proposed for adoption in this House, so that they can sit and objectively inquire into this matter, especially with regard to the allegations that have been made against the IEBC.

Mr. Temporary Speaker, Sir, the rule of pre-assumption of innocence must apply and should be emphasized. Looking at the membership, the committee is composed of some of the most eminent sons and daughters of our country.

Mr. Temporary Speaker, Sir, it is proposed that the Committee be chaired by very senior and experienced lawyers from both sides of the political divide; the Government and the Opposition side. These are Sen. Murungi, the Senator for Meru County and Sen. Orengo, the Senator for Siaya County. Both of them are eminent Kenyans and lawyers of long standing who have made immense contribution to the development of the legal system of modern Kenya. Therefore, I have no doubt whatsoever that these two colleagues will spearhead this Committee judiciously and detach themselves from any



other influences because this will be a *quasi judicial* process where justice should not only be done, but must be seen to be done.

I would like to add that for us to show political support for this exercise even if we know that it is a parliamentary led-exercise, the leadership from both Houses will support this process. The Majority leaders from both the Senate and the National Assembly will show leadership in this process. The Motion also suggests that outside this Parliament, it has been encouraged that other political leadership, who are not in the membership of Parliament, will support this process as a show of consensus and solidarity with what the team will have done.

Mr. Temporary Speaker, Sir, the Committee will rely on the work of experts and each side of the political divide may even have their own experts although this being a parliamentary process, the parliamentary HANSARD remains the main source of official record.

Finally, I would like to thank the friends of Kenya who behind the scenes supported our country without making loud noises. I know that there are certain members of the diplomatic as well as leaders of religious organisations and the private sector that did a great job in going in between, especially when the political temperatures were very hot. I take this opportunity to thank each one of them. I may not mention all of them by name, but they know themselves. I would like them to know that from the side that I represent in this House, as well as the Opposition, we treasure the support that they gave our country during very trying moments when political disagreements threatened to bring back the ghost of violence and destruction in our country.

Allow me to wish this Committee all the best. I wish them a quick and expeditious disposition of this matter because we do not want this process to interfere with the election date. The Jubilee side is clear and I want to go on record that the next general election should and must be held as scheduled in the Constitution on the eighth day of August in 2017. That date must not be changed even for a day. For that reason and what Judge Kriegler told us when we invited him when we had problems like this, the need to, therefore, conclude this matter expeditiously cannot be overemphasized. I thank you and the House for listening to me. I wish the Committee all the best. God bless our country, Kenya

Mr. Temporary Speaker, Sir. I beg to move and request the Senate Minority Leader, Sen. Wetangula to second this Motion.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Temporary Speaker, Sir, I beg to second this Motion. This is a bipartisan Motion. We have come a long way to reach where we are now. I start by sending a message of condolence to the innocent members of the public who have lost their lives on the journey to reach where we are. I also wish those who are recovering in hospitals a quick recovery.

This Motion is a culmination of a process long, winding, protracted violent and diplomatic. I thank the interlocutors, the religious groups led by Bishop Korir of Eldoret together with Bishop Rotich of the Army, Cannon Karanja of the National Council of Churches of Kenya (NCCCK) and all the other bishops of other evangelical churches together with the Muslim leadership. Above all, I thank two distinguished ambassadors to this country; the American Ambassador, Mr. Robert Godec and the British High Commissioner, Mr. Nic Hailey, who spent a lot of time shuttling between the two protagonists.

Mr. Temporary Speaker, Sir, this is not an ordinary Motion. It is trying to bring sanity into the electoral system. You may recall that Kenyans lost lives pre-elections of 1993 as well as pre-elections and during the elections of 1997. They were then cheekily christened as tribal clashes, but we all know that the conflict was due to election. In 2007/2008, hell broke loose and the country nearly went into an abyss. We rediscovered ourselves as a nation and came back to where we are. In 2013, we went to elections and the outcome is a history that we all know and can read about. Everybody questioned the outcome of that election. Even those that were declared winners have privately said that they did not win.

The manner in which we conduct elections will determine the future or the disintegration of the Kenyan nation. You may recall that during the conflict arising out of election in 2007/2008, we even started hearing belligerent statements such as cessation. Forget about “*Pwani si Kenya*” slogan which has been misconstrued to mean cessation. What the people at the Coast have been asking is: “Kwani, Pwani si Kenya?” People misinterpreted it to mean “Pwani si Kenya.” What they mean is that the Jubilee Government is concentrating all resources to the places where you come from.

I stand here today to laud my brother, Sen. (Prof.) Kindiki, who is normally very measured. He does not get toxic. He is more sensible than many of his colleagues across the divide. We have talked about this Motion, and I am very confident that the leadership that we have given---

**Sen. Sang:** On a point of order, Mr. Temporary Speaker, Sir.

**The Temporary Speaker** (Sen. (Dr.) Machage): What is it, Sen. Sang?

**Sen. Sang:** On a point of order, Mr. Temporary Speaker, Sir. Did you hear the Senate Minority Leader, a presidential aspirant, who some of us believe has very good chances to lead the CORD fraternity to take leadership, say that Sen. (Prof.) Kindiki is more sensible and less toxic than his colleagues, include some of us? We have a lot of tremendous respect for him. Is he suggesting that some of us are toxic?

**The Temporary Speaker** (Sen. (Dr.) Machage): Order! Whereas in my own capacity, I have no latitude on that kind of training to assess the thinking of an individual on his own analysis on people’s behaviour and character, it might have been extreme to explain this verbally, but that is his opinion. If you do not reply to him, it will not hurt at all.

Please, continue, Sen. Wetangula.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Temporary Speaker, Sir, I did not intend to hurt any body’s feeling.

Where I come from, we have a common saying that a dog that is a thief, any time you raise a stick, it is the first to bark *pwee pwee pwee* even when you are not aiming at it.

**The Temporary Speaker** (Sen. (Dr.) Machage): What is it, Sen. Sang?

**Sen. Sang:** On a point of order, Mr. Temporary Speaker, Sir. I did not intend and still do not intend to withdraw my potential support for the presidential candidate, Sen. Wetangula. However, he has almost directly shot at me as being toxic. Is he in order?

*(Sen. Wetangula spoke off record)*

**The Temporary Speaker** (Sen. (Dr.) Machage): Order, Sen. Wetangula. I am digesting this. I would like to advise the Senator for Bungoma that I could easily punish him under Standing Order No.110(e). Please, do not use your privilege to stumble on other Members' feelings.

Proceed.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Temporary Speaker, Sir, I believe the distinguished Senator for Nandi just wants to colour the debate. I welcome him. Debate must not be boring. It must have some light moments, a few irrelevancies and so on.

**The Temporary Speaker** (Sen. (Dr.) Machage): Order, Sen. Wetangula. You are becoming extreme. Stick to the point.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Temporary Speaker, Sir, I salute Sen. Orengo and Sen. Murungi, distinguished colleagues in this House whom we all respect. It is little wonder that they have been chosen by both coalitions to co-chair this important Committee. We have also met the threshold that in Joint Committee of both Houses, each House must produce an equal number. We have seven members each. I have absolutely no doubt that the two will steer this Committee efficiently, effectively and deliver the desired results.

I do not want to speak for long. We want to pass this Motion and set the team to work. I would like to point out that the current Independent Electoral and Boundaries Commission (IEBC) even when you want to give them the benefit of doubt, they fall under the category what we, lawyers, the distinguished Senate Majority Leader, young Sen. Sang, Sen. Orengo, Sen. Mutula Kilonzo Jnr. – we say the error is on the face of the record. For the current commissioners, the error is on the face of the record; their demeanor, conduct and utterances. They have been daring that they want to leave. We do not want to punish anybody if they are not culpable. We want a Commission that enjoys the trust of everybody. Lawyers will tell you that when you go to court and find that you are unlikely to get justice from a judge, you are entitled as an individual, as a litigant to tell the judge that I do not trust you and you should not preside over my matter, disqualify yourself. That does not mean you disrespect the judge or do not believe in justice. Human nature is such that when you seek justice, you must go to an arena where you feel that there is a sense of justice.

As we go to the next elections, I want Kenyans, including myself who has offered myself as a presidential candidate to face an electoral process where I will get fairness. That is why in wisdom we say elections must be free and fair. Free for the voter and fair to the candidate. Then at the end of the day, you leave knowing that Sen. (Prof.) Kindiki got more votes than me because the process was fair. However, if at the end of the elections, winners are declared losers and losers are declared winners under whatever circumstances or you are sent through a whole protracted malicious process like I have gone through because of mismanagement of elections; then, the referee does not deserve to be there.

Some of those commissioners are known to us. As individuals, they may be good people but we are not looking for people. We are looking for good honest commissioners. They may be people we have lunch with, laugh and talk with but as long as they are not capable of delivering a credible election as Mr. Kriegler said – as the Motion says in

2(c): That, we want elections that are free and fair and are administered in an impartial, efficient, simple, accurate, verifiable, secure, accountable and transparent manner.

Mr. Temporary Speaker, Sir, you may remember the IEBC going to the Supreme Court. They were not able to tell the country whether they had a register for elections. They produced three different registers; the black book, the green book and another one. They were not able to tell which one they used to conduct elections. In situations such as these, in a country polarized as we are on political, ethnic, class lines and so many other negatives, you can easily trigger a fireball that you cannot control. That is why after what we have gone through; all these Senators behind me have inhaled toxic teargas. We have been splashed with poisonous water by the police. What did we hear after that? The Cabinet Secretary for Interior and Coordination of National Government said, "*Kama hamuogi nyumbani nitaendelea kuwaosha.*" This is very arrogant and unhelpful.

However, now we have reached a level where we forgive him. He did not know what he was saying or if he knew, he did not know it was wrong. We want to have a sober approach. Let those with good ideas take them to the Committee that we are setting up. I am happy that the parties even without the protracted we have heard, we have settled on a team that we all can exhibit confidence with. The team coming from this House including my sister, who is walking away instead of sitting here to listen, are people who are able and capable of executing a brief as important as this. You cannot indict Sen. Murkomen. Sometimes he gets excesses that are unhelpful but I hope that he will go to this Committee and leave behind his bloated image, sit and work with the team.

Mr. Temporary Speaker, Sir, I would like to end by urging---

**The Temporary Speaker** (Sen. (Dr.) Machage): What is it, Sen. (Prof.) Kindiki?

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): On a point of order, Mr. Temporary Speaker, Sir. I seek your guidance. Should the Senate Minority Leader not be reprimanded by the Chair? Even at the most improper moments like these ones when we are striving to build national sobriety on our politics, he is constantly attacking people including Senators who are Members of this Committee that allegedly should do their work objectively and bring a report that is acceptable to this House and the people of Kenya. Is he in order to cast aspersions at the Deputy Majority Leader, Sen. Murkomen, who is not here but he is a very able, competent and loyal Member of this House and the Jubilee Coalition?

**The Temporary Speaker** (Sen. (Dr.) Machage): He is completely out of order. I might be forced to invoke Standing Order No. 90(3). Let me read it for the purposes of the Senate Minority Leader to fully understand, despite the many years of experience that he has been in this August House. He was here five years earlier than me.

Standing Order No. 90(3) says:-

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

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

**The Temporary Speaker** (Sen. (Dr.) Machage): I could say it Kiswahili too.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Temporary Speaker, Sir, I understand both languages. I understand a lot of Luhya and a little French, Kikuyu, Kalenjin, Luo and Kuria. I am sorry if I have offended anybody but when you say somebody has a bloated image, it is not offensive.

**The Temporary Speaker** (Sen. (Dr.) Machage): Order. Can you move away from that? It is a bit inferior to your status.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Temporary Speaker, Sir, let me move away from that and end by the following: Out of this Committee, we want to have an Independent Electoral and Boundaries Commission (IEBC) that will enjoy the full confidence of Kenyans from all walks of life. Whether a Kenyan is contesting for a Member of County Assembly (MCA), Member of Parliament (National Assembly or Senate) or presidential seat, he needs to enjoy the process by having an IEBC that enjoys that candidate's confidence; an IEBC like the one in Ghana, where President John Dramani Mahama, defeated my friend Nana Akufo Ado. In fact, the two are my friends. I know them at a personal level. Nana Akufo Ado was my counterpart when I was Foreign Affairs Minister. In Ghana, they went for elections where there was a near tie and because there was an issue the deciding constituency, the IEBC equivalent of Ghana stayed the election for the next day where President John Dramani Mahama defeated Nana Akufo Ado by 23,000 votes only. The two accepted the results because the electoral body enjoyed the confidence of everybody.

Mr. Temporary Speaker Sir, you cannot say this of our current IEBC or the Kivuitu - God rest his soul in eternal peace - Electoral Commission. That is why we are where we are. I urge this House to unanimously support this Motion so that we can get down to work, prepare for elections and have a peaceful election in 2017. You may have noticed some of our colleagues from this House, in fact, in today's media, the distinguished Senator for Kirinyaga and I, had seen even my distinguished colleague my brother Sen. (Prof.) Kindiki---

I want to assure you on behalf of CORD that what we want is a reformed IEBC. We are not using this process to look for your notorious *nusu mkate*, to enter Government. We do not want to enter Government, we want to be Government. We are not using this process to change the electoral date because it is set in the Constitution and I agree with you, my brother. Our elections will be August next year. Anybody who wants to change the date may bring it forward, not any further.

With all these few remarks, I wish to second the Motion and urge ourselves to pass it. I urge Sen. Orenge, my brother and Sen. Murungi who enjoy our absolute confidence and trust that we expect nothing less from them but a good outcome from this protracted process. Let not the lives of those people in Kisumu, Migori, Siaya and elsewhere, the young man in a green T-shirt who was trampled on by a well-built, well-fed policeman on the streets of Nairobi University way, young Morogo from Meru who was struck on the head by a truncheon from a policeman and slept in Nairobi hospital for 20 days, and all who inhaled teargas not to have done so in vain. Let it be a moment that brings us to a level of sanity and acceptability in elections.

I encourage Commissioner, Hassan the Chairman of IEBC and his team that sometimes throwing in the towel is a tact and not cowardice. If they want to help this country, they may have to reconsider their position as we move into this process. It will make it easier for everybody so that we now grapple not about how to send them home, but how to replace them.

I beg to second.

*(Several Members stood up in their places)*

**The Temporary Speaker** Sen. (Dr.) Machage): Order, Members. When the Speaker is on his feet, you freeze on your seats. This is a very important Motion if you could just give it time and let it flow slowly into people's hearts. I will repeat for the purposes of slow digestion.

*(Question proposed)*

**Sen. Sang:** Mr. Temporary Speaker, Sir, I rise to support this Motion. From the outset, I want to appreciate what has gone into the negotiations that led into setting up this Joint Committee.

Mr. Temporary Speaker, Sir, elections and the body mandated to carry out elections is a very important issue in this Republic. It is an urgent issue, knowing very well that we have very few months to the next election. However, it is unfortunate that we have taken too long to have these discussions and sort out the issues of the IEBC. From the initial stages when the Coalition for Reforms and Democracy (CORD) insisted on negotiations to relook into these issues, I personally made it clear that it would be important for us to follow the law. Even as we demand for negotiations, discussions and engagement on the IEBC, it was important that it was based on institutions that are already in place and supported by the Constitution. I do not understand why it had to take three or four years for any coalition to appreciate that negotiations on the IEBC and electoral matters must be done in Parliament and not outside. Therefore, I want to appreciate our colleagues in the CORD for coming to the realisation that this could only be done within Parliament.

Mr. Temporary Speaker, Sir, secondly, the agreement was reached one month ago. It has taken us about one month or 30 days to agree on the names of the people to sit in this Committee. If we understood the urgency of this matter, we should have agreed on these names in three or four days but we understand the delay was on the membership of Sen. (Dr.) Khalwale. I am happy that Sen. (Dr.) Khalwale is a Member of this Committee because he is qualified and I think we could not have gotten a better person to replace him. He is now part of the Committee but it should not have taken more than two or three days to agree on the name.

Mr. Temporary Speaker, Sir, if you look at the mandate of the Committee, you will see that it is clearly stipulated and very well done. However, I will urge the Committee to carry out public participation. There was a false perception given in this country that, generally, Kenyans are unhappy with the IEBC yet we could only see this being expressed in a few places in Nairobi, Kisumu and Homa Bay. When the Committee will be sitting to handle this particular matter, they should visit all the 47 counties in this Republic, so that the input of every Kenyan is captured. It will be unfair if two, three or four counties are taken to represent Kenya. I, therefore, call upon Sen. Mutula Kilonzo Jnr., the Co-Chair, Sen. Orenge, Sen. Murungi and the entire team to ensure that they do not carry out cosmetic public participation fora on such an important matter. Every member, every county and every Kenyan should get an opportunity to share their views on this particular matter. However, in the process of carrying out this entire exercise, they should avert a situation where you are likely to have a crisis because there is vacuum in terms of the existence of the IEBC. Therefore, we must allow the IEBC to continue doing

its job as they look into this matter comprehensively, so that we do not have a situation where you have a vacuum in the body that is expected to carry out elections in this Republic at any one time.

Mr. Temporary Speaker, Sir, the Committee should also look at the issues relating to its mandate *vis-à-vis* the electoral timetable. It is clear from both the coalitions that this country is not comfortable to the shifting of an election date; not a day earlier, not a day later. Therefore, as they work through the mandate of the Committee and propose the legal mechanisms, it should be understood that that has to be within the electoral cycle so that we have our elections next year in August. Therefore, all the changes must be done within that period. However, they also need to be honest enough. If the Committee finds that looking at the electoral timetable, certain comprehensive changes to the IEBC would affect the election timetable, they must be honest enough to tell Kenyans that these are the options available to Kenyans, so that we do not create a situation where you send officials of the IEBC home and you have only six or eight months before the elections are held and the new team of commissioners that you bring into office are unable to carry out the necessary systems.

Mr. Temporary Speaker, Sir, if you look at the issues that were raised by the CORD and many other Kenyans in the elections petitions that went to court, a number of those challenges also relate to the systems within the IEBC. I do not think that a credible new team of commissioners will be comfortable to inherit all the systems that were being operated by the current team. Therefore, we need to have candid and honest discussions, so that eventually even if it means having candid discussions with Kenyans and having a serious decision as to whether to shift the election date, if that is one option or to continue with the IEBC as it is so that we stick to the elections date, those candid discussions must be placed on the table.

Therefore, I urge Members of this Committee to get into this responsibility with an open mind. We know that all of them come from either coalitions and each of our coalitions has its specific position on this matter. As we send them there, because they are our representatives, we also hope that they will have candid discussions as they engage experts and various sectors. They should be open to their coalitions and share with us honestly on ways and means of ensuring that we have credible, free, fair, verifiable, secure and accountable elections in 2017.

I want to congratulate the Senate Majority, Minority Leaders and the principals of both coalitions for finding fit to make the Joint Committee of equal membership. On several occasions, we have seen Members of the National Assembly behaving in a manner that suggest that this should be based on proportional representation. They think that they should have a bigger portion of the membership just because they have a bigger House.

Mr. Temporary Speaker, Sir, this is a clear indication that a bicameral Legislature in this country can work. This is how we should process business in this House. When we have a Joint Committee, it should be of equal members from both sides. I cannot say much about the individual Members of the Joint Committee. I am sure that the various coalitions have done their assignment well in ensuring that they get people who can present their coalitions better and who have the necessary skills and expertise.

It is unfortunate that when discussions reach these kinds of depths, a leader in this House would describe certain Members of the Committee in an unfair manner. They

are the same people who are always toxic yet they accuse others of being toxic. I vote for the integrity and the expertise of each of the 14 Members. I know that they will deliver a good job to this House and support this country to get a commission in charge of election that will ensure that we have free, fair and credible elections in the next year.

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

**Sen. (Prof.) Anyang'-Nyong'o:** Mr. Temporary Speaker, Sir, I rise to support this Motion and to draw attention to the mandate of the select Committee 2 (c). While doing so, I would like to express my confidence in the Co-Chairs and my colleagues in the second liberation who have contributed tremendously to reforms in this country.

2(c) states that:-

“Recommend legal, policy and institutional reforms to strengthen the IEBC and improve the electoral system and processes so as to ensure the August, 2017 elections are free and fair and are administered in an impartial, efficient, simple, accurate, verifiable, secure, accountable and transparent manner”

I want to emphasize the issue of institutional reforms. The Committee must understand that institutional reforms are not internal to the IEBC. The institutional reforms refer to the political and constitutional context in which IEBC functions. We know that at a time of elections and in the Constitution, there are various institutions that can influence and determine the success of IEBC. We know that we have the security systems, the previous provincial administration, the Presidency and the National Security Intelligence Service (NSIS). These are important institutions when we are having elections. We also have the political parties. All these institutions provide IEBC in the context that it will carry free and fair elections. This means that the rules of the game which the IEBC will use for running elections must be in the context of the function of these institutions.

For example, when we have elections and during the polling process, the security of the bosses must be guaranteed. If this security is not guaranteed impartially and is guaranteed in a partisan manner, it can easily spoil the independence of the IEBC. Second, it is in regard to political parties that do not carry out their elections democratically and properly. If they do not submit the names of their nominees to the electoral commission, without bringing the electoral commission in the process of nominating their candidate, they compromise the independence of the electoral process and the manner in which the electoral process will act as a referee.

Mr. Temporary Speaker, Sir, in the last election, the IEBC was deeply involved in the nomination process of political parties which was regrettable. There must be a clear roadmap and framework whereby political parties nominate their candidates according to the political parties' law and present the candidate nominated by the political parties. When the lists are presented to the electoral commission, it should not in any way interfere with that nomination.

Thirdly, we know that the success of election can trigger economic growth and the failure of an election can also downgrade economic growth.

In the history of this country, in 2002, as a result of a successful election that year, precisely because of the agreement in the opposition to have a powerful coalition that would be difficult for the incumbent Government to falsify election results, there was tremendous legitimacy of the then elected governments through the electoral process. This immediately led to tremendous economic growth in this country particularly because



that Government managed the economy and the society well. Subsequently, when elections have been Mismanaged, in 2007 and 2017, we have problems with economic growth. Therefore, it is important that we set a process in motion that ensures the success of elections, hence the legitimacy of the Government produced.

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

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

Fourth, I hope that the Committee in terms of looking at the institutional reforms and framework in which the IEBC will function, we establish an institution that provides ethical and internal accountability by the IEBC.

In the *Okoa Kenya's* proposals for reforms, there was a proposal to have an ethical institution within the IEBC which will make issues of accountability be initiated and undertaken instantaneously as events occur. For example, if we had an ethical institution within IEBC involving players that ensured that when IEBC was procuring election kits unethically, it would have been ironed out before it went too far. We would not be questioning the credibility of IEBC as we are doing now. As it happens, all these things were done and the elections were held. Things were done and elections were held. Subsequently, it is the office of the Auditor-General that during a post-mortem, as it usually does, has unearthed these things for discussion in the National Assembly. Therefore, this Committee that we are establishing will be able to use this material to bring to book the IEBC officers, both the commissioners and the secretariat.

Talking about the findings that we are expecting from this Committee, there is plenty of evidence now in the public domain and, not just the Auditor-General's Report, but volumes of papers have been written on the IEBC by scholars and others alike that analyse and document the crimes both economic and political that the current Commission committed. Therefore, I hope the Committee will not haggle too much over these issues. For example, the mandate No.2

(a) to enquire and delegations against the Independent and Elections Boundaries Commission (IEBC), Commissioners and the Secretariat

(b) On the findings of (a) above, may recommend-

I understand the question that was involved in framing this particular mandate because the Committee did not want to presuppose the innocence or culpability of the IEBC. However, there are certain things that are amenable to common sense. Kenyans, in general, would be very furious if the very persons, the very commissioners and the secretariat that have caused us so much pain are somehow still found fit to run the IEBC. This would be an exercise in futility. I strongly feel that one of the issues that this Committee should agree on very quickly is the fact that we do not want to spend too much time proving the innocence or culpability of the commissioners and so on. What we want to do is find out the extent to which these travesties were committed and so on. Therefore, recommend the action that will be taken.

**The Temporary Speaker** (Sen. Sang): What is your point of order, the Senate Majority Leader?

*(Interruption of Motion)*

**PROCEDURAL MOTION**

## EXTENSION OF SITTING TIME

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): On a point of order, Mr. Temporary Speaker, Sir, I am sorry to interrupt my senior in the academia, Sen. (Prof.) Anyang'-Nyong'o.

With your indulgence, I beg to move a very short Procedural Motion given that we are approaching 6.00 pm:-

THAT, pursuant to Standing Order No.30(2), the Senate resolves to extend the sitting of the House until the conclusion of the Business appearing under Order Paper No.8 of today's Order Paper.

Mr. Temporary Speaker, Sir, the interest is huge. The time is short and the Committee must be able to finish its work in the shortest time possible so that the elections are not affected. I, therefore, beg to move that we continue with the debate to allow everybody to express themselves until when we exhaust this agenda before we adjourn so that we do not push it to tomorrow.

I also request the guidance of the Chair in the same context that each speaker can be given five minutes so that all the speakers can have an opportunity.

I beg to move and I request Sen. Orengo to second.

**Sen. Orengo** seconded

*(Question proposed)*

*(Question put and agreed to)*

*(Resumption of the Motion)*

**The Temporary Speaker** (Sen. Sang): The second issue makes sense for we will then be able to finalise debate on this matter. Every Member will contribute to a maximum of five minutes with the exception of Sen. (Prof.) Anyang'-Nyong'o.

**Sen. (Prof.) Anyang-Nyong'o:** Mr. Temporary Speaker, Sir, in light of that Motion, I will be very brief and conclude. Given what is in the public domain and has actually been proven by court decisions in the United Kingdom (UK) and the Auditor-General's report and volumes of writings that scholars have done on the IEBC, I hope the Committee will do its work expeditiously when it comes to Mandate No.8 (a)(b). Kenyans do not want to see anyone of those commissioners and the culpable people in the secretariat back in office. This would be an exercise in futility if that happens.

Finally, I hope that the Committee will use the resources from the experts to quickly do a comparative review of electoral processes and look at various jurisdictions how electoral commissions are established, how they function, how they deal with issues of ethical responsibility and accountability, how results are announced, who announces results, what forms the context of final results so that in fulfilling mandate No.(c) in terms of an impartial, efficient, simple, accurate, verifiable, secure, accountable and transparent manner, we are not reinventing the wheel. Such efficient and verifiable

mechanisms exist in other jurisdictions. By a quick look at comparative review of such things, we will be able to have a very good report that we can adopt so that in the year 2017, for the second time in the history since 1963, we shall have another free and fair elections in the Republic of Kenya in addition to the one we had in the year 2002.

I beg to support.

**Sen. Orenge:** Mr. Temporary Speaker, Sir, I thank the leadership of both sides inside and outside Parliament for including my name in this Committee. I hope that this Committee will be able to accomplish its mandate and come up with a report that is acceptable to all Kenyans. I do not want to say a section; I will say a report that is acceptable to all Kenyans.

In 1978, the late Masinde Muliro stood for an election in one of the constituencies; I think it was Cherengany, in Trans Nzoia. It was so clear that he was winning after the votes were being counted before they were announced. His supporters were busy celebrating outside the county hall, but when it came to announcing the results, the Returning Officer who at that time was a District Commissioner (DC), unfortunately a DC coming from my part of the world, announced the opponent's votes as being those of the late Masinde Muliro and the late Masinde Muliro's votes as being those of the opponent. With that announcement, the late Masinde Muliro was defeated in that election. When he confronted the Returning Officer and told him that he had made a mistake because he had not announced the right results, he told him that he had announced the results and he could take that matter in the High Court. So the late Masinde Muliro lost an election that he had won by a landslide. The returning officer deliberately because of the powers she was given announced his opponent's victory right in front of the public. I am saying this because there could be even a properly held election but an officer or a commissioner such as the one we have can commit a fraud upon the people of a constituency by deliberately announcing the results that cannot be supported by the vote. To that extent, all that we are asking as Kenyans is that we should have a Commission with integrity. If elections are conducted with integrity – they are not complicated. Up to about the time I contested my first election, there used to be a supervisor of elections sitting at the Office of the Attorney General, just one person. He used to coordinate elections countrywide. The difference is; there was no presidential election. The largest democracy in the world; India, hold very complicated elections but other than individual candidates contesting results in courts in India; in parliamentary and in the Upper House (Raja Sabha) generally, the elections are accepted because there is integrity in the process.

On this note, one cannot examine and talk about everything today; there is a word which is used in this Motion which is very important. The election should be administered in a verifiable manner. That means that even if you have lost an election, just for the record, I may demand from the Commission that I want to see the returns of the elections; look at the election documents just for my satisfaction. Many times and having taken part in many election petitions, you would have people who are just interested in an inspection being carried out after an election exercise; they look at the documents and the records and say, I accept I lost, I am also satisfied with the record of that election. Now, what happened with the IEBC, for example, after the last presidential elections? I am not trying to talk about the result of that election but I am saying that even

for somebody who was interested in determining as to whether or not there was an election that was held transparently---

Mr. Temporary Speaker, Sir, I am so sorry. With those remarks, I beg to support.

**Sen. Sijeny:** Mr. Temporary Speaker, Sir, I rise to support this Motion. It is important. It is clear from the events that have been happening lately that there were issues. As the saying goes, "where there is smoke, there is fire." Half of the country would not have been protesting if there was nothing wrong. This exercise is important because this Committee will be given an opportunity to strengthen the IEBC. As CORD has been saying, dialogue is required and is the only way to go. The question also arises, why it took about three years for the Jubilee Government to note that it is through dialogue that issues can be resolved? This is very encouraging. This spirit should proceed from now henceforth. When there are any issues to be determined, people should sit down in a civilized manner, deliberate upon issues and not allow third parties or strangers to get involved. Right now, the whole world is watching Kenya. We portrayed our image in the public media internationally in 2007, to some extent in 2012 but the good Lord is on our side, we still have a country which we are very proud of.

Mr. Temporary Speaker, Sir, having said that, I encourage this Committee, as serious as they are, because they are men and women of high integrity. Our Senators are the team leaders, Sen. Murungi and Sen. Orenge whom we have a lot of faith in to guide this Committee and deal with every detail of whatever can be happening, listen to Kenyans and come up with good and airtight recommendations and ways of implementation of the same. Once done, then we would urge the Government to implement all the recommendations to the nitty gritty details. We also urge other coalition partners not to bring or pull surprises or monkey business and invoke the so called tyranny of numbers when the matter goes to the Floors of the two Chambers to ensure that what the public has recommended carries the day.

I urge the Committee and Parliament at large; the Senate and the National Assembly, to prioritise this issue, give it the sensitivity and speed that is required so that we sort out our issues and proceed with the elections as enshrined in our Constitution. We definitely should not add Jubilee one day or extra hour than what is there.

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

**Sen. (Prof.) Lesan:** Mr. Temporary Speaker, Sir, I rise to support this Motion. Since 1962, I have had the opportunity since 1962 to witness elections in this country. I remember that in June, 1963, I sat beside a transistor radio listening to the results of the election. From that time, I have had the opportunity to witness other elections, for instance; Kenya Africa National Union (KANU), Kenya Africa Democratic Union (KADU) and APP contest the elections in 1963. The results were announced and accepted throughout the country. I have since witnessed elections in the years that followed until 2007; the lowest point in my listening to results when the Chairman of the Electoral Commission then, Mr. Kivuitu, appeared on radio and announced that as Chairman of the Electoral Commission, he did not know who won the elections. This was perhaps the lowest in terms of conduct of elections in this country. He only did not declare the elections as a drawer which was of course going to be a very serious problem in the country if there is no winner who has been declared more so by the Chairman of the Electoral Commission.

Mr. Temporary Speaker, Sir, from 1963 onwards until last year, there has been a continuous progression of the grumbling and dissatisfaction of the citizenry on the results of the election. We know what happened in 2007 when the public was not happy with the results of the election. Therefore, it is right that at this point in time, we need to look at the IEBC and review how it conducts elections. We know that election is a very serious issue in any country that desires to have a leadership. This Motion is so important in this country. We need to pay attention on it. This is the only way where we can escape possibilities of violence that erupts after election.

I support this Motion. I have confidence in the 14 Members of Parliament (MPs) who have been selected to represent all of us in Parliament in discussing this very delicate issue. We trust that they will consider every one of those aspects which have been mentioned as their mandate. The only thing is that the interest in the entire country on this issue will be huge. I have doubts whether 30 days would be adequate. I know we have pressure for time but I believe that 30 days are not sufficient for the number of Kenyans who are now aware of their rights who will come forward. They will need much more time than this. I believe that we should give everybody time so that after this report, we do not have Kenyans who are still grumbling because they did not have time. So, I would suggest that we give 45 days so that every one of these Kenyans who would want to say something can come forward and make their comments.

Secondly, at the beginning of every commission that we have appointed in this country, people have confidence in it, but it only requires that commission to conduct one election and suddenly, there is no confidence in that election. I suggest that from here, every commission that is appointed in this country conducts only one election so that the time cycle we can give for a commission is to end at the mid-term of a Government so that every other time we have a new commission, it has time to acclimatize or learn how to conduct an election because we now know that at the end of one cycle of election, Kenyans do not have confidence in the results of that election because there are many Kenyans who are losers. Once you lose, you think that the system that has been used is bad.

However, on the whole, I support the formation of this Committee.

**Sen. (Dr.) Khalwale:** Mr. Temporary Speaker, Sir, I rise to support this Motion. I want to thank the Coalition for Reforms and Democracy (CORD) for choosing me as one of the Members of the team of the Select Committee of fourteen. I also want to thank the heroes and heroines of the teargas Mondays without whose resilience we would not have had this wonderful Motion before this House. I want to send my heartfelt condolences to all those who lost their lives and those who got injured in the process but as they say, there is always a price tag.

Mr. Temporary Speaker, Sir, my understanding is that we shall not be meeting to discuss the fate of the IEBC. It is gone. It is finished. It is over. We will only be discussing more important things like I wish to speak to.

One, Kenyans must appreciate that why it is that I particularly with a lot of passion, was involved in this thing, the anti IEBC demos to the extent that on one occasion, I participated in Kisumu in the morning, drove very fast and participated in Nairobi. The passion is because of the handling of the presidential election by the IEBC of 2013.

How on earth could it be that in the other elective positions like Women Representatives, Member of County Assembly, Senator, Governor and Member of Parliament (National Assembly), the cumulative total vote for each of those positions was 10 million and the one of the president, the cumulative vote was 12 million? Where did these two extra million come from?

Mr. Temporary Speaker, Sir, where and why only for the President? Could it be that the 5.3 million votes that hon. Raila got was the real victory and the 6.7 million that President Uhuru got should have been minus 2 million so that President Uhuru should have been number two, at 4.7 million?

The corruption in IEBC procurement of the kits and the Chicken Gate scandal in the UK is reason for these people to go home. The handling of *Okoa* Kenya signatures is another reason. Who told IEBC commissioners that they were supposed to decide whether a signature was *bona fide* or not?

Mr. Temporary Speaker, Sir, IEBC has no depository of the signatures of Kenyans. Only our banking institutions have a depository of our signatures. So, how could they on earth doubt a villager from Malinya who signed using the sign of a dog? Probably he signs that way. How do they know?

The way they transmitted the results of Kericho by-election clearly shows that there was something worth questioning. How could it be that results were being flashed on the screen like salvos or scud missiles? This thing is enough reason for these people to go away.

I, therefore, wish to remember that I am the only elected Member of this Parliament who has been arrested because of this process and I am facing a court case. I hope that wisdom will prevail and these flimsy cases against me will be dropped so that sufficient goodwill is created for the process. August 8<sup>th</sup>, 2017 will be a defining moment for the Republic and the history of this country. People will have to be identified as voters. That identification should be done using electronic biometrics. However, after that, that should be the end of electronic playing in this exercise because of lack of integrity among Kenyan professionals. Electronic voting is only dependent on officials who are---

**Sen. Lesuuda:** Thank you, Mr. Temporary Speaker, Sir. For this opportunity to contribute to this very important Motion and to say that all Kenyans have been looking forward to this moment, where we could resolve this matter and finally have an amicable way to sort out the issue of the electoral process and the IEBC.

We know that many Kenyans were getting anxious on the manner that this issue was being carried forward and it is good to ultimately see that it ends up in an institution that is recognized in our Constitution even as we look on matters to do with the Constitution on issues to do with the electoral process.

It is important to also note that many of us in this country both from the Jubilee and CORD coalitions were saying the same thing but expressing ourselves in different ways. At no time had the Jubilee Coalition said that there was no need for electoral reforms or expressed their interest in one way or the other but was only very categorical that we use the institutions that are in place.

I am happy that finally, sanity has prevailed upon all of us and we are having this process happening in the precincts of Parliament. I have no doubt that the Members that have been chosen to sit in this Committee, the two co-Chairs Sen. Murungi and Sen.

Orengo, have immense experience, they are distinguished lawyers in this country and they will look into the mandate of this Committee.

The only sad part is that, I know there is a third in terms of gender balance and that is not something that we just talk about because we want just want to talk about it, but it is something that is in our Constitution. We are dealing with a constitutional process. I can see that from the CORD coalition who only brought one lady, Hon. Mishi Mboko. I believe that they also have other women who are Members of Parliament and who are equal to this task. This matter is not an issue which should be swept under the carpet. In future, we should have women taking the two-thirds and our male colleagues being a third of either gender---

*(Sen. (Dr.) Khalwale spoke off record)*

**The Temporary Speaker** (Sen. Sang): Order, Sen. (Dr.) Khalwale. Sen. Lesuuda is making a very important point that you should have heard.

**Sen. Lesuuda:** Mr. Temporary Speaker, Sir, I hope you are not bringing the bullfighter to my attention.

**The Temporary Speaker** (Sen. Sang): You may restate your point because it was very important.

**Sen. Lesuuda:** Mr. Temporary Speaker, Sir, as I conclude on this matter because of time, it is important that next, the two-thirds of the other gender should sit in such a very important committee. I am sure that they are also equal to the task.

I want to speak on issues to do with electoral process. In any country, matters of elections are very emotive because people want to have trust and confidence in the whole process of elections. That is like what we were talking about concerning the police. It is more about building the confidence and people having trust in certain institutions. I hope that the Members of this Committee will look at this matter in a critical manner but not party politics if we really want a credible process to happen in 2017. I also think that 30 days are adequate so that whichever way it goes, then the process of preparing for the next general elections will not be interfered with.

Mr. Temporary Speaker, Sir, it is also important to note that the mandate that needs to be looked at so that we do not have any quagmire and gaps that we will need to sort out later. This Committee will have to look at all those matters and what happens if the commissioners have to go---

*(Sen. Lesuuda's microphone went off)*

**The Temporary Speaker** (Sen. Sang): Sen. Mutula Kilonzo Jnr.

**Sen. Mutula Kilonzo Jnr.:** Mr. Temporary Speaker, Sir, I will be quick. First, I want to thank CORD for appointing me to sit in this important Committee. Without saying more, the mandate is extensive. I have just been quietly telling my colleague here that I hope we will not engage or boggle ourselves into enquiries on the IEBC but we will concentrate on more fundamental issues of ensuring that we have a verifiable, accurate and quick election.

Mr. Temporary Speaker, Sir, I have been privileged to have acted in election petitions. I participated in 17 of them in 2003 including the one for the Deputy President,

Hon. William Ruto, where I represented him. I represented people in four petitions in 2007 and three in 2013. The elections in this country have been a joke throughout. I think that is the most important aspect.

Regarding the question of transmission of elections, the Supreme Court abdicated the responsibility in the presidential petitions by not making a pronouncement as to whether our elections should be either electronic or manual. They decided to take the middle path. They made a finding on when the register should be issued, when it should be verified and what it should have. As a result, we have an issue about whether or not there is indeed one, two, three or four registers.

Mr. Temporary Speaker, Sir, the Kriegler Recommendations that I have read were largely ignored in the formulation of the IEBC and the Act itself. These are some of the issues that will have to be inquired into detail.

Mr. Temporary Speaker, Sir, I can see that deliberately the recommendations under (c) suggests that--- and I have proposed that elections must be held in August. I am one of those people who believe that if we work day and night and put political but not legal will because legal mechanisms exists, elections can be held and we can do whatever it takes to have an elections.

Mr. Temporary Speaker, Sir, the words “efficient, simple, accurate, verifiable, secure, accountable and transparent” are very simple words. Accurate is accurate. The result that is transmitted from one polling station to Nairobi should not differ. Therefore, I will recommend a formula where the verification is done at the polling centres to avoid the changing of figures when results are being transmitted.

Mr. Temporary Speaker, Sir, we know what we need to do, how to do it and who can do it but we deliberately as a country choose methods that we know will favour us. I hope this Committee understands that we hold the will of Kenyans and the security of this country in our hands. Therefore, this is the time our oath will apply most because the country will call upon us as Members of this Committee to abide to our oath the Constitution. I know we will be pushed around, there will be phone calls and we will be monitored by everybody. They will want to know who we talk to and what we think *et cetera*. We want to warn everybody that we will do what we need to do.

Mr. Temporary Speaker, Sir, the only thing I am happy about, because I do not trust a lot of things that people are doing out there, is the fact that we will have seven Senators sitting in that Committee. If there is one time we have stood up to be counted, this is the time. I have been wondering where we have been and this is the only time. That is the reason that the seven of us must offer direction. We are the 007 of this country. Therefore, each one of us, irrespective of the coalition we serve, will be called upon to perform a national duty. I wish we will wear the national flag.

I thank you.

**Sen. Elachi:** Mr. Temporary Speaker, Sir, I also want to support this Motion. I appreciate that we have come back to our senses as politicians. I remember when the issue on the IEBC started, the first cry was why can we not do the process through Parliament. If we had started earlier and agreed on the numbers and the method, we would have already sorted out this issue. Therefore, I thank my brothers and sisters from the CORD for appreciating that the institution of Parliament is key in terms of taking forward our country with the new dispensation that we have.



Mr. Temporary Speaker, Sir, having said that, it is also important to note that Kenyans are looking at us. I believe what the Senator for Makueni has just said is what some of us will do. I believe we will not go there and display sideshows of political agendas. I hope we will agree with recommendations of the Kriegler Report and come up with a way of conducting our elections in order to see our country go forward without going to the streets, throwing stones and makings Kenyans suffer and die for the sake of politicians because at the end of the day, about 400 only people who will enjoy. We keep saying that Kenyans are under some Kenyans but as political leaders, we should know that our country needs us more than we think.

Mr. Temporary Speaker, Sir, I just want to read the summary of the results and this is public knowledge. I know my Senator spoke about two million but I want to put it as it is. When you go to the website and everywhere else, you will find that the total valid votes for the presidential candidates was 12,221,053.

The variance from other elective votes was 26,491. For any Member of Parliament (MP) at that time, the total varied votes were 12,194,562. Therefore, the variance was 26,491. The women's representative's total varied votes were 12,101,568. Therefore, the variance with other elective position was 118,485. The total votes for the post of Senator were 12,131,294. The under-variance from all the elective votes was 89,759. The total varied votes for the post of the governor were 12,162,733. Therefore, the variance for other elective positions was 58,320.

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

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

**Sen. (Dr.) Khalwale:** Mr. Temporary Speaker, Sir, is the distinguished Senator in order to use the figures that I have given using what she found on the website of Independent Electoral and Boundaries Commission (IEBC) prepared by IEBC, when my source for the figures that I gave was electronic data bundle that was given to the lawyers of Hon. Raila after the court ordered that IEBC to do so? On adding up the data bundle, it brings up the variance of 2 million votes for the presidential election alone.

Is she in order to use the evidence given by the thieves when we are interrogating the behaviour of the thieves of our 'cows' called votes?

**Sen. Elachi:** Mr. Temporary Speaker, Sir, if he will not agree with this, then all of us are here illegally. Therefore, we are all thieves because we stole from those who lost.

**The Temporary Speaker** (Sen. Sang): Order, Sen. Elachi! You are trading on dangerous grounds. You have given us contradicting figures. Sen. (Dr.) Khalwale, you also gave us some figures. I direct that the two of you submit the sources of the information to this House. Both of you should table the documents that you have so that we can establish the veracity and accuracy of that information.

**Sen. (Dr.) Khalwale:** Mr. Temporary Speaker, Sir, I must thank you. I want to be on record that on Tuesday at 2.30 p.m. next week, I will bring that evidence. We got it following up a court order---

**Sen. Elachi:** Mr. Temporary Speaker, Sir, I will table it tomorrow in the House.

**The Temporary Speaker** (Sen. Sang): I direct that both documents be tabled at 2.30 on Tuesday, next week.

Sen. Elachi, you have one minute to conclude.

**Sen. Elachi:** Mr. Temporary Speaker, Sir, if we want to heal this country, it is important for all of us, as we move forward, to learn from the past. I have pleaded with IEBC commissioners to resign on their own volition so that we concentrate on building this nation.

**Sen. Ong'era:** Mr. Temporary Speaker, Sir, thank you for giving me the opportunity to support this Motion. This is an important and a landmark Motion for our country because it is after the culmination of very serious events that occurred in our country that we have arrived at this decision. I, therefore, rise to support it. First of all, I would like to commend the CORD principals, hon. Raila, hon. Kalonzo and Sen. Wetangula. I would also like to commend Sen. Muthama and Sen. Orenge for ably steering serious protests against the IEBC that have led us to this dialogue. I also commend Sen. (Dr.) Khalwale who was even imprisoned for championing this matter.

**The Temporary Speaker** (Sen. Sang): Order, Sen. (Dr.) Khalwale! What you have just done is completely out of order. Since you are on your way out, please, take note.

Proceed, Sen. Ong'era.

**Sen. Ong'era:** Mr. Temporary Speaker, Sir, while we are supporting this select Committee, I hope that it will not bog itself down with the issues of 2(a) which is inquiring into the allegations against IEBC. We do not want to know who ate what part of the chicken be it the drumstick or the back. We are particular about---

**The Temporary Speaker** (Sen. Sang): What is it, Sen. (Prof.) Kindiki?

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): On a point of order, Mr. Temporary Speaker, Sir. Is Sen. Ong'era in order to suggest that this Committee should never care to find out whether the allegations against the IEBC are true or not? Is she in order to suggest that this Committee should simply condemn the IEBC unheard and regardless?

**Sen. Ong'era:** Mr. Temporary Speaker, Sir, had the distinguished professor waited for me to complete my sentence; he would have known what I am arriving at. We are concerned about item (b), to find out a legal mechanism on how to deal with the current IEBC. Looking at the key words for this Committee should be impartiality, efficiency, accuracy, verifiable, secure and accountable system. We want an electoral process that is independent and can assure us of a level playing field that is free and fair. I am not saying that item 2(a) is not necessary. However, those are issues that the court will determine as to who ate which part of the chicken be it the drumstick or the back.

Mr. Temporary Speaker, Sir, we do not want this Committee to be bogged down with issues that should be left to the purview of courts. We want this Committee to give us a report that can jumpstart and accelerate the elections to be done in August 2017. We do not want the Committee to be bogged down by non-issues. I can see the professor agreeing with me.

**The Temporary Speaker** (Sen. Sang): Sen. Ong'era, you have not responded to the point of order. Item (b) says on the findings of (a). Are you suggesting that (a) which is supposed to be established before (b) is addressed is a non-issue?

**Sen. Ong'era:** Mr. Temporary Speaker, Sir, I am merely highlighting what is important to Kenyans right now; the issues that Kenyans really need. That is why I am suggesting that it would be very important for this Committee is to look at the three issues first before they look at (a).

Mr. Temporary Speaker, Sir, I am expressing my opinion. Can I proceed, please?

**The Temporary Speaker** (Sen. Sang): What is it, Sen. (Prof.) Kindiki?

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): Mr. Temporary Speaker, Sir, I am sorry to interrupt Sen. Ong'era. I like the last part where she says that is her opinion which should have settled the whole issue. However, in my view, for clarity, the Senator should be directed by the Chair to clarify that there is no hierarchy of mandate. This mandate is all inclusive and in fact, (d) depends on the findings in (a).

**The Temporary Speaker** (Sen. Sang): I was going to rule you out of order, Sen. (Prof.) Kindiki. You are the Mover of this Motion. The way you worded it, clearly there is hierarchy that you have to address (a) and on the findings of (a) then (b), (c) and (d). So, being the Mover of the Motion, you are completely out of order to mislead this House.

Therefore, Sen. Ong'era, there is a hierarchy on (a) but you are highlighting your opinion.

**Sen. Ong'era**: Mr. Temporary Speaker, Sir, I have just been confirmed right that there are important issues that need to be looked at where the elephant is in the room and there are other issues where the elephant is not even in the room. 2(a) is where the elephant is outside.

The choice of distinguished hon. Senators and Members of the National Assembly is a very good. I commend the two coalitions for choosing these able men and women. I believe they will deliver. It only saddens me that in terms of the gender threshold, we were not able to achieve it but be it as it is we are happy to see that at least we have three distinguished and hon. ladies who will be equal to that task.

I also want to---

**The Temporary Speaker** (Sen. Sang): Order, Senator. I will add you half a minute.

**Sen. Ong'era**: Mr. Temporary Speaker, Sir, let me also take this opportunity to congratulate the leaders of the two coalitions for seeing sense and agreeing to have a dialogue. I congratulate the CORD co-principals and the President of the Republic of Kenya and his deputy for agreeing that we need to have dialogue in this country. Had we agreed on this, three years back when we raised this issue, we would have not had to suffer all the problems because we have lost lives.

Therefore, I commend these leaders. Let us follow and pursue the path of peace. It is what can build this country.

With those remarks, I beg to support.

**Sen. Wamatangi**: Mr. Temporary Speaker, Sir, I also rise to support the Motion as presented to the House. I express my confidence especially in the leadership of this Committee. I have all the assurance from the past records of the Senators that they will prosecute the matter in their hands with proper legal confidence. However, from the outset, I believe that the work of this Committee will lead them in many times at the boundary of asking themselves serious legal and constitutional questions.

First, I would like to inform this House and remind Members of this Committee that the Constitution in Article 248 creates more than 10 independent commissions. After doing so, the process of removal of all those commissioners in all those commissions is uniform. So, the first thing this Committee and ourselves as legislators is to assure the

country that we still believe in constitutionalism that the other commissioners sitting in their offices still enjoy the confidence and have their tenure of office secured.

Mr. Temporary Speaker, Sir, just by a plain reading of our Constitution; Article 249 (2)(b) on the independent commissions is very clear. It states that commissions are independent and not subject to direction or control by any person or authority. When we are looking at the work that has been laid down for this Committee, the line between constitutionalism, the work and mandate of this Committee will be very thin every single day. As a House, we must avoid the continuous erosion of confidence by negative propagation of any agenda or policy against institutions that are created by this Constitution. We also need to assure this country that we are also ready and willing to follow the laid down constitutional process.

However, I would like to narrow myself to what the mandate of this Committee is as read in this Motion. I am especially keen on 2(a) where it says that the mandate of this Committee is to inquire into the allegations. To begin from there, would it not have been in order that these allegations are laid down first such that even as we pass these names, then we know what allegations we will give this Committee the mandate to probe. They could be 1,000 or amorphous allegations that are boundless and we could be sending this Committee into work that they may not conclude.

Secondly, if you look at (b) on the mandate of the Committee; it says; that (a) above, they may recommend legal mechanisms for the vacation from office of the current commissioners of the IEBC. When we say that they may recommend the vacation of office, are we saying that whatever recommendations that this Committee may come up with are superior to the provisions of the Constitution which clearly lays down the process of removal of commissioners? The reason why I raise these issues is---

**The Temporary Speaker** (Sen. Sang): Order, Sen. Wamatangi. You do not have the luxury to read the sentence selectively. It says, "in accordance with the Constitution." So, you are reading half the sentence and leaving out the aspect of "in accordance with the Constitution." Are you sure that does not address what you are raising?

**Sen. Wamatangi:** Mr. Temporary Speaker, Sir, I was not even half way. I wanted to lay my case very well. However, in a nutshell, it behooves us that we, politicians, must also realise that we are stakeholders in a larger community where there are other stakeholders. The political will and the intentions of politicians should not override the intentions of the rest of the country. More so, we also must agree to be bound by the Constitution.

I am short of time, I would have required more time to prosecute my point of view and what I think but let me summarise by saying that I believe that once this Committee sit and come up with a Bill, as politicians, we would want to know if this Bill will be a substitute for the provision, that, in the process of removal of commissioners, then that a petition must be put forward and debated in this House. Will that Bill be the petition? Is it implicative that now that we have both sides forming this Committee, then, the allegations laid have already been agreed by both sides? Those are the questions.

**The Temporary Speaker** (Sen. Sang): Senator Dickson Daniel Karaba, *Mwalimu*, Chairman Committee on Education and Senator Kirinyaga County.

**Sen. Karaba:** Thank You, Mr. Temporary Speaker, Sir. In absence of any other contributor, you can extend my time to maybe 15 minutes until we get the next contributor coming around. I am happy to be here and support the Committee, and wish

that what prompted this Committee to be formed should not be used as a precedent to prompt other commissions to be under surveillance.

In this case, I am imagining that we are not going to use the same method which was used to have a committee formed and discussed in the Senate and extend it to other constitutional committees. I hope it will not happen.

Secondly, I am a victim of what is called the Independent Electoral and Boundaries Commission (IEBC). I remember in 2007, I had won the elections. The same IEBC we are discussing discussed my fate through Judge Kriegler and found that I had won because the Returning Officer even apologized to the Commission that he had made a mistake by announcing the wrong person.

If this is the same IEBC that we are discussing, then it should have gone a long time ago, because it is the one which made me stay out for five years without even appearing in the Tenth Parliament, having won. If that is what we are discussing, to have credible IEBC, then I support the Committee. I hope that they will not only sit for the 30 days but they should even be confirmed to be there even after election, if they will all be elected.

Mr. Temporary Speaker, Sir, it is important also to also note that once IEBC or a member in the name of Returning Officer makes a mistake and it is confirmed that the mistake is theirs, they should own it so that we do not go into unnecessary costs of going for a by-election like the way it happened in my case. If it was not for the mistake that was made by the Electoral Commission, I would have been declared the winner of my constituency in the 2007 elections but it never happened.

So, I hope that this Committee might also find it necessary to divulge a bit and come up with some possible amendments to the electoral laws so that if a situation like that one is to happen, somebody should not be seen like he can be denied the opportunity to represent his people just because somebody in IEBC has made a mistake. I am holding the Electoral Commission responsible for not declaring me a Member of Parliament in the year 2007, for five years.

It also important to note that the IEBC should be responsible for maintaining peace and tranquility in this country, in the sense that when it comes to nominations, there are some areas where nominations will be like the elections. Going by the recent Bill that was assented to the other day, it is like now we are having blocs; one in CORD and the other one in Jubilee. If somebody gets a nomination in some areas in CORD, that is the end. It is similar in Jubilee. I am asking this Committee and the IEBC to take note of that.

The nominations should be taken seriously as if there were no other elections except that. In the absence of IEBC not taking the nominations seriously, we are going to land into problems where some people who never won will be declared representatives of the people because of the wrong actions of the party.

We are, therefore, supporting this Committee and hoping that it will do a good job.

**The Temporary Speaker** (Sen. (Sang): Thank you, *Mwalimu* Senator. There being no other interest to contribute on this matter, I call upon the Mover to reply.

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): Mr. Temporary Speaker, Sir, I beg to move.

**The Temporary Speaker** (Sen. Sang): Hon. Members, this is not a matter affecting counties. Therefore, we will vote by acclamation.

*(Question put and agreed to)*

### ADJOURNMENT

**The Temporary Speaker** (Sen. Sang): Hon. Senators, it is now time to interrupt the business of the Senate. Therefore, the Senate stands adjourned until tomorrow, Wednesday, 6<sup>th</sup> July, 2016, at 2.30 p.m.

The Senate rose at 7.00 p.m.