

# PARLIAMENT OF KENYA

## THE SENATE

## THE HANSARD

Tuesday, 1<sup>st</sup> July, 2014

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

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

### PRAYERS

### COMMUNICATION FROM THE CHAIR

#### WELCOME TO THE OFFICIAL SENATE CHAMBER

**The Speaker** (Hon. Ethuro): Order, Senators! I have a Communication to make. It is with great joy and pleasure that I wish to take this opportunity to welcome you, hon. Senators, to the official Senate Chamber, in the Main Parliament Buildings.

*(Applause)*

The event that we are participating in today, namely, taking of the custody and occupation of this Chamber, is a major milestone in claiming and entrenching the bicameral system of governance in Kenya after a hiatus of about 50 years. As you are well aware, the Independence Constitution of 1963 established a Bicameral legislature, consisting of the Senate and the House of Representatives. It is a historical fact that in 1966 the Senate was disbanded through a constitutional amendment. It may be worth noting that the then Attorney General and Mover of the amendment Bill referred to the exercise as a merger or an amalgamation with the House of Representatives, to form the Kenya National Assembly, and in the process, ushered in a new era of a Unicameral legislature. I leave it to the historians, constitutional lawyers, political scientists and posterity to judge whether disbanding the Senate then was the right thing to do.

It is, however, important to take cognizance of where we are as a country and most significantly, our role as the Senators in the constitutional dispensation. You will all recall that in the long journey towards constitutional reforms, devolution of power and resources became a critical component as a means to addressing marginalization and

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promoting equitable growth and development in all parts and regions of Kenya. With the enactment of the new Constitution of Kenya in 2010, 47 counties were created. This had a domino effect on the legislature, as the country reverted to the Bicameral system with the reintroduction of the Senate, with a membership of 47 Senators, representing the 47 counties, 16 nominated Women Senators, two Senators representing the youth and another two Senators representing persons with disabilities.

The role of the Senate, as spelt out in Article 96 of the Constitution, is to primarily protect the interests of the counties and their governments, lawmaking, determining allocation of national revenue among counties and to provide oversight of State officers.

Hon. Senators, you will allow me to make a few observations on the place of the Senate, especially after our experiences of the last one year. First, the Senate exists because the people of Kenya wanted it and not due to the magnanimity of a person, entity, body or authority. This fact should exercise our minds on a daily basis.

*(Applause)*

Secondly, as in 1966 and looking at the events of the last one year, there are those who are stuck in the mindset of a Unicameral system. They have failed or otherwise refused to understand and appreciate the essence of bicameralism and consequently, why the Senate exists. Our response to them as a Senate is that we will remain faithful to our call and mandate.

Hon. Senators, for the record, the Senate was deliberately created by the people of Kenya as an organ of national Government to perform specific functions, especially to be the guardian angel of devolution, which goes to the heart of the new constitutional dispensation. As we settle in our Chamber, I, therefore, appeal to all of you to rededicate yourselves to this cardinal duty that you have been called upon to do and serve our country.

It is, therefore, my pleasure and privilege to welcome all of you to the Senate Chamber, which I believe will be a permanent home. It has nothing to do with my nomadic nature. I wish you all the best in your endeavour to serve the country and the people.

I thank you.

*(Applause)*

**Sen. (Dr.) Khalwale:** On a point of order, Mr. Speaker, Sir. Allow me to join you on your communiqué. In the process, I would like to appreciate the role played by the former Clerk, Mr. Gichohi and former Speaker, Hon. Kenneth Marende, because this was a project that started when they were in office. Also allow me to congratulate the former Grand Coalition Government which not only started this project, but also started all the big projects, including the Standard Gauge Railway line. From the time that the Grand

Coalition Government stopped working, all the other projects have not been moving so well.

I hope that now that we are here, we have the proper voice to push the Executive of this country to, not only ensure that those grand projects continue, but also ensure that all the stalled projects, especially of roads in most counties and, more so, in the counties in the Coast, Western and Nyanza, are addressed. This is an institution of equity. Therefore, we shall continue to remind the Executive that as they do projects in Rift Valley, Central Province and around Mt. Kenya, they should do so in the rest of the country.

Thank you, Mr. Speaker, Sir.

**The Speaker** (Hon. Ethuro): Order, Senators! This is a fairly straightforward matter. I am sure that you will have plenty of opportunities to interrogate the kind of issues that Sen. (Dr.) Khalwale may be interested in. I will only allow comments. I am just advising on how those comments should be delivered.

Sen. Murkomen.

**Sen. Murkomen:** Mr. Speaker, Sir, allow me, again, to congratulate you and my fellow Senators for being patient, despite the “nomadism” that we had to go through; starting from the Kenyatta International Convention Centre (KICC) to County Hall and, finally, to our Chamber. The manner in which this House demonstrated maturity and patience basically confirms that this is truly the Upper House. I want to remind my colleagues that even the location of this House, from where we are, the other House is lower there. We are on this side, which is the upper House.

*(Applause)*

Mr. Speaker, Sir, having said that, I want also to recognize that being in this Chamber makes it possible for us to further better relations with the National Assembly. This is because we are closer to each other and are able to now interact. I hope that the Speaker of the other Chamber will now not need to rubbish decisions that come from this House, because the distance is closer and we can walk to each other, talk and consult.

Mr. Speaker, Sir, I also want to point out that this also gives us the greater opportunity to continue pursuing our responsibility in the protection of county governments. In that role, we are united and bipartisan as a House. It is sad to have heard my colleague, Sen. (Dr.) Khalwale, trying to reduce this House to a House of Coast, Western or any other region. This House performs functions on behalf of the people of Kenya, regardless of the region or area. It is because of this bipartisan nature that Kenyans respect us. It is because of our vocal and determined resolve to ensure that county governments get enough money, decisions that we want and are protected by legislation. There are so many legislations that we will amend, including the one that is in the Order Paper, to ensure that county governments are accommodated.

Mr. Speaker, Sir, having said that, it is also important for us, as Members of this House, when we are speaking in the public out there, to ensure that we protect the integrity of this House and the Speaker. I am saying this because I saw one of the Senators this weekend trying to say that Sen. (Prof.) Kindiki and Sen. Murkomen brought a Motion to this House to remove from office the Cabinet Secretary for Interior and Coordination of National Government, Mr. Ole Lenku. That demonstrates the highest level of ignorance, because this House does not have the capacity to remove any Cabinet Secretary under the Constitution. For that reason, I have realized that my brothers, Sen. Muthama who said that, Sen. (Dr.) Khalwale and the others, do not need dialogue, but civic education.

Thank you, Mr. Speaker, Sir.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Speaker, Sir, listening to the distinguished Senator for Elgeyo-Marakwet, I am sure you have no doubt in your mind as to who needs, not just civic education, but education in totality.

Mr. Speaker, Sir, allow me to congratulate you and the leadership of the House, particularly the Rules and Business Committee (RBC), that has kept the matter of this Chamber on our agenda virtually every Tuesday. Allow me also to thank the management of Parliament for finally giving the Senate a domicile that it deserves. This is truly a Senate Chamber, by all descriptions in its decorum and structure. Even when we looked at the television screens, when you stood there speaking, you actually looked like a real Speaker. In the other Chamber, the images were sometimes blurred and you would not know whether you were looking at a Speaker or a Sumitomo wrestler. But now, you really look like a Speaker and we are very happy about this.

Mr. Speaker, Sir, more importantly, I want to urge the Clerk and his office that this is a small House. It will be very good and orderly, given how scattered we are in terms of offices, that he takes time and labels seats in accordance to counties.

Apart from the leadership, I would propose that if this is the seat for Elgeyo-Marakwet or Meru, it can be labeled. The nominated Senators can fit in as well, because all of us fit in here. We can say “West Pokot, Nominated, Meru, Nominated,” like that until we finish. You can add names which will be temporary for the purpose of the term. I am saying this because sometimes you want to deliver mail to us. I pity the office of the Clerk if they have to go to KICC and move from floor to floor, dropping mail for Senators when, in fact, those mails can be put on our desks here. When we come in we can just find them here and work in a more orderly manner than we have hitherto done.

Mr. Speaker, Sir, finally, I want to urge colleagues that while I appreciate the statement made by the distinguished Senator for Elgeyo-Marakwet County, actually he is one of the principal culprits in exactly what he said. This is because he has been making incredible statements in public, purporting to speak for the Senate. He has been saying: “The Senate is doing this. The Senate is going to do this. The Senate has decided. The Senate will decide.” Nobody should purport to speak for this Senate. If the Senate wants a spokesperson, ordinarily, we hold a *Kamukunji* and if it is a collective decision---

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

**The Senate Minority Leader** (Sen. Wetangula): You claim that you are digital. Do not say “on a point of order.” Press the intervention button and the Speaker will see.

*(Laughter)*

**The Speaker** (Hon. Ethuro): Order! Order, Sen. Wetangula! The Chair was trying to protect you, but now you are making yourself more vulnerable.

What is it Sen. Murkomen?

**Sen. Murkomen:** Mr. Speaker, Sir, any person who makes assertions in this House must be willing to table what they are saying about others. I have proof of what Sen. Muthama said and I can table it in the House. But in the same manner, Sen. Wetangula should be able to table proof of the assertions that he is trying to insinuate about me. This House must run away from contradictions and hypocrisy, which Sen. Wetangula is well known for. If a person tries to take the puritan route, when we know that his historical--- Let me not say more.

**The Speaker** (Hon. Ethuro): Order, Senators! It is too early to become passionate about things.

Let us continue.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Speaker, Sir, I was concluding. What I said earlier, I can say it elsewhere. It is wrong and incorrect for any one of us, including me, to stand out there and say: “The Senate is doing or will do this” as if you are the spokesman of the Senate. You can say: “As a Senator, I will bring a Motion or Bill to the Senate for consideration.” But you cannot go out there and speak as if you control or own the Senate; that the Senate will do what you are saying. This is because none of us, apart from the Speaker’s office, is the spokesperson of this Senate. If we want things to be said about the Senate collectively, we should have a *Kamukunji* under your chairmanship or your deputy, as you may delegate. Whatever we agree upon, then we release as a communiqué and we can say: “Somebody is speaking for the Senate”.

That is not asking for too much, being unreasonable, taking a moral high ground or being holier than thou. I am simply saying what each of you, given an opportunity, can say. I will never stand out there and purport to speak for the Senate because I have no authority to do so. I can speak for Bungoma County, the CORD coalition or my party. However, for you to arrogate yourself that authority is wrong. We will continue saying this because we see it every other day.

Once again, I congratulate all of us, as a Senate. I want us to conduct ourselves with decorum, civility and to know that when we are on this Floor, what you give us, we will give you in equal measure; that is, you behave well, we behave well. That is what politics is all about.

(Applause)

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): I also thank you, Mr. Speaker, Sir. I would like to congratulate you and the entire leadership of the Senate and Parliament as a whole for finally making it possible for Senators to sit in our home, the original chamber of Parliament. I am told that this was the original chamber since those days. Therefore, what has happened is that the Senate has come back home. This event alone speaks volumes, as others have said, in terms of our entrenchment, not only into the bicameral Parliament of this country, but also in terms of what we are supposed to do under the Constitution, to ensure that we make our country better.

Secondly, I want to take this opportunity to congratulate all my colleagues from both the Majority and Minority sides, who, for more than one year, have persevered under all manner of ridicule by people who do not understand things. We started off at the Kenyatta International Convention Centre (KICC). Many people were making a lot of funny jokes about how the Senate was sitting at the KICC as if it was a parasatatal board. After that, we moved to County Hall. Today we are here. I am very proud to be associated with this Senate because we have conducted ourselves in a manner that has demonstrated to the nation that it is not about where we sit or what people say about us. It is about believing in ourselves and the institution of the Senate and that we owe the country services rather than expecting favours and privileges from the country.

Finally, Mr. Speaker, Sir, I want to continue, like other Members who have spoken before have done, to urge for consistent focus. It is easy for us, as a House, to lose focus. So far, we have done well. Let not the little things that crop up over the weekend divide us or make us say or do things that will demean this esteemed institution in the eyes of the people of the Republic of Kenya. It will be very trivial if our job will be to be coming here every afternoon and we are busy exchanging tidbits, exchanging funny jokes and attacking each other. We have done well in the past. We can still do better even as we settle down here. Let us avoid things that will make the Senate be exposed to public odium.

Mr. Speaker, Sir, with regard to what my brother Sen. Wetangula has said, allow me to state that, largely, I agree with him, but there is one thing which we need to make it clear. I do not think anybody has gone out there to say: "I speak for the Senate and I am the Senate spokesperson." The law is clear. When it is the Senate speaking, it is through the Speaker. But we are also politicians. I cannot be gagged if, for example, I say: "I am introducing a Motion." I have not seen anything in the Standing Orders gagging me from saying that.

The only thing that I know that is expressly prohibited in the Standing Orders is where there is a matter before a committee of this House which is being considered, and then I go out there and start talking on the merits, not about the topic, whether or not that matter should go either way. That is wrong. Where it has happened, we have been able to

restrain ourselves. However, you cannot tell me that I should go to Tharaka-Nithi County and speak about other things and not speak about what we are doing as the Senate.

Sometimes these matters are raised by the people themselves. They ask you: “What is the Senate doing about this or that?” There is nothing wrong in saying what the Senate is doing. By doing that, I am not trying to say I am the spokesman of the Senate. So, that balance has to be struck. Let us not dwell on little things. We are all mature people. We have been in leadership in other capacities before. We are not excited about being Senators. We have done other things even outside this country. Let us not really trivialize this Senate. It is full of men and women with rich history, experience and expertise.

I thank you, Mr. Speaker, Sir.

**The Speaker** (Hon. Ethuro): Really, hon. Senators, let us focus on the good things. The Senate Majority Leader had done very well until he was tempted.

Sen. Orengo.

**Sen. Orengo:** Mr. Speaker, Sir, let me also join my colleagues and the leaders in the House to congratulate you and the leadership of the House for making it possible for us to be in this new Chamber. I would have seen you in your private chambers, but now that you are now in this new Chamber, I want to apologise to you personally, for the incident that happened in the other Chamber where you had no alternative but to throw me out.

*(Laughter)*

In my entire parliamentary career, that was the first time I was thrown out of the House. But I understand why you had to take that measure. Since I am a disciplined Member of the Senate, I want to assure you that I did not take it personally, but I saw the authority of the Speaker working effectively. I urge other Members to follow suit.

*(Laughter)*

Mr. Speaker, Sir, having said that, this Chamber is very historic. This is the Chamber where Jaramogi Oginga Odinga was thrown out for saying: “No Independence without Kenyatta.” Just that statement made Jaramogi Odinga to be thrown out of this House. It would be wrong not to recognise that fact.

Secondly, it is in this Chamber that a small band of politicians, the few African Members of Parliament who were eight, and eventually they became 14 and then 30 to the then number that constituted the full Membership of the House in the other Chamber up to when we amended the Constitution was 210. In recognition of that fact, the history of this Chamber has shown that sometimes minorities can be right and sometimes the majority can also be right. As we speak and address each other in this House, let us give

the Chamber and Parliament the honour that it deserves and not trivialize any issue that comes before this Parliament.

Mr. Speaker, Sir, the only thing I would like to say as I finalise my remarks is that the people of Kenya have spent a lot of resources, first of all, taking us to KICC which was like a car park then we went to County Hall, which has its own history and eventually we have come here. It will be wrong for the public to spend that type of money and now in this very opulent Chamber, and that this Chamber should be taken for granted. This has nothing to do with how beautiful this Chamber looks; it is do with the powers and mandate that the people of Kenya have given this Senate. Therefore, whatever is happening in the country at the moment, the full honour and distinction of this Senate, all of us together, must make sure that it is protected and defended. Otherwise, if we are not each other's neighbour and friend, this Senate can go like the other one went.

Mr. Speaker, Sir, in your Communication, right from the beginning, you said that, that this is not going to happen under your watch. But I plead that, again, the Supreme Court has spoken, you have spoken and Article 110(3) of the Constitution is clear that no Bill can become a law in this Republic without being referred to you. To that extent, I am pleading with the friends on the opposite side, that defending the Constitution is a joint project for us. There is a famous judge of the Supreme Court in the United States of America who said that "Tyranny begins with very small, little acquisitions of power which builds on and becomes compounded." The fact that the Senate is being disregarded in the law making process cannot make us not to fulfill our constitutional mandate. As I speak today, the situation has been changed. To that extent, I can say that I am speaking for the Senate that we are fully behind you in pushing forward the authority and power of the Senate. In this, we are not going to be divided.

Thank you, Mr. Speaker, Sir.

**Hon. Senators:** Tuko pamoja!

*(Applause)*

**Sen. Billow:** Thank you, Mr. Speaker, Sir. I also want to add my voice, to thank you and the leaders of the House for working tirelessly for the last few months to get this Chamber ready. Indeed, I agree with what all my colleagues have said, that this Chamber clearly reflects the status of the Senate in terms of its location in parliamentary premises. Clearly this shows that, today, for the first time since the Senate started, we are now able to say that this is part of Parliament. In fact, it is located within Parliament buildings. For avoidance of doubt, for those who might have thought that being located outside on the periphery of Parliament, it is not part of that institution, I think today it shows that we are part of Parliament.

I want to also thank all Members of the Senate. For the past one and a half years or so that we have been existence, Members have generally and largely conducted



themselves with decorum. Members of this House are highly respected in the country largely because of their decisions, the way they handle issues and avoid controversies. Generally, we have cut a niche for ourselves in the politics of this country.

Mr. Speaker, Sir, the bicameral concept has still not been understood by many Kenyans. There is need, particularly for the Senate, being the new kid on the block, to go out and do some civic education on this matter. The role of the Senate in many parts of the world is to act as a quality control of the lower House. That is what Senates are for. If you go to the UK, the House of Lords or in Canada, the Senate in those countries basically looks at what comes out of the lower House in terms of legislation and act as quality control. That is the role of the Senate. In addition, we have a more important role of representing counties. Devolution today is the single most important thing that Kenyans hold dear. We have a lot of work. Many of us thought that: "Well, the Senate will, probably, not have much work." But today we all know that when we look at the media what is reported daily from the counties, we actually have our work cut out. We have a lot of work pending that we need to do in terms of creating the environment for devolution.

I also want to thank Members because for the past one year or so that devolution has been in existence, it is on course. Last weekend, the Commission for Implementation of the Constitution (CIC) launched an assessment report on performance in terms of implementation of devolution for the last one year. Their verdict was clear, that devolution is on course. Counties have been set up, structures are in place and systems are running. They looked at everything. Generally, they gave a positive report in terms of the way things are. Members of this House have a reason to smile because if that is one of our babies, the main baby that we look after, we have been told our baby is doing well. We need to, therefore, do much more.

Mr. Speaker, Sir, I want to encourage Members on two things before I sit down. One, we have to fight for our space. Our space is increasingly becoming constricted by the Executive and the National Assembly.

*(Applause)*

If we are not careful, we will be an appendage of politics in this country. We have to fight for that space. I want to encourage the leaders, particularly the Majority and the Minority leaders, to work overtime in terms of making sure that we are not slighted. We have courts. We should never accept to be slighted in this country in terms of what is provided for in the Constitution. We do not want to be seen to be asking, begging or trying to cajole the Executive or the National Assembly, telling them: Give us this or that. No.

*(Applause)*

Let us stand up and say: "If this is wrong, it is wrong." I am particularly concerned about legislation. Where we have a mandate and we are supposed to be involved in a particular legislation and that has not been done, we must be able to say: "No". If we do not do it today, we shall be responsible in the next generation if this House is scrapped. It will be remembered by our next generation that: "Those guys never stood up for the Senate."

In that regard I also want to encourage Members of this House to speak for the Senate. You can speak for it in this manner. When you go out there, say: "We, as the Senate, are determined to support devolution." That is a statement you can make without any fear. You do not have to be a spokesman to say when you are out there in the rallies that: "As a Member of the Senate, I want to tell you wananchi, that we are ready to support these counties and hold MCAs and the Executive to account." Those are statements that you can make that really bring out the mandate and the role of the Senate very clearly.

I want to thank Members and the Speaker for the effort they have made in getting this Chamber operational.

Thank you, Mr. Speaker, Sir.

**The Speaker** (Hon. Ethuro): Hon. Senators, let us be brief.

Sen. Sijeny.

**Sen. Sijeny:** Mr. Speaker, Sir, thank you very much. I also wish to congratulate the management for making it possible for us to come here, especially for having chosen this day, which happens to be my birthday.

*(Laughter and applause)*

**Hon. Senators:** Happy birthday!

**Sen. Sijeny:** Thank you very much. I wish to urge, as I have heard my other colleagues say, that the country looks up to us; that we must debate and think of the future of the country.

Having said that, it would have been more historic if we had moved in here with pomp and glory so that we move in with the nation; and the *wananchi* know that the Senate has officially been brought here. I wish we would have brought in the Executive; the President himself should have officiated this historic moment.

With all that, I wish to thank all of you.

**The Speaker** (Hon. Ethuro): Are you done, Sen. Sijeny?

Yes, Sen. Kagwe!

**Sen. Kagwe:** Thank you very much, Mr. Speaker, Sir. I also want to join my colleagues of the Senate and the leadership of Parliament as a whole for doing what they were supposed to do a year ago. That is to provide these Senators with a place or a venue that is commensurate with their standing in Society. It is interesting that we are sitting in a very old place, but in a very new manner. I, therefore, think that even as we sit in an old place, it is now time for us to have a new beginning of co-operation between different

political persuasions and political parties. Even the level of noise that we make in the Chamber should also be a bit less than it was when we were in the other Chamber.

*(Laughter)*

There used to be so much noise and people were consulting so loudly that we could not hear ourselves. But now that we are in a new Chamber, one presumes that we are now going to be listening to each other, and that we are going to hear each other.

Mr. Speaker, Sir, I also want to believe that this new Chamber is also going to inform new ways of doing things. For instance, we have been talking about having a paperless Parliament and Senate. This appears to me, and I agree with Sen. Sijeny – happy birthday – that this would have been a good beginning for us to enter this Chamber, not only looking and feeling new, as it were, but also with our iPads and no paper in this Chamber. Only then can we really feel that we are in a new Chamber. A new Chamber is not just the chairs that look nice, but it should also be the manner in which we are going to conduct ourselves from now henceforth.

Mr. Speaker, Sir, it is good that we are near our colleagues here next door who are in the National Assembly. But let that be the reason we can co-operate better with them. Let it be the reason we will continue to engage them. But let us never fear to engage the National Assembly in all manner of issues. However, we should never engage them in fear because we cannot fear. Fear should not be in the vocabulary of the Senate; it should not be. There are those who tell us “Why are you people going so softly? Why are you being so nice? Why are things being denied to you which belong to you, and yet you continue to say that you are engaged in dialogue?”

Sometimes we do so, because we are wiser and not because we fear. However, it must be made very clear to the National Assembly that, now, we can even meet on the coffee tables right here to discuss all things that we want to discuss. If distance was the reason we were being seen as if we were not part of Parliament, now it should be very clear that we are very close; closer than, perhaps, some of them would want us to be.

Mr. Speaker, Sir, as I said, last week in your absence, thinking about the strategies, we raised another matter regarding the operations of the Senators. Even as we sit here, there are county offices and county operations that are rendering us fairly useless. I say this because when you think about what a Senator today is being given to run an office in the county and to run an office here, you will realize that even though we do not want to expose our weaknesses out there, we are getting such a miserly amount of money to run the offices that we cannot even get a decent personal assistant: A personal assistant worthy of the research that a Senator needs to do; a personal assistant who can guide us and who can run our office costs a lot more than we are getting in total to run our offices.

Mr. Speaker, Sir, let this new beginning be meaningful. Let it be a new Chamber where Senators can use IPads. Let it be new in terms of the way Senators are going, forthwith, to operate back in our counties and here in the Chamber.

Mr. Speaker, Sir, I beg to support and thank you again.

**The Speaker** (Hon. Ethuro): Sen. Muthama.

**Sen. Muthama:** Thank you, Mr. Speaker, Sir. The Bible says that there is a time for everything. We were in the Tenth Parliament with you in the National Assembly and we vacated that Chamber and came here to allow renovations. We then went back there. But when we were elected, we were sworn in at the Kenyatta International Conference Centre (KICC) Pavilion and our Chamber was at the KICC. We then had to move to County Hall and now we are here. It is my sincere request to my colleagues here that we come here with issues that will move this country forward.

Mr. Speaker, Sir, because you said that we be brief, I listened to my colleague, Sen. Murkomen, and he had his time to say what he said. I would also have my time, but not in this Chamber. Here, I want to touch on the issues that will move this country forward. But where he got that information that he is holding, that is the same place I would go back to answer him. If he now wants to respond, he can also do it outside because what he said is not true.

I rest my case, Mr. Speaker, Sir.

**Sen. (Prof.) Lonyangapuo:** Thank you, Mr. Speaker, Sir. I join my colleagues in congratulating the Senate for finally moving into this Chamber which has been under renovations for almost four years now since the works begun.

Mr. Speaker, Sir, I want to give a lot of commendations to my colleague, Sen. Chris Obure, who was the then Minister for Public Works and myself because I was the Permanent Secretary. We made sure that the consultants, architects and engineers worked 24 hours a day to beat the deadline that was given by the Parliamentary Service Commission (PSC) then to deliver the drawings of the beauty of what you now see here. Although I and Sen. Obure had mentioned that since we may be coming to the Senate, two seats; one for me and another for him, must be distinct in recognition of our work in that Ministry. We want to thank the pool of the experts that we have in Kenya. I want to give a lot of commendations to the experts and professionals in the Ministry of Public Works, led by the Chief Architect, Quantity Surveyor and everybody else who made sure that all the drawings and the work that you now see here was delivered. I also want to add that the contractor is a Kenyan; he is not somebody from outside.

Lastly, Mr. Speaker, Sir, although we began our sittings at the KICC, I do not think our debate and our work was of any lesser quality. I think Senators have been measured and they have stood the test of time. I pray that we continue doing the same and working together as a unit and as a House.

Thank you, Mr. Speaker, Sir.

**The Speaker** (Hon. Ethuro): I want to conclude this by 3.30 p.m. So, any other subsequent contributors will take only two minutes.

Yes, Sen. Obure? You have two minutes

**Sen. Obure:** Thank you, Mr. Speaker, Sir. Indeed, I will be very brief. First of all, I want to congratulate the Senate for moving into this new Chamber, which is, indeed, beautiful and magnificent.

Mr. Speaker, Sir, I want to appreciate the work of all the people who were involved in this project. In particular, I want to thank the PSC for making it possible for all this work to be done. I know that they worked very hard to look for the money that enabled this work to be done.

Mr. Speaker, Sir, I want to thank you in particular, because I know that you have put in a lot of effort to ensure the success of this project. I am also personally privileged to have had the opportunity to work alongside the---

**The Speaker** (Hon. Ethuro): Your time is up, Senator!

**Sen. Mungai:** Thank you so much, Mr. Speaker, Sir, for catching my eye. I only have two minutes or less now. First, I would like to thank the Government for the outstanding work it has done in ensuring that we have such a beautiful Chamber. The previous speakers have talked much about what has been done in this particular Chamber. Of course, it has been a long wait. I believe that with the kind of comfort and space that we now have, our contributions will be more fruitful. I believe that we will also engage one another in a way that will benefit our people. I thank the architects because this Chamber is beautiful and I look forward to us having very lively debates here.

Mr. Speaker, Sir, thank you so much.

**Sen. Hassan:** Thank you, Mr. Speaker, Sir. Mine is just to reiterate what the previous speakers before me have said. We came to this Senate with extra ordinary expectations, particularly those expectations of the Kenyan people. Mine is to simply echo the sentiments by Sen. Kagwe. I came from an institution where I had a budget and the technical staff to help me to deliver. It is ironic that right now, we are given a budget that if you want to really have a technical person, I do not think it can employ more than one person. I remember that just the wage bill of the department I headed was close to Kshs70 million annually. I run a budget of about Kshs200 million in my department. For you to deliver, you need to have effect and capacity. Therefore, I particularly urge those Members who represent this Senate in the PSC to stand firm.

If there are any issues, I think we are part of your soldiers and we are your constituency. If you need our support, we are willing, able and capable to stand by those decisions that you take. But in totality, I think this new Senate means a renewal of what the Senate must achieve for the next two-and-a-half to three years before the next elections. We hope that most of us will sit in this Senate once again after those elections. Otherwise, it will be a tragedy for you to have sat in this Senate for only three years and then walked out of it.

Mr. Speaker, Sir, with those many remarks, I thank you for that opportunity.

**Sen. Wamatangi:** Thank you, Mr. Speaker, Sir. Mine is also to join my colleagues in congratulating all of us and the entire Senate team on moving into this new

Chamber. I am sure, as most of my colleagues have said, that it is also going to go along way, commensurate with raised and highly standardized debates.

Mr. Speaker, Sir, I want to take the opportunity to also echo the concerns of my fellow Senators because I believe that in as far as the Senate is concerned in articulating our role and space, it is now time to walk the talk. We have spoken a lot and we have said a lot on where we should be and what should happen to us. But now, we need to take action.

Mr. Speaker, Sir, there was an amendment that was done to the Public Finance Management Act which had the effect of diluting the role and powers of the Clerk of the Senate as the accounting officer of the PSC. That has put this Senate in a highly compromising situation because it is possible that we can find ourselves as a Chamber without the funds to run the Senate. If we continue to keep quiet over those kinds of issues and not take action, we will have failed in our roles. I believe that, this time, we must not only speak, but act.

Lastly, Mr. Speaker, Sir, in all our deliberations as a Senate, we have always upheld the spirit of togetherness. We have risen and spoken as one Senate over very thorny, divisive issues and we have stood as one.

Mr. Speaker, Sir---

**The Speaker** (Hon. Ethuro): Your time is up!

Order, Senators! I can see that the demand is still very high. I will allow another 15 minutes, but we are still subject to the maximum of two minutes per speaker.

Yes, Sen. Khaniri?

**Sen. Khaniri:** Mr. Speaker, Sir, I want to thank you for the opportunity. I was not going to say something on this particular matter until Sen. Sijeny made her contribution. That is when I realized that we do share a birthday; it is actually my birthday today, too.

*(Laughter and applause)*

**Hon. Senators:** Happy birthday!

**The Speaker** (Hon. Ethuro): Order!

**Sen. Khaniri:** Mr. Speaker, Sir, I am glad we are moving into this magnificent House on this special day for me; the 1<sup>st</sup> of July.

Mr. Speaker, Sir, let me join my colleagues in thanking you and the entire leadership of the Senate for the effort that you have put in to ensure that we eventually get into our permanent home. It has been said here by Sen. Orengo that this is a very historical Chamber; so many good things came out of this House in the period just before Independence and soon after Independence. It is the expectations of Kenyans that will continue with the same pace. We have to maintain the standards and ensure that the kind of legislation and debates that we are going to carry out in this House must be commensurate with the work that has been put in this Chamber.

Mr. Speaker, Sir, the taxpayer has spent so much money to give us this beautiful Chamber. I also want to thank those who worked on this Chamber for the good art work--

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**The Speaker** (Hon. Ethuro): Your time is up!

Sen. Kiraitu Murungi.

**Sen. Murungi:** Mr. Speaker, Sir, let me also join my colleagues in thanking you and the secretariat and the Rules and Business Committee (RBC) for the effort that they have made in bringing the Senate in its permanent home. I want to request the Clerk to install some letter boxes or pigeon holes in our lounge instead of bringing the letters to the Floor of the House. This is just but one step. The Senate requires a lot of empowerment. If you look at where we come from, the Members of the County Assemblies (MCA) are more empowered than Senators. The Members of the Lower House are more empowered than Senators in their own constituencies. I think it is important for the same people who have been working for us to be empowered here, to mobilize resources to enable Senators to be effective within their counties.

It is difficult for us even to know what interest we are required to protect as the Senate if we cannot call meetings within our counties. There are no resources to enable us to meet as leaders in the counties, so that we can articulate the interests of those counties. Women Representatives have the Uwezo Fund, Members of Parliament have the Constituencies Development Fund (CDF), Nairobi County Assembly Members have the ward development fund, but what do the Senators have? So, it is important that we empower Senators.

Secondly, as elected representatives of the people we should talk to each other---

**Sen. (Dr.) Khalwale:** On a point of order, Mr. Speaker, Sir. I hate to interrupt my senior, but is he really in order to give the Republic the impression that now Senators are lobbying for a CDF or Uwezo like fund for ourselves when we are supposed to lead the whole country in adopting the principle of separation of powers where our role has nothing to do with implementing projects? In fact, we should be the ones leading the country to ensure that CDF and Uwezo Funds are taken to the governors. Is he in order?

**Sen. Murungi:** Mr. Speaker, Sir, I think my colleague; the bull fighter, went to fight the bulls without understanding them. I am not asking for a CDF for the Senate, but I am asking that our offices at the county level be empowered. My colleague here has just come from Philippines. Senators there, employ 40 members of staff both in their offices and in the counties. They have to do research and connect with the electorate. If you want to call for a meeting now as the Senator for Wajir, how do you call for that meeting? You need to be facilitated to enable you interact with leaders. That was what we were trying to do through the Bill which did not go through.

Finally, I was saying that let us discuss among ourselves. We are the elected representatives of the people. The sovereignty of the people is vested in us. Let us not go to negotiate with crowds. I would be very happy if we can engage in those negotiations that CORD wants here in the Senate. I would like to engage with Sen. Muthama, Sen.

Wako, Sen. (Dr.) Khalwale and so on, because those crowds will not solve issues of insecurity in this country. It is we, as leaders, who can do so. I am talking from experience because it is me together with hon. Dalmas Otieno who spearheaded negotiations during the Inter-Parties Parliamentary Group (IPPG). Why can we not, as elected representatives of the people, negotiate first, discuss, agree and disagree before we go to set this country aflame through those *Saba Saba* rallies?

**Sen. (Dr.) Machage:** Bw. Spika, nakupongeza na Maseneta wenzangu kutumia Seneti hii siku ya leo. Tunakumbukua mwaka 1966 kama mwaka mweusi. Kulikuwa na kifo cha Seneti. Seneti hii ilifufuka tena kupitia Katiba mpya ya mwaka jana. Hayo ni mambo ambayo hatungependa yarudiwe tena.

Bw. Spika, baaada ya kusema hivyo, ningependa kusema kwamba Seneti hii iwe ni Bunge inayoendeleza maadili ya utu na kuleta haki kwa wanyonge. Iwe ni Seneti ya kuleta amani, hekima na ushauri kwa viongozi wote hapa nchi.

Bw. Spika, wakati huu siasa si nzuri sana hapa nchini. Sen. Murungi ametaja kidogo tu halafu akaketi. Upepo unavuma hapa na pale. Viongozi wengine wenye ujeuri wanasema haya na wengine wenye kiburi wanasema yale. Hao wawili wataitumbukiza nchi ya Kenya motoni, sisi tukiwaangalia na tukipiga makofi. Itakuwa aibu kubwa sana kama iwapo kutakuwa na *Saba Saba* na kuwe na mambo mabaya nchini. Nyinyi mnajua msimamo wangu. Ni hekima kwa viongozi kuketi na kuzungumza pamoja. Lakini ni ujeuri kuomba ya kwamba nchi iwe na fujo ili kuwe na mashauriano. Hao viongozi wetu wawili nikitumia Seneti hii siku ya leo, msiingize nchi ya Kenya hatarini au motoni---

**The Speaker** (Hon. Ethuro): Muda wako umeisha, Seneta.

**Sen. Moi:** Mr. Speaker, Sir, let me take this opportunity to congratulate your good self and your team for a job well-done. Let me also take this opportunity to wish the lovely lady, Sen. Sijeny, and Sen. Khaniri a happy birthday and many returns.

Mr. Speaker, Sir, let us not delude ourselves that all is well. If we do not exert our position and take our rightful place as Senators, we are in a very precarious position. The only way we can do that is for both sides of the House to work as one to make sure that the Senate works together, especially in the legislative process. We are having situations today where the President is signing Bills in total disregard to what is happening in the Senate. That cannot and must not be allowed to continue. It can only be stopped if we work in unison.

As I conclude, I would like to say, let us conduct our affairs with decorum and civility as befitting the Senators of the Republic of Kenya.

Thank you very much.

**Sen. Musila:** Mr. Speaker, Sir, I wish, on behalf of the PSC, to acknowledge with a lot of humility the positive comments that have been made by various Senators in connection with the quality work that has been done in this Chamber.

I also want to urge my colleagues to be patient because there are going to be a lot of inconveniences here since we still have a lot of work going on. Across here, we are constructing offices, parking space and also dining and catering facilities. Inevitably,



there will be a lot of inconveniences to all of us. Just as you know what happens when construction is going on. I just want to plead with you on behalf of the PSC to bear with us. Generally, the PSC will be very happy to hear the kind of comments that have come from the Floor of the Senate. Yours truly as the Chair of the Projects Committee, I want to assure you that I worked very hard to ensure that the Senate gets all the facilities that they need.

Thank you, Mr. Speaker, Sir.

**Sen. Kanainza:** Thank you, Mr. Speaker, Sir, for giving me this opportunity to appreciate your office, yourself and all the Members who made sure that we are in our rightful place today. As Senators, our role is to defend the county governments and the people. I want to urge my fellow Senators that we should use this rightful place to ensure that we do our role.

Thank you.

**Sen. Wako:** Mr. Speaker, Sir, thank you for giving me this opportunity. This is, indeed, a historical place. By our coming here, we can now say that devolution is on course. Gone are the days when some people felt or thought that they could move this country to do away with the Senate or devolution. It is on course.

Mr. Speaker, Sir, this is a very historical place where important landmarks in the history of this country have taken place; starting with the first Independence that we received going to the second Republic where the new Constitution was endorsed. It was endorsed here before it went to the referendum, taking into account the fact that the late Tom Mboya moved Sessional Paper No.10 in this very House. The IPPG negotiations were done in this very House. Those are momentous moments in our country's history have been resolved here in this House. Therefore, I hope that this will create an inspiration for us, as Senators, to provide the necessary national guidance; to provide the necessary leadership in this country in moments such as this because the country is facing many problems.

I wish, therefore, to inform Members that time has come when we should take seriously our role, particularly in legislation as the other speakers have stated. We really must be involved. I support here what Sen. Moi has stated; no more Bills should be assented to without having a signature of the Speaker of the Senate.

**The Speaker** (Hon. Ethuro): Your time is up, Senator!

Sen. Njoroge.

**Sen. Njoroge:** Mr. Speaker, Sir, thank you for giving me the opportunity also to contribute to this. First, I want to congratulate you and the entire Senate for walking into this new Chamber. I will not also forget to thank the PSC for coming up with a disability friendly Chamber which I hope will also be reflected in the allocation of the three offices to suit people with disability next to this Chamber. I am sure we will be allocated offices which suit people with disability. Again, I want to say that since we have come to the right place and we have come from far, it is good that we display some maturity

considering that we are very close to the National Assembly which keeps on shouting and running right and left. We shall avoid becoming like them.

**The Speaker** (Sen. Ethuro): Hon. Senators, we have now come to the end of this. We now move on to the next Order.

**Sen. G. G. Kariuki:** On a point of order, Mr. Speaker, Sir. If you cannot see my name then I do not know how to get it to your eyes. I have been here for long.

**The Speaker** (Hon. Ethuro): That is true, there must be a problem with your equipment, but you should have done what Sen. Wako did. He came to confirm that having recognized that, there are many other names that wanted to contribute, but because of time considerations, we cannot allow them. So, we will assume you belong to that category for now. We have already done one hour and fifteen minutes on this and yet it is really not our business.

Next Order!

### PAPERS LAID

#### REPORT OF THE COMMITTEE ON ENERGY, ROADS AND TRANSPORTATION ON BENCH-MARKING VISITS TO NEW ZEALAND, AUSTRALIA AND UNITED ARAB EMIRATES

**Sen. Moi:** Mr. Speaker, Sir, I beg to lay the following Papers on the Table of the House today, Tuesday 1<sup>st</sup> July, 2014.

The Report of the Standing Committee on Energy, Roads and Transportation on the Bench-marking visits to New Zealand, Australia and United Arab Emirates on February, 22<sup>nd</sup> to 4<sup>th</sup> March, 2014.

### NOTICE OF MOTION

#### ADOPTION OF ENERGY COMMITTEE REPORT ON BENCH-MARKING VISITS TO NEW ZEALAND, AUSTRALIA AND UNITED ARAB EMIRATES

**Sen. Moi:** Mr. Speaker, Sir, I beg to give notice of the following Motion.

THAT, this House adopts the report of the Standing Committee on Energy, Roads and Transportation on the bench-marking visit to New Zealand, Australia and United Arab Emirates (UAE) on February, 22<sup>nd</sup> to 4<sup>th</sup> March, 2014 laid on the Table of the House on Tuesday, 1<sup>st</sup> July, 2014.

**The Speaker** (Hon. Ethuro): Next Order!

## STATEMENTS

## ACTIVITIES OF MR. ERICK DEAN PRINCE IN THE COUNTRY

**Sen. Haji:** Mr. Speaker, Sir, I beg to give this confidential information on the presence and operations of Mr. Erik D. Prince, an American mogul and former officer of the US Navy. The above statement was issued on 5<sup>th</sup> June, 2014. However, during the proceedings, Sen. (Dr.) Khalwale requested for;

(1) The immigration forms that were filled by Mr. Erik D. Prince upon his entry into the country on 8<sup>th</sup> June, 2014.

(2) The visa application forms filled upon entry into the country.

I wish to state as follows. Efforts to trace the above records commenced on 18<sup>th</sup> June, 2014. So far, they have not been traced due to the following reasons.

(3) The Immigration Department processes over 30,000 passes monthly which translates to over 180,000 entry declaration forms for the period January to June, 2014.

(4) Since the fire tragedy, the Department of Immigration lacks appropriate storage at the Jomo Kenyatta International Airport for better service delivery. Indeed, this was aggravated when the Kenya Airports Authority allocated the previous storage facilities to the Anti-Narcotics Unit thus necessitating physical transfer of records.

(5) The Kenya Tourism Board Officers also have access to the said forms for capturing statistics of tourists coming into the country and those forms are kept in shelves. This ends up in reshuffling existing records.

(6) The Board of Management system in place at the JKIA has a bias towards this kind of storage of data thus, the record history of a passenger is easier to receive and forward.

Further, the Department has done away with the filling of departure declaration forms for all departing passengers. However, I wish to table a detailed electronic version profile record which provides information of Mr. Prince's Travel records. This includes a passport, his entry and exit status, dates of travel, destination and origin of passenger.

*(Sen. Haji laid the documents on the Table)*

**Sen. (Dr.) Khalwale:** Mr. Speaker, Sir, this response for which I want to thank the hon. Senator speaks volume about the absence of security at our border points.

The issue of Mr. Erik Prince was debated about at the Congress of the United States. A resolution was made that he should not do business with the Government of the United States. However, he has sneaked into this country in a very short period; not once, twice, not even three times, but 16 times during which two things turned out.

One; that the Government has no idea what the man comes to do here for a few hours then he goes out. Secondly, every time, on diverse occasions, Prince has been using different passports; four of them. If a foreigner can move in and out of the country with

four different passports on short periods pretending that he is a tourist and that does not catch the eye of the Government, then security is a problem in this country.

All this has been happening since last year. No wonder terrorists have been sneaking into the country. Mr. Erik Dean is not even a Somali. Probably, security officers have been waiting for someone of Somalia origin to suspect him of ill motive. Could the Chairperson tell us what business Erik Dean has been having in this country in the 16 times he has come in and out? If the Government does not know, how do we rule out the original question which was that Dean is trying to set up a security structure in the same way that he did in Iraq where he ended up killing innocent native Iraqis because they were fighting over oil?

Is Mr. Erik Dean preparing to use his security structure the way he was doing in Iraq so as to ship out oil from Turkana and ensure that Kenyans do not get returns and value for the resources that they have?

**The Senate Minority Leader** (Sen. Wetangula): Mr. Speaker, Sir, I sit in the Committee that the distinguished Senator for Garissa chairs. I have not compared notes with him in giving this statement. I want my Chairperson to clarify the following.

Whether he is aware that Erik Dean Prince, an American national, has a very dangerous pistol? This is a man who was running a company called Black Waters, if you have heard of it. The company was contracted to provide some security in Iraq and Afghanistan. This man ended up causing deaths of thousands of Afghans and Iraq nationals to the extent that the Central Intelligence Agency (CIA) that had contracted him exposed him and disowned him.

That caused the American Government to declare that Erik Dean Prince will never do any business with the Government of America. I want my Chairperson – if he does not have the facts, he should be sufficiently humble to go look for them and bring them – to clarify whether he is aware because he is representing Government and he knows that the aviation industry is a highly sensitive security business.

However rich you are, even if you are as rich as George Soros or the owner of Virgin Airlines, Branson, you cannot go to UK, America or any of those countries with your billions and start your aviation business. This is a highly sensitive security business. The information that we have which was published by the Americans themselves is that Erik Dean Prince has purchased in Kenya Kijipwa Aviation Business. Over and above that, he will provide security for oil exploration companies. This information was published by the Americans themselves; that he would provide security in your county and others of oil exploration and drilling.

*(Sen. Murungi stood up in his place)*

I am serious. I am hearing my distinguished Senator from Meru murmuring things and appearing agitated. I am seeking clarification in a matter that can affect all of us.

**The Speaker** (Hon. Ethuro): Senator for Meru has all the rights to stand on a point of order. He was not agitating. What is it Sen. Murungi?

**Sen. Murungi:** On a point of order, Mr. Speaker, Sir. This is not in bad faith. We appreciate that this matter is very important. It is important that we seek clarifications. However, is there no limit of time in seeking clarifications? He is talking longer than the person who gave the statement.

**The Speaker** (Hon. Ethuro): Order, Senators! I want to agree completely with Sen. Kiraitu. Sen. Wetangula, you are not making another submission. You are seeking clarifications on four issues. So far, you have sought two and yet there are other submissions.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Speaker, Sir, I thought that the Chair would indulge me in view of the gravity of the matter. You know very well the challenges of security that this country is going through. As a responsible Upper House we have to know---

**The Speaker** (Hon. Ethuro): It is not only the responsibility of the Upper House, but also your responsibility to seek clarification.

**The Senate Minority Leader** (Sen. Wetangula): In seeking further clarification, I want my Chairperson to tell this House whether the Government knows that Erik Dean, a person who is *persona non grata* in his own country is in Kenya running business in aviation that we know. This information came from his own Government and was published in our media. Can the Government, in fact, interrogate the acquisition of Kijipwa Aviation, terminate it and expel this man from our country because we do not need someone with such a dirty record coming into our country?

Mr. Speaker, Sir, my distinguished Chairperson said that he did not have the records because they were taken somewhere else. All of us know that for the last two years, when you go through Jomo Kenyatta International Airport, you do not fill those forms. We are fully computerized. When you hand in your passport, the data is captured by the computer and stored. If you punch in the name Erik Dean Prince, I am sure that you will see everything about his entry unless he has been entering here and assuming names and aliases and fake passports. In which case, that is the more reason he should not be entertained on Kenyan soil.

Finally, we are moving into a new economic enterprise of oil and gas exploration, discovery and production. It makes a whole nonsense of our excitement about oil if the contract of giving protection to oil exploration and drilling firms is given to an American when we have Kenyans who can do this. This does not make too much sense. I want answers to those questions.

**Sen. Billow:** On a point of order, Mr. Speaker, Sir. I have two issues. When you come in through the airport, with electronic finger printing, it is highly unlikely, with the current system of technology that is being used in airports all over the world, for you to escape if you use different passports. It would be known that you are the same person because of the system. It is important for members here to note that Mr. Prince, today, is

the Chairman of the Frontier Servicers Group, an African Focus security and logistics company in Hong Kong. That company, it is important to know, has very close ties to China's largest conglomerate called City Group which has ambitions on Africa's resources.

I was in a seminar which I attended on behalf of the Senate in Accra a couple of months ago. There is a programme to spend a trillion dollars on infrastructure in Africa in the next five to ten years. I have a huge presentation that I can share with Members. Their aim is to do with oil. It is important to note that this gentleman sits as the Chairman of that company in Hong Kong which has close relationships with the company which is planning.

So, there is more to do with this and I wish the Chairman of the Committee would investigate the matter further.

**Sen. Hassan:** On a point of order, Mr. Speaker, Sir. I want to touch on the substance of the substance. Whereas we appreciate that within our border management systems, the JKIA has an electronic storage, the preceding statements by the Chairperson on behalf of the Minister are extremely scary. I do not know whether that was brutal honesty, inefficiency or the fact that this House cannot be misguided.

You say that you have 30,000 passengers with almost 180,000 forms and that storage is a problem. Part of the storage has been given to the Anti-Narcotics unit, and that there has been physical transfer of documents. That said and done, I did not see the statement make an attempt to address the fact that this logistical crisis is being handled. I want the Chairperson to clarify because this statement is scary for the Kenyan people on whether there are any particular systems that have been put in place to ensure that if a Senator crosses any border in this country, we can retrieve that document in a matter of seconds or in the soonest possible time. I want to know whether there is any work that is going on to ensure that we have an efficient way of managing data entry in our country knowing that security is an important element of the challenges we are facing.

**Sen. Abdirahman:** Thank you, Mr. Speaker, Sir. We have listened to references from the Chairperson. His main reference is to the Immigration Department. I do not think that this is a very light matter. This is a matter that touches on national security. I do not know whether we, as a country, will witness a repeat of the "Artur Brothers" in this kind of a thing. I want the Chairperson to confirm whether other security agencies are in the know of this matter so that tomorrow we do not find ourselves in shock.

**Sen. Haji:** Thank you very much, Mr. Speaker, Sir. To answer Sen. (Dr.) Khalwale, I agree that if there is any lapse in keeping proper records, as far as coming into this country is concerned, that would lead to a lapse in our security.

However, the earlier statement which I gave on 5<sup>th</sup> June, 2014, clearly states that this gentleman came to Nairobi and left immediately to wherever he had come from. The fact that the forms were not traced elaborately explains the statement that I have given just now. It ends by saying that with the border management system in place, the JKIA has had a bias towards electronic storage of data, thus the record history of a passenger is

easier to retrieve electronically. That means that from now onwards, they will use electronic records so that it will be easy to retrieve. The issues of moving files are understandable.

I think it is very difficult and understandable that with so many records, sometimes it becomes very difficult when they are put in a sack for somebody to sit there and go through hundreds of sacks of millions of documents.

To answer Sen. Wetangula, I will ask him to read the Statement which I gave on 5<sup>th</sup> June which answers all the questions that he has raised. I am not in a position now to go back to the Statement which I had given about a month ago.

Mr. Speaker, Sir, with regard to the question raised by Sen. Billow and others about this man, personally, I am not aware of those issues although I read about Black Water in Iraq. However, I do not have any evidence to relate it with him as has been alleged here.

**The Senate Minority Leader** (Sen. Wetangula): On a point of order, Mr. Speaker, Sir. Surely, the distinguished Chairperson of the Committee cannot just casually say that he is not aware of him when we have given him factual issues about this man. Now that he is aware, it cannot just be swept away that because he is not aware of this man, therefore, he is not an issue. He is an issue. When I opened my request, I said that if the Chairperson does not have all the facts, we cannot blame him. He has to go and look for them and bring them to the House. However, he says he is not aware of this man and what he has been told about him is inadequate.

**Sen. (Dr.) Khalwale:** Mr. Speaker, Sir, the Senate should not let the Chairperson get away with the casual comment that he does not know the connection between Mr. Erick Dean Prince and Black Water. A responsible Government like this one should have at least done the easiest thing which is to *Google* Erick Dean and Black Water. I am saying this because it is security and we know where we are as a country today. *Wikipedia* tells us that Erick Dean---

**The Speaker** (Sen. Ethuro): Order, Senator! You are on a point of order.

**Sen. (Dr.) Khalwale:** Mr. Speaker, Sir, I was building it. It is just two lines and then I ask my question. Erick Dean almost murdered the investigator who was pursuing him in Iraq. On that particular handle, it clearly shows that Black Water Company was actually formed by Erick Dean. Is he in order to deliberately refuse to respond to this issue when it is clear that the information is there, only that the Government which might be covering this guy who is connected to China which goes to bed with the Jubilee Government and we have nothing to show for it? Is this the reason they are covering for Erick Dean, a known criminal?

**Sen. Haji:** Mr. Speaker, Sir, most of the issues that are being raised were answered in the Statement of 5<sup>th</sup> June, 2014. In any way, this *Wikipedia*, he is talking about is not official. It is a gossip handle on the internet. Therefore, the Kenya Government is not responsible for that gossip.

Secondly, I think I answered on the issue of the aviation company which Sen. Wetangula is talking about. I also mentioned here that among the people who are named as shareholders, this man's name is not there. Therefore, I do not know what I am really expected to answer. I think I answered the same about a month ago.

**Sen. Kembi-Gitura:** Mr. Speaker, Sir, I want to thank the Chairperson of the Committee in which I also serve for a reasonably elaborate answer on a very sensitive issue. Taking into account that the interventions from the Members of this House and also the answers that the Chairperson has given, I was wondering whether I would be in order to request – with a lot of respect to my Chairperson – that the matter be referred back to the Committee of Foreign Affairs and Defence so that we can again as a Committee look at and interrogate that answer as a Committee because, of course – I am record for saying this very many times – he is doing his best and that is all a Chairperson can do because what else can he do?

If we, as a Committee, are able to sit and interrogate the Statement that has been given by the Cabinet Secretary, then maybe we, as a Committee, could even come up with a report on this issue because it is a very sensitive issue. A lot of us have been reading something about this person. There is also the sensitivity of the issue as we go towards exploration of and the security of oil in our country which we are doing for the very first time in the history of this country. It is an extremely important issue and if my chairperson agrees and if Sen. (Dr.) Khalwale who had raised the issue would agree with me, this is not an issue which we should rest at this moment.

**The Speaker** (Hon. Ethuro): Order, Senators! I am sure the Chairperson is strongly persuaded by your pleadings and given the issues that have been raised, I will direct that the matter is interrogated further by the Committee and you can give us a report in three weeks' time.

Do you have another Statement?

**Sen. Haji:** Yes, Mr. Speaker, Sir.

### COMMUNICATION FROM THE CHAIR

RAMADHAN KAREEM WISHES TO ALL  
KENYAN MUSLIMS

**The Speaker** (Hon. Ethuro): Maybe, before you issue the next Statement, let me also make a small Statement. On behalf of the Senate and on my own behalf, I want to wish our Muslim Senators, Members of the National Assembly and all Kenyans *Ramadhan Kareem*. I do recognize that this is the third day of the holy month of *Ramadhan*. We join our Muslim brothers and sisters at this moment of prayer and sacrifice. I urge you to pray for this great nation so that *Allah* may grant us his abundant favour and victory to surmount our current challenges.

Proceed, Sen. Haji.

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*(Resumption of issuance of Statements)*

INSECURITY ALONG THE WEST POKOT/ TURKANA  
COUNTY BORDER

**Sen. Haji:** Thank you, Mr. Speaker, Sir. On behalf of the Muslim Members of the House, we also want to thank you for recognizing this holy month and wishing us *Ramadhan Kareem*. In fact, yesterday when you called me I was in a Mosque and we were praying.

On Tuesday, 17<sup>th</sup> June, 2014, Sen. (Prof.) Lonyangapuo requested for a Statement on the security situation along the West Pokot, Turkana border. The Hon. Senator sought to be informed on:-

(1) Whether the Government is aware that two children namely Chemening' Chulian aged six years and Moses Chebaruk aged five years were killed by bandits from Turkana County while in Sunday school on 15<sup>th</sup> June, 2014.

(2) What action the Government has taken to apprehend the perpetrators of this heinous crime.

(3) What the Government is doing to restore security along the border.

The Government is aware that two children, Chemening' Chulian and Moses Chebaruk were killed on 15<sup>th</sup> June in Tukana, Thakakaiywa Village by suspected Turkana bandits as they were escaping from the bandits together with their parents.

Following the incident, a contingent of police officers from Lolgorian and Nakwomoru camps visited the scene and tracked the criminals, but unfortunately, they did not recover the animals. An Inquest File No.1/2014 has been opened and is pending investigations.

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

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

The following measures have been taken to ensure security along the border:-

(1) The Government has deployed additional personnel in all security posts and camps along the volatile border.

(2) Joint security meetings between West Pokot and Turkana counties are being held regularly with the most recent meeting held on 19<sup>th</sup> June, 2014, in Lodwar, Turkana County to strategize on emerging security threats and how to deal with them.

(3) Inter-community dialogues are being encouraged with the most recent of such meetings held on 13<sup>th</sup> June, 2014 at Lorengipi along the Kenya/Uganda border with the Turkana, Pokot and Mathenikuo community elders in attendance.

Adequate vehicles have been provided to the security teams to enhance patrols and improve their efficiency and effectiveness. Mopping up of illicit arms is ongoing and the capacity of police reservists is being enhanced to effectively support the National Police Service (NPS) in its mandate.

**Sen. (Prof.) Lonyangapuo:** Thank you, Mr. Deputy Speaker, Sir, for the opportunity. I want to thank the Chairperson for the detailed Statement that he has given. He has taken the shortest time as agreed; that he brings the answers today. He is saying in his answers that the contingent of police officers who were at Lorogon in Nakwamuru went to follow those bandits. I agree with him. He has also said that the Government has deployed additional personnel in all security posts along the volatile border. I do not know whether this is true because all the villages that are inhabited by the Pokot pastoralists are not covered by any security personnel at all. There are places like Karon, Kases, Tikaiwa, Sarmach and so on, are not covered.

The two camps he has mentioned are right in the Manyattas of our neighbours; the Turkana who are staying in Lorogon and Nakwamuru. The Chairperson says the Government has now posted a camp at Karon, Kases, Tikaiwa, Sarmach and all those manyattas where the Pokot community resides. He also said that adequate vehicles have been dispatched to that area and I can confirm to you that that information is not true. It is also not correct that a special DO has been posted to Turkwel. The special DO who is supposed to be helping the two communities has no vehicle at all. The Anti-Stock Theft Unit that is found at Lochakula or Akula has only one old lorry. I hope he is saying that new vehicles are being sent to these units. The security personnel in that area should be having the latest vehicles that the Chairperson is talking about.

Lastly, he has said that the capacity of national reservists is being enhanced. I do not know how this is being done because currently, we have less than 10 Kenya Police Reservists (KPRs) in the whole of that belt who are covering these people. Is he saying that new permission has been given and more KPRs have been recruited to man the border?

**Sen. Haji:** Mr. Deputy Speaker, Sir, I want to thank Sen. (Prof.) Lonyangapuo for all the issues that he has raised. I am going to ask that the Cabinet Secretary gives us the vehicle registration number that has been sent there. He should also tell us whether security in Karon, Kases, Tikaiwa, Sarmach has been beefed up. I will also find out why the special DO who was sent there and who was expected to go around has no vehicle. I will answer in a week's time.

Regarding the homeguards, I will also find out whether their number is being increased or whether they are undergoing training to make them more effective than they were before. I will also give an answer to that in a week's time.

**Sen. (Prof.) Lonyangapuo:** Mr. Deputy Speaker, Sir, I am satisfied with what the Chairperson has said that he will need a week to make clarifications.

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. Haji, are you going to issue your further Statement on 8<sup>th</sup> July?

**Sen. Haji:** Yes, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. Kembi-Gitura): Thank you. It is so ordered. Sen. Sijeny!

**Sen. Sijeny:** Mr. Deputy Speaker, Sir, last time before we adjourned, I had answered one Statement as sought by Sen. Murungi and there is a second one which I wish to give.

**The Deputy Speaker** (Sen. Kembi-Gitura): What did I direct on both Statements?

**Sen. Sijeny:** Mr. Deputy Speaker, Sir, you directed that I table the statement today and for the first one, he had requested for time so that he could answer. So, if I give the Statement and he is ready, he can proceed.

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. Murungi, how do you want us to proceed with this issue?

**Sen. Murungi:** Mr. Deputy Speaker, Sir, I requested that I be furnished with the Statements and then I will interrogate all of them on 8<sup>th</sup> July, which is Tuesday, next week. So, I will be very happy to receive it today and then I will cross-examine you on Tuesday.

**The Deputy Speaker** (Sen. Kembi-Gitura): If I remember correctly, if the date was 8<sup>th</sup> July, 2014 and not today, it was not about being cross-examined on 8<sup>th</sup> July, 2014. That is not the way I remember it. It is a question of you giving Sen. Murungi a copy of the Statement in good time so that he can look at it and interrogate it and then when you issue it on 8<sup>th</sup> July, 2014 or whatever date was ordered, he is able to interrogate both Statements. So, to me, it looks that I am not going to allow you to issue a Statement now unless it is interrogated on a future date. I remember you handed a copy to him, but apparently, he understood that his intervention was going to be on 8<sup>th</sup> July, 2014 and not today. That Statement is put aside until 8<sup>th</sup> July, 2014.

**Sen. Sijeny:** Mr. Deputy Speaker, Sir, I stand guided. If the Chair rules so, it is okay with me.

NON-ACCREDITATION OF THE TECHNICAL  
UNIVERSITY OF MOMBASA BY THE  
ENGINEERS BOARD OF KENYA

**Sen. Karaba:** Mr. Deputy Speaker, Sir, I rise to issue a Statement regarding accreditation of the Technical University of Mombasa by the Engineering Board of Kenya.

**The Deputy Speaker** (Sen. Kembi-Gitura): I want to confirm whether Sen. Muriuki is here.

**Sen. Karaba:** Mr. Deputy Speaker, Sir, he is already here. I had talked to him.

**The Deputy Speaker** (Sen. Kembi-Gitura): I had not seen him.  
You can go on.

**Sen. Karaba:** Mr. Deputy Speaker, Sir, pursuant to Standing Order No.45(21)(b) of the Senate, Eng. Muriuki, the Senator for Nyandarua requested for a Statement from the Chairperson of the Departmental Committee on Education, regarding accreditation of Technical University of Mombasa engineering programmes.

Mr. Deputy Speaker, Sir, the Chairperson was required to inquire into and report on:-

(a) whether or not the Government is aware of the predicament that the Technical University of Mombasa students find themselves in;

(b) what it intends to do in order to help the poor students;

(c) how many students have been affected in a similar manner in various other courses in other universities; and,

(a) what measures are being taken to ensure that only accredited courses are offered by institutions of higher learning.

Mr. Deputy Speaker, Sir, the Ministry of Education, Science and Technology and the Technical University of Mombasa have been following the issue of accreditation with the Principal Secretary, Ministry of Transport and Infrastructure and the Engineers Board of Kenya (EBK) to have Bachelor of Science, Civil, Electrical and Mechanical Engineering programmes accredited without success. The process has taken too long. Currently, there are engineering students who are supposed to graduate and as per the EBK Act No.43 of 2011, they risk not being registered as practicing engineers from the Technical University of Mombasa.

Mr. Deputy Speaker, Sir, I wish to request this Committee, of course, to intervene. We hope that we have done a lot of intervention through the Cabinet Secretary, Ministry of Transport and Infrastructure to fast-track the process of accreditation of these engineering programmes, to enable the Technical University of Mombasa students to graduate. I have all the correspondence from the Technical University of Mombasa and the Ministry of Education, Science and Technology to the Ministry of Transport and Infrastructure. The latest correspondence from the Cabinet Secretary, Ministry of Education, Science and Technology to the Principal Secretary, Ministry of Transport and Infrastructure is dated 27<sup>th</sup> May, 2014. This has not been responded to.

Mr. Deputy Speaker, Sir, on measures being taken to ensure that only accredited courses are offered by institutions of higher learning, the Ministry through the Commission for University Education (CUE) ensures that before accreditation the Commission must be satisfied that the institution concerned has adequate physical, human, library and financial resources, viable relevant academic programmes and sound structure of governance.

Mr. Deputy Speaker, Sir, accreditation in Kenya means public acceptance and confirmation, evidenced by award of a charter which a university meets and confirms to meet the standards of academic excellence. The CUE undertakes recognition of qualification and examines the content of the respective training programmes, in order to compare the content and achievement levels, with those that have been obtained within

the Kenyan university system. To this effect, the Commission has guidelines to the recognition and equation of degrees and diplomas.

Mr. Deputy Speaker, Sir, the CUE also works closely with other international and regional accrediting bodies. Institutions accredited by those bodies are also recognized by the CUE.

Thank you, Mr. Deputy Speaker, Sir.

**Sen. (Eng.) Muriuki:** Mr. Deputy Speaker, Sir, first of all, let me thank the Chairperson for making the effort to get an answer.

Mr. Deputy Speaker, Sir, secondly, allow me to clarify that I was not in the House when the answer first came because I was out of the country. Actually, I was part of the Kenyan delegation which went to attend the African Union meeting in Equatorial Guinea. Also, allow me to report that Kenya has a very high standing in the African Union. It is, therefore, very disappointing to hear this kind of answer from our own Government. It would look like the Government is not taking this matter seriously.

Mr. Deputy Speaker, Sir, the Statement that I sought had four parts. Part (a) was whether the Government is aware of this predicament. To that extent I think that the Government should get an A because it is aware. Part (b) was asking what the Government is doing to assist or help those students who find themselves in this predicament. The specific predicament is students graduating with a degree which is not recognized by the professional body of the profession for which they have been learning for the last so many years. That has not been treated seriously. I do not know what the Chairperson will do, so that a more appropriate answer is brought. They have not even said what, therefore, will happen to those students whose graduation happened last week.

Mr. Deputy Speaker, Sir, part (c) of my request for the Statement was: - "How many other students are in this kind of situation, whether in the Engineering, Law or whatever other profession, in the various other universities, be they public or private?" The last part of my question was asking what the Government - more so the CUE - is doing to ensure that only accredited courses are being taken by various universities.

Mr. Deputy Speaker, to that extent, I would request that this Statement be deferred, so that parts (c) and (d) of my request can be answered. After answering parts (c) and (d), perhaps, the Chairperson of the Committee on Education could invite the main players, including the Principal Secretary, Ministry of Education and the Principal Secretary, Ministry of Transport and Infrastructure. This is because giving us correspondence between the two Ministries is like confirming that they have failed to solve the problem.

Therefore, I request that this Statement be deferred, so that parts (c) and (d) of my request can be answered before we go to the next stage, which is to get the Cabinet Secretaries of the two Ministries and the CUE to appear before the Committee. The Committee should then alert me and other interested Senators to be present, so that we can raise issues.

**The Deputy Speaker** (Sen. Kembi-Gitura): Are there some more interventions?

Sen. (Prof.) Lesan, do you have an intervention?

**Sen. (Prof.) Lesan:** Mr. Deputy Speaker, Sir, I am a Member of this Committee and also a former administrator in the university. I want to agree with Sen. Karue that the answer that we actually got for the question that was asked is inadequate. In fact, the questions were very clear. The university itself is accredited, but the programme is not accredited. This is one of the things that need to be answered. I am aware, being a university lecturer, that courses are not accredited if the teaching staff in that programme is not of the calibre that is required and accepted by the professional body. This question has not been answered by all the correspondences that we have.

Therefore, I think that we need to go back and, probably, get a proper answer as to why a professional body should not register a programme in an accredited university which is recognized. What is required is a very simple thing; that all the administrators of this university should give a straight answer as to why this programme has not been accredited and yet, it is a conditional requirement that this should be done well before the students have actually undertaken the course. I do know that it is---

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. (Prof.) Lesan, are you making a Statement or seeking a clarification?

**Sen. (Prof.) Lesan:** Mr. Deputy Speaker, Sir, being a Member of the Committee, I am just trying to---

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. (Prof.) Lesan, You are supposed to seek a clarification. Could I pose a question to you? Please, resume your seat. I am also posing this question to all Senators. You are a Member of that Committee; two things, therefore, must have happened. One of them is that, that statement was not interrogated after it came from the Ministry to the Committee. If it had been interrogated, we expect that the issues that you are raising, you would have raised them at the Committee level and then told your Chairperson that this statement is not adequate to answer what Sen. (Eng.) Muriuki had asked and, therefore, you should not read it on the Floor. You should have told him to wait and defer it until we get a proper answer. But now when I see Members of the same Committee rise and say that they are not satisfied with the answer, it tells me that the Statement was not interrogated at the Committee Stage.

In my opinion, that is what should happen in the first instance; that Members of the Committee see the Statement, if possible, and even agree on whether it is adequate or not. But now when you interrogate your own Chairperson, Sen. (Prof.) Lesan, then, of course, it gives us an impression that, that Statement was not discussed by the Committee. I am not taking it against you; I am just pointing out because I am appreciating what I have seen in the Statement. I am just saying that in future, it will be very healthy, and particularly for a person like you who is an administrator in education, as you have put it, to help us come up with proper answers on the Floor of the House.

**Sen. (Prof.) Lesan:** Thank you, Mr. Deputy Speaker, Sir. I am sure when I made the Statements that I have made; it really goes to show the frustrations that we, as a Committee, including my Chairperson, have had to go through, having a lot of

correspondence coming from the Ministry of Education that never really answered the kind of questions that were posed to us. Again, these are some of the frustrations that we, as the Committee, are getting because these answers that are required here were fairly straight forward. That is why I am supporting the Chairperson, that we are seeking time to further ask specific questions that we want---

**The Deputy Speaker** (Sen. Kembi-Gitura): But your Chairperson has not sought for time! But I get you, Sen. (Prof.) Lesan.

**Sen. (Prof.) Lesan:** Thank you, Mr. Deputy Speaker, Sir. That is the only thing we are really supporting each other as the Committee; to try and answer these serious questions.

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. Karaba.

**Sen. Karaba:** Thank you very much, Mr. Deputy Speaker, Sir.

*(Sen. Karaba spoke off record)*

Thank you very much, Mr. Deputy Speaker, Sir, for the time given. We have struggled and we are going to struggle with this answer because I am also very close to this system. There is a Motion coming here – and I hope that everybody will pass it – it is like every other college wants to be called a university---

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. Karaba, the issue for me is very simple; it is this; you are the Chairperson of the Committee. If you are not satisfied with the answer, you should not bring it to the Floor of the House.

**Sen. Karaba:** Okay.

**The Deputy Speaker** (Sen. Kembi-Gitura): If you are satisfied, then stand by your statement. But if you are not, then you concede that your statement is not satisfactory; ask for more time and if Sen. (Eng.) Muriuki agrees to more time, then you can proceed and give us a better and stronger statement that satisfies us as a House.

**Sen. Karaba:** It is agreed. We agree that we can ask for more time, Senator, so that we can bring in a more elaborate answer to this august Senate.

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. (Eng.) Karue?

**Sen. (Eng.) Karue:** Mr. Deputy Speaker, Sir, that is very appropriate. Let us talk about how much time you need; is it one week? These are straight forward things; we are only asking about what the Government has done; it is not something they are going to do. So, it should be there in their books.

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. Karaba, if you are able to give an answer in one week's time, my suggestion to you is that you take the matter back to the Committee; if need be, invite Sen. (Eng.) Muriuki to the Committee and thrash out the issues so that then you can come out with an answer that is acceptable.

Thank you. So, is that going to be 8<sup>th</sup> or 9<sup>th</sup> of July, 2014? It appears to me that the urgency with which Sen. (Eng.) Muriuki had when he sought this statement is now no

longer there. It looks to me like now it is a matter of policy going forward. So, shall we make it 8<sup>th</sup> or 9<sup>th</sup> of July, 2014?

**Sen. Karaba:** Mr. Deputy Speaker, Sir, 9<sup>th</sup> of July.

**The Deputy Speaker** (Sen. Kembi-Gitura): Thank you. It is so ordered. It shall be given on Wednesday, 9<sup>th</sup> July, 2014. Thank you. There being no further statement, let us move on to the next order; Sen. Amos Wako's Bill.

## BILLS

### *Second Reading*

#### THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL

*(Sen. Wako on 24.6.2014)*

*(Resumption of Debate interrupted on 26.6.2014)*

**Sen. Wako:** Mr. Deputy Speaker, Sir, as you can see, there is no threshold to have a vote on this particular Bill. Normally, we have said that voting should take place on Wednesdays---

**The Deputy Speaker** (Sen. Kembi-Gitura): No; nobody has said that. If you have an application to make, Sen. Wako, you make an application but do not bring forth things that are not in the records of the House.

**Sen. Wako:** Mr. Deputy Speaker, Sir, I am seeking adjournment under Standing Order No.54(3); that we defer putting of the Question to the following day in view of the fact that we do not have the threshold at this point in time.

Mr. Deputy Speaker, Sir, this has happened quite a number of times in view of the unique nature of voting in the Senate. Somehow, I would plead that there is normally a time at the very beginning before these statements are made when there is actually a very big quorum in the House. Like today, had we taken the vote before we came to the statements, we would have had a quorum; it would have been an overwhelming quorum. But once the statements began, people began walking out and so on, and so forth. That is point number one.

Secondly, Mr. Deputy Speaker, Sir, although this Bill has been put for voting today, I do not think the Whips have done their job to whip people to come and vote. I, for one, did not receive any message from my whip saying "please, note that you are going to vote on this day on this Bill in the House." I normally do receive such notices, but this time round, I did not receive any notice. Which means---

**The Deputy Speaker** (Sen. Kembi-Gitura): What is your point, Sen. Wako?

**Sen. Wako:** Mr. Deputy Speaker, Sir, my point is that the Whips should also do their job, especially when they know that on the Order Paper---



**The Deputy Speaker** (Sen. Kembi-Gitura): Quite obviously, they do not seem to have done their job right now. So, what are you proposing we do?

**Sen. Wako:** What?

**The Deputy Speaker** (Sen. Kembi-Gitura): Quite obviously, they do not seem to have done their job regarding your vote. So, what are you proposing we do?

**Sen. Wako:** Mr. Deputy Speaker, Sir, I am proposing that the Speaker comes down on them---

*(Laughter)*

**The Deputy Speaker** (Sen. Kembi-Gitura): You know that, for me, is futuristic. You have a division; your Bill is coming up for a division.

**Sen. Wako:** Mr. Deputy Speaker, Sir, for now what I am asking for under this Standing Order which I have just quoted is that we defer putting the Question to tomorrow.

**The Deputy Speaker** (Sen. Kembi-Gitura): Yeah; you have taken a very long time to say the same thing. You have gone in a roundabout manner.

Sen. (Eng.) Muriuki, what do you have to say on this issue?

**Sen. (Eng.) Muriuki:** Mr. Speaker, Sir, allow me to add to what Sen. Wako is saying, although maybe he was not so clear. It is obvious it would not be so clever of the House to start doing a division when we obviously do not have the prerequisite quorum. So, my suggestion would be that the Chair should take up this matter with a view to actually designating a day. At one time, I think we had said it should be done on Wednesday, but I think it was not official. Because when we say we should move it to the second day, I think it may not be good enough. Because we are here to achieve something, it will be good if we can agree on a permanent situation that we all know will work; say, on a Wednesday afternoon, the first business is division after the procedural matters. This will even enable the Whips to know what and when they are whipping. Otherwise, the division is coming on a day, on and off, where the Whips may not be aware that there is need to do that kind of whipping. That will be my suggestion.

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. Karaba?

*(Sen. Karaba spoke off record)*

Sen. Karaba, you know you must make a request. I know the system is new and you have to use your card wherever you move to.

*(Sen. Karaba moved to another microphone)*

If it is not working, you can move to the Dispatch Box.

**Sen. Karaba:** It is working now. We have a lot of things to do with these machines. What I was observing is that when we are coming to vote, we can change the format of the agenda so that we start with the vote, then move to other business on the Order Paper. It is very hard to whip this group according to my observation. It is very bad for somebody like Sen. Wako who has done much for the Bill to realize that it is being frustrated towards the end. Let us come up with a new strategy towards that progression.

**The Deputy Speaker** (Sen. Kembi-Gitura): Thank you very much, Sen. Karaba, but let me make this observation: Voting is an important business of this House just as the other Orders. So, it is not a question of coaxing Members to vote by bringing it forward. It is a question of Members knowing that we have an important Motion or Bill and we are voting on it on a particular day but we cannot relegate the business of the House or redo the Order Paper as traditionally done to accommodate a situation which is not more important than all the other issues that we have to do in the House. The reason why we have an Order Paper is because every Order of the House is important.

So, obviously, I understand where you are coming from, and I am going to proceed on the petition by Sen. Wako on Standing Order No.54(3) and defer it to the next day but this next day cannot be indefinite. Tomorrow will come, again, there will be no quorum or threshold and somebody will talk about the following day. It cannot continue like that because you must also realize that being absent is also another way of voting. It is a negative vote because by not being here, you are voting against a Bill or a Motion. So, we cannot assume that people are not here because they do not know. It is maybe because they do not want to vote in a particular manner.

Having said that, I would agree with Sen. (Eng.) Muriuki Karue that traditionally what we have done was to vote on a specific day, say, on Wednesday, where everybody knows it is a voting day and they can come and vote to a Motion or a Bill. Also, this is not by way of entitlement but the whips also at all occasions should be aware that a Motion or a Bill is coming up for division and it is up to them to ensure that there is a threshold in the House.

Sen. Wako, your Bill will be voted upon tomorrow, Wednesday, 2<sup>nd</sup> July, 2014 after 2.30 p.m. Is that okay?

**Sen. Wako:** I entirely agree with that but is it also possible for the message to be conveyed to the whips?

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. Wako, you are out of order. It is not the work of the Speaker to convey a message on any Bill or any Order of the day to the whips. So, the vote is tomorrow and it shall be provided for in the Order Paper. You cannot ask the Speaker to whip on any issue. We have whips in the House.

Sen. (Prof.) Lesan, did you have an intervention to make?

**Sen. (Prof.) Lesan:** Mr. Deputy Speaker, Sir, we are recognizing that this is a perennial problem and I am just wondering what would happen tomorrow if the number of Members in the House still does not meet the threshold. Are we going to continually seek for more time?

**The Deputy Speaker** (Sen. Kembi-Gitura): If you make another application, a ruling would be made and we shall proceed in that regard until we change the Standing Orders to be clear on what the following day means; whether it is acting in perpetuity or whether it is specifically “tomorrow”.

**Sen. (Prof.) Lonyangapuo:** On a point of order, Mr. Deputy Speaker, Sir. I want to join my colleagues who are concerned with the way the two whips of the two sides have been--- I do not know whether they get the Order Paper in good time. What is the way forward? How do we deal with such people who abscond their duty?

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. (Prof.) Lonyangapuo, if you look at Standing Order No.54 (3), it says that the Speaker may, on the request of a Senator, defer the putting of the question. We have not put the question on this issue. We will defer the putting of the question to the following day, in which case the Speaker shall thereupon nominate a time at which the question shall be put. Are we together? It says “to the following day” which is tomorrow. Then tomorrow, Thursday, will be the following day and if there is no threshold, then we can still use the same thing. For how long it can go, that is where a ruling needs to be made by the Speaker so that it cannot be in perpetuity. There must come a moment at which a vote must be taken, regardless.

Sen. G.G. Kariuki, your card is not in but I can see you. You can come to the Dispatch Box if your card is not working.

**Sen. G.G. Kariuki:** Mr. Deputy Speaker, Sir, I regret that we are really spending a lot of time asking you to do impossible things as far as the Speaker is concerned. The Speaker cannot be the whip for CORD or Jubilee. The Speaker is supposed to be independent. We anticipated this problem the time we came here. If you ask a very honest question; who owns this programme? Is it CORD or Jubilee? If we know that it is coming from a certain political party, then we expect the Chief Whip of that political party to whip their Members and also campaign on this side to support them or not. The way things are, we are pretending that we are not from different parties, thus we are committing a political crime. We need to be honest to ourselves that when a Bill is here, it is emanating from either Jubilee or CORD. We should then deal with that matter that way. That does not mean we cannot compromise knowing very well that we are supporting the Bill presented by Sen. Wako who is not from Jubilee but the Bill might be for the national interest. So, there is no reason why I would not support it. We are trying to contain this problem.

**The Deputy Speaker** (Sen. Kembi-Gitura): Mr. G. G. Kariuki, at the end of it all, this matter has to go before the Rules and Business Committee. It is contemplated that a vote can be outstanding for as long as possible. It must come to an end like litigation. This is an issue that will finally have to go before the Rules and Business Committee. It will not just be about quorum because we have quorum but about the threshold for voting. When will voting take place, in what format and how many times can we have a certain Bill being deferred to the following day? That is an important issue. I see that Sen.

Ongoro would like to make an intervention. That should be the last one so that we move on to the next issue.

**Sen. Ongoro:** On a point of information Mr. Deputy Speaker, Sir. I want to inform Sen. G. G. Kariuki that this has nothing to do with CORD or Jubilee. This is a Bill that emanated from the Committee. It is constituted and represented by both parties. Having said that, we have in the past shown a lot of maturity in contributing to Bills in the Senate devoid of party affiliations and regional balancing. When we feel that a Bill is okay and good for the welfare of this nation, we have supported it, whether it originated from somebody who subscribes to the Jubilee Coalition or the CORD Coalition.

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. G. G. Kariuki made that remark. The Bill is in front of us and it is a Committee Bill. Sen. G. G. Kariuki's view was towards the whips and when they should whip so that we have Members in the House.

Having said that, we have exhausted that order, let us move to the next order.

*(Bill deferred)*

### *Second Reading*

#### THE POLITICAL PARTIES (AMENDMENT) BILL

**Sen. (Dr.) Khalwale:** Mr. Deputy Speaker, Sir, I rise to move that the Political Parties (Amendment) Bill, Senate Bill No.3 of 2014 be read a second time. I want to start by thanking you for giving me the opportunity. I thank the Office of the Clerk for the support it has given towards this Bill. I would like to thank the Standing Committee on Legal Affairs and Human Rights in this Senate for the outstanding work they have done in conducting public hearings.

Mr. Deputy Speaker, Sir, this amendment is in respect of Section 25 of the Political Parties Act No.11 of 2011 which reads as follows:

The fund for political parties, distribution will be as follows -

(a) Ninety five per cent of the Fund proportionately by reference by total votes secured by each political party in preceding general election; and,

(b) five per cent to be reserved for the administrative expenses of the Fund.

(2): Notwithstanding Section 1, the Political Parties shall not be entitled to receive funding from this Fund if -

(a) the party does not secure, at least, five per cent of the total number of votes at the preceding elections; or

(b) or if more than two-thirds of the registered office bearers are of the same gender.

Sub section 3, for purposes of sub section 1(a) and sub section 2(a), the total number of votes secured by the political party shall be computed by adding the total

number of votes obtained in the preceding General Election by a political party in the election for the President and Members of Parliament and County Governors and Members of the County Assemblies.

That is the law that I find mischievous and which has to be cured. Since this is a bicameral system, I would like to clarify right from the beginning that yes, this Bill should come before this House because it does not delegate any legislative powers or limit fundamental rights and freedoms.

This Bill, indeed, concerns counties in the sense that in terms of Article 110(1) (b) of the Constitution, the funds to political parties affect the elections of county assembly members or the county governments.

I wish to set out the amendments. The amendments are fairly straightforward. I am saying that we amend Sections 5 and 25 of the Political Parties Act of 2011 in the following manner.

(a) in sub section (2) of the Act by deleting the words; “at least, 5 per cent of the total number of votes” appearing in paragraph (a) and substituting therefore the words; “at least one single member constituency seat in Parliament or in the county assembly.”

(b) In sub section (3) by deleting the words “the President” appearing after the words “elections for.”

My justification for this amendment is as follows. If you look at the memorandum of objects in this Bill - I invite you to find that the object of this Bill is to amend Section 5 of the Political Parties Act of 2011 – is to provide for the distribution of funds to all political parties that have one elective constituency seat in Parliament or in any of the 47 county assemblies. The amendment further requires that the total votes obtained by a presidential candidate should be excluded from this consideration for distribution of the funds, since in so doing, this provision disadvantages a political party that may decide to support a presidential candidate from a different political party. I will shortly be explaining what I exactly mean so as to persuade the House to move with me on this one.

Mr. Deputy Speaker, Sir, this amendment will protect all political parties as envisaged in Article 10 of the Constitution of Kenya which provides that our national values and principles of Government include democracy and the rule of law. At this point, it is important that I cite to the House in full what aspects of the national values are being offended by this provision. On page 15 of the Constitution, Article 10 (2) (a) (b) and (c) detail this and these supersede what this amended Act contemplates. Sub-section (a) states that the national values and principles of governance include patriotism, national unity and sharing. We want to share a national resource meant to promote governance, nurture the development of political parties and in the process of sharing, we have put a condition that in practice has ended up locking several parties out of that sharing.

I will soon be explaining what those parties are. Sub-section (b) provides for equity and inclusiveness. To fund just a few political parties which are represented in this Senate, the National Assembly and in the respective county assemblies to the exclusion

of others offends Section 2 of Article 10 of the Constitution of Kenya. Finally, Sub-section (c) speaks to good governance and transparency. The way the money has been hitherto shared has not been transparent to the extent – as I will be showing shortly – that a whopping 700,000 votes do not count in this formula as of the last General Election.

Mr. Deputy Speaker, Sir, having said that, I want to affirm again that this amendment will protect all political parties as envisaged in Article 10. I now want to zero in on the greater justification. When we made this particular Act in 2011, we did it in theory but in practice, this is what the general election brought. In the last General Election, a total of 14,388,781 Kenyans registered as voters and on election day, 12,221,052 actually cast their votes. Upon casting, it came out that the CORD coalition garnered 5,340,546 votes and on the other hand the Jubilee coalition garnered 6,173,433, a total of 11,513,979. It is these players in Jubilee and in CORD who attracted funding at level one. In the process, the 707,073 votes that were not cast in favour of CORD or Jubilee mainly going to the *Amani* coalition, the Eagle coalition of Peter Kenneth, the political party of Prof. Kiyiapi and so on, this 700,000 votes do not count; they have been left out.

It is essential that I go further and dissect what then happened within the coalition. In the coalition, again, it was found that even in those Jubilee and CORD coalitions, it is only three parties that are entitled to funding namely; United Republic Party (URP), The National Alliance (TNA) and the Orange Democratic Movement (ODM). In effect, even within those coalitions, the Wiper Democratic movement has been left out, FORD-(K) has been left out and the Federal Party of Kenya (FPK) has been left out. On the Jubilee side, the APK (bus party) has been left out and many others.

Therefore, I approach this House and request for this amendment because I am fully aware that the party leader of the bus party was once upon a time a member of the largest party in Kenya. Little did he know that one day, he will end up in a small party. He was actually a member of FORD that brought together Njindo Matiba and Jaramogi Oginga Odinga. Little did he ever imagine, in those dashing days of his politics that he will end up in a party that after he fought so hard to bring in this law, that will not benefit. FORD-(K) which was then in the hands of Musikari Kombo – I wish the party leader, Sen. Wetangula, was here – who initiated this Bill in the House which went on the pipeline for a long time only succeeding in the last Parliament when Kombo knew that political parties needed to be supported. Today Musikari Kombo must be a shocked man that having succeeded in this law, his own party FORD-(K) does not benefit. These are the realities. I therefore want to appeal to Members of ODM, URP and TNA to be futuristic and know that today they are here but tomorrow, they will not know where they will be.

Mr. Deputy Speaker, Sir, I even know that this is the second time you are serving in this House and the party you belong to today is not the same one that sponsored you in your first tenure in this House. Those are the realities of the politics of Kenya today. Somebody can laugh at me; that Sen. (Dr.) Khalwale comes from a party of only three

Senators and 11 Members of Parliament which is true, but that is where I found myself. The voters only gave us those votes, so what could I do? I could not run away. Living in that reality, I am requesting the country to join us on this one. Even in the Jubilee Coalition, there is a headache of how they should share this money.

If you ask Prof. Lesan and I, there is something in medicine called “the all or nothing law.” If we applied the “all or nothing law” now in the Jubilee Coalition which won the election, it provides that whether the TNA got more votes than URP, they are equal, for the reason that had URP withdrawn its support, then TNA would have collapsed. So, whether it was little support that they gave as URP, it was an all or nothing law. For this reason, I want to believe that if we had argued carefully about this Political Parties Act when we were moving it, we should have found that in the principle of the “all or nothing law” 50 per cent should go to URP and 50 per cent to TNA, but I am not a Member of that Coalition.

Mr. Deputy Speaker, Sir, in an area which was predominantly ODM and UDF, FORD-(K) which fought so hard and helped the former Prime Minister, Raila Odinga, to get 62.2 per cent of all the votes that were cast in Western. But today, FORD-(K) is locked out of the party. By “party”, I mean the sharing of the spoils. I want to persuade ODM---

**Sen. Murungi:** On a point of order, Mr. Deputy Speaker, Sir. We like what the contributor is saying, but is it in order for him to mislead Kenyans that he is not a Member of our coalition when, indeed, his UDF party is a member of the Jubilee Coalition? Could he clarify this position before the cameras?

**Sen. (Dr.) Khalwale:** Mr. Deputy Speaker, Sir, I take that point of order very seriously. It reminds me that once upon a time, soon after the General Election last year, my party leader was so much in love with Jubilee that they went to bed and in the process, a wonderful---

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. Khalwale, before you go into the theatrics about what I know you want now to start, the issue raised by Sen. Kiraitu is pretty easy. You are leading in a very important Bill in this House on political parties and he raised an issue with you on a point of order. I think that he deserves an answer. The House, rather, deserves to hear what you have to say about that point of order.

**Sen. (Dr.) Khalwale:** Mr. Deputy Speaker, Sir, indeed, I am going to answer directly. After they went into that union, they created the union that asked me, as UDF on the Floor of this House, to work with Jubilee, which I did gladly. But, unfortunately, as the House will recall, a Motion was brought in this House, debate done, question put and a vote determined that I be thrown out of the Jubilee Coalition. That is how I found myself with no option other than not sitting here in the middle, but working with the CORD Coalition which, fortunately, I have found to be likeminded.

Mr. Deputy Speaker, Sir, if I may clarify, because I am a disciplined Member of my party, I still subscribe to UDF and pay all the monies that we are supposed to pay the party, because I thank it for sponsoring me. But having been de-whipped, there was no

way that I was going to refuse to participate in Committee work. Then, I would not have discharged my duties as a Senator. I hope that, that decision to de-whip me will be reconsidered and then, in that process, I will be able to rise and please my senior, who knows that I respect and fear him for many reasons.

**Sen. Murungi:** On a point of order, Mr. Deputy Speaker, Sir. He has not answered by point of order. He has just avoided it. It is true that you were removed from a Committee, but you were not removed from your Coalition, because your party is still a member of the Coalition. So, you being a Member of UDF, and since UDF is a member of the Jubilee Coalition by implication--- You could be a rebel, but you are a Member of the Jubilee Coalition.

**Sen. (Dr.) Khalwale:** Mr. Deputy Speaker, Sir, I am aware that you are a senior Member of the Bar and so is Sen. Kiraitu. You know that the Political Parties Act---

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. Kiraitu Murungi and Sen. Khalwale, the one thing that I am not going to allow is for both of you to get into a debate on this issue. But I got Sen. Kiraitu Murungi to raise a direct question with you, on a way of point of order. That is what he is asking. If you are able to answer him, it is fine. But if you are not able to answer, just say so, and then we proceed. But he raised a very direct point of order with you and I reckon that the House wants to know your response. But I do not want us to go into a debate on this issue.

**Sen. (Dr.) Khalwale:** Mr. Deputy Speaker, Sir, the Political Parties Act does not in any way bind any Member to a post-election agreement that is negotiated and the Member is not satisfied. So, I am not bound by law.

**The Deputy Speaker** (Sen. Kembi-Gitura): Then I think that we should just leave it at that.

Sen. Lonyangapuo, do you have a point of order?

**Sen. (Dr.) Khalwale:** Mr. Deputy Speaker, Sir, I beg that my time is not---

**The Deputy Speaker** (Sen. Kembi-Gitura): I will hold your time, Sen. Khalwale.

**Sen. (Prof.) Lonyangapuo:** Mr. Deputy Speaker, Sir, my colleague has sought the clarification that I wanted to seek.

**The Deputy Speaker** (Sen. Kembi-Gitura): Proceed, Sen. Khalwale.

**Sen. (Dr.) Khalwale:** Mr. Deputy Speaker, Sir, where are we with all this reality? Where we are is that parties that contributed to making the President of this country are today relying on the membership of the party to support their party financially. At UDF, we contribute Kshs20,000 per month. I know that KANU, the "Bus" party and everybody else must be contributing. Why should we be denied access to public funds? Why should we rely on the salary that is supposed to enable us to discharge our duties, as Senators, Members of Parliament and Members of the County Assemblies (MCAs), when there is money from the national kitty?

I beg that this realization be the one that will persuade my colleagues in supporting this amendment. This is because if you refuse to support it, it simply means



that you want to be – and this is figurative – like a spoilt boy in a family, who when food is served, refuses to eat with the rest of the members of the family. He wants to eat alone.

Mr. Deputy Speaker, Sir, there is the important issue of concurrence on my thinking. Indeed, I want to confirm to the House that I have this huge report from the Committee of Legal Affairs and Human Rights, which is born out of public participation when members of the public came out in large numbers, as institutions and individuals, to give their views. The most important institution under the Political Parties Act is the Office of the Registrar of Political Parties. If you have a copy of this Report, in paragraph 2.1.1, the Registrar of Political Parties had the following to say - She expressed support for the Political Parties (Amendment) Bill of 2014 based on the following rationale. She said that the amendment shall ensure that more political parties are funded by the State and prevent the influence of political party policies by individuals and donors who support that party.

Mr. Deputy Speaker, Sir, she also said that this amendment shall promote the doctrine of equality of the vote, as provided for in the Constitution, as the performance of every political party in every single election in both Assemblies shall be taken into account. She added that this amendment shall address the challenge of distribution of Political Parties Fund to political parties within a coalition. She added that she was proposing further amendments to the Bill – and she had very interesting ideas which I want to confirm that they will guide me as I lead the House in the Third Reading of this Bill. She said that she proposes the inclusion of the gubernatorial seats that a party wins in a single election as a factor to be considered in the distribution of funds. Finally, she further wanted to amend the Bill by saying that the performance of a political party in a presidential vote to be considered in the distribution. She was insisting that we do not move away from the current provisions.

Mr. Deputy Speaker, Sir, we also had strong representation in support from the Centre for Multiparty Democracy (CMD). The CMD puts together all the political parties in this country. In Paragraph 2.1.3, I will just read out one statement they said:-

“The Centre for Multiparty Democracy supported the amendment in Section 2(b) of the Political Parties Bill and said, however, that the President, being a unifying factor, we must find a way of factoring the presidential vote in the amendment.”

Mr. Deputy Speaker, Sir, based on this, I have chosen to say just a few of the views of the public. The Committee of this House then made the following recommendations, and I would like those recommendations to be on record. They were as follows:-

(a) The number of gubernatorial seats that a party wins in a single election and the performance of a political party in a presidential vote to be considered in the distribution of Political Parties Fund.

(b) They recommended further that a provision be made in the Political Parties Act, 2011, to act as a legal basis for the formation of coalitions and, further, to require

that a coalition instrument to be included in a provision for the distribution of funds amongst member parties.

This important observation reminds this House of two things; the first one is that even within CORD and Jubilee, they are forced to have a mere Memorandum of Understanding (MoU) to see how ODM would cede some of its funds to FORD-(K) or Wiper Democratic Movement. The same thing of MoU applies in Jubilee.

Mr. Deputy Speaker, Sir, because politics is dynamic, supposing Wiper Democratic Movement or FORD-(K) – God forbid – fell out with ODM before the end of the five years, they will simply close the taps and the party would be frustrated. The same way, God forbid, if Jubilee was to break down and URP goes that way, and TNA that way, and the Bus this way, TNA will simply close the taps. So, in order to remove the mischief of people relying on an MoU which is not legally binding, this recommendation will be very welcome.

Mr. Deputy Speaker, Sir, they further recommended that out of the 95 per cent of the funds to be distributed, we should now subject to a further formula; namely, 25 per cent to be distributed equally amongst all parties while 70 per cent of the funds to be distributed proportionately between political parties with at least one single member constituency seat in Parliament or in a county assembly. They recommended further that Section 25(2) (a) be deleted altogether and be substituted with the words “the party that does not secure at least two Members of Parliament (MPs) or at least 25 Members of the County Assembly (MCAs)”. They further recommended that Section 25(3) be deleted entirely on the basis that there would be no means of establishing that whoever voted for a President, MPs, county Governors and MCAs belonged to any particular party.

Think about it; you come to my western region, for example, where my presidential candidate had invested the highest hopes and what happens? The votes are cast in the constituencies where he gets MPs, Senators, MCAs and hon. Raila beats him hands down! So, it means that as people vote, you cannot know that the person who voted for Sen. (Dr.) Khalwale to become Senator, again voted for hon. Mudavadi to become President. So, this provision should be removed; that is the reality. It is too hypothetical!

Mr. Deputy Speaker, Sir, they further recommended that the Office of the Registrar of Political Parties be given a right to determine the distribution of the funds to political parties as they are the custodians of data for political parties. They also proposed that political parties that do not register any growth should be given a grace period of a maximum of five years for growth after undergoing training before they are deregistered. At the moment, it is very easy for your party to be deregistered because this provision is not there. You will just be assumed not to be growing. A provision should be made for independent candidates from the Political Parties Fund to benefit on their numbers. If the allocation remains unused, then such allocations could be returned back to the Fund and not to the national Treasury.

Three, Mr. Deputy Speaker, Sir, that we clarify the use of the words “briefcase parties.” This has been used severally to belittle very senior politicians like some of us in

this country; you will find a very junior politician who belongs to TNA or URP goes around and when I pass, he calls me a Member of a briefcase party. How I wish some people will pause to learn English!

Mr. Deputy Speaker, Sir, it is not possible to have political parties today because before you are registered as a political party, you must have at least 2,000 registered members from the 47 counties; and you must have registered offices where you have employed staff in a minimum of 24 counties. So, we want the law to be clear so that the people who call us briefcase parties to stop forthwith.

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

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

Madam Temporary Speaker, because briefcase political parties are not there - you are in a political party, you do not know how it feels in the system when somebody tells you that you are from a briefcase party; and the person telling you – for all you care to know – they got those votes to be who they are by hanging on coat tails of strong political leaders of their parties.

Finally, Madam Temporary Speaker, caution must be exercised when determining the threshold for funding to avoid the possibility of a single party meeting the threshold of 5 per cent, which would breach Article 4(2) of the Constitution on multi-partism. Think about it; if we left this statute as it is, it is possible for a party which is overwhelmingly popular to be the only one which has secured 5 per cent and the Opposition is the Opposition, without 5 per cent so that all this money now will end up going to that party. It would be an indirect affront on Article 4(2) of the Constitution on multi-partism.

Madam Temporary Speaker, Article 4(2) says - and this is in the declaration of the Republic - it says that Kenya is a sovereign Republic and secondly that the Republic of Kenya shall be a multiparty democratic state founded on national values, principles of governance as referred to in Article 10. So, we will end up colliding with that provision in the Constitution. To avoid this not so theoretical possibility, we need to amend that provision.

Madam Temporary Speaker, I want to use this opportunity as I come to the tail end of my contribution to assure the Committee on Legal Affairs and Human Rights and to assure the Centre for Multiparty Democracy, to assure the Constitutional Implementation Commission (CIC) which came out opposing this particular Bill, to assure the Registrar of Political Parties and indeed to assure all my colleague Senators here that I will be listening very keenly to the strong suggestions made by the Committee and some will come from you, we will factor them in during the Committee of the Whole.

I now want to request Sen. Mong'are Okong'o to second this Bill and wish to move that the Bill be read a Second Time.

**Sen. Okong'o:** Madam Temporary Speaker, thank you for giving me this opportunity to second this Bill which has been extensively and in detail moved by my colleague, Sen. (Dr.) Khalwale. In a multiparty democracy there are tenets which must be embraced; the tenets of equity, transparency and good governance. These are the reasons which can be captured if all our Members support this Bill with amendments.

Devolution as it is means sending and enabling all corners of the country. We have county assemblies where diverse political parties are represented. It would be very noble that those who have majority numbers in the assemblies have their share and those with minority have their say even if it is one Member. That is the essence of democracy.

Madam Temporary Speaker, since 1992, Kenya was earmarked to be a multiparty democracy but the Act as it is, is for a few. As you have heard from my colleague, Sen. (Dr.) Khalwale, in the CORD Coalition for instance, some of us in the FORD-(K) party are still fighting to get even a little of what is at disposal in the coalition. We need to make this a matter of law. This needs to be a matter of equity. If you look at and compare with other jurisdictions, political funding should enable parties to be functional. For instance, whether a party is represented by one Member at the Senate, National Assembly or County Assembly, it should be facilitated from the Consolidated Fund. These funds come from taxpayers who, in their wisdom, have empowered those people to represent them in the county assemblies whether in the majority or minority. So, if the funds are equitably distributed, it will assist those Members to do the following:-

- (i) they can develop their political interest with the people;
- (ii) they can bring political parties influence in shaping and pairing with the opinion of the public;
- (iii) it can inspire and further political education within the citizens, particularly on the ideologies of political parties and for the interest of the public;
- (iv) it can also promote active participation by individual citizens in political life;
- (v) it can also assist a political party in exercising their influence in those regions where they were elected; and,
- (vi) it will also ensure a continuous interaction between the people and the ones they elected.

Madam Temporary Speaker, in South Africa, for instance, research has shown that the African National Congress (ANC) takes the largest percentage of the political fund and it is an exception. Research has also shown that this has given ANC powers to stifle small parties. Those are not my findings but the findings of contemporary research in politics. That is the reason why we need to support this amendment so that political parties which were not catered for by this Act may not fall to the whims of foreign donors.

You have heard Sen. (Dr.) Khalwale allude that there are some organizations which fund political parties in our country but they may not enable this country to have homegrown democracy. We can only have homegrown democracy if an individual Member and a minority is given the tools of trade. These include funding for registration and divergent ideologies pertaining to their party. Therefore, if we support this Bill, we will move forward in the new order and in the new constitutional dispensation.

With those very few remarks, I beg to second.

*(Question proposed)*

**Sen. (Prof.) Lonyangapuo:** Madam Temporary Speaker, I want to laud Sen. (Dr.) Boni Khalwale for introducing this amendment on the Political Parties (Amendment) Bill, 2014, which touches on the rights of the people of Kenya as exercised in the parties they have chosen during elections.

We pass many laws and it is important that we start implementing them. Sometimes we may pass very many laws that may appear very brilliant from the outset, but in real practice, this does not work very well. The proposal that the Senator made that we delete the words “at least five per cent of the total number of votes cast” are the parties that will benefit and yet we know we had over 50 political parties that participated in the last General Election. We have many parties serving Kenyans at the two levels of governance; at the County Assemblies and national Government, both in the Senate and the National Assembly.

I support the amendment that says that at least one single member constituency sits in the Parliament or in the county assembly. This gives us the freedom as exercised in our Constitution. The sovereign power of the people is exercised at two levels of Government; the national and the county level. This is under Article 1(4) of our Constitution. If we went by the law that existed before this amendment, it would cut out many people who have been elected by the people of Kenya at the county level whose parties are not recognized. This cuts off some people who are found at the national level such as me who are in the oldest party, KANU, which has given birth to all the other parties. It is a shame that if we were to proceed the way the law says, then we would not get any support. This party made the leaders who are in the new parties.

As we move on as it is indicated, every political party will have access to funds that are raised by Kenyan taxpayers. I support the ratios as indicated. Every political party; whichever numbers it has, gets a uniform figure. This is already being practiced in the way that the Commission on Revenue Allocation (CRA) distributes money to counties. There is a column which is constant for every county. Funding is supposed to stabilize that and there is something called equal share in the formula. Every county must get a certain flat rate. If this is indicated and approved, every political party should get a flat figure of 25 per cent of the total amount.

Dr. Khalwale has not told us what amounts were allocated in this Financial Year, 2013/2014; the year that has just ended so that we know the actual figures of 25 per cent. We should say that every party that has ever produced somebody should have a certain amount. This is to assure Kenyans that if they choose to go for some parties; those parties will not die a natural death as envisaged. The 75 per cent can now be given proportionately depending on the number of persons that we have elected.

That is what is happening in other countries. My colleague mentioned what happens in South Africa. A lot of money goes to the ruling party which has higher numbers. We chose to allow as many parties as possible; therefore, we should share the money. Elsewhere, we have dominant parties. Like in Britain, we have three political parties and two are the main ones; the Labour Party and the Conservative Party. In Kenya, we have over 50 parties. In America, we have two main ones and I do not know whether we have small ones. Since we have gone this direction, we should not introduce segregation by making other people who want to exercise their rights to vote to suffer.

Last year, we had over 700,000 voters who will be locked out. That is a staggering close to 6 per cent of the total votes cast. They will not enjoy and get the support of the political parties. What do political parties use this money for? I know that they use it to teach their members. Civic education should be conducted. They may want to carry out their leadership through bringing in changes. These leaders can become more focused if they are better trained. That is why funding and money is required.

Last week, we struggled to have our own youth congress where we were taking *Youth for KANU* through a certain programme. If this money was there and if we could get money from the National Democratic Institute (NDI), then we would not hold those meetings. This funding will be very appropriate for parties to survive and to move on. I do not want to speak so much about this Bill because this is what we have been waiting for. The Lower House will also speak to it because it affects all of us.

I support and concur with the Mover of the Motion. I support.

**Sen. (Prof.) Lesan:** Madam Temporary Speaker, first, I would like to congratulate my colleague, Sen. Khalwale, who has introduced this amendment and defended the Bill passionately. I am sure he took a lot of time to consider and think about the amendments he has brought on the Floor of the House.

Funding of political parties in this country, in the first place, is perhaps one of the greatest milestones in terms of entrenching democracy in this country. Therefore, it is one of the welcome items that were introduced through our Constitution. I want to look at this from a different perspective. I am informed by what I believe.

Multiplication of parties is not an indication of democracy. That does not mean that the more parties we have in the country, the better democracy we will have. I have difficulties in supporting the amendments. I will give some reasons why I have a problem. The reason given for wanting to exclude the votes cast for the President is the fact that some parties will choose to support the President and not field their own. This is something that happens to all other seats. There are many parties that we know which did

not field candidates for the seats of Governors in some places but supported Governors from other parties. This is the same thing which happened to the Senate seats.

Going by this reasoning, we can also say that even the votes for all the others should be excluded. This does not make a lot of sense. I think it is important that we consider all the votes cast by the voters knowing very well that in this country not all voters are registered members of political parties and yet they vote. If you consider amending this to exclude the presidential vote, then I think it is also important to also think about excluding the votes that were cast by party members that have identified themselves as belonging to a particular party but they did not have a candidate. This is one thing that needs some further thought before amending it the way it has been suggested by Sen. (Dr.) Khalwale.

Madam Temporary Speaker, when I look at the manifestos of parties in this country, some of them are similar word by word. I will not be surprised that some of the parties are actually there for funds. I think we should discourage this by allowing parties to take ideological lines. If the introduction of or sharing of the funds will diminish some parties so that we end up having two to three main parties, I think the introduction of party funding is welcome because it has done for us what has been difficult to do for all the years. I think it is very important that parties rule the country based on ideology and not access to the funds which are available. I would be very hesitant to support this amendment as it is, unless we can accept the amendment but still retain the fact that the presidential votes should not count in determining the sharing out of the funds.

I support the amendment.

**The Temporary Speaker** (Sen. Ongoro): I am not seeing any more requests.

**Sen. Omondi:** Madam Temporary Speaker, I would like to request that we move to another Motion.

**The Temporary Speaker** (Sen. Ongoro): Sen. Godliver, you are out of order. You can only move for an adjournment and you must do it procedurally. Nevertheless, let me consult with the Mover. Hon. Senators, you realize that this is a Motion that has a lot of political implications and impact to this nation. Under the circumstances, since no other Senator wants to contribute, I would have called upon the Mover to reply, but having consulted with him, he is of the opinion as I am that more Senators would want to speak to this Motion.

**Sen. Okong'o:** Madam Temporary Speaker, Sir, considering that this Bill before us is of great interest to this nation and has political consequences, under Standing Order No.99 (1), I request that we adjourn the debate for now.

**The Temporary Speaker** (Sen. Ongoro): Granted. Who is seconding?

**Sen. (Prof.) Lonyangapuo:** Madam Temporary Speaker, I concur with the Senator and I second.

*(Question proposed)*

*(Question, that the Debate be now adjourned put and agreed to)*

## MOTION

### MEASURES TO DEVELOP RESEARCH IN KENYA

THAT, aware that research is a mystified domain which remains a preserve of selected Government agencies, academic institutions of higher learning and a few other organizations; concerned that even in the said institutions of learning, research is usually introduced at post-graduate level; further concerned that research has not been prioritized and very low funding is channeled towards it; the Senate calls upon the National Government to:-

- (a) take deliberate measures to cascade research to lower levels of education right from early childhood education level;
- (b) inculcate and institutionalize research by introducing it as a compulsory discipline at all levels of education;
- (c) develop a clear policy and legal framework to guide the development and sustainability of research at all levels of education; and,
- (d) increase funding for research by allocating at least 1 per cent of the National Budget to research.

*(Sen. (Prof.) Lonyangapuo on 25.6.2014)*

*(Resumption of Debate interrupted on 25.6.2014)*

**The Temporary Speaker** (Sen. Ongoro): The last time that we were debating this Motion, Sen. Amos Wako, was giving his contributions and he had some remaining minutes. But since he is not in the House, I will give the Floor to Sen. Zani.

**Sen. (Dr.) Zani:** Thank you, Madam Temporary Speaker. I stand to support the Motion by Prof. Lonyangapuo and congratulate him for delving into an area that is not talked about as often as it should. This is because it is the foundation of knowledge and the way people get to really understand, conceptualize and confirm the issues or questions that are raised regarding various issues in various disciplines, be it history, sociology, geography or political science.

Madam Temporary Speaker, for a long time, the area of research has been really a mystery. It seems like a complicated process and, therefore, very many institutions start research courses in higher levels of learning rather than much earlier. So, you will find that the first time that somebody will come across the concept of research is in the first, second or third year of university or during a Masters course. In various countries, you



will find that, at least, the basic components of research are discussed at much earlier stages in a child's educational circle.

Madam Temporary Speaker, research is so critical in any country, especially in this country being a developing country, because it is the source of informed knowledge. When you are doing research and come up with findings you are not just talking off-the-cuff, but actually talking with facts. You will have actually gone out of the way to understand and look at the issue in detail. You will have looked at what others have talked about that issue. You come up with the methodologies and ways of making sure that, that research is verifiable and then make conclusions that are very well informed. In fact, it should be the norm that before information is disseminated or shared, the sense that research has taken place needs to be given out. Such research skills are critical for a society and everybody really needs to be encouraged to learn them.

Madam Temporary Speaker, some of these research skills include mathematical models and statistical analysis that might seem complicated, but over time, even a linear regression can first be introduced in a very simple form and then as somebody moves on to higher levels of learning, that concept can be expanded and made more complicated, as the ability to understand increases over time. It is a logical way of doing things. It is a way that is refined and involves someone doing homework, going into background issues and being able to see exactly what happens.

Madam Temporary Speaker, the process of research varies from institution to another, but the format of research, starting with identifying the problem and being able to really pinpoint exactly what to study is very critical. Somebody has to do literature review and look at what other people have talked about, because the idea is not to re-invent the wheel, but come up with new information that is going to be helpful for that particular research discipline. That is a lot of hard work. The literature review must be critical and address the issues. It should look for the academic lacuna or gap that exists before the answers can come.

Madam Temporary Speaker, the methodology aspect is also very critical because it gives the way in which the answers will be sought, how the samples will be selected, the way the research design will be done, how the sample size will be selected and how the methodology for collecting the work will be engaged. This is so that at the end of the day, the information that is collected is, one, informative and two, it can be replicated by somebody else. Therefore, the whole idea that his information is correct is very critical. If information is about agriculture or society, it is information that has been confirmed, looked through, dissected and, therefore, it is information that people can have confidence in.

After information has been collected, it has to be assessed so that the real answers can be found. Finally, publications and research dissemination processes ensure that everybody knows what that research came up with.

Madam Temporary Speaker, for a long time, in many fields, we tend to make assertions without going through a specific process of knowing exactly what we are

discussing. Therefore, as a way of addressing issues generally in this country, coming up with such fact finding methodology is very important. There is nothing very mysterious about research. That is why this Motion that tries to demystify research and, indeed, even encourage that this research is cascaded to lower levels of education, right from early childhood, is very important so that at the primary and at the secondary levels, components of research are taught. The idea is that over time, it will be possible for somebody to get better with research, implement and look at ways of really doing research properly as time goes by.

Madam Temporary Speaker, it is, therefore, important to inculcate and institutionalize research by probably introducing it as a compulsory discipline. Just like many courses that seem complicated, where research methodology and design has to be sought, most of the time you will find a situation where students, especially given an opportunity to make a choice on whether they really want to engage in the research or not, tend to make a decision not to engage in that specific research. Therefore, if it is made as a compulsory discipline, especially where in many cases it will mean that they can actually apply that knowledge in the future in specific areas, it becomes very critical. For us to do so we need to have a very clear policy and legal framework that will guide the development and sustainability of research at all levels.

Madam Temporary Speaker, one of the key issues that comes up every time people talk about research is that it is a very expensive exercise. In many instances, institutions will not give the funds that are required for such research, even for breakthrough research, for example, in HIV/AIDs studies that is critical for the sustaining and survival of the citizens of the country. Thus, if such initiatives are not put in a legal framework or through clear policy, that it is a must that components of research, depending on the level of the learner, can be introduced gradually. But at one point to another, that everybody is actually exposed to research skills. I think in one way or another, even as people are looking at projects, this will make the sense of logic and thinking through issues become a part and parcel of the decision making that we always have to do in different facets.

In most institutions, the funding for research tends to come from external donors. Many research projects, indeed, that could have been a breakthrough have actually not seen the light of the day and come up with sufficient conclusions and information that will be critical for this particular country.

Madam Temporary Speaker, in the post graduate level, of course, the learner is better equipped and able to translate that information into something tangible. That tangible thing is immediately a project, thesis, dissertation or a publication. But the skill cannot be developed overnight; it has to be built over time, gradually and systematically, so that at the end of the day, it is possible for somebody to showcase exactly what they have done.

In terms of policy and funding, we do not have a system where there is budgetary allocation that has been given specifically to research, either research targeting a specific

area or research targeting key areas that have been identified by the Government. If we have to look at it in terms of policy or a legal framework, it would be important to cascade it in that format, so that it is possible for the learners right from the beginning to have funding that will enable them to progress with research.

Madam Temporary Speaker, the Motion calls for increased funding by allocating at least one per cent of the national budget to research. That can be useful. If we are talking about one percent, we are not asking for too much in this Motion, to go into an important process like research of the national budget.

I would like to move an amendment to this Motion that instead of stating that one per cent should come from the national budget, we should talk about one per cent coming from the Gross Domestic Product (GDP). This is so that at the end of the day, we are looking at the GDP that tends to factor in and have a higher proportion. If I am to give an example, in 2012, the GDP was at Kshs3.5 trillion. If we talk about one per cent of this amount, this is something substantial. But in the same year, on the budget allocation, if we are talking about one per cent, this would only have been at about Kshs1.4 trillion which is just less than half.

We should come up with an initiative where we can anchor funds into a particular kitty, for example, the GDP as an indicator. The GDP has been growing over time at a rate of 4.6 per cent. We will be giving hope to this country in terms of being able to move the agenda forward and have very ground breaking research that this country needs.

Madam Temporary, Speaker, I, therefore, wish to move an amendment to Sen. (Prof.) Lonyangapuo's Motion to the Department of Education, Science and Technology as follows:-

“By deleting the words “national budget” and replacing it with the words “gross domestic product”.

**The Temporary Speaker** (Sen. Ongoro): Before you proceed, Senator, I would like you to know that I have not been issued with your written submission of the amendment.

*(The Temporary Speaker (Sen. Ongoro)  
consulted the Clerk-at-the-Table)*

I have gone through your written submission and I do not think it substantially alters the spirit of the Motion. So, you can move.

**Sen. (Dr.) Zani:** Madam Temporary Speaker, I beg to move:-

THAT, the Motion be amended by deleting the words “national budget” and substitute it with the words “gross domestic product”.

I beg to move and ask Sen. Okong'o to second.

**Sen. Okong'o:** Madam Temporary Speaker, I beg to second this amendment by Sen. (Dr.) Zani. This is a very important Motion that requires that we empower our citizenry at an early age. If we pass this Motion as amended, it will be very important

now that Kenya is looking at Vision 2030. These are the processes that we need to embrace in our educational system. For instance, we are all aware that the ECDs and polytechnics have been devolved. But since we are laying the ground for the counties, when the national Government gives into this kind of Motion, even county governments will be persuaded to also entrench research in their budgetary allocations.

Madam Temporary Speaker, we have witnessed in this country, on two or three occasions, young men who have tried to fly aircraft. If these funds are allocated at lower levels in our schools, those citizens will value the inside of research. We will have the best brains and scientists who may come up with several discoveries in areas of agriculture, sports and even medicine.

I support the amendment as moved. I beg to second.

*(Question of the amendment proposed)*

**The Temporary Speaker** (Sen. Ongoro): Is there any Member willing to talk to the amendment?

**Sen. (Prof.) Lesan:** Madam Temporary Speaker, I rise to once again support the Motion as amended. As mentioned by the previous speakers, research is a very important aspect of life and one in which we can move our knowledge and knowhow to be used to our advantage in society. Innovation and research go together. Innovation is one of those things that you have ideas on how to do things, perhaps not completely. To be able to do them completely, you need to do some research.

Madam Temporary Speaker, I am aware that this country has a lot of young people who are very innovative. However, their innovations require support. I remember about a year or two ago, a young man in Kiambu County had innovated and attempted to fly an aircraft by designing and modifying engines. He was able to put the engines together and at one point, he was in the middle of a field where he tried to take off. I believe this time, because of the fact that this country is not concerned with research, that young man is now disappointed somewhere in the village because he was not assisted and there were no funds available to nurture the innovation that he had come up with. This Motion has come at the right time. It has touched on areas that have limited research in this country. It is only the funds and the legislation that are not there to provide support. I know there are many areas in which research can be used especially in the area of agriculture and food.

Madam Temporary Speaker, I wish to support the Motion as amended.

**The Temporary Speaker** (Sen. Ongoro): Hon. Senators, I have not seen any more interest from Senators wishing to speak to the amendment. I will now put the question.

*(Question, that the words to be left out be left out,  
put and agreed to)*

*(Question, that the words to be added be added,  
put and agreed to)*

*(Question of the Motion as amended put and agreed to)*

*Resolved accordingly:-*

THAT, aware that research is a mystified domain which remains a preserve of selected Government agencies, academic institutions of higher learning and a few other organizations; concerned that even in the said institutions of learning, research is usually introduced at post-graduate level; further concerned that research has not been prioritized and very low funding is channeled towards it; the Senate calls upon the National Government to:-

- (a) take deliberate measures to cascade research to lower levels of education right from early childhood education level;
- (b) inculcate and institutionalize research by introducing it as a compulsory discipline at all levels of education;
- (c) develop a clear policy and legal framework to guide the development and sustainability of research at all levels of education; and,
- (d) increase funding for research by allocating at least 1 per cent of the gross domestic product to research.

### ADJOURNMENT

**The Temporary Speaker** (Sen. Ongoro): Hon. Senators, it is now 6.30 p.m. Therefore, the Senate stands adjourned to tomorrow, Wednesday, 2<sup>nd</sup> July, 2014, at 2.30 p.m.

The Senate rose 6.30 p.m.