

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

Thursday, 10<sup>th</sup> October 2013

The House met at 2.30 p.m.

*[Hon. Deputy Speaker (Dr. Laboso) in the Chair]*

### PRAYERS

### PAPER LAID

The following Paper was laid on the Table: -

The Report of the Auditor-General on the Financial Statement of the Central Bank of Kenya for the year ending 30<sup>th</sup> June 2013 and the certificate therein.

*(By hon. A.B. Duale)*

**Hon. Deputy Speaker:** That is the only Paper that was to be laid. Let us move on to the next Order.

### REQUESTS FOR STATEMENTS

#### NON-PAYMENT OF SALARIES TO EMPLOYEES OF AGRICULTURAL DEVELOPMENT CORPORATION

**Hon. (Dr.) Pukose:** Thank you, hon. Deputy Speaker. I rise pursuant to Standing Order No.44(2)(c) to request for a Statement from the Chairperson of the Departmental Committee on Agriculture, Livestock and Cooperatives regarding the non-payment of salaries to the employees of various Agricultural Development Corporation (ADC) in the country, and more specifically in my constituency.

For instance, there are employees of Olngatongo, Chepchoina, Sabwani, Suam, Japata and Nai ADC farms in Endebess Constituency, Trans Nzoia County who have not been paid their salaries for the past 18 months. Moreover, these employees are living in pathetic conditions and are given rotten maize, milk and meat instead of paying them salaries.

In the Statement by the Chair, the Chairperson should inquire into and report to this House on the following: -

- (i) why these employees have not been paid their salaries for the last 18 months;
- (ii) when they and others around the country will be paid their salaries; and
- (iii) the Government's plan to revamp the management and production of all the above ADCs.

**Hon. Deputy Speaker:** That was directed to the Chair, Departmental Committee on Agriculture, Livestock and Cooperatives. Is the Chair or a Member of that Committee in the House to tell us when the Statement will be ready?

Yes, hon. Serut.

**Hon. Serut:** Thank you, hon. Deputy Speaker. We will issue a Statement in three weeks' time. I know the issue is very urgent but we will issue a Statement in three weeks' time.

**Hon. Deputy Speaker:** Yes, hon. Pukose.

**Hon. (Dr.) Pukose:** Hon. Deputy Speaker, when you approved this Statement, I had an opportunity to discuss with the Chair of the Departmental Committee knowing very well that this issue was going to be presented today in the afternoon. He assured me that he was going to be in the House. Three weeks is too long because these employees have really suffered for all this time. As I speak today, I know they are expecting that this issue will be addressed with the urgency it deserves.

**Hon. Deputy Speaker:** It is okay. The point has been noted but we keep repeating that we are not the Executive and it will take time for us to get a response. If you had spoken to the Chairman as you have said, there will be no problem if he expedites it. The Statement can be made earlier. Is that okay?

#### DEGAZETEMENT OF LAND OCCUPIED BY CHOLIM CO-OPERATIVE SOCIETY MEMBERS

**Hon. (Dr.) Pukose:** Hon. Deputy Speaker, I had also requested a Statement on 18<sup>th</sup> July from the Departmental Committee on Lands. This has to do with private land which was allocated to Members of Cholim Co-operative Society and later on these people were evicted and the land was acquired by the Kenya Forest Service (KFS).

**Hon. Deputy Speaker:** Hon. Pukose, you have not received the response?

**Hon. (Dr.) Pukose:** Hon. Deputy Speaker, I have not received a response from the Chair of the Departmental Committee on Lands. Last time when I was here, one of the Members rose and took over the matter. The Speaker allowed him to respond within two weeks. Now, it is actually four months since he took over that matter and I have been lenient enough. Could the Chair intervene on that matter so that I can know when this issue will be addressed? These people were evicted in 2002 and they have stayed as squatters up to day. I am aware that the President might be visiting the area this weekend-

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*(Loud consultations)*

**Hon. Deputy Speaker:** Order, hon. Members! There are loud consultations. There is no standing on the chairs. Hon. Irungu, we had agreed that if you want to speak with another Member, there are enough seats at the back where you can consult. The Chair, Departmental Committee on Lands, can we get an indication of when this Statement will be issued? July up to today is too long really. Is the Member who had undertaken to take up the matter in the House or he is also not in the House?

**Hon. (Dr.) Pukose:** He is also not in the House.

**Hon. Deputy Speaker:** The Majority Leader, could you comment on this issue?

**Hon. A.B. Duale:** Hon. Deputy Speaker, I will pick up this issue with the Chair, Departmental Committee on Lands. I will ask him to give the Statement on Tuesday as per your direction.

**Hon. Deputy Speaker:** Yes, let us have that Statement. Sometimes you may not have the Statement ready, but you can even give us an update on what has taken place and where you have reached on the matter. This will be good for the Members, if you have not got the Statement ready.

The next one is by William Kamoti Mwamkale.

#### DEREGISTRATION/CLOSURE OF KAJIWE SCHOOLS

**Hon. Mwamkale:** Hon. Deputy Speaker, pursuant to Standing Order 44(2)(c), I wish to request for a Statement from the Chairperson of the Departmental Committee on Education, Research and Technology regarding the loss of public land belonging to schools across the country. There have been cases where land belonging to schools has been irregularly acquired by private developers despite the said public land having been owned by relevant local authorities. For instance, in Rabai Constituency, Kajiwe Primary School and Kajiwe Secondary School, with students 1,141 and 208 respectively, are facing the threat of deregistration and closure due to their land having been taken away in unclear circumstances.

Hon. Deputy Speaker, the Chairperson of the Committee should inquire into and report on the following matters: -

(i) why the Principal Secretary is in the process of deregistering the two schools, contrary to a court stay order, which issued clear instructions for the maintenance of the *status quo* until the ongoing appeal is determined;

(ii) why the Principal Secretary is involved in the role of deregistering schools despite this matter being under the purview of the county education boards; and,

(iii) if there are any measures in place to ensure that public schools around the country do not lose their land through fraudulent transactions.

**Hon. Deputy Speaker:** Thank you, hon. Mwamkale. Hon. Kaluma, do you want to add something to the same request? It has got to be an addition to the same request. You are not going to ask a new question.

**Hon. Kaluma:** Hon. Deputy Speaker, I have a similar problem in my constituency, in respect of which I would like to request the Chairperson of the Committee to treat it in the same way. That is Rodi Primary School in Homa Bay Town Constituency. It is a school at the centre of town with a student population of over 2,000. A half of the land of that school, on which the classrooms stand, has been grabbed by six individuals. Since it is a matter we have raised, we could take it up with the Committee when they bring the Statement.

**Hon. Deputy Speaker:** Hon. Members, we have a unique situation where the entire membership of the Committee on Education, Research and Technology is not in the House. Leader of Majority Party, you will have to make an undertaking. In future, we need to have a rule about an entire membership of Committees leaving at the same time.

**Hon. A.B. Duale:** Hon. Deputy Speaker, I remember that the same matter came up in the House Business Committee. I am sure that your office will give a direction on

it. As far as the Statement request is concerned, I will inform the Chairperson of the Committee to bring a response within two weeks. I will write to her.

On the issue of an entire membership of a Committee going out on a trip, the Speaker and the Deputy Speaker will give direction in future.

**Hon. Deputy Speaker:** Okay, hon. Lekuton.

**Hon. Mwamkale:** Hon. Deputy Speaker, I want to respond on the timing.

**Hon. Deputy Speaker:** Hon. Mwamkale, we have been talking about the matter of trying to make Members of Parliament, just like you, to give instant Statements. They are not in the Executive. So, let us allow them to go through the process. They have to get in touch with the Executive and then bring back the responses to the House.

**Hon. Mwamkale:** Hon. Deputy Speaker, mine is a bit urgent. There are some letters to the effect that those schools are in the process of being deregistered. I believe that, in two weeks' time, deregistration will have taken place and, therefore, pre-empted whatever reply we are going to get from the Chairperson. So, if they can treat it with urgency and bring a reply---

**Hon. Deputy Speaker:** Hon. Mwamkale, your point has been made. Leader of Majority Party, could you impress upon the Committee to ensure that if anything is going to be done on the said land before they bring the Report to this House, it is stopped until the matter is sorted out?

**Hon. Mwamkale:** Hon. Deputy Speaker, if there is any way they can stop---

**Hon. Deputy Speaker:** Hon. Mwamkale, the matter is settled.

Hon. Vincent Musau, are you going to respond to a Statement request, on behalf of the Chairperson of your Committee?

**Hon. Musau:** Yes, hon. Deputy Speaker.

**Hon. Deputy Speaker:** No, let us finish with the requests, first.

Hon. David Gikaria, is yours a request?

#### RESETTLEMENT OF INTERNALLY DISPLACED PERSONS IN NAKURU

**Hon. Gikaria:** Hon. Deputy Speaker, pursuant to Standing Order 44(2) (c), I wish to request for a Statement from the Chairperson of the Departmental Committee on Lands regarding the resettlement of Internally Displaced Persons (IDP) from an IDP camp in Nakuru. Two hundred and sixty-seven families were resettled at Ndonga Farm in Subukia by the Government in September, 2010. However, the ownership of that land is now in dispute. Separately, another lot of 556 families that had been earmarked for settlement at Kisima Farm in Njoro by the Government are yet to move to the land because of a dispute involving the land. Forty-seven families are yet to be resettled and are still living at the Pipeline IDP Camp.

Hon. Deputy Speaker, the Chairperson should inquire into and report on the following: -

(a) why the 267 families and the 556 families have not been resettled at Ndonga and Kisima farms, respectively, as planned, yet the Government had bought the two pieces of land; and,

(b) when the Government will disburse money for the 47 families, who are yet to be resettled.

**Hon. Deputy Speaker:** To which Committee was the request directed?

**Hon. Gikaria:** It has been directed to the Committee on Lands, hon. Deputy Speaker.

**Hon. Deputy Speaker:** Hon. Kanini Kega, do you want to make an undertaking, on behalf of the Committee?

**Hon. Kanini Kega:** Yes, hon. Deputy Speaker.

**Hon. Deputy Speaker:** Okay, proceed.

**Hon. Kanini Kega:** Hon. Deputy Speaker, we will bring a reply in three weeks' time because the Chairman and the Vice-Chairman are not around.

**Hon. Deputy Speaker:** Hon. Gikaria, you will have to be satisfied with that undertaking.

Hon. Joseph Lekuton, can you make your request?

#### MITIGATION OF SUSPECTED PETROLEUM DRILLING-RELATED CANCER

**Hon. Lekuton:** Hon. Deputy Speaker, pursuant to Standing Order 44(2)(c), I wish to request for a Statement from the Chairperson of the Departmental Committee on Health regarding the rampant cases of cancer related to petroleum drilling in the northern parts of Kenya, especially in Marsabit and Wajir counties. The high rate of cancer in the region, especially in Kargi Location in Laisamis Constituency/District, and the failure by the Government to put in place mitigation measures has visited untold sufferings on the people of northern Kenya. Statistics from various dispensaries in that area, and specifically in Kargi Location, show more than 40 people who have died of cancer in the last seven years. Many more people are currently afflicted by cancer. Previous efforts to have some address to this matter by the Government have not given us much fruits.

Hon. Deputy Speaker, the Chairman of the Committee should inquire into and report on the following: -

The number of people who have died of cancer related to petroleum drilling in northern Kenya since 1989 since the first case was reported. Secondly, a report on the action the Government has taken to pursue the matter and if any research and investigations were ever done. The report should be tabled in this House. Fourthly, I seek to know what the Government is doing to mitigate the situation given the fact that drilling for oil is currently going on in various parts of northern Kenya specifically in Laisamis, Turkana, Maikona and in the next two months, Wajir.

**Hon. Deputy Speaker:** Hon. (Dr.) Pukose, you are the vice-chairman of the Committee.

**Hon. (Dr.) Pukose:** Hon. Deputy Speaker, we are occupied for the next two weeks. If the hon. Member could allow us, in three weeks' time we will be able to give an answer.

**Hon. Lekuton:** Hon. Deputy Speaker, I accept.

Hon. Deputy Speaker: Hon. Nakuleu, do you have a Statement request?

#### INSECURITY AFFECTING FISHERMEN IN TURKANA

**Hon. Nakuleu:** Hon. Deputy Speaker, pursuant to Standing Order No.44(2) (c), I wish to request for a Statement from the Chairperson of the Departmental Committee on

Administration and National Security regarding rising insecurity affecting fishermen in Lake Turkana.

Hon. Deputy Speaker, militia and police from Southern Omo District killed 25 fishermen in a span of two weeks in August. This has prevented fishermen from safely venturing into the lake. In the Statement, the Chairman should inquire and report on whether the Government is aware of the endless attacks on Turkana fishermen by militia and State marines. If yes, what action is being taken to bring an end to these attacks and bring the attackers to justice? What is the Government doing to secure Lake Turkana's territorial waters and the islands currently occupied by Ethiopians? He should also report on the security measures the Government has put in place to secure the people of Turkana from the said endless attacks.

**Hon. Deputy Speaker:** Hon. Kamama.

**Hon. Abongotum:** Hon. Deputy Speaker, the issues the hon. Member is raising are quite pertinent because that area he comes from has actually been a playing field for the Merilles from Ethiopia actually killing the people of Turkana North. We need to get an answer to this. I need two weeks to respond to this request.

#### MULTIPLE SALE OF LAND PARCELS IN THE COUNTRY

**Hon. (Ms.) Nyamunga:** Hon. Deputy Speaker, pursuant to Standing Order No.44(2)(c), I wish to request a Statement from the Chairperson of the Committee on Lands regarding rampant multiple sale of land parcels in the country.

It has become difficult to buy land in the country particularly in Kisumu County for fear of multiple land sales to different people. In the Statement, the Chairperson should state if the allegations that the Ministry of Lands officials are involved in these shady land deals are true and indicate actions taken against officers found culpable to date; state the measures that can be put in place to instill confidence amongst investors dealing in land in Kisumu County; and lastly state measures that can be put in place to safeguard women, in particular widows who inherit parcels of land from their late husbands who lack knowledge of procedure on land matters.

**Hon. Kanini Kega:** Hon. Deputy Speaker, four weeks.

**Hon. Deputy Speaker:** There are quite a number of requests that have been directed to the Committee on Lands. So, you are giving them a month.

#### DEGRADING STATE OF NGONG AND NAIROBI RIVERS

**Hon. Kilonzo:** Hon. Deputy Speaker, I have two requests for Statements. Pursuant to Standing Order No.44(2)(c), I hereby request a Statement from the Chairperson of the Departmental Committee on Environment and Natural Resources concerning the degrading state of Ngong and Nairobi rivers. These rivers are polluted with garbage, industrial liquid, toxic waste, agro-chemicals and petro-chemicals amongst many others. This situation has occasioned spread of waterborne diseases, loss of sustainable livelihoods, reduced unavailability and access to safe water which affects the livelihoods of Kenyans and further affects the sustainability and use of the environment.

The Chairperson should inquire into and report on the plans in place to avert the risks posed to the people living along the rivers and also the environment.

**Hon. Deputy Speaker:** Is the Chairperson or the Vice-Chairperson present?

**Hon. Njomo:** Hon. Deputy Speaker, our Committee is currently working on the Bill on wildlife. Soon it will start working on the Mining Bill. It is quite a busy period for us. I request the hon. Member to give us a period of three to four weeks for us to complete the exercise.

**Hon. Kilonzo:** Hon. Deputy Speaker, I will make my second request.

#### OCCUPATION OF LAND NEAR RAILWAY LINES

**Hon. Kilonzo:** Hon. Deputy Speaker, pursuant to Standing Order No.44(2)(c), I hereby request for a Statement from the Chairperson of the Departmental Committee on Transport, Public Works and Housing concerning the occupation of land on/or near the railway lines.

Hon. Deputy Speaker, Kenyans in densely populated areas like Embakasi, Kibera or any other part of the country conduct their businesses on or next to the railway lines and only move when trains are passing by.

Hon. Deputy Speaker, the Chairperson should inquire into and report on the measures being taken by the Government to secure and guarantee safe operation of railway services and the plans they have to provide areas for residents near railway lines to conduct their business securely.

*(Loud consultations)*

**Hon. Deputy Speaker:** Order, hon. Members. The levels of consultations are high. That was directed to the Departmental Committee on Transport, Public Works and Housing. Hon. Mahamud.

**Hon. (Eng.) Mahamud:** Hon. Deputy Speaker, it is true that the matters raised by the Member are very serious. Indeed, the Ministry of Transport and Infrastructure is already doing some work on relocating people from the railway lines around Nairobi area but we will be able to give a comprehensive report in the next two weeks.

**Hon. Deputy Speaker:** In the next two weeks it shall be. Now, Paul Arati do you have a signed Statement? I do not remember signing your Statement or it is not a Statement?

**Hon. Arati:** It is not, hon. Deputy Speaker.

**Hon. Deputy Speaker:** Okay, we are on requests for Statements. What about Timothy Bosire? Do you have a signed Statement?

**Hon. Bosire:** No, hon. Deputy Speaker.

**Hon. Deputy Speaker:** Members, you are logged in but do not make a request until you reach the Order that you want to contribute on. Junet, can you please stop distracting hon. Bosire? So, I want to give the Chair of the Departmental Committee on Energy, Communication and Information to respond or any other Chair that has a response.

#### STATEMENTS

**Hon. Kamau:** Thank you, hon. Deputy Speaker. Indeed, it is true that I had misplaced my card. Fortunately, I found it was with the honourable Leader of Majority Party, but I have taken it back now.

Hon. Deputy Speaker, the Member for Kiambu, hon. Jude Njomo had requested for a Statement from the Departmental Committee on Energy, Communication and Information and the Statement is ready. In the spirit of collective responsibility, we have agreed as a Committee that one, the hon. Member for Mwala will actually respond to that Statement. So, I will request that the Member proceeds.

**Hon. Deputy Speaker:** Okay. Hon. Vincent Musau, you have been given the honour of responding on behalf of your Committee.

**Hon. Musau:** Thank you Chair and hon. Deputy Speaker. I first want to thank my Chair and the Committee. I think it demonstrates leadership, that in a committee we should work together as a team. So, I want to say thank you for your generosity. So, I want to respond to the request by the hon. Member of Kiambu Constituency.

Hon. Deputy Speaker, hon. Jude Njomo, MP for Kiambu Constituency, requested for a Statement from the Departmental Committee on Energy, Communication and Information regarding the cost of power generation by Independent Power Producers commonly known as IPPs.

Hon. Deputy Speaker, the Committee summoned the Cabinet Secretary and the Principal Secretary in charge of Energy and Petroleum on 8<sup>th</sup> October, 2013 to deliberate on the Statement request by the Member for Kiambu Constituency.

Hon. Deputy Speaker, the Statement by the Member requested the Committee to report on the following:

(a) why KenGen has continued to buy power from these producers and yet it is very expensive;

(b) the reason for KenGen to continue purchasing power from one supplier instead of tendering again for new players in the market;

(c) the comparison between prices of the IPPs and those of other sources of power; and,

(d) measures, if any, that KenGen is taking to reduce the cost of power to Kenyans.

On behalf of the Committee, I wish to report as follows:

As to why KenGen has continued to buy power from these IPPs and yet they are very expensive, KenGen does not purchase power from IPPs. The electric power sub-sector in Kenya is the single buyer market with the Kenya Power Company (KPC) buying all the power generated by KenGen, IPPs, emergency power plants as well as imports. All the power purchases are based on long term contracts. The Power Purchase Agreement term commonly known as PPA currently averages 20 years except for emergency power plants which are short term.

Hon. Deputy Speaker, the current installed capacity is 1,718 megawatts of which KenGen accounts for 1,201 megawatts. An amount of 1,470 megawatts is supplied by IPPs. In addition, the Government of Kenya (GoK), through the Ministry of Energy and Petroleum owns 17.1 megawatts of isolated grid power.

Hon. Deputy Speaker, Kenya's power requirements are fairly high while suppliers lack demand partly due to high dependence on hydro power which is prone to vagaries of weather and partly due to the delays in bringing new capacity on stream. Furthermore, the



public sector is constrained for resources and cannot on its own provide all the capacity needed to develop Kenya. Consequently, and in order to keep pace with the growing demand, it has been necessary to contract IPPs to fill the gap which KenGen's balance cannot be able to sustain.

Hon. Deputy Speaker, as to the reason for KenGen to continue purchasing power from one supplier instead of tendering again for new players in the market, the Committee established that KenGen does not purchase power from IPPs, it is a competitor to IPPs. Under Kenya's single buyer market, KPC purchases power from power producers namely, KenGen which is the public sector producer and from six IPPs namely, IberAfrica with a capacity of 108.5 megawatts, Tsavo with 74 megawatts, Rabai with 90 megawatts, Imenti with 0.3 megawatts, Mumias with 26 megawatts and Thika Power with 87 megawatts, which is undergoing commissioning tests in readiness for commercial operation.

Hon. Deputy Speaker, KPC is the single off-taker of all grid and off- grid power generated in the country. KenGen is the largest generator accounting for 70 per cent of the total capacity, with the rest coming from IPPs. It is expected that more private power generators will be procured through the private public partnerships which are PPPs as the country implements the first tracked power generation programme of adding 5,000 plus megawatts to the national grid in the next 40 months.

As to the comparison between the prices of the IPPs and those of other sources, the Committee established that electricity prices vary depending on the technology used. The Committee is in possession of a table showing tariff comparisons between KenGen and IPPs and Members are free to obtain the response from the Committee secretariat to appraise themselves with the matter.

Hon. Deputy Speaker, finally, as to the measures, if any, that KenGen is taking to reduce the cost of power to Kenyans, I wish to confirm to the House that this is a key area of concern to the Committee. However, the Committee established that the Government is taking the following measures to reduce the cost of power:

(a) reducing the generation cost by developing 5,000 plus megawatts in the next 40 months at competitive costs largely driven by cheaper fuels such as Liquefied Natural Gas (LNG) and also coal;

(b) absorbing all transmission investment costs and geothermal steam development costs to shield end user tariffs from these components;

(c) weatherproofing the generation needs by diversification, away from hydro power towards less weather prone but environment friendly sources such as geothermal and wind;

(d) undertaking a comprehensive cost of connection study that will effectively define the actual current cost of connecting customers to the grid;

(e) developing least cost options in generation while reducing the transmission and distribution losses;

(f) benchmarking local utilities in respect of international best practice in the efficiency of the power supply; and

(g) undertaking a series of Demand Side Management (DSM) measures including efficient light bulbs roll out throughout the country and pickle management through a proposed time of use tariff among others.

Thank you, hon. Deputy Speaker.

**Hon. Deputy Speaker:** Hon. Njomo.

**Hon. Njomo:** Thank you, hon. Deputy Speaker. I would like to thank the Committee on Energy, Communication and Information for their detailed response to my question and for displaying teamwork in this House while replying.

The law of demand and supply dictates that if there is enough or excess of supply, the prices will go down. In the report, it was clear that the supply lacks the demand, as far as electricity in Kenya is concerned. The Government, through the various organs involved in the energy sector, should encourage more power producers to invest in the country, so that the price of electricity can go down. I have noted that there are some steps being taken by the Government as it has been articulated by the Committee, to reduce the cost of power.

I do not think those steps are enough. We have seen in many countries where governments have given incentives to individuals and consumers to encourage them to reduce consumption and be innovative in the area of energy. When it comes to water heating for domestic use, various governments have given incentives for domestic installation of solar power to encourage the citizens to embrace alternative sources of energy.

We live in the tropics and have the sun all the year round, but we do not make use of it as a source of energy. This is one area that we should focus on, to bring down the cost of electricity. I would urge the Government to invest more in research on production of solar panels and solar heating elements, so that they are readily available at a low cost. The reply to my questions by the Committee of Energy, Communication and Information was satisfactory.

Thank you, hon. Deputy Speaker.

**Hon. Deputy Speaker:** Hon. Musau, do you have anything else to say on the same? His was more of a comment, he did not ask for any further clarifications. We can leave it at that and allow the Leader of Majority Party to respond to one or two Statements before we move to the next Order.

#### INVESTIGATIONS INTO THE DEATH OF HAJI LUKINDO

**Hon. A.B. Duale:** Thank you, hon. Deputy Speaker. Hon. (Eng.) Nicholas Gumbo, Member of Parliament for Rarieda, sought a Statement on the death of a Kenyan citizen, the late Haji Lukindo in a road accident involving an American diplomat. This is a reply from the Ministry of Foreign Affairs of the Government of Kenya.

On 11<sup>th</sup> July, 2013, along Ngecha Road, in Gigiri Nairobi, a fatal accident occurred involving a passenger service vehicle (PSV) *matatu*, Registration No. KAU O62W and a Ford Everest car Registration No.29 DX KB10 registered under and driven by Mr. James Joshua Walde, a technical and administrative staff at the American Embassy. As a result of the accident, one Haji Hassan Lukindo a passenger seated in the front seat of the PSV *matatu* died on the spot.

*(Loud consultations)*

**Hon. Deputy Speaker:** Hon. Members a Statement is being responded to. Please have the courtesy of listening so that the Member who asked the question can be satisfied

that he has heard what is being said. Reduce the levels of consultations. You know we have ample rooms elsewhere if you must speak louder than is acceptable in the House.

**Hon. A.B. Duale:** Eight other passengers in that *matatu* were also injured. The Ministry of Foreign Affairs wrote to the Inspector General of Police for a comprehensive report on the accident. The report on the investigation from the Director of Criminal Investigation to the Ministry of Foreign Affairs states that Mr. Joshua Walde failed to keep on his side of the road and collided head on with the PSV *matatu*. The police did not arrest Mr. Walde, because of his assumed diplomatic status. He was however, a member of the technical and administrative staff of the embassy. The Ministry had issued him with an appropriate identity card No.908/12, designated for staff at that level. The identity card entitled him to immunities except administrative and civil jurisdictions of the receiving state in line with Article 37(2) of the Vienna Convention on diplomatic relations.

Notwithstanding Article 41(1) of the Convention, it is required that all persons enjoying such privileges and immunities respect laws and regulations of the host country. Unfortunately, Mr. Walde left the country soon after the accident, before necessary action could be taken to seek a waiver of immunity so as to be subjected to the legal process in the country.

Indeed, the Immigration Department's records show that Mr. Walde departed a day after the accident on 12<sup>th</sup> July, 2013, at 2035hrs aboard KLM, Flight No.566. Upon learning that Mr. Walde had departed from the country, the Ministry of Foreign Affairs wrote to the United States of America (USA) Embassy requesting them to confirm that he was their employee and had left the country.

The embassy wrote back expressing its deepest sympathies to the family of Mr. Lukindo, confirming that Mr. Walde was an employee of the embassy and an accredited member of its Technical and Administrative Department at the time of the accident. The embassy further confirmed that Mr. Walde departed Kenya shortly after the accident.

With this confirmation from the embassy, and with the report from the Criminal Investigation Department, the Ministry of Foreign Affairs further wrote to the embassy bringing to their attention the details of the investigations and requesting the Government of the United States of America to extradite Mr. Walde to Kenya to face charges for causing death by dangerous driving, contrary to Section 46 of the Traffic Act, Cap. 403 of the Laws of Kenya. Meanwhile, the Ministry has also written to the Director of Public Prosecutions (DPP) to take appropriate action in accordance with the law and make sure Mr. Walde is brought before the justice system.

Finally, while waiting for a response from the Embassy of the United States of America (USA) and their Government over the request for the extradition of Mr. Walde, the Ministry of Foreign Affairs shall continue with the ongoing engagement, through diplomatic channels with the Government of USA, with a view of ensuring that justice is done to the family of Mr. Hassan Lukindo and to make sure that such an incident never happens again in our country.

Thank you.

**Hon. (Eng.) Gumbo:** Thank you, hon. Deputy Speaker. First of all, allow me to start by thanking the Leader of Majority Party. This question was asked more than three weeks ago. I asked it because I am a believer in our country. I believe in the dignity of

the people of Kenya and every Kenyan, irrespective of their status in society has to be respected and especially so by foreigners.

Hon. Deputy Speaker, diplomats collide with the law from time to time and it is not the first time. Most times whenever diplomats collide with the law, as the able Leader of Majority Party has said, they tend to hide under Article 37(2) of Vienna Convention of 1949. The Article does not say that you can ignore the rule of law and you can behave in uncivilized manner and still claim diplomatic immunity.

Hon. Deputy Speaker, I thank the Kenya Government for demanding that this diplomat, who has become a criminal because he was driving on the wrong side of the road and he killed an innocent and poor Kenyan whose only fault was walking home on Ngecha Road, be brought to justice. I call upon the Leader of Majority Party to take it up with the Ministry of Foreign Affairs to make sure that Mr. Walde is brought back to Kenya to face justice in this country for killing a Kenyan.

Most importantly, as this is being done, what action is our Government taking? This is because the sad part about this is that, Mr. Lukindo left behind a wife with three children and she is not employed. In fact, she was then six months pregnant. What action is the Kenya Government taking to make sure that the American Government compensates and looks after the widow of Hassan Lukindo as these matters are being processed through the rule of law?

**Hon. Deputy Speaker:** Is there any other clarification on the same before I call upon the Leader of Majority Party to respond? Hon. Bowen, is it on the same?

**Hon. Bowen:** Yes. Thank you, hon. Deputy Speaker. I just want to support my colleague, hon. Gumbo. As we speak, the wife of the late Lukindo is a widow and the children of the late are orphans. Here is a country expressing sympathy for the family. When this diplomat killed the late Lukindo, the embassy facilitated him to run out of the country the following day. This is very serious and I believe it is the same impunity that this American Government is perpetrating in so many cases, including the ICC cases, which they support.

Hon. Deputy Speaker, the Leader of Majority Party must take this issue very seriously. The late Lukindo left a wife and school-going children.

**Hon. Wandayi:** On a point of order, hon. Deputy Speaker. Is the hon. Member in order to impute improper motive on the name of the friendly Government of USA, that it has been practising impunity? Is he in order to refer to the American Government as practising impunity? Of course, he knows that the American Government is friendly to the Kenyan Government?

**Hon. Deputy Speaker:** Hon. David Bowen, can you clarify whether you were talking about the American Government or you were talking about the person under question?

**Hon. Wandayi:** Hon. Deputy Speaker, it is total impunity because this diplomat who was working for the American Government---

**Hon. Deputy Speaker:** Are you talking about the diplomat or are you talking about the American Government?

**Hon. Wandayi:** I am talking about the diplomat. What is the difference?

**Hon. Deputy Speaker:** Please confine yourself to the person who is under investigation. Do not talk about the whole country.

**Hon. Wandayi:** But it is still the impunity we are talking about. So, the Government should move very first to bring this culprit back to be tried here in Kenya.

**Hon. (Eng.) Gumbo:** Hon. Deputy Speaker, I think a spade has to be called a spade. James Walde left Kenya on facilitation by the American Embassy. Why are we not calling these things by their proper names? What other name do you give to such an action? They knew that he had killed a Kenyan and they facilitated him leave the country. We have to treat every Kenyan with dignity and there is no question of bringing politics on matters like this. He could not have left the country a day later if the American Embassy had not facilitated his leaving.

**Hon. (Ms.) Emanikor:** Thank you, hon. Deputy Speaker. Hon. (Eng.) Gumbo has said what I wanted to say. The American Embassy is representing the Government of the USA in this country. When we are talking of that diplomat who was facilitated by the Embassy, we are actually talking about the American Government.

**Hon. Ng'ongo:** Thank you, hon. Deputy Speaker. What happened to the Kenyan is bad, but no amount of annoyance or anger would make us violate the rules of this House. If you have to discuss the conduct or behaviour of the American Government, why do you not move a Motion on the Floor of this House and we will be here to debate the conduct of that Government? It is wrong to use anger to violate the rules of this House. It is completely unacceptable. We need to apply and respect our rules, otherwise, this House is going to sink to the bottom. It is completely wrong. We cannot discuss the conduct of American Government without a substantive Motion or any other Government for that matter, unless we send away the ambassador and say that we have no more diplomatic relations.

**Hon. Deputy Speaker:** Order! Order, hon. Members! Let us look at Standing Order 87(1) on contents of speech.

“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 House shall be referred to adversely, except upon a specific substantive Motion of which at least three days’ notice has been given.” So, let us confine ourselves to the officer that we are talking about; the representative and let us not take any matter beyond there.

**Hon. (Eng.) Gumbo:** On a point of order, hon. Deputy Speaker.

**Hon. Deputy Speaker:** Hon. Gumbo, we are following the rules of our own House.

**Hon. (Eng.) Gumbo:** I am also trying to follow the rules. We are not discussing the conduct of the American Government. Nobody has done so.

**Hon. Deputy Speaker:** But that is what they are saying and they are calling it impunity.

**Hon. (Eng.) Gumbo:** What we are talking about is the process of facilitating this man to leave the country a day after he had killed a Kenyan. How can we say that, that was good?

**Hon. Deputy Speaker:** Order, hon. Member! I think we have agreed that what we are talking about is the conduct of a representative, not the conduct of the American Government. You are saying the process of facilitating the representative to leave the

country. But we are not substantively discussing the American Government here. We need a substantive Motion to be able to do that. Hon. Members, I do not want us to belabor the point. I think enough issues have been raised on that matter. I will give this chance to the hon. Member who has not spoken, hon. Gichigi.

**Hon. Gichigi:** Hon. Deputy Speaker, within the confines of the Kenyan and international law, what steps is the Government taking to restrain people who hold diplomatic status from running away after committing criminal offences in this country?

**Hon. Deputy Speaker:** Let us finish with the clarifications to the Leader of Majority Party. We do not want to go on and on. Hon. Junet.

**Hon. Nuh:** Hon. Deputy Speaker, I wanted to seek further clarification from the Leader of Majority Party in terms of how this diplomat left the country. Did he go at night or during the day? Did he go through the Jomo Kenyatta International Airport or through the Isebania border, where I come from? Where was the Kenyan Government when he was leaving? The matter was reported to the police.

**Hon. (Ms.) Shebesh:** Hon. Deputy Speaker, I want the Leader of Majority to clarify whether he knows that it is very difficult when a diplomat is involved in what has become a norm in this country, which is child pornography to be arrested. We have cases especially here in Nairobi where people in the diplomatic corp cannot be arrested because of diplomatic immunity yet they have been directly connected with child pornography. How are we supposed to protect our Kenyans if diplomats have more rights than the ordinary citizens?

**Hon. Wekesa:** Hon. Deputy Speaker, my main concern is that in his Statement, the Leader of Majority Party did not tell us whether the departure of this diplomat had been scheduled or was facilitated after the exit?

**Hon. Deputy Speaker:** The Leader of Majority Party, you will answer all those questions together.

**Hon. (Ms.) Kiptui:** Hon. Deputy Speaker, I would like to join hands with my colleagues in stating that the Kenya Government has failed in its duties to ensure that the diplomat, having committed a crime, could not leave the country. Whereas we are told that they are still pursuing the issue of bringing back that criminal to face the judicial system, what happens to that family? Is the Government sympathetic enough to ensure that if there are children going to school, they are given bursaries or enabled to study freely because of the problem they are facing? This is a very unique problem and maybe the leadership of the area from where the family comes should also look into the matter.

**Hon. Konchella:** Hon. Deputy Speaker, I also wish to request the Leader of Majority Party to consider asking the Executive to come up with rules on how to deal with criminal activities like this one. If our people are taken to The Hague because of assumed criminal activities in the country, why would somebody from a foreign country be allowed to run away and be free in his country? We want the American Government to join Kenya in ensuring that we can try our own people here and they can also try their own people there.

**Hon. J.K. Bett:** Hon. Deputy Speaker, I just wanted to join hands with my fellow colleague, hon. Kangogo in saying that diplomats and by extension the American Government, exercise a lot of impunity. After the Westgate incident, they issued travel advisories. Suppose it was a Kenyan diplomat in the USA who had hit somebody in the streets of America, what would have happened? We need to be more stringent and

keener on these diplomats. We should ask the American Embassy to compensate and give upkeep to the children of the person who was knocked down.

**Hon. Deputy Speaker:** We are not going to have so many clarifications. We have to move to the next one. This is the last clarification.

**Hon. (Ms.) Ghati:** Hon. Deputy Speaker, I have a lot of respect for the United States of America Government. I have lived, studied and worked there, but I look at the life that is lost and the widow who has been left behind. We have just been told that she was expecting. She has a family to feed. This is a poor Kenyan who has no one to run to. That is why I want the Leader of Majority to explain further. I am not satisfied that the Government is really serious about protecting the lives of its citizens in this country. If I was in New York, where I lived, and I did something like that, I would be quickly deported to this country. We have no reason to pardon such people and there are many other diplomats who come to this country and get away with so many things, just because they have diplomatic immunity. This is not sufficient information from the Leader of Majority Party. We need further explanation on this issue.

**Hon. Nakara:** Hon. Deputy Speaker, it has become routine in this nation that whenever a foreigner kills or beats up a citizen, no action is taken. I remember the case of Nagin who killed a person and left a family without a bread winner. He went out and came back quickly. It appears like the citizens of this country are not considered as people. We want the Leader of Majority Party to demonstrate to us the measures the Government is taking whenever such a thing happens. Our citizens should be considered first. As my sister, hon. Ghati, has said, if it was in the USA, anybody who kills an American citizen, the Government jails that person in the USA. It will not bring that person to Kenya.

So, the Government should be serious about that issue, otherwise we will be like dogs in this nation.

**Hon. Deputy Speaker:** Hon. Members, the issues being brought out are really repetitive. Let us allow the Leader of Majority Party to respond to those issues and we will ask other questions.

**Hon. A.B. Duale:** Hon. Deputy Speaker, I agree with hon. Gumbo. Article 37(2) of the Vienna Convention must be read together with Article 41(1). Yes, you will be given immunity but Article 41 tells you that you must respect the laws and the regulations of the host country. So, you can be a diplomat and I am sure many diplomats are watching this and will hear it. Our diplomats are everywhere in the world, but you must live within both Articles of the Vienna Convention.

With regard to the issue of the wife and children, in my opinion, the Government must come in and we will communicate that to them. In response to the issue raised by hon. Bowen, it is true the American Government is a friendly Government just like the Chinese, the UK or any other Government. The Chinese and the Americans are all friendly governments. Hon. Gichigi asked what steps the Government is taking. In my Statement, I talked about the extradition orders, the role of the DPP, the role of the American Embassy and how we have written to their Government. Justice must be done to that poor Kenyan from the slum, Alhaji Lukindo. His death and blood is not in vain. I am sure the Ministry of Foreign Affairs, the Ministry of Interior and Coordination of National Government and the Office of the DPP must bring justice to that family and to all Kenyans.

I do not know how hon. Ghati measures sufficiency. The information I gave is very sufficient. If there are specifics that are not sufficient, then she will ask the specific areas, but as far as I am concerned, the Statement I gave from the Government is sufficient. I am happy today she has said that she lived in the USA. I am sure our diplomats everywhere cannot kill and sneak out more so, in America and the western world. So, it is very unfortunate and it should not happen. I am sure our immigration and everybody failed, but there was the element of communication. This person left the same day.

I want to agree with hon. Gumbo that when this diplomat caused the accident, he must have reported to his bosses as a matter of administration and he must have returned the vehicle. He must have been given off duty to sneak out of the country. I want to say categorically here that yes, the American Government is a friendly Government and we have good bilateral relations just like we have with the Chinese, but the American Government is liable and there is an omission on their part.

Hon. Deputy Speaker, hon. Shebesh has talked about child pornography. It is a serious crime just like murder. I want to tell those diplomats who have come here and want to use the Vienna Convention provisions to get privileges and immunities and then engage in pornography, that this is the wrong country and they better look for another country.

Hon. David Were has said it all. This man left the country the second day. I am sure that if there was co-ordination between our security agencies; that is the police and the Immigration Department the man should have been held at the airport. However, the man who died was a poor man from the slum. So, they thought they will get away with his death. I want to thank Hon. Gumbo for bringing to the attention of the House that Haji Lukindo was not from Rarienda. He stood to request for the Statement on behalf of the many Kenyans---

**Hon. Deputy Speaker:** The Majority leader, I believe that you are referring to “David Wafula” and not “David Were”.

**Hon. A.B. Duale:** Yes, it is hon. David Wafula of Saboti Constituency. On hon. Grace Kiptui’s questions, I do not think the Government has failed. I am sure that Mr. Walde can run but he has no choice. The Government must engage the Interpol and do all the paper work to bring him back to face justice.

On hon. Bett’s concerns, in future we must put in place very stringent measures and we must not allow diplomats to behave differently in this country from the way other diplomats behave in other countries. Hon. Konchella’s concerns were more of training than a comment. The same applies to hon. Nakara’s concerns. I do not know what hon. Junet was doing when I was reading my Statement. I have given the time he left the country and through which exit point. He took Flight No.KLM566. The KLM usually leaves at 2350 hours.

*(Hon. Nuh consulted with hon. Ochieng)*

Mr. Walde never left in the morning but he left in the evening by a flight through Entebbe. Even now, the hon. Member is not listening to me. I think hon. David Ochieng is giving him some local politics back at home.



Hon. Deputy Speaker, I am sure it is a very sad incident. It has happened and this House stands with Haji Lukindo's family. I am sure that there are many other Kenyans who suffer because of diplomats who use the Vienna Convention to avoid arrest. The leadership of this House must stand up and protect our people.

**Hon. Deputy Speaker:** Thank you. We have to bring that to an end. The Majority Leader, you had a second Statement you wanted to make. Can you issue it first before I call upon hon. Lentoimaga?

#### NON-GAZETTEMET OF *UWEZO* FUND

**Hon. A.B. Duale:** Hon. Deputy Speaker, the Member for Mvita and the son of a great man, Shariff Nassir, hon. Abdullswamad Sheriff Nassir sought a Statement on the *Uwezo* Fund. The first question was why the relevant Ministries have not gazetted *Uwezo* Fund to date and yet the Cabinet Secretary informed the public that the Fund had been gazetted on 6<sup>th</sup> September, 2013.

"Prior to the official *Uwezo* Fund launch, the Ministry of Devolution and Planning had forwarded the key elements of the framework to the Attorney-General to be gazetted with the aim of letting the general public know what was being launched."

I am reading what the Cabinet Secretary wrote and these are not my words. She further says: -

"I later learnt through my officers that the gazette notice had not been published and it necessitated for further consultations. I regret any misunderstanding that this may have caused."

Hon. Deputy Speaker, this is not how the Government should communicate to the House. The Cabinet Secretary is blaming the Attorney-General who is not in the House to give us the Statement. So, hon. Members should take note of that, that a Cabinet Secretary is saying "I regret".

The Second question was: When will the Fund be officially gazetted? The response is: -

"The Ministry of Devolution and Planning has developed the content of the draft regulations for *Uwezo* Fund and had these draft regulations forwarded to the Attorney-General's Office for his advice on the next steps that we need to take."

Again, that in my opinion is not a very satisfactory answer. The Fund has been launched and the Ministry is waiting for the Attorney-General to create regulations and send them to Parliament.

The third question was what the Ministry is doing to resolve the delay in the issuance of registration certificates by the Department of Social Service which is hindering disbursement of the funds to qualified groups. The response is: -

"Registration and provision of the certificates for potential *Uwezo* Fund beneficiaries is critical for successful implementation of the Fund. The Department of Social Service charged with the responsibility is under the Minister of Labour, Social Security and Service."

Hon. Deputy Speaker, that is blame. One Ministry has the funds and another Ministry has staff who are supposed to give the certificates. We are aware of the challenges the Department of Social Service is facing towards fulfillment of its mandate. The Statement further reads: -

“To address the challenges, the Ministry of Devolution and Planning has done the following: As a stopgap measure, we requested the Ministry of Labour, Social Security and Services to supply us with soft copies of the certificates to facilitate printing. We have received the same and the Ministry has been printing the certificates. We have expanded the registration.”

Hon. Deputy Speaker, I do not even want to read this Statement further. Through your indulgence, and I have contacted the relevant Chair that oversees that Ministry, that this matter is seized by the Committee and investigated. The way things are going, the *Uwezo* Fund that His Excellency the President launched is in shambles. This is because a Government Ministry is asking another Ministry to act and is waiting for regulations. This depicts that the Government is not in tandem. I request through the Chair that the issue of *Uwezo* Fund be referred to the Departmental Committee on Finance, Planning and Trade that hon. Benjamin Langat chairs so that they can bring a comprehensive report on the structures and the regulations on how to spend this money. I am told that they have already had the first session. These Members will know how the youth and women in their constituencies and counties will access these funds.

**Hon. Deputy Speaker:** Hon. Members, let us listen to the Chairman of the Committee on Finance. He had a session with the Cabinet Secretary yesterday. So, he should be able to shed light than what the Leader of the Majority Party is able to do.

**Hon. Langat:** Thank you very much, hon. Deputy Speaker. The issue of *Uwezo* Fund is bringing a lot of challenges. Somehow, the process has been rushed but I want to tell the House that my Committee is already on it. In fact, I have already informed the Cabinet Secretary that in one week or two weeks’ time, we are going to arrange for a *kamukunji* so that all the Members of this House can have an opportunity to ask questions and get answers from him on this matter. As the Leader of the Majority Party has said, the rules are already at the Office of the Attorney-General. They will finally be brought to this House for approval. That will be an opportunity for hon. Members to make their input into the rules that will govern the operation of *Uwezo* Fund.

Thank you.

**Hon. Deputy Speaker:** Hon. Members, I have a long list of people who want to interrogate this matter but, having been guided by the Chairman of the Committee, do you still want to go that way or will you wait for the rules to come to the House, so that we can have a more comprehensive debate on them?

Let us hear what the owner of the Statement request has to say.

**Hon. Nassir:** Thank you, hon. Deputy Speaker. The Leader of the Majority Party has hit the nail on the head that, indeed, there is something not very right that is going on. I actually tend to wonder. Had this issue not been raised in Parliament, for how long would we have had to continue not knowing exactly what is happening? I was actually in the meeting of the Committee on Finance, Planning and Trade. My Chairman has rightfully put it that this issue had gone to the Office of the Attorney-General, but I was informed otherwise. I was informed that the Office of the Attorney-General went further to release the rules for gazettment, and that the same are before the House, which is clearly not the case. Therefore, I would like the matter referred back to the Committee for modalities of operating the Fund to be deliberated on. Whenever we implement a programme as big as *Uwezo* Fund, we should do so after proper deliberations. We should not be taking *ad hoc* measures just for the purpose of public relations.

**Hon. Deputy Speaker:** Hon. Rachael Shebesh, I can see your request for a point of order.

**Hon. (Ms.) Shebesh:** On a point of order, hon. Deputy Speaker. I was going to say that I attended the meeting of the Committee on Finance, Planning and Trade yesterday as a friend of the Committee. I want to agree with the Leader of the Majority Party because we need to be candid whenever necessary. Definitely, *Uwezo* Fund was launched with the names of County Women Representatives. We went around the counties and spoke about women representatives but, from what has come out, it is clear that we have no role in *Uwezo* Fund. Therefore, politically, I do not want to dig my own grave in the name of *Uwezo* Fund---

**Hon. Deputy Speaker:** What is your point of order, hon. Junet? Rachael, accept the point of order.

**Hon. (Ms.) Shebesh:** Hon. Deputy Speaker, I am also on a point of order.

**Hon. Nuh:** On a point of order, hon. Deputy Speaker. Is the hon. Member in order---

**Hon. Deputy Speaker:** Order, hon. Junet! Rachael Shebesh, I actually thought that you were making a contribution.

**Hon. Nuh:** Hon. Deputy Speaker, she is misleading the House.

**Hon. Deputy Speaker:** Prosecute your point of order, hon. Shebesh.

**Hon. (Ms.) Shebesh:** Hon. Deputy Speaker, I was building up my point of order. I would want the Chairman of the Committee and the Leader of Majority Party to come out clearly on this matter. Is it in order for the Government to make a political statement to the effect that *Uwezo* Fund will be administered through County Women Representatives only for the Gazette Notice to show that there is no role for County Women Representatives? That is political suicide for some of us.

**Hon. Deputy Speaker:** Hon. Junet, do you have a different point of order?

**Hon. Nuh:** Hon. Deputy Speaker, first and foremost, I would like to thank the Government for launching the---

**Hon. Deputy Speaker:** Is that really a point of order, hon. Junet?

**Hon. Nuh:** Hon. Deputy Speaker, I am building my point of order. Is the hon. Member in order to mislead the House by saying that *Uwezo* Fund was launched in the name of County Women Representatives when we know that it takes the model of the Constituencies Development Fund (CDF)? Secondly, is she in order to mislead the House by saying that there is confusion in this matter when the matter is going on very well? It is fifty-fifty. We are sharing *nusu mkate*.

*(Laughter)*

**Hon. Deputy Speaker:** Order, hon. Members! I want to return the matter to the Chairman of the Committee on Finance, Planning and Trade. From the foregoing, it is clear that there is still a lot of confusion in this matter. The direction to go would be to allow the Committee to do what they have told us they want to do, including calling a *kamukunji* and all those things.

Committee Chairman, what do you have to add?

**Hon. Langat:** Thank you, hon. Deputy Speaker. You have already said what I wanted to say. Hon. Members will get sufficient opportunity to raise any issues they may

be having, through my Committee and the *kamukunji* session. So, I would like you to stand by your earlier ruling that this matter be left where it is, so that we can make progress as a House.

**Hon. Deputy Speaker:** I want to agree with you because, as you can see, the hon. Member who requested the Statement and the Leader of Majority Party have agreed that the matter should be left with the Committee. So, hon. Members, let us leave it at that.

What is your point of order, hon. Millie Odhiambo?

**Hon. (Ms.) Odhiambo-Mabona:** Thank you, hon. Deputy Speaker. I am in agreement but because I will not be able to attend the Committee meeting, I would like to put forward an issue for the Committee to consider when they discuss the matter.

On the issue of the certificates, the Leader of Majority Party said that the Ministry in charge of devolution has requested the Department of Social Service to furnish them with soft copies of the printed certificates. As the Committee considers the matter, they should look at applications across the country and the status of each area, especially Mbita Constituency. I have been asked about this matter all the time I have been there.

Thank you.

**Hon. Deputy Speaker:** Hon. Members, are we prosecuting this matter or not? We have to make a decision. We are leaving it to the Committee. Let all those matters be brought up in the Committee session, be it the matter of certificates or that of who gets what percentage, let all of them be brought up when we come for the *kamukunji*.

Let us hear hon. Lentoimaga.

## NOTICE OF MOTION FOR ADJOURNMENT

### INSECURITY IN THE COUNTRY

**Hon. Lentoimaga:** Hon. Deputy Speaker, pursuant to Standing Order 33(1), I seek leave to move a Motion for the adjournment of the House for purposes of discussing the rampant insecurity in parts of the country, especially in areas like Marsabit, Mandera, Nairobi, Mombasa, Garissa, Bungoma and Samburu County.

Hon. Deputy Speaker, I beg to move and appeal to my colleagues to support my request.

**Hon. Deputy Speaker:** Hon. Lentoimaga, do you have support for your adjournment request?

**Hon. Lentoimaga:** Yes, hon. Deputy Speaker.

**Hon. Deputy Speaker:** Let me see if you have 20 Members supporting you.

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

Hon. Lentoimaga, I can see that you have sufficient support. So, I will allow you to move the Motion for adjournment of the House at 5.30 p.m., after we have done some business. One hour should be ample time for you. Hon. Members, please, resume your seats. We are now going to the next Order.

Yes, Leader of Majority Party.

## STATEMENT

BUSINESS FOR THE WEEK COMMENCING 15<sup>TH</sup> TO 17<sup>TH</sup> OCTOBER 2013

**Hon. Deputy Speaker:** I have given this chance to the Leader of the Majority Party.

**Hon. A.B. Duale:** Hon. Deputy Speaker, pursuant to Standing Order No.44(1)(2), on behalf of the House Business Committee (HBC), I rise to give a Statement regarding the business coming before the House the week beginning Tuesday 15<sup>th</sup> October, 2013.

The HBC met on Tuesday this week at the rise of the House to give priority to the following business of the House: Next week on Tuesday the House will consider the Capital Markets (Amendment) Bill, 2013 in the Committee of the whole House. Further, there will be consideration of the Microfinance (Amendment) Bill, 2013, if it is not concluded today. The Bill will be presented to the Committee of the whole House on Tuesday next week, if it is not concluded today.

In this regard, may I take this opportunity, through you, to remind Members to hand in their proposed amendments to the said Bills to the Office of the Clerk in good time. It is envisaged that the House will continue with the Second Reading of the Tax Appeals Tribunal Bill, 2013. This is in case debate on the Insurance (Amendment) Bill is not concluded today.

Also lined up for Second Reading next week on Tuesday are the Kenya Information and Communications Bill and the Media Council Bill, 2013. Members will recall that the Media Council Bill, 2013 is one of the Bills with a constitutional deadline which was recently extended by this House. We, therefore, have no choice, but to pass this Bill in whatever form by the time we go for recess in December. In this regard, the HBC has resolved that the Bill will be scheduled for commencement of the Second Reading next week.

In keeping with requirements of Standing Order No.127(4) and (5) and since 20 days have expired since the First Readings of these Bills, the Second Reading of these Bills may commence notwithstanding the non-tabling of the Report of the Committee. However, we do hope that the Departmental Committee on Energy, Information and Communication will table its report on the Bill next week.

Hon. Deputy Speaker, on a brighter note, allow me to report on behalf of the HBC on the several improvements made since the beginning of the week. As a House, we have continued to look at new ideas that will possibly improve service delivery. As you may have noted, the new format of our Order Paper has additional information showing the tentative business coming before the House the following day. This information is contained in a paper titled: "Notice Paper". It is appended to today's Order Paper. Today's Notice Paper shows the tentative business for Tuesday next week. It is our view that this new development will enable Members to prepare adequately for debate.

Further, I wish to bring to the attention of Members that the Clerk's Office has since prepared trackers for the Bills, Statements and Petitions. This means that you can track Bills, Statements sought and even Petitions. This will enable Members track the status of the items aforementioned. The trackers are available in the parliamentary website.

Finally, the HBC will meet on Tuesday, 15<sup>th</sup> October, 2013 at the rise of the House to consider business for the rest of the week. I beg to lay the Statement on the Table.

**Hon. Deputy Speaker:** Hon. Bunyasi, what is it? Is it something related to what hon. Duale has presented?

**Hon. Bunyasi:** Hon. Deputy Speaker, it is related to the interruptions that took place when the Leader of the Majority Party was speaking, which came from a stranger. I do not know how the stranger got into the House. That is the matter I was raising. It is also a bad omen and a rare custom.

**Hon. Deputy Speaker:** I am told that we have some interruptions by some strangers in the name of birds. I think somebody has gone to address that matter.

**Hon. (Ms.) Odhiambo-Mabona:** Hon. Deputy Speaker, I want the Leader of Majority Party to clarify two things. One, he said that the Media Council Bill will pass in whatever form. Even though we have a short period, I do not know whether it is in order for this House to pass the Bill in whatever form. Could the Leader of Majority Party clarify that he will ask the relevant Committee and Members to put in a lot more time so that we do not pass the Bill in whatever form?

Secondly, Members around me were consulting a little too loudly when he raised the issue about where the Private Members' Bills are. I wish he could repeat that. This is because the hon. Speaker had indicated that we would get an update this week as to where our Private Members' Bills are. I have sponsored three Bills, but I have no clue where they are. There is one that even came for First Reading in the last Parliament. I am really getting concerned because this is a Bill that seeks to protect victims of crime. I do not know why we are not giving it a priority.

**Hon. A.B. Duale:** Hon. Deputy Speaker, I read the Statement from the HBC. The words, "in any form" mean, amended or otherwise. It is for the House to do that. I did not mean in other form. So, the Bill will come for the Second Reading and Members are urged to bring their amendments. Of course, what will leave Parliament will be a better and robust media law.

On the issue of the Private Members' Bills, we now have a tracking system of all Private Members' and Government Bills, Statements, and Petitions. We now have the dates and status of all these. If you go to the Parliamentary Website, it will be easier to know the status and location of the said things.

Hon. Deputy Speaker, she is smiling because she is my good friend. We have a long history.

**Hon. Bunyasi:** Hon. Deputy Speaker, I am very pleased with the development that has been described by the Leader of Majority Party. They have moved to the digital platform and that is commendable. That is the way we should go. Yesterday when we had this special Motion on transport, there was the issue of duplication. It has been difficult to know which Committee is discussing what and where. In this digital age, I hope such information will be availed, so that any Member who is interested can find at any one-time what Committees are discussing, so that they can decide which debate to attend or follow wherever they are.

However, this cannot happen unless Members have access to this information. Many Members do not have offices and networks have not been set up. That will just be of help to the few who have access. I urge the Parliamentary Service Commission to

move very quickly and get Members settled, so that we have access to this. I cannot do my due diligence as a Member operating from my car in the car park.

**Hon. Deputy Speaker:** It is true that we have gone completely digital. Most of you can now use the internet in your computers and phones, even without having an office. I know that is a critical issue, but it is being addressed by the Parliamentary Service Commission. By every Friday, the website is updated and new information is availed.

**Hon. Bosire:** Hon. Deputy Speaker, I have been *finyaring* here and I have not got a response.

*(Laughter)*

All along I have been expecting a Statement as promised by my good friend, the Leader of the Majority Party, yet we have come to an end without any response from him. You are aware of this.

**Hon. Deputy Speaker:** It is true you mentioned that. I am sorry I overlooked it. But that is why I have allowed you a chance. Hon. Leader of Majority Party, because of time can you please give an undertaking?

**Hon. A.B. Duale:** Hon. Deputy Speaker, with your indulgence, I want to beg my colleague to let me do it on Tuesday afternoon. I have the Statement. Let it be Tuesday because I have already done two.

**Hon. Bosire:** Hon. Deputy Speaker, this is too much.

**Hon. Deputy Speaker:** Let us do it on Tuesday, hon. Bosire. We are asking you this, so that we can progress. Remember we have not yet started the business of the House and we are going to end at 5.30 p.m.; we are just asking for your indulgence. He says he has the Statement, but because of the amount of work that we have committed ourselves to do today, we can let him issue it on Tuesday. We have not started the business. The business is just about to start now. So, please you will get your Statement on Tuesday, hon. Bosire.

**Hon. Bosire:** It is okay, hon. Deputy Speaker.

**Hon. Deputy Speaker:** Okay. Good. Now, let us allow the next Order to be read. Hon. Benjamin Langat.

## COMMITTEE OF THE WHOLE HOUSE

### THE MICROFINANCE (AMENDMENT) BILL

**Hon. Langat:** Thank you, hon. Deputy Speaker. I want to seek your indulgence that we postpone the Committee Stage of the Microfinance (Amendment) Bill because we want to make a very good law. We are yet to agree with the stakeholders on the amendments to a few areas. So, I really want to seek your indulgence that we postpone this stage to next week or the next available time, so that we get amendments which have been widely consulted on. Let us postpone this Order to next week or until the next available time. Thank you.

**Hon. Deputy Speaker:** We are, therefore, not going to the Committee of the whole House; we will thus move to the next Order.

*(Committee of the whole House stage deferred)*

## **BILLS**

*Second Reading*

THE INSURANCE (AMENDMENT) BILL

*(Hon. Langat on 1.10.2013)*

*(Resumption of Debate interrupted on 9.10.2013)*

**Hon. Deputy Speaker:** Hon. Members, debate had already been concluded on this Bill and we are only waiting to put the Question. Can we confirm that we have the necessary quorum for putting the Question? Okay, we have quorum. I will then put the Question.

*(Question put and agreed to)*

*(The Bill was read a Second Time and  
committed to a Committee of the whole House tomorrow)*

**Hon. Deputy Speaker:** Next Order.

*Second Reading*

THE TAX APPEALS TRIBUNAL BILL

**Hon. Deputy Speaker:** The hon. Chair of the Departmental Committee on Finance, Planning and Trade.

**Hon. Langat:** Thank you very much, hon. Deputy Speaker.

I beg to move that the Tax Appeals Tribunal Bill, (National Assembly Bill No.7 of 2013) be now read a Second Time.

Hon. Deputy Speaker, this Bill came for the First Reading on Thursday, 27<sup>th</sup> June, 2013 and that was the time it was committed to the Departmental Committee on Finance, Planning and Trade. Pursuant to Article 18 of the Constitution and Standing Order No.127, my Committee invited stakeholders for the purposes of consultations so that we pass the Bill having heard their views.

*[Hon. Deputy Speaker  
(Dr. Laboso) left the Chair]*

*[The Temporary Deputy Speaker  
(Hon. (Ms.) Mbalu) took the Chair]*



Hon. Temporary Deputy Speaker, the Tax Appeals Tribunal Bill in short seeks to consolidate the appeal process which now is scattered across the other laws. We have tribunals under the Valued Added Tax (VAT) Act, Income Tax Act and Excise Duty Act. Therefore, this Bill seeks to consolidate the appeal process, so that we have a one stop shop for appeals.

Hon. Temporary Deputy Speaker, many members of the public, or even Members of this House, may ask themselves: What is an appeal? An appeal is when you disagree. If you disagree with the Commissioner of Taxes in terms of the taxes that he or she has imposed on you and say: “No, this is not the figure; this is wrong.”, then you will now make an appeal to the Tax Appeals Tribunal, which is created under this Bill.

Hon. Temporary Deputy Speaker, one of the best attributes about this new law, which we are seeking to pass, is so that you do not move from one office to another. We want to make it such that if you are appealing against VAT, then this is the place. If it is Excise Duty, this is the place. Therefore, we will have a one stop shop, which can build capacity for itself to hear all the appeals.

The issue of appeals is very critical because many of our business communities, when they disagree, they need to have a place where they can express their displeasure, and where they can get justice. Presently, you may not differentiate the officers of the Commissioner from those of the appeal. Currently, it is the Commissioner who does the assessment of tax and tells you what to pay. For you to go back and appeal to the same person is a travesty. Therefore, this is an innovative way of dealing with the appeals.

Hon. Temporary Deputy Speaker, I will just mention a few areas, having given the general purpose of the amendments. Generally, this Bill has around five parts which address several areas of the appeal process. Part II creates the tribunal itself, which is called “The Tax Appeals Tribunal.” It states that, that tribunal has a chairperson who must be qualified to be a judge of the High Court.

There are some areas that we will look at, including the qualifications because matters of taxation are necessarily about law. So, my Committee will bring some amendments so that we do not make it a legal process. It is a practical process in which business communities and tax experts must be involved. So, on the issue of the chairperson being a judge of the High Court, we are going to consider whether we can include other professions to open it up because tax is beyond the legal framework.

The part also says we should have not less than 15 members who must be degree holders in various fields including law, public finance, economics and other areas. Not more than 20 persons will be appointed by the Cabinet Secretary. These members will have a secretary who will be the Chief Executive Officer. Therefore, the tribunal will comprise the chairperson and 15 members, or not more than 20 members, who are qualified and who will hold office for a five-year period but non-renewable.

Part III of the Bill deals with the process of making the appeal itself. It deals with the procedure for making an appeal to the tribunal against a decision made by the Commissioner. One of the requirements is that whoever disagrees with the Commissioner must give notice of the appeal, which should be in writing and submitted to the tribunal within 30 days upon receipt of the decision of the Commission. So, there is a requirement that if you disagree, then you must give notice of your appeal to the tribunal within 30 days, so that you can file your case and it can be heard.

Hon. Temporary Deputy Speaker, this tribunal has been given powers to summon witnesses; these powers are like those of a court, so that you must attend sessions and give evidence to the tribunal. Therefore, I agree that the Commissioner must come and the taxpayer and the person who has appealed must also come to give evidence. So, we need to give the tribunal enough powers to summon people and get evidence. This is because at the end of the day, we must hold them accountable for the decision they will come up with. Therefore, we must give them enough powers to be able to arrive at a very good decision.

Hon. Temporary Deputy Speaker, if you disagree again, then you will appeal to the High Court against the decision of the tribunal, and that will be another process.

Part V deals with offences. If you make false statements to the tribunal or false claims and you produce false documents it will be a crime. This again is meant to give credibility to the work of the tribunal, so that the decision they will arrive at will be a decision based on correct documents and statements provided by those who give evidence.

We have also given immunity to officers from personal liability in matters they handle in good faith, so that they can execute their duties without fear or favour.

The last part of the Bill repeals the various sections of the Customs and Excise Act, Income Tax Act and Value Added Tax. I just mentioned when I was starting this debate that we are trying to create one body to deal with appeals. We will do away with provisions in various Acts like the VAT Act and the Excise Duty Act. We are saying that we want to remove from those Acts appeal related provisions and consolidate them in one law, so that you have one place where everybody will go, that is our tribunal. If you have a problem with our assessment, you will go and lodge an appeal.

So, this is really a very good innovation and I want to urge the House to support the creation of the tribunal and give it enough powers as far as possible. I want to encourage hon. Members to read and propose amendments. My Committee will also bring some additional amendments to the Bill, so that we make the tribunal a body that Kenyans and the taxpayers will have confidence in, a body that we will have confidence in and to which we will lodge our claim.

There is a proposal that if you are lodging a claim, you must pay Kshs20,000. In my Committee's analysis, we did say that somehow that punishes the claimant; we said that we may have to re-look at this at the Committee stage. If my appeal eventually succeeds, I have to get a refund or even make it a free exercise, or make everybody to pay so that it is neither the taxpayer nor the Commissioner alone.

In this Bill, my Committee has considered and said--- We actually must have people who have knowledge in addition to having degree and other requirements; we must have people who understand the business itself. For example, in the insurance sector in addition to having a degree, you must understand it. It may be the insurance sector, banking sector or manufacturing sector; this is because tax has very practical elements about our lives.

I would want to urge hon. Members to support this Bill to move to the next stage, and prepare to make this Bill better in the Committee stage through amendments. I want to encourage hon. Members to bring amendments that will improve the Bill. My Committee will bring envisaged amendments; we have considered them and are going to move them at the right time.

I want to thank my Committee. We have had several meetings and I want to thank them. I want to encourage this House that we support this Bill to the next stage.

I now move that this Bill be now read a Second Time.

I would want to request my neighbour, who happens to be the Leader of Majority Party to second the Bill.

**Hon. A.B. Duale:** Thank you, hon. Temporary Deputy Speaker. Again, I want to go on record saying, just as I do every time, that a technical and important Bill is being passed. I am sure that if the country is seeing me, it can see that the House is empty. This is the business of Parliament. Apart from the few colleagues who are here, it is near empty. At least, we have a quorum.

This is a very important Bill. It was the same when we were debating the Capital Markets Authority Bill and the Insurance (Amendment) Bill. Why we have the Tax Appeals Tribunal Bill is because we need to create a win-win situation between the Government as a collector of revenue---

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): There is an intervention. What is your point of order, hon. Antony Kimani?

**Hon. Ichung'wa:** Hon. Temporary Deputy Speaker, I was really perturbed by my good friend, the Leader of Majority Party, for purporting that the House is empty yet we are all here. As much as I am also disturbed that the House gets empty when such technical businesses comes up, it is good for hon. A.B. Duale to appreciate that hon. Members are present. Truly, there are hon. Members present and the House is not empty.

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): Hon. A.B. Duale, be advised.

**Hon. A.B. Duale:** The word "empty" is very relative; I have a lot of respect for my colleagues who are here. I want to appreciate their presence, but we should have more Members, particularly when we are doing this.

Coming back to the Bill, this is a Bill that intends to create a win-win situation. It intends to create fairness and justice both for the Government as a revenue collector and for businessmen, investors and taxpayers. It provides that where a dispute arises, we will manage it within a certain legal framework. If you look at the history of our country, we have backlog of cases of VAT and the Income Tax between the institutions mandated to collect these taxes and the taxpayers. We have created this law, and I am sure it is the first law that has come; the Tax Appeals Tribunal Bill, to make sure that what is due to Ceasar is given, but in a fair and just manner. In the Bill of Rights in the Constitution, citizens have a right and a moral obligation to pay taxes to the Government for the Government to provide services.

So, it is a two-way traffic. The citizens have a constitutional obligation to receive services from the Government that they have elected, but the same citizens must also make sure they pay taxes. This process must be undertaken in a fair and just way. Where a dispute arises, then this law provides recourse. The Government will collect its rightful share of revenue within the parameters of the law and the citizens will not abscond paying taxes that they are supposed to pay. That is the essence and the foundation of this Bill. In a nutshell, the Chair has, through his report and notes, given most of the salient features of this Bill. In a nutshell, this Bill talks about the Tax Appeals Tribunal and gives the functions and the membership of the tribunal. It talks about where they will come from, how they will be appointed, their tenure, how the chairman will be appointed and

how they will get funds, because it is going to be an institution. It talks about the responsibilities of the Chair and members, and how far they can go within the law.

Further, this Bill gives the procedure for appeals. Again, it is not cast in stone. For you to appeal, you must follow a particular process. This Bill gives you the roadmap for what you will do within the timelines and what the law says. It stipulates the requirements for you even to notify the Commissioner of either the Income Tax or the VAT of your appeal. It even talks about conflict of interest in relation to the functions of the tribunal. In Clause 20, it gives the tribunal powers. We do not want to give either the Commissioner or the taxpayer just a blanket law. Clause 20 gives the powers and whether evidence is going to be under oath. It states how you will proceed in the absence of one party, and how to adjourn the hearing of any proceedings. So, the powers of the tribunal are well stipulated in this Bill.

It also states when you should give evidence and when you are not allowed to give evidence. It shows the voting rights within the panel. More importantly, this Bill provides that in the event you disagree with the tribunal, then you have redress. You can still move to the High Court. So, it is not law of the last resort. The Bill further contains provisions on offences, evidence and at what stage you can say a claim is false. It states at what stage you can say that the document you are presenting to the appeal is fake or false, how updated your accounts are, whether your accounts are audited by reputable audit firm and how your registry is.

The last bit, as the Chair said, is on the existing tax laws. These are some of the very important financial related laws that are exercised by the Executive through the National Treasury. I want to thank the Committee on Finance, Planning and Trade, because it has handled the highest number of Bills, including the Finance Bill. Some of them had a stipulated deadline. This is a Committee that has executed its mandate well. I am not saying that the other Committees are not working, but if you tell me to give a score card of one to ten, this is a Committee that, in my opinion, will receive eight out of ten. By the time they are through with the capital Markets Authority Bill next week, they will have attained 10 marks.

In conclusion, I want to raise this issue and because I am on the HANSARD, I will say it. Tomorrow, you will see some of our colleagues in Press conferences, political rallies or funerals criticising this Tax Appeals Tribunal Bill. They are supposed to be here. This is a law-making House and the only one. In the last Parliament, I had the privilege to serve my people and I told my colleagues that the best job in this country is to be a Member of Parliament. It is the only place where you can amend and make good laws for this country. That is why I did not want to become a governor or a Senator or a county representative. It is not that I belittle them. These are very important institutions, but this is where we should have passed three or four Bills for the interest of our people.

I second the Tax Appeals Tribunal Bill, 2013, at the Second Reading.

*(Question proposed)*

**Hon. Bunyasi:** Thank you, hon. Temporary Deputy Speaker. I rise to support the Bill. Issues of tax and taxation are extremely important to any economy, because that is how the country gets resources that become the engine of our growth. In the business of paying taxes and conforming to the timelines set, sometimes there are disagreements.

This Bill seeks to smoothen out those areas. If payers are aware that the law requires payment at a certain time and a certain amount, and if there is a dispute, it will be expeditiously, prudently and fairly looked into, they will have the motivation to pay on time.

Despite the complexity of these amendments, the basic message in it is: pay your taxes. If you disagree, you have an appeal mechanism that will deal with all your views, whether they are about VAT or other forms of taxation in one house, and they will be looked at speedily, that is in not more than 90 days. This is an extremely important amendment. I urge my colleagues to support this Bill, so that we can achieve the double-digit economic growth that we want. We cannot achieve it without collecting taxes and allowing the public sector to invest as we provide the facilitation that we all require.

With those comments, I support.

**Hon. Gichigi:** Thank you, hon. Temporary Deputy Speaker. I rise to support this Bill. I remember when the NARC Government took over power about 10 years ago, many people in this country voluntarily started paying their taxes. After some time, due to challenges of corruption in the country, the spirit of patriotism went down. I was one of those persons who were really eager to meet their obligation to pay tax. This is because it was clear that the Government was going to do a very good job. Everybody came out to support the change that we expected. Only a few of us have continued paying tax voluntarily. I request the people of Kenya to pay tax because it is very expensive for people to be followed all over in order to pay tax.

I support this particular piece of legislation because it is entrenching the trend of moving away from courts to alternative dispute resolution. This is a very good piece of legislation. I request my colleagues in this House to be very particular, as previous speakers have indicated. Let us look at this law and ensure that we have come up with the best that this House can produce. This law will make dispute resolution between the taxman and the taxpayer cheaper and faster. It will also make justice accessible. This is a law that needs to be supported.

As indicated by the Chairman of the relevant Departmental Committee, it is a piece of law that will resolve disputes. Previously, you would meet the Commissioner of Domestic Tax and the Commissioner of Customs but right now, there will be one office that you will visit. Therefore, I would like to say that this is a very good piece of legislation.

Hon. Temporary Deputy Speaker, having said that, I support this Bill, which in my opinion, requires some amendments. Clause 18 needs to be amended to protect the taxpayer as well as the taxman. It gives the tribunal power to say when there is a dispute whether the taxpayer will pay the money or not. I think we probably need to go the way we went with the Finance Bill by defining what exactly the taxpayer ought to pay pending the determination of the dispute. That is important. Let us bring sanity to this clause.

The other amendment we need to introduce deals with the time span that the tribunal needs to resolve these disputes. Let us look at what needs to be done and say whether it will be three or six months. Let us not leave these disputes for an open-ended period of time.

Clause 32, in my opinion, invites an amendment. Let us also give the period that the High Court needs to deal with the appeal from the tribunal. Clause 34, in my opinion,

has certain unconstitutional aspects. It shifts the burden of proving one is not guilty to the taxpayer. That will certainly not be in tandem with the Constitution. We need to let the person accusing to prove that indeed, an offence has been committed. Clause 34 has sub-clauses 1 and 2.

Clause 38 states that the certificate issued by the Commissioner is final in terms of how much is owed, whether or not tax is owed. I would like to propose an amendment to that clause so that when a matter of dispute is placed before the tribunal, the Commissioner is also required to explain and prove that the tax demanded is owed. Let us not just leave the burden to the taxpayer to show that he does not owe tax, which he might not even understand how it was arrived at.

Hon. Temporary Deputy Speaker, Clause 2 talks about the definition of a “Commissioner”. This also needs to be looked into. This is because it is framed in a manner that suggests there is only one commissioner at the Kenya Revenue Authority (KRA). It is, therefore, important to acknowledge that there are several commissioners who deal with tax. There is the Commissioner for Medium Taxpayers, the Commissioner for Large Taxpayer and the Commissioner for Customs. It is important that the Act takes into consideration that aspect.

This is truly a very good piece of legislation and I support it.

Thank you, hon. Temporary Deputy Speaker.

**Hon. (Dr.) Nyikal:** Thank you, hon. Temporary Deputy Speaker for giving me this opportunity to contribute to this Motion. Let me start by appreciating the work that has been done by the Chairman of the Finance, Planning and Trade Committee in the new way of writing the memorandum that makes it possible even for those who have not looked at the main Act to get the gist of the discussion and, therefore, participate.

May I also agree with the Leader of Majority Party that often when it comes to what, to me, looks most important, we are very few although I was worried when he said that the House was empty. How could that be when we were sitting here?

Last weekend when I was in my constituency, some people told me that they have noted that when we are discussing important issues, there are very few Members in the House. So, we must be aware that other people are noticing that when it comes to emotional issues, the House is full but when it comes to issues that touch on people, they find that we are very few.

The issue of tax is important and we know that Kenya is probably one of the highest taxed nations in the world. That is also important because we need services, good infrastructure, hospitals and schools. Therefore, we must pay tax. However, even the process of paying tax in the past has been very difficult. A situation has arisen where the taxpayer and the tax collector are virtually enemies. This is because of the processes that were involved, which were very inflexible.

Many times, small businesses have even had to close because when the Commissioner makes a decision, there is absolutely no way they can protect themselves. If they had to make an appeal, they had to make an appeal to the same person who had made the decision. This absolutely made no sense. Therefore, I support this Bill that establishes a separate tribunal which in a way brings the taxpayer and the Commissioner to the same level so that when the taxpayer appears before the tribunal, he or she is, at least, happy and confident that he or she will be heard.

It is also important because the funding of the proposed tribunal will be undertaken by the Government. Again, that shows the importance that we have put in the process, of protecting the taxpayers and giving them a leeway in resolving tax compliance issues. Many small-scale businesses have closed down not because they had committed any offences but just because the Commissioner had decided that they should do so. We also know that there are times when some KRA officials misuse their positions to punish people unfairly and perpetrate corruption. Sometimes an officer would threaten a businessman: "If you do not do this, I will levy this tax." When the businessman goes to appeal, he finds himself appealing to the same official. Therefore, this Bill is very important.

Hon. Temporary Deputy Speaker, I like this Bill because, for example, in Clause 9, it proposes very practical ways in which the tribunal will function. It appears to me that the chairperson of the tribunal will constitute a panel, depending on the case before it. This makes it flexible and relevant to whoever appears before the tribunal. I am also happy with this because it avoids conflict of interest. I know that we have accepted corruption in this country. It is something that we just talk about, we have accepted it. It has permeated each and every part of our psyche. I think even when we talk about it; we do not mean that it should go. There will be quite some problem if you have Commissioners sitting and listening to your case when some of them have interest in that case.

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): What is your point of order, hon. Chairman of Committee?

**Hon. Langat:** Hon. Temporary Deputy Speaker, is it in order for my friend, Hon. Nyikal, to say that we have accepted corruption in this country? We hate corruption so much that we have spent so much money creating the Ethics and Anti-Corruption Commission and many other bodies dealing with corruption. This country hates corruption. We do not like corruption in the way my friend said it.

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): Hon. Nyikal, can you substantiate what you mean, for the benefit of hon. Benjamin Langat?

**Hon. (Dr.) Nyikal:** Hon. Temporary Deputy Speaker, I will go by my observations. It is true that we put all those bodies in place. We talk about it every day, but what has really happened? How many times have we seen serious action being taken? Has corruption gone down? That is my interpretation. If the hon. Member sees it differently, that is his observation. In any case, Transparency International (TI) has always ranked us very high in terms of corruption. So, it may not be my view alone. Well, I agree that corruption is a vice that we must fight.

Hon. Temporary Deputy Speaker, I was saying that the provision for dealing with conflict of interest is very admirable in this Bill. I also like this Bill because the tribunal will have the powers of the court. So, it is not going to be window-washing so that it may look like something is happening. When we have a situation where both the tax collector and the taxpayer can be summoned with the same vigour to appear before the tribunal, as a taxpayer, you can face the tax collector with confidence and feel comfortable that something is really happening.

The Bill further provides that if you are not satisfied with the decision of the tribunal, you can file an appeal with the High Court. I really find this provision supportive to businesspeople. However, as other hon. Members have said, there may be

areas that we may have to look at. An example is Clause 12, which provides that as you lodge a complaint with the tribunal, you must pay a non-refundable fee of Kshs20,000. That is punitive. We must always consider small-scale businesses. These are the people who cannot keep their tax records properly. They are the people who are likely to get into problems and appeal. If we provide for that kind of fee, small businesses will not be able to appeal. So, even if the tribunal is established, it will only serve those who have the financial muscle. I may probably amend that bit and say that we can retain that fee in order to avoid frivolous appeals. However, once you win the case, you should get your money back. That would, probably, be the best way to go about it.

Hon. Temporary Deputy Speaker, I am happy that this Bill seeks to harmonise all other taxation laws. We have discussed a lot of tax laws in this country. We discuss tax in the Value Added Act as well as in the Finance Act. I can see that this Bill seeks to harmonise all those laws and put them together in one Act.

With those remarks, I beg to support the Bill.

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): Yes, hon. Sakaja.

**Hon. Sakaja:** Thank you, hon. Temporary Deputy Speaker.

Looking at the kind of Bills that have been coming to this House, especially from the Government, Kenyans can see the value of electing a President who understands the economy. If you look at the Capital Markets (Amendment) Bill, the Value Added Tax (Amendment) Bill, the Tax Appeals Tribunal Bill and the Finance Bill, 2013; you see that it is clear that the Government is keen on streamlining the economy and matters of finance.

Hon. Temporary Deputy Speaker, I want to thank the Chairman and the Vice-Chairperson of the Departmental Committee on Finance, Planning and Trade because it is through their leadership that we have been seeing all the Bills dealing with the economy coming to the House. I want to thank them for the great leadership that they have shown. As a country, we are looking forward to taking our economy to the next level. Anything that can make this country more competitive, in terms of retaining its regional business and economic hub status, must be encouraged.

For the benefit of businesspeople, investors and ordinary taxpayers, we need to have a tax regime and framework that is predictable and fair, and which guarantees a safe environment for investment. The proposed Tax Appeals Tribunal will shield all taxpayers, big or small from the whims of individuals, as it has been the case before. The best thing about this Bill is that we had, under the various tax laws, provision for some form of appeals tribunals but those tribunals have not been entrenched in any statute. Having this tribunal entrenched in a statute gives it greater power, greater thrust and greater predictability. Those who will be serving in the tribunal will be able to perform their mandate with confidence and fairness.

Hon. Temporary Deputy Speaker, I would also like to say that this is a major step towards institutionalisation of matters of appeal. Most Kenyans do not even know that they can appeal such decisions. I would like to concur with some hon. Members who said that the issue of depositing Kshs20,000 with the tribunal, as one files an appeal, should be looked into. Instead of giving an optimum figure, we could propose that the fee to be deposited should be a proportion of the settlement being sought, in order to ensure that frivolous claims do not come to the Tax Appeals Tribunal.



I would also like to point out that the time limit being given by law, within which to deal with such cases, is very good. One can know that once such an issue comes up, within the next number of days, it can be expedited and sorted out. This is the first such kind of set up within the region. It will, indeed, go a long way in ensuring that Kenya continues to lead in the East and Central Africa with respect to economic matters. I would like to refer to Clause 23, where it says that the tribunal will have powers to engage an independent expert.

Hon. Temporary Deputy Speaker, I would like to suggest that we look at that, but in the spirit of reducing the cost of all these tribunals and commissions we have in the country, probably, we should just ensure that the tribunal consists of people with that expertise so that it does not have to start engaging people to pay them as experts in tax matters. Let the people who sit in this tribunal be people who are well versed in matters of tax, economics and business.

The Bill has been put together in a very neat manner. The fact that it is not the last court of call is also good. This is because we also need to decongest. We need to decongest our courts so that instead of everybody going to court when they have an issue, we can have all of these other avenues of alternative dispute resolutions. We have for example seen the success of the Political Parties Dispute Tribunal which removed a lot of issues going to court. It is only those who are not satisfied with the outcome of this tribunal who have to go to the High Court.

I would like to encourage the Committee of which I am a Member to keep up the good job and keep bringing us such nice pieces of legislation as we move towards establishing a safe and fair business environment for all Kenyans.

**Hon. (Ms.) Kiptui:** Hon. Temporary Deputy Speaker, I rise to support. Recently, we passed the Valued Added Tax Bill. We know that sometimes the law can be rough to the business community. This particular Bill we are discussing will really smoothen the rough edges of that VAT law by assisting those people who think they have been rubbed the wrong side. This Bill, if passed will enhance the running of business in this country and therefore, grow our economy.

**Hon. Gaichuhie:** Hon. Temporary Deputy Speaker, I want to thank the Chairman of the Departmental Committee on Finance, Planning and Trade because of late he has been bringing very good Bills. I also thank the Members of that Committee who have been working very hard to make sure that the Bills on their table are dealt with expeditiously.

This is a good Bill because when you look at all tax laws, they have appeal bodies, that is, tribunals that deal with appeals. This Bill is now going to consolidate all of them instead of having separate tribunals under every tax law. That is a very good way of cutting costs.

When we have a chairman who has the qualifications of a judge, then we expect the rulings of the tribunal to be very fair. The people in the tribunal are qualified in various professions. Having a clerk who has the qualifications of a Clerk of the High Court, that is almost like a court. I think all the judgments that will be coming from that tribunal will be of high integrity. Of course, there is a leeway that if one is not satisfied then one can still go to the High Court. This is a fair way of dealing with an appeal. The Bill states how people will get fair hearing. People are allowed to bring witnesses and even documents that may be required. All the members of the tribunal who have an

interest in the case must declare their interest before any judgment is made. This is good because where people have conflicting interests and they do not declare, the judgment may not be fair.

The Bill stipulates the different kinds of offences that are going to be dealt with. It gives a timeframe on how to appeal and when to conclude the cases. This is good because you will know that after you appeal within a certain number of days, your appeal will be dispensed of. At the end of it all, the Bill is repealing all the other tribunals in the other laws. This is good because some laws forget the clause of repealing the other laws and thus, they find their way here for us to repeal those laws. This Bill is comprehensive although we still need to do other adjustments on it.

With those few remarks, I beg to support.

**Hon. Rotino:** Thank you very much, hon. Temporary Deputy Speaker for giving me this opportunity to contribute to this important Bill. I want to thank the Chairman for bringing forth this very important Bill.

Taxes are things that run a country. We ought to encourage our citizens to pay their taxes. When citizens know that there is a way they can defend themselves or they are able to solve their problems which they encounter when paying their taxes, they will pay the taxes very well. We need to educate our people. In the rural constituencies people do not know much about taxation. People must be educated on how to pay taxes and where to seek remedy. The Bill should have a clause on education. The communities must understand how they can run to the tribunal when they are faced with problems.

This tribunal will help minimize complaints that people have with regard to payment of taxes. I do not think we need a judge to be the chairman of this tribunal. We need to bring an amendment that anybody who is qualified, say, a person with a basic degree and enough experience can be the chairman of this tribunal. We should not limit this because we have very few judges; let us open it up.

I want us to build confidence in our taxpayers. One of the speakers said that in 2003 when the NARC Government took over people were paying taxes because they had confidence in the Government they had elected. If we can build confidence in our taxpayers by using the money collected well, then they will always pay taxes. We need to assure them that when they have a problem, they have a place to go to. This will help our people a great deal.

We are going to bring amendments to this Bill. For example, the membership of the tribunal should not be 20 members. We should have a maximum of nine members. Overloading the membership will bring a problem to the taxpayers. We need to spend less money on the tribunal.

Hon. Temporary Deputy Speaker, with those few remarks, I beg to support.

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu) Hon. Dan Kazungu.

**Hon. Muzee:** Thank you, hon. Temporary Deputy Speaker for the opportunity to stand up here and support the Bill. I have just come from rural Malindi where I distributed title deeds to the landless people who had never seen them since Independence. I am meant to understand that it cost the Government Kshs20 billion to ensure that we have 60,000 title deeds to be distributed to the hitherto landless people. For that, I want to thank the Government and I know it is because of Kenyan taxes that we are able to get this money and support this programme.

So, the subject of tax is very important because this is one of the ways that we get our finances to fund activities in the nation. The issue of the tribunal here is so key because like other colleagues have said, we have been having different tax acts. We have the Tax Act, the VAT Act and the Customs and Excise Act and all of them have some form of tribunals. This law seeks to harmonise all that so that it is streamlined for business. For a Government that is keen on transforming economy, we cannot do that if we have laws which are disjointed and tax appeals in different houses or offices.

Hon. Temporary Deputy Speaker, so, I rise to support this Bill but I would also like to talk briefly about the VAT Act. I have heard hue and cry from the Information, Communication Technology (ICT) industry that over the years ICT products have been zero rated. The new Act did not factor in the fact that we need to continue zero rating ICT equipment, both software and hardware. It is my considered view that we will get a chance to amend it. We know the uptake of ICT over the years has been high and this is because since 2005 the Government had a deliberate policy of ensuring that we have ICT products and services zero rated. The uptake has been phenomenon, not just in Kenya but in the whole region. I would like that situation to continue because being a product of the ICT industry myself, it is important that we ensure that the industry continues to blossom. The ICT has been and will continue to be one of the key pillars of Vision 2030 going forward.

So, hon. Temporary Deputy Speaker, I also rise to support this Bill because of the fact that instead of a Cabinet Secretary being the person to decide how this tribunal goes, you have a team that cannot just be swayed. You have a team that cannot just abdicate this very important issue to the whims of one person. So, it is very important that we have this and I like the fact that we need to go a step further to ensure that we have tax experts who understand tax issues, regime laws and practice in this country so that we do not have to rely on other people. Imagine you go to the tribunal and because members there do not understand tax issues properly, they have to go and consult other people or hire other experts to get this idea. So, it is important that we have that. That will ensure that we have decisions made faster and promptly so that we can facilitate business instead of frustrating it. I think that is really key especially now that this transformational agenda wants Kenya to be one of the leading economies in the region.

So, I rise to support this Bill, hon. Temporary Deputy Speaker and I hope that the Finance team here will continue to do a good job and provide leadership now that we are focusing more on transforming this country. Without good tax laws, we cannot go far. Thank you so much.

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): Hon. Kirwa Stephen Bitok.

**Hon. Bitok:** Thank you, hon. Temporary Deputy Speaker for this great opportunity that you have given me to support the Tax Appeals Tribunal Bill. I also wish to congratulate the Chairman, Vice-Chairman and the members of the Departmental Committee on Finance, Planning and Trade of which I am a member, for the work they are doing tirelessly to see to it that the management of finances in our country goes well.

Taxation is a very important component of financing the budget of this country and as you are aware, we passed a Constitution in 2010 which has several layers of Government demands for funding and the funds have to come majorly from taxation of our own citizenry. Given that we have to encourage them to contribute to the

development of this economy and the growth of the revenue of our land, we also need systems of managing the tax regime so as to encourage compliance.

Hon. Temporary Deputy Speaker, I find that the Tax Appeals Tribunal will go a long way in encouraging the businessmen and citizens of this country to see to it that taxation is complied with. To allow development, it means we have to have a tax regime that is friendly, transparent and that encourages people to perform and to see that their taxes are properly applied in the country.

With those few remarks, I support this Bill. Thank you.

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): Hon. Lisamula Silverse Anami.

**Hon. Anami:** Thank you, hon. Temporary Deputy Speaker. I would like to thank the Committee that has brought up this Bill and especially the issue of the tribunal. From time immemorial, our people with the experience from the colonial times do not have a very good place in their hearts for tax. So, we have all the time tended to avoid tax. However, the journey we have travelled as Kenyans, we need to address some of these issues and demystify the concept of punitive taxing systems.

So, I want to support this especially with the understanding that tax is important. Tax is important and that is what will enable us to grow socially, economically and even politically as a nation. However, the taxpayer is more important than tax. So, we need to provide a good place for the taxpayer and this Bill just does that – provides the opportunity for redress by taxpayers who feel that they have not been treated well.

Indeed, our socio-economic situation is such that there is a lot of dependency, caused by the high poverty levels which feed on our people. This will be better taken care of if our people are educated on the positive roles of tax, business and contributing to the national basket. This can be done very well when people know they are respected and can participate in the process of revenue collection and get services.

The important thing here is provision of commensurate services which justify the collection of tax. When Members of the Public do not get these services, they need to have a place for redress. It should not just be for the business community but also the citizens who pay tax. Do they get the services?

This tribunal should have a wide range of concerns, which should be addressed so that there is value for money. We need to benchmark with countries that have very strong tax regimes, where citizens are happy to contribute as much as 50 per cent of their earnings, because they get services. We need to give feedback to the taxpayers; they need to know the contributions they make add value to the welfare of their society.

This Bill goes a long way in providing confidence to investors. Lately, we have read about very lucrative businesses being taken to other countries because of our very unpredictable tax systems. I wish to thank the Chairperson of the Committee on Finance, Planning and Trade for bringing up this reform. As you can see from both sides of the House, we appreciate such reforms because they are user and citizen friendly and they go a long way towards reducing poverty in the citizenry.

I would like to support the Chair and encourage him to go even further and involve the general public and younger generations to participate in these tax systems.

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): Hon. Mary Wambui Munene.

**Hon. (Ms.) Munene:** Thank you, hon. Temporary Deputy Speaker. I rise to support this Bill on Tax Appeals Tribunal, brought by the Chairperson of the Committee on Finance, Planning and Trade. I take notice of the fact that the taxpayers are going to be happy and this country will provide confidence to investors. We will show that we are ready to reform our country.

For those who have appeals, instead of them going to the court they will face the tribunal and it will take them a shorter period. If they go to the courts, it will take two months. As for the young people who are interested in business and face problems, it will be easier for them to seek redress through this tribunal.

Thank you, hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): Hon. James Kimaru Bett.

**Hon. J.K. Bett:** Thank you, hon. Temporary Deputy Speaker, for giving me this opportunity to support this Bill on Tax Appeals Tribunal. I want to mention that tax is an old concept which has been in our society for a long time. I wish to thank the Chairperson of the Committee on Finance, Planning and Trade for bringing such a progressive subject to this House, because tax is a major source of revenue to the Government. I hope the tribunal will be able to set in place a tax system and regime that will not only be fair, but also equitable as they raise revenue for the Government.

We know when a tax system is fair and equitable, the citizens are motivated and encouraged to pay taxes to the Government. Looking at the proceeds from the tax, we hope this tribunal will use them for the development of our country, by improving infrastructure and medical services to enable this country move to a higher level. As it regards membership of this tribunal, the Chairperson does not necessarily have to be somebody with a legal background, like a judge. I am of the opinion that somebody who has a finance or economics background will be most suited to chair this tribunal. Somebody with a legal background can be one of its members. I want to ask the Committee, as they go ahead to constitute the tribunal, to remember the marginalized groups like the youth, women and people with disabilities so that we embrace and make them part of our development agenda.

Finally, I want to urge, as we develop our tax tribunal, to come up with a tax regime that will be fair and equitable. In the long run, we will encourage investors to invest in different sectors of our country. This way, we will be able to achieve the two-digit growth that the Jubilee Government has envisaged to achieve.

Thank you, hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): Hon. Nicholas Gumbo.

**Hon. (Eng.) Gumbo:** Thank you, hon. Temporary Deputy Speaker for giving me the opportunity to contribute to this Bill. I want to thank the Chairperson of the Committee on Finance, Planning and Trade for bringing it. Those of us who subscribe to the Christian faith know that people like Zaccheaus in the Bible were much hated because, for a long time, taxpayers saw them as a loss to them, and they had no recourse even when they felt aggrieved.

Most of us in this House have a business background, we have been doing one thing or another and we know how difficult sometimes it can be, because the matter of taxation is a very subjective affair. Most times the taxman says and it becomes law. As politicians, we know there have been instances where people have used tax to settle political scores.

This tribunal is very important and paying tax is an obligation. I can say with certainty that if Kenyans were to be assured, for example, that the moment they pay taxes they will be guaranteed of security, good roads, clean tap water, medicines in our hospitals and house services will work, many more Kenyans would pay their taxes.

Additionally, when Kenyans get to know that whenever they have grievances related to tax, there is a way to present them and get a listening, this will be a step in the right direction. I would urge my good friend, hon. Benjamin Langat, and his Committee to relook at the whole issue of taxation in Kenya.

There is still a big percentage of our people who ought to pay taxes and are not being taxed, either because the tax regimes we have in place are not friendly or lack of understanding on what tax can do for them. When you go to some countries and see what people achieve through taxation, you see absolutely no reason; it has become almost a voluntary affair to pay tax. If the culture of this redress can be entrenched in our laws, we can know the moment we have an issue with taxes, we can get a redress and it will be a good thing.

I do not want to take too much time, other than thank the Committee for bringing this Bill and urge them that the issue of fair taxation is something that touches each one of us. When people feel unduly taxed and we have seen it happening all over, it touches people personally, the way they relate to their children, their school fees, how they feed and look after them when they are sick. I would urge the Committee, as we go along, there will be many issues touching on taxation in this 11<sup>th</sup> Parliament. As we bring laws touching on taxation, let us always project the human face because as Members of Parliament, we are seen as being up there and completely out of touch with reality, not just in Kenya but all over the world. Whenever things are not working, we are the target because we are the leaders that people see most.

I thank the Committee, this is a move in the right direction, and I support it.

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): Thank you. Hon. Members, I can see a lot of requests but as had been directed before by the substantive Speaker after a request by hon. Lentoimaga pursuant to Standing Order 33, that this House adjourns to discuss a matter of national importance, I call upon hon. Musa Lentoimaga to move the Motion.

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

#### **INSECURITY IN THE COUNTRY**

**Hon. Lentoimaga:** Thank you hon. Temporary Deputy Speaker, for giving me this opportunity. I also want to thank hon. Members who stood by me when I moved Notice of the Motion.

I would like to express my displeasure and pain for the kind of insecurity that Kenyans are experiencing, not only in my constituency but across Kenya. Having worked in the security sector for a long time, I am disturbed by what is happening in the country.

Hon. Temporary Deputy Speaker, it is like security systems have almost collapsed in this country. This is because when you go to report an incident, nobody takes action unlike before. The buck stops at nobody! People are killed or property is stolen and

nobody cares. You are just told: "Okay, report." You can even be termed a suspect, instead of being a witness or somebody who can give information.

In the recent past, we had experience of insecurity in Moyale, Mandera, Bungoma, Kakamega and even here in Nairobi; the Westgate incident and many others. There are many others like in Mombasa, Garissa and Busia. It actually happens everywhere. I think I want to request and appeal to hon. Members to stand up and let us save our country. This is because we are likely to go to the dogs. If we are not careful, if we continue the same way we are doing now, I am afraid things will be worse than they are at the moment.

So, as a House, I think we need to put initiatives in place that can assist us to chart the way forward to save our country from collapsing. Kenyans are burning firearms.

**Hon. Member:** On a point of order, hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): I have not seen you on a point of intervention, hon. Member. What is your point of order?

**Hon. Member:** Thank you, hon. Temporary Deputy Speaker. I am very sorry, I did not want to interrupt my good friend. When we are speaking about the matter of security, the Chair of the Administration and National Security Committee or the Leader of Majority Party should be in the House. They should be here so that they can take our sentiments because we are not going to speak to ourselves.

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): I agree with the hon. Member, it is important but since hon. Lentoimaga has already started moving the Motion and it was a request that was granted, I think he can continue moving, but we will note that.

**Hon. Lentoimaga:** Thank you, hon. Temporary Deputy Speaker. It is actually important to have those hon. Members in the House. I think they are aware. Some of them even supported me while I was moving Notice of the Motion.

So, the critical issue is that in the counties at the moment, there is nobody in charge of security. The command system has collapsed. You have two commanders in the county and it cascades down to the constituency. Two commanders; one in charge of Administration Police and another one in charge of regular police. When we go to ask for interventions, they compete. Everybody says he is independent. They cannot deploy officers to act and that is the reason the security systems have collapsed and the reason why we can see that it is not working well.

Secondly, in the recent past, even the County Commissioner who is supposed to be the chairman of the county security committee is also not so much in charge. It is like these two departments in the police force are unable to agree, therefore, they cannot actually assist the county security systems.

Hon. Temporary Deputy Speaker, cattle rustling in northern Kenyan has really increased. In the recent past, it has even heightened because of the conflicts between our security agencies. I want to bring it to the attention of the House that I have several incidences which have taken place especially in Samburu County and specifically in Samburu North which have not been responded to at all. Children have been killed especially school-going children. No arrests have been made and nobody follows even the livestock which have been stolen. It is just left like that.

So, there are so many outstanding cases that we do not know where to run to get assistance. I want to enumerate them so that I can give hon. Members an opportunity to

ventilate. I want to say that in the last two months, for instance, on 24<sup>th</sup> August, 2013, five armed men invaded a Manyatta in Baragoi Town, just next to the District Commissioner's Office and killed and harmed an innocent young person called Lelsit.

On 25<sup>th</sup> August, 2013, in Maskita Village, Ndoto Ward, six armed men raided and invaded a Manyatta in the night and stole camels and shot and critically injured a 14-year girl from a family called Lemaron. The girl is still in hospital in Maralal, being treated and the parents have nothing even to pay for the hospital bills.

On 31<sup>st</sup> August, 2013, another group of armed men stole 106 goats belonging to somebody called Lowesa Emuria, just next to the secondary school about two kilometres from the town. On 16<sup>th</sup> September, 2013, another group of armed men raided cattle shed three kilometres from the town and police station and in the process of shooting the herders, they seriously injured a 14-year-old boy and he is still in hospital.

On 18<sup>th</sup> September, 2013, another group of armed fellows stole three cows from a village in a place called Keleswa. Those animals have never been recovered because nobody followed them. On 22<sup>nd</sup> September, 56 cows were also raided by armed bandits in a place called Loonjorin in South Horr in Nyiro Ward, two herders from Lesingiran family were shot and critically injured and they are in Wamba Hospital receiving treatment. No follow up, arrest nor recovery was done on those animals.

On 26<sup>th</sup> September, two young boys who were riding a motorcycle from South Horr to Baragoi were also attacked. They were innocent riding a motorcycle. It is about two kilometres from the Baragoi Town and they were shot. They are in Nakuru hospital receiving treatment. No arrest has been made; no report has been made but nobody follows these incidents.

On 28<sup>th</sup> September, 2013, a 13-year-old young boy was also killed near the police camp, next to the secondary school. Fifty goats were stolen.

Hon. Temporary Deputy Speaker, on 2<sup>nd</sup> October, the most recent one, 40 armed raiders invaded a manyatta in a place called Suiyan and killed two herders, namely, a 16-year-old boy from the family of Lewarani and 47 years old from the Lentilo Family. Consequently, 300 cows, 700 goats, 80 camels and 32 donkeys were stolen. Three herders were also critically injured and are currently receiving treatment in hospital. Why does this happen? It is a shame because a Government cannot recover firearms stolen by bandits. You will remember the Baragoi Massacre which is still outstanding and fresh in our minds where 50 policemen were killed and 50 rifles taken including 2-HK-11 and a grenade. Nobody bothered to follow up these issues. Even the Government itself was hurt. It was attacked and they do not care.

These firearms are the ones which are being used now to cause atrocities to Kenyans. They are also coming here to Nairobi. We are not complaining because of the Samburu County, but the firearms will be taken to Kakamega, Garissa, Nyeri or even to Nakuru because human beings travel. That is why I was appealing that this 11<sup>th</sup> Parliament should rise up and try to address these issues. It is like the Executive is not serious about what is going on in Kenya. This is already spreading. We need to do something. When we were in Mombasa during our retreat, my Chairman made very critical suggestions. I want to stop there, so that we can continue, but my conclusion is that we need to do something.

**Hon. Lati:** Hon. Temporary Deputy Speaker, I want to thank hon. Lentoimaga for asking the House to adjourn to discuss this very important matter that touches on our



country. I want to dwell very specifically on the Baragoi Massacre. The genesis of the Baragoi Massacre is a very sad thing for our country. We all know what happened on that fateful day. Very noble people, from across our great Republic, went after bandits; tribal criminals, who had stolen livestock to try and recover it. What happened is very sad. They were ambushed and 50 plus of our great men, in the service of our country, were killed. Not only did these people kill these great men, who were family members, brothers and relatives to many of us, but they also took their firearms. They took tonnes of assortment of arms and ammunition.

Today, those firearms and ammunitions are looking at very innocent Kenyans. We know what firearms are. They are not pillows or roses, but bullets from the Government. These are guns that were bought for Government officers now in the hands of tribal criminals trying to kill more people in our own land. They already killed 50 plus police officers who were serving our country. These were not just policemen, but people who represented families. They were husbands, relatives and brothers to many. I do not think it has ever happened in the history of our country that somebody kills 50 plus officers, takes away their arms and to date, nothing has been done about it.

We know what happened the following day during the recovery. There have been very sad stories by people who went there the following day. After the 50 plus officers were killed, there was no Government response, not even a plane was sent to that place. We know who rescued the few policemen that were rescued. They were rescued by simple herdsmen from the Samburu Tribe. In fact, there is a true story of a senior Administration Police Officer from Ukambani who had a cellphone. He had a very small injury and spent three days calling every day to the police station to be rescued and nobody dared to go and rescue him. The great Government of our country never dared to rescue an officer who went there in the service of our nation. That man is dead today. We have widows and children. We have people somewhere in Ukambani asking what happened to their husband and son. We have heroes of that day. We have a small boy who literally carried an OCPD who could not walk. The small boy carried an OCPD weighing several times his weight and took him away. That boy has not been mentioned in the books of our history.

We have people who used their cars and took the risk to collect the officers. Some of these officers are alive today because of such Kenyans. There is a guy somewhere in Kalenjin land who is alive today because a few Samburu men, namely, Tom Lekesike, Laisi Latura, Tom Lelemore and Leshole took the risk and took that guy to hospital when the Government could not. It is sad because many months after the Baragoi Massacre, the arms are still in the hands of criminals. The Government has gone down so much. It went on asking the criminals to forget about the people they killed, how noble they were, how good they were to our country and what service they were offering to our nation. It asked them to forget that they are killers and just give the Government the firearms. The Government said: "Just give us the firearms". The criminals said: "You did not give us the guns. We took them by force. If you are truly a Government worth its salt, come and pick the guns". I want the Government to hear me loudly saying that today, the criminals have won. They have the ammunitions; they have killed and I am not sure where else in the world human beings could get such amnesty. Someone is telling you to forget about the noble officers that you killed and just give the firearms and the criminals say no.

It makes me wonder whether there are some special people in this country. I know there are elections, the Government needs votes and maybe that is why it does not want to discuss that issue. Again, we cannot rule by rigging votes when innocent Kenyans, the 50 plus officers, have been killed. That is not enough. The 16HK and the other guns are aimed at very innocent children, women and the innocent lives of the Samburu and the Pokot tribes. We know where those people go. I am sorry to say this and I am not a tribalist, but we know who those guns are facing. They are facing the Samburus and the Pokots. Can we just sit as a Government and see those people get killed again?

I want to end by asking a few questions to our Government: what happened to the operation that was authorised by the Government of President Kibaki? What happened to the Government operation? When will it be implemented, at least, to recover the guns? Forget about our great men who died, who came from across our Republic, but when will the Government, at least, get those guns? What should we tell those families? Should we tell them that the Government is very weak and a bunch of criminals can kill their relatives and breadwinners and six months down the line the Government cannot even recover the firearms from those people?

Hon. Temporary Deputy Speaker, another question that is important to this debate is: what precedent are we setting as a country? What are we telling our tribes? What are we telling the tribes that are armed with illegal firearms? Are we telling them that they can kill anybody in the Government and take away their firearms so that they can kill more? Is that the precedent we want to set as a country that I love very much; that an officer who works for the Government can be killed and the firearms taken and nothing happens? Is that what the Government wants to do? If these people are Kenyans and they are somewhere in Kenya, have we lost control of our territories? Are we saying that we cannot rule our country?

The United States of America is almost 50 times bigger than this country but you cannot do anything bad. The Government will catch up with you if you commit a crime even in the deserts of Mexico or wherever. This is the case and yet here, we have a very small country and we keep on talking about the Suguta Valley as if it is sending robots to the Mars. This valley is within our territories and it is not even big. The Government has the machinery such as planes---

Hon. Temporary Deputy Speaker, I support this Motion.

Thank you.

*(Question proposed)*

**Hon. ole Kenta:** Thank you, hon. Temporary Deputy Speaker, for giving me this opportunity to also address this issue which is actually a cancer in our country now. It is a fact and everybody knows that we are a country under siege. This has been confirmed by what happened the other day at the Westgate Mall in Westlands. I do not know what we have been doing all these years because the security situation is deteriorating day by day.

You could go to any place in this country safely and return home when we were growing up but you cannot do that now. You come out of your home now and you do not know whether you will go back in the evening.

It is not only the Samburu who are crying, we have even seen the suffering of innocent people in Nairobi. Children are raped and killed. Cartels are all over the place even muzzling business activities. I believe that this cancer will spread very fast and we might not be able to contain it if we do not do something now.

Whereas these problems exist, we must also take responsibility as leaders. This is because if you look at cattle rustling, you will find that it is communities fighting each other. They are fighting for scarce resources. You will see some of the leaders going out of their way to defend their tribesmen instead of saying that fighting affects all of us. The first thing that we should do is to sit down as leaders from the respective communities, especially those communities that do not agree or that steal livestock from one another and try to iron out this problem. I assure Kenyans that there will be peace in our country now and forever the moment the leadership agrees to resolve these problems.

On unemployment, let us not bury our heads in the sand. The economy of this country has gone to the doldrums. Our children are not employed. What do they do? They amass themselves and drink and engage in drug abuse. What follows after that? It is lawlessness. So, this does not just affect the towns, but it also affects the countryside and everywhere. So, we must come together as leaders and ask ourselves, where did we go wrong? How do we reverse these ugly incidents that are affecting our country? After what happened at the Westgate Mall, I believe that Kenyans will come back to their senses and know that we are not enemies of our brothers and sisters. We have to come together to survive as a country.

Let us think about what the future holds for us. What should we do for our country? I believe that we have these problems more than anything else because if I am the one in power today, I make sure that it is only my tribesmen who get everything; that is job opportunities. How do we get out of that? It is an assumption that I can only get something if I fight for it. Somebody will say that, that person is not a Kenyan but an enemy. That is somebody who has to fight in order to survive.

In conclusion so that other Members can get an opportunity to contribute, we must also look at the security forces. You cannot tell the security forces to go out there, sacrifice as it has been said by hon. Lati, they are killed and yet you do not look into their welfare. The other important thing is that we should look after our security personnel. We must also make sure that they are properly housed. I was surprised to learn that there is no compensation for Kenya forces. If a policeman is killed, his family suffers a lot. I believe that, that is one of the incentives that we must give. We must not only give them returns for their work, but we should also make sure that they are insured so that even if the breadwinner dies, that family will not suffer.

I believe that this is something that should be looked into. I also believe that this is something that should have made this House full today. I believe that this is something that should have made the Majority Leader to be here. This is not a Government issue neither is it a party sponsored issue. This is a Kenyan issue and it affects all of us.

If you fear to talk about it just because you will be seen to be anti-Government, then you do not even love that Government but you hate it. The Constitution says that the right to property and the right to life is paramount and must be protected. It is the duty of the Government to enforce that. I have noticed that we always come together when our welfare is being threatened or when we are in a situation where we feel that we are

disadvantaged. It is time we came together and said that this is our country and we must reclaim and fight for it.

I thank hon. Lentoimaga for bringing this Motion and I support it fully.

Thank you.

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): Thank you, hon. Members. There is direction from the Chair. Standing Order No.33(4) says: -

“No Member speaking on a matter under this Standing Order shall speak for more than five minutes without the leave of the House, except that the Mover may speak for ten minutes.”

So, be advised that you will speak for not more than five minutes each.

Yes, hon. Leshomo.

**Hon. (Ms.) Leshomo:** Ahsante sana Naibu Spika wa Muda. Ninaunga mkono Hoja hii ya usalama. Tunapongea kuhusu usalama katika nchi ya Kenya, kila mtu anaona kwamba kuna shida mahali fulani. Kuna shida kwa sababu hakuna mahali hapa nchini hakujatokea janga kama hili tunalolizungumzia kuhusu Baragoi.

Ningependa kusema kwamba ikiwa sisi viongozi tunaona mahali shida iko inafaa tujiulize shida hii inatokea kwa nini na tutafanya nini. Kwa nini ninauliza haya maswali? Hii ni kwa sababu nimeona mengi katika Bunge la Kumi na hili la Kumi na Moja.

Ningependa kusema kwamba kuna shida kubwa huko Baragoi, vile wenzangu wamesema. Ni chungu sana kwa sababu hata maafisa wa usalama waliuawa.

*(Hon. Leshomo spoke in her mother tongue)*

**Hon. (Maj-Gen.) Nkassery:** Thank you very much, hon. Temporary Deputy Speaker. This is a very important Motion for this country but I do not see the Leader of Majority Party or the Chairman of the Committee on Administration and National Security in this House. The Mover of this Motion is the Vice-Chairman of the Committee. Since this is a very important Motion, I want to request you to send the Serjeant-At-Arms to go and fetch one of the two gentlemen because somebody has to respond, on behalf of the Government.

Thank you.

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): Thank you, hon. Nkassery. That is an observation that was made by an hon. Member before. It is the business of the Whips to get Members to the House. The Government Whip should be directed that in future, when we discuss matters of national importance, such leaders should be in the House. Having said so, we may continue but we have taken note.

Hon. Leshomo, you have two more minutes.

**Hon. Leshomo:** Mhe. Naibu Spika wa Muda, ninamuunga mkono mhe. Nkassery kwa sababu hili ni jambo la kusikitisha na linawaadhiri Wakenya wote. Mambo yote tunayosema hapa, yanaenda wapi? Yatajibiwa na nani? Ni masikitiko makubwa. Siweza kurudia yale yaliyosemwa na mhe. Lentoimaga kwa sababu ametaja kila kitu. Nitagusia tu machache ya mambo ambayo hajayazungumzia.

Nilishuhudia mimi mwenyewe kile kilichofanyika kwenye mauaji ya halaiki ya watu kule Baragoi lakini tulipokuwa tukiulizana ni kitu gani kilifanyika, nilipelekwa kwenye afisi ya CID kwa sababu niliongea kuhusu jambo hilo. Ikiwa watu wako wamekufa, na umeona; akiwemo mtoto wa ndugu yako, ukiwa kiongozi, utanyamaza?

Ninaomba hivi, sisi tuko katika Serikali; hatuko nje ya Serikali. Kenya ni yetu. Hakuna mahali tunaenda. Kenya ni yetu, na ni lazima tuseme ukweli ili makosa yarekebishwe.

Mhe. Naibu Spika wa Muda, tukio la tarehe 2.10.2013 lilingangaza sana. Kama alivyoeleza mhe. Lentoimaga, watoto waliuawa na ng'ombe kuibiwa. Jambo la kushangaza ni kwamba ripoti rasmi ya Serikali iliyoletwa Nairobi inasema kwamba hakuna mtu aliyeuawa ama ng'ombe kuibiwa. Ripoti hiyo ilitumwa Nairobi licha ya kwamba maiti za waathiriwa zilikuwa bado hazijazikwa. Hali hiyo inanikera sana. Tulifanya kampeini ya amani miongoni mwa wakazi wa sehemu hiyo, na watu wakarudiana na kuanza kukaa pamoja kwa amani. Hatujui vita vilianza wapi tena. Swali ambalo ningependa kuuliza ni: Ng'ombe hao wanapelekwa wapi?

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): Hon. Leshomo, you should be winding up.

**Hon. Leshomo:** Mhe. Naibu Spika wa Muda, ninauliza, ng'ombe hao wanapelekwa wapi, ndiyo tujue? Zile bunduki za Serikali zilizopotea zinatumiwa kuwaua raia. Makosa yako wapi katika Serikali? Ningependa wale ambao wako na makosa Serikalini wachukuliwe hatua. Kuna endelea nini katika kitengo cha usalama? Hali ya usalama imezorota zaidi. Nikizungumza hivi sasa, nimearifwa kwamba hakuna watu Baragoi. Watu wote wamehamia kwenye milima. Watoto wametolewa shuleni. Sasa tutafanya nini?

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): I am sorry, your time is up, hon. Leshomo.

Hon. Mohamed Ibrahim, you may come to the Dispatch Box.

**Hon. Elmi:** Thank you, hon. Temporary Deputy Speaker. First and foremost, I would like to thank hon. Lentoimaga for moving this Motion.

Hon. Temporary Deputy Speaker, our country is bleeding from ineffective security services. Most of what I am going to say here are things I have shared with the security chiefs of this country. I want them captured here for the record of this House. Hon. Lentoimaga gave a lot of examples. So that this House understands the gravity of this matter, I want to also give an example from my county and my constituency.

It is public knowledge that four months ago, there were clan clashes in my constituency, during which three towns were burnt down. The residents of those towns are now Internally Displaced Persons (IDPs) in other towns. Schools were closed. Four months down the road, even after the leadership of Wajir County were shot at, no security personnel has gone there. Even the County Commander has not visited the scene. Not even the County Commissioner. I have informed the Principal Secretary and everybody else responsible for security in this country, but nothing has been done to-date.

Hon. Temporary Deputy Speaker, as hon. Lentoimaga said, you cannot tell who is in charge of security in the counties. Everybody says that they are independent of each other. I do not want to go into any further detail. The question is: Who is in charge of our security? People are killed but no action is taken. What would such scenario lead to eventually? It leads to proliferation of small arms.

Everybody knows that we are surrounded by countries where firearms are in plenty. If you are a pastoralist looking after your camels and you feel threatened, what would you do? You would walk across the border and buy yourself a gun. You have a son who is not well behaved. Before you know it, he uses the gun to kill somebody. The next day he needs some money, he sells it to somebody who brings it to Nairobi. So, the

whole country becomes awash with illegal firearms just because we are not giving basic policing services.

Hon. Temporary Deputy Speaker, I call policing “basic service” because when something happens to somebody, he needs to report somewhere and see action being taken. I am afraid to say that, at the moment, such action is probably confined to around Nairobi. Elsewhere and, specifically in northern Kenya, it is not there. If it is there, it is very limited. Nobody is being taken to court. I refuse to buy the idea that what is happening in parts of this country is cultural. There is nothing cultural about somebody putting together a gang of criminals to go and kill people. We cannot say that such an act is not a problem.

Around Nairobi, it is robbery with violence if somebody threatens you using a knife and takes away your mobile phone but, in those areas, those are pastoralists; it is their tradition. There is nothing traditional about killing one another. Therefore, this must be brought to a stop.

Hon. Temporary Deputy Speaker, I want to say that the 11<sup>th</sup> Parliament is not like previous Parliaments. We cannot just lament. If this country goes to the dogs because we did not perform our responsibility, then history will judge us harshly. The foundation for any economic development – even Vision 2030 says so – is security. Security is not among the three pillars of Vision 2030 because it is its foundation. That foundation is disappearing very fast. Therefore, I propose that, first and foremost, we give ourselves a maximum of two weeks or a month. We, Members from 290 constituencies, are on the ground. If the situation does not change, we can censor people and remove them from office.

We can provide more budgets and provide insurance even better. We have heard about the terrible incident of Baragoi. It happens every day. Police officers get killed every day because we did not take any precautions to stop the proliferation of small arms into our country. What happens to the families of the killed police officers? Nothing! They are not supported at all. We have the power to bring legislation to this House and provide for a compensation of between Kshs5 million and Kshs10 million for every police officer who dies while on duty, so that police officers can feel that they are serving Kenya. That is a Bill in respect of which we do not have to wait for anybody. We should bring it to this House.

Hon. Temporary Deputy Speaker, it is time we enacted legislation to make it impossible for one to carry an illegal firearm in this country. At the moment, if you are caught with an illegal firearm, you get away with a small fine. It is this House which can enact the necessary law to ensure that illegal firearms have no room in this country. Even better, we can allocate money for one year to specifically mop up illegal firearms in this country.

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): Hon. Member, you should be winding up. Your time is up.

**Hon. Elmi:** Hon. Letimalo talked about who is in charge. The Constitution is clear. The Inspector General is in charge. If he is not, then this Parliament should deal with that office.

**Hon. (Ms.) F.I. Ali:** Thank you, hon. Temporary Deputy Speaker. First and foremost, I appreciate the efforts of hon. Letimalo in bringing this Motion. I am really

sad because we have had frequent adjournments over this issue. The first week we came here, we adjourned because of insecurity. Week after week we have been doing the same thing; it has become music in this House. I am saddened that people are dying every day. One can say that life has become meaningless in this country. Today it is Baragoi and tomorrow it is Wajir. Today Wajir is hosting over 28,000 IDPs. They cannot go back to their homes because they were burnt. Their animals were taken away. The schools were damaged. The water points and shops were also damaged. People there are starting life from scratch and there is no help for them. The poverty rates are increasing because of these attacks and insecurity. Today, we heard that 300 heads of cattle were---

**Hon. Bunyasi:** Hon. Temporary Deputy Speaker, given the great interest in this subject, I would like to suggest that we go down to two minutes after this speaker.

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): Hon. Members, what are your proposals? I can assure you there are a lot of requests from hon. Members. It is, indeed, a matter of national importance.

**Hon. Members:** Three minutes!

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): Hon. Fatuma, after you, each Member speaking will have three minutes.

**Hon. (Ms.) F.I. Ali:** Thank you. The other common trend of this adjournment is that the Government security agencies are ineffective. There are no arrests or recovery of livestock. There is nobody who is taking responsibility. We are not a failed state. We are a stable and rich country. We are highly respected by our neighbouring states. What could be the problem? Is it that the people in the north are not Kenyans? We need to reflect on this matter. This House is not a centre for lamenting only. This House must act upon these concerns. We are not trying to learn how to speak in this House.

Hon. Letimalo and others have brought this Motion seeking action. The action is by this House which is the top decision-making organ in this country. If the Executive is not doing its mandate, the law is very clear that the state is supposed to protect its citizen. It is supposed to provide security, but it has failed. We cannot sing this same song. We must bring a radical action by Parliament. This Parliament is not a place to cry and lament. This Parliament must take action. I was among the leaders in Wajir who were almost killed. We survived only by the grace of God. Bandits were almost killing us, but nobody was arrested. Two months ago, there were killings in Wajir and Mandera and yet nobody was arrested. The County Commissioner has never visited. This is the same scenario hon. Lentoimaga has explained. Locals and villagers have been killed one kilometre from the police station and the Administration Police camp. *Manyattas* have been raided. Where are we? Can we then harm everybody because the State has failed so that people defend themselves, their property and their livestock?

Hon. Temporary Deputy Speaker, we cannot cry and be saddened by the situation every day in this House. This House must take action and the action is---

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): Hon. Kirwa Bitok.

**Hon. Bitok:** Thank you, hon. Temporary Deputy Speaker for again giving me this opportunity. I wish to congratulate hon. Lentoimaga for having adjourned the House so as to discuss this important Motion.

One issue is that security is paramount in this country and if it fails, it means our country will not prosper. It will not prosper in that we need freedom of movement. We need to safeguard our investments. We need to undertake trading activities that require

people to traverse the country and areas trading in goods and services. We also need to promote tourism which is sensitive and requires security to be guaranteed so as to have people moving freely in this country. We need new areas like Samburu, North Eastern, western Kenya where I come from to be free of insecurity so that we have promotion of tourism and, therefore, earn foreign exchange for this country.

Hon. Temporary Deputy Speaker, we also ought to see to it that the education sector is guaranteed so that we have people who tomorrow will not bring insecurity in the country but will bring prosperity because they are able to go to school and consistently improve the land. Given the current situation, I would recommend that the security agencies of this country be funded properly, be given equipment and the necessary resources to undertake their duties and on their failure, we have the power and the might to ensure that they are overhauled.

I support.

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): Thank you. Members, if you can use the least time possible so that other Members can speak, I would really appreciate.

**Hon. (Eng.) Gumbo:** Hon. Temporary Deputy Speaker, I thank you so much for giving me the opportunity to add my voice to this important matter of security. As has been said by all Members and I do not want to repeat, virtually every part of Kenya has now become a death and torture chamber. I think it is important as the hon. Member for Wajir County said that as a House we must take decisions and we must take firm and tough decisions. When it comes to this matter, let us not care whether it is your brother or sister. If an institution has failed, let us call it by its proper name. Security does not discriminate. We witnessed what happened at Westgate Mall and the pain our President went through when his own nephew was killed because of a security lapse in the country.

Therefore, when it comes to these matters of security, this House has to avoid unnecessary bipartisanship so that we come together as leaders of the Republic of Kenya and do what is only best for the interest of the country, knowing that none of us is immune.

It is very sad to see what is happening in our country today. Security is failing, but what are we seeing are squabbles between those who have been appointed to head the security institutions in the country. We are only hearing of the squabbles between the Chairman of the National Police Service Commission and the Inspector General; I think governance has killed security in Kenya. It is time we relooked at our laws to see quite clearly whether what we have is really what we need. I dare say that much as we had hope with this new Constitution, to me Kenya was better policed before we had this new Constitution and what we have now.

Hon. Temporary Deputy Speaker, if we try something and it does not work, let us accept that it is not working. We have for instance, the Independent Policing Oversight Authority, but how many of us can tell us what it has done to improve security in the country? When we take a former teacher and put him in charge of matters relating to security, what are we trying to tell our country?

The Mover of the Motion has talked about Samburu District, but I have here with me information about every county in this country; right from the capital of Kenya, Nairobi. Someone is shot dead at midday, the killers are captured on CCTV; three or four months later, nobody is arrested. What are we telling the people of Kenya? Even in this



House, very soon, we will be unable to convene because this thing is affecting hon. Members.

The other day the hon. Member for Fafi, hon. Bare Shill, escaped death by the skin of his teeth and the hon. Member for Wajir has just spoken about it. The other day it was the hon. Member for Trans-Nzoia County and it is everywhere you go. What are we doing?

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): Thank you. Let us have hon. Langat contributing and then hon. Sakwa. Please take the least time possible.

**Hon. Langat:** Thank you, hon. Temporary Deputy Speaker. First and foremost, I want to thank my friend from Samburu for bringing up this matter.

I want to say that people must work in this country. Those who have been given responsibilities must work. The day this House will rise and take action on anybody, I will give a vote on that because even if I am in Jubilee, I do not support people who do not do their jobs. It is possible today, and this is very sad, that you start your journey from Kisumu all the way to the city and there is no policeman on the road and no security checks at all. You can pick a gun from Kisumu, Eldoret and even Kakamega and nobody really cares. My colleagues who come from those sides of the western part of Kenya, experience it. There is no security barriers on our roads in this country. Therefore, criminals move from Kisumu to Nairobi, back to Nakuru and nobody cares to take care of our roads.

On the issue of Westgate Mall invasion, that shows us that this country is not safe. Something very serious in terms of security needs to be done. I come from Kericho and two months ago, members of a family were killed in their business just one kilometre from the police station. It took one hour for one policeman to respond and he was shot at and he disappeared. More policemen came much later and it is just less than two kilometres on the highway. This shows that we have a problem with the security systems in this country. I want to say that I associate myself with the sentiments of hon. Lentoimaga.

Hon. Temporary Deputy Speaker, if we have to take action, I support seriously the action we will take against anybody who fails to do their job. I will not vote just because I am in Jubilee; people who have been given jobs must do them.

Therefore, with those few remarks, I support the Motion.

**Hon. Bunyasi:** Hon. Temporary Deputy Speaker, I will be very short, indeed. I share the sentiments of hon. Lentoimaga fully as well as the views expressed by our colleagues from the north and north eastern belt; the pastoral areas. We must remember that this is where our hidden wealth lies in this country. First of all, it is in the people, the livestock that is not yet fully exploited and it is going to be in the mineral resources that are going to be exploited. If today is bad, tomorrow will be worse. We know that for sure from other countries. It is time that someone woke up. These insecurity dimensions take a different shape in every part of the country. It is extremely serious, but different shapes.

In Nambale, for example, we had five robberies in one night in businesses in Tangakona and Nambale trading centres. Nambale Trading Centre is probably 200 metres from the residence of the APs and barely a kilometre from the police base, which got a new vehicle just recently. There is need for certain performance standards to be imposed on our security agents, their response time and active audit programmes where there are cases of this nature. It is completely unacceptable that this should continue unabated as it

has happened. It is time that this country had a security summit to bring to account the big boys in the security chain. We are in a situation where insecurity depletes the Gross Domestic Product (GDP). We are not going to achieve what we want to achieve so long as we get these kinds of insecurity cases going on.

As I finish, I will just hope that we would get a way in which this House can adjourn again on Tuesday when the House is fuller and when the Leader of Majority Party and particularly the Chair of the Committee on Administration and National Security are in the House, so that we can carry this to the next level. I seriously would like to propose that. I did not get enough time to reference the Standing Orders to see if, in fact, we can do so. I stand guided.

**Hon. Mati:** Hon. Temporary Deputy Speaker, first, let me congratulate my brother, hon. Lentoimaga, who is a guru on security matters. Having served in my district which is prone to insecurity, he is quite aware of what happens.

I am going to digress and talk a little about what Kenya has in terms of resources. Kenya is a signatory to the Conflict Early Warning and Response Mechanisms of the Intergovernmental Authority on Development (IGAD) and houses the focal point for eradication of small arms in the horn of Africa. We are almost embarrassed to be associated with these two important institutions because we are doing nothing about the security of our people. On the issue of small arms, we cannot say more because they have injured this country. We had the Westgate Mall incident last week and our people are killed every day using small arms and there is not a conscious attempt to deal with it by mopping up small arms. I do not want to mention countries, but I know a country where bandits have taken over territory and tax people. You cannot move from one district to another without paying tax to these bandits and the central Government remains hostage in the capital. We need to prevent this. If we do not prevent this, in a matter of years or even months, some places will be taken over by bandits and they will exercise their tyranny on the citizens of that part of the country.

Today at lunch time, I got a call and I was informed that in one part of my constituency, namely, Wikithuki Irrigation Scheme, which produces food for my people, there were 10 guns across the Tana River threatening my people. There are five policemen whose only duty that we know is moving around arresting women who make illicit brew. We do not drink *changaa*, but we drink *Muratina*. The officers will not confront these bandits. I hope and pray that there will be a command structure at the top that makes it possible for the officers to protect the lives of my people.

Lastly, we have a problem in the command structure of our security forces. Three weeks ago, we moved very fast as a district and said that we were going to have disarmament and kicking out people from the game park. We have two Commanders in Kitui County and because the Commissioner said it, the OCPD and the other one did not agree.

**Hon. Otaalo:** Thank you, hon. Temporary Deputy Speaker. I also have some few sentiments about the Motion. I thank the Mover for giving us this chance to talk about security in Kenya. Just as he has said, insecurity is not only in Samburu where he comes from. In Lurambi Constituency which I represent, we lost six people who were shot in various situations just in one week. This is because we do not have security. We have what we call “*nyumba kumi*” programme in the newspapers.

I used to work near Tanzania and *nyumba kumi* had done a very good job because everybody in the vicinity is able to know each other and what one does. I am sure we will be ahead if we implement this programme in this country.

Secondly, I do not know where our gangsters get weapons from. You will realize that policemen have inferior weapons compared to those in the hands of gangsters. These criminals must be getting these guns from somewhere and the police should do the same.

Hon. Temporary Deputy Speaker, I support this Motion.

**Hon. (Ms.) Shebesh:** Thank you, hon. Temporary Deputy Speaker. I really want to thank the Member for Samburu North for including Nairobi in this debate today. I want to speak about what other people have not spoken about what is the elephant in the room. We have the capacity now to allocate more money to security. The police have no morale. Let us not cheat ourselves. The police are not working the way they should because they are not paid good salaries and do not have protective gear. They will not go after bandits who have more superior guns than themselves.

As a House, because we are saying that this is not about lamenting, let us allocate the police enough money for salaries, motivation and protective gear. The technology must be improved. Maybe we should start having an impact as a House.

Hon. Temporary Deputy Speaker, I support this Motion.

## ADJOURNMENT

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): Thank you, hon. Members. I have many requests because this is a matter of national importance. I want to appreciate hon. Members namely, Lisamula, Benard Masaka, James and the rest for their requests.

Because I keep on saying that this is a House of rules and procedure, and it is now 6.33 p.m., the House stands adjourned until Tuesday, 15<sup>th</sup> October, 2013, at 2.30 p.m.

The House rose at 6.33 p.m.