

# PARLIAMENT OF KENYA

## THE SENATE

### THE HANSARD

Thursday, 2<sup>nd</sup> March, 2017

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

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

#### PRAYER

**Sen. Wangari:** Mr. Temporary Speaker, Sir, pursuant to the provisions of Standing Order No.45, I wish to present the Senate Business for the coming week,

On Tuesday, 28<sup>th</sup> March, there shall be a Rules and Business Committee (RBC) meeting---

**Sen. Khaniri:** On a point of order, Mr. Temporary Speaker, Sir. I thought that we are on Order No.5; Papers. What the Senator is doing is to give a Statement which should come under Order No.7.

**The Temporary Speaker (Sen. Sang):** Sen. Khaniri is right. What Sen. Wangari attempted to do is supposed to be under Statements and not Papers.

Sen. Wangari, you will do the necessary at the right time.

#### NOTICE OF MOTION

##### ESTABLISHMENT OF JOINT SELECT COMMITTEE TO REVIEW THE PROCEDURE AND RULES FOR ELECTION OF MEMBERS OF EALA

**Sen. Wangari:** Mr. Temporary Speaker, Sir, I would like to give notice of the following Motion:-

THAT-

ACKNOWLEDGING that the East African Legislative Assembly (EALA) is established under Article 9 of the Treaty for the Establishment of the East African Community as one of the key organs and institutions of the Community responsible for the Community's legislative matters;

RECOGNIZING that Article 50 of the Treaty provides for the election of Members of EALA by respective Partner States' Legislatures in accordance with their parliamentary procedures for a term of five years;

AWARE that the five-year term of the current third East African Legislative Assembly is due to expire on June 04, 2017;

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FURTHER AWARE that the East African Legislative Assembly Elections Act, 2011 contemplates conclusion of the election of Members of a new Assembly to be within ninety (90) days before the expiry of the term of the subsisting Assembly;

NOTING that the current Election Rules were adopted by the National Assembly in April, 2012 and therefore do not take cognizance of the bicameral nature of the Kenyan Parliament;

COGNIZANT of the need to urgently conclude the election process within the statutory timelines;

NOW THEREFORE, in accordance with the provisions of Rule 9 of the Houses of Parliament (Joint Sittings) Rules, the House Resolves to establish a Joint Select Committee consisting of seven (7) Members from each House of Parliament and that-

(i) the mandate of the said Joint committee shall be to:

(a) review the procedure and rules for election of Members of EALA contained in the Treaty for the Establishment of the East African Community (Election of Members of the Assembly) Rules, 2012 in light of Kenya's bicameral nature;

(b) on the basis of the review in (a) above, propose appropriate procedures and rules for election of persons to represent the Republic of Kenya at EALA;

(c) within fourteen (14) days, submit a report to the Houses of Parliament containing the revised rules of procedure;

(d) suggest appropriate timelines for purposes of notifications, nominations and elections; and

(e) consider the nominees, oversee the election process and report to the House within the timelines stipulated in the Elections Rules.

(ii) the Committee shall formulate its own rules of procedure;

(iii) the Offices of the Clerks of both Houses shall provide secretariat services in accordance with the Standing Orders; and

(iv) the following Senators shall represent the Senate in the Joint Committee:

1. Sen. Kimani Wamatangi;
2. Sen. Peter Mositet;
3. Sen. Kipchumba Murkomen;
4. Sen. Mshenga Mvita;
5. Sen. Mutula Kilonzo Jnr;
6. Sen. Elizabeth Ongoro; and
7. Sen. Henry Tiolo Ndiema.

## STATEMENTS

**The Temporary Speaker** (Sen. Sang): Hon Senators, we shall start with the Statements being sought.

Please proceed Sen. (Prof.) Lonyangapuo.

## THE PLIGHT OF SUPERMARKET WORKERS IN KENYA

**Sen. (Prof.) Lonyangapuo:** Mr. Temporary Speaker, Sir, I rise pursuant to Standing Order No. 45(2) (b) to seek a Statement from the Chairperson of the Standing Committee on Labour and Social Welfare regarding the plight of supermarket workers in Kenya.

In the Statement, the Chairperson should:-

- 1) Clarify whether Supermarket workers are allowed to enter or form trade unions;
- 2) explain why the workers are not allowed to enter into the supermarkets with their mobile phones;
- 3) explain why irrespective of the government guidelines on the minimum wages, the workers are still paid low salaries; and
- 4) state the measures that the Government will take to remedy this situation.

**Sen. Madzayo:** Mr. Temporary Speaker, Sir, due to the gravity of the question and the fact that it covers the whole country with regard to supermarkets, I humbly request that you grant me about three weeks to come back with a substantive answer to the question.

**Sen. (Prof.) Lonyangapuo:** Mr. Temporary Speaker, Sir, I do not have a problem with that but I do not know whether the three weeks will start after the recess or starting now.

**The Temporary Speaker (Sen. Sang):** Sen. (Prof.) Lonyangapuo, you know the rules of this House. You cannot anticipate debate. When the Chairperson requests for three weeks, it means three weeks from now, all factors considered.

**Sen. (Prof.) Lonyangapuo:** Mr. Temporary Speaker, Sir, three weeks is fine.

**The Temporary Speaker (Sen. Sang):** Let us move to the Statements to be issued.

BUSINESS FOR THE WEEK COMMENCING  
TUESDAY, 28<sup>TH</sup> MARCH, 2017

**Sen. (Prof.) Lonyangapuo:** Mr. Temporary Speaker, Sir, this is a Statement as given by the Senate Majority Leader on the Business of the Senate for the week commencing 7<sup>th</sup> March, 2017. Pursuant to Standing Order No.45 I wish to present the Business of the Senate for week starting Tuesday 28<sup>th</sup> March, 2017.

On Tuesday, 28<sup>th</sup> March, 2017, the Senate and Business Committee (SBC) will meet at 12.30 p.m. to schedule the business of the House for the week.

Subject to further direction by the Senate Business Committee (SBC), the Senate will continue with the business that will not have been concluded in today's Order Paper, focusing on the debate on Bills at the Second Reading and Committee of the Whole stages.

On Wednesday, 29<sup>th</sup> March, 2017, the Senate will continue with the business not concluded during Tuesday sitting and further consider any other business scheduled by the SBC. On Thursday 30<sup>th</sup> March, 2017; the Senate will consider Bills at the Second Reading, deliberate on Motions and any other business scheduled by the SBC.

Hon.Senators, as you are aware, the Senate will break for recess today 2<sup>nd</sup> March, 2017 and resume on 28<sup>th</sup> March, 2017 in accordance with the calendar. It is however, worthwhile to note a number of key activities that will take place during the recess where the Senate is scheduled to participate.

(1) The State of the Nation Address by His Excellency the President of the Republic of Kenya scheduled for 15<sup>th</sup> March, 2017 pursuant to Article 132(1) (b) of the Constitution and Standing Order No.22(1) which mandates the President to address a Special Sitting of Parliament once every year.

(2) The Devolution Conference scheduled for Monday 6<sup>th</sup> to 9<sup>th</sup> March, 2017 at the Kenya Wildlife Training College Naivasha, Nakuru County.

(3) The 2<sup>nd</sup> Annual Legislative Summit to take place from 20<sup>th</sup> to 24<sup>th</sup> March, 2017 at Bright Inn, Shanzu, Mombasa County.

Hon. Senators are requested to make time and participate in these very important events.

I hereby lay the Statement on the table of the Senate this afternoon as presented by the Senate Leader of Majority, Sen. (Prof.) Kindiki.

*(Sen. (Prof.) Lonyagapuo laid the Statement on the Table)*

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

**Sen.Wako:** Mr. Temporary Speaker, Sir, I thank Sen. (Prof.) Lonyagapuo for having read on behalf of the Senate Majority Leader the business for the week commencing 28<sup>th</sup> but I would also want to convey to the Senate Majority Leader that we are going into recess at a time when there are so many Divisions still to be done on Bills at the Committee Stage. In fact, there are five Divisions still to be done and each has been on the Order Paper for the last three weeks.

So, I hope that during the recess and in the course of the various important meetings that we are going to have, the issue of how to deal with these immediately we come back will be useful.

Mr. Temporary Speaker, Sir, it is important that we deal with that because there are again seven matters pending before the Committee apart from the Division. There are also very important Bills and I plead with the SBC that when they meet on 28<sup>th</sup> of March they give special consideration to the important Bills.

I know there is the County Allocation of Revenue Bill but I am particular on the matter that touches on my Committee. One of them is the Public Participation Bill that has been pending for quite a long time and I would like it to be finalized before we adjourn *Sine Die*.

**The Temporary Speaker** (Sen. Sang): I am sure Sen. (Prof.) Lonyagapuo has heard your sentiments.

Order No.8

**MOTION****ESTABLISHMENT OF JOINT SELECT COMMITTEE TO  
REVIEW THE PROCEDURE AND RULES FOR  
ELECTION OF MEMBERS OF EALA**

**Sen. Wangari:** Mr. Temporary Speaker, Sir, I rise to move this very important Motion, as we all know the role that EALA plays in terms of legislative matters between the East African countries----

**The Temporary Speaker** (Sen. Sang): Order! You need to move the Motion as you have moved several others in this House before.

**Sen. Wangari:** Mr. Temporary Speaker, Sir, I apologize for that---

**The Temporary Speaker** (Sen. Sang): Rest assured that is still the way to move motions in the National Assembly.

**Sen. Wangari:** Mr. Temporary Speaker, Sir, I beg to move the following Motion:-  
THAT –

ACKNOWLEDGING that the East African Legislative Assembly (EALA) is established under Article 9 of the Treaty for the Establishment of the East African Community as one of the key organs and institutions of the Community responsible for the Community's legislative matters;

RECOGNIZING that Article 50 of the Treaty provides for the election of Members of EALA by respective Partner States' Legislatures in accordance with their Parliamentary procedures for a term of five years;

AWARE that the five-year term of the current third East African Legislative Assembly is due to expire on June 04, 2017;

FURTHER AWARE that the East African Legislative Assembly Elections Act, 2011 contemplates conclusion of the election of Members of a new Assembly to be within ninety (90) days before the expiry of the term of the subsisting Assembly;

NOTING that the current Election Rules were adopted by the National Assembly in April, 2012 and therefore do not take cognizance of the bicameral nature of the Kenyan Parliament;

COGNIZANT of the need to urgently conclude the election process within the statutory timelines;

NOW THEREFORE, in accordance with the provisions of Rule 9 of the Houses of Parliament (Joint Sittings) Rules, the House Resolves to establish a Joint Select Committee consisting of seven (7) Members from each House of Parliament and that-

(1) The mandate of the said Joint committee shall be to:

(a) Review the procedure and rules for election of Members of EALA contained in the Treaty for the Establishment of the East African Community (Election of Members of the Assembly) Rules, 2012 in light of Kenya's bicameral nature;

(b) On the basis of the review in (a) above, propose appropriate procedures and rules for election of persons to represent the Republic of Kenya at EALA;

(c) Within fourteen (14) days, submit a report to the Houses of Parliament containing the revised rules of procedure;

(d) Suggest appropriate timelines for purposes of notifications, nominations and elections; and

(e) Consider the nominees, oversee the election process and report to the House within the timelines stipulated in the Elections Rules.

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

(3)The Offices of the Clerks of both Houses shall provide secretariat services in accordance with the Standing Orders; and

(4)The following Senators shall represent the Senate in the Joint Committee:

1. Sen. Kimani Wamatangi;
2. Sen. Peter Mositet;
3. Sen. Kipchumba Murkomen;
4. Sen. Mshenga Mvita;
5. Sen. Mutula Kilonzo Jnr;
6. Sen. Elizabeth Ongoro; and
7. Sen. Henry Tirole Ndiema.

I beg to move.

Before I get a Seconder for this Motion, I would like to just clarify a few issues.

We all appreciate the role that EALA plays in terms of our integration in the East Africa community. We have really come a long way. This is the third East Africa Legislative Assembly in place.

If you look at the Motion, it clearly stipulates that the last time the rules were reviewed and agreed upon, this Constitution that we are serving under was not promulgated. In fact, it was done in 2010 but we need to review the rules so that it is in accordance with the bi-cameral nature of Kenyan Parliament.

We have had to go back and forth with the National Assembly but I think this is one area that we agree. In fact, this Motion is being moved in both Houses. We agree on the role that each House must play in terms of getting this done in time.

We are looking at the expiry of the EALA term on 4<sup>th</sup> June. We will be looking at an election year for ourselves as a country to be done two months later. We must put the rules in order, the infrastructure and the methodology to be in place so that there is no confusion.

I am sure by June, everyone will be running in their respective constituencies and counties but it is our responsibility as Parliament to make sure we put the infrastructure in place so that EALA can do its work.

We can also give guidance as we have always done in this East African integration process. In fact, Kenya has been in the forefront. More importantly, we must make sure that we participate fully as both Houses of Parliament in the nomination, overseeing the process of election and giving timelines and guidelines for these elections to happen. This Motion, therefore, is meant to operationalise that.

I have no doubt that the Members proposed here will deliver this mandate. If you look at that constitution of that Committee and proposed committee from this House, we have done as we always do in accordance to the Standing Orders in terms of majority, minority and numbers. If you look at the composition of the Committee in terms of gender, you will see there are a number of women. I hope that they will expedite this process and table a report on the specifics that have been highlighted here. I hope they

will do their job well and submit a report to both Houses of Parliament within the stipulated time of 14 days.

I hope they will come up with Terms of References (TORs), rules and procedures so that we move forward as we always do.

I beg to move and I want to ask Sen. Wako to second this Motion.

*(Interruption of Debate on the Motion)*

### COMMUNICATION FROM THE CHAIR

#### VISITORS FROM THE NORWEGIAN COUNCIL FOR CHILDREN AND YOUTH ORGANIZATIONS

**The Temporary Speaker** (Sen. Sang): Before he does so, I have a communication to make.

Hon. Senators, I would like to acknowledge the presence in the Speaker's Gallery this afternoon of visitors from the Norwegian Council for Children and Youth Organizations.

They are:--

- (1) Ms. Embla Mathisen; and
- (2) Ms. Solveig – Marie Haland

In our usual tradition of receiving and welcoming visitors to Parliament, I wish to extend a warm welcome to them. On behalf of the Senate, and on my own behalf, I wish them a fruitful visit.

I thank you.

*(Applause)*

**Sen. Wangari:** Mr. Temporary Speaker, Sir, on a point of order. As I join you to welcome the delegation from the Norwegian Council, I would want to note, maybe, that you would have advised them to stand and bow to the Speaker. They looked a bit shocked. I can tell you they have been smiling at me up there because they are seeing there is a lot of involvement and participation of women and youth. As a young woman, I welcome them. I hope that they will learn the best practices from us. I request that they stand up so that we acknowledge them in our usual tradition manner.

**The Temporary Speaker** (Sen. Sang): As requested by Sen. Wangari and as it is our tradition, I wish once more to acknowledge visitors from the Norwegian Council for Children and Youth Organizations. They are:-

- (1) Ms. Embla Mathisen; and
- (2) Ms. Solveig – Marie Haland

*(Applause)*

**Sen. Mutula Kilonzo Jnr.:** Mr. Temporary Speaker, Sir, on a point of order. My concerns have been properly addressed.

**Sen. Sijeny:** Mr. Temporary Speaker, Sir, I also wish to join you in welcoming our guests. I hope they will have a fruitful visit and enjoy the warm hospitality of Kenyans, particularly at the Senate. I hope they learn the best practices from us and we hope to visit them soon.

*(Resumption of Debate on the Motion)*

**The Temporary Speaker** (Sen. Sang): Sen. Wako, proceed to second the Motion.

**Sen. Wako:** Thank you, Mr. Temporary Speaker, Sir, for giving me the chance to second this Motion. It is a Motion to which I have a lot of attachment to if, I may say so, because my own father in 1961 became the first Clerk of the then East African Legislature. That was before Independence. Since that time I have heard a very great passion in matters relating to the East African integration.

If you may recall, the former President, Hon. Mwai Kibaki appointed me to chair a meeting on how the federation must be fast-tracked. In that regard, I learnt more about the various structures of the East African community. No doubt, the East African Legislative Assembly has the potential to be a major player in moving East Africa forward, in being the voice of the people of East Africa in matters relating to greater political, economic and social integration.

Election of Members to the legislature has been marred in some controversy. If you may recall, the current Members whose term is coming to expire were the second lot to be voted for. The National Assembly had voted for the Members and that was challenged; that the method they used was contrary to the provisions of the East African Community Treaty. The challenge was successful. In fact, it was the first case that was being heard by the East African Court of Justice. Arising out of that, I, as the then Attorney General, was asked by the three Heads of State to make some amendments to the treaty which were duly made and approved by all the three countries. However, it meant that the National Assembly had to draft rules which are consistent, not only with the treaty and establishment for East African Community, but also consistent with our Constitution as it was at that time. As the Mover said, we have a new Constitution. Therefore, we need rules which are consistent with it.

I have had occasion to write to the Speaker – and I hope this can be taken up in the next Parliament – that it is a high time the Senate had also a committee which deals with the East African Community affairs in the same way as the National Assembly has.

A number of Bills have been passed by the EALA which affect the entire East Africa. However, when they come for approval in Kenya they are only approved at the level of the National Assembly which, to me, contradicts the current constitution. We, as the Senate, dealing with matters which touch on counties, we must also have that opportunity to interrogate the Bills that are passed by the EALA. That has not happened. I have addressed my concerns to the Speaker and I am quite sure he is looking at it. The word “Parliament” under our old Constitution meant only National Assembly. However, under the current Constitution, it is now the National Assembly and the Senate. Therefore, it is good that this matter has come to the House, so that the Senate is involved in promulgating regulations under this Act.



There are people in this Committee who are well versed in matters of the Community and I know that they will do a good job. As they do a job in drafting and crafting regulations for elections, let them take into account the recent experience in Uganda because Uganda is seen to be one step ahead of us in electing Members of the EALA.

When President Yoweri Kaguta Museveni addressed the National Assembly of Uganda, he said that the rules must be such that---. I hope Sen. Mutula Kilonzo Jnr. who is a Member of my Committee will take this into account. When you craft some of these regulations, you should ensure you know the character of the people being elected.

The Treaty that establishes the East African Community (EAC) says that those elected must reflect the national parliaments. President Museveni said that in all the three states, the tendency has been to elect people who go to the EALA just to earn a living. Maybe such people could have been active in Kenya and were not able to be elected to the national parliament or be given any job anywhere and the opportunity comes. So, they go there to earn a living yet what we require in the EALA is not just people who go there to earn a living but people who have a commitment and a vision for East African integration.

Therefore, Mr. Temporary Speaker, Sir, when they craft the regulations, they should ensure that the people who go there have a commitment to the integration of East Africa. In as much as this Senate is a Senate which represents county governments, people who present themselves for elections as Senators must be committed to devolution. In that sense, people who are to be elected to the EALA must be committed to closer political, economic and social integration of East Africa. They should be people who are prepared to be the voice East Africans.

When my Committee went round East Africa, I noticed that the people of East Africa want unity but all of them stated that the problem lies in our leaders who still want 21 guns salute or this or that job and think that they will lose a few of their powers and privileges in the wider Community.

So, the only institution within East Africa which can push the wishes of the people of East Africa is the EALA. I wish the Committee good speed in coming up with good regulations on this matter and making our role as Senate in that process very clear. With those few remarks, I second this particular Motion.

*(Question proposed)*

*(Interruption of debate on Motion)*

### COMMUNICATION FROM THE CHAIR

SPECIAL SITTING OF PARLIAMENT FOR THE STATE  
OF THE NATION ADDRESS BY H.E. THE PRESIDENT

**The Temporary Speaker** (Sen. Sang): Hon. Senators, I have a communication to make on the Special Sitting of Parliament for the State of the Nation Address by His Excellency the President.

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Hon. Senators, as you may be aware, Article 132(1)(b) of the Constitution and Standing Order No.22(1) of the Senate Standing Orders requires the President to address a Special Sitting of Parliament once every year and at any other time.

By a letter referenced SH/9/VOL VI 37 of 15<sup>th</sup> February, 2017 and addressed to the Clerks of Parliament, the Office of the President requested to have the Presidential Address to Parliament scheduled for Wednesday, 15<sup>th</sup> March, 2017. A Gazette Notice will shortly be issued convening the Special Joint Sitting of Parliament.

Hon. Senators, this is, therefore, to inform you that a Special Sitting of Parliament will be held on Wednesday, 15<sup>th</sup> March, 2017 at 2.30 p.m. in the National Assembly Chamber. This is an important occasion in the calendar of Parliament that provides an opportunity for His Excellency the President to deliver the State of the Nation Address and to address the Legislature and the people of Kenya on critical matters concerning the country. I therefore urge you to attend the Special Sitting.

Hon. Senators, more significantly for the Senate, His Excellency the President will also on the same day officially open the refurbished Senate Chamber, as well as the New Wing of Parliament. As you may recall, the Senate occupied this official Senate Chamber in the Main Building of Parliament on 1<sup>st</sup> July, 2014, having previously sat at the KICC and later at the County Hall Chamber. This day was noted as a major milestone in claiming and entrenching the bicameral system of governance in Kenya after a hiatus of about 50 years. I therefore request Hon. Senators to avail themselves during this occasion.

Hon. Senators, due to limited sitting space, Senators and Members of the National Assembly will be at liberty to invite one guest each to the occasion. In this regard, you are hereby requested to provide the names of such guests to facilitate the preparation of formal invitation cards. The names should be submitted to the Office of the Clerk by Thursday, 9<sup>th</sup> March, 2017.

Hon. Senators, the Special Sitting has also necessitated a re-arrangement of parking. Consequently, the current Senators' parking area here at the Main Parliament Building will not be available for parking by Senators on Wednesday, 15<sup>th</sup> March, 2017. Alternative parking arrangements within the precincts of Parliament are being made, and will be communicated to Senators before the Special Sitting.

I thank you.

*(Resumption of debate on Motion)*

**Sen. Mutula Kilonzo Jnr.:** Mr. Temporary Speaker, Sir, I rise to support the Motion. I participated in the research and litigation of the first nominees. At that time, Sen. Wako was the Attorney General. He appointed two senior counsels to defend the Government. He lost and ended up paying legal fees for it.

Therefore, this could not have been more appropriate. My name appears here. The research and the rulings that were delivered by the court would be very useful in some of the things we will do. I promise that we will deliver within the timelines specified.

However, as we do so, I am not extremely elated about this. Assuming that this Committee recommends that there should be an amendment to the treaty, I am sad to report that this Senate would not pass or do anything about that proposal. I say so because

our colleagues in the National Assembly had amended the Ratification of Treaties Act, the leadership of this House through the Majority Leader has not managed to pass that amendment through which we sought to reinstate our position of treaty making in this Republic.

So, Mr. Temporary Speaker, Sir, while we have been given a mandate with my colleague, Sen. Murkomen and others, we will still find ourselves shorthanded because we cannot participate in amendments to any law on treaties. It is possible that we would do so.

Therefore, I still think that the Bill that was here in the Senate about ratification of treaties should come back so that we do this properly, and then, reinstate our position in the ratification of Treaties Act.

Mr. Temporary Speaker, Sir, as Sen. Wako has said, the character of EALA has slightly not represented our interests. I have not seen its impact, maybe because the reports do not come to this Senate; but I agree with Sen. Wako to the extent that we must change the character of that House so that the persons representing Kenya should represent our interests.

There are many things that are not going right in the East African Community (EAC). There is something that lawyers call “cross-border practice”. Sen. Wako, as the Attorney-General, caused there to be joint practice where lawyers can practice all over East Africa. Being one of the lawyers who studied law in Dar es Salaam, he cannot go back as a senior counsel as chair to practice in Dar es Salaam. It is a tragedy. You cannot practice law there yet he is a product of that first university which trained one of the best lawyers in the country, Sen. Wako and other judges who are sitting on the bench today.

So, the representation of the country and our interest is important. They might not confess – our previous colleague, Sen. Keter, was stopped somewhere in an airport where his passport was confiscated on mismanagement of our East Africa affaire. The oil pipeline that we took so much pride in could not cross over. The incentive that the Jubilee Government was talking about on the Standard Gauge Railway (SGR) is that it would cross over to our neighbours. We all know that contract was cancelled.

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

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

This is very important. Our representation should take these interests at heart. The only reason we want to integrate is that so that we can do business with our colleagues and make our economies grow; something that we can be proud of. Rwanda has so many things. We are sending people to benchmark there on cleanliness. We send people to the streets of Rwanda to benchmark on disposal of waste. We have a lot of to do. I would like to see that we have proper representation and not just send people to earn allowances and become big boys or girls in East Africa.

**Sen. Sijeny:** Madam Temporary Speaker, I also support this Motion. It is quite timely. I am very happy to see that Kenya is taking the initiative to do things properly. I also benefited in trying to challenge – it was not something to be proud of but I was one

of the lawyers who challenged Kenya's perceived elections to the EALA sometimes in 2005 or 2006, thereabout.

It was very embarrassing but it was an interesting case. I hope they will look at those authorities, the case laws; even books have been written. It has become a case study. Every university student is taught using the case. Sen. (Prof.) Anyang'-Nyong'o was one of the litigants. It is famously known as the *Anyang'-Nyong'o Case*. It made history because the rules were amended. In fact, the rules that the Committee will look at have been amended several times. They also need to look at the history and see why the amendment was necessary.

Madam Temporary Speaker, I also made history because that case against Kenya's election of representatives to the EALA made the Summit to constitute an appellate court. I was the first lady to appear before it representing Sen. (Prof.) Anyang'-Nyong'o and others who were aggrieved with the manner in which Kenya purportedly elected their representatives to the EALA.

It is important for this Committee to perform its mandate as required because that will also enhance the standards and ensure that the people who represent Kenya will become cooperative, active and put Kenya's best interests at heart so that we can make East Africa a better place. It is unfortunate that even having been at the Senate all this time, I have not felt the interaction between the Senate or Parliament as a whole with the EALA; but there has been a lot of interaction between EALA and the East African Law Society where they have fought for legislations and harmonization of the laws, especially concerning gender. They have done a lot of work.

With those few remarks, I beg to support.

**The Senate Minority Leader** (Sen. Wetangula): Thank you, Madam Temporary Speaker. I also wish to support this Motion. Previously, the Electoral College of the EALA Members of Parliament was the National Assembly. This was before we became a Bicameral Parliament.

Madam Temporary Speaker, in Burundi and Rwanda, where they have bicameral parliaments the Electoral College is vested in both Houses. Here, we are also trying to move in tandem with our partners in East Africa, so that we can have both Houses participate in the nominations and elections of Members of EALA.

As the East African Community (EAC) comes of age, I think we need to start shifting gear. The EAC is a very old organization. Having been a very vibrant organization in the 1960s, I remember people from this country who used to work in Tanzania. The managing director of harbours at that time was a certain Mr. Halwenge, who was in charge in Dar es Salaam. We had people working in the aviation industry in Soroti. Some people used to work in the then East African Postal Corporation. You could get a transfer from Nanyuki in Kenya to Mbeya in Tanzania and move with your family to go and live there. You could get Kenyans in Uganda and Ugandans in Kenya. It built a very formidable East African nation.

Courtesy of my friend, Charles Njonjo, who is on record as having toasted champagne when the EAC collapsed in 1977 the dream of East Africa came to an abrupt end. Everybody knows that the Kenyan regime then, and the greed of the leaders of the day, heavily contributed to the collapse of the EAC. Probably by now, East Africa would be a federation and we would be enjoying the economics of scale in the region.

Madam Temporary Speaker, we have consulted on the membership of this Committee and I think that those of you we have put there, including yourself, Mutula Kilonzo Jnr., Sen. Ndiema, Sen. Murkomen and others, will work to protect the capacity and interest of this House in participating and ensuring that it is not a monopolized character by the National Assembly.

You may recall, and Sen. Mutula Kilonzo Jnr. spoke to this, that the National Assembly unilaterally amended the law on treaty ratification, so say that treaties signed by this country shall be ratified by the National Assembly, when the Constitution is very clear that treaty ratification is by Parliament. The Committee on National Security and Foreign Relations that you and I sit in drafted a Bill to reverse that amendment. I wish that my colleagues across the Floor would fast-track that Bill, the same way they sneaked and fraudulently passed a Bill on elections in this House. This House can then go back to its proper status, as vested in the Constitution, so that---

**Sen. Wangari:** On a point of order, Madam Temporary Speaker. This is a House of record. We actually pass laws through a systematic way, through a vote, which we did. Is the Senate Minority Leader in order to actually say that a law was fraudulently passed in this House, when he was there when the vote was put and they did not garner the required numbers?

**The Senate Minority Leader (Sen. Wetangula):** Madam Temporary Speaker, I do not want to engage in unhelpful arguments on matters that are so clear. We were in this House, and the Speaker sitting where you are sitting, allowed unauthorized persons to vote in this House. If I were Sen. Wangari, I would concentrate on struggling to become the Member of Parliament for Gilgil---

**The Temporary Speaker (Sen. Ongoro):** Order! Senate Minority Leader, you have to stick to addressing the issue raised by Sen. Wangari. Stick to that and do not digress.

**The Senate Minority Leader (Sen. Wetangula):** Madam Temporary Speaker, when we passed the Bill that entrenched electoral fraud in this country, two Senators voted without authority and I have got documentary evidence. I have talked to it and nobody has challenged me. I even went to the public media and said that the Speaker presided over a fraudulent process and he has not challenged me. I spoke on the Floor here and they were in a great hurry to disappear from the Chamber after the fraud. This is a point that we cannot run away from.

**Sen. Wangari:** On a point of order, Madam Temporary Speaker.

**The Senate Minority Leader (Sen. Wetangula):** Let me finish, Madam Temporary Speaker. Sen. Onchwang'i was not authorized to vote, but he voted. Sen. Lesuuda was also not authorized to vote, but she voted. I have got documentary evidence--

**The Temporary Speaker (Sen. Ongoro):** Order, Senator! I have granted another intervention to Sen. Wangari, since you are responding to her.

**Sen. Wangari:** On a point of order, Madam Temporary Speaker. The Senate Minority Leader is actually making this worse. Just because he said it in some funeral the following weekend does not make it right. I was in this House until midnight and in fact, not even ten Senators from the minority side were present by the time we were finishing. Is he in order to mislead the country?

With regard to the authority to vote, can Sen. Obure and Sen. Leshore complain officially because they are the leaders of delegations?

**The Temporary Speaker** (Sen. Ongoro): Which delegation are you talking about?

**The Senate Minority Leader** (Sen. Wetangula): How can the participants in fraud complain? It defeats logic.

**Sen. Murkomen:** On a point of order, Madam Temporary Speaker. Is it in order for the Senate Minority Leader to continue discussing the conduct of any Senator in this House and casting aspersions – calling them participants in fraud – without a substantive Motion, as per the Standing Orders? I would have been concerned if it was just another Senator speaking, but for a man who wants to be the President of the Republic of Kenya to call part of the population of this country a fraud, hoping that he can surmount --- I think he needs to be ‘*naswad.*’

**The Temporary Speaker** (Sen. Ongoro): Let me grant another intervention and then you will respond to all of them.

Sen. Sang.

**Sen. Sang:** On a point of order, Madam Temporary Speaker. More particularly, you would remember that when that issue was contested by the same Senator, the Speaker made a ruling. It is unfortunate for the Senator to continue to perpetuate the same position. He raised the matter and it was confirmed that the said two Senators had the authority to vote. Is he, therefore, in order to raise the same issue that was settled by the Speaker, which amounts to actually attempting to counter the position given by the Speaker?

**The Temporary Speaker** (Sen. Ongoro): Senate Minority Leader, can you respond before I give my response?

**The Senate Minority Leader** (Sen. Wetangula): Madam Temporary Speaker, I wish they could let me go on and let the chips lie where they fall.

**The Temporary Speaker** (Sen. Ongoro): You have to respond.

**The Senate Minority Leader** (Sen. Wetangula): Madam Temporary Speaker, I know that I raised this matter on the Floor and the Speaker did not rule; he just brushed it off and ignored us. You were part of this House and saw it. You know that very well. I have documentary evidence that I can bring to this House tomorrow or any other day, to show that the two Senators cast votes that were invalid. The Bill was carried by a majority of one vote.

I have no regrets or apologies about what I am saying, but allow me to proceed on the East African Legislative Assembly (EALA) debate.

**The Temporary Speaker** (Sen. Ongoro): Take your seat. I have to make a statement on this.

Hon. Senators, as it has been said, this is a House of records. I do not want to draw your attention to any other document apart from the Standing Orders. I want to draw your attention to Standing Order No. 90(1). For any avoidance of doubt, it states:-

“Neither the personal conduct of the President, nor the conduct of the Speaker or of any judge, nor the judicial conduct of any other person performing judicial functions, nor any conduct of the Head of State or Government or the representative in Kenya of any friendly

country or the conduct of the holder of an office whose removal from such office is dependent upon a decision of the Senate shall be referred to adversely, except upon a specific substantive Motion of which at least three days' notice has been given."

Hon. Senators, I do not have any notice of such a Motion. Therefore, I want you to desist from mentioning the Speaker of the Senate adversely. That matter rests. The Speaker had already given his ruling on that matter. I will not revisit that matter or re-open debate on that until and unless a substantive Motion to refer to that matter and debate is presented before the Speaker.

Please, conclude.

**The Senate Minority Leader** (Sen. Wetangula): Thank you, Madam Temporary Speaker. I stand advised. I hereby instruct Sen. Mutula Kilonzo Jnr. to draft a Motion and start processing it.

I want to go to the substantive issue of EALA.

**Sen. Murkomen:** On a point of order, Madam Temporary Speaker.

**The Temporary Speaker** (Sen. Ongoro): What is out of order, Sen. Murkomen?

**Sen. Murkomen:** Madam Temporary Speaker, you have made a very serious ruling which is right in law and in the procedures of this House. What is remaining is for the Senate Minority Leader to withdraw and apologise to the Speaker before he proceeds. This is to make sure that his words are no longer part of the record of the Senate.

**The Temporary Speaker** (Sen. Ongoro): Sen. Murkomen, Sen. Wangari who raised the first point of order did not demand for an apology or withdrawal. I want to bring this to a conclusion. I have already given my ruling on that. I do not want us to proceed in the manner of mentioning the Speaker of the Senate adversely. That matter rests as I directed.

*(Sen. Murkomen spoke off record)*

Could you conclude your contribution?

**The Senate Minority Leader** (Sen. Wetangula): Madam Temporary Speaker, I never called the Speaker a fraud. I said the vote was a fraud, not the Speaker.

I want to urge East Africa to move to the level of the European Union (EU). If we want EALA as a Parliament to be effective and representative, it is my humble view that, in future, we should not have National Parliaments as the Electoral College. We should have members of EALA being elected by the people of East Africa in special constituencies.

If you go to Europe, the members of the European Parliament are elected by universal suffrage. Constituencies are defined. For example, here in Kenya, we are entitled to nine members. If we take into account the population, we can zone counties from 47 to nine electoral areas. We allow those people who want to be elected to campaign in those special areas.

In the EU, they have zoned themselves that way. They allow parties to present candidates. That is why you sometimes find the EU Parliament being led by left-wingers or the ultra-conservatives. Of late, there is a mix of a few neo-Nazis and hardnosed

racists creeping into the EU Parliament, making things very difficult for the operation of the EU.

I think we were with you, Madam Temporary Speaker, and Sen. Haji when we visited Germany. We went to *Eijlander* which is equivalent to a county. We visited the Parliament. When we were being acknowledged as visitors, the neo-Nazis refused to stand up for us because they could not understand how whites could stand up for black people. It looked very awkward.

I am happy that yourself, Sen. Murkomen and Sen. Mutula Kilonzo Jnr. are members of this Committee. As they formulate the rules, it will be good if your Committee can make a recommendation for the future that ways and means be found to revisit the treaty of East Africa and redefine the election of members to EALA. I go to many places with EALA members and when they stand up to say that they are members of EALA, people do not know what EALA is. They do not know what they do. They do not know the effect of their being in the EALA Parliament.

However, if we make it electoral and give them capacity to legislate on matters that bind various members of the community which are enforceable, it becomes very helpful, especially on matters of taxation. The Ministers of Finance can meet and agree on uniform taxation. When they withdraw to their national governments, they start doing all the different things.

A country sometimes just wakes up and closes its border on certain products entering its jurisdiction. You can imagine a situation where Kenya and Uganda agreed that there will be a pipeline going to run from the oil fields of Lake Albert through Kenya to Lamu. Uganda, but one day, they woke up and decided that it will run through Tanzania to Tanga. The reasons they advance is that the high levels of corruption in Kenya are untenable in getting into any joint projects. That is something regrettable by meaningful Kenyan. We must find a way of fighting these vices together and benefit from the positives together so that the EAC can truly grow into an organization that benefits the people of East Africa.

Those who go to represent us in EALA must be people who are born out of the roots of the people other than being elected. As Sen. Wako said, many of the people who go to EALA are sometimes people who are being rewarded by their parties for failing in elections. That is not how to have a good EALA.

I urge the Committee to do its work speedily so that we beat the deadline. When it does come, the National Parliament being the Senate and the National Assembly, should give EALA good quality people who will represent the face of Kenya.

I beg to support.

**The Temporary Speaker** (Sen. Ongoro): Thank you Senate Minority Leader. Sen. Okong'o.

**Sen. Okong'o:** Madam Temporary Speaker, I support this Motion though with a heavy heart. After 53 years of independence, this country does not have a foreign policy. It is tragic that Members who served in those dockets are in this House. The Jubilee Regime has failed to move further to domesticate the Bills which give life to the East Africa Legislative Assembly (EALA).



To work in Tanzania is like a terrible crime for a Kenyan whereas Tanzanians are moving freely in our country. Our people languish in jails in Southern Sudan and the Jubilee Regime gives a deaf year as they do to everything.

The fiasco at the Africa Union (AU) is a culmination of lack of a foreign policy. We saw the Jubilee Regime spending billions of shillings to campaign for a candidate. Other countries failed to understand what this country stands for. That is how we lost yet people are dying of hunger and yet we spent billions running up and down.

The National Assembly moved with speed in a petition the other day to try to remove the Auditor-General from office. That is why we wanted this Act which was irregularly passed in the National Assembly to be brought to this House by the Majority side. It is tragic that they cannot do that because their views are narrow. The EALA must take consideration of issues which closely affect our people in terms of employment and permits. These are issues I expect that this Committee of eminent Senators will look into.

With those few remarks, I support this Motion for the sake of a new order. This is so that when I will be president, I will also move very fast for the people of Kenya to scrap the National Assembly because their interests are myopic. They do not serve the interests of Kenyans at large. I prefer that we have a Senate which represents the interests of

Kenya.

**Sen. Murkomen:** Madam Temporary Speaker, thank you for this very important opportunity to speak to this Motion.

One of the very important entities that Kenya is part of in international law is the EALA which is part and parcel of the East African community (EAC).

The EAC is an entity anchored in international law and particularly the law of the World Trade Organization (WTO). The General Agreement on Tariffs and Trade (GATT) in Article 24 provides for the possibility of having a regional integration as an exception to the Most Favoured Nation (MFN) Principle in GATT. It says that Members who are trading as part and parcel of the WTO can sometimes discriminate against the other members if they are part and parcel or give favoured treatment to a few countries that are part of regional integration.

First and foremost, the EAC is about trade. Trade is important for this country and region. We have great opportunity to expand our trading relations with Tanzania and Uganda. Uganda is one of our biggest export destinations after the United States of America (USA) and Europe. It is important for us as a country to have a lot of attention on the EAC.

Last December I had an opportunity to drive into Tanzania. There are still a lot of things that Tanzania still needs that I thought were so obvious in Kenya. A simple facility as using a credit card is not an easy thing there. You think that you would walk to a petrol station, fuel and use a credit card. To a greater extent our neighbours are still working on financial systems and many other things.

Madam Temporary Speaker, what makes me sad is the stories we hear. I have no evidence *per se* but the stories we hear from traders and business men is that there is too much protectionism that is still going on within our neighbours, particularly Tanzania. That would have been ironed out if we had a very strong EALA that has a wider mandate to look at all the treaties.

It is interesting that we have a Legislative Assembly that does not operate like we have the European Parliament which has the powers to pass laws that are going to be used in the countries. However, if you look at EALA, they cannot touch or amend a single treaty except to meet and work on issues of representation.

I agree with the Senate Minority Leader that this Committee will look into this. Hopefully, we will have cooperation of Members of the National Assembly. I wish this had come up a bit earlier. We wish we had thought about it in 2013 or 2014 so that we slowly walk this journey together as both Houses with an intention of suggesting very drastic measures that should be put in place.

One is to make the EALA a full Parliament where during elections the country can provide mechanisms. For example if it was Kenya, every political party provides a list of Members of Parliament who will serve in the Parliament if they get a chance. We will vote for that list. This is so that by the time the election is over in the country, we know that a certain number of Members of Parliament will be serving in that Legislative Assembly.

Secondly is to expand the mandate so that we now have men and women who are going to sit in the Assembly, make laws and negotiate legislations with the executive, collectively having ways of sending the message of representation.

It would be tragic if we have an East African Parliament where the representation will only focus on narrow interest of the political party or region where one comes from. This is because we want to integrate East Africa. However, we are also operating in an environment where regional integration is under threat.

*(Sen. (Dr.) Khalwale) entered the Chamber)*

The former Assistant Minister for East Africa Community, Sen. (Dr.) Khalwale, has just arrived and is very excited to get this Motion still going on. He will agree with me that we need to strengthen the EALA so that when the Members of Parliament sit we can now begin to have interest with the Assembly because the decisions they are going to make will have effect. However, what is the decision that the current Members of Parliament can make in EALA that can affect any person here?

Unless we have situations where treaties will come from EALA, after being debated and passed in that Parliament, there will be no time the Senate or the National Assembly of this Republic will be interested.

Sen. Mutula Kilonzo Jnr. raised an issue which I agree with. We want to ensure that the EALA is well represented in this country on all matters since their decisions will affect devolution. For example, when you talk about trade and agriculture, you are talking about milk, the price of maize, tea, coffee and so on.

*(Sen. Wetangula spoke off the record)*

Madam Temporary, Speaker, the Senate Minority Leader is very excited about my presentation and he says he wishes he would be in Elgeyo Marakwet to vote for me, which I appreciate.

If you are trading in Malaba, there are relations between Malaba-Uganda and Malaba-Kenya. There are Kuria's in Kenya and others in Tanzania, the Maasai are more in Tanzania than in Kenya. Therefore, trade will affect the revenue of the counties and how they will collect it. The tourism corridor in Namanga, Serengeti or Maasai Mara will depend on good relations between the two countries and it will directly affect the counties around there.

When we talk about devolution, it is not possible for us to divorce it from international law and regional integration. For that reason, the Senate must be an active participant in the determination of the persons who will serve in the EALA and also the ratification of treaties that come from outside the country. For example, we have an eye on agriculture. We have a greater focus on how milk, maize and eggs will be affected. If we are going to import eggs from South African and we have a lot of *kuku* in Kakamega County, what will happen? We need to have the Senate playing a role in so far as ratification of treaties is concerned. Since the law says Parliament shall ratify treaties, we have a window of opportunity for us to ensure that all treaties that are brought to the country will have the involvement of the Senate.

Madam Temporary Speaker, I disagree with my friend Sen. Mutula Kilonzo Jr. that we have slept on this side. This House is run by a Senate Business Committee (SBC) which is composed of both sides of the political divide. It is upon us who are sitting in the SBC to prioritize this business and ensure that the law is brought into place. Whereas I take blame as a Member of that Committee, it is not true that it is only one side of the political divide that sits in that Committee. For sure the Senate Minority Leader sits in the SBC among many other Members.

I thank the SBC for putting me in this list. I have immense interest in this. As I have said in this House before, I spent a lot of time studying international trade law, both at my undergraduate and my post-graduate. My specialization was trade and investment law. Regional integration was part and parcel of that topic. Therefore, the EAC from a trade perspective is an area that I have great interest in. If you heard me, I quoted immensely on the GATT Agreement, the Most Favoured Nation (MFN) principle in Article 3 of the GATT and the exceptions of Article 24 in relation to regional integration, amongst others.

Therefore, this is an area that I am more than happy to contribute to, not only in terms of knowledge for purposes of involving the Senate in the passing of the names but also for posterity. One of my colleagues whom I think we can reach out to and may be useful is Hon. David Ochieng, the Member for Ugenya Constituency. He is a colleague in international trade law perspectives. He is a man whom after campus we started a consultancy together. I know he has a lot of passion on this and has contributed immensely to matters relating to East Africa, the Common Market for Eastern and Southern Africa (COMESA) and the World Trade Organization (WTO) law. Hon. Ochieng is a Member we can reach out to and explore ways of improving these treaties and representation of the EALA.

I know we have issues with the National Assembly but there are individual Members of Parliaments that I have a maximum respect for. The hon. Member of Ugenya Constituency is one of them. If that House was able to sit down reason with us, we would be able to reach a compromise and direction.

I appreciate the presentation by the President-in-waiting Hon. Mong'are. However, the people of Elgeyo Marakwet are asking whether he is only going to be the President of Nyamira County. They want to know when he will visit Elgeyo Marakwet to ask for votes. I only see this man here and once in a while in Nyamira County. He is also welcome in Elgeyo Marakwet to come and sell his policies.

Thank you very much and I support.

**Sen. (Dr.) Khalwale:** Thank you, Madam Temporary Speaker. I am sorry for coming late to this House, it is never in my habit but I have a greater national responsibility. I sit on the National Coordination Committee of the National Super Alliance (NASA) that intends to decide whether it will be *Baba, Stevo, Weta* or "*MM*" to be the President of the Republic of Kenya. I believe you have forgiven me.

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

**Sen. (Dr.) Khalwale:** I rise to strongly support to this Motion. Very quickly, it is my pleasure that making the list is Sen. Kimani Wamatangi. Having served in Arusha for many years, I know that there is serious business being done by Kenyans in Arusha, Dar-es-salaam, Kampala and Juba. Sen. Wamatangi is a renowned businessman and therefore he will add value by that particular fact.

I see Sen. Mositet has made it to the list. How timely. He comes from the unique community that is the face of Kenyan culture – the Maasai who stride across the boundary and are found equally in Tanzania as they are in Kenya.

It is my pleasure to see Sen. Kipchuma Murkomen make it to the list. Until he started undergoing political metamorphosis he had very serious credentials at the international level. Sometimes when I see him I wonder what happened.

*(Laughter)*

**Sen. Murkomen:** On a point of order, Madam Temporary Speaker. Very few of my constituents believe that Sen. (Dr.) Khalwale is a qualified medical doctor who can carry out a surgery on anybody. With the image of politics, people think you leave your papers there.

**The Temporary Speaker** (Sen. Ongoro): What is not in order?

**Sen. Murkomen:** Is Sen. (Dr.) Khalwale in order to doubt my credentials and to actually cast aspersions on the institution of the Senate that it snatches credentials from anybody?

**Sen. (Dr.) Khalwale:** Madam Temporary Speaker, with a light touch, I was just dealing my speech to actually appreciate the suitability of Sen. Murkomen who will deliver. I remember he was my Co-chair in the Committee amending the Constitution of Kenya. He demonstrated that he is up to it. I will not be surprised if he becomes the Co-chair with the distinguished and respected Senator from Makueni County, Sen. Mutula Kilonzo Jnr.

Making the list is Sen. Mshenga Kisasa. Sen. Kisasa is a wife of the Miji Kenda, having been born, of course, in the plains of Busia County in Luhya land. She was a matron in my hospital. I know she is very capable. Matters of health are very critical in East Africa and she will add a lot of value as she debates on how best we can identify and attract people from the medical fraternity in making it to the EALA.

Madam Temporary Speaker, I have nothing to add about Sen. Mutula Kilonzo Jnr.. However, I want to remind him as he goes to sit in this Joint Committee. When I was the Assistant Minister for East Africa Community, Sen. Mutula Kilonzo Snr. led a team of legal experts and managed to defeat the all powerful Mt. Kenya team of lawyers who had wanted to shortchange the Republic of Kenya in nominating Members to the EALA. Sen. Mutula Kilonzo Snr. managed to reverse it and that history will never be erased. I hope Sen. Mutula Kilonzo Jnr. will not disappoint me.

**Sen. Mutula Kilonzo Jnr.:** I will not.

**Sen. (Dr.) Khalwale:** I know you cannot.

I see the distinguished Senator from Nairobi, Sen. Ongoro. I had no doubt that you would be part of the team because Nairobi is the face of East Africa.

Madam Temporary Speaker, knowing how you have Nairobi at your fingertips and how you turn it the way you turn your left hand back and forth, I know you will make a lot of impact. In fact, I am strongly fighting for nomination rules in the National Super Alliance (NASA) so that they are skewed in such a manner that you are shooed into becoming the elected Senator for Nairobi in August, 2017.

*(Laughter)*

**The Temporary Speaker** (Sen. Ongoro): Order, Senator for Kakamega! I have the capacity to be elected and I do not intent to have anybody bend any rules to allow me to be “shooed” or whatever you mean into election. Can you correct that?

**Sen. (Dr.) Khalwale:** Madam Temporary Speaker, I stand corrected the way you have guided me. However, allow me to issue a veiled threat. Please do not underrate the powers of my persuasion to a certain voting bloc in Nairobi because it can certainly become injurious to you.

*(Laughter)*

**The Temporary Speaker** (Sen. Ongoro): Order Senator! You are now completely digressing from the matter on the Floor of the Senate and you are almost attempting to threaten my politics in Nairobi. Can you stick to what we are debating and do not draw the Speakers anger and wrath towards your comments.

**Sen. (Dr.) Khalwale:** Madam Temporary Speaker, I beg you to spare me. From now henceforth, I will stay on the thin and straight line.

Madam Temporary Speaker, I acknowledge you and Sen. Ndiema who is a long-serving administrator in this country. Therefore, he will be invaluable.

Secondly, I would like to remind again this group that we do not want to see the shame of the Ninth Parliament when we were nominating Members to the EALA. We would like them to wake up to the political realities in the country at the moment. Today, we have the NASA and Jubilee. It is quite obvious that because we are walking into the future, the NASA has the majority while Jubilee has the minority of the country. Therefore, on the rule of four against five, I hope that this Committee will craft a law to ensure that the parties within the NASA will have five slots, Jubilee being one monolith

will have three slots and the small parties of Hon. Wavinya Ndeti, Hon. Ababu Namwamba and the rest will have themselves one slot.

Madam Temporary Speaker, we do not want them to craft rules using their rear mirrors. They should look forward in the windscreen where the country is going. You might be tempted to craft rules so as to fix the dispensation of 2013.

**Sen. Wangari:** On a point of order, Madam Temporary Speaker. According to the Standing Orders on relevance, is the Senator for Kakamega in order to dwell on the Terms of Reference (ToRs) of the Committee that we have formed today? The Motion is very clear and it is on the formation of a Joint Committee. Is he in order to speak to ToRs and pre-empt what they are supposed to do?

**The Temporary Speaker** (Sen. Ongoro): Senator, try and stick to the Motion.

**Sen. (Dr.) Khalwale:** Madam Temporary Speaker, sometimes when I am faced with a House as constituted this afternoon--- I can see Martha Wangari, Joy, Ken, Mutula Kilonzo Jnr. and Prof. Anyang'-Nyong'o who is having a closed eye reflection.

**The Temporary Speaker** (Sen. Ongoro): Order Senator! You will have to address the hon. Senators appropriately. We have Sen. Gwendu, Sen. Wangari and the rest.

**Sen. (Dr.) Khalwale:** Madam Temporary Speaker, I can see Sen. Wangari, Sen. Gwendu, Sen. Mutula Kilonzo Jnr. and Sen. Okong'o. Because Sen. (Prof.) Anyang'-Nyong'o was having a closed eye reflection, I will not involve him in this particular statement. I am therefore tempted to speak just a little bit on the ToRs without pushing my luck because it leaves you and I the likely resource people who can draw on institutional memory so that we enrich these young newcomers in the Senate.

**Sen. Okong'o:** Point of order!

**The Temporary Speaker** (Sen. Ongoro): What is it Sen. Okong'o? Please stick to what is out of order.

**Sen. Okong'o:** Madam Temporary Speaker, is Sen. (Dr.) Khalwale in order to mislead the nation and the House that he has the preserve of knowledge of this institution by virtue of having served in Parliament for two or three terms? Is he in order to mislead the House that some of us who have been here for four years do not have capacity to look at the past and current happenings in Parliament?

**Sen. Mutula Kilonzo Jnr.:** On a point of order, Madam Temporary Speaker. It is always entertaining to sit here and listen to Sen. (Dr.) Khalwale. However, you must stop him because he is anticipating debate. He has gone into how many things we have not done and many other things. You must stop him from doing so. Otherwise, we will have no work to do when we finally sit as a Committee.

**The Temporary Speaker** (Sen. Ongoro): Senator, you are completely out of order because you are proceeding to debate the ToRs of the Committee. Please stick to the matter at hand and conclude. You have three minutes.

**Sen. (Dr.) Khalwale:** Madam Temporary Speaker, I thank you for the guidance and colleagues for the points of order. There is what we call in my culture the hunting tactics of a cat. A cat is extremely fast but when it finally realises that the prey has no way of escaping, it starts tapping the prey.

**The Temporary Speaker** (Sen. Ongoro): Senator, what is your point? Who is the prey and who is the cat in your analogy?

**Sen. (Dr.) Khalwale:** The prey is Jubilee. Now that now we have gotten the Jubilee, therefore, the cat, which is the NASA, is playing with the Jubilee. The game is over and that is why we are even boasting that we shall get more slots than them.

I support.

**Sen. (Prof.) Anyang'-Nyong'o:** Madam Temporary Speaker, I will be very brief. First, I would like to congratulate the Mover of the Motion and the Joint Committee that has been put together comprising Members of the Senate and the National Assembly to look at the election of Members to serve in the EALA.

Madam Temporary Speaker, I remember I was once involved in 2008/2009 in a controversy of election of Members to the EALA and the fact that we as the ODM did not feel that those elections had been carried out properly. I think Sen. Mutula Kilonzo Jnr. will remember very well that his late father was leading the legal team in Arusha. It was a learning curve of the importance of clear rules of the game for electing Members to the Assembly in terms of representation of parties equitably, recognition of the need for what I may call gender parity in representation to the Assembly and finally to take to the Assembly men and women who are competent to debate issues in the Assembly with regard to *la raison d'être* of that Assembly.

Madam Temporary Speaker, the EAC has a long history. If I remember well, it started as the East Africa Common Services Organisation (EACSO) during colonial times. With Independence, it became a community. The idea was eventually to have one East Africa. I remember that the late Mwalimu Julius Nyerere declined to be the Head of State of Tanzania for a whole year. He gave that responsibility to the late Rashidi Kawawa as the Prime Minister while he was organizing the Tanzanians politically and waiting for the rest of the East African countries to become independent so that we could have a political federation. I am quite sure that all of you in this House were too young to remember that. It is important to note that at that point in time, the nationalists were committed to one East Africa.

Unfortunately, our country stands accused of having been reluctant to push for the political federation at the political level, given the ideology and commitment of the leadership then. This is one of the reasons why two factions emerged in KANU. One was Pan Africanist, further to the left and socialist, while the other one was very inward looking, conservative and ready to pander to western interest; but that is water under the bridge.

Eventually, in the 1970s as you may remember, with the coup in Uganda, it became very difficult to maintain the EAC as one because the late Mwalimu Julius Nyerere completely disapproved of the manner in which the late Idi Amin was conducting his affairs in Uganda and East Africa as a whole.

Madam Temporary Speaker, time has come for us to rejuvenate the idea of East "African-ness". The treaty as it exists looks forward to fast-track economic integration and also to have an ambition for a political federation, but I am afraid that those who go to the assembly do not seem to champion this political aspect of the Community as hard as they could.

In the early part of this century, 2003/2004, a professor from Uganda led a team of people to go around East Africa to find out what our ideas about that future of East Africa are. He is a scholar of EAC and federation. The report they gave pointed out that

the people of East Africa are still hopeful that sooner rather than later, we shall have a political federation. I am not shy to say that the President of Uganda, Yoweri Museveni has always harboured the ambition of becoming the first Head of State of East Africa. He has said so openly; that, one of the things that he would like to do before he retires from politics is to make sure that there is a political federation in East Africa.

I do not know how much commitment or support he has from his colleagues but I believe that we should not look at the federation as a top-down approach; that should come from political parties in Parliament. That should be championed. I hope that as Sen. (Dr.) Khalwale gets more and more excited about the National Super Alliance (NASA) every time he speaks in the House; that one of the planks of the NASA Manifesto should be a strong commitment to the unity of East Africans. The principle we now have that you can go through the borders without a passport is made a reality. It should be freedom of movement of persons and capital.

My relative from Tanzania visited us three days ago. She went through an ordeal at the transit station in Namanga. They were expected to disembark from their vehicle which was coming from Dar es Salaam to Nairobi, take out their luggage, carry it across the border so that it could go through customs and then board the vehicle again on the Kenyan side. She was carrying a 40 kilogramme bag of rice that she was bringing to us from Tanzania. You can imagine that she was compelled to carry this 40 kilogramme bag of rice across the border from Tanzanian to the Kenyan side of the border. This does not augur well for East African unity or the principle of free movement of capital, labour and goods across the borders.

A mere luggage which has no bearing on commercial transaction except personal consumption should not be taken out of a vehicle to be inspected. I do not think it makes a lot of sense. If there are inspectorates, it should be inspected in the vehicle and the passengers are allowed to walk through rather than the ordeal they go through at the moment at the border. It makes *wananchi* look at the pronouncements of politicians with a lot of cynicism. When we have platforms at EAC meetings, we talk in lofty terms about the desire to unite our countries but we are not uniting our people in practice.

Madam Temporary Speaker, I do not want to talk about the terms of reference of this Committee but I will talk about the vision that should inspire its work. I remember when we had the East African University before the university became separate; one in Tanzania, Kenya and Uganda – those days, there used to be a lot of interaction at the East African level among scholars and academics. We used to have the East Africa Social Sciences Conference which made us appreciate the issues that we were going through in East Africa, whether political, social or economic and discuss them together. Papers were written with strong comparative studies of the three East African countries.

It is unfortunate that since the University of East Africa was divided and we had distinct universities – it is not that this was a bad development but the interaction at the university level, notwithstanding that fact that we have an East Africa Inter-universities Council based in Kampala - the interaction among universities in the East African level is rather weak. I hope that these are some of the things that should be strengthened at the EALA by legislation and policy. One thing that we should consider in reform of EALA and EAC is the need, once laws are passed in the assembly, to domesticate them in each of the member states. Since our members go there to represent us, these laws should be



tabled in our Parliaments. We may not do anything to change them but debating them would help to domesticate them in our countries and for our people to know the kind of laws passed in the Community.

At the moment, I am afraid that the EALA is isolated. If you took a sample of people in Kenya and asked them about the EALA, very few people would know what you are talking about. This is very unfortunate. The same thing applies to the Pan African Parliament. I am quite sure that not many Africans know or appreciate the existence of the Pan African Parliament. We should not have these things exist for formality. They should exist in reality.

On the contrary, the African Union (AU) is well known because it has been there for a long time and of course through the Organisation of African Unity (OAU), especially, the Liberation Committee, a lot was done for the liberation of former colonies. It is known. The Pan African Parliament and EALA should make their mark by what they do.

**The Temporary Speaker** (Sen. Ongoro): Hon. Senator, you have three minutes to conclude.

**Sen. (Prof. Anyang'-Nyong'o)**: They should make their mark by what they do, rather than continuing to exist in formality. I hope that as this Committee will settle down to work; as we choose new members to go to the EALA, we should start a new dawn for the work of this assembly; to make a difference in East Africa and not just to be a formal body existing as such because the Treaty says so, and we are obligated every now and then to send members there.

Madam Temporary Speaker, with those few remarks, I beg to support the Motion.

**The Temporary Speaker** (Sen. Ongoro): Thank you, Sen. (Prof. Anyang'-Nyong'o).

Sen. Omar Hassan.

**Sen. Hassan**: Madam Temporary Speaker, I rise to support this Motion, but also continue to express my utmost reservations to the East African Community (EAC) in terms of its pace of integration and what informs it. You will recall that Kenya hosted the last edition of East African Legislative games in Mombasa. It was a grand meeting of legislators and secretariats of the various parliaments, where we competed in football, netball and various other disciplines.

Madam Temporary Speaker, first and foremost, it is extremely difficult to locate the impact of the work of the EALA. I know our members from the Coalition for Reforms and Democracy (CORD) more with respect with what they are doing to their parties than what they are doing in that assembly. Whenever they meet here, the President would come or delegate the Speaker of the Senate to open their sittings. Their normal sittings are held in Arusha.

I hear that they are proposing an anti-corruption legislation, but how binding is it to us? I know hon. Judith Pareno more as the chairperson of the National Elections Board of the Orange Democratic Movement (ODM) than her work as a legislator. I know hon. Mathuki from the Wiper Party, but have no idea what they can quantify in terms of their impact. If I will be party to appointment of these individuals, they must report to us. If I am appointing you, then you need to account to me. I am here validating seven Senators to sit in a Joint Select Committee to appoint nine Members of the EALA who will earn as

much as I do and enjoy certain functions and privileges. I have seen the Speaker of the EALA chauffeured in a big way. I need them to come periodically and tell me what they are doing in that Parliament, apart from supporting their political parties.

Madam Temporary Speaker, we should, therefore, create a process or mechanism for them to report to their respective Parliaments their legislative work, the impact and nature upon which that legislative work is binding. We are accountable to our electorates. There is a way in which a legislator must account for his attendance and appearances. Our colleagues ask us at home how many Motions we have passed and legislations we have proposed. They must account for something. Otherwise, it will be a joyriding kind of appointment.

I am the Secretary General of a party and people are sending me messages and curriculum vitae. I am at loss because I do not know what they are doing. I am not sure who the best person is. I do not know whether it is my best friend or political mathematics. Is it the person who has the most techniques to help Kalonzo Musyoka and National Super Alliance (NASA) in their campaign? We need to quantify what these people will deliver. I see this wish list---

**Sen. (Dr.) Khalwale:** On a point of order, Madam Temporary Speaker. It is not in doubt that Sen. Hassan is a distinguished legal mind in this country. However, is he confirming that he has not read the Treaty establishing the East African Community, which has got clear protocols, including the establishment of the EALA, East African Court of Justice and a Summit comprising Heads of State of the five member states? If this Senate recalls that, that Treaty was domesticated by the Parliament of Kenya, I request that the Chair requests Sen. Hassan to be short on that criticism, unless it is a critique.

**The Temporary Speaker (Sen. Ongoro):** Could you clarify that, Sen. Hassan?

**Sen. Hassan:** Madam Temporary Speaker, mine is a critique. I am fully aware of the East African Court of Justice, which is totally impotent. It cannot deliver on anything. I took a matter there before and they were so happy to throw it out. They throw out matters for want of time; a technicality to defeat the cause of justice. Can the EALA tell me one thing that we are doing in this Republic because of a binding nature of a legislation passed by it? I am asking about the impact. I do not mind that we need---

**Sen. (Prof. Anyang'-Nyong'o):** On a point of order, Madam Temporary Speaker. I apologize for interrupting my friend, but is he in order to critique the East Africa Court of Appeal and say that it is impotent because it does not make any decisions on cases? I took a case there and it was ruled in our favour and we were very happy. It is only that the lawyers cheated me on the proceeds of that case, but that is another issue.

**The Temporary Speaker (Sen. Ongoro):** What is your response, Sen. Hassan?

**Sen. Hassan:** Madam Temporary Speaker, that is specific to a technical matter, which is very easy; how to appoint members. We took a matter of violation of human rights. There were substantive matters that could have informed the jurisprudence. If you go to the European Court of Justice or the European Human Rights Court, their proclamations are binding to all of Europe and its membership. When they proclaim, the jurisdictions of respective counties must abide; that is what I mean.

Madam Temporary Speaker, let me talk generally about the EAC. We have five countries which have questionable democratic credentials. Some of them have dictators;

people extending their terms of office, pulling off the nails of their political opponents and clinging on to power indefinitely and we do not know when they will exit the presidency. Kenya sometimes hangs out with these people with bad habits. I see that temptation once in a while trickle over to Kenya, by people trying to make proclamations akin to what you see in these pseudo-democracies. I will not mention any specifically.

Even where we have a lot of faith like in Tanzania, I hear about an unprecedented crackdown on the media and the Opposition. On one side they say that they do not want corruption, and on the other side, they are violating the constitution and human rights; stifling space and freedom of expression. That is a contradiction. In fact, to fight corruption you need a robust media and Opposition. You cannot stifle the Opposition and say that you are fighting corruption. You cannot stifle oversight by Parliament and say that you are fighting corruption. Today, the Opposition in Tanzania cannot hold political rallies. Some media houses are being shut down for the most flimsy of reasons. Journalists are being prosecuted in Tanzania for something called “insulting the presidency or the President”. We must be a community of common values. That is what I have been saying repeatedly.

Our populations are literally disenfranchised through poverty. It is mismanagement by a few people who cling to power to steal from the State and preservation. This community must be about common values. The EU Community talks about common standards of democracy, human rights, migration and many other issues. What are our common templates? We are obsessed about some pseudo-developments, free movement of goods and services and the East Africa passport then we think it is an achievement. Our heads of states gather somewhere; put so much money and protocol just to launch a passport.

I hope this Parliament can have the teeth to interrogate the transactions of respective States and call them to account. These people can be an enforcement agency. EALA and the East Africa Court of Justice should be empowered by a review of our treaty as an oversight agency so that we have common standards. The standards should be democratic.

We are all happy to see five presidents cuddling and shaking hands and raising their hands time and again when their nations are not making any progress. This is a different time. Therefore, different policies and values should inform our interactions, both at the regional and international level. Kenya must stop interacting with countries that are stifling democracy though we must first be democratic. We must respect the outcome of a free and fair election. Only then can we ensure that we enforce these values. Kenya has been a big brother in terms of democracy and development. However, lately, it has become a bad example. It cannot censure any of these countries.

I had hoped that this would be the time when Kenya would play a role such that if it says that you must have an election or exit power, President Pierre Nkurunziza does it. Here we are, we are just a club yet we say that we have to popularize the East Africa Community within our populations because they do not know too much about it. They do not need to know too much about it. Let them see the results. People get to know things through results.

The things about common market and transfer of goods and services are clichés. Anybody can do that. We need people, a country or countries whose leadership will

demonstrate the need for common values. I keep on saying about this and I will be a proponent of this in this House and out of this House. The East African Community and its attendant arms need to demonstrate to us that they actually deliver on certain issues. It is time to review the East African Treaty to know how effective it is as it informs our modern discourse. We should ask ourselves if there is need for a review to ensure that we create a more perfect treaty to ensure that there is greater accountability and oversight. We should also see to it that our integration is based on sound common visions, common values and common standards, moving forward.

I have seen the seven names. They are extremely good people. I expect good results from them. As you sit on the Committee, Madam Temporary Speaker, make sure that you are not carried away by those who lobby more. I know this is a political time for our parties, so we are going to try to create some balance. Some of the people you had given the opportunity hoping that they will bring votes on your side have left for Jubilee. Look for competence and possibly young people and consider gender balance for it to reflect the Kenya we want to build.

We have some old tired people who are appointed as Members of EALA. It is like given them retirement benefits by taking them there. Closer to the next election, because I think that is when the next appointments will take place, they will be defecting after having five years of good time. This is because we will not ask them what they have delivered to our country or not. As you sit, be very firm and do not just balance. Do not pick on somebody because they have called you so much or they have bombarded you with text messages and then you hope that she or he will deliver the community in the next election.

The timing of these appointments has impact on the intrigues of the next election. We, therefore, have to coach ourselves to ensure that we only get the best. We should be fair, transparent and competitive as per the Constitution of the Republic of Kenya.

I can see the Clerk is about to switch me off, I support.

**The Temporary Speaker** (Sen. Ongoro): Thank you. There being no further request, I call upon the Mover, Sen. Wangari, to reply.

**Sen. Wangari:** Thank you, Madam Temporary Speaker. I have listened carefully to each contribution to this Motion. I am happy that it is widely supported across the Floor.

The Most critical thing that has been raised is the Terms of Reference (TORs) of what is expected of this Committee, the role of the Senate in treaty ratification and the role of bicameral Parliament. The reporting to the appointing authority has also been ably raised by Sen. Hassan, though he has his own reservations on so many issues.

I also want to note the contribution of Sen. Wetangula, despite him saying that I should focus on my struggle to be the Member of Parliament of Gilgil. I wish he was in the House. I would remind him that nobody has the monopoly of winning or losing. At least, mine has a chance. His desire for the presidency has been documented; that he will not become one.

More importantly, allow me to---

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

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

**Sen. (Dr.) Khalwale:** Madam Temporary Speaker, the young distinguished nominated Senator from Nakuru County knows how much I like and respect her. Is it necessary for her to impute improper motive on the Ford-Kenya party leader? If she thinks that it serves her well, she can go ahead. However, if it does not, I will request that she withdraw and apologise.

**Sen. Hassan:** On a point of order, Madam Temporary Speaker.

**The Temporary Speaker** (Sen. Ongoro): Yes, Sen. Hassan?

**Sen. Hassan:** Madam Temporary Speaker, the distinguished Senator from Nakuru, who I wish well in her bid, also said that it has been documented that Sen. Wetangula will not be president. Where has that been documented?

**The Temporary Speaker** (Sen. Ongoro): Sen. Wangari, it is improper that you mentioned a Senator so adversely in his absence. In respect to documentation whose details you are not tabling in the House, I demand that you withdraw that statement and proceed.

**Sen. Wangari:** Madam Temporary Speaker, you were in that Chair when Sen. Wetangula made that attack on me. I respect him as someone who was first nominated then elected. I hope that I will also follow that road. I will, therefore, withdraw because I respect him. However, I wish that the condescending attitude is minimized regardless of where one sits.

Allow me to thank every other Senator who has contributed to this Motion. The work for this Committee is cut-out. Their role is clear. There is the issue of inter-border relationship that has been pointed out so well by Sen. Mutula Kilonzo Jnr. and the free trade pointed out by Sen. (Prof.) Anyang'-Nyong'o. The plate of this Committee is full.

This comes in an election year. It is a time when the temperatures are very high. I hope that we will draw proper guidelines, laws, nomination rules so that we can get the best representation to this very critical body that unites the East Africa member states.

I beg to move.

**The Temporary Speaker** (Sen. Ongoro): Thank you, Sen. Wangari.

I will now put the Question.

*(Question put and agreed to)*

**The Temporary Speaker** (Sen. Ongoro): Let us move on to the next Order. According to the records here, Sen. (Prof.) Anyang'-Nyong'o still has 30 minutes to move his Motion.

Please, proceed.

## MOTION

### ADOPTION OF REPORT OF CPAIC ON FINANCIAL OPERATIONS OF VARIOUS COUNTIES FOR FY 2013/2014

THAT, the Senate adopts the Report of the Sessional Committee on County Public Accounts and Investments on the inquiry into the financial operations of Kiambu, Busia, Tana River, Trans Nzoia,

Nyandarua, Migori, Kwale, Kisumu, Samburu and Kericho County Executives for the Financial Year 2013/2014 (1<sup>st</sup> July, 2013 to 30<sup>th</sup> June, 2014) laid on the Table of the Senate on Thursday, 23<sup>rd</sup> February, 2017

*(Sen. (Prof.) Anyang'-Nyong'o on 28.02.2017)*

*(Resumption of debate interrupted on 28.02.2017)*

**Sen. (Prof.) Anyang'-Nyong'o:** Thank you, Madam Temporary Speaker. I do not think I will use all the 30 minutes because I had substantially covered the presentation of the report. When we adjourned last time, I was summarizing our recommendations of the report of these first ten counties that the County Public Accounts and Investment Committee (CPAIC) has done.

I reminded the House and the nation that these are just ten county executives and promised to table the report of other counties before this House adjourns *Sine Die*. One of the three final recommendations that we made is that the Office of the Auditor-General should take special audits on selected counties from time to time in order to promote the principles of public finance enshrined in the Constitution.

One of the reasons we made that recommendation is because during the first year of devolution, counties had a lot of problems with managing public finance. Quite often, in both the counties and the assemblies, there was very poor understanding of the major laws that govern management of public finance. There was a very poor understating of the Public Finance Management (PFM) Act and the Public Audit Act. There was also very little appreciation of the fact the even the County Governments Act expects counties to be accountable to the people and the county assemblies to keep county governments accountable through similar committees that we have in this House.

Madam Temporary Speaker, this learning curve of being respectful and filial to the laws of funds with regards to management of public finance is extremely important. Because of this laxity, we would like the Auditor-General to, from time to time, pick up a few counties and do special audits. This is because special audits allow the Auditor-General to go into deeper details about the management of a county. Governors being the Chief Executive Officers (CEOs) of the counties, must at all times ensure that all offices and institutions under them exercise prudent financial management and controls in compliance with the tenets of the Constitution and relevant laws and regulations. Failure to do so, they shall be held liable.

Madam Temporary Speaker, this is in line with the Constitution as well as in line with the PFM Act and the Public Audit Act. In the final analysis, when you are a CEO at whatever level of Government, you should make sure that under your tutelage, officers obey the law. Quite often, this responsibility does not mean that you are the one who bears the punishment when officers disobey the law. However, you must at least make them know and present them to the relevant authorities when procedures are abrogated or regulations ignored.

We recently saw a case in Nyeri County where officers were penalized for not following procurement procedures. It is the person who is responsible for doing that, that bears responsibility. However, in the final analysis, the CEO must ensure that these

things are done and not be complicit in the abrogation of financial laws regulations and procedures.

In cases raised by the Auditor-General that require immediate action, the investigative agencies; the Criminal Investigations Directorate (CID), the Ethics and Anti-Corruption Commission (EACC), the Director of Public Prosecution (DPP) and the Attorney- General should all proceed to perform their duties. We met all these agencies twice; once in our committee room and finally in this Chamber.

We noted that once the Auditor-General's report is out, it is a public document. These law enforcement agencies should take seriously and proceed to investigate certain cases. Nonetheless, if they wait for us to table this report in this House, it is also a public document and work should begin forthwith because when the House debates a report and passes it, it bears the authority of this House. However, that does not mean that certain investigative process cannot be undertaken to safeguard the loss of public funds.

Madam Temporary Speaker, when we recommend that investigation should be done, we ourselves are not in a position as a Committee to make the final judgment. That is one of the reasons that we recommend investigation. We want to ensure that the rule of law is obeyed. We do not want anyone to be condemned without being given a full hearing and the utmost attention in terms of law. Investigations by their very nature do not mean that one is culpable. It means that there is *prima facie* evidence that something has gone wrong and facts should be established so that proper action is taken.

I would like to use the example of the Kiambu County Executive which is one of the county executives that we have presented here. In the first one, there is a case of certain officers who never surrendered imprest according to the law. When we met the Kiambu County Executive, the Governor was very clear that those officers abrogated procedure and he was not going to be in a position to defend them if they did not follow proper procedure with regard to imprest.

The Committee has recommended that the Governor be held responsible for advancing imprest contrary to Section 197 of the Public Finance Management Act 2012. Being held responsible means that the Governor is either personally responsible or he will explain the officer who should bear that responsibility. The responsibility is not personal but is in the office. It is very important that if you hold an office you take responsibility according to Article 226(5) of the Constitution. It does not matter whether you are incumbent or have left. Article 226(5) states-

“If the holder of a public office, including a political office, directs or approves the use of public funds contrary to law or instructions, the person is liable for any loss arising from that use and shall make good the loss, whether the person remains the holder of the office or not.”

These audit queries are important precisely because of that Article. You may find that you are followed in life for negligence of duty once you leave public office. Therefore, the Constitution wants everybody who holds public office to be very responsible in terms of their terms of service and in executing them effectively and not in a way that leads to some improprieties.

We have also stated that the Ethics and Anti-Corruption Commission (EACC) should investigate the management of imprest and breach of financial regulations that led to the apparent loss of Ksh.2,966,697 by officers of the County Government of Kiambu

including Mr. Samuel Kioko, Ms. Wambura, Ms. G. Njambi and Mr. Elias Kariuki with a view to recover the money and prosecute those responsible.

The law on imprest is very clear that when you are advanced imprest, you should surrender it within 48 hours of finishing the activity. If you hold it longer than that, then it becomes a loan and the terms of any loan is that you must pay interest. We have seen a very common pattern in counties where people take imprest, stay with it for months or even years without surrendering it which is against Government regulations and the Public Finance Management Act.

Obviously, as a Committee, we have to obey the law and make recommendations accordingly. This will serve as a warning to further financial discipline in counties. If we make very clear and strong recommendations now we shall be in a position to avoid malpractices subsequently. We hope that this will help improve performance in counties particularly performance on financial management.

I know that the Committee is soon going to embark on looking at the audit queries of 2014/2015 and from what we have seen, there are even more travesties in counties in the second financial year. There is misappropriation, misuse of funds, wanton use of revenue at source when locally collected and mis-receipting of revenue received. This will come up when we look at the 2014/2015 Financial Year. The Committee will be rather tough. In the first year, maybe, we could have been lenient because it was the first year in office but we will be tougher when we come to the second year of office of county governments.

Madam Temporary Speaker, when we come to Tana River County, we made some recommendations regarding procurement of road works. One area that has been notorious in county government is what we call “tenderpreneurship” where county governments pay a lot of attention to infrastructure. Road construction is definitely very important in our counties and people should have good infrastructure. However, you do not just throw money around. People are building roads with very little mechanism to ensure that work is done properly and people get value for money. I am sure Sen. (Eng.) Muriuki will talk about this when it comes to Nyandarua County.

This is a serious matter. Governors boast of having built 6000km of road but what type of roads are we talking about and at what cost? Was there a better way of using that money rather than putting it on a road that when it rains, it is no longer there? Can we use more money building fewer roads that are more durable?

In the case of Tana River County, we observed that the documents availed to us for auditing road works were not there. The evidence that good work was done was very difficult to come by. These are some of the things that we have made very serious observations on and we shall continue to discuss as we look at other counties.

While on procurement, observing the Public Procurement and Disposal Act 2005 is a very important because it is at the center of the breach of a lot of procedures. That Act tells Government officials very clearly how to procure services and goods and how to dispose off assets whenever necessary.

The guidelines and the rules are very clear but they are much more observed by not observing them. In the case of Tana River County we found that there was no evidence or prior approval of the use of restricted mode of tendering in an unjustified way. That is why rent seeking is around the corner and people want to have shortcuts and



get money for themselves. Yes, restricted tendering exists in the Public Procurement and Disposal Act but it must be under certain conditions. In the case of Tana River County, we found instances where restricted tendering was used without any justification whatsoever. The auditors were never satisfied after they verified the documents that restricted tendering should have been used at all.

Our recommendation was:

“The Committee having considered and deliberated on the audit queries noted that the Public Procurement and Disposal Act 2005 was breached and we recommend that the Director of Public Prosecution (DPP) takes appropriate action with a view of charging and prosecuting the individuals responsible and recovering the amounts lost with appropriate interest which is usually calculated at the Central Bank of Kenya rate from the time that the money was received outside the perimeters of the law.”

I request my colleague Sen. (Dr.) Khalwale the former Chairperson of the Committee before I took over and who is well versed with these matters to second the Motion.

*(Interruption of the debate on Motion)*

**The Temporary Speaker** (Sen. Ongoro): Sen. (Dr.) Khalwale, before you second the Motion, I have a communication to make.

### MESSAGE FROM THE NATIONAL ASSEMBLY

#### APPOINTMENT OF MEMBERS TO THE JOINT SELECT COMMITTEE ON ELECTION OF MEMBERS TO EALA

Hon. Senators, I wish to report to the Senate that pursuant to Standing Order No.40 (2), (3) and (4), I have received the following message from the Speaker of the National Assembly regarding the appointment of Members to the Joint Select Committee on the election of Members to the East African Legislative Assembly (EALA).

Pursuant to the provisions of Standing Order No.41 of the National Assembly Standing Orders, I hereby convey the following message from the National Assembly.

WHEREAS Article 50 of the treaty for the establishment of the East African Community, establishes the East African Legislative Assembly (EALA) and provides for the election of Members of EALA by respective partner States, legislatures in accordance with their parliamentary procedures for a term of five years;

WHEREAS cognizant that the five year term of the current Third East African Legislative Assembly (EALA) is due to expire on June 4<sup>th</sup>, 2017;

IN FURTHERANCE to the provisions of Rule 9 of the Houses of Parliament joint sittings, rules and Standing Orders No.213 of the National Assembly Standing Orders, the National Assembly by resolution passed on Wednesday, March 1<sup>st</sup> of 2017, resolved to establish a Joint Committee to consider certain matters related to the election of

Members of EALA in light of Kenya's bicameral nature and comprising of the following seven Members on the part of the National Assembly:-

- (1) Hon. Kato ole Metito; EGH, MP – Co-chairperson
- (2) Hon. Samuel Chepkonga - MP
- (3) Hon. Wanjiku Muhya - MP
- (4) Hon. Ali Wario - MP
- (5) Hon. Florence Mutua - MP
- (6) Hon. Daniel Maanzo - MP
- (7) Hon. Wafula Wamunyinyi - MP

NOW THEREFORE in accordance with the said provisions of the Standing Orders and Houses of Parliament Joint Rules, I hereby convey the National Assembly's resolution to the Senate.

It is noteworthy to note at this stage that the Senate has already similarly today, Thursday, March 2<sup>nd</sup> of 2017 resolved to establish a Joint Committee and has approved its membership to the Committee. The Joint Committee will now be able to commence its work so as to ensure that in accordance with Article of the Treaty, the election of Kenya's membership to the East African Legislative Assembly is concluded.

Thank you.

Sen. (Dr.) Khalwale, you can now proceed to second.

*(Resumption of debate on Motion)*

**Sen. (Dr.) Khalwale:** Thank you, Madam Temporary Speaker. I rise to second this very important report that comprises a number of counties in respect of their performance in the utilization of the public funds at their disposal for the Financial 2013/2014.

It is with a heavy heart that I note that findings we have made in these particular counties appear to cut across quite a number of counties. In spite of this, the resource person, the Auditor-General, we find that he is not adequately funded. That is why some of the reports have come to these House six months after the Constitutional deadline that expects that the Auditor-General should have tabled these reports here.

Madam Temporary Speaker, we also regret that the public will be thinking that our Committee is not up to the task because we are still talking about 2013/2014 financial year at the tail end of the term of the fifth year. We would like Members of the public to know that governors successfully injuncted the Committee for a period of 10 months and we were unable to do anything and this is why there is this delay.

Thirdly, the governors of Kakamega and Embu counties failed to appear before our Committee. As far as this Senate is concerned, there is no governor in Embu County. The one of Kakamega continues to engage in legal somersaults in court in an attempt to avoid accountability. Well, it is up to him either to come before this Senate so that it gives him an opportunity to clear himself or run the risk, as he has done, of having all the audit queries confirmed and being subjected to investigations by the investigatory accounting institutions of this country, including the Ethics and Anti-Corruption Commission (EACC) and the Directorate of Criminal Investigations (DCI). Furthermore,

he runs the further risk that he might be found to be unfit to hold public office and therefore runs the further risk of not being allowed to run for re-election in Kakamega.

Generally, we also found that quite a number of things that we raised required immediate action from the DCI, the office of the DPP and from the EACC. We, therefore, request that these officers in these offices move in with quick speed.

Madam Temporary Speaker, allow me to make specific remarks on specific counties. I would want to make passing remarks on the County of Kiambu. As currently constituted, the County of Kiambu makes economic sense. Kiambu County is expected in the next 20 years to be collecting more revenue than it receives from the sharable revenue. I want to congratulate Gov. Kabogo because he has made huge strides towards this. He is one of the few governors who are now registering an increased performance in revenue collection when compared with what the defunct local authorities used to collect. However, that does not mean he has no transgressions.

On the issue of employment of casual workers and payment of casual wages, Gov. Kabogo has done very poorly to the extent that in one instance the Auditor-General found that a total of Kshs6.8 million was paid during this year in respect of various low cadre workers who are involved in small jobs. However, when challenged to account for this money, he could not adequately convince us, forcing us to observe that the schedules supporting payments were not signed by the casuals at the time of audit.

This means, therefore, Kshs6.8 million is paid out to people who have not signed and acknowledged that they were paid that money. We have been left with no option, but to direct that the Governor of Kiambu County be investigated and be made to refund the Kshs6.8 million. Further, pending the findings of that investigation, he be prosecuted. I saw him screaming in the newspapers and I said who told him not to clear himself when we gave him a chance.

Madam Temporary Speaker, in Kiambu there is an issue of unsundered books. We found that in Ruiru Sub-County Kshs8.49 million had been collected using receipt books that were not accounted for. So, millions are collected and the money which is collected is pocketed in the evening and nobody accounts for it yet Governor Kabogo expects that we should forgive him. I want to tell him "sorry". He has to report to the Ethic and Anti-Corruption Commission (EACC) and the Director of Criminal Investigations and clear his name and that is our recommendation.

Madam Temporary Speaker, so that I am not seen to be dwelling too much on Kiambu, allow me to make a comment on Tana River. There is a marginalised community in Tana River that should have benefited from devolution but what did the governor do when he came to office? There is the issue of procurement of laptops, iPads, X-ray machines, ultrasound machines and public address systems worth Kshs45.8 million. When we challenged the Governor, you cannot believe what he told us. He said that he want Senators to forgive him because he could not account for the Kshs45.8 million. He admitted that his county experienced challenges in attracting experts in the relevant fields of expertise. He is a man found to be qualified to be a governor under Article 179 of the Constitution.

He told us that he abused Kshs45.8 million because he did not get the expertise. Who told him that that he was supposed to hire only people from Tana River? He was free to go to Ugenya which is a boiling pot of experts and they would have gone and

worked there. The only thing they would have asked for was a higher salary because they would have required special security and special accommodation.

Madam Temporary Speaker, people like those belong in jail. How can someone pocket Kshs45.8 million in a county like Tana River where livestock and children die because of lack of water? Such people belong in jail. The Senator for Tana River should have been a Member to see the pain that runs through the CPAIC when we read about Tana River.

For the County Government of Trans Nzoia, we found there is a governor who is highly educated and experienced but he allowed Kshs64.1 million to be unaccounted for in the form of imprest. Can you imagine what Kshs64.1 million can do? The governor just gave it to people in the office and they signed here and there without accounting for it. We have recommended that he faces the EACC and the Directorate of Criminal Investigation (DCI) to account for the money, failure to which he should be prosecuted and spend his time in jail.

In the County Government of Nyandarua, the father of the Constituencies Development Fund (CDF) was born and rose from poverty to become an engineer. He is the reason why we have devolution because it made sense that if CDF worked, then on a larger scale, we could spend billions in counties. However, Governor Mwangi engaged in irregular rehabilitation of roads. I almost fought him when he appeared before us.

I was the Chair at that time and I was forced to bring the business of the Committee in this room because a whole battalion of *wananchi* had accompanied him from Nyandarua and they wanted to hear us. We found that he had misappropriated Kshs657,947,191. When we combed through the report slowly by slowly and gave him time to bring the documents, he could not account for that money. For this reason, we have recommended that we have enormous irregularities and notwithstanding the special audit, the matter should be referred to the EACC and those found culpable be prosecuted. Nyandarua is a place where they have even build toilets for Kshs5 million and that is very interesting.

If there is one county in central that deserves to be respected, it is Nyandarua. This is the county of Josiah Mwangi Kariuki who is one of the few heros of Africa. He died believing that corruption was creating a county of 10 millionaires with 10 million beggars. He would scream if he woke up and found the poverty in Nyandarua compared to the wealth in Kiambu. He died fighting for Kenya but when members of his community continuously remain in the Office of the President, they shortchanged Nyandarua and developed Kiambu. I do not understand how Sen. (Eng.) Muriuki is not in the NASA up to this day but I know we are still “nasaring” them. It is just a matter of time before he comes.

*(Sen. Njoroge spoke off record)*

Madam Temporary Speaker, please protect me from Sen. Njoroge. I was always telling him but he could not listen to me until when he attempted to say that he will speak against “Muthamaki.” He moved away from Jubilee and went to something called Kanu. Overnight, his businesses were closed down including a petrol station in Naivasha. The chickens are coming home to roost.

**Sen. (Prof.) Lonyangapuo:** On a point of order, Madam Temporary Speaker. Did you hear Sen. (Dr.) Khalwale talk of “something called Kanu?” What did he mean by that? He needs to elaborate further what he meant by “something called Kanu.”

**The Temporary Speaker** (Sen. Ongoro): Did he say “something called Kanu?”

**Sen. (Prof.) Lonyangapuo:** He should confirm.

**The Temporary Speaker** (Sen. Ongoro): Was he referring to KANU the political party? Maybe it is just the variation of tone.

Sen. (Dr.) Khalwale, were you referring to KANU?

**Sen. (Dr.) Khalwale:** Madam Temporary Speaker, allow me to define to him what I meant. I meant that party whose symbol is a cockerel and its real owner shocks us. He is an old man of around 99 years and he has a son whose name I will not say. That son has never left the nest. He keeps going back to a 99 year old man to consult on how to work with a son of another 80 year old so that they come and lord it over Kenyans.

**The Temporary Speaker** (Sen. Ongoro): Order Senator! Get back to the issue on the Floor of the Senate.

**Sen. Njoroge:** On a point of order, Madam Temporary Speaker. Is it in order for the Senator who is my good friend to come and start mentioning names of personalities who cannot even come and defend themselves here in this Senate?

**The Temporary Speaker** (Sen. Ongoro): Indeed, Senator, you are completely out of order. The insinuations could be referring to former heads of state which is absolutely unacceptable for you to mention them adversely in the Senate without substantiation or tabling of documents or giving them the benefit to defend themselves. You need to withdraw.

**Sen. (Dr.) Khalwale:** Madam Temporary Speaker, I have run away from it. I withdraw with immediate effect.

Madam Temporary Speaker, in the County Government of Nyandarua, we found that a whopping Kshs62 million intended for construction of county headquarters had been misused. We have recommended that the County Government has not accounted for the money advanced to it in that financial year. For that reason, it should be recovered from the governor and whoever else that might have partaken of those public funds. The stories do not end there. They are many but let me end by just mentioning something because my time is up.

**The Temporary Speaker** (Sen. Ongoro): Hon. Senator, I will use my discretion to allow you more time. What you are tabling is critical to the Senate. So, we will not limit you. You will continue until you exhaust that presentation.

**Sen. (Dr.) Khalwale:** Thank you. What would I do without you, Madam Temporary Speaker?

*(Laughter)*

**The Temporary Speaker** (Sen. Ongoro): Proceed, Senator.

**Sen. (Dr.) Khalwale:** Madam Temporary Speaker, protect me from the laughter of Sen. (Eng.) Muriuki. He is laughing in a funny manner.

The Governor for Migori lied to me when I was the Chairman of Public Accounts Committee (PAC). When we were fighting corruption in the sugar industry, the current

governor for Migori was then the Chairman of the Kenya Sugar Board (KSB). I did a lot of work with him, for him and for KSB because he told me he believed in the fight against corruption. However, we have gone to Migori and the picture we have found is total opposite of what the Governor for Migori had painted to me.

Migori is the place that the late Jaramogi Oginga Odinga fought so hard for in this country to become equal to Kiambu or Nairobi; but now when given their resources, the Governor for Migori has refused to manage the money with the prudence that is required. He has decided to raid the county treasury through imprest. Millions of shillings go unaccounted for by way of imprest. We struggled and managed to pin him down on Kshs29,392,000. We have recommended that the Ethics and Anti-Corruption Commission (EACC) should investigate and ensure that this money is not only refunded but as our Chairman likes to put it, it should be refunded with interest at the Central Bank of Kenya (CBK) rates. Investigations should be done with a view of prosecution and imprisonment.

Madam Temporary Speaker, still on this issue of imprest, we found a further Kshs14.6 million had just disappeared. So, when the governor says that we were playing politics in the Senate, what did he expect us to tell this plenary? That the Auditor-General found imprest missing and that we called the governor to come and discharge himself, and that he failed to do so; and then we tell this House that we have forgiven him? What does the Governor for Migori expect us to do? He wants to cause you to cast aspersions against us. We did not get the Kshs29 million. Similarly we did not get the Kshs14 million. So, the only reasonable thing is; pay the money, be investigated, prosecuted and answer for it.

As if that was not enough, the auditor then found that his governor has a habit of making payments that are not supported. He found that the governor bought drugs from the Kenya Medical Supplies Agency (KEMSA) worth Kshs14.6 million and unfortunately, there was no distribution schedule to show where the drugs were meant to go, which health center, dispensary, sub-district or hospital in Migori. What is more? There were no records to show the delivery. When pressed to produce these records, the governor could not. The Auditor-General had failed to verify existence of such records.

So, we were left with no option other than to recommend that Governor Obado faces the EACC to explain whether he paid KEMSA Kshs14 million for purchase of drugs, and if he did, where were they delivered? If they were delivered, where is the evidence? He might very well have bought and those items might have been delivered in private hands; private clinics, hospitals and laboratories. He must answer for this. We will not stop there.

As if that was not enough, the way the Governor for Migori purchases fuel used on road works is amazing. He purchases it the way my mother, *Mama Paulina Shinangoi*, used to purchase paraffin that we used to put in the little *Koroboi*. In our home, we used to use a little thing called *Koroboi*. So, my mother could buy that little paraffin and put it in and we could use it. Governor Obado thinks it is buying paraffin for *Koroboi*. He does not know that we are talking about use of Kshs4.5 million on buying fuel which we found that he could not account for. Therefore, we have said the governor must refund this Kshs4.5 million and further be investigated why he attempted to say Kshs4.5 million was

used to buy fuel while on the other hand, it was possibly being used to line private pockets.

The Governor for Migori has many mistakes. In fact, when we shall go there for the NASA rally, I hope I will be given a chance to tell the people how devolution has not worked very well in Migori. I am saying this on authority of the Auditor General. Governor Obado was caught buying motor vehicles. You will not believe it. He procured 41 motor vehicles at a cost of Kshs231,678,000. As far as the people of Migori are concerned, the priority was not to buy motor vehicles that much. The only thing that the poor man who struggles with a five year old child that dies from malaria – what this poor person would have got in this Financial Year was the Kshs14 million that was paid to KEMSA to purchase drugs. This governor spent Kshs14 million to buy drugs; the people felt need and in comparison spends Kshs231 million to buy motor vehicles. For whose use? Not ambulances! It is for them to drive around and look big with police sirens in front.

I pray to God that if the people of Kakamega so decide that I become the governor, I will convert such four wheel drive vehicles in Kakamega that make people look big and important into ambulances. We do not need them. To come from Malinya to the office in Kakamega Town I can even come on foot. Nobody will touch me. After all, I go to Kakamega with my bull. I ride with my bull when we are going for bull fighting. What is the big deal? I can go to Kakamega on a *boda boda*, sit in the governor's office, speak fluent English, meet whites and attract them to invest.

These young people do not have to ride on four-wheel-drive vehicles. We are lying to this country; that the priority in Migori was to buy vehicles worth Kshs231 million. After buying them, we are told by the Auditor-General that he was not satisfied with the response since the relevant documentation had not been submitted. We were left with no option, and Gov. Obado can forgive us on this one.

Therefore, we recommended that since the county government did not follow the Public Procurement and Disposal Act procedures, in using open tendering processes and submitting documents, the Ethics and Anti-Corruption Commission (EACC) should expedite investigations and prosecute those found to be culpable. Where is the malice that that the Governor was talking about in the newspapers? If he had convinced us we would have freed him; that is how Parliament works. I have been to the House of Commons and seen how it works there. I have been to the Congress and seen how the Public Accounts Committee works there. I have been to Poland, Canada, South Africa, Nigeria and almost everywhere. I am properly equipped not to be malicious. My integrity requires that we recommend that this man be prosecuted.

Madam Temporary Speaker, since Sen. Wamatangi has walked in, and he is one of the most faithful Members of our Committee, I want to spare some little time for him to speak. However, he may not have much to say today because he is very excited. He has been given the responsibility of sitting in a Committee to decide how we shall nominate people to the East African Legislative Assembly (EALA).

With those many remarks, I wish to second this Motion.

*(Question proposed)*

**Sen. (Eng.) Muriuki:** Madam Temporary Speaker, I stand to strongly support the Motion for the adoption of this Report. The County Public Accounts and Investments Committee (CPAIC) has done a lot of work. However, this work is not generally visible to the people of Kenya because the action is coming very late. There have been quite a number of frustrations that the committee has gone through; perhaps that is an agenda for another day. As we go on, the Senate should facilitate this Committee, so that it can do its work in time. Perhaps, we need twice the number of secretariat personnel that other Committees have, so that they can ably handle all the 47 counties.

Devolution was adopted by Kenyans in 2010 and it was God-sent in principle. It was envisaged that it would enable people in every county to mind their own affairs. They would be duly facilitated to do them, so that they can set their own destiny. However, not only did we devolve corruption, but we seem to have graduated it to embezzlement of funds. What the counties have achieved is far from what those who crafted the Constitution had in mind.

When we look at the public accounts of various counties, there are a number of common issues arising across the board. Prominent among them is the procurement process of the various contracts for construction works, provision of services, *et cetera*. Whenever the Governors are put to task, they say that they are in a new government. However, Kenyans must know that to qualify to be a governor one has to have a university degree. More importantly, each governor is allowed a set of ten experts from wherever they can get them around the country. Therefore, if you are not a financial expert, you will get one. If you are not an expert in procurement, you will get one. If you are not an expert in health services, you will get one. There should be no excuse.

Sen. (Dr.) Khalwale has walked out and I would have wanted him to hear this, because occasionally, we do discuss the merits and the demerits of Constituency Development Fund (CDF). I always tell him that when devolution came, I hoped that in due course, there will be no need for CDF. If the governors did what we were supposed to do with the CDF, in a few years - may be in one or two rounds of elections – the CDF would come to an end, because we will have all the secondary schools, primary schools and health centres that we want. However, those expectations have not been met.

Madam Temporary Speaker, I can go and on talking about the various counties, but perhaps, it would be good to mention about my county, which is Nyandarua County. We have serious issues of funds spent. We were told at one time that there is a road project. It is very ambitious but when you look at it, in the first year, we do not know what happened to more than Kshs410 million. The roads that were earmarked have not been built. When we ask about it, the governor gives all sorts of excuses. Latrines which are supposed to cost less than Kshs1 million are being constructed at over Kshs5 million.

We were also told, at one time, that there was a study for a great master plan for the Nyandarua County. A company from Israel was procured without following the procurement procedures and paid a total of Kshs55 million for the study. The Committee asked why the proper procurement procedures were not followed. At least they should have tabled a report on the same. There is no report and yet, money has been paid to a foreign company. The best that the governor could do was to say sorry; he did not know about what they were supposed to do.



Madam Temporary Speaker, most areas in Nyandarua receive a lot of rain, but there are some areas which are very critical, for example, Ndaragwa Constituency in the northern part of the county, which is dry most of the year. The people there complain about lack of water throughout. They keep requesting for a borehole which could cost maybe Kshs10 million. I know that over 16 billion has been disbursed to the county from the central kitty and yet, people in that part of the county are still complaining about lack of water. Some other well-wishers and I managed to get some donors to drill a borehole, while the governor keeps on giving excuses.

Occasionally, in Nyandarua County and other places, the governor says it is not him who is responsible, but other members of staff. When the auditor goes around the counties, he knows who the person in charge of health is, in Mombasa, Homa Bay and so on. If the governor is not responsible for the mess, he should say who is responsible. Some governors claim that the Senators who are vying for governorship, like I am doing in Nyandarua, are against them because we are looking for votes. However, facts will remain facts. The current Governor of Nyandarua is my friend, but we have a job to do for the *wananchi*.

Madam Temporary Speaker, in Garissa County there are no records. There is no excuse for that. The County Executive Committee (CEC) members were appointed within the county because they are qualified. You cannot appoint someone to be in charge of finance matters, for example, unless that person is well versed in matters finance. Therefore, the excuse that they did not know what they were doing is just a way of embezzling public funds.

The bottom line as far as I am concerned is, in the case of Nyandarua County, that a total of Kshs657 million cannot be accounted for. This is because the work which was supposed to have been done has not been done and the money is not in the bank. That is why the Committee wants to know what happened to the funds.

Madam Temporary Speaker, I would urge that this Report is adopted by the House without wasting much time, so that the investigations which are supposed to take place start early enough. If we keep on debating, the year will end and the Senate will have done nothing to protect the interests of the counties and the people, which is our mandate under Article 96.

With those few words, I beg to support.

**The Temporary Speaker** (Sen. Ongoro): Sen. (Prof.) Lonyangapuo!

### PROCEDURAL MOTION

#### ADJOURNMENT OF DEBATE PURSUANT TO STANDING ORDER No.99 (1)

**Sen. (Prof.) Lonyangapuo:** Madam Temporary Speaker, I beg to move that the debate on this Motion be now adjourned pursuant to Standing Order No. 99 (1).

I request Sen. Kagwe to second.

**The Temporary Speaker** (Sen. Ongoro): You have not given any reasons for making that request.

**Sen. (Prof.) Lonyangapuo:** Madam Temporary Speaker, I am moving that we adjourn debate because of the Motion under Order No. 24 on Order Paper, which is the Motion on Adjournment of the Senate until Tuesday, 28<sup>th</sup> March, 2017.

**The Temporary Speaker** (Sen. Ongoro): Order, Senator! Do not proceed to debate; you have moved. Who is seconding your request?

**Sen. (Prof.) Lonyangapuo:** Sen. Kagwe is seconding.

**Sen. Kagwe** seconded.

**The Temporary Speaker** (Sen. Ongoro): Your request is in accordance with Standing No.99 and that is in order.

*(Question proposed)*

*(Question put and agreed to)*

*(Debate on the Motion was adjourned)*

**The Temporary Speaker** (Sen. Ongoro): Hon. Senators, that request having been granted, we will defer everything on the Order Paper, from Order No.9, which we will resume when we next meet, to Order No.23 because we need to have time to debate Order No.24 before passing it.

## COMMITTEE OF THE WHOLE

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

THE NATIONAL CEREALS AND PRODUCE BOARD  
(AMENDMENT) BILL (SENATE BILL NO.15 OF 2015)

THE COUNTY STATUTORY INSTRUMENTS  
BILL (SENATE BILL NO.10 OF 2015)

THE PRESERVATION OF HUMAN DIGNITY AND  
ENFORCEMENT OF ECONOMIC AND SOCIAL RIGHTS BILL  
(SENATE BILL NO.8 OF 2015)

THE BASIC EDUCATION (AMENDMENT) BILL  
(NATIONAL ASSEMBLY BILL NO.35 OF 2014)

THE PARLIAMENTARY POWERS AND PRIVILEGES BILL  
(NATIONAL ASSEMBLY BILL NO.35 OF 2014)

THE TREATY MAKING AND RATIFICATION  
(AMENDMENT) BILL (SENATE BILL NO.5 OF 2016)

THE PHYSICAL PLANNING BILL

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(NATIONAL ASSEMBLY BILL NO.46 OF 2015)

THE MEDICAL PRACTITIONERS AND DENTISTS  
(AMENDMENT) BILL (SENATE BILL NO.2 OF 2016)

THE COUNTY GOVERNMENTS (AMENDMENT)  
(NO.2) BILL (SENATE BILL NO.7 OF 2016)

THE ASSUMPTION OF OFFICE OF GOVERNOR BILL  
(SENATE BILL NO.10 OF 2016)

*(Committee of the Whole deferred)*

### MOTIONS

ADOPTION OF REPORT ON THE SECURITY SITUATION IN  
MANDERA COUNTY, LAIKIPIA AND KAPEDO

THAT, this House adopts the Report of the Standing Committee on National Security and Foreign Relations on the assessment of the security situation in Mandera County, Laikipia County and Kapedo (Border town of Turkana and Baringo Counties) conducted between 19<sup>th</sup> January and 5<sup>th</sup> February, 2015 and laid on the Table of the House on Wednesday, 29<sup>th</sup> July, 2015.

*(Motion deferred)*

ADOPTION OF EALA REPORTS AND RESOLUTIONS

THAT, the Senate notes the Report of the Standing Committee on National Security and Foreign Relations on the EALA Reports and Resolutions pursuant to Standing Order 235, laid on the Table of the House on Tuesday, 19<sup>th</sup> April, 2016.

*(Motion deferred)*

ADOPTION OF REPORT ON THE STUDY VISIT TO RUSSIA

THAT, this House adopts the Report of the Standing Committee on National Security and Foreign Relations on the study visit to Russia, laid on the Table of the House on Tuesday, 15<sup>th</sup> March, 2016

*(Motion deferred)*

ADJOURNMENT OF THE SENATE PURSUANT TO THE  
APPROVED CALENDAR FOR THE 2017 SESSION

**The Temporary Speaker** (Sen. Ongoro): The Senate Majority Leader is not here, but Sen. (Prof.) Lonyangapuo has been mandated to move the Motion.

**Sen. (Prof.) Lonyangapuo:** Madam Temporary Speaker, I wish to bring to the attention of the Senators that the Senate Business Committee (SBC), where I am a Member, came up with the Calendar of the Senate business for this Session.

**The Temporary Speaker** (Sen. Ongoro): Just a point of correction, Senator. You did not take the opportunity to first of all move the Motion, before proceeding to debate.

**Sen. (Prof.) Lonyangapuo:** Madam Temporary Speaker, I beg to move the following Motion:-

THAT, pursuant to Standing Order 28 (3) the Senate do adjourn until Tuesday, 28<sup>th</sup> March, 2017.

Madam Temporary Speaker, I sit in the SBC which prepares the Calendar for Senate business for every session. It was agreed that the Senate adjourns today and resumes on 28<sup>th</sup> March, 2017.

However, it was noted that there are many Bills, Motions and Statements still outstanding. Since a lot of work is also ongoing in the counties, we agreed to give Members time to go and look at their work. This is also an election year and a number of parties are doing nominations this week and the coming weeks before we resume.

There are also conferences taking place. The annual conference on devolution, which is organized by counties, will be held in Naivasha next week. Another conference has been organized by the Senate and the county assemblies and will take place in Mombasa. Therefore, there is a heavy programme which requires our attention.

We are in this House courtesy of elections and political parties. Therefore, we need to comply with the timelines given by the Independent Electoral and Boundaries Commission (IEBC). For those reasons, this Motion for adjournment comes at the right time. However, from 28<sup>th</sup> March onwards, the SBC has scheduled many Bills and Motions that we have to transact and finish.

Some of us come from areas which are facing challenges of drought. We trust that we will visit those areas and work with both the national Government and county governments, with a view to attending to our citizens. We also have areas which are affected by insecurity. It also requires us, as elected leaders, to attend to the matter.

Coincidentally, our colleague, Sen. Kagwe, lost their governor. We stand with the people of Nyeri and understand the challenge they have gone through. We will continue to pray with them as they mourn their departed leader.

This Motion is not peculiar. It is as a result of the usual calendar.

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

**Sen. Kagwe:** Madam Temporary Speaker, I rise to second this Motion. In doing so, I wish to raise a number of issues regarding matters that will affect us while we will be on recess.

Madam Temporary Speaker, the idea of recess is for us to go and do a number of things. One of them is to acquaint ourselves a little bit more with what is happening on the ground, in the counties. The second one is to familiarize ourselves with the kind of projects that the counties are undertaking. It is very difficult for us to do so while we are in the House.

One of the failures of this Senate – and we must be bold enough to criticize ourselves as well as critique others – is that we have been shortchanged in terms of civic education, to tell wananchi what the purpose of the Senate is. If you ask the Senators, who are seeking re-election as Senators or to any other position for that matter, including the many of us in this House who are seeking positions of governors, you will find that the biggest question that is always asked by *wananchi* is: ‘where have you been and what have you done for this county?’

When the Senator for Kiambu comes to this House and debates in a fine manner on matters of legislation, like he has done, somewhere in Wangige in the slums of Kiambu, people have no idea what he is doing in the House. When the Senator for Kakamega goes to seek for votes from the residents of Kakamega to become governor, the issue still arises. He is asked: ‘what do you do in the Senate?’ This is because the understanding of somebody in the village is that the work of anybody elected is to make sure that roads are murramed. Where the money for murraming comes from is a secondary issue that neither the electorate is told of nor anybody asks. Nobody wants to know where the money comes from. As far as they are concerned, the Member of the County Assembly (MCA) of that area is the one who got the money to repair the murram road.

The fact that we sat here as we did yesterday, negotiating on matters of the Division of Revenue Bill, discussing how much money will go to the counties is assumed to be a matter of course. It is assumed that whether the Senate was there or not, the money would still go to the counties. Never mind that at this particular time, the proposed amount by the Senate to go to the counties is 37.1 per cent. The Constitution simply talks of an allocation of 15 per cent of the money of the national Government money as represented in the last audited reports. We are now sending the counties 37 per cent if we have got anything to do with it. That is the work of the Senate.

**Sen. (Prof.) Lonyangapuo:** On a point of information, Madam Temporary Speaker.

**Sen. Kagwe:** I do not want to be informed, Madam Temporary Speaker.

**The Temporary Speaker** (Sen. Ongoro): I grant the point of order. Proceed.

**Sen. (Prof.) Lonyangapuo:** Madam Temporary Speaker, is Sen. Kagwe in order to mislead this House by saying that the Constitution talks about 15 per cent. It actually talks about a minimum of 15 per cent.

**The Temporary Speaker** (Sen. Ongoro): Clarify that, Sen. Kagwe.

**Sen. Kagwe:** Madam Temporary Speaker, I am aware that the constitutional stipulation is a minimum of 15 per cent. That means that without this House, the amount of money that would go to the counties would be that minimum, the 15 per cent. This is the House that makes sure that we do not take back 15 per cent to the counties. Instead, we take back the 33 per cent that we did last time and the 37 per cent that we have proposed this time. That is why this House exists.

If you go to the counties---

**Sen. (Dr.) Khalwale:** On a point of order, Madam Temporary Speaker. I respect the Senator for Nyeri County especially during this difficult time of mourning but, is he in order to mislead this House and the country? He has said that the money would still go to the counties even if the Senate was not there. He knows very well that before any money goes to the counties, we have to pass the County Allocation of Revenue Bill. How would you decide how much goes to Kakamega County or Nyeri County? Could he clarify the point so that people in Nyeri do not think that he has no work?

**Sen. Kagwe:** Madam Temporary Speaker, you will agree with me that as a matter of fact, what Sen. (Dr.) Khalwale is asking me to clarify is exactly what I have said. I said that if you go to the villages, they will ask what you do in this House. Part of the failure of the current Senate is that we have not spent sufficient resources in civic education to make our people aware of what this House does particularly on matters of resource allocation. I blame the Ministry of Devolution and Planning.

For the benefit of my colleague as I clarify, if you remember, I said that if he goes to Kakamega County, an MCA will be talking about the money that they have given to construct a road. The governor will have put up notices saying how he has done “x”, “y” and “z”, while as a matter of fact, the resources to do all those things, whether by the MCA or the governor, were allocated by the Senate and specifically fought for by the Senator of that county. That is precisely what I was talking about.

One of the other failures that we have experienced as a House is when we were denied sufficient funding to create effective oversight. One of the accusations Senators get in the counties is that we are not doing enough oversight as far as the expenditures are concerned. We have just been debating the audit report and we can see that we cannot even exhaust the issues that have arisen as a result of corruption in various counties.

In order for us to be effective in oversight, we must have the resources allocated to the Senate offices. Part of the reason there are issues of oversight in the counties is because many counties continue to use analogue-based systems. There is no better equalizer and no better fighter against corruption than technology. We have seen it in Nyeri County where collection of funds through a mobile based system produced three times more money than what they were collecting before. This has been across the board.

The minute you have direct engagements, people become corrupt and they start printing their own receipts. This is different when you tell people that we do not wish direct contact of an individual making a payment to the county government. The money can be taken directly to the bank, paid by Mpesa or through some technological manner and not direct engagements.

As we go for recess, part of what we should do is to talk to our people and the county governments to infuse technology in all systems. In Nyeri County, there was a system where people would pay rates to officers sitting in offices. When that was done, the computer would be made to say that the money has already been paid. However, there was a serious gap between the amounts that were supposedly paid to the county government and the money that was in the bank. Somewhere along the line, the money paid was very high but the money in the bank was very low. It does not take Albert Einstein or any smart mathematician to realize where this money was going to.

When we introduced a system where there was no contact, instead one was to take the money to the bank and come back with a certified receipt from the bank; we certainly got some money in Nyeri County. In fact, when the parking payments were changed to be done electronically, the parking meter attendants voluntarily quit and went to keep cows. That is because it was more profitable for them to keep a cow than to manage parking meters where they would only get a salary of Ksh 7,000 and nothing else.

When there were parking meters and individuals would pay by cash, people would carry fake receipts. They would go to a printer in River Road and print receipts clearly written Nyeri County Government. They would charge people and keep the money while the county thought that there was work going on yet there was nothing going on. If we want to introduce discipline in our counties, that discipline must be backed and supported by technology.

That is the direction most countries in the world have moved to. It is also the reason for the efficiency that is being seen in the national Government institutions such as the Kenya Revenue Authority (KRA). When you go to collect the certificate of good conduct from the Directorate of Criminal Investigation (DCI), they email it to you. I was pleasantly surprised.

The Directorate of Criminal Investigations (DCI), Mr. Ndegwa Muhoro and his team are doing a fantastic job. I went to see a man called Mr. Ali and within minutes, he had taken my fingerprints. Within an hour, he had posted my clearance certificate to my computer. That is fantastic. We should appreciate some of the things that are happening quickly because of the use of technology.

Madam Temporary Speaker, as we go on the recess, let us make sure that one of the issues that we raise with our county governments is how much money they will allocate to technology. Once we are done with the Division of Revenue Bill, which is soon because we have finished with the Allocation of Revenue Bill, how much money will they put into technology? I propose that they should allocate at least five per cent of the money into technology because it cuts across all the activities that are going on. If we were to create e-procurement as it has been proposed elsewhere, it will cure a lot of the issues that Sen. (Dr.) Khalwale has been raising in this House.

The way I envision it, is that when a company takes its proposal, it should simply be numbered and should not be known to those processing that procurement. The companies can easily be named "a", "b" or "c" so that the people who are processing the tender do not know what that company's name actually is. That way, it will be very difficult for me to go to the Senator for Kakamega County and tell him to help my company with its registered name because the people who will be accessing the procurement documents will not know what company that is. All this can be done through technology.

Madam Temporary Speaker, e-procurement will cure some of these ills. I am aware that many people will hate that system because they know that once we create that anonymity of whatever organization we are accessing, and that they are assessed purely on merit of what they have offered, financial data and technical data. That is the only way to cure a lot of the small things that go on underneath where people meet at night to process fake tenders.

With those few remarks, I would like to invite my colleagues to Nyeri County on Monday when we will lay to rest the body of the former Governor. For those of you who want to be there, please, get there by 11.00 a.m. because that is when we will start the burial ceremony.

Madam Temporary Speaker, I beg to second.

*(Question proposed)*

**The Temporary Speaker** (Sen. Ongoro): Hon. Senators, before we move on to the next speaker, by leave of the House, I propose that we reduce the debating time to five minutes to allow all the Senators to speak. If there is no objection to that, I give the Floor to Sen. Njoroge.

**Sen. Njoroge:** Madam Temporary Speaker, I beg to support this Motion to adjourn sittings of the Senate to 28<sup>th</sup> March 2017. That is a good step that has been taken by this House purely because this is a season of campaign and elections. This House has a good number of Senators who want to prepare themselves for the elections.

I will be contesting for the gubernatorial seat of Nakuru County. This county has 11 constituencies. I need to marshal my muscle and make sure that I get the majority of the votes in Nakuru County on a KANU ticket.

It would be a step forward noting that since I left Jubilee Party I have to do a massive recruitment so that the electorate in this county can join KANU as they are proposing to.

I know this is the only time we will sell our manifesto noting that KANU has partnered with our sitting President, Uhuru Muigai Kenyatta. For that matter, I will be going that route of selling our manifesto and campaign for the sitting President to be re-elected in the August elections.

I, therefore, fully support this Motion, not forgetting that we still have other business since we have quite a number of conferences. We have one in Naivasha which is my home sub-county, whereby I welcome all the Senators.

Madam Speaker, I personally also invite you to join me in Naivasha so that you can feel that fresh air. It is one of the few places where we have a fresh lake.

I Support.

**Sen. Wamatangi:** Madam Speaker, I rise to support this Motion to adjourn the House until the dates that have been set on the Senate Calendar.

I also acknowledge that it is important that we put it on record that there is a lot of pending business in this House which must be transacted. We have to not only expedite the pending business, but remember that most of it is one that will define the role that this House has played in its life.

As we adjourn, we have two conferences to attend: First, will be the devolution conference in Naivasha which is notably the last one in the first cycle of the life of this Parliament. Being the last devolution conference, it is a marker on the calendar of this country and its history. This is where we shall be judged that when we birthed devolution after our Constitution which has excited this country and given hope once more to the people that we can be one people and have an egalitarian society of all equals.



I want to quote what Sen. (Prof.) Anyang-Nyong'o said yesterday in the writing of one of the most distinguished writers who said that, "All of God's children must have shoes to walk on this planet."

When in the devolution conference, we look at what we have achieved, we should feel ashamed that we have achieved what we should have done in these first five years. This is dissatisfying. Indeed, we need to look back and take stock again.

Madam Temporary Speaker, the second conference that we are attending will be the consultative conference of the Senate in Mombasa. In this conference, the House will judge itself what it has done in the four and half years. Given the role that the Constitution has given us; that of spearheading devolution and ensuring that the pendulum is balanced equally and to make sure that devolution succeeds. As we go to that conference, this question must have a straight forward answer from us, Members of this Senate of this Republic. Did we do what we should have done, given the mandate and the authority, notwithstanding the complaints or the circumstances? We have been given the opportunity. Those questions must ring loud in our minds.

I acknowledge as we go on recess that it is campaign time. Therefore, we are going back to our people to tell them that they gave us a job to do. First, I acknowledge and thank the people of Kiambu County for having sent me to this House to transact the business that they sent me to do. My mind is also still inquisitive. As we go to do campaigns, have we set the right mood? Are we doing the right things? Have we put the country ahead of our personal interests? Do we stand as we go out there with the dignity that a Senator should stand in front of the nation and say, "Yes I stand for the country and the ideals that will see a better tomorrow for our children?" When we go to the campaigns, is that the song that we have been singing? Is that the message that we are going to be sending? We have to say that because this House consists of politicians.

**The Temporary Speaker** (Sen. Ongoro): Your time is up, Hon. Senator!

**Sen. Wamatangi:** Madam Temporary Speaker, as we go on recess, we should be mindful of those issues.

I support.

**Sen. (Dr.) Khalwale:** Thank you, Madam Temporary Speaker. I rise to strongly oppose this Motion.

Dear colleagues, what is wrong with us? Where are you going? You came here the other day and now you want to go back. The two months you were at home; what is it that you wanted to do that you did not do? We are shortchanging the taxpayer. We must work. I know on such critical things I am usually in the minority in this House. You will defeat me, but I will vote against. Having defeated me, I will go and tell you what I will do. The first thing I would do is that I will attend every NASA rally and I am looking forward to the first NASA rally in Thika Town. I am told there is a misguided person in here who thinks that we cannot end at Thika Stadium. Where was he with those tribal thinking when Hon. Kenneth Matiba was holding hands with Hon. Masinde Muliro, and Hon. Martin Shikuku?

**The Temporary Speaker** (Sen. Ongoro): Have you withdrawn your request? Stick strictly to what is out of order because of time.

**Sen. Wamatangi:** On a point of order, Madam Temporary Speaker. Is the Senator for Kakamega in order to mislead this House that there is either an insinuation or

a plan to bar the members of NASA from coming to Thika Town or Kiambu County? Thika Town is part of Kenya. The only thing that the members of NASA would have to do is to maintain the decorum and the spirit of this country when they come to preach. Today we were with Sen. (Dr.) Khalwale in a debate and we agreed that every time when they go around this country they should adopt a better and a good theme.

**The Temporary Speaker** (Sen. Ongoro): Stick to what is out of order.

**Sen. Wamatangi:** Madam Temporary Speaker, I was trying to find if he is in order to mislead the nation that he is not welcomed. You are welcomed all the time. The only thing that we agreed with you this morning is, please, this is not entertainment or outdoing *zangalewa*. It is sending a message to the people of peace and that you will accept to lose honourably when the elections come.

**The Temporary Speaker** (Sen. Ongoro): Senator, you have made your point. Allow the Senator to respond.

**Sen. (Dr.) Khalwale:** Thank you, Madam Temporary Speaker. I hope you will save my time. On a serious note, this tribal heat that people from certain tribes are going to be in your place is the very reason why we should change the government.

I want to appeal to my colleagues in the NASA that it will be wrong for us to fight tribalism perpetuated by Jubilee by using tribalism. For example, we say that let us remove those two tribes and have our tribes take over. We want to embrace the message of inclusivity. We want to fight tribalism using inclusivity. We want to fight tribalism by loving people from the communities of the two leaders who have taken us on a dangerous precipice of tribalism.

Madam Temporary Speaker, I want to appeal to the hoi polloi in the former central and rift valley regions.

**The Temporary Speaker** (Sen. Ongoro): You have one minute to conclude.

**Sen. (Dr.) Khalwale:** I am appealing to the hoi polloi to open their eyes and join us. Their Senator has deserted them and he pretends in press conferences that he is unhappy about the deaths in Baringo, West Pokot and Elgeyo-Marakwet. He also pretends when he goes and dines with the same people who are issuing orders of shoot to kill.

**The Temporary Speaker** (Sen. Ongoro): Hon. Senator, did I hear you say holloi kolloi? What do you mean by that? You need to clarify because this is on record?

**Sen. (Dr.) Khalwale:** Madam Temporary Speaker, hoi polloi are the ordinary people; the people who walk barefoot. They are those who suffer under the weight of our Government simply because when they walk around the cities of Kenya, they see Tuskys and Naivas supermarkets owned by one of them yet they do not partake of the jobs and returns from those things. They should be more worried about the cost of bread and sugar which has more than trebled since President Uhuru took over Government. Oh Lord, take away this Jubilee Government! How can the poor people be suffering like this?

Madam Temporary Speaker, there are no drugs in hospitals---

**Sen. Wamatangi:** Point of order.

**The Temporary Speaker** (Sen. Ongoro): Sen. Wamatangi, you have 30 seconds and please stick to what is out of order.

**Sen. Wamatangi:** I will Madam Temporary Speaker. Is the Senator in order to mislead this nation that he knows of two communities that have shortchanged this

country? Could he substantiate by naming those communities if he has that evidence and how they have done that?

Secondly, he is in order to misuse the opportunity that he has been given to contribute and become irrelevant to the debate?

**Sen. (Dr.) Khalwale:** Madam Temporary Speaker, I would like you to guide my junior colleague from Kiambu that it is during debate on adjournment that a Member can speak to anything under the sun.

I was saying that we cannot miss drugs in hospitals yet the Senator for Kiambu keeps on smiling. Children of five years die in the villages because you people have refused to take drugs there. Jubilee must leave Government. This cannot be right. The death of a boy---

**The Temporary Speaker** (Sen. Ongoro): Order Senator, your time is up. I will now give the Floor to Sen. Elachi. You only have two minutes.

**Sen. Elachi:** Madam Temporary Speaker, when we go on recess, I hope we will attend the conferences that have been scheduled. There is also a lot of work that we need to clear. If this Senate wants to be in history, it is time we cleared all the Bills that are pending. This will help our Senate to stand and the next Senate will appreciate what we have done.

Madam Temporary Speaker, it is time for women to take over our country. If the men continue pushing our country to the direction they are doing, we will lose our country. Our children are suffering. It is time we took over the leadership of constituencies. We have to save our country from the rhetoric that men use thinking that is the direction our country should go. Our schools are rotten. We need to save our children.

Madam Temporary Speaker, with those remarks, I beg to support.

**The Temporary Speaker** (Sen. Ongoro): Thank you, hon. Senators. I also take this opportunity before we conclude, as we go on recess, to encourage all of us as we go to our various rallies and meetings to preach peace, reconciliation and seek for votes in a manner that do not provoke or cause anybody to feel that they do not belong to the system.

## ADJOURNMENT

**The Temporary Speaker** (Sen. Ongoro): Hon. Senators, it is now time to interrupt the business of the Senate. This House stands adjourned until 28<sup>th</sup> March, 2017 at 2.30p.m.

The House rose at 6.30 p.m.