

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Thursday, 5th March, 2015

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

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

PRAYERS

COMMUNICATION FROM THE CHAIR

KAMUKUNJI TO ADDRESS IMPLEMENTATION OF MEMBERS' MEDICAL SCHEME

The Speaker (Hon. Ethuro): Order Members, I have a communication on a *Kamukunji* to address the concerns on the implementation of the Members' Medical Scheme

Hon. Senators, in recent times, a number of Members have raised concerns about the implementation of the Members' Medical Scheme ranging from the entitlements to Members, administration and management of the scheme. The Parliamentary Service Commission recently held a meeting with the management of the scheme administrators M/s AON Kenya Insurance Brokers, Limited. It has been agreed that the top management of AON Kenya Insurance Brokers Limited attend and brief a joint *Kamukunji* between the two Houses on Thursday, 12th March, 2015, at 10.00 a.m. in the National Assembly Chambers.

Hon. Senators, this is, therefore a request to all of you to mark it in your diary and attend this special *Kamukunji*. All concerns and questions regarding the medical scheme will be addressed during the said *Kamukunji*.

Thank you.

The Speaker (Hon.) Ethuro: What is it Sen. Kembi-Gitura?

PETITIONS

Sen. Kembi-Gitura: On a point of order, Mr. Speaker, Sir. I wish to seek your direction on the Petitions that we brought here in the last Session, because Petitions are supposed to be answered to within 60 days from the date they were tabled in the House.

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor, Senate.*

What is the position of those Petitions that we brought before the House in the last Session; they were never reported on and yet there were promises that they would be reported on? Do we put new Petitions or what is the current position? Are the chairpersons and committees supposed to give the results of their findings or are we supposed to ask the people who had put those Petitions to bring new Petitions? This will be an extremely inconvenient thing to do because these Petitions are not from us, but from the public, through us.

(The Speaker consulted the Clerk-at-the-Table)

The Speaker (Hon. Ethuro): Petitions do not lapse; so, all the committees with Petitions from the last Session can proceed to table their reports. So, that inconvenience does not arise. But I am sure 60 days have lapsed since the end of the last Session. So, this is to encourage committees to expedite those Petitions so that they are tabled.

Sen. Kembi-Gitura: Thank you very much Speaker, Sir. I am very grateful to your direction because there are so many outstanding Petitions. The law clearly talks about 60 days and I do not remember of any, except maybe one or two Petitions that we have had an answer from the Floor of the House. I would like to seek your indulgence, as the Speaker of this House to make it clear to the committees that this is a legal obligation that they have and that the Standing Orders talk about 60 days by which time the answers to the Petitions must be brought.

The people are waiting and they want us to tell them what became of their Petitions. I have a Petition for Murang'a County on tea issues and I know that my colleague and friend, Sen. Obure and a good number of other Senators have issues. So, it is important that the committees take their work seriously and give the answers or responses to those Petitions.

The Speaker (Hon. Ethuro): That is well put.

Sen. Khaniri: Mr. Speaker, Sir, this is a follow up on the issue raised by Sen. Kembi-Gitura. I am looking at Standing Order No.227 (2) which states:-

“Whenever a Petition is committed to a Standing Committee, the Committee shall, in not more than sixty calendar days from the time of reading of the prayer, respond to the petitioner by way of a report addressed to the petitioner or petitioners and laid on the Table of the Senate and no debate on or in relation to the report shall be allowed, but the Speaker, may, in exceptional circumstances, allow comments or observations in relation to the Petition for not more than 20 minutes.”

In view of this Standing Order which is very explicit and in which the word “shall”, has been used, the 60 days stipulated have already elapsed. Will the time still be valid or do we have to do this afresh to meet the requirement of this Standing Order?

Sen. Obure: Mr. Speaker, Sir, you have already addressed some of my concerns through your direction. However, I want to support Sen. Kembi-Gitura from Murang'a and to stress the fact that there is a lot of anxiety out there. Tea farmers, in particular, have been waiting for the outcome of their Petition. I am aware that the Senate Committee on Agriculture, Livestock and Fisheries has done some work on this. I am

also aware that they convened a conference of stakeholders and all the people involved had extensive discussions. However, since we have not seen a report in this House, I appreciate the direction you have given. We look forward to a report being tabled here as quickly as possible.

Sen. Mutula Kilonzo Jnr.: Thank you Mr. Speaker, Sir. The Committee on Legal Affairs and Human Rights completed work on two Petitions in November last year. When we inquired from our Secretariat, we were told that the petitions were pending in the Office of the Clerk. As you give direction, you should consider that some of the hard working committees have done their work and, therefore, some of those things are stuck due to the bureaucracies in the offices.

In your direction, we should know whether the 60 days include the time when the bureaucracy is not working well.

The Speaker (Hon. Ethuro): Order, hon. Senators. I will start with the last. The 60 days, from my understanding will include the bureaucracy. Without bureaucracy, one cannot move. The bureaucracy should be alive to the matter more than the Members are. That is a serious breach. For Sen. Khaniri, the breach is already there. There is nothing you can do now except to try to mitigate for all the reasons that Sen. Chris Obure and Sen. Kembi-Gitura have alluded to; that these things come from people. The people need to get their reports back. You cannot go back to ask them to re-petition. In recognition of that, in the last Session, out of nine Petitions, we satisfactory carried five. Therefore, there were about four remaining.

I direct that committees dealing with those Petitions have 15 days to report back to the House. We have also taken administrative measures. If committees have pending business they may not be allowed to proceed with any additional business.

PAPER LAID

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, I beg to lay the following Paper on the Table:-

Report of the Controller of Budget on the County Budget Implementation Review during the first quarter of Financial Year 2014/2015

(Sen. (Dr.) Khalwale laid the document on the Table)

STATEMENTS

BOUNDARY CONFLICT BETWEEN RESIDENTS OF VIHIGA AND KISUMU COUNTIES IN MASENO

The Speaker (Hon. Ethuro): We will begin with the requests first then we go to the responses.

Do we have any that are ready? Sen. Khaniri, you seem to be more than ready.

Sen. Khaniri: Mr. Speaker, Sir, I rise pursuant to Standing Order No.45(2)(b) to seek a Statement from the Chairperson of the Standing Committee on Legal Affairs and

Human Rights on the simmering hostility and tension between residents of Vihiga and Kisumu counties over the Vihiga-Kisumu counties boundary in Maseno.

In the Statement, the Chairperson should explain:

(a) What the Government is doing to solve the dispute between Maseno School in Kisumu County, Kisumu Rural Constituency and St. Paul's Cathedral Maseno in Vihiga County, Luanda Constituency over a new feeder road that splits the church and the Archdeacon's residence between the two counties hence curving the residents from the church and taking it from Vihiga County to Kisumu side.

(b) Maseno University in Kisumu County and Ebusakami Location in Vihiga County over the university's hostels whose perimeter wall is in Ebusakami Location.

This is a very sensitive issue. I would like the Committee to give this issue priority. I was there last weekend for a church function and the situation will soon deteriorate and get out of hand. Therefore, I want the Government to intervene as soon as possible.

The Speaker (Hon. Ethuro): Which Committee is that one?

Sen. Kembi-Gitura: Mr. Speaker, Sir, I am a Member of that Committee. However, Sen. Adan is more senior, because she is the Vice Chairperson of the Committee.

The Speaker (Hon. Ethuro): I doubt if she is the Vice Chairperson of the Committee on Legal Affairs and Human Rights. She is not.

Sen. Kembi-Gitura: Thank you, Mr. Speaker, Sir. That is a very serious issue. I notice that it dovetails very well with the Motion of Sen. Mutula Kilonzo Jnr. It is a very urgent issue. As a Committee, we shall endeavor to look into it and give an answer in two weeks' time.

The Speaker (Hon. Ethuro): Two weeks' time is sufficient.

Sen. Kembi-Gitura: Thank you, Mr. Speaker, Sir.

Sen. Khaniri: Thank you, Mr. Speaker, Sir. I am okay with two weeks' time.

The Speaker (Hon. Ethuro): Sen. Hassan Omar Hassan.

REPORT ON THE STATUS OF FINANCIAL ALLOCATION TO COUNTIES BY THE CRA

Sen. Hassan: Thank you, Mr. Speaker, Sir, for reiterating my name in the right way. On most of the Senate records, I see my name evolving to Sen. Hassan Omar Hassan.

I rise to seek a Statement from the Chairperson of the Standing Committee on Finance, Commerce and Budget on the following:-

(1) Whether the Chairperson is aware that there are a number of county assemblies that are grinding to a halt in operations and are unable to pay their Members and staff because of the budget ceilings that have been imposed by the Commission for Revenue Allocation (CRA).

(2) Whether the Chairperson is aware that the Controller of Budget has refused to finance county assemblies unless they comply with the said ceilings set by the CRA.

(3) Whether the Chairperson is aware that the High Court has rules on the matter and although dismissing the petition by the county assemblies, the court has determined that the CRA ceilings are not binding and can only be binding if the said ceilings are approved by Parliament.

(4) Whether the Chairperson can confirm that the Committee on Finance, Commerce and Budget has presented the ceilings for approval by this House and in that case the ceilings are still only a recommendation as determined by the court.

(5) Whether the Chairperson is aware that the Controller of Budget is sending county assemblies to negotiate with the CRA to vary ceilings, even though the court has placed the mandate on this Parliament.

(6) Whether the Chairperson is aware that some of the proposed ceilings by CRA last year and the figures proposed this year are irreconcilable, putting into doubt the modalities and criteria used to arrive to these ceilings. For example, CRA recommended a ceiling of Ksh191million for Tana River County Assembly last year and Ksh398 million for them this year which is Kshs200 million more. This is a drastic change within a year. The recommendations appear arbitrary.

(7) What the Committee on Finance Commerce and Budget is doing to ensure that the Controller of Budget releases funds to the county assemblies on the basis of the Appropriations Act, to allow them perform their constitutional and statutory mandates.

The Speaker (Hon. Ethuro): Signed by who?

Sen. Hassan: Signed by Sen. Hassan Omar Hassan, Senator for Mombasa County on 5th March, 2015.

The Speaker (Hon. Ethuro): Is that not how I referred to you earlier?

Sen. Hassan: Mr. Speaker, Sir, I said that you are the only person who keeps calling me on record accurately. My records in the Senate are evolving. I am now being referred to as Omar Hassan Hassan, outside Hassan Omar Hassan. I can see the Clerk of the Senate is here. I hope he has noted the changes.

Sen. (Dr.) Khalwale: Thank you, Mr. Speaker, Sir. I am rising to seek guidance from the Chair. If the same committee that has requested Sen. Hassan to seek that Statement have already presented themselves before a Committee of this House, have been given audience and their concerns responded to, canvassing precisely the same issues, where does that leave this particular Statement?

Sen. Hassan: On a point of order, Mr. Speaker, Sir. This is a request for a Statement not from anybody, but from Sen. Hassan Omar Hassan, to the Chairperson of the Committee on Finance, Commerce and Budget. I have not canvassed any of these issues with that Committee. Even if these matters have been canvassed before the Committee, they have not presented a report. Therefore, it is a valid Statement.

The Speaker (Hon. Ethuro): Sen. (Dr.) Khalwale's intervention was based on the MCAs appearing before the Committee, so that it is seized of the matter. However, I am just wondering whether for a moment he has confused Sen. Hassan for an MCA.

(Laughter)

From the reaction, he can only deduce that Sen. Hassan is not an MCA. He is perfectly in order to seek a Statement. So, let the Committee Chairperson respond.

Sen. Billow: Thank you, Mr. Speaker, Sir. I would like my able deputy to respond on my behalf.

Sen. Mositet: Thank you, Mr. Speaker, Sir. Sen. Hassan asked whether the Committee is aware. I believe that we are aware. As Sen. (Dr.) Khalwale said, we are working on it and we should be able to unlock that within two weeks.

The Speaker (Hon. Ethuro): Chairperson, you really do not have to demonstrate that you can delegate to your Vice Chairperson on the Floor. You could have consulted so that the Vice Chairperson could have just responded. Secondly, given the urgency of the matter, I think two weeks is a bit too long.

Sen. Mositet: Mr. Speaker, Sir, we are meeting with the Controller of Budget next week on Tuesday. The main purpose is to unlock the stalemate.

The Speaker (Hon. Ethuro): So, can you give us the report on Wednesday or Thursday?

Sen. Mositet: Mr. Speaker, Sir, we can give the report on Thursday next week.

Sen. Hassan: Thank you, Mr. Speaker, Sir. I am satisfied.

The Speaker (Hon. Ethuro): I hope your satisfaction will continue for the rest of the Session.

Sen. (Dr.) Kuti, my system is back so you can make your request.

IMMINENT BORDER CONFLICT BETWEEN ISIOLO COUNTY AND MERU COUNTY

Sen. (Dr.) Kuti: Mr. Speaker, Sir, I stand to seek a Statement from the Chairman of the Committee on National Security and Foreign Relations on a matter that is very urgent and serious. Right now Isiolo is on fire because of some serious border issues that might cause conflict between the communities in Isiolo County and Meru County.

In the Statement, I would like the Chairman to highlight the following:-

(1) Whether he is aware that there is a Nanyuki Accord that was made in 2013 between the counties of Isiolo and Meru where both parties were to keep off that border until a survey is conducted and the positioning of the border points are done;

(2) Why the Governor of Meru has repeatedly ignored this Accord and continues to incite Isiolo people by erecting border posts and check-points in the areas that the Accord said we should not interfere with.

(3) Whether the Chairman is aware that yesterday a big billboard was put just outside Isiolo Town that has incited the community to the extent that security is now at breach and that at any time there is going to be a conflict which has been ignited by this billboard which was erected saying: "Welcome to Meru County". This billboard was erected in the middle of Isiolo Town.

This is a serious provocation and, in fact, the communities have even demonstrated. I would like the Chairman to be fully aware that any time, things will fall apart because the Governor of Meru keeps inciting Isiolo people. We have tried as much as possible to follow the Accord but the communities are now getting out of our hands. If

you saw yesterday's Statement, the communities have said that they do not need leaders to contain them anymore and that they are going to take things into their own hands.

What is the Chairman going to do to avoid these conflicts which are being incited by the Governor of Meru without any respect to the Accord that has been placed?

The Speaker (Hon. Ethuro): Chair.

Sen. Haji: Mr. Speaker, Sir, I am aware there has been a border dispute between Meru and Isiolo. I am aware that leaders have been meeting over it but I have not seen the Accord signed in Nanyuki. However, the Statement sought by Sen. (Dr.) Kuti is quite valid and a very serious one. I will attempt to respond to it on Tuesday in view of the seriousness. I want the Clerk's Office to help me write a letter to the Office of the President to give us that Statement urgently in order for me to issue the Statement on Tuesday.

Sen. Hassan: On a point of order, Mr. Speaker, Sir. I want to echo the point raised by Sen. (Dr.) Kuti, particularly in his last Statement. Rather than say that the violence is being incited by the Governor of Meru, the question should read: "Is the Government aware that the violence is being incited by the Governor of Meru?"

The Speaker (Hon. Ethuro): Sorry, Sen. Hassan, what did you say?

Sen. Hassan: Mr. Speaker, Sir. Sen. (Dr.) Kuti said with finality when he was seeking the Statement that the violence has been incited by the Governor of Meru. So, I have asked him to paraphrase his Statement to read: "Is the Government aware that the Governor of Meru is inciting the violence?" This is in order to give room for investigation.

The Speaker (Hon. Ethuro): Order, Senator. Whatever assertion a Member makes will not compel the Committee to move in that direction. The Committee will still undertake investigations and confirm whether that is the correct position or otherwise. So, I do not think he needs to do anything.

It is so ordered, Mr. Chairman.

Sen. Elachi!

STANDOFF BETWEEN MEDIA HOUSES AND THE COMMUNICATIONS AUTHORITY OF KENYA

Sen. Elachi: Mr. Speaker, Sir, as I seek this Statement, I want to thank the three media houses that are coming back on air at 7.00 p.m. today.

I want to seek a Statement from the Chairperson of the Standing Committee on Information and Technology regarding the recent stand-off between media houses and the Communication Authority of Kenya. In the Statement, the Chairperson should address the following issues:-

(1) Whether the Authority have the capacity to administer and enforce frequencies distribution.

(2) How the Authority will avert the immense proliferation of set top boxes by different providers due to lack of control.

(3) How the Authority will handle issues of frequent price adjustments for pay television channels considering that Kenya is a free market economy.

(4) Who will regulate the content and whether there are any standards of acceptable *vis-à-vis* the unacceptable content type.

(5) What the effects of non-compliance would be with the agreed world migration deadline.

(6) To state the best practices around the world that the Authority can adopt.

(7) What would be the effect of the migration in terms of price discrimination in a perfectly competitive market outside Nairobi.

(8) What measures the Authority has taken to protect the consumer from a repeat of such rules in the future.

Thank you.

Sen. Kembi-Gitura: On a point of order, Mr. Speaker, Sir. I think we need your direction on that Statement sought by the Majority Whip. I know that the Committee led by Sen. Wako has had several meetings with both the Communication Authority of Kenya (CAK) and the Media Council with a view to looking into this issue. I know that the Committee is in the process of compiling a report for the House on those issues. Is this not going to be duplication if the same Committee, in which I serve, is now asked to issue a specific Statement and yet the matters are already being canvassed?

The Speaker (Hon. Ethuro): Senator Hassan.

Sen. Hassan: Mr. Speaker, Sir, while I associate myself with the comments by the Deputy Speaker, I want to seek further clarification. The Committee should tell us who the Kenyan shareholders are by name and give us the identity of Pan-Africa Network Group (PANG).

(Laughter)

The Speaker (Hon. Ethuro): I have a feeling of what Sen. Murkomen and Sen. Kembi-Gitura want to say. We will sort it out, then if you have not determined your matter, you can come back.

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, I thank Sen. Elachi for seeking such an important Statement. Allow me to request further that the Chairperson explains to this House why the Authority, which is a Government Authority is going out of its way to frustrate local entrepreneurs who have an interest in this particular business. Instead they are promoting entrepreneurs from South Africa and China.

(The Speaker consulted with the Clerk-at-the-Table)

The Speaker (Hon. Ethuro): Order, order, Senators. I am actually surprised that after Sen. Kembi-Gitura explained the matter, Sen. Hassan, while associating with the same Statement went opposite. That was also repeated by Sen. (Dr.) Khalwale. Let me refer you to Standing Order No. 89 which states:-

“No Senator shall refer to the substance of the proceedings of a Select Committee before the Committee has made its report to the Senate.”

So, you can work on the assumption that maybe Sen. Elachi did not know that this matter was before the Committee. Sen. Kembu-Gitura has informed the House that the matter is actively before the Committee. So, under the circumstances, we will wait for the Committee to table its report.

I will also direct that the Statement is also acted upon by the same Committee as part of their report so that they also handle that at that particular time. We can only impress upon the Committee to note that when three Senators are interested in a matter, then the matter is topical and important. Therefore, the Committee should expedite the proceedings and bring the report as quickly as possible.

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

The Speaker (Hon. Ethuro): I am not sure whether I want to allow this after I have given such elaborate explanation which was even not necessary. I only needed to refer you to the Standing Order No. 89. There should be no other matter arising.

In any case, if I am talking and Senators are responding to me, that is very discourteous to the Chair. Let us proceed.

Sen. Hassan: Mr. Speaker, Sir, since I came to the Senate, you have also been a mentor and a teacher to me. I just want to know whether within the meaning of this Standing Order, a Standing Committee would be a Select Committee. It talks about a "Select Committee" but not a "Standing Committee."

The Speaker (Hon. Ethuro): Let us hear Sen. (Dr.) Khalwale now that the Floor has been opened.

Sen. (Dr.) Khalwale: On a point of order, Mr. Speaker, Sir. I would like to draw your attention to a ruling that you have made this afternoon. I held exactly the same concerns about the matter that is now being prosecuted by the Committee on Finance, Commerce and Budget and drew your attention. You allowed that because the honourable Senator is not an MCA, he be allowed to do so when the matter was actually actively being handled by a Departmental Committee. I was worried that we were breaching the Standing Orders. You have now ruled this way.

The Speaker (Hon. Ethuro): My ruling is consistent. The Committee on Finance, Commerce and Budget itself did not object. The Committee on Legal Affairs and Human Rights has objected. So, it is up to the Committee on Finance, Commerce and Budget to tell us whether the issues raised in that Petition are the same ones. You see, the way they proceeded is that they were meeting the Controller of Budget on Tuesday. So, they were not going to bring the matter until they have concluded it. My understanding was that by the time they come back on Thursday, which we agreed, they would have already concluded the proceedings. That is different. That is the same direction I have given to the Committee on Legal Affairs and Human Rights. They should take that into account just like the Committee on Finance, Commerce and Budget will take into account what Sen. Hassan had asked. They will bring the same once they have finished their proceedings. What is inconsistent there? I have put my case and that is final.

Sen. Hassan, thank you for giving me the opportunity to continue mentoring and teaching you. If you look at your Standing Order No. 208 (1), this is about appointment of Standing Committees. It states:-

“There shall be Select Committees to be designated Standing Committees.”

Do I need to go further?

(Mr. Hassan nodded at the Speaker)

You do not just become happy, you must be grateful to me.

(Sen. Hassan stood up in his place and bowed to the Speaker)

(Laughter)

Sen. Mutula Kilonzo Jnr.: Mr. Speaker, Sir, perhaps I heard it wrong but the question that was asked by Sen. Elachi was to the Committee on Information and Technology. My senior, the Senator for Murang’a County answered the question. I do not know whether you have varied the question in so far as where it should go.

The Speaker (Hon. Ethuro): I have varied.

Sen. Mutula Kilonzo Jnr.: Thank you Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): That was her intention but another Committee of the same House confirmed that it is ceased of the matter. So, we have re-routed it there.

STATUS OF GOVERNMENT’S MOBILISATION OF RESOURCES TO
HANDLE ONGOING THREAT OF TERRORISM
IN MANDERA COUNTY

Sen. Billow: Mr. Speaker, Sir, I seek a Statement from the Chairperson of the Committee on National Security and Foreign Relations on the status of the Government’s mobilisation of resources to handle the ongoing threat of terrorists in Mandera County. The Statement should address the following issues:-

(a) how much financial resources have been allocated to security agencies in the county for the operations;

(b) how many serviceable motor-vehicles, excluding trucks, and armored personnel carriers have been mobilised since last year in the county;

(c) the number of security personnel in the county deployed to specifically deal with the terrorist threat.

(d) what actions are being taken by the Government to address the border insecurity affecting Mandera town itself; and lastly,

(e) what strategies the Government has adopted since last year’s bus and quarry killings to prevent similar attacks from happening.

Sen. Haji: Mr. Speaker, Sir, I need a week. Will that be alright?

The Speaker (Hon. Ethuro): It is so ordered.

Finally, the Senate Majority Leader.

BUSINESS FOR THE WEEK COMMENCING
TUESDAY, 10TH MARCH, 2015

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Speaker, Sir, I would like to issue a Statement under Standing Order No.45 regarding next week's business.

On Tuesday next week we will have the usual Rules and Business Committee (RBC) meeting at 12.00 p.m. Subject to the directions of the RBC, the House will discuss business that will not be concluded in today's Order Paper.

On Wednesday, we will continue with business that will not be concluded on Tuesday next week and any other business that will be scheduled by the RBC. Following the decision recently of the RBC, where it was decided that Motions be given priority on Thursdays, on Thursday 12th March, 2015, the House is expected to debate a number of Motions including but not limited to the following Motions:-

1. Motion by Sen. Mutula Kilonzo Jnr. on initiation of legislation to provide for the establishment of an independent Commission of Inquiry into the boundaries of counties.

2. Motion by Sen. (Dr.) Agnes Zani on re-classification of all secondary schools as county schools.

3. Motion by Sen. (Dr.) Wilfred Machage on review of existing legislation to take care of dementia patients.

On Thursday, the Senate will also continue considering any other business, including consideration of the various Bills that are going through Second Reading and Committee of the Whole.

Mr. Speaker, Sir, I want to take this opportunity to thank the hon. Senators for working very hard in the last few days and approving a number of critical reports, including the following:-

1. The Report of the Standing Committee on Finance, Commerce and Budget regarding the Budget Policy Statement for 2015.

2. The Report of the Sessional Committee on Devolved Government on the suitability of the nominees to the Commission of Inquiry into the Petition to dissolve Makeni County Government.

3. The joint reports on the nominee for appointment to the position of the Inspector-General of the National Police Service.

Mr. Speaker, Sir, at this juncture, I want to appeal to Senators that we should keep the same spirit. We continue to require the requisite numbers to be able to transact business, especially concerning Bills, and so far, so good. We are hopeful that if we continue in this spirit, this year will be a remarkable Session in terms of delivery by this House.

Mr. Speaker, Sir, I now lay this Statement on the Table of the House. Thank you.

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

MOTION**ESTABLISHMENT OF INDEPENDENT COMMISSION
ON COUNTY BOUNDARIES**

THAT, noting the constitutional role of the Senate in the protection of the interests of counties and their governments and in the implementation of the devolved system of Government pursuant to Article 96 of the Constitution; aware that the 47 counties are based on the delineation of administrative districts as created under the Provinces and Districts Act of 1992; further aware that there existed deep-rooted and historical boundary disputes between the districts which were inherited by the resultant counties; aware that there are existing boundary disputes between various counties, which raise questions on the exact boundaries between the counties; recognizing the provisions of Article 188 of the Constitution of Kenya that mandates Parliament to approve alteration of county boundaries on the recommendation of an independent commission set up for that purpose; the Senate urges the Standing Committee on Legal Affairs and Human Rights to initiate and prioritize the drafting of legislation within ninety days to provide for the establishment of an independent commission to inquire into, examine and identify the boundaries of counties, taking into account the criteria set out in Article 188 (2) of the Constitution and to recommend appropriate changes to Parliament so as to comprehensively deal and resolve the inter-county boundary disputes to enhance national cohesion and stability.

(Sen. Mutula Kilonzo Jnr. on 19.2.2015)

(Resumption of Debate interrupted on 19.2.2015)

The Speaker (Hon. Ethuro): Sen. (Dr.) Zani is not present. Who wishes to contribute?

Sen. Wangari!

Sen. Wangari: Mr. Speaker, Sir, I rise to support this Motion right from the beginning, especially coming from the Senator for Makueni. I can attest that he has been through a very interesting period in terms of issues of boundaries.

As a Member of the Committee on Lands and Natural Resources, we have had very many issues concerning boundaries. Even today as we listened to the Statements being sought by Senators, there are already other issues that have arisen between Vihiga and Kisumu counties and between Isiolo and Meru counties. During the colonial era we did not have issues with boundaries. People were staying in villages. We of course graduated after the colonial era to actually now get administrative boundaries. With time they have metamorphosed into political boundaries. Now with devolution it is

becoming worse because we are now talking of wealth in the counties. We are talking about natural resources and money that can be drawn from the counties.

We have handled several cases in our Committee and I will cite the example of Konza City. There are very many inconsistencies. You will find that the boundaries that were created under the Provinces and Districts Act of 1992 are inconsistent with the maps that are available. You will find that one county has the right when it comes to the maps and another one has the right when it comes to the Act. So, it has been very difficult to determine exactly where some of these landmark resources lie. It is a very sensitive matter because we have seen lives lost. We saw what happened in Kapedo between the boundary of Turkana and Baringo. We have lost lives even in Mai Mahiu and it is getting worse each day.

However, the Constitution drafters had actually anticipated that it is possible for us not to agree; being the human beings that we are. The politicization of this has not helped matters.

I want to thank the Senator for Makueni. Having experienced it firsthand, he has now brought this Motion very confidently before this House. This is because it has been a duel dealing with the Konza City issues between Machakos and Makueni. We can only settle this matter through the law. When you read Part 4 of Chapter 11 of the Constitution, on the boundaries of counties, and specifically Article 188 (2) (e), it states:-

“The boundaries of a county may be altered to take into account the view of the communities affected.”

If we leave people out of it, we will just do it on paper and several years down the line, we will be back debating the same issues. Public participation must actually be done under some kind of legal framework. I am throwing this back to Sen. Mutula Kilonzo Jnr., who also sits in the Committee on Legal Affairs and Human Rights. We should not just create this Commission, but also address some issues through public participation. His Committee should work towards legalizing or institutionalizing public participation as is anticipated in this Constitution.

The reason why they proposed to have an independent commission to deal with these issues is because they are emotional and if politics takes the lead, we should expect to see chaos. We also must remember that putting it in the Constitution, we must be very clear on how it will be funded and we need to do this in subsequent legislation because personally, I do not see it provided for in the Constitution.

The independence, in terms of having autonomy of funds would be very critical because if this commission will rely either on the national Government or the county government for funding, then we will still have the same problems. So, even as we propose that they initiate this legislation, I am hoping that it would be wide enough to look not only at the mandate but on the autonomy of the funding of this commission so that we can get clear structures and be able to clear these issues. If we do not do it, then these issues that come to this House every day will continue coming.

I want to support Sen. Mutula Kilonzo Jnr. and hope that we will give direction as the leaders of this country, in the areas that we come from. We should not be part of the inciters of the problem. We must quell whatever is happening on the ground. As I was listening to Sen. Khaniri, as he was seeking a Statement on Vihiga and Kisumu boundary,

the onus falls on us that we must not be the fire or the fuel and say “my people, my people” we must remember that even with devolution, we are still a unitary State. The people of Makueni and Taita Taveta are still Kenyans. We must not stand at the centre of the chaos and divide our people.

As we wait for this legislation because it will take some time and I can see that the time prescribed here for legislation is about 90 days. It will take even longer to have it on this Floor, have it debated, passed and assented to. I hope that we will take the responsibility as leaders not to become part of the problem. We should help in guiding because at the end of the day the people who suffer most in this circus are women and children. We have seen the insecurity that is going on in Baringo, where, for example, about 20 public schools are closed because of issues of boundaries and natural resources. We must stand and give guidance and not become part of the problem.

I want to thank Sen. Mutula Kilonzo Jnr. and hope that the Committee on Legal Affairs and Human Rights will get the mandate from this House to initiate this critical legislation.

Sen. Obure: Mr. Speaker, Sir, Thank you, for giving me this opportunity so that I can make a few remarks. Boundary disputes between counties have the potential to affect and disrupt the activities of county governments. Where there is a dispute over a boundary between two or more counties, the counties involved are most likely to divert most of their attention in trying to seek settlement to the disputes instead of focusing on service delivery to the citizens because that is their core mandate and function. It is in this spirit that I support this Motion, initiated and moved very ably by Sen. Mutula Kilonzo Jnr. We all recall that before we adopted the present Constitution, there was serious debate on how to identify the current 47 counties, how they were going to be formed, the criteria for determining the boundaries and issues of that nature. They were debated at length and they were very hot issues at that time.

That debate was not concluded but a compromise was reached to adopt the Provinces and Districts Act of 1992, which had created 47 districts as the basis for the current 47 counties. While we all accept that this compromise has served us well over the short period since the adoption of the Constitution, we are also aware that there are people among us who may not be satisfied with that compromise because they feel that it was arbitrary and it had no sound basis. The districts which gave rise to the counties were actually created through an administrative action, many of them at the request of communities, some of them on the basis of influence by politicians and others were formed as an attempt to put together people who share common interests.

Therefore, there was no scientific criteria or formula which was generally accepted which informed the creation of these districts. The districts therefore left a lot of room for possible disputes over boundaries and we are beginning to see some of the disputes between counties around the country. There is need for the establishment of an independent commission to hear and determine such disputes where they genuinely exist. However, I wish to throw some caution at this point because that could open up old wounds including wounds which may have healed by now. I have seen that since the introduction of this Motion in this House by Sen. Mutula Kilonzo Jnr., a week or so ago, I have started hearing some of these disputes which we have not been hearing about. In

fact, even in my own area of Kisii and Nyamira, I was not aware of any boundary disputes between the two counties but when this Motion was introduced here, I have heard some elements of dispute. I hope that they would not necessarily form a basis for serious engagement going forward. I want to urge that when that commission is eventually put into place, its terms of reference must be very specific and precise.

The proposed commission should be mandated to deal with only those disputes which already exist and which are genuine because boundary disputes can be very delicate matters which should be handled carefully. If we do not handle them carefully they could disrupt national cohesion and stability which would be very costly because some of them may take a long period of time before they are resolved. In many cases, boundary cases are best resolved by community elders and leaders and not necessarily through commissions. We should, therefore, encourage counties to settle any such disputes directly by engaging the communities, including their elders and leaders.

With those few remarks, I beg to support.

Sen. Karaba: Thank you very much, Mr. Speaker, Sir, for allowing me to also contribute towards this Motion. This Motion is important, pertinent and is coming at a time when many communities are wondering about their placement, especially after the scramble for boundaries. This is as old as the scramble for boundaries itself, which started in 1895 in a Brussels Conference which was held in Belgium. That was the time when many Europeans came to scramble for African colonies. They came in Africa and they carved out various colonies for themselves, including East Africa which became a protectorate in 1895. After 1895, there was the creation of Kenya which became a colony in 1920. From that time, there was now the possibility of various districts and provinces to be positioned at that time. Since that time, we have had a lot of changes.

What happened then was that the districts and provinces were to be fixed according to ethnicity, population and the economic activities of the said communities. For example, at the same time in the 1920s, a part of the former Eastern Province was called Southern Province and it included Machakos and the Akamba lands. There was another one called Northern Province, which included Meru and the rest of the other places in that region. With time, we have had quite a number of boundary changes depending on the needs and wishes of the people living in those areas. So, this is not a new thing which is coming from my friend, Sen. Mutula Kilonzo Jnr. This Motion is timely because it is coming at a time when Kenyans are living in a dynamic country. It is coming at a time when many districts are being carved out and many regions have also disappeared. We had regions like Central Province, which are no longer there now. So, we are afraid that if such Motions do not come here, we will then be left wondering what happens after the creation of the districts and provinces, which have already been deleted from the map. Those changes are, therefore, welcome.

Mr. Speaker, Sir, we used to have regions like Central, Nyanza, Western, Coast provinces and the like; but now, we are having regions called counties. We now have 47 counties from the former very many districts which are represented here by Senators. It is, therefore, prudent to note that in these changes, we need to look into the exact positions that counties have. I have a point in case; at one time, Kirinyaga extended up to the boundaries of Machakos and Embu. In the 1960s when there were changes, Embu

produced a very powerful person who was the then Minister for Lands and Settlement. It is through him that right now we have Kirinyaga which at one time was a part of Embu and also a part of Murang'a, which was called Fort Hall in those days. But it has now been squeezed to remain the way it is now as Kirinyaga County because the southern boundaries have been moved upwards from the River Tana where it was supposed to be, up to the present boundaries in the northern part of Mwea. In this case, we talk of around 200 square kilometres of land which should have been in a county called Kirinyaga but now it is claimed to be in Mbeere and Embu.

So, such a Motion is coming at a time when we should know the exact definition of a county; the extent of the county, the people living there and the physical boundaries. Physical boundaries are very important when it comes to knowing what the physical borders of a county are. In most cases, even without going backwards for too long, you will find that rivers, mountains and ridges have been used as possible physical boundaries, including even the margins of deserts – even if those are migratory – and so on, and so forth.

Rivers, mountains and the ranges have been used for a long time. In this case, you note that River Tana, which is on the western side right now, marks the physical boundary of Kirinyaga, Murang'a and Nyeri because to date, that has been the boundary. The same river continues to be the boundary of Kirinyaga and Machakos. In between, we have another district coming in the name of Mbeere and Embu. That is the reason which made the then President, at that time in 1998, to appoint a Commission called the "Chesoni Commission," which was sent to fix the boundaries between Embu and Kirinyaga. That report has not been tabled to date nor has it been made public, although the people of Kirinyaga still claim and they still know that the southern boundary should be the same physical boundary of the river which marks Kirinyaga and Machakos districts. But we are not supposed to have another district in between called Embu as a county and a sub-county called Mbeere.

Mr. Speaker, Sir, I am supporting the Motion that we need to have a commission. Even if we are not going to have it immediately; even if it comes after a year, it is important to come up with the exact position of most of these 47 counties which have so far been created by the Constitution. Let us know the extent of these counties, let us get to know the communities living in the counties and even the communities should tell us the exact positions because if you were to use the then colonial boundaries then confusion will start. That is what may lead to clashes between the counties and the communities now and in the future.

Mr. Speaker, Sir, it is, therefore, this commission should be set up so as to revisit the boundaries. They can even go back to 1895 to find out how the protectorates came about, how the colonies came about in 1920 up to 1963 when we became Independent in order to find out what the then boundary changes of that time were. If there is need of changing the boundaries to fix the new ones – the way we would like Kirinyaga to be fixed so that we can reclaim the southern parcel of land measuring 200 square kilometres – the we should go back to what was the natural boundary of River Tana and River Rupingazi so that now Kirinyaga is seen to have physical boundaries not like the ones

which were fixed by somebody who was powerful at that time, whose name I withhold for obvious reasons.

Mr. Speaker, Sir, this Commission should be allowed to operate and we should pass this Motion with a view to revising the boundaries to fit and conform with the economic activities of the said people and the areas which are demarcated by the physical boundaries. In this case, Kirinyaga should be considered.

Very soon I will be tabling a Petition by the Kirinyaga Council of Elders. We also have elders, like in many other areas and we have nine clans, although they are supposed to be 10. These 10 clans have already met with the clans of the other neighboring areas and have agreed that the boundary should be changed. Therefore, this Commission is coming at a time when I was almost tabling the Petition. Therefore, I can see that my Petition will go through. I hope it will go through the Committee so that we can have Kirinyaga as a county, remaining the way it has always been, going by the physical boundaries of River Tana, River Rupingazi and the confluence which is known as Riakanau. This is to revert back the area called Mwea Trust Land to Kirinyaga and remove it from Embu and Mbeere.

With those few remarks, I beg to support.

Sen. Kembi-Gitura: Thank you very much, Mr. Speaker, Sir. Right from the outset let me start by congratulating Sen. Mutula Kilonzo Jnr., for bringing this very important Motion before this House. Not so long ago; this afternoon during the time for Statements, my friend, Sen. Khaniri raised an issue which on the face of it, may look like it is a small issue of a church parish split into two by the issue of a boundary between counties. These are issues that are continuing and are going to continue until this commission which has been contemplated by the Constitution sits down and comes out with final solutions on how the boundaries of this country are, because it is only that Commission, set under the Senate, that can sort out the issue of boundaries once and for all.

Mr. Speaker, Sir, since we were constituted as a Senate, there have been many Statements sought and questions asked on boundary issues. Not so long ago, there was a Statement sought about the boundaries of Malili Techno City, which is a very important city under Vision 2030. Apparently, the Statement which was sought has not been given to date and is still being awaited by this House.

Like Sen. Karaba has said, the issue of boundaries goes back to history and, currently, there are many counties and former districts where the boundaries are unclear. It is important that, to stop conflict, these boundary issues must be settled once and for all. The Committee on National Security and Foreign Relations, in which I serve, led by Sen. Haji, recently visited the conflict areas of Kapedo and some areas in Laikipia and Baringo with a view to understanding these boundary disputes, which have been the source of conflict invariably. In Kapedo, we had the occasion to talk to all communities from West Pokot, Turkana and Baringo to see where the problem was. We immediately saw that it is an extremely emotive situation whereby the people and the leaders who came to see us told us that they believed that what needs to be done to sought out this problems once and for all, is for us as the Senate, to set the boundaries so that we know where the lines are drawn so that anybody crossing that line knows that they are

transgressing the law, the Constitution and that the law would take its consequences. We are in 2015, and it is very unfortunate that we still wrangle about boundaries in this day and age of *google*, where boundaries can be set once and for all and everybody is satisfied.

When we went to Laikipia and all those areas, it was the same issue of unclear boundaries and boundaries that are not distinct and which, quite obviously, have been fueling these conflicts. Just this afternoon, Sen. (Dr.) Kuti, the Senator for Isiolo, talked very emotively about the issue of the boundary between Isiolo and Meru. He warned this House that it is a very volatile issue which could bring conflict at any time. We hope that, that is not going to happen because it is not our wish to see lives being lost as a result of an issue that can be sorted out sensibly by a commission formed by this Senate.

I support this Motion and urge that it be taken with the urgency than it is currently being taken so that this commission maps out this nation. As recently as last year, many schools in a whole division of a sub county in Murang'a County were in Kiambu District, but we discussed that issue and the schools and the offices were reverted to Murang'a County. This is because it was quite obvious that they were in Murang'a County. But because of the situation where there was Murang'a County and Thika District, Murang'a District and Kiambu District, this was invariably going to happen. So, I believe that with the commission that is contemplated by this Motion being formed and coming into place, all of us shall sort out our issues and know exactly where these boundaries are. Over and above everything else, this is going to help us to sort out existing conflicts and potential conflicts which I believe is in the interest of everybody in the Senate.

Mr. Speaker, Sir, the Senate, under Article 96 of the Constitution has an extremely important duty to protect the counties. If we do not do what we are supposed to do now, we may regret when it is too late.

With those few remarks, I wish to record my support for this Motion and to see to it that the Commission is formed as urgently as possible to look into these issues.

Thank you for the opportunity.

The Speaker (Hon. Ethuro): Sen. Wako, you have only four minutes because at exactly 4.00 p.m., the Mover will be called upon to reply.

Sen. Wako: Thank you very much, Mr. Speaker, Sir. I hope it will take me lesser time. This is a very important Motion being moved by a Member of my Committee, one Sen. Mutula Kilonzo Jnr. This is a problem which I handled a bit as soon as I was appointed the Attorney-General of the Republic and at least five districts had been constituted in addition to the 42 districts which were there at the time of Independence and yet there were no boundaries. That is why as the Motion states, we created the delineation of administrative districts as provided for under the Provinces and Districts Act of 1992, which I moved in Parliament.

In moving that particular Bill in Parliament, I made sure that the boundary of each district was clearly set out. If you look at the Act, the big body of it is about delineation of the boundaries of each and every district. What happened after 1992 is that more districts were constituted, but the boundaries of those districts up to today have not been delineated, as required by the laws of this country. That is why we are having this particular problem. That is why I support this Bill; that in the creation of the new

districts, no boundaries were fixed and in a number of situations, they were not fixed because of the volatile situation in fixing those boundaries. Therefore, the Government was hesitant to come up with another Bill similar to the one I moved in, in 1992 in which the boundaries of each district were delineated.

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

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

Mr. Deputy Speaker, Sir, it is a responsibility, function and constitutional duty of the Senate to protect the interest of the counties. There can be no greater interest in the county than for the county to clearly know where its boundaries are. Therefore, I support this Bill; that we look into this problem and that we do not bury our heads in the sand like an ostrich and do nothing about it because this is a volatile problem that we cannot solve. We have to confront this problem head on. The Mover of this Motion has given some responsibility - in fact, the main responsibility to the Standing Committee on Legal Affairs and Human Rights - to come up with the appropriate legislation within 90 days to provide for the establishment of an independent commission to inquire into, examine and identify the boundaries of the counties. I want to take this opportunity to assure this august Assembly that the Standing Committee on Legal Affairs and Human Rights will not be wanting; we shall, within 90 days, come up with appropriate legislation on this.

With those few remarks, I support.

The Deputy Speaker (Sen. Kembi-Gitura): The Mover should now reply.

Sen. Mutula Kilonzo Jnr.: Mr. Speaker, Sir, with your consent, I will donate the 15 minutes in reply to the Senate Minority Leader, Sen. Wetangula, Sen. Munyes, Sen. Mositet and Sen. (Dr.) Kuti. Each could take about three to four minutes so that I respond after that.

The Deputy Speaker (Sen. Kembi-Gitura): They cannot take three to four minutes. You have to be specific. Otherwise, how much time do you want for yourself?

Sen. Mutula Kilonzo Jnr.: The Senate Minority Leader can take five minutes and the rest can share out up to two minutes each.

The Deputy Speaker (Sen. Kembi-Gitura): That is fine. I direct the Clerks-at-the-Table to ensure that the timing is done properly so that we do not lose any time at all.

Sen. Wetangula, you have five minutes.

The Senate Majority Leader (Sen. Wetangula): Thank you Mr. Deputy Speaker, Sir. I will be very quick. I thank the Senator for bringing this Motion. I was just talking to him. Looking at the Constitution, we probably would have set up a commission without bringing a Bill. However, it is neater to bring a Bill so that we set, clearly, the parameters within which to operate.

The amendment of Article 188 does not necessarily need a Bill. As we pass the Motion, we must appreciate that there are many flashpoints between counties. The Kakamega-Nandi boundary is a problem. I heard hon. Sen. Khaniri talk about the Vihiga-Kisumu boundary. We also have Turkana-Pokot, the Pokot-Baringo, the Isiolo-Meru counties boundaries and many other places.

If you look at the Boundaries Act; the old law that governed boundaries in this country, you will see that the colonial regime was very meticulous in defining boundaries. They defined boundaries to the decimal point. If a boundary passed between two trees, they would even describe it. They would describe it when it was in the mouth of a river, on top of a hill and an ant hill is also described in the old Boundaries Act. With the new discoveries of extractive resources in this country, the need for people to define where their interests begin and end is very critical because much sooner or later, you will find just like coal, oil, titanium or gold, the boundaries can start breeding new frontiers of conflict between counties.

For the Senate to live to its mandate under Article 96, we need not only to set up this commission but to be very clear on its timelines and terms of reference so that it clears its work quickly. We must be fully aware that a job as delicate as this; if it comes within an electoral year, can ignite a lot of conflict within the country. We need to move quickly. The work of the Committee should be to bring a Bill to this House within the next one month if not less. We should pass it and determine that the commission that we will set up will not open up every boundary of every county but will only define where they exist and to resolve problems. The commission will then bring back a report for this House to debate, approve and solve the problems once and for all.

Ideally, we should target that within the next 12 months, this task should be over so that as we start cascading towards the next electoral campaign and competition, we do not have the baggage of conflict regarding boundaries between counties and constituencies.

Once again, I laud the distinguished Senator for bringing the Motion. Once we pass it, I would like to see the Senator for Busia, who is engaged with other colleagues, asking his Committee to move very fast to bring a Bill and even hold a *kamukunji* with us.

Above all, as I finish, I hope that those who will serve in this commission will be men and women of integrity and not people who will come to gerrymander boundaries to meet narrow and parochial interests that can ignite hostility.

Sen. Munyes: Mr. Deputy Speaker, Sir, I will start by thanking the Mover of this Motion for his greatness in bringing this Motion. I am grateful because for a long time, this country has played politics using boundaries. Kenya has lacked the right political will to deal with matters of boundaries. I have an issue with the variance between the colonial boundaries and what Sen. Amos Wako is referring to as the Provincial and District Act of 1992.

My people in Turkana would want to push this issue behind a bit. Turkana was, for instance, known as the Rudolf Province. I would not want my people to be put back under the former province which includes Laikipia. However, in addressing these problems, we will end conflicts in our regions. We have 22 disputed points along the Baringo-West Pokot-Turkana Border. We have 22 disputed towns. This has created the conflict we see.

Sen. (Dr.) Kuti: Thank you Mr. Deputy Speaker, Sir. I would like to thank Sen. Mutula Kilonzo Jnr. for bringing this Motion and for donating two minutes to me. I would like to go back to the issue of the colonial border and the 1992 Commission. There

are traditional borders which were recognised by the colonial Government and which remained the same up to 1992 all the way since 1960 when we had the *Shifta* uprising in the North Frontier District (NFD). While our people were busy in that war, the border was moved from the colonial place right to the middle of Isiolo Town. The 1992 Commission followed that and moved the colonial borders and even chocked Isiolo.

Isiolo is the only county in Kenya today where for every visit to any other part of it, you must go through another county. Its design is such that its neck is chocked. If you drew it, you would draw a small head and a big body. I wish I could draw it and show you. This is because every side was taken and squeezed in Isiolo Town. When this Commission is formed, we will need not just to follow the survey plans but also to look back and see what it was like before the borders were taken.

Sen. Mositet: Thank you, Mr. Deputy Speaker, Sir. I thank Sen. Mutula Kilonzo Jnr. for bringing this Motion. It is a Motion that should have come immediately we were sworn in as Senators. As Article 96 states, one of our major roles is to protect our counties. Therefore, we seriously need to know our boundaries.

Let me also state that we also have some few problems in our county. I can just state one area. Each and every person in this country knows very well that the boundary between Kajiado County and Machakos County is supposed to be the railway line. It is really hurting to note that up to 1974, people in Athi River used to pay their rates in Kajiado. They included the Kenya Meat Commission (KMC), East African Portland Cement and quite a number of other industries. However, when the late Hon. Ngei served as the Minister for Lands, he decided to change the boundaries and quite a big chunk of our land went to Machakos County. It is even said that where my Governor lives is in Machakos County and quite a number of people are still there. I think this Commission will really do us good. It will make sure that at least each and every county knows its boundaries.

Mr. Deputy Speaker, Sir, as the Senator for Busia mentioned, in 1992 there were a lot of politics at that time and the powerful man of the land at that time wanted to demarcate his own area. So, as much as it is still in existence in law, it was a political one.

I beg to support.

Sen. Mutula Kilonzo Jnr.: Thank you, Mr. Deputy Speaker, Sir. I have taken note of the Senators' contributions and I thank them for the great interest that they have had in this Motion. I am going to ask the Secretariat to extract the HANSARD proceedings so that we can forward it to the Committee. I want to assure the Senators that we already have a draft Bill on the way. Therefore, we will most likely come back sooner than the 90 days. I also want to request the leadership that once we are done, we can have a retreat or a session where we can brief all the Senators on the Bill that we have come up with.

I have heard of the misgivings by Sen. (Dr.) Khalwale, but I want to assure him that the work we are going to do in the Committee on Legal Affairs and Human Rights is to come up with proper mechanisms and legislation so that all the fears that we have heard from the Senators, including Sen. Obure are taken care of.

The Senate Minority Leader said something very important which I also heard from Sen. (Dr.) Kuti and others; that, this is not an avenue to start boundary disputes where none existed or to open Pandora's boxes everywhere. The point is that, the law that was there, in 1992, describing boundaries, appears from what we know in the disputes, not to have resolved the exact descriptions of the boundaries.

As Sen. Karaba said, we do not have hills, fence posts and rocks as boundaries of counties. We will have clear demarcated beacons showing where boundaries are so that we can have fewer disputes in the country. I want to answer Sen. Wangari, that this will be done using public participation. The public will participate. The methods of appointing the commissioners, their duties and parameters will be in public. We will consider all these factors so that we can then accommodate the wishes of all Kenyans. This is an opportunity for the Senate to set precedent on something that we have done that has protected counties under Article 96(3) of the Constitution. As I was seated here, members of the public were sending me messages to send the terms of this Motion to their email addresses, hence underlying the interest in this Motion.

I beg to move.

The Deputy Speaker (Sen. Kembi-Gitura): Order Members! Debate on the Motion is over and I should be putting the Question. I am satisfied that this is a Motion that affects counties and, therefore, we are going to vote by Delegations. Before I put the Question, I would like to know whether we have a threshold or how we are going to go about it.

Sen. Mutula Kilonzo Jnr.: Mr. Deputy Speaker, Sir, I beg to move that under Standing Orders No. 54(3) that you defer putting of the Question to Wednesday next week when we have quorum to vote.

Sen. (Dr.) Kuti: On a point of order, Mr. Deputy Speaker, Sir. This is about the formation of a commission. Why would the formation of a commission be a county matter?

The Deputy Speaker (Sen. Kembi-Gitura): I have already made a ruling on that. Are you testing my ruling or what would you like me to do?

(Sen. Hassan consulted loudly)

Order Sen. Hassan. This is a House in which order must prevail. I do not think that it is right for you to be shouting across the divide at Sen. (Dr.) Kuti.

Sen. (Dr.) Kuti, you were listening when I said that this concerns counties. You saw me stand up, make that ruling and sit down. Are you testing that ruling?

Sen. (Dr.) Kuti: Mr. Deputy Speaker, Sir, I just needed your guidance.

The Deputy Speaker (Sen. Kembi-Gitura): You do not seek guidance once I have made a ruling. I have said that it concerns counties.

Sen. Orengo: On a point of order, Mr. Deputy Speaker, Sir. I entirely agree with your ruling, but just for purposes of orderliness in the House. I wonder whether the Chair would allow the Members, in matters of this nature, to ventilate whether an issue concerns counties; to give people a chance to demonstrate whether a matter concerns counties or otherwise. Whereas the Chair has the final word, I think it would be important

for the Speaker to give people a chance to ventilate. I am saying this because if you look at Standing Order No.1, the discretion given to the Speaker is not unfettered.

Standing Order No. 1(1) states:-

“In all cases where matter is not expressly provided for by these Standing Orders or by other Orders of the Senate, any procedural question shall be decided by the Speaker.”

So, this is a general rule of application, but since it is anchored on the Standing Orders 1(2), the House should be given time not to have a debate but just to ventilate. Standing Order No. 1(2) says:-

“The decisions made in paragraph (1) shall be based on the Constitution of Kenya, statute law and the usages, forms, precedents, customs, procedures and traditions of the Parliament of Kenya and other jurisdictions to the extent that these are applicable to Kenya”

My point is that, under Standing Order No.1, you do not have unfettered discretion.

My point is that under Standing Order No. 1, you do not have unfettered discretion. Therefore, in order to enable the Speaker to make an informed decision, it would be good as a matter of practice to allow Members to express themselves as to whether matters concern counties or not. This is not being said to challenge your ruling but I was just saying as a matter of procedure in future. We are here for the counties and if a matter is decided and we were not heard, our constituencies may raise questions with us.

The Senate Minority Leader (Sen. Wetangula): On a point of order, Mr. Deputy Speaker, Sir. Thank you for allowing me to also enjoin the point that Sen. Orengo has raised. Both the Constitution and the Standing Orders define and give direction on how we vote in this House. In each case, the decision as to what concerns counties, and I am not challenging your ruling on this Motion at all, but we will want a reasoned direction that can bring order and clear thinking in the House. As to what concerns counties, it is grounded in Article 123 of the Constitution about voting in the House and then in our Standing Order No.73 that also states how we vote. It is not, both in the Standing Orders and in the Constitution, the sole discretion of the Chair to decide what concerns counties.

The Deputy Speaker (Sen. Kembu-Gitura): Order, Sen. Wetangula. I heard what Sen. Orengo had to say but you are saying that it is not the sole prerogative of the Speaker to rule on this issue. I want to know whether you are making a general statement or you are talking about the specific situation in which we are in now, in which case I have already made a ruling. Is it for the future or for this specific one?

The Senate Minority Leader (Sen. Wetangula): If you could hear me---

The Deputy Speaker (Sen. Kembu-Gitura): I have heard you and I have also heard what Sen. Orengo said. The question I am asking is, and I want to be clear, I have made a ruling on this issue already and I have said it concerns counties. You started by saying you agree with me and so is Sen. Orengo. Are you saying that I made a mistake or are you talking about now or the future?

The Senate Minority Leader (Sen. Wetangula): If you listen to me, you will see the direction I am taking.

The Deputy Speaker (Sen. Kembi-Gitura): I have seen the direction you are taking but if you want me to make a reasoned ruling on this issue, this is not the time to make that application and you are not contesting. If it is an issue for the future that you would like the House to get seized of so that in future when we are talking about what affects or does not affect counties, the Members are involved in the making of that decision, then this is not the correct forum.

The Senate Minority Leader (Sen. Wetangula): Mr. Deputy Speaker, Sir, since you gave me a few minutes---

The Deputy Speaker (Sen. Kembi-Gitura): I did not; you rose on a point of order.

The Senate Minority Leader (Sen. Wetangula): Yes, it is a point of order. Allow me to prosecute it very briefly.

The Deputy Speaker (Sen. Kembi-Gitura): Yes, but I must understand.

The Senate Minority Leader (Sen. Wetangula): I am not challenging the ruling you made.

The Deputy Speaker (Sen. Kembi-Gitura): Perfect. I understand that but I am asking you again, if it is not for this purpose, and you are the Leader of the Minority, if you wish to challenge this issue or to have it clarified, I am sure you know very well that the forum is not now. It could be the next sitting day or you could rise in your place and say what you want to say.

The Senate Minority Leader (Sen. Wetangula): Mr. Deputy Speaker, Sir, I know you did, if you read a book called *Song of Lawino* by Okot P'Bitek, he says:-

“There is no fixed time for breastfeeding; children are fed when they cry”

The Deputy Speaker (Sen. Kembi-Gitura): Who is crying now, Sen. Wetangula?

The Senate Minority Leader (Sen. Wetangula): I am crying.

The Deputy Speaker (Sen. Kembi-Gitura): Who is crying now? I am sorry but I will bring this to an end. Who is crying?

The Senate Minority Leader (Sen. Wetangula): I am the one crying.

The Deputy Speaker (Sen. Kembi-Gitura): You are not crying because each child will cry at its own right time.

The Senate Minority Leader (Sen. Wetangula): Please give me two minutes I finish my point.

The Deputy Speaker (Sen. Kembi-Gitura): No. Please sit down, Sen. Wetangula. There is no breastfeeding today as it were. There is no breastfeeding today.

(Laughter)

Let me say that Article 123(2) states very clearly that when the Senate is to vote on any matter other than a Bill, the Speaker shall rule on whether the matter affects or does not affect counties. Our Standing Order No.72(1) says that when the Senate is to vote on any matter other than a Bill, the Speaker shall rule on whether the matter affects or does not affect counties. That is clear.

It says, “Shall rule”, I would want to imagine that the application of a Member, in good time, the Speaker may then have to make a reasoned ruling on that matter. If you

rise on your feet at the right time, not when the ruling has already been made then in my view this does not affect or affect counties and there are several people who want to canvass that tissue. I want to assume or imagine that the Speaker would have to listen to every Member who wants to canvass the issue then make a ruling on that point.

Most of the Motions we deal with here are quite obvious, they either affect or do not affect counties. That is why the Speaker does it most of the time. The fact that there is the phrase "shall rule" in my mind, it presupposes that he may have to listen to views of Members and decide whether or not it affects counties. That is what I would like to say at the moment.

In the present case, the issue does not arise because if you were to rise on your feet and try to make me change my mind, it is too late. In that case, then Sen. Wetangula, the Leader of Minority, may I request that at the right time, you canvass that issue as need be because this is a from time to time issue. It is a need-basis situation.

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

The Deputy Speaker (Sen. Kembi-Gitura): Order, Sen. Wetangula. Under what Order of the Order Paper are you making this application? Right now we are dealing with the Motion brought by Sen. Mutula Kilonzo Jnr. That is where we are. We have finished the debate, he has replied, I have made a finding and he has requested under Standing Order No.53 that we vote, I have not even said when, how can you possibly raise an issue based on that?

Sen. Mutula Kilonzo Jnr. and the House, the voting on this Motion shall be on Wednesday next week.

It is so ordered.

Next Order!

MOTIONS

CATEGORIZATION OF PUBLIC SECONDARY SCHOOLS AS COUNTY SCHOOLS

THAT, aware that the prime purpose of devolution in Kenya is to decentralize and transfer functions, resources and power to the county level of government in order to promote participatory democracy and sustainable development for the benefit of all Kenyans; concerned that the Ministry of Education, Science and Technology still upholds the historical classification of schools into national, county and district schools; concerned that such categorization has implications in terms of funding, administration and eventually academic performance and that it limits choices and admissions of students to Form One; appreciating that in the current devolved system of government counties will play a key role in the educational outcomes of their schools; the Senate calls upon the Ministry of Education, Science and Technology to take immediate action to review the categorization of public secondary schools and to classify all of them

as county schools in order to ensure equity in resource allocation and guarantee quality education for all.

The Deputy Speaker (Sen. Kembi-Gitura): Is Sen. (Dr.) Zani not here?
Next Order!

REVIEW OF EXISTING LEGISLATION ON HEALTHCARE TO MAINSTREAM
AND ENHANCE CARE FOR PATIENTS OF DEMENTIA

THAT, aware that currently there are approximately 44 million persons living with dementia worldwide, a figure that is expected to triple by 2050; acknowledging that caring for dementia patients can be a difficult experience; appreciating the contribution of family members and other care givers of people suffering from dementia across Kenya; noting with concern that mental healthcare does not seem to be a priority in the public health sector in Kenya since the allocation for mental healthcare is less than 1 per cent of the total public health budget; acknowledging the importance of raising awareness of dementia and ensuring that people with dementia are treated with dignity and respect; appreciating the contribution of non- governmental organizations such as the Africa Mental Health Foundation and the International Institute for Legislative Affairs who provide a platform for sharing of views and experiences on care of people with dementia; noting the need to enhance awareness on and provide better care for patients of dementia; the Senate directs the Standing Committee on Health to immediately initiate review of the existing legislation on health care in order to mainstream and enhance care for patients of dementia and further that the Committee submits a report to the House on the matter within ninety (90) days.

The Deputy Speaker (Sen. Kembi-Gitura): I can see Sen. (Dr.) Machage is also not here.

I hope the Movers of these Motions understand what it means when an Order is called and they are not here, on a new Motion. Unless the Rules and Business Committee rules otherwise, the Motion is dead, at least for six months.

Next Order!

BILLS

Second Reading

THE POTATO PRODUCE AND MARKETING BILL (SENATE BILL
NO. 22 OF 2014)

(Sen. (Eng.) Muriuki on 4.12.2014)

(Resumption of Debate interrupted on 24 .2.2015)

The Deputy Speaker (Sen. Kembi-Gitura): This is resumption of debate. Who was on the Floor? Sen. Kittony had concluded. So, the Floor is still open.

Sen. (Prof.) Anyang'-Nyong'o, are you seeking the Floor?

Sen. (Prof.) Anyang'-Nyong'o: Mr. Deputy Speaker, Sir, this Bill is very important because one of the things we must understand is that diet requirements of Kenyans based essentially on starch, particularly maize, are being threatened by the weather. In many places where people have depended on rain as a source of water so as to grow both maize and millet, the pattern of rainfall has changed so drastically that peasant farmers are left worried about how they shall continue investing in maize, millet or sorghum production without depending heavily on irrigation.

Mr. Deputy Speaker, Sir, traditionally, in this country, the only food crop that has received State attention in terms of irrigation is rice. The other agricultural produce that has depended on irrigation is cart flower. Cart flower is a very typical cash crop as it were because it is produced essentially for export and under capital intensive measures.

Rice is irrigated and we should produce enough rice for domestic consumption. However, the reality is that we are not. Sen. Hassan and the Senate Minority Leader---

(Sen. Hassan and Sen. Boy Juma Boy consulted loudly)

The Deputy Speaker (Sen. Kembi-Gitura): Order, Sen. Hassan and Sen. Boy Juma Boy. Your colleague is on the Floor and he has to be heard. If you want to consult, then do so in low tones.

Sen. (Prof.) Anyang'-Nyong'o: Mr. Deputy Speaker, Sir, if I were Jesus, I would tell them they have turned my house into a den of robbers. Then, I would whip them out of this House.

(Laughter)

Mr. Deputy Speaker, Sir, even cart flower is irrigated under highly capital intensive conditions. As you know, it is one crop which has not been amenable to small holder production or out growers whereas, other crops which are equally amenable to irrigation like tea were the first to be amenable to out growers. Therefore, that economy was extended successfully to small peasantry through the Kenya Tea Development Authority (KTDA).

Mr. Deputy Speaker, Sir, we know, full well, that it will take a very long time for our peasant based agriculture to move from rain-fed agriculture to irrigated agriculture, unless there is heavy State investment in irrigation for the production of maize. Currently, there is a project in Tana River Delta or thereabouts for intensive irrigation for the production of food crops. However, like all Jubilee Government projects, they tend to falter at child birth. That has been a dream rather than a reality. It is part and parcel of what we call huge capital intensive projects established more for rent seeking rather than for realisation of those projects.

Therefore, Mr. Deputy Speaker, Sir, what I am trying to drive at is that the Potato Produce and Marketing Bill must first begin from the assumption that potato produce is very important for the diet of Kenyans; particularly, the so-called Irish potatoes or, *waru*, as it is known in central Kenya. Sweet potatoes are more nutritious and energy providing than the other potatoes, which was good for the Irish but not good for us. That one is very good for chips but not very good for the basic diet of a people living in the tropics and being harassed by the sun as we are now, who, therefore, need a lot of energy.

Mr. Deputy Speaker, Sir, I believe that the key tenet - I hope Sen. (Eng.) Muriuki is aware that his Nyandarua County is a big potato producing county - when we finish with the Second Reading of this Bill and come to the Committee Stage, amendments will be brought to broaden the conception of the potato industry and to include the provision of capital intensive potato production in the hands of peasant farmers and small holders just like the KTDA was established. Potato production in places like Nyandarua has not been in large scale. It has been peasant-based and by small farmers.

Production of sweet potatoes is very successful in South Nyanza, Nyakach, Nyabondo Plateau and Kasipul Kabondo areas. This extends to Kisii which is one of the best producers of sweet potatoes. Currently, sweet potatoes are poorly marketed. Middlemen and women sharks take huge trucks to the area during favourable seasons to collect these potatoes in huge sacks and pay farmers below wage returns. What I mean is that, the value of a commodity is measured by the value of labour that goes to produce it. Labour includes both dead labour; in terms of instruments and capital and living labour; in terms of the workforce.

Capital is not disembodied entirely from labour. Capital is labour accumulated in technology over time. It includes substantial amount of intellectual labour and science which produces the technology. That is why those of us who are in developing countries are unfortunately beholden to technology which is overpriced because we are mesmerised by the intellectual labour put in this technology in foreign cultures. If we could produce appropriate technology in our own economy, we would perhaps realise that it should not cost us much. That is why India has developed so fast. Many years ago, Japan developed so fast because they went and found the secret of certain forms of technology, produced them realistically with the labour value that was not exploitative as a capitalised world had generated. Therefore, the appropriate technology that was produced for farming purposes has made it easier for India and other economies to invest in agriculture at a much less cost in terms of capital investment than we have, having relied on almost entirely in received technology from highly developed capitalist countries, therefore, overpricing these technology for our production.

Therefore, I hope this Bill will take care of these things. Let us not just go the traditional way where we are concerned about who comes and collects commodities and goes to sell it. Then, we begin thinking that when you produce potatoes, there must be a ready market for it. Indeed, there is a ready market for potatoes produced in Kasipul Kabondo area in Nyabondo Plateau although it is a market that is highly exploitative because of pirates on potatoes during the good seasons when the price is very low.

It does not really reward the farmers and give them value for their labour and investment. That must be taken into consideration. I hope that the potato industry that we

are looking forward to takes into account the centrality of sweet potatoes and not just *waru* as it is known in Nyandarua.

That leads me to the next issue, which is the structuring and diversification of the market. This market must also be based on value addition. As you know, potatoes and bananas can be transformed into chips or dry potatoes and bananas. The chips that we eat at Kenchic are extremely unhealthy, because they are dipped in oil for a long time. Sometimes you are not quite sure what type of oil is being used. I have heard that one of the reasons some people break into transformers in the countryside is to bleed them off oil. They then use that oil for making potato chips. You and I then go and eat these chips, essentially eating what is carcinogenic or cancer-causing. So, I would not like us to go that direction. I would like us to eat the dry potatoes or bananas where value has been added; not necessarily chips. If you go to supermarkets, you will find dry vegetables and bananas without too much salt and additives. Indeed, in the western world, in the health food markets, chips and such like food are actually banished. You have dry food with value addition, purely to last long so that the market can be diversified and, therefore, give more time for farmers to produce and sell their goods.

One area which this country should invest in is the production of greenhouses. At the moment, greenhouses are seen as elite agriculture. Indeed, we know what is happening to global warming and now we more or less live in an oven in Kenya, because of the unusual heat that has hit the whole Republic. Imagine what is happening to plants and agricultural produce. Logically, if we think that in future, we are still going to rely on rain-fed agriculture, there is going to be less rain and we will have to vary the kind of production that we are engaged in. We must get crops which are more weather-resistant and depend on less water. So, we may have to move from potatoes to cassava, which requires less water. It is not bad to produce cassava, but the kind of starch that it has is very different from the starch and other relevant things that are available in potatoes.

We need to begin thinking of amendments as the Bill goes to the Third Reading. When new technology comes in and you want to valorize or popularize it, you cannot avoid the Government coming in as state capital. I would propose, if the Ministry of Agriculture, Livestock and Fisheries is listening to me, that now they should get themselves involved in intensive research on greenhouse production, that is accessible to the ordinary farmer; not what we have now which is mainly for elite farmers. I think this will help in making sure that peasant agriculture is more productive and when markets are created, they are not limited to when the weather permits---

The Deputy Speaker (Sen. Kembi-Gitura): Your time is up.

Sen. (Prof.) Lesan: Thank you, Mr. Deputy Speaker, Sir. I also want to thank Sen. (Eng.) Karue for bringing this Bill, which is very useful to Bomet County which is agriculture-based. Bomet County is a tea growing zone. The tea is grown and sold in large scale. It is weighed and packaged at different stages right from the farm. The weighing, processing and packaging of tea is regulated by the Tea Act. This assists a great deal in marketing.

Mr. Deputy Speaker, Sir, potato is also a crop that is grown largely in specific areas of Bomet County. I want to specifically mention about Merigi area which produces one of the best potatoes that is well known and used to produce crisps. This product

requires high quality seeds so that it is preferred by most consumers. The purpose of this Bill is to safeguard the quality of seeds that are used in the potato industry. This is the best thing that can happen to this type of potato that is grown in Merigi area of Bomet County.

The Bill also considers the packaging and weighing of these potatoes. When you visit market places where potatoes are grown, when a customer talks about one bag, it could mean a bag weighing 50 kilogrammes or 120 kilogrammes. There is nothing that distorts the prices in the market more than these variable weights in packaging. This Bill proposes to have a standard weight and measure for potatoes. This will go a long way in the marketing of this product and get value for the farmer.

The standard weights proposed by this Bill will also, to a large extent, go towards assisting farmers to continually evaluate themselves, whether they are succeeding in getting maximum produce from their land. They will know exactly how many bags of potatoes they have harvested from a piece of land. This will encourage them to improve on productivity. They will know whether their farms are productive or the quality of the seeds that they are using is assisting them. This is a very useful Bill that will cut both ways in terms of improving the quality of the product and the financial enterprise of the farmers by giving them good returns on their crop.

Mr. Speaker, Sir, I strongly support this Bill and urge my colleagues to also support it, because it will go a long way in assisting the farmers who till and derive their livelihood from this product. This includes the farmers from my county, specifically in Merigi area, which produces the best quality of potatoes.

The Deputy Speaker (Sen. Kembi-Gitura): There is no more interest shown on this Bill and the Mover is not here to reply, so we just reserve a date for its voting which will be again on Wednesday of next week.

It is so ordered.

(Putting of the question on the Bill deferred)

REORGANIZATION OF BUSINESS APPEARING
ON ORDER PAPER

Hon. Members, I am proposing that we reorganize the business appearing on the Order Paper, Order No.11 is finished, Order Nos.12,13, 14 and 15 will be suspended. Let us now go to Order No.16 on the Order Paper, The Public Fundraising Bill (Senate Bill No.28 of 2014)\

Second Reading

THE PUBLIC FUNDRAISING BILL (SENATE BILL
No.28 OF 2014)

Sen. (Prof.) Anyang'- Nyong'o: Mr. Deputy Speaker, Sir, I beg to move that The Public Fundraising Bill (Senate Bill, No. 28 of 2015) be now read a Second Time.

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor, Senate.*

Mr. Deputy Speaker, Sir, I was the Chairman of this *ad hoc* Committee that prepared this Bill after quite some time of meetings, consultations and hearings on this issue. I do not have the list of the other Members but I am sure that somewhere in the records, the membership of this Committee which finished its work some time ago, are in the Clerk's Office. I know for certain that Sen. Wamatangi was the Vice Chairperson of this committee and I must thank him for helping me guide the Committee's work.

This is what is called the Harambee Committee because one of the major issues of fundraising in this country has been harambees. In the past, although we have an existing legislation on public fundraising which has been there since Independence, at times in the past to update that law in the context of the current reality, has been made at least twice in Parliament. Sen. G.G Kariuki will remember in the previous Parliament, he belonged to and he had been in this House on and off longer than any of us, and we thank God for preserving his presence up to now so that we can have a memory bank of what has happened in previous Parliaments. I remember that during the National Rainbow Coalition (NARC) Government, there was a committee chaired by hon. Koigi Wamwere. It looked into the issues of harambee and he produced an extremely interesting Report on harambees. Essentially, what the Report said is that harambees have become outdated and a source of misuse of public funds and a way of intimidation of those who are in power, either of the opponents or of the general public. There is a whole litany of ills that hon. Koigi Wamwere's Committee unearthed regarding harambees. Having gone around the nation and received presentations from Kenyans, there was a general feeling that most Kenyans while they appreciated that when harambee was first introduced, it served a very useful purpose. Over the years, it has become rather than albatross around the necks of Kenyans as far as meeting its original objectives were concerned.

If you remember well, the first harambee that was held, I remember I was a young student at Alliance High School soon after Independence, there was a man in Muhoroni whom we knew as "Omollo Harambee" because he was very fond of repeating what Mzee Jomo Kenyatta was saying "Harambee" and the people would respond.

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

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

So, Mr. Temporary Speaker, Sir, harambee had become our motto in the Coat of Arms. I am sure if you have the Coat of Arms anywhere in this House, you will see harambee inscribed there. It is protected in our Constitution as a national slogan. In that regard, although there was a lot of low discussion precisely because harambee was protected, there was some kind of shyness on going too far to deal with the ills of harambee.

The other thing which hon. Koigi Wamwere noticed and which we also noticed is that, when it was started, it was focused mainly in dealing with people's social welfare particularly building schools, health facilities and improving water resources. If you look at the literature on harambee, those were the things that those who were raising public funds were focused on. There were schools which were built, which were called

harambee primary and secondary schools and they mushroomed everywhere because people felt that the colonial Government had not really invested in education for the natives.

Mr. Temporary Speaker, Sir, I remember in those days, in the then Central Nyanza District, at Independence, there was no high school. The only high school was in Maseno, which was in the boundary between central Nyanza and northern Nyanza as it were. Of course, it was part of Nyanza Province but nonetheless, it was a school that was established by the missionaries just as Alliance High School and others. Then there were few Government schools like Kamusinga, Kakamega School and so on. Apart from a few secondary schools established for the natives, more schools were run by missionaries than the Government. I think gathering this from the experience of the Kenya's first President Kenyatta, when they started Githunguri Teachers College as a harambee institution in colonial times, a movement started for raising funds for building schools, health facilities and water resources which was very good. At that point and time, harambee secondary schools and health centres mushroomed and then they were eventually taken over by the Government. Harambee secondary schools faded, I do not think that there is a school now called harambee secondary school. We do fundraising for the existing schools or to start schools which are then taken over by the Government rather quickly. As time went on, then harambee spread to other things and more recently it has become a little more ridiculous. Harambees are there for pre-wedding purposes, weddings, funerals and for raising funds for people to go abroad. Sometimes, funds are raised for somebody to go abroad and he or she never goes but you do not know where the money is. So the law that was then passed in the 1960s was meant to give some kind of control or accountability in harambee but it never did.

So, hon. Koigi Wamwere's Committee recommended a law that will improve accountability in the collection of public funds, but proposed several measures for limiting the province of harambees. When we started the NARC Government, harambees were actually banned by the Government and the people were very happy. But then I remember being in the Cabinet with some of the Cabinet colleagues saying:-

“We have banned harambees and we are not doing it, but our KANU colleagues are doing it and, very soon, they are going to get political clout over us. So, I think we should relax this rule.”

Then we relaxed that regulation and went back to the old ways or bad manners of collecting money for everything.

So, Mr. Temporary Speaker, Sir, when I moved a Motion in this House to relook at public fund raising, this was the background. One, we have departed from the original purpose of harambees focusing purely on social welfare issues and we have expanded into areas which are rather ridiculous. Sometimes people do not look after themselves because they are waiting for harambees. But we also realized that the Government must also take responsibility of having institutions that limit the desire for public fundraising. For example, in the health sector, one of the areas where harambees are really helping is to meet medical bills. This is realistic because if you spent two days in Nairobi Hospital, God help you – and you should not really go there unless you can afford it – but sometimes you have to do so because you are sick; and all of us go through sickness once

in a while. If you spend two or three days there, you will be flashed with a bill of Kshs250,000 and, of course, this is unaffordable to most Kenyans. But sometimes we resort to calling people to raise money quite understandably, because they do not have the money. But, then, if we had a comprehensive social health insurance scheme like they do in Rwanda, Ghana or in South Africa – these are developing countries – or as they have in Malaysia, Singapore or Mexico--- I have lived in Mexico for three years and I never heard anybody raising money from the public to pay medical bills; never! Although Mexico is a richer country but, in many ways in the rural areas, it is not different with some places there being poorer than some parts of Kenya. But Mexico has a social welfare system where they have a comprehensive social health insurance. So, once you are part of this, then you do not really have to worry too much about medical bills.

Mr. Temporary Speaker, Sir, as the Minister for Medical Services and previously as the Minister for National Planning and Development, I worked very closely with hon. Charity Ngilu, who was the then Minister for Health. We proposed to have this comprehensive social health insurance scheme but it never worked because tycoons who own the insurance industry opposed it. These people have influence in the Government, while some people in the Government also have insurance firms. Therefore, they thought that if we had a comprehensive social health insurance in place, it will eat into their market – of course, it would, to some extent – but not for the two per cent of the elites who are insured for these companies. So, that misunderstanding and social bigotry by people who earn a lot of money has sabotaged the comprehensive social health insurance scheme in Kenya, much to the detriment of the economy. If we had a comprehensive social health insurance scheme, we would surely not need to hold harambees to meet health bills. So, that is one remedy of dealing with harambees.

The other one, of course, Mr. Temporary Speaker, Sir, is when people retire – let me remind ourselves that sooner, rather than later, we shall be retiring. I once met a Permanent Secretary (PS) – and I will not mention his name – who had retired, having served with distinction not just as a PS, but also as an Ambassador; and this is not long ago, this was about seven years ago. He told me that his pension was Kshs7,000 a month in this day and age. Let me tell you that there are many people who have served us high up in the Government whose pension is that much. This leaves a lot to be desired. So, one of the things we should look at is how to organize our social welfare systems, pension schemes and so on and so forth. How do we manage pension funds so that they are available to the people who have retired so that they can access it and have the wherewithal to pay their bills? If we had proper pension schemes, the National Social Security Funds (NSSFs) plus comprehensive social health insurance scheme, we could cushion our people from the need to fundraise whenever they have bills to pay. I am sure of, because in societies where this happens, I have never seen people holding harambees. Just go to Rwanda next door; Rwandese people may have collective fund raising at a purely family level. When somebody is getting married, it is a family affair and one should not organize a huge event in Nairobi Club or in Charter Hall to raise money for a purely family affair like getting married. But I think we have the mentality that we should or must outsource our financial commitments to the external world and this has meant that harambees have spread into all kinds of spheres of life, making it very difficult

especially for people in leadership positions to survive. Leadership positions do not just mean us, politicians, but even civil servants, policemen and so on and so forth. So long as you are a wage earner, you are likely to be subjected to fundraising which is not necessary.

I understand when something like a health bill under our system, it is necessary; or funerals – but those should be limited. I think funerals should not be turned into huge feasts for consumption, but it should be for essential services. But even then, if you have an insurance scheme like a benevolent fund – like what teachers have – which includes the last rights of a person, then there will be no need for a funeral harambee. Some insurance schemes also include last rights as part of their insurance cover. They make sure that they provide enough money to cater for last right expenses for those who contribute to this insurance. If these things happen in a modern society like ours, they will reduce the need for harambees. So, rather than have laws for safeguarding how harambees should be conducted, we should have laws safeguarding how public fundraising should be limited to real areas of need. Public fundraising should not be open rather excessively to expenses which could be easily catered for through a proper public system of supporting them.

There is no need of saying, for example, that we are re-basing our Gross Domestic Product (GDP), therefore qualifying to be members of a world other than the third world and saying that our economy is the ninth-fastest growing economy when we do not, in that same breath, say how we are improving the standard of living of our people and how we are protecting our people from a psychology of dependence, which harambee is. Because then, our rapid growth rate is not being matched by our public policy and our social programmes.

So, Mr. Temporary Speaker, Sir, the essence of this Bill is, one, to deal with the mischief that harambees have created. One of the mischiefs that is observed in both the Koigi Wamwere's Report and our Report is the corruption which has crept into sustaining harambees. If you are a Cabinet Secretary (CS), a Principal Secretary, a Senator, a Member of the National Assembly (MNA), a Chief Executive Officer (CEO) of a parastatal; a Member of County Assembly (MCA) and you are expected to attend harambees at the rate we are doing, obviously you are going to get money from somewhere, not necessarily from your salary or the allowances that you get.

You are given those allowances to perform your functions; they are not given to be taken away to other people who have outsourced their responsibilities. If you use that allowance for that, it means that you will look for money to perform your functions elsewhere and that is where corruption comes in. You can only deal with corruption if you also deal with its causes. Harambee is one major cause of corruption because it compels people, by its very nature, to look for resources to sustain it; people who are honest enough to support harambee through their allowances, pockets and so on, and so forth and in the process get embarrassed. I know that Senators get embarrassed when they go to certain functions because you are there as a Senator and the master of ceremony is trying to ridicule you by saying "Senator so-and-so is present, how much money is--- but before we go to him let us just go to somebody who just got a contract from a governor another day and has a lot of money to throw around." I mean really; that a person will

have to get those contracts and get the money because he knows that is the only way to compete with the Senator whereas the Senator is not likely to get those contracts and get the money to sustain harambees. So, these are realities that we, as Senators, must speak about. I know it may be unpopular out there but unless we speak the truth, will never deal with socio-economic problems in our society. My friend, Sen. G.G. Kariuki has suffered for speaking the truth in previous governments, but at one time, he also hurt me for speaking the truth. So, he has some reconciliation to do between him and I. But nonetheless, unless we do this, we will definitely not deal with our major social problems.

(Laughter)

So, when my colleagues, Senators, discuss this Motion, this is the spirit and I do not think I am going to spend the whole hour talking about it. I would rather give the opportunity to my colleagues to talk about it.

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

Sen. (Dr.) Khalwale: Mr. Temporary Speaker, Sir, being in the Senate and listening to the Senator, the Senate can also be an important and serious learning process. The Senator for Kisumu County has just said that Sen. G.G. Kariuki has suffered for speaking the truth, could he substantiate so that the country can know the suffering that Sen. G.G. Kariuki has gone through for speaking the truth in this country?

(Laughter)

Sen. (Prof.) Anyang-Nyong'o: Mr. Temporary Speaker, Sir, for the sake of others who may not know the history of this country very well- but, obviously I hope not for the sake of Sen. (Dr.) Khalwale, who should know the history of this country - Sen. G.G. Kariuki was a very powerful Minister in the first *Nyayo* Government. In fact, truth be told, I, as a student--- I was not really a student; I was already teaching at the university.

An hon. Senator: You suffered?

Sen. (Prof.) Anyang-Nyong'o: Of course, that is another story! But, I actually saw him and Mr. Charles Njonjo riding in the same vehicle with the President. This was not wrong, if you are powerful, you have to be with the powerful. Nonetheless, finally both him and my friend, Mr. Charles Njonjo, were deprived of this opportunity in a rather ludicrous way and reasonably unfairly. So, I think he really realized and, of course, he never made that mistake again - that if you tell the truth to power, it can be rather painful. Of course, he can explain how he told truth to power, but he has told me that story. Since he is here, I would not like to footnote him, but give him the opportunity later to tell it himself. So, Sen. (Dr.) Khalwale, if you can wait, I am sure my friend, Sen. G.G. Kariuki, will enlighten you quite effectively on what really happened.

(Laughter)

The Temporary Speaker (Sen. Mositet): I can see that Sen. G.G. Kariuki also has a point of order.

Proceed, Sen. G.G Kariuki.

Sen. G.G Kariuki: On a point of order, Mr. Temporary Speaker, Sir. Are we taking this House seriously or did we just come here like kindergarten fellows who just come here to talk other things which are not there?

The Temporary Speaker (Sen. Mositet): Sen. G.G Kariuki is asking whether the Senate is serious in allowing this to go on. I thought, as a matter of concern, that Sen. (Dr.) Khalwale was quite correct to ask about how you suffered. But still, we do not need to dwell so much on that. I will restrict Sen. (Prof.) Anyang'-Nyong'o to---

Sen. G.G Kariuki: Mr. Temporary Speaker, Sir, I need to be heard properly by the gentlemen on the other side of the House. If they think that they have more insinuations and they can become more trivial, I will do the same. This is a very serious matter that a Senator just comes in and starts talking about personal things, personalities and asks my friend about my history. If you read the "Illusion of Power," you will see the truth about me; you do not have to ask the Professor. I am not like one of those guys who never wrote any paper!

(Laughter)

(Sen. Wetangula consulted loudly)

The Temporary Speaker (Sen. Mositet): Order, Sen. Wetangula!

Sen. (Prof.) Anyang'-Nyong'o: Mr. Temporary Speaker, Sir, I apologize to my friend, Sen. G.G. Kariuki. It was with a light touch. Sometimes both in courts and in the Houses of Representatives the world over, there are light moments just to reduce the heavy weight of serious debate. But having said that, I hope my colleague will take it with a light touch. I will not revisit that issue again.

Finally, Mr. Temporary Speaker, Sir, so that I give my colleagues time to speak more on this, now that we have a new beginning with county governments, this is a new era in our structure of government, we should not let me underline the word "not" - allow the bad manners of the past to be imported into county governance. If the current governors or executives in the counties begin laying the pattern of heavy reliance on harambees for social development, we shall lose the role of devolution because devolution was created so that we can take more resources to the grassroots for socio-economic development. That is why when we think of the health sector, we emphasize that it is taking so much money in county budgets. That, if we do not vote more money from the national Government to go into counties to take care of social welfare programs like education, health and water resources, then we shall have county governments again appealing to the public to subsidize its expenditures to meet the needs of social welfare projects. If we realize the importance of increasing allocations to county governments,

particularly for social development projects, then we shall again find a way of dealing with harambee and not begin burdening devolution with the sins of the past.

Since this Senate has the responsibility of protecting the interests of counties, this Bill is extremely important for the Senate. I would appeal to our colleagues, that even at the Committee Stage, the Bill is not cast on stone. I have looked at it and I know that there are certain amendments that we need to do. Let us caucus ahead of time. I know that Sen. Mutahi Kagwe has proposed some radical amendments to the Bill, but let us look at it this way. One, that harambee is not the only way for public fundraising; we can still have a law allowing public fundraising by getting rid of harambee but allowing public fundraising with much better control and discipline to meet or solve specific problems and not this one which has gone a little bit haywire as in undermining good governance and potentially undermining devolution.

Mr. Temporary Speaker, Sir, with those remarks, I beg to move and ask the Senate Minority Leader, Sen. Wetangula, to second.

The Senate Minority Leader (Sen. Wetangula): Thank you, Mr. Temporary Speaker, Sir. If distinguished Senators can remember, Prof. Anyang'-Nyong'o brought a Motion to this Chamber and we gave him the green light to draft a Bill to address the abuses and excesses that have come to characterise an otherwise very noble cause.

I was privileged to be nominated by him to serve in the Committee that went round to collect and collate views of Kenyans on what they felt about harambees. I remember we had a public meeting in Kitengela County. The Members of County Assembly (MCAs) who came to meet us with the Speaker had alongside them a group of very agitated church people who had misunderstood what our intention was. When we explained to them what the philosophy behind this move was, one of them prayed for us.

Harambees have played a role in developing this country. Some of us, including myself, went through harambee secondary schools as many people who have gone to worship in a church or a mosque built on harambee basis. Some have even drunk water from projects developed on harambee basis. Kenyans are very generous at heart. You will see people in the villages coming together to donate their labour, energy and money towards a common good.

I was convinced to work alongside Professor in promoting this Bill because of the historical abuses and obscenities that came to hijack the harambee spirit; a spirit that was benevolent, a spirit that was meant to be human became a dispirit of purveying merchandise, opulence, display of obscene wealth and all of a sudden, thieves, robbers and gangsters became the most generous contributors to harambees. Even churches started running to known criminals; to invite them to preside over harambees in their churches. You would go to a village and find that a local rogue is referred to as *Bwana Maendeleo* because he donates his ill-gotten wealth during harambees. When you turn up as an honest Kenyan and give Kshs20,000 which is all that you have--- Our distinguished church people forget that in the Bible, Jesus said the woman who gave the little and the only that she had was better than the pharisees who gambled with money and accounted for half of it while keeping the other half.

The society does not seem to appreciate any more that when Sen. Kittony goes to give the only Kshs10 that she has, from her heart, she is not *Mama Maendeleo*. However,

if a gangster gives Kshs1 million out of Kshs10 million that he stole yesterday, he becomes *Bwana Maendeleo*. This is the danger we have driven our country into.

We have reached a level where harambees have been convulsed, corrupted and it is this that informed the evolution of the CDF. The CDF was brought to the fore because Parliament then, in its wisdom, appreciated that individuals cannot be substitutes of the state for development. There can be small worthy causes like making a collective contribution towards a funeral or a dispossessed family. However, the state cannot stand aside while *wananchi* go through looting of their hard earned money and people going round to donate it.

You have seen leaders whose salaries have been gazetted and are known going round every weekend donating 20 times their salary in harambees. That is why we also institutionalised organs of governance like the Ethics and Anti-Corruption Commission (EACC). In proper jurisdictions, the moment you appear to live beyond your means, nobody waits for someone to complain. They will come for you and tell you that last weekend, according to their records, you donated Kshs2 million in a certain harambee, another Kshs2 million in harambee "B", Kshs1 million in harambee "C" and Kshs500,000 in harambee "D". They will want to know the source of your money because truth be told, harambees feed on corruption. Apart from the ordinary person who denies himself a packet of milk to put Kshs10 in a harambee basket, all these big stomached opulent characters that turn around to donate money are wheeler-dealers and fixers.

There are people who are stealing from our economy, raising our inflation and at the end of the day, we call them *Bwana Maendeleo*. This has to be checked. We now have devolution. The CDF is going through its own challenges. I can see colleagues whom we served with in previous Parliaments; *Professor, Lord Jim and the Bull Fighter*. Each of these Members, with very paltry figures, an average of Kshs50 million to Kshs70 million carried out development in their constituencies particularly schools and other social amenities like health centres much more than the billions that devolution is doing.

Mr. Temporary Speaker, Sir, if you go to the countryside, I am sure that this applies to all of us; you will find that the largest collection of mail on your desk is about harambees. You will be invited to every conceivable function for harambees. You even sit back and ask yourself where all these billions are going. You will find a county which since Independence had not received Kshs1 billion for the past 50 years and all of a sudden receives Kshs5 billion but cannot even take up bursaries for children. Those bursaries are a joke. You will find a parent with a school going child who requires school fees of about Kshs40,000 but is given Kshs3,000 and that is referred to as bursary. The Kshs3,000 is not even enough to buy the amenities that the child is supposed to go with to school before you pay the fees

In the old days, our parents went to school 100 percent paid for by bursaries from the colonial set up. With so little, they were able to do so much. If we institutionalize proper institutions of governance, this country can do away with harambees as an alternative avenue for development. In developed economies and democracies, even in the United States of America (USA), where fundraisings are allowed, they also have a system in the law where, if you give a donation from your income for a good course, you

get a tax rebate for it. For instance, if you look at your payslip now, the taxman is creaming off about Ksh405,000 every month as tax and in 12 months, it is about Ksh6 million. If you demonstrate that your contributions to worthy causes amount that much, then the taxman should give you a rebate on your taxes, because you have supplemented the state responsibility for development out of your generous donations.

More importantly, you may recall in the previous two Parliaments, we had a Committee set up and chaired by Hon. Koigi wa Wamwere. Their report had a damning indictment on the abuses of harambees. Our Committee went through that report and we were satisfied that what Hon. Koigi and his team said was true; that, harambees had fueled corruption, that is not arguable. It had also fueled theft of public funds, that is not arguable. You may recall previously – I hardly go to Government offices these days – when you went to see a Government official and he would welcome you very heartily and you would talk. But as you finish, he would tell you that incidentally, he had a harambee the next weekend. That: “Incidentally I have a harambee next week”, is not a polite way of asking for a donation. It is just a crude way of pursuing corruption. He would tell you how he would help your child join the school you wanted, but he has a harambee the next week.

Mr. Temporary Speaker, Sir, these kinds of things are what have destroyed our country and it runs through. When people go to chiefs to look for burial permits, he has a harambee book. People go to the mortuary to have the bodies of their loved ones attended to, they get harambee books; even at the mortuary. If we let our country go that way, we shall soon have no country. Here in Parliament, even distinguished colleagues who earn good money are still asking for harambee because of the pressures put on them elsewhere. *Ati kesho naenda kanisa, enda uombe.*

I have noticed that even in your own constituency, when you go to a church – the distinguished Senator for Bomet is even showing me harambee cards that he is holding – it is no longer like the olden days where you woke up in the morning drove to church *in cognito*, sit, pray to your God and go home. As soon as the service is over, it is announced that there is a distinguished person among them who should greet them. That greeting is not a just a greeting. You will only be clapped for when you eventually say that you have a personal donation to give to the church. They will clap for 10 minutes. However, if you do not say any such thing, it is like you have been to no church.

Mr. Temporary Speaker, Sir, it has become so sad. We are taxed left, right and center. We live a dog’s life. Even as a public representative, when you go to your constituency and want to visit a school to greet the school children, if you are not carrying money, do not go there. *Ukimaliza, lazima watoto watakula mkate.* Many of us used to enjoy walking on the streets of Nairobi. Try it now and see how you will be taxed by everybody. This Bill is very important. You remember the obscenities people used to-- -There was a man from Kiambu called Kuria Kanyingi who used to carry money in sacks on a wheelbarrow to harambees. Those of you who have read contemporary history know that the only people who behave like that are the mafia. There is no way that you can carry your hard earned money on a wheelbarrow to a harambee. It is simply not possible. Even if you win a rotary, you cannot behave like that.

We have seen people competing and knocking each other. Even some of our colleagues in this House; people who did not have even a second car and lived the humblest of humble lives, I respect people like Sen. (Prof.) Lesan here, a humble professor from the university who has come to the Senate and he leads a decent life. I have seen some young Senators here who have now lifted from the ground, and live in the air, donating Ksh1million every weekend, and you know very well that these young men do not have money. These are just corrupt proceeds. We have heard that heads of parastatals are even complaining as to how many of them are knocking on their doors and demanding “protection” fees. That is the money they are using to hire helicopters and flying to all parts of the country to donate and say: “*Sisi ni wana maendeleo.*” These are the same young men who a year ago did not even have a car. If the young are corrupt to that extent, where is our country headed to? Until and unless we regulate, check each other and search ourselves; that when Sen. (Prof.) Lesan, whose capacity and ability we know, all of a sudden donates a million shillings every weekend and broadly smiling to be clapped for and called “*Bwana Maendeleo*” and is reminded that he came late, he should have come earlier, then we have a rotten country. This runaway abuses unchecked, we are instilling a culture in our society for our own children and grand children to start thinking that for you to be a good father or a grandfather, you must have a lot of money; that for you to be a good Christian is directly proportional to how much you donate to your church. They have now forgotten “*fungu la kumi*” and nobody talks about it. When you turn up in a church, you are told: “Now that Professor is here, our problems are solved” *na wewe umeenda kuomba Mungu.*

If you go through this Bill, you will see that all these things that Professor and I have talked about are addressed. Yes, within acceptable limits, sanity and reason, we can be benevolent to society, ourselves and friends.

Let harambees not be means of extortion. Those of you who are doing the first term may not know this, as you are busy running around as a Member of Parliament (MP) being terrorized for harambees and so on, there is somebody sitting in a Government office who is going to take your seat, who is stealing money from everybody who goes there for service and who is going to donate money every weekend. That is why we passed a law that six months to elections, there shall be no harambees. That law is not tight enough because no harambees for us MPs but those who are eyeing the seat still go on out there. Then you will be put on a scale; who is *bwana maendeleo*?

Mr. Temporary Speaker, Sir, over and above this law, we want to audit the development structures in the counties. What is tormenting *wananchi* about harambees? What is it that devolved funds can do? If you go to the counties today, the wastage that is going on is too much. If you go to a governor’s office, the secretary, who earns Kshs30,000 and has only been on the job for two years, is driving a brand new Prado. The governors have surrounded themselves with advisors on women, disabled persons, the youth, special programmes, politics, hunger and soon they will have an advisor on girlfriends and so on. We also have chief of staff. Each of these employees is driving a brand new Prado. These are public resources. On top of that, they are giving our children Kshs3,000 for bursary.

This Senate has a lot to do. When a parent is given Kshs3,000 for bursary, they come straight to the Senators to supplement but we do not have it. I pity people like Sang; you are not in the sky team, so you start suffering and running away from home. Those in the sky team are busy knocking on parastatal doors saying: "Give me money or you leave the office tomorrow". This Senate has a unique opportunity to bring sanity and sense to the country. I want to urge you, colleagues, that let us come together and audit how the funds in the counties are being spent. We are sending enough money to the counties to even build churches. There is no point for your constituents to come to you for money to repair a water borehole or a cattle dip. I am sure you are routinely asked to do that. This is simply because somebody somewhere is not doing the right thing. When you say something, they will say: "*Senator kama amechoka akuje tung'ang'ane hii kiti*".

Mr. Temporary Speaker, Sir, I want to urge Kenyans that harambees are good but we must stop abusing them. I remember, and I said in the Motion when we were debating, during our days as young lawyers, there was a young female magistrate who organized a harambee to get married. She called in all lawyers, arranged some crook who sat next to her in a suit smiling broadly as an intended groom. People donated money but two months down the line, any lawyer who went at the Chamber would say: "Sorry, Madam, I did not come for the harambee" and he would be told: "It is still open just bring your contribution". There was no intention of marriage, the crook who sat next to the lady was not even her boyfriend but just a crook used to get money. If things can happen at that level, imagine two young people, I cannot call them distinguished but crooked, fleecing lawyers who have cases in the court. They would go to court and say: "*Mimi ni Mvita* and I missed your harambee." Then he would be told: "It is not closed, *leta tu*". That is called corruption and it eats away society. We must check it and arrest and control the situation.

Mr. Temporary Speaker, Sir, I can tell you for free that there is no country anywhere in the world that develops on harambees. Countries develop on clearly defined laid down development programmes, harnessing and utilizing resources from the economy, accounting for those resources, auditing the use of those resources and holding those who abuse the resources to account.

There is a country called South Korea, in terms of corruption index, it is quite up there. In this country, once you are caught, it does not matter your station in life. If you read newspapers you saw last year a former President of South Korea drove to a cliff, leaped into the sea and died because they were catching up with him for his corrupt activities when he was the President. This is a president of a country and not a jockey club. This country must also destroy the sanctuaries of corruption. It is difficult to completely eliminate corruption. In China, if you are charged with smuggling, they bring the court at your shop, try you, convict and hang you on a lamp post outside your shop as a deterrent. If you are sentenced to a firing squad, they will shoot you and pass the cost of the bullet to your family to pay for it. We do not want to go that draconian way but sometimes extra-ordinary difficulties require extra-ordinary measures to control. In this country when you listen to people, even in this Chamber, very few people talk to you about earning money, they only talk about making money. They talk about deals. A deal is an ordinary English word but it has some very serious negative connotations. A deal is

not an ordinary transaction and making money is not earning money. That is why you see young fellows, every weekend when you call Wilson Airport to look for a helicopter to go somewhere; you are told it was booked last week by these young fellows called the sky team. That is corruption because they cannot account for a single shilling of the money they are obscenely flushing around. We want to control this. We want Kenyans to have value for money. We want Kenyans to be respected for the content of their character and their brain and not for the size of their wallet and bank account. If you go that way, the greatest human that ever lived was Don Collion, but we know he was not; he was the greatest scoundrel that ever lived.

The humblest and greatest human beings that ever lived include Mother Teresa, the late Prof. Wangari Maathai and other humble people who have known that they can walk the narrow path but touch and change people's lives. Jesus Christ said that woman who gave a dinar and it is the only thing she had was better than the Pharisee who took out a wad of money, gave some, kept some and was clapped for and went home.

With those few remarks, I beg to second.

The Temporary Speaker (Sen. Mositet): Order, Senators. I now want to propose the question.

(Question proposed)

Sen. Orenge: Mr. Temporary Speaker, Sir, I thank my colleague and friend, Sen. (Prof.) Anyang'-Nyong'o and his team for coming up with this Bill. I know it is not an easy burden to carry. I remember when Hon. Wamwere's Committee was going round the country; there were so many accusations against Members of that Committee. People said they were anti-development because they did not want people to hold harambees. Similarly, when Sen. (Prof.) Anyang'-Nyong'o brought this Motion about enactment of a statute that would regulate harambees and it was passed in this Senate, there are some people who did not understand what he and his team were trying to do. They started out a propaganda that, probably this Bill and their contemplated legislations was going to stop harambees.

I congratulate Sen. (Prof.) Anyang'-Nyong'o in taking this burden. If you want to make Kenya different and to move ahead into this century, somebody has to take the burden. Just about a week and half ago, the President of Uruguay handed over power to a new president; the poorest president in the world. He died when his popularity rate was over 80 per cent. He used to drive a twenty year old Volkswagen, had a three-legged dog and one tractor. He used to drive that Volkswagen himself. The demonstration is that when you offer leadership and do the right thing with it, people will always support your leadership. If that former President wanted to run for a third term, if it were possible, he would have been voted back. I know that in Uruguay, they do not allow consecutive terms; you can only go for one term and then try again after the expiry of the next term or a subsequent term. In Kenya, we are already talking about when this President completes his term after 10 years, we are going to enthrone a particular individual as president, then another one. This is part of the bad culture. It is only in backward, in fact, medieval

societies, can determine who will rule after an election because you are supposed to leave that to the voters.

Adolph Hitler predicted that the Third Reich would rule for 1,000 years. Thank God he did not go for more than 10 years. If he had ruled for more, the world would be a worse place to be. Once you say that you are going to rule for 10 or 30 years, you begin to prepare the means so that the prediction can be brought to pass. It means that the business of governing for the benefit of the people does not exist. The great saying by Abraham Lincoln, that: "Democracy is the government of the people, by the people and for the people." This is a statement that in a kleptocracy like Kenya, cannot survive. This is because elections and power always revolve around those who control the economy and use it not for the benefit of the people but for the benefit of the ruling class.

Mr. Temporary Speaker, Sir, when I came to Parliament for the first time, I did not have a regular job or a house. I was just out of college. When I came to this Parliament, we were earning Kshs4,000 a month, with a weekly allowance of about Kshs1,500. Luckily, within a year, it was increased to about Kshs8,500. It was easier to live at that time because when I went to my constituency, nobody expected you to fundraise and that if you were stopped at a market, you would splash money around. People there would be asking you about what debate took place in Parliament or talk about their problems in the constituency or district. At that time, it was then easy for people like my colleague, Mwachofi, to conduct a whole campaign on a bicycle and I was there to see it. This also applies to my friend, Abuya Abuya, who was here for several years. Then, it was possible to offer leadership even if you did not have a working professional job.

I hope that in enacting this legislation, we will change the political culture. This culture was beginning to spread in countries across Africa which did not know about harambees. I remember one time I had a guest who had come to visit. He was a Minister in the South African Government. As we talked in my office, she saw the number of people coming in asking for money for harambees. She then went to the village and said that if she was a Kenyan, she would not be a politician. She thanked God she was South African. In fact, in South Africa, because of their system of professional representation, you are assigned a constituency. Her constituency was within – I do not know the place in South Africa where they have dormitories for minors and so on. She was a little bit uncomfortable about representing that particular constituency.

Mr. Temporary Speaker, Sir, by the time this Bill becomes part of the laws of Kenya, of course, with the necessary amendments, we will begin the journey of trying to change the political culture in this country, so that this country gets the leadership it deserves. That way, parliamentarians will spend more time in Parliament more than outside wondering how to go home over the weekend.

During debates in this Parliament, like those regarding Bills, we used to speak endlessly because time was always available since we were never in a hurry. We never hurried the business of the House because nobody was dying to go out there and knock offices. Our business was here in Parliament. It was to debate and so on.

Mr. Temporary Speaker, Sir, although my leader here did not want to accept, there are some places in churches where even the Gospel of Jesus was not accepted. They did not accept that the poor lady who had dinari was the greatest contributor.

(Laughter)

They would tell you that you are misguided and we are not going to give you the votes if that is the way you are behaving. There is one particular election where I made a very big mistake and it was against my better judgement. My group of campaigners insisted that we go to a church. Since the election was taking place in December, we went to that church on Christmas day. As soon as I stepped in, they said: "The candidate is here. He has come on the right day because the roof of the church is coming down. Now we know that a new roof will be provided today and not tomorrow. The Lord is with us."

When I said that I would do something about the roof, the priest stood up and said: "Look at my robes. They are torn and I cannot preside over Holy Communion on them." I decided to give something small. Then the Mother's Union said that they were travelling to Kampala. *Nikatoa kitu kidogo*. Then, the youth in the church also said that they had a project. I decided that if that is what one had to do to win an election, so be it. But the worst thing was now when I went outside the church. The members of the congregation now told me: "Now we want ours. What you gave in there is for the priest and the leadership of the church. We never get whatever they receive."

I could not manage that crowd. As I drove out of that church compound, they were shouting: "Orengo, you are not going to get that seat again."

I really regretted having gone to that church on Christmas Day, yet it was the most natural thing to do on such a day. I hope that this Bill will bring this culture to an end. Thanks to Professor if that day will come. Even now, as my leader said, the devolved systems should work and do what is required of them; to carry out development, instead of going to meetings and everybody is paraded and wants to know what the other is carrying. There is a lot of money within this system. Part of the NARC revolution, and I thank Professor again with the people that he served with in that Government - It was suddenly realized that there was a lot of money in this country. The President announced that we were going to have primary education and it came. People were wondering if it was ever going to happen. They bought into the idea and children went to school.

The Constituencies Development Fund (CDF) idea came when President Moi was still in Government and it looked impossible. But, again, it was found that it was quite possible to give those devolved funds. I really believe that with a fair system of taxation and plan to carry out development projects in the country, we should be able to build schools, hospitals and even entertainment places. In the colonial days, they were not just building structures all over, but even entertainment utilities were built, including Pumwani Social Hall and Kisumu Municipal Hall. Stadia were built and then suddenly, we went through a period where you could only be a leader if you were carrying a bag of money with you. That culture was almost catching up with us. I believe that the country still has sense. I know that there people like Prof. Lesan over there. Whenever you read

about what people went through, you will realize that they were fighting against giants who were well oiled. In the by-election of my leader here, a lot of money was poured, but the people rejected that type of leadership. If we go the way of having a system of Government where corruption determines how we elect our leaders, then people will be forced to look for quick money.

There was already a well established system that after every election, you would do election returns and accounts. There was a supervisor who would check how much money is spent on petrol and so on. You were to provide receipts after the election, but when crooks came by, they said: "You cannot stop leaders from giving their people money." Then it went haywire. Our generation of politicians, probably, is an endangered species. Prof. Anyang'-Nyong'o is here by the grace of God. When I see the creation of the new leadership, what they aspire and the way they show material things, I think Kenya is going on the wrong direction. But we will not allow it to get there so long as there are men and women in this Senate who are ready and willing to bring this kind of legislation. Although we are not stopping every fundraising, through this Bill, we will ensure that leadership, especially state officers and institutions, will not be used in a manner that the whole system will be corrupted. Those who are appointed to positions of authority will not be blackmailed and intimidated, so that the political leadership can survive in one way or another. I think those days will be gone, if we start with this type of legislation.

I hope that both sides of the House, before we get to the Committee of the Whole, can sit down and look at what appropriate amendments can be made. We should deal with this issue in a bi-partisan way. What killed the initiative of the Koigi, when that special committee was established, is because people started associating the idea with him and he had always been seen as being anti-development but he was never anti-development. What he was against was using public office for corrupt purposes. So, I urge that we approach this issue in a bi-partisan way.

Change and reform in this country is not really over, we still have got a long way to go. We must continue to be vigilant and that part of vigilance is to ensure that Chapter Six of the Constitution finds its proper place in our constitutional arrangement. For me, this Bill is a contribution towards enthroning that essential pillar. In fact, for me, the two main ideas that have made our new Constitution a transformative document is the Chapter on devolution and that on Leadership and Integrity. Even in the former constitution, we had a Bill of Rights and it is still important but on the issues of integrity, leadership and devolution, we still have a very long way to go. If the history of this country will be written in 10, 20, 40 years later, I think we will remember this Senate for passing this Bill as believers in Chapter Six of the Constitution.

With those remarks, I beg to support.

Sen. (Prof.) Lesan: Mr. Temporary Speaker, Sir, thank you for giving me this opportunity to make some contribution.

First, I wish to thank and congratulate Sen. (Prof.) Anyang' - Nyong'o for bringing the Motion and now the Bill to the House. I also wish to extend this appreciation to the Committee that sat for many hours to deliberate and put a lot of brain capacity to generate information, ideas and to design a path on how to go through in deciding on the

fate of public collection in this country. Before talking about what is going on with contributions of harambee, I want to make it specifically clear that we need to appreciate the contribution that the harambee spirit made to this country in the 1960s and the 1970s. We know that some of us standing here today have a word or two to say about the harambee contributions that made some contribution to our progress during those formative years of this country. It was until the mid 1970s, when there was one report called the Gachathi Report. This is the Report which allowed civil servants to participate in business and at the same time continue to be civil servants. For me, I think that was the time that I can put my finger on, that the inception and the start of corruption at levels that affect the economy came in. With the arrival of these practices that civil servants had access to public funds and at the same time the control at which they accessed these funds was highly there because there was no legislation to curb that kind of behavior.

It was a very long time thereafter that any legislation was put in place. I can say that up to date, there is no legislation that curbs access to public funds without corresponding punitive steps being taken and that is why this spirit of corruption has prospered in this country. I can put my finger on two or three things that have contributed to this very strong force that is driving the harambee spirit. One is the wealth distribution in this country which portrays - and you can see it in the salaries of individuals in this country- that it is so diverse that you sometimes wonder whether one individual earning two Kshs2million and one earning Kshs200 live in the same country. This kind of distribution of resources exemplified by the salaries that are paid by this country, these differences in wages or earnings of people in this country obviously leads to the very skewed distribution of wealth. Therefore, the temptation of having to do illegal things comes in.

Secondly, the other contributor of this vile of misuse of contribution in this country is the way we plan and organize ourselves to use or misuse our greatest resource which is land. The level of hoarding of land in this country from the very beginning is perhaps one of those things that has contributed to these alienated individuals who feel that they have the knowhow to try and survive on land but the land has been alienated in a manner that they are denied it. Land is an asset that Kenyans can use, whether they have education or not, to grow wealth. Unfortunately, the use of land in this country is still one of those things that despite the very much know how we have, we are yet to put a finger on how to use it. In fact, the land policy in this country, if we have any at the moment, is a land policy that is leading this country to a dead end. We should not have expectations in this country, if we are continually going to sub-divide land into parcels that are unproductive. In fact, we are heading to hunger and starvation as a result of the policy that we know very well is not going to serve us well or any better in this country. We should address the issue of land.

Mr. Temporary Speaker, Sir, opportunities are sometimes given to us in this country to address these issues but we fail to seize the opportunity to do so. In 2007, we are all aware of the sad history that this country went through and many people were displaced from their land and became Internally Displaced Persons (IDPs). I thought we would have taken this opportunity, that we have people who are displaced, to place back in their land in a more organized way in a manner that they will benefit from the land.

There is so much pressure to settle people on one, three or five hectares of land, which is a bad policy. This policy is not going to lead anybody anywhere. I think that we would have used this opportunity that we have displaced people in our country and, in fact, not only those living in camps are calling themselves displaced but the sons and daughters of this country who are still living in their homes are calling themselves IDPs because they do not have land of their own.

Therefore, we are going to have the IDPs all the time. Perhaps, it is better now, that we take the opportunity to address the issue differently. I look at the IDPs that we have in this country and I think the way to go at the moment is to secure a 1000 acres of land for those 50 IDPs, give them the land as a communal land, let them get 10 or 20 acres, build themselves a school, a police station, a small market and leave the rest 999 acres of land to use for what land is for, it is a means of production, they can produce the food from that. That would have given us a living example of how best we can use land in our country so that we do not drive ourselves into this perpetual poverty where we are going to collect money by deceit from people in the name of harambee.

Mr. Temporary Speaker, Sir, there are other things we could have done to avoid driving ourselves into this position and these are all in the way we drive our policy. Let me give you an example of the health sector. We have, within a very short time driven ourselves by the way we spend the little money we have in curative health services. We have left what we would have saved and reduced our expenditure if our main policy was to drive primary health care. Currently, we are spending only 3 to 4 per cent of our money in the health sector. I believe all that money goes into curative services and, in fact, it is not adequate. But if we were to spend 5 per cent of our money in primary healthcare, we would have educated our people on how to live healthy lifestyles, how to eat healthy foods and how to detect some of the diseases early. In doing so, we would not be hustling with lifestyle medical health problems and it would have been much cheaper if we went into primary healthcare than into curative healthcare, which is now loading seriously on the budgets that we have in our country. That is, in fact, the reason why you cannot refuse attending most harambee functions because they touch us. These are harambees which are meant to help somebody who has suffered a heart attack or kidney failure to be rescued in some institution and they require that kind of money. This is what we have been reduced to. The only avenue we have is to do harambees. Had we, in fact, reinforced primary healthcare 10 or 15 years earlier, it is possible that those individuals would not be suffering from failing kidneys, heart attacks or heart failure. We would not be having all these problems had we taken that route. In fact, it is not too late to do that because it is the right thing to do now.

Mr. Temporary Speaker, Sir, I do not need to say much about this monster called corruption in this country. Corruption in the country is distorting everything that would have been done normally. It is now practiced in this country as a normal procedure or thing to do and this, perhaps, is where we probably need to spend a lot of our energies. This will help us build a society that can sustain and maintain itself without vulnerable individuals. Families or people in our communities suffer because of the effects of this proposed law. We are dealing with communities and we cannot legislate here that the communities shall not help each other or that they should not hold harambees. I am glad

that this Bill is not banning harambees; it is simply legislating on the best way we can assist each other with the resources that we have and lock out those fraudsters or people who use harambees for deception; those guys who enrich themselves through harambees by unfair means yet they do not deserve. This is why we want to pass this legislation and I support it because it is going to bring harambees into the open, in an organized manner. This Bill is going to legislate on the way we are going to access and assist the vulnerable members of our societies. It will also regulate how, in the future, we can distribute wealth so that we do not have to use harambees to assist the others. I am sure we can build our economy if we cut out some of these things. Once our society is rightfully endowed with its resources, they should legislate and even enhance this legislation so that we do not have to use harambees any more to sustain ourselves 50 or 70 years after Independence.

Mr. Temporary Speaker, Sir, I want to support this Bill and I believe very strongly that this is the correct position to take and this is the correct Bill to pass. It might not matter much what opinion others have, but if we legislate the way we collect money, we will simply be making ourselves accountable individuals at all levels of our society.

With those few remarks, I beg to support. Thank you.

Sen. Kisasa: Asante sana Bw. Spika wa Muda. Kusema kweli, kichwa kimeniuma mchana mzima. Mimi ninatoka katika Kaunti ya Kilifi na sipingi sheria hii. Lakini hata mtoto pia akizaliwa, atanyonyeshwa halafu utaangalia njia zingine za kumpa chakula kabla ya kuamua kuwa hautamnyonyesha tena. Tukiangalia wanyama vile vile, utaona kwamba hakuna mzazi anayemuacha mtoto wake mara moja. Nilivyosema kuwa natoka Kilifi, ni kwamba sisi huko hatuwezi kuishi bila ya *harambee*. Sipingi Hoja hii, lakini lazima tuangalie njia nyingine mbadala za kuwasaidia watu wetu kwenye sheria hii. Je, kutakuwa na hazina fulani ambayo wale ambao wako kwenye kaunti ambazo ziko chini kimaendeleo na ambazo zina udhaifu au unyonge wa fedha watafaidika nao?

Bw. Spika wa Muda, ninaona Sen. (Dr.) Khalwale ameamisha kichwa chake chini, lakini ninamwambia kwamba akiwa daktari, Kilifi, ataletewa vitelevisheni ambavyo vyote saa hizi vingekuwa vimezimwa; vitu ambavyo ni duni. Watu hawana hata hati miliki za ardhi za kuwawezesha kuziweka rehani na kusema kwamba “muache mgonjwa wangu akae hapa halafu kesho nitaleta pesa.” Hivyo basi, utajaziwa vitarakilishi na vyombo vyengine vya nyumbani ambavyo hivi sasa vingekuwa vimezimwa ilhali wewe kama daktari hata haujui utaviuza wapi kwa sababu hauwezi kuvichukua uvipekele mahali ili upate pesa ndio hospitali yako iendelee.

Bw. Spika wa Muda, hii ni sheria ya maana sana, lakini tukiangalia kwa makini, tumefundishwa vibaya kama Wakenya kuanzia zama za muanzilishi wa Taifa hili; hayati Mzee Jomo Kenyatta. *Harambee* ni moyo ambao umetufunza ya kuwa hakuna arusi wala matanga ya mtu mmoja. Ni lazima kijiji kizima kishiriki katika mambo haya. Lakini tukiangalia katika mkono wangu wa kushoto, utaona kuwa watu sasa wanajifanya hawajiwezi kabisa. Ukiangalia mazingira watu wanayofanyia kazi, utakuta kuwa lazima mtu atadanganya kuwa leo nimefiwa na babangu, mwaka ujao tena atasahau aseme amefiwa tena na babake, ilhali mwaka mwingine atasema amefiwa na babake tena. Sasa, utashangaa kuwa mtu huyu ana baba wangapi. Hapa tukiangalia, tutaona kwamba shida hii inayoitwa *harambee*, lazima kuwe na hazina fulani ambayo itaenda kule rizavu kuwasaidia wale wasiojiweza.

Bw. Spika wa Muda, twachangia watu ambao walikufa miaka mingi sana iliyopita, lakini utajuaje kwamba unaambiwa ukweli ama unadanganywa? Kwa mfano, ukienda matangani, Sen. (Prof.) Lesan ataenda huko, atatoa Kshs20,000 na hautaambiwa kuwa hizi fedha zipo. Sen. Kisasa naye akienda huko matangani, naye pia atatoa Kshs20,000 na hawatajali iwapo mimi ni Seneta aliyechaguliwa ama niliyeteuliwa. Sen. Wetangula naye pia akienda huko, atatoa Kshs20,000. Matanga yamekuwa ghali sana, na ukienda huko, hawatakwambia kuwa Seneta huyu ama yule ametoa pesa kiasi fulani.

Kwa hivyo, kuna shida kubwa sana kwa sababu Wakenya tumezoea uwongo mwingi na tumezoea kujirudisha chini. Hata ukiangalia arusi zetu, zinakuwa za kifahari hadi unashangaa yote haya ni ya kazi gani. Utaona pia katika matanga, mtu yuazikwa kana kwamba atatembea; yuavishwa viatu vya Kshs20,000. Kwa hivyo, tuko na shida kubwa. Kama vile wenzangu walivyosema hapo awali, utakuta ya kwamba ukionekana tu umefika, basi hii pesa ya matanga itabidi iongezwe na makadirio yake lazima yawe makubwa na yasiyoeleweka kabisa. Ndio maana nikasema kuwa Mswada huu umeniumiza roho sana kwa sababu sijui kama nitauunga mkono au nitaupinga. Lakini nikiukataa pia, itabidi labda watu wazikwe kama wanavyozikwa Waislamu; ukifa leo, basi, uzikwe leo leo. Hii ni mila yetu, hivyo basi, hatuwezi kusema “yatoshia; hatutaki tena kusaidiana.” Je, tukisema *Harambee* zifungiwe milango, tutaenda wapi sisi Wanakilifi ambao tumezoea kusaidiana?

Bw. Spika wa Muda, *Harambee* ni za kutokea jadi; je, hii jadi tutaikata vipi? Je, hii jadi tutaisemaje kuwa leo ni mwisho? Je, tutatafuta njia nyingine mbadala ya hii *Harambee*? Niko na maswali mengi sana kichwani mwangu, na ndio maana nikasema kwamba ni muhimu tutenge kiwango fulani cha pesa kwa sababu mazishi lazima yataendelea kuweko. Kimila, lazima tupeane michango; sijui nyinyi wenzetu mwafanyaje katika kaunti zingine? Sisi Wapwani, kimila, lazima tufanyiane mchango katika mazishi. Kwa hivyo, sijui tutafanyaje, ndipo nikafikiria upande mwingine. Je, tutasema tuwe na kiwango fulani---

The Temporary Speaker (Sen. Mositet): Sen. Mshenga, you are left with eight minutes. So, next time the House resumes, you can continue with your contribution.

ADJOURNMENT

The Temporary Speaker (Sen. Mositet): Hon. Senators, it is now time to interrupt the business of the Senate. The Senate, therefore, stands adjourned until Tuesday, 10th March, 2015, at 2.30 p.m.

The Senate rose at 6.30 p.m.