

# PARLIAMENT OF KENYA

## THE SENATE

## THE HANSARD

Wednesday, 11<sup>th</sup> March, 2015

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

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

### PRAYERS

### COMMUNICATIONS FROM THE CHAIR

#### VISITING DELEGATION FROM THE HOUSE OF COUNCILLORS, KINGDOM OF MOROCCO

**The Speaker** (Hon. Ethuro): Hon. Members, I have two communications to make. I will start with the first one.

Hon. Senators, I wish to acknowledge the distinguished presence of our friend and my colleague, H.E (Dr.) Mohamed Cheikh Biadillah, President of the House of Councillors of the Kingdom of Morocco and his delegation seated at the Speaker's Gallery.

The delegation comprises:-

1. His Excellency Abdelhamid Saadaoui, Head of Haraki Group, Popular Movement, Majority in the Congress; and,
2. His Excellency Mohamed Fouzi Benallal, Vice President, Parti Istiqlal, the Opposition.

They are accompanied by the following:-

- (i) His Excellency Abdelilah Benryane, Ambassador of the Kingdom of Morocco to Kenya;
- (ii) Mr. Omar Chiban, Staff, Morocco Parliament;
- (iii) Ms. Ghyslaine Derrous, Staff, Morocco Parliament.
- (iv) Mr. Abderrahim Cherrab, Political Counselor, Moroccan Embassy; and,
- (v) Mr. Mohamed Koursy, Journalist, Agency Morocco Press.

As Hon. Senators are aware, H.E (Dr.) Mohamed Cheikh Biadillah arrived in our country on Sunday, 8<sup>th</sup> March, 2015, for a four day official visit. The delegation has had a number of engagements so far, including a meeting with His Excellency the President of the Republic of Kenya, Hon. Uhuru Muigai Kenyatta. The delegation has as well had a meeting with the Speaker, the leadership of the Senate and the Senate Standing

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Committee on National Security and Foreign Relations as well as with the Speaker and the leadership of the National Assembly.

Hon. Senators, Kenya and Morocco have enjoyed long and cordial relations. We are beacons of hope, prosperity and democracy in our various regions of the continent, especially East Africa and the Maghreb, respectively. The two friendly countries are the top 10 fastest growing economies; with Kenya at position nine in Africa and Morocco at position five. I have no doubt in my mind that the visit will further entrench those links, friendship and development between our two countries and Parliaments for the mutual benefit of our people, and by extension, the African Community.

Hon. Senators, I wish to recall that I visited the Kingdom of Morocco in November last year accompanied by the Senate Minority Leader, Sen. Moses Wetangula and Sen. Paul Kimani Wamatangi on the sidelines of African Parliamentary Union (APU) Conference in Rabat. I met the Moroccan Prime Minister, H.E Abdelilah Benkirane during which time we discussed multiple issues focusing on how to strengthen the relations between our two countries and explored other areas of co-operation, including higher education in medical and engineering fields.

Hon. Senators, As I conclude, I wish to reiterate that the Senate of the Republic of Kenya will continue to foster and nurture closer links with the House of Councillors and the people of the Kingdom of Morocco in order to share experiences in addressing the challenges that confront us, as a bicameral Parliament, nations and Africa and together, I am certain, we shall overcome.

It now gives me great pleasure, on your behalf and on my own behalf, to extend a very special and warm welcome to our colleague and dear friend, H.E (Dr.) Mohamed Cheikh Biadillah, President of the House of Councillors of the Kingdom of Morocco, together with Members of his delegation and to wish them a happy and enjoyable stay in our great Republic of Kenya. I thank you.

*(Applause)*

VISITING DELEGATION OF THE PARLIAMENTARY COMMITTEE  
ON LOCAL GOVERNMENT AUTHORITIES OF TANZANIA

**The Speaker** (Hon. Ethuro): Hon. Senators, the second communication is to acknowledge the presence of a delegation of the Parliamentary Committee on Local Government Authorities of Tanzania.

Hon. Senators, I am pleased to acknowledge and welcome to the Senate this afternoon, a delegation from the Parliament of Tanzania which is seated at the Speaker's Gallery.

The delegation comprises Members of the Parliamentary Committee on Local Government Authorities. They are in Kenya on a study visit to benchmark on the role of Parliament in social security with a special focus on county governments.

I request Members of the delegation that when your name is called out you stand so that you may be acknowledged in our usual Kenyan tradition.

1. The Hon. John Paul Lwanji, MP, Vice Chairman/Head of Delegation;

2. The Hon. Rosweeter Faustine Kasikila, MP;
3. The Hon. Rashi Ali Abdallah, MP;
4. The Hon. Mkiwa Adam Kimwaga, MP;
5. The Hon. Moses Joseph Machali, MP;
6. The Hon. Asha Mohammed Omari, MP;
7. The Hon. Christopher Olonyikie Ole Sendeka, MP;
8. The Hon. Sabreena Hamza Sungura, MP;
9. The Hon. Conchesta Leonce Rwamlaza, MP;
10. Ms. Mwajuma Ndugu Ramadhani- Committee Clerk; and,
11. Mr. Valerian Mablangeti, Director of Operations at the Local Authorities Pension Fund in Tanzania.

Hon. Senators, I take this opportunity on behalf of the Senate and on my own behalf, to wish the delegation a successful visit in our country. I thank you.

*(Applause)*

*(Sen. Madzayo stood in his place)*

What is it, Chairman of the Committee on Labour and Social Welfare?

**Sen. Madzayo:** Asante sana, Bw. Spika. Nataka kutoa shukurani kwa Serikali ya Tanzania kwa kuwaruhusu Wabunge wa Bunge la Tanzania kufika hapa ili kujionea kile tunachofanya katika Seneti. Wabunge hao wanaongozwa na John Paul Wanji, ambaye ni Mbunge katika Bunge la Tanzania na Naibu Mwenyekiti wa Kamati ya Utawala wa Mikoa na Serikali ya Mitaa.

Bw. Spika wamekuja na kutuona sisi kama Kamati ya *Labour and Social Welfare*. Tumezungumza mambo ambayo yanaweza kutusaidia. Vile vile tumeweza kuelezana jinsi tunavyofanya kazi hapa na vile wao wanafanya kazi kule Tanzania. Tunataka kuwashukuru sana kwa ukarimu wao wa kufika hapa.

Jambo la mwisho ni kwamba wao pia wametualika na ikiwezekana baadhi ya Maseneta watatembelea nchi ya Tanzania.

**Sen. Hassan:** Mr. Speaker, Sir, I will speak in English language. Since my colleague, Sen. Madzayo from Kilifi where Kiswahili was also nurtured has congratulated the delegation from Tanzania, it will only be proper for us also to acknowledge the friendly relationship that we have had with Morocco. Many of us here have visited the Kingdom of Morocco. We have been extremely well treated during our visits to Morocco. We need to continue to foster that relationship, including our parliamentary exchanges. We need to build on the best practices as we nurture our African democracies and the destiny of our people.

We welcome the delegations from Morocco and Tanzania.

Thank you.

**Sen. (Dr.) Machage:** Bw. Spika tunafurahia sana ziara ya Wabunge ambao wamekuja kututembelea siku ya leo, hasa kutoka nchi ya Tanzania; moja ya nchi za Africa Mashariki na jirani wetu. Tunajivunia kuwa nanyi hapa na tutafurahi kuwatembelea tena siku za usoni.

Karibuni.

**The Speaker** (Hon. Ethuro): Naona Maseneta zaidi wanaomba kuongea. Ni nini tena, Sen. Hassan Omar Hassan?

**Sen. Hassan:** Jambo la nidhamu, Bw. Spika. Naona Maseneta wawili wanajaribu pia kuwaonyesha ndugu zetu Watanzania kwamba Kiswahili kimmelala hapa.

*(Laughter)*

**The Speaker** (Hon. Ethuro): Order, Sen. Hassan! Yes, Sen. Muriuki Karue.

**Sen. (Eng.) Muriuki:** Mr. Speaker, Sir, allow me to join my Chairman of the Committee on Labour and Social Welfare Committee in welcoming the delegation from Tanzania. They came to discuss a very important subject of retirement benefits for workers of the county governments. We have had very fruitful discussions. I believe that the deliberations will continue either by them coming back or us visiting them.

Thank you, Mr. Speaker, Sir.

**The Speaker** (Hon. Ethuro): Nitapeana nafasi tano za mwisho nikianza na Sen. Wamatangi, Sen. (Dr.) Zani, Sen. Elachi, Sen. Mutula Kilonzo Jnr. na Sen. Billow Kerrow.

**Sen. Wamatangi:** Mr. Speaker, Sir, I wish to take this opportunity to also welcome the Moroccan delegation. The relationship between our country and Morocco requires strengthening. We have had a strong relationship both in trade and diplomatic relations. This visit by the delegation from Morocco is an indication that this relationship will grow into greater heights. We are sure that most of us want to open more opportunities in Morocco.

I welcome them and also urge our Members and the entire country at large that when we have an opportunity, Morocco is a good place to go to.

*Karibuni sana.*

**Sen. (Dr.) Zani:** Thank you, Mr. Speaker, Sir. I wish to take this opportunity also to welcome both the delegations from Morocco and Tanzania. Indeed, it is a wonderful opportunity that we could have this visit by a delegation from Morocco; a delegation from Kenya having had a chance to go there. We can actually see what we have in common and what lessons we can learn from each other, especially as we continue to forge stronger bilateral relationships.

Mr. Speaker, Sir, both Kenya and Morocco have a lot in common in terms of certain sectors, specifically tourism and agriculture. Through the dialogue that we have had with this particular delegation, I am sure that we will find ways and means of improving and coming up with better skills in terms of agriculture. Irrigation has been a very strong point in Morocco, something that Kenya could learn. This sort of engagement should continue being enhanced.

Morocco has also had challenges in terms of security, terrorism and extremism. We have exchanged views in terms of how we can improve in these particular areas which are very key. Morocco has also been at the forefront in terms of solar energy. This is an area where we could also benefit. We have already benefited from the interaction that we have had with them.

Regarding the delegation from Tanzania, I wish our Standing Orders could allow us to mix Kiswahili and English languages. I will break them and say: “*Karibuni sana.*” We are very happy that you are our neighbours. We value you. I am sure that through the interaction we will share a lot. Let this friendship and partnership with both Tanzania and Morocco continue so that we can build one another.

Thank you, Mr. Speaker, Sir.

**Sen. Elachi:** Mr. Speaker, Sir, I also want to thank the Moroccan delegation and the Ambassador for giving his time during the four days they have been here. Indeed, when the Senators travelled to Morocco the Speaker of Morocco ensured that they met senior Government officials. We hope that as we build a legislative framework in a bicameral system, we shall benefit from the experience in Morocco.

We also know that Tanzania is trying to come up with a new Constitution. We hope that they will also learn from the lessons that we have learnt as Kenyans. As they consider the local authorities in Tanzania, they also need to learn more from the counties and see whether it is a model that they can borrow from. They can even make what we have now better. Currently, we are facing a few challenges, but they can improve on them.

I also want to thank Morocco for the trade that we have, especially on tea. If we work very well with Morocco we will strengthen bilateral trade that we have had for many years. They have supported us and we are there to support them. We want to also learn about how they are dealing with terrorism, so that we can protect our borders.

Thank you very much for coming. Send our greetings back to Morocco and Tanzania.

*(Sen. Mutula Kilonzo Jnr. interjected)*

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

What is it, Sen. Mutula Kilonzo Jnr?

**Sen. Mutula Kilonzo Jnr:** Mr. Speaker, Sir, for a minute I thought that Sen. Elachi was asking for votes. Right behind you is the future Senators and Members of National Assembly of Kenya, whom we have not recognized.

**The Speaker** (Hon. Ethuro): Order! Sen. Mutula Kilonzo Jnr.

**Sen. Mutula Kilonzo Jnr:** Mr. Speaker, Sir, allow me to join the rest of the Senators in congratulating the visiting delegation from Morocco. We have received a very nice coverage in our Fourth Estate in Nairobi. I want to tell the delegation from Tanzania, that the Bill by Sen. (Dr.) Zani on benefit sharing borrows greatly from what Tanzania is doing on tourism. That is the reason Tanzania is doing so well in tourism more than we are doing in Kenya. In fact, the people of Tanzania are benefiting directly from tourism.

**Sen. Billow.** Mr. Speaker, Sir, I want to add my voice in welcoming the delegations from Tanzania and Morocco to this House. I had the privilege to join you when you were hosting the delegation from Morocco. One thing that I have learnt is that, they are leaders, particularly in irrigation and energy. It is something that this country needs to learn from. It is amazing the things they have done with regard to agriculture,

particularly in irrigation - based agriculture and energy. It is an opportunity for us to learn from them. We welcome and thank them for the exchange of ideas.

**Sen. Kagwe:** Mr. Speaker, Sir, I also rise to salute the delegations from Morocco and Tanzania, particularly to welcome with special feelings those from the neighbourhood, that is Tanzania. I would like to tell them to do whatever they can do to use their influence in Parliament and in their country to fast-track the East African Community (EAC). They can use their influence in their country to overcome the few hurdles that are an impediment to the realization of the EAC. We want to see Kenyans, Tanzanians, Rwandese and Burundians moving freely. We want Tanzanians to move freely in Kenya or Rwanda and Kenyans to look for jobs in Tanzania freely. This is really the way forward. We wish to get to that destination as quickly as possible.

### PAPER LAID

#### REPORT ON THE HALF YEAR NATIONAL GOVERNMENT BUDGET IMPLEMENTATION 2014-2015

**Sen. Billow:** Mr. Speaker, Sir, I beg to lay the following paper on the Table:-  
Review Report of the 2014-2015 half year national Government Budget implementation.

*(Sen. Billow laid the document on the Table)*

### NOTICES OF MOTIONS

#### ISSUANCE OF IDENTITY CARDS TO ORPHANS AND VULNERABLE CHILDREN ON ATTAINING 18 YEARS OF AGE

**Sen. Elachi:** Mr. Speaker, Sir, I beg to give notice of the following Motions:-

THAT, cognizant to Article 12 of the Constitution guarantees a right of citizenship; noting that it is the right of every Kenyan attaining 18 years to register and be issued with a National Identity Card; further noting that the National Identity Card is at the core in determining the extent to which an individual enjoys his or her fundamental rights and freedoms; concerned that orphans and vulnerable children attaining the age of 18 years in the children homes have difficulties obtaining the National Identity Cards, the Senate urges the national Government to take remedial policy administrative and legislative measures to improve and expedite the process of registration for the National Identity Cards, especially for the orphans and vulnerable children who live in children's homes and have attained 18 years of age.

ESTABLISHMENT OF RESCUE CENTRES IN  
KENYAN EMBASSIES

THAT, aware that many Kenyans migrate out of the country for employment, especially as domestic workers; concerned that they have worked under deplorable conditions in those countries they go to; cognizant that this possess a great danger to them and their families; the Senate calls upon the national Government to establish rescue centres in all its embassies and missions abroad.

**COMMUNICATION FROM THE CHAIR**

RULING ON STATEMENT BY SEN. (DR.) KHALWALE:  
DELAY IN SUBMISSION OF REPORT ON ACCOUNTS  
OF COUNTY GOVERNMENTS FOR THE FINANCIAL  
YEAR 2013/2014

**The Speaker** (Hon. Ethuro): Hon. Senators, on 18<sup>th</sup> February, 2015, the Chairperson of the County Public Accounts and Investments Committee (CPAIC), Sen. (Dr.) Khalwale, rose to issue a Statement pursuant to Standing Order No.45(2)(a) on Senators' General Statement. It says:-

“A Senator may make a Statement on a county issue or on an issue of general topical concern.”

The substance of Sen. (Dr.) Khalwale's Statement was the delay by the Auditor-General to submit to Parliament, reports on accounts of county governments for the Financial Year 2013/2014. Pursuant to the provisions of Article 229(4)(a) of the Constitution as stated by the Senator in his Statement, the deadline for submission of the Report on the accounts of the national and county governments for the Financial Year 2013/2014 was December, 2014.

The Senator further observed that Article 229(8) of the Constitution provides that within three months after receiving an audit report, Parliament or the relevant county assembly shall debate and consider the report and take appropriate action.

Hon. Senators, in the course of giving his Statement, the Senator posed two questions which, ordinarily, under the Standing Orders, ought to have been raised substantively under the provisions of Standing Order No. 45(2)(b), which provides for a Statement to be sought from a Committee Chairperson. The Senator sought to find out-

(a) Whether the Speaker was aware that the National Assembly had passed a resolution to audit the entire Constitution of Kenya and that an amount of Kshs80 million had been earmarked for this exercise, which in his view, was a breach of the Constitution and whether there was anything the Sessional Committee on County Public Accounts and Investments could do so as not to be part of the breach of the Constitution.

(b) Whether Article 110(3) of the Constitution had been observed in respect of the Public Audit Bill (National Assembly Bill No.38 of 2014), which was before the National Assembly.

On 4<sup>th</sup> March, 2015, Sen. (Dr.) Khalwale made reference to the same matter of the delayed submission by the Auditor-General of the reports of the county governments.

Hon. Senators, from Sen. (Dr.) Khalwale's Statement, I have distilled the following three issues that require the directions of the Chair:-

(1) The alleged delay by the Auditor-General in submitting reports on the accounts of the county governments for Financial Year 2013/2014 and its implications on the constitutional provisions on the submission of the reports and impact on the work of the County Public Accounts and Investments Committee (CPAIC) and Parliament as a whole.

(2) The constitutionality or otherwise of the resolution by the National Assembly regarding an audit of the socio-economic impact of the Constitution of Kenya, 2010, and whether that resolution had diverted the attention of the Auditor-General resulting in the alleged delay in submission of the reports.

(3) Whether the provisions of Article 110(3) of the Constitution were observed in respect of the Public Audit Bill (National Assembly Bill No. 38 of 2014).

On the first matter, which is the alleged delay by the Auditor-General in submitting reports on the accounts of the county governments for Financial Year 2013/2014 and its implications on the constitutional provisions on the submission of the reports and impact of the delay on the work of the CPAIC and Parliament as a whole, Article 229 of the Constitution sets out the processes and timelines attendant to the audit process. In particular, Article 229(4) requires the Auditor-General to perform the auditing and reporting function within six months after the end of each financial year. Thus the Auditor-General is required to conclude the mandate under Article 229(4) by 30<sup>th</sup> December in each year.

Pursuant to Article 229(7), the mandate of the Auditor-General includes the submission of audit reports to Parliament or the relevant county assembly. Article 229(8) of the Constitution then requires Parliament or the relevant county assembly, within three months, to debate and consider the report and to take appropriate action.

Hon. Senators, the mandate of the Auditor-General, Parliament and the county assemblies is clearly stipulated in Article 229 of the Constitution and is subject to strict timelines. Sen. (Dr.) Khalwale alleged in his Statement that the audit reports on the accounts of the county governments for the Financial Year 2013/14 are yet to be submitted to the Senate. If, indeed, this is and continues to be the case, this is a matter of grave concern.

In terms of Article 229(7), the Auditor-General is required within the stipulated time to submit audit reports to Parliament, both the National Assembly and the Senate; and to the relevant county assemblies. This is a constitutional requirement, a solemn duty of the holder of the Office of the Auditor-General. Where such audit reports are not submitted to one or both of the Houses of Parliament or to a county assembly, such failure constitutes a breach of the Constitution and has serious ramifications on the effective execution by the relevant Houses of their oversight functions.

Hon. Senators, this is not the first time that Parliament has experienced a delay in the submission of critical documentation. Only recently in the last Parliament on 7<sup>th</sup> June, 2011, the then Speaker of the National Assembly, Hon. Kenneth Marende, was faced



with a similar matter relating to the late submission by the Cabinet Secretary responsible for Finance of the estimates of revenue and expenditure of the national Government which were submitted later than the period required under Article 221(1) of the Constitution. In ruling on the matter, the Speaker observed as follows, and I quote:-

“A delay in such a situation is highly regrettable and must be strenuously avoided. But if, despite every effort, it does occur, I think that the obligation at Article 3 of the Constitution on every person to respect, uphold and defend the Constitution would demand that the person responsible for the delay or other failure seizes every available means to repair and mitigate that delay or failure.”

In that matter, the Speaker noted that the delay in submitting the reports had been mitigated as the estimates had already been submitted.

Unfortunately, in the present case and without prejudice to other remedies that may be available to the Senate, it is clear the Auditor-General should move with haste to mitigate the unconstitutionality arising by ensuring that the audit reports are submitted to the Senate without further delay. Further, if this has not been done, the Auditor-General should similarly ensure that the audit reports are submitted to the Houses – the National Assembly and to the relevant County Assemblies. I, therefore, urge the CPAIC to remain vigilant in ensuring the observance of Article 229 of Constitution and of other relevant provisions of the Constitution and the law.

Hon. Senators, I shall now proceed to the second matter which is the constitutionality or otherwise of the resolution by the National Assembly regarding an audit of the socio-economic impact of the Constitution of Kenya, 2010, and whether that resolution had diverted the attention of the Auditor-General resulting in the alleged delay in submission of the reports.

On this matter, suffice it to say that a Legislature may make a resolution on any matter and, indeed, Legislatures will often make resolutions on all manner of issues. In addition, I am sure that Sen. (Dr.) Khalwale, who is a seasoned Member of Parliament would appreciate the status of such resolutions *vis-à-vis* the binding nature of legislation passed by Parliament.

That said, hon. Senators, in accordance with Standing Order 90(4) and (5) which generally do not allow the Senate to call to question the proceedings of the National Assembly, save by way of a substantive Motion, I shall say no more on this matter. Nonetheless, as to whether that resolution may have diverted the attention of the Auditor-General resulting in the alleged delay in submission of the reports, whatever actions the Auditor-General may be taking to implement the resolution of the National Assembly, such actions cannot override the constitutional mandate of the Auditor-General under Article 229 of the Constitution. The execution of that mandate is not optional, neither is it discretionary on the part of the Auditor General. He has no choice. The reports required must be submitted and the submission must be made within the required timelines.

Hon. Senators, the final matter is whether the provisions of Article 110(3) of the Constitution were observed in respect of the Public Audit Bill (National Assembly Bill No. 38 of 2014). This is a question of fact. The answer to the question is that the provisions of Article 110(3) of the Constitution were not observed.

Hon. Senators, I note that Sen. (Dr.) Khalwale also undertook to lay in the Senate, reports on the audit reports that the Committee had worked on before the injunctions issued by the courts. As the Senator observed, the work of the Committee has been interrupted by a process of the law. Consequently, the timelines stipulated in the Constitution would, for the duration of the injunctions, freeze and cease to run. At the appropriate time, the Committee would then discharge its mandate and to table its reports. But that does not stop you from interrogating them. However, it is apparent that the relationship between the arms of Government and, in particular, the Legislature and the Judiciary must be such that the actions of one arm do not impede another arm of Government in the execution of its mandate.

The prevailing injunctions issued by the courts have, unfortunately, in many respects stalled the execution of the mandate of the CPAIC. This further adversely affects the execution of the oversight mandate of the Senate as a whole under Article 96(3) of the Constitution. I, therefore, wish to call upon the Judiciary – and, indeed, any other arm of Government – to ensure that these matters are expeditiously heard and concluded so as to ensure that the Legislature discharges its constitutional mandate without any fetters because injunctions are supposed to be temporary, but they seem to be taking much longer than even the process of Parliament would have taken.

I thank you.

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

**Sen. (Dr.) Khalwale:** Mr. Speaker, Sir, I want to thank you for that good answer to my concerns. But noting that the Kenya National Audit Office (KENAO) is practically the expert arm of Parliament that enables us to do accurate oversight, I have further taken action and held a meeting with the Auditor-General. He has confirmed that the main reason he is unable to beat this deadline is because of insufficient funding. What are you doing as the Speaker of the Senate specifically, given that unless you have audited accounts, then this Senate cannot oversight the devolved governments? What are you doing given the expanded role of Parliament of participating in budget making, to ensure that the Auditor-General is sufficiently funded?

Mr. Speaker, Sir, the second clarification is on the matter of the Public Audit Bill. This Bill concerns counties and you know very well that this particular Bill has been ongoing in the National Assembly. In view of the fact that we know it concerns counties, what proactive action have you taken to ensure that we do not again come here to start crying that we are being bypassed and resort to going to court. What proactive action are you taking to ensure that Speaker Muturi does not breach the Constitution in so far as this Bill is concerned?

Thank you, Mr. Speaker, Sir.

**Sen. Kembi-Gitura:** Thank you, Mr. Speaker, Sir. I also want to thank you for that communication that you have made. I also want to thank Sen. (Dr.) Khalwale for raising the issue with you, which has made us get that answer.

My understanding of Article 229(4)(a), which is very clear on the timelines in which the audited accounts must be given, is very important because a lot of things are predicated upon it. One of them being under Article 203, which talks about audited accounts approved by the National Assembly. This would then mean that if there is a

delay from the Auditor-General in giving his report, it means that Parliament will take that much longer to approve the accounts which again, will mean that the money going to the counties is invariably affected. That is why I am very grateful to you for your answer also because not so long ago, the Office of the Controller of Budget or another research - I do not know who it is - came out with the ranking of the counties to talk about those who had consumed or the capacity with which some counties had used or utilized the money; referring to percentage utilized in development, *et cetera*. The audited accounts are so important because it is not just about how much a county has utilized for development, but how that development fund has been used. It is not enough to tell us that 40 per cent was used on development because the audits of the Auditor-General would tell us whether the money was utilized prudently or not.

Mr. Speaker, Sir, it was not sufficient for the Controller of Budget to rank counties because then that meant nothing because it did not tell us how that money was used; properly or not. It is very important that we pursue the communication that you have given us, dissect it and with the Committee headed by Sen. (Dr.) Khalwale, to enforce the issuance or making available of those audited accounts so that we can interrogate them for the benefit of the counties that we represent here.

Thank you, Mr. Speaker, Sir.

**The Speaker** (Hon. Ethuro): I can see that the requests are quite many, so we should make our interventions brief.

Proceed, Sen. (Prof.) Anyang'-Nyong'o.

**Sen. (Prof.) Anyang'-Nyong'o**: Thank you very much, Mr. Speaker, Sir, for giving me the opportunity to speak and for your communication from the Chair. I want to raise two issues which you could help us clarify. One, it is true that the Auditor-General has made statement before us, as a Committee and also in the Committee on Finance, Commerce and Budget, chaired by Sen. Billow indicating that his office is underfunded. I do not think that is enough.

Sen. (Dr.) Khalwale has requested you to state what you are going to do about it. However, I am not quite sure whether it is you who should be the prime mover of raising issues regarding the under financing of the Auditor-General's office or any other office of statutory nature dealing with finances. The issue is; can you give us direction - given that the Auditor-General has complained, and, indeed, the subject of his complaint is borne by the delay of these accounts - can you give us a direction on how to pursue this matter? How exactly should we, from now on, move to ensure that that office gets enough funding to do its work? Both the Committee on Finance, Commerce and Budget and our Committee is suffering from the fact that the Auditor-General is not fully funded. Therefore, he does not have the institutional capacity to carry out his work. That is the first question.

The second question puzzles me, and, maybe, this is the root of the matter. I am not quite sure whether the reports we are looking for are not already in the National Assembly, because Article 229(7) of the Constitution. It says:

“Audit reports shall be submitted to Parliament or the relevant county assembly.”

We know the relevant county assemblies, but Parliament is comprised of the two Houses, the Senate and the National Assembly. So, which Parliament should be the port of call for these reports once they are prepared by the Auditor-General; is it this House or the other House? Is it possible for us to ascertain whether these reports are in the National Assembly? We are here crying when work is being done elsewhere. We would like to be guided on this issue.

**Sen. Murkomen:** Mr. Speaker, Sir, thank you for your communication. I would also like to thank the Senator for Kakamega County for raising very important issues. It has come to our notice and we have had meetings with certain county assemblies; even today we had a meeting with some officials from county assemblies. If there is something that concerns me, it is the performance of independent offices *vis-a-vis* the legislature both at the national and county level. I do not know how your office will facilitate that because county assemblies are even coming up with ideas and suggestions that the Senate should facilitate or directly get auditors who will do forensic audit on behalf of county governments either because of inability of the Auditor-General's Office to do the job based on either human resources or otherwise. Sometimes they do not have faith in those who are working with independent offices closer to them. Going forward, is that something that is feasible? How shall we deal with matters of accountability, particularly when it comes to verification of information where the assembly is incapacitated on one hand, but on the other hand, it also needs to get necessary information to avoid pilferage of resources at the county level?

Mr. Speaker, Sir, I would like to thank you also for noting the importance of co-operation of other institutions. Going forward, I hope that we can get situations where the Judiciary can work with us so that we can unlock what our Committee of Finance, Commerce and Budget is doing, so that we can carry this country forward.

Mr. Speaker, Sir, lastly is to thank you for giving very important information and message. Going forward, we have a bigger role to do in this House in so far as oversight is concerned. If we can have an open session, through your good offices, with the Auditor-General, the Controller of Budget and all the Senators; like the ones we have had with other offices, then we can interrogate these issues one by one and have a final report that we can carry forward.

Thank you, Mr. Speaker, Sir.

**Sen. Hassan:** Thank you, Mr. Speaker, Sir for this opportunity. I also want to join other colleagues who have sent their appreciation for your communication. A violation of a stipulated provision of the Constitution should, in my assessment, attract a more severe sanction from this Senate. As Sen. Kembi-Gitura pointed out, this interferes with the entire planning systems that are laid out in the Constitution. Therefore, there will be delayed approval of reports and a delay in planning for the next cycle of county allocation of resources.

You talked about not prejudicing remedies available to this Senate. I will propose that either the Committee on Finance, Commerce and Budget or the Committee on County Public Accounts and Investments to explore further remedies that are available to this Senate or Parliament in totality. If this breach is not stalled by the time we are

implementing the Constitution, then this might have an adverse impact even on our own systems within the Senate and in Parliament generally.

Secondly, you have indicated that there was a breach of Article 110. I do recall that this Senate passed a resolution so that we pursue the constitutionality of all legislation that was passed in breach of Article 110 of the Constitution. It is important for this process to move forward so that we reassert the mandate of this Senate.

**Sen. Kagwe:** Thank you, Mr. Speaker, Sir. I also join my colleagues in thanking you and, indeed, Sen. (Dr.) Khalwale. This morning, we were discussing in the Finance, Commerce and Budget Committee about the petition in Kisumu. It then transpired that it will be very difficult to proceed with the petition on the aspect of finance. This is basically due to lack of audited accounts. There is also the issue of how long it will take. As I speak, we are still waiting for the Auditor-General to give us the Audit Report for Narok County following the petition that was brought here.

I believe that there is a way out of this. I do not believe that the way out of this is the Speaker's Office. The Speaker's Office is, perhaps, the lead office to guide us on what we should do. However, this issue is major because it relates to Article 96(3) of the Constitution where the Senate will not carry out its mandate. Consequently, I propose as a way forward, that in the budgeting process for the Senate, we have an audit support system and an audit support budget.

This morning, Sen. Wetangula, in his contribution, picked out the aspect of the fact that the Senate can hire private auditors to deal with matters of petitions. However, we can only do so if there is a budget aspect. That is number one.

Secondly, this is an area that we need to engage, not only Mr. Rotich in the Treasury, but also Hon. Mutava Musyimi of the Budget and Appropriations Committee of the National Assembly. It should be possible for us to engage the two with a view of influencing them or telling them how it is important for them to allocate sufficient funding to the Auditor-General's Office. By the end of the day, all these matters will be resolved when the Auditor-General has sufficient funding. If the solution is for the Auditor-General to have sufficient funding, then the process by which this should happen is something that the whole House should be involved in and not just the Speaker.

Thank you.

**Sen. Mutula Kilonzo Jnr.:** Thank you, Mr. Speaker, Sir. This issue is serious. Let me remind this House that the impeachment of Governor Wambora came out in the first report of the Auditor-General.

I want to say on the Floor of this House, that it is possible that the enemies of devolution and the "Al Capones" of corruption are sabotaging the Office of the Auditor-General so that we do not get these reports. The rumours about the Auditor-General are not in counties. It is possible that the people out there in the counties do not know about the Office of the Auditor-General. Therefore, deliberate sabotage of this office is happening so that we do not ask the most appropriate questions. The initial audit or what we call the transition audit, when Governors took over counties, before we split committees were already bad enough. By the time we deal with these issues, this Senate will be an undertaker of corruption and not a watchdog of misuse of public funds.

Mr. Speaker, Sir, I also want to agree with Sen. Murkomen that, probably, your communication did not have a direction in terms of timelines or the action we need to take. Lastly, your direct admission which is a confession that you were not consulted on Article 110(3)---

**The Speaker** (Hon. Ethuro): Order! I do not make any confessions!

**Sen. Mutula Kilonzo Jnr.:** Mr. Speaker, Sir, we call it a “confession” in law. Let me call it an admission.

**The Speaker** (Hon. Ethuro): For whatever sins I have, I pray directly to my God.

**Sen. Mutula Kilonzo Jnr.:** Mr. Speaker, Sir, again, on that issue, probably, your direction should, in a *kamukunji* or off-camera, find us a method of how that Bill will come to this Senate before it is passed at the National Assembly. We have waited for very long. We are always the ones who are given these documents late so that we appear to be “*Johnny come lately*” in the legislation process which should not happen.

**The Speaker** (Hon. Ethuro): I have several requests. So far, you have done well in terms of remaining within the two minutes. If anyone goes beyond that, I will cut him off. We have to be sure.

Sen. Billow, Sen. Elachi, Sen. Orenge, Sen. Muthama, Sen. Wetangula and Sen. ole Ndiema, you will contribute in that order.

**Sen. Billow:** Thank you, Mr. Speaker, Sir, for that useful statement. I will mention two things. One is the reality that corruption is significantly gaining ground in the counties. There is no doubt about that. There is a lot of concern that literally, in every county, there is massive corruption that is being reported by Members of County Assemblies, by the media, in the Auditor-General’s Reports, the Controller of Budget Reports and many other reports.

We had a meeting with the Auditor-General regarding this matter. The Auditor-General expressed, clearly, that he does not have sufficient resources to carry out this exercise. Why is this? This is because when he was dealing with the national Government, he had a budget of Kshs2.5 billion. When we added the 47 new governments, he got an extra Kshs100 million and his budget became Kshs2.6 billion. In the second year, he got another Kshs100 million. Therefore, in the Budget Policy that was approved here last week, we emphasized and recommended that the Government must increase more resources to the Auditor-General so that he can carry out his work effectively.

Yesterday, the National Assembly passed the policy statement. I do not know how much money they have allocated. However, I will be meeting hon. Mutava Musyimi to discuss exactly how much they gave. He promised that they would allocate more money to the Auditor-General in the Budget. I agree with what Sen. Kagwe said. This is a matter that, in fact, we need to engage the President on. The Budget should get to His Excellency the President because there is concern about inadequate resources.

With regard to Senators in the Budget Policy Statement that was discussed and adopted yesterday, there was---

**The Speaker** (Hon. Ethuro): Order! You have exceeded your brief and time limit.

**Sen. Elachi:** Thank you, Mr. Speaker, Sir. One of the things that we, as House, need to do is to ensure that three institutions that we have; the Commission on Revenue

Allocation (CRA), the Controller of Budget and the Auditor-General, work together. This is because when you look at what CRA is doing to this House, it is putting us into conflict with all the institutions, especially the county assemblies. Today we have to sit with the county assemblies and listen to the challenges they are facing in terms of the same issue of budgets. Every county has its own challenge. Each of them, has decided on how to swindle money, but in a manner that ensures that you either protect the office of the Controller of Budget or that of the Auditor-General. That is why we face a big challenge when we bring petitions to this House.

When you send members of the Auditor-General to go to the field, collect the data and bring it for analysis, you will find that we still have a challenge because even the communities cannot trust the same offices. We need to have a *Kamukunji* where we can ask candid questions such as “why it is that communities cannot trust your office within this county?” That is what we are also facing even in Narok. We sent the Controller of Budget. He had to release new staff members to go to Narok so that Narok can trust what will come out will be transparent. It is a serious issue and, indeed, the President must also intervene because the national Government and this country are ailing in corruption.

**Sen. Orenge:** Thank you, Mr. Speaker, Sir. Let me make a general point on this issue that is very important. Normally, we are put under pressure when it comes to the question of division and allocation of revenue. We play a very important role in so far as the division and allocation of revenue is concerned. However, we are not playing an effective role with regard to how that revenue is used or deployed by the counties. The success of the counties or the devolved system of government is not going to work out if we are just a purveyor of revenue, but we cannot oversight how that revenue is used.

Let me remind you that in the one party era, to ensure that this beast of corruption germinated in the system, the office of the Auditor-General was killed. Partly, by denying it security of tenure and by dividing it into two; that is when the problem started.

Mr. Speaker, Sir, in Article 229 of the Constitution, there are constitutional timelines that must be fulfilled. According to this Constitution, if you violate any provisions of this Constitution, even in relation to a timeline, action will be taken against you. We impeach governors on constitutional violations. If we are going to be made to violate the Constitution on account of some institution not playing its role, then I think that this project of devolution may fail and we will be blamed.

My suggestion would be that we have a *Kamukunji* and then have a discussion with the office of the Auditor-General and find out what the problems are.

**The Speaker** (Hon. Ethuro): Order! You have exceeded your two minutes.

**Sen. Muthama:** Mr. Speaker, Sir, first of all, let me appreciate the statement you have made and also remind my colleagues that in the Tenth Parliament, I served in the Public Accounts Committee (PAC). The issues we dealt with turned out to be those who misappropriated public funds are either senile, sick and cannot be pursued or they are dead. We came out with evidence on how public funds were squandered. Now, we are entering into that same situation because the accounts we are seeking here are for the year 2013/2014. We are heading to the 2014/2015 Financial Year and yet we have to verify how the funds were spent.

The Constitution is very clear. Going by what Sen. Kembi-Gitura said, Article 229(6) is very clear. It says:-

“An audit report shall confirm whether or not public money has been applied lawfully and in an effective way.”

It is wrong for the World Bank to come and give assessment on how the money was spent and how counties spent their percentage on development; the reason being that there is no report from the Auditor-General. It is also my kind request through the Chair, that the Auditor-General must issue a statement and tell the public that the assessment that was given by the World Bank – whether it was the Controller of Budget – was wrong and should not be considered by Kenyans. We are serious about this issue.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Speaker, Sir, this is a very serious matter. In fact, I would wish that you even allocated time for this Chamber to debate this important issue. The Constitution has been grossly violated. Article 229(4) says:-

“Within six months after the end of each financial year, the Auditor-General shall audit and report, in respect of that financial year, on – the accounts of the national and county governments.”

We are now entering the third year of devolution, we have sent billions of shillings to the counties and there has been no audit. Nobody knows whether this money has been utilized in accordance with Article 229(6) which states as follows:-

“An audited report shall confirm whether or not public money has been applied lawfully and in an effective way.”

Mr. Speaker, Sir, every time the Controller of Budget and the Auditor-General appear before any of our committees, the cry is that his office is completely understaffed, under-funded and incapacitated in every way. The Controller of Budget and Auditor-General are even now under threat with the little that they hold on. The Bill that you have mentioned in the National Assembly is whittling down the independence and capacity of the office of the Controller of Budget and the Auditor-General. If the timelines are clearly set, this House, as an oversight agency – like as any other Parliament - has worked with the Controller of Budget and the Auditor-General as the principal agents of oversight. In the absence of that, we cannot quite tell what is going on in the counties. That is why in every county, governors are now creating a new office called “Director of Special Programmes,” who is being given public funds to play the politics of the governor; to run everywhere, doing everything and anything with public funds.

It is good that you have come out clean and honest that you were not consulted on the Bill in the National Assembly. After you leave your Chair, we urge you to write a letter demanding that when that Bill is finalized by the National Assembly, it must be forwarded to us. It squarely concerns counties.

Lastly, I think we also need a House that oversights because I understand there is an audit of the Constitution going on. We should look at this Constitution and see whether we are going back to the bad old days that Sen. Muthama is referring to, where all audits are done long after money has been stolen, misappropriated by people who have left the country. All we are told is that ten years ago, somebody misappropriated



money. We cannot go this way because this is how we are setting up devolution for failure. We must be proactive and make sure that Kenyans are getting value for money.

Mr. Speaker, Sir, in many counties, *wananchi* are asking whether the money that we are sending to the counties is to buy four wheel drives and sirens and make noise around towns or to give women water, to build schools, create bursaries, bring health facilities and help *wananchi*.

Thank you.

**Sen. Ndiema:** Thank you, Mr. Speaker, Sir. We, as the Senate, are the protectors of counties. We do so through our oversight function, but without expert audit reports, this function cannot be performed. It is high time that the audit does not become an annual ritual so that it is only done after expenditure. There should be a continuous process of auditing. It should be a performance audit that the Auditor-General audits right from the time that the first batch of the money is released so that they are in touch.

There is also need for the Auditor-General to realize that he is now dealing with 48 county governments and not one Government as before. It is necessary that he decentralizes that function and assigns officers to specific counties. Part of the high expenditure in that office is used on paying allowances for officers to travel all the way to the counties to carry out audits. This is very high expenditure.

Mr. Speaker, Sir, we are also told that some of the reasons the Auditor-General is not performing is because some officers deliberately do not provide the documents or information. It is high time we looked at it to see to it that if there is any officer who fails to provide information then we must be---

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

**Sen. (Dr.) Machage:** Mr. Speaker, Sir, the problems and the situation of accounting in the country is in a pathetic situation, particularly when you look at the work of the Auditor-General. As Sen. Wetangula said, Section 229 of the Constitution has been breached. This is because we have not moved fast to amend the Public Finance Management Act (PMF) not only to regulate the functions of the Auditor-General, but to also prescribe penalties for his failure to act. That is the only way we will be able to manage the finances at the county level and be able to perform our oversight role.

Our Legal Department should look at the PMF Act and see how we can streamline it, especially so as to give lee way for the legislative part of the county government to handle its own monies. The problem we have now in the county government is the executive overburdening the assembly in the pretext of controlling money. So, you find that the Speaker and the county assembly do not have powers because money is controlled by the executive.

**Sen. Nabwala:** Thank you Mr. Speaker, Sir. I also want to thank you for that communication. The Senate under Article 96 has its mandate as oversight and legislation and allocation of money to the counties. That being our function, we must also be able to oversee how those funds are being used. As I speak, so many counties are having problems because of financial malpractices.

Today some MCAs from Kisumu County were having misunderstandings because they think that money is being misappropriated. In the absence of audited accounts, it is very difficult for this House to be able to determine what the problem is because we have

only heard from the MCAs' side. What can clear the air is if we have reports which are audited because this House must go by the facts as presented to us by the Controller of Budget.

Initially, these reports used to come very frequently, but when we started the County Public Accounts and Investments Committee headed by Sen. (Dr.) Khalwale, they have fizzled out. We do not know what is happening. We should make a follow up on this matter because without the audited reports or budgets, then it is very difficult for us to carry on with our oversight role.

**The Speaker** (Hon. Ethuro): Hon. Senators, your many interventions; almost 13 of them, just demonstrates the importance of this particular matter. That is why when Sen. (Dr.) Khalwale raised the matter, I gave it some thought because the primary function of a Legislature is oversight. Without that, we have no other business in town. Again, I cannot be the one to propose a Motion to that effect; that is your job. Mine is to deal with the matter that is brought to me. I will just respond to a few which I hope will capture the rest.

How do we ensure that the Attorney-General gets more money and how do we become proactive? Those are issues raised by Sen. (Dr.) Khalwale.

First I want to persuade Sen. (Dr.) Khalwale that it is not the office of the Speaker - I think the other Members have raised the same matter - to give more money. You have the power. As the Chairperson of the County Public Accounts and Investments Committee that is on a daily basis interacting with that office. It is you actually to be proactive the way you have done in seeking the Statement and find out from the Auditor-General - as you have done - what his needs are. Liaise with your colleagues, particularly the Chairperson of the Committee on Finance, Commerce and Budget. Approach even your counterparts in the National Assembly because budget making is not the sole duty of the Executive; Parliament actually participates.

Unfortunately in terms of the figures, we, as the Senate, are disadvantaged in the sense that power has been given to the National Assembly on our collective behalf. So, it is a matter for us to assess what the Auditor-General needs and we make representations as a House. We have started that process in terms of the Budget Policy Statement. I see from your own recommendation you say:-

“Although the report tabled before the National Assembly by the Budget and Appropriations Committee on 2015 Budget Policy Statement, as given on page 29, Kshs1 billion for enhancing county audit under the office of the Auditor-General.”

So, some progress is being made in that direction. However, it is important that we determine what is the actual quantum needed and then Parliament should be able to provide that money. This is not just a matter for the Senate. It will equally affect the National Assembly and the county assemblies. That is a proposal that both Houses should easily agree to without much ado.

What do we do to Article 110? I think Article 110(3) is an old beaten story. We have gone to the Supreme Court and made a resolution that every other Bill that goes out of that routing will meet the same consequences; that is so clear. I have said before, this is a democracy. We are not going to start fighting and grabbing things. Everybody knows

the consequences if we do not pursue a particular path. It is not for the Speaker or for the Senate, but for whoever is responsible; that should be dealt with.

Hon. Senators, as far as I am concerned, we have always done our bit in terms of communicating that information and that is why we have given you as much. Whoever ignores one House knows what will happen. Sen. (Prof.) Anyang'-Nyong'o, there is only one Parliament of the Republic of Kenya. However, for avoidance of doubt, there is only one national Parliament, which is defined under Article 93(1). It reads:-

“There is established a Parliament of Kenya, which shall consist of the National Assembly and the Senate.”

Article 1 of the Constitution gives us the same power in terms of Legislature as Parliament and the county assemblies. That is why you will find that in Article 229, the Auditor-General is required to give the reports to Parliament or to the relevant county assemblies. At the national level, our functions are clearly defined. Article 95 deals with the national accounts while Article 96 deals with county accounts. That is why we have Sen. (Dr.) Khalwale's led Committee to deal with county accounts. Then we have the Public Accounts Committee (PAC), in the National Assembly to deal with accounts of line Ministries. That is how we have done our division of labour. That mandate or division has never been contested, so far. It should remain that way, and it must go that way, whatever happens.

The source of that information is the same office of the Auditor-General. So, if that office does not produce the audits, it will affect the PAC of the National Assembly's, our County Public Accounts and Investments Committee and the Budget and Appropriations Committees of the county assemblies. So, we are talking about a matter affecting the entire legislatures in the Republic of Kenya at both levels of government. It is a serious matter that deserves the kind of attention that we are trying to give it.

I will treat the World Bank report as just your comment because I have mine and they are different. So, I do not want to make a determination. I do not think that we can stop any entity from making some analysis of a document. It might just be how we allocated resources. What you are requesting is for another entity to analyze those expenditures in an itemized manner. As far as I am concerned, it was World Bank report that was made. It may have challenges like any other, but it is a step in the right direction.

Regarding severe sanctions, other ideas of whether to get independent auditors, the need for the arms of Government to work together - and I had already said that audit support maybe extended by the Senate. We will look at the HANSARD for all your contributions and suggestions made. I think that they are very good in terms of engaging the offices and the House owning the entire process which is very evident now and then; engaging others in the same.

In conclusion, we should not as an oversight entity try to wish away any other institution. I have heard people talk about getting rid of the Commission on Revenue Allocation (CRA), if it is giving ceilings. Then what do we get after that? When the Controller of Budget makes a report; we want to get rid of that office. We cannot work like that as a country. If the Senate tells you to come to account; you say: “Get rid of the Senate.” When the National Assembly asks you to account, you say: “Get rid of the National Assembly.” That is not how we will proceed as a nation. We must allow each

and every institution to work. If it has challenges, all of us have a responsibility to help that institution to address those challenges.

Hon. Senators, you as the legislators will make the law. I have always been of the view that the Auditor-General being such an important office, there was wisdom in splitting the offices of the Controller of Budget and the Auditor-General. However, that split did not reach its logical conclusion. We should have actually made the office of the Auditor-General to be an office of Parliament, so that it still remains an independent office, but appropriates money through Parliament. We would not be dealing with this kind of issues because we are the consumers of what the Auditor-General does. They audit on our behalf for that accountability and oversight element; the constitutional obligation that we have. However, that is just my suggestion. It is up to you to look at an appropriate way of dealing with it.

I want to pay tribute to the office of the Auditor-General. Even at the times of the single party system in the Republic; all of us can confirm that, that office remained firm and steady. I have no reason to think otherwise even now. What they need, as Sen. Kagwe said, is money. Let us allocate them more resources and they will do the job.

Thank you.

Hon. Senators, today is Wednesday afternoon, and according to our resolutions which we should be faithful to, it is the day of voting. Since we have the requisite numbers and two issues at the Division level, I plead with you that we move on to that Order before we come back to Statements.

Next Order!

### 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 5.3. 2015)*

**The Speaker** (Hon. Ethuro): We are on Order No. 8 on the Order Paper. The Whips have not given me an indication of the number of Delegations. However, from my looking, it seems good. Let us give it two minutes to allow those who are outside to join us. Please, ring the Division Bell for two minutes.

*(The Division bell was rung)*

We will do the Division for Order Nos.8 and 9.

The Division Bell will ring for only two minutes.

The two minutes are over, close the door and draw the Bar.

The procedure would be such that we will read one Order, vote, we do not announce results, we go to the next Order, vote and then we will give the results at the same time.

*(Voting in progress)*

**The Speaker** (Hon. Ethuro): Order, Senators! Order, Sen. (Dr.) Khalwale. You had done the disappearing act. I would not even have recognised you. The whole idea is that you freeze the way you are. So, if you had maintained the original position---

*(Laughter)*

## **DIVISION**

### **ELECTRONIC VOTING**

*(Question that the Standing Committee on Legal Affairs and Human Rights initiates and prioritizes drafting of legislation within 90 days to provide for establishment of the independent commission to inquire into the boundaries of counties put and the Senate proceeded to vote by County Delegations)*

**AYES:** Sen. (Prof.) Anyang'-Nyong'o, Kisumu County; Sen. Billow, Mandera County; Sen. Chiaba, Lamu County; Sen. Elachi, Nairobi County; Sen. Haji, Garissa County; Sen. Hargura, Marsabit County; Sen. Hassan, Mombasa County; Sen. Kagwe, Nyeri County; Sen. Karaba, Kirinyaga County; Sen. Kivuti, Embu County; Sen. (Dr.) Kutu, Isiolo County; Sen. Leshore, Samburu County; Sen. (Prof.) Lonyangapuo, West

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Pokot County; Sen. M. Kajwang', Homa Bay County; Sen. (Dr.) Machage, Migori County; Sen. Madzayo, Kilifi County; Sen. Melly, Uasin Gishu; Sen. Mohamud, Wajir County; Sen. (Eng.) Muriuki, Nyandarua County; Sen. Murkomen, Elgeyo-Marakwet; Sen. Musila, Kitui County; Sen. Muthama, Machakos County; Sen. Mutula Kilonzo Jnr., Makueni County; Sen. Mwakulegwa, Taita-Taveta County; Sen. Ndiema, Trans Nzoia County; Sen. Obure, Kisii County; Sen. Orenge, Siaya County; Sen. Sang, Nandi County; Sen. Wetangula, Bungoma County; and, Sen. (Dr.) Zani, Kwale County.

**NOES:** Sen. (Dr.) Khalwale, Kakamega County.

**The Speaker** (Hon. Ethuro): Hon. Senators, the results of the Division are as follows:-

**AYES:** 30

**NOES:** 1

**ABSTENTIONS:** 0

The "Ayes" have it.

*(Question carried by 30 votes to 1)*

## BILL

### *Second Reading*

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

*(Sen. (Eng.) Muriuki on 4.12.2014)*

*(Resumption of Debate interrupted on 5.3.2015)*

## DIVISION

### ELECTRONIC VOTING

*(Question, that the Potato Produce and Marketing Bill  
(Senate Bill No. 22 of 2014) be read a second time put  
and the Senate proceeded to vote by County Delegations)*

**AYES:** Sen. (Prof.) Anyang'-Nyong'o, Kisumu County; Sen. Billow, Mandera County; Sen. Chiaba, Lamu County; Sen. Elachi, Nairobi County; Sen. Haji, Garissa County; Sen. Hargura, Marsabit County; Sen. Hassan, Mombasa County; Sen. Kagwe, Nyeri County; Sen. Karaba, Kirinyaga County; Sen. (Dr.) Khalwale, Kakamega County; Sen. Kivuti, Embu County; Sen. (Dr.) Kuti, Isiolo County; Sen. (Prof.) Lesan, Bomet County; Sen. Leshore, Samburu County; Sen. (Prof.) Lonyangapuo, West Pokot County; Sen. M. Kajwang', Homa Bay County; Sen. (Dr.) Machage, Migori County; Sen. Madzayo, Kilifi County; Sen. Melly, Uasin Gishu; Sen. Mohamud, Wajir County; Sen.

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(Eng.) Muriuki, Nyandarua County; Sen. Murkomen, Elgeyo-Marakwet; Sen. Musila, Kitui County; Sen. Muthama, Machakos County; Sen. Mutula Kilonzo Jnr., Makueni County; Sen. Mwakulegwa, Taita-Taveta County; Sen. Ndiema, Trans Nzoia County; Sen. Obure, Kisii County; Sen. Orenge, Siaya County; Sen. Sang, Nandi County; Sen. Wetangula, Bungoma County; and Sen. (Dr.) Zani, Kwale County.

**NOES:** Nil.

**The Speaker** (Hon. Ethuro): Hon. Senators, the results of the Division are as follows:-

**AYES:** 32

**NOES:** 0

**ABSTENTIONS:** 0

The "Ayes" have it.

*(Question carried by 32 votes to nil)*

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

### POINT OF ORDER

ALL SENATORS PRESENT DURING A  
DIVISION MUST REGISTER THEIR VOTE

**Sen. Hassan:** On a point of order, Mr. Speaker, Sir. You once ruled that for as long as you are in this House, you must either vote "yes", "no" or "abstain." However, if you look at the two Divisions, they do not tally. There is somebody who did not vote the first time. We need a consistency on what you had ruled. I want you to reaffirm your ruling that as long as one is in this Chamber, they shall either vote "yes," "no" or "abstain." This is because the two Divisions do not tally. One of the Division lists shows that there is a Senator who did not vote during the first Division.

*(Sen. (Prof.) Lesan spoke off record)*

**The Speaker** (Hon. Ethuro): Order! Sen. (Prof.) Lesan, guilty as guilty charged! This is real application of confession by Sen. Mutula Kilonzo Jnr.

**Sen. (Prof.) Lesan:** Mr. Speaker, Sir, I am the culprit who did not vote the first time because my card was unable to register my vote although I pressed it. However, I voted manually during the Second Division. That is why the figures are worrying Sen. Hassan.

**The Speaker** (Hon. Ethuro): Order, Senators. I just want to confirm that, indeed, Sen. Hassan is right on that assertion. It is not just a directive of the Chair, but a Standing Order. I did not quote the Standing Order itself. He has made the right application and interpretation. That is Standing Order No. 80(1) which states:-

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“No Senator shall be obliged to vote in a division, but those present and not voting shall either-

- (a) In the case of an electronic vote, press the “Abstain” button; or,
- (b) In the case of a roll call vote, record their abstention with the Clerk.

(2) It shall be disorderly conduct for a Senator to fail to record his or her abstention in a division.

(3) A Senator shall not vote on any question in which the Senator has a pecuniary interest.

(4) During division, Senators shall maintain order in the Senate and shall be in their designated seats and shall remain seated until the result is announced.”

That one is very important for me. All of them are important or else, they would not be here.

Having said so, firstly, I once appreciate the admission by Sen. (Prof.) Lesan that he might be culpable.

Secondly, you will remember that because some of you were excited about the outcome of the results on the vote which was combined with the second vote, we did not give enough time to allow those who wanted to approach the Table to do so. So, under those circumstances, it is understandable.

Next order!

Remove the Bars and open the Doors.

*(The Bars were removed and Doors opened)*

## STATEMENTS

**The Speaker** (Hon. Ethuro): We are back to statements. The Rules and Business Committee (RBC) made a decision this morning that statements should not exceed one hour. If you have more than one statement for today, we will only give you a chance to either request or respond to only one. So, if you have more than one on the Order Paper, you need to approach the Chair and prioritise the one for today. Sen. (Dr.) Khalwale has already done so. Therefore, this is applicable to everybody.

Order Members, these many points order after the Chair has ruled is very disturbing. What is it, Sen. (Prof.) Anyang’-Nyong’o?

**Sen. (Prof.) Anyang’-Nyong’o:** On a point of order, Mr. Speaker, Sir. It is now 4.15 p.m. and we have spent a lot of time on these preliminary issues. Noting that we have at least seven Motions and Bills in their Second Reading and there are many more queuing in the House Business Committee, would it be in order to postpone the statements and go straight to Order No. 10 and subsequent ones? We have too many things in our tray. This may even force us to propose that we sit on Wednesday mornings, so as to finish outstanding business before the House.

**The Speaker** (Hon. Ethuro): Order, Senator! First, I have already ruled on that.

Secondly, let me deal with your last bit. Of course, you know the procedure. We can always create more time if the business is that overwhelming.



Thirdly and more importantly for you, Sen. (Prof.) Anyang'-Nyong'o, I realise that Order No.10 may be related to you although you have not disclosed. You should have declared your interest on that. However, more importantly, even statements are assigned to certain Members. All the business before the House is important. I would rather even not to rush the Bills because part of this process is actually a process of debating, interrogating and raising issues. I do not think we have particular deadlines against them.

So, lets us proceed as I have ruled. We will take a maximum of one hour for statements and then we will proceed to the next business.

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

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

FAILURE BY GOVERNMENT TO MAKE  
REGULATIONS ON BASIC EDUCATION

**Sen. (Prof.) Lesan:** Mr. Temporary Speaker, Sir, pursuant to Standing Order No.45(2)(b), I wish to seek a Statement from the Chairperson of the Standing Committee on Education regarding the failure by the Government to make regulations, pursuant to Section 95(1)(a) of the Basic Education Act, 2013. In the Statement, the Chairperson should:-

(a) explain why the Cabinet Secretary for Education, Science and Technology has not made regulations to establish the national education boards and county education boards, pursuant to Section 95 (1) (a) of the Basic Education Act, 2013 to date;

(b) clarify if he is aware of the procurement and recruitment crisis facing schools due to lack of functional boards of management, occasioned by the Cabinet Secretary's failure to gazette the regulations and if so, state the measures being taken to address the matter; and,

(c) state if the Government could in the interim extend the life of the existing boards the second year running to enable the institutions to operate within a legally acceptable framework.

Thank you, Mr. Temporary Speaker, Sir.

**Sen. Karaba:** Mr. Temporary Speaker, Sir, I have heard that. I will table the Statement here in two weeks' time.

**The Temporary Speaker** (Sen. Murkomen): Is that okay, Sen. Lesan?

**Sen. (Prof.) Lesan:** Yes, Mr. Temporary Speaker, Sir.

**The Temporary Speaker** (Sen. Murkomen): It is so ordered.

Chairperson of the Committee on Education, it is your time to issue the Statement that was asked by Sen. (Dr.) Khalwale regarding University of Eldoret.

What is it, Sen. Musila?

**Sen. Musila:** I made a request to respond to Prof. Anyang'-Nyong'o earlier.

**The Temporary Speaker** (Sen. Murkomen): But you did not press the intervention button.

**Sen. Musila:** I beg your pardon.

**The Temporary Speaker** (Sen. Murkomen): Sen. Leshore, you are also requesting to speak.

**Sen. Leshore:** Mr. Temporary Speaker, Sir, I have two requests to make under Standing Order No.45(2)(b).

**The Temporary Speaker** (Sen. Murkomen): But the Speaker is not aware of that and yet, you are the most experienced Member. There is no way that I can help you because even the Chair's hands are tied.

**Sen. Leshore:** Mr. Temporary Speaker, Sir, I will make the requests tomorrow.

**The Temporary Speaker** (Sen. Murkomen): Okay, maybe tomorrow. Chairperson of the Committee on Education?

#### PREVAILING CHAOS AT THE UNIVERSITY OF ELDORET

**Sen. Karaba:** Mr. Temporary Speaker, Sir, I wish to give a Statement regarding the chaos at the University of Eldoret, triggered by an attempt by some local leaders to eject Prof. Teresa Akenga from office as the Vice-Chancellor of the University of Eldoret (UoE), as requested by Sen. (Dr.) Boni Khalwale. I wish to state as follows:-

On Thursday 25<sup>th</sup> February, 2015, the Committee unanimously agreed to probe the circumstances that led to the recent disturbances at the UoE, by visiting the university to interrogate the university's board of management. The probe took place from 26<sup>th</sup> to 28<sup>th</sup> February, 2015 in the UoE.

The Committee paid a courtesy call to the Uasin Gishu County Commissioner, Mr. Abdi Hassan and his security team where they briefed the Committee on a number of issues. The Committee then had a meeting with the Vice-Chancellor, Deputy Vice-Chancellors, Registrars, Dean of Students, Students Governing Council and the area chief. Finally, the Committee toured the students' hostels within and outside the university.

The Committee's findings are as follows:-

(1) The distribution of employees from the management board, Deans of Schools, senior management administration, other staff and chairpersons of various committees does not reflect regional balance. Only three major communities are represented, that is, from Rift Valley, Western and Nyanza regions.

(2) The University of Eldoret Council has not taken responsibility in the recruitment of the new staff, promotions, transfer and financial management. Instead, it has abdicated its duties to other actors.

(3) Although the recruitment and appointment of the Vice-Chancellor, Prof. Teresa was competitively carried out by the Cabinet Secretary, Ministry of Education, Science and Technology on the recommendations of the Council, in line with the Universities Act, the Vice-Chancellor has faced a lot of resistance from the local community, including the leaders who prefer a Vice-Chancellor from the locality.

(4) The 352 contractual workers taken over from Moi University when the university got its charter requested for permanent employment terms, but the university had not confirmed them yet due to financial constraints.

(5) The university has faced a lot of challenges in terms of infrastructure, lecture halls, hostels and office equipment which are inadequate. The available students' hostels are in deplorable conditions.

(6) The commencement of duty by Prof. ole Kiyapi to UoE by the Ministry of Education raised many questions among the lecturers at the UoE.

(7) The university faced a lot of challenges with a new system called Enterprise Resource Planning (ERP) that included inaccurate examination results and financial records.

(8) There was mistrust between the Vice-Chancellor, members of the management board and the University Senate due to lack of consultation.

Mr. Temporary Speaker, Sir, the Committee's recommendations are as follows

(1) The University Council must undertake drastic measures within six months to solve all issues currently facing the university and building harmony in the university, failure to which the Ministry of Education should take appropriate action and dissolve the Council.

(2) The University Council should reorganize the university's organizational structure from the management board members to subordinate staff to reflect regional balance.

(3) The Council should ensure that the composition of the university at all levels complies with the provision in the Constitution.

(4) The university council should take responsibility and ensure that members of staff are employed, promoted and transferred according to the laid down procedures and university's policy.

(5) The Ministry of Education to initiate a process to bring healing and harmony to the university and community.

(6) The Ministry of Education together with the Commission for University Education must undertake an immediate financial audit in the university to ensure prudent management of resources. The financial management should be reviewed in order to set out clear structures in terms of financial reporting and authorization of funds.

(7) The Government should enhance the budgetary allocation to enable the university to confirm the 352 contractual employees taken over from Moi University on permanent terms.

(8) The University Council should ensure that the management board is all inclusive and accommodate all members in decision making.

(9) The Vice Chancellor should move with speed to ensure that the members of staff have all the necessary technical and human resource support to improve their working conditions.

(10) The Vice Chancellor must move with speed to upgrade the ERP system for timely and accurate exam result and financial information.

(11) The Council should expeditiously mediate between the university management and the leadership of the county to solve any grievances that could hinder the smooth running of the institution.

(12) The Council should also review the university policy with regard to duties and responsibilities, Senate composition, sitting and quorum requirement during sittings.

(13)The leadership of the county government should embrace dialogue for smooth running of the university as a national institution for the professional university education in Kenya.

That is the executive summary of our Report. The Report is to be signed by the relevant bodies including myself for it to be authenticated and tabled.

**The Temporary Speaker** (Sen. Murkomen): Mr. Chairman can you clarify whether you have brought to the House a final report, an interim report or a summary? What do we have because you should be able to complete your answer?

**Sen. Karaba:** This is the executive summary of the Report. The Report is being compiled because we have had so many other reports coming and we will condense them together so that we table the Report.

**The Temporary Speaker** (Sen. Murkomen): I have several points of order on that. Sen. Obure, is it a further clarification or a point of order?

**Sen. Obure:** Mr. Temporary Speaker, Sir, I want to seek further clarification.

**The Temporary Speaker** (Sen. Murkomen): If that is the case, you can go ahead.

**Sen. Obure:** I just wanted to know from the Chairperson of the Committee, if he met any of the county leaders, including, for example, the governor, the local leadership or the Senator for the county and what their views regarding the state of affairs at the university are.

**The Temporary Speaker** (Sen. Murkomen): I have about six points of order and I will give all of you a chance. I want to give a chance to the people who are seeking further clarification and I will start with Sen. (Prof.) Lonyangapuo.

*(Loud Consultations)*

**Sen. (Prof.) Lonyangapuo:** Mr. Temporary Speaker, Sir, the Chairman has tabled this document which is not signed. That means it has not been digested by Members, so I do not know whether he can own this document or what is his intention for submitting it here before it is stamped.

**The Temporary Speaker** (Sen. Murkomen): Chair, you will take the three questions before you respond.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Temporary Speaker, Sir, we are faced by procedural difficulties. Ordinarily, when Statements are sought, they are sought from the Executive and the Chairs of Committees convey the requests and await the response from the Executive. The Speaker ruled that when those Statements come here, they must be signed by the Cabinet Secretaries themselves. Now, when this Statement was sought, the Committee embarked on a totally unprocedural conduct by deciding to visit the *situ* and holding meetings instead of letting the Ministry give them a response as the line Ministry incharge of this university. We are now told that this is an executive summary of yet another Statement. It is neither signed, initialed nor in any way authenticated as to who the authors are, or who takes responsibility. If indeed there is a Statement that this represents as an executive summary which the Chairman is calling a Report, then the procedure should be, the Report is tabled, accompanied by a Notice of Motion, then the Motion comes and we debate the Report. This is a deviation from

procedure and the Committee needs censorship from the House, for embarking on a totally different and unhelpful misadventure away from the norms of bringing Statements to this House.

Mr. Temporary Speaker, Sir, we want your direction before we seek any clarifications to what is not a Statement but a Report in a matter where a Statement and not a Report was sought.

**Sen. Orengo:** Mr. Temporary Speaker, Sir, I entirely agree with what the Senate Minority Leader has said but to compound this whole process is that the Chair said that they went and made a courtesy call to the County Commissioner. I do not know whether that was part of the proceedings, but it means that there must be a record of the meetings that they held, there must be minutes and those minutes must reflect the outcome of the Report that they have come up with. I think what the Senate Minority Leader is suggesting is the correct way to go. Let that Report be tabled and on the tabling of that Report, a Notice of Motion can be given and then we debate it. On the other hand, the difficulty was that if this Statement would have been handled through the Executive and what was of concern to the Senator for Kakamega, was the violence visited upon the Vice Chancellor. That is an issue that he completely ignored to deal with.

In the Constitution, the protection of life and limb is very critical and this Statement is wanting in that particular aspect of the Statement required by the Senator for Kakamega. First, he can table that Report so that we discuss it, but secondly, he must also respond in a form of a Statement to those specific requests which were made by the Senator for Kakamega. He went on a misadventure and we will be part of it but the original request has not been dealt with and we need to deal with that request going through the agencies that are established within the Executive who should have signed the Statement.

**The Temporary Speaker** (Sen. Murkomen): Sen. Kagwe, there are too many point of orders so take the shortest time possible.

**Sen. Kagwe:** Thank you, Mr. Temporary Speaker, Sir. We are faced with two different issues here; one of them has to do with what Sen. Wetangula raised and that is whether the Committee was exercising its adventures and other uncalled for activities when they visited Eldoret. That is incorrect because there was a ruling which was made here by the Speaker when that same matter arose; the HANSARD will correct me on this one. The ruling was that the Speaker or anybody else cannot direct how a Committee is supposed to come to whatever results, what action they need to take and what visits they can or cannot do. These are purely decisions that must be made by the Committee. As honorable Members, we respect the decisions made by those committees.

The second point, Mr. Temporary Speaker, Sir---

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

**Sen. Kagwe:** There is nothing wrong that can be passed by so many hon. Members; and so many hon. Members travelling to Eldoret cannot possibly be wrong; hon. Members are never wrong and they cannot be engaged in misadventures.

The second point, Mr. Temporary Speaker, Sir, has to do with this particular document that is with us here in the House. I would agree with those saying that since this document is not signed by the Cabinet Secretary (CS) concerned, I am aware that at

the Committee level, we have looked at very many documents and there are minutes for those meetings. Therefore, what I would propose as a way forward on this matter is that rather than virtually, metaphorically, kill the Chairperson of the Committee; rather than go through all that process, would I be in order to recommend or to ask you to give guidance as to whether the Chairperson can keep his summary, because it is not signed, seek what Sen. Wetangula has proposed and come back with a report that is signed? It is this report which we can then debate instead of going through many issues today of procedure and what might or might not have happened.

**The Temporary Speaker** (Sen. Murkomen): We will proceed in the following order; Sen. Mutula Kilonzo Jnr., Sen. (Dr.) Khalwale, Sen. (Dr.) Zani, Sen. Sang and then Sen. Wangari.

Proceed, Sen. Mutula Kilonzo Jnr.

**Sen. Mutula Kilonzo Jnr.:** Mr. Temporary Speaker, Sir, the Constitution – forget about the Standing Orders – the constitution is what gives us power as a Senate or as committees and it says what we should do and on what basis we should act. I sometimes think I say these things too much; but I think I should say it again. Article 125 is clear that when a Committee is acting, it should act as a court and, therefore, they should follow rules of evidence which require that a document must be signed if they are supported, *et cetera*. There is no other way to describe what the Chairperson has done today other than a flight of fancy, because it really does not meet any threshold; none; zero! Therefore, it is fair that we just set the record straight and forgive the Chairperson for his misadventures and flights of fancy.

Thank you, Mr. Temporary Speaker, Sir.

**Sen. (Dr.) Khalwale:** Thank you, Mr. Temporary Speaker, Sir. Indeed, like the Senate Minority Leader has said, I am so saddened because when I rose, there were issues of threats to the life of the Vice Chancellor and other senior officers at the university. There was also the matter of a senior public officer – in this case a Senator – misconducting himself, contrary to the provisions of Article 73 of the Constitution---

**The Temporary Speaker** (Sen. Murkomen): Order, Sen. (Dr.) Khalwale! Order! We are on a point of order on the procedure; we have not come to the stage of seeking clarification on the substance of the Statement that has been provided.

**Sen. (Dr.) Khalwale:** Thank you, Mr. Temporary Speaker, Sir.

**The Temporary Speaker** (Sen. Murkomen): Secondly, a Senator cannot misconduct himself.

**Sen. (Dr.) Khalwale:** Mr. Temporary Speaker, Sir, if you had given me time to conclude what I was saying, you would have seen that I am speaking to procedure. So, just allow me to---

**The Temporary Speaker** (Sen. Murkomen): Sen. (Dr.) Khalwale, just go straight to procedure so that we can come to clarifications, because---

**Sen. (Dr.) Khalwale:** Mr. Temporary Speaker, Sir, I cannot argue with the Chairperson, but I would also like the Chair to allow me to exercise the freedom of speech on the Floor of the Senate of the Republic of Kenya as provided for in the Constitution.

*(Laughter)*

**The Temporary Speaker** (Sen. Murkomen): Order, Sen. (Dr.) Khalwale!

Proceed, Sen. (Dr.) Zani.

**Sen. (Dr.) Khalwale:** On a point of order, Mr. Temporary Speaker, Sir. I have not spoken!

**The Temporary Speaker** (Sen. Murkomen): I thought you said you wanted to---

**Sen. (Dr.) Khalwale:** I want to speak!

**The Temporary Speaker** (Sen. Murkomen): Order, Sen. (Dr.) Khalwale!

Proceed, Sen. (Dr.) Zani.

**Sen. (Dr.) Zani:** Thank you, Mr. Temporary Speaker, Sir. I think a very good---

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

**The Temporary Speaker** (Sen. Murkomen): Order, Sen. (Dr.) Khalwale! If you want to make a request on a point of order, you know how to do it.

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

**Sen. (Dr.) Khalwale:** But, Mr. Temporary Speaker, Sir, I was already on my feet on a point of order and you were trying to guide me.

**The Temporary Speaker** (Sen. Murkomen): I have seen your request now; now sit down. I will come back to you.

Proceed, Sen. (Dr.) Zani.

**Sen. (Dr.) Zani:** Thank you, Mr. Temporary Speaker, Sir. I think it is very unfortunate that what the Committee on Education intended to do has ended up being misrepresented. One, when we set off for the so-called “misadventure,” it was on a very serious motion. This was a dynamic situation that had happened. Unlike many of the Statements that we seek on the Floor of this House regarding policy and *status quo*, a riot had taken place in a university and we did not know what the circumstances were. Sen. Mutula Kilonzo Jnr. is talking about evidence; and we collected evidence. We went to the university and decided to be dynamic. Once we were there, we interviewed very many people apart from the Vice Chancellor, the policy makers---

**The Temporary Speaker** (Sen. Murkomen): Sen. (Dr.) Zani, you are going to the substance. The question before the House in terms of point of order is whether we have a proper report; whether we can debate it; whether we have a Statement as requested and whether we have something to seek clarification on.

**Sen. (Dr.) Zani:** I think we have Statements because we have looked at the report. What needs to happen is for those Statements to be derived from the report; specifically Statements to answer the key questions that were asked within the House. But the answers for the questions that were sought are within that report.

**The Temporary Speaker** (Sen. Murkomen): Because we have remained with about 20 minutes for Statements, I want us to move a little bit faster.

Proceed, Sen. Sang.

**Sen. Sang:** Thank you, Mr. Temporary Speaker, Sir. I rise on a point of order. I think it is important to appreciate what the Committee did. However, in accordance with

the Standing Orders and as quoted by Sen. Wetangula, when you are seeking a Statement, you expect the answer to come from the CS. There is no harm in the Committee being proactive. But I think it is important for the Committee Chairperson to confirm to this House whether they actually sought a Statement from the CS. Beyond that, they decided, as a Committee, to do further inquiry and to visit the University; which, of course, then, the procedure would be different from what the Chairperson has done.

For the Statement from the CS, he should table the signed Statement from the CS himself. But for the other inquiries by the Committee on its own, then let them table the report and then go through the notice of Motion. I think we are interested in both outcomes; we would be keen to see what the CS says, but we also want to see what the Committee did in Eldoret.

So, Mr. Temporary Speaker, Sir, would I be in order to request that you give guidance that the two processes are undertaken concurrently?

**Sen. Wangari:** Mr. Temporary Speaker, Sir, I want to agree with Sen. Sang, because procedurally, I think the Chairperson is answering the right question but under the wrong header. If it was asked as a Statement, we would expect that we get a Statement from the CS. But if it is a report, it has to be presented to this House through a Motion which does not need the CS to sign it; it is actually to be owned by the Chairperson of the Committee. So, I pray that you direct that if it is a Statement, it comes through the proper channels and it is tabled the proper way. If it is a Motion to follow that Statement, then let us debate a report which is properly before the House.

**The Temporary Speaker** (Sen. Murkomen): Proceed, Sen. (Dr.) Khalwale.

**Sen. (Dr.) Khalwale:** Thank you very much, Mr. Temporary Speaker, Sir. I was trying to raise an issue of procedure; I will not go into the details. There were specific issues that I sought. Listening to the Chairperson of the Committee in his summary, he has completely ignored all the issues that we sought. You can see that there are issues of Prof. Kiyiapi and many other things. The Chairperson has actually then gone out to answer things that are not related to what I sought. So, I request the Chair to direct the Chairperson to table the entire answer from the Ministry so that when I go through, it, I can see whether my issues were also dealt with, after they dealt with the ones that he set up himself.

Finally, Mr. Temporary Speaker, Sir, and without prejudice, I would like to remind you that on such a sensitive issue, given the prejudicial statements that have been attributed to you earlier and elsewhere, do you think your conscience is clear as you try to preside on this very sensitive issue or should you not vacate the Chair so that a Speaker who has not been quoted elsewhere in the manner you have been quoted can then preside over these proceedings. Can you consider disqualifying yourself for this particular matter?

*(Laughter)*

**The Temporary Speaker** (Sen. Murkomen): Sen. (Dr.) Khalwale, reports elsewhere are not factual for this House; those are gossips. We do not quote newspapers, blogs or other things in this House. So, do not cast aspersions on the Chair, basically,



perhaps on things that you must have seen in some blogs being updated by idle people somewhere.

*(Laughter)*

Proceed, Sen. (Prof.) Lonyangapuo.

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

**Sen. (Prof.) Lonyangapuo:** Thank you, Mr. Temporary Speaker, Sir. I concur with all my colleagues. Is it in order or would I be in order to request that you direct that this document be withdrawn and be properly brought to the House at a later date when it has been owned by the Committee?

**The Temporary Speaker** (Sen. Murkomen): Are you done, Professor?

*(Sen. (Prof.) Lonyangapuo nodded in agreement)*

Yes, I think I heard you supported what Sen. Wetangula had said.

**An hon. Senator:** He said more than that.

**The Temporary Speaker** (Sen. Murkomen): You can repeat it, Sen. (Prof.) Lonyangapuo.

*(Laughter)*

**Sen. (Prof.) Lonyangapuo:** Mr. Temporary Speaker, Sir, I asked if I was in order to request you to order that this document be withdrawn and then be properly worked on and procedurally reintroduced at a later stage by the Committee?

**The Temporary Speaker** (Sen. Murkomen): Senate Minority Leader, again, please do it in one minute so that we proceed. We have five other statements to look into.

**The Senate Minority Leader** (Sen. Wetangula): Just one minute, Mr. Temporary Speaker, Sir. We would want to have the work of Committees made easy; but we also want the Chair to direct committees. It does not matter whether the Committee was acting in good faith or not; but procedure is procedure and when a Statement is requested for, the generosity of the Committee to bring us a Report instead of a Statement is unacceptable. Nobody is imputing *mala fides* on the Committee, but we are saying that they have done a good job badly; it is as simple as that. We would want the Chairperson to make sure the time of this House is not spent in a manner that we are spending it now, simply because a Committee has exceeded its mandate and gone out to bring a Report instead of a Statement.

**The Temporary Speaker** (Sen. Murkomen): Very well.

Order, hon. Senators! We have to proceed. Sorry, Sen. Ndiema, your request came a little bit late. First of all, I would like to point out that the relevant Standing Order on Statements---

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

Order, Sen. Madzayo! Please, sit down.  
Basically, the relevant Standing Order on Statements is Standing Order No. 45, which says in 45(2) (a) that;

“During Statements Hour- a Senator may make a Statement on a county issue or on an issue of general topical concern”.  
That is not the relevant one but;

b) “a Senator may request for a Statement from a committee chairperson relating to matters under the mandate of the Committee and the Speaker may appoint a day of the statement to be made or direct that the statement be issued on the same day;”

So, that relevant Standing Order does not say that if any person seeks a Statement from the Chairperson, the Chairperson must go and consult anyone else. There is nowhere it is written that you must go and see the Cabinet Secretary (CS) or any other public officer. But as a matter of practice, if you go ahead and seek that Statement - and that is what the Speaker ruled before – if you have to bring a Statement from the CS, it must be signed by that CS. But it is not mandatory that the Committee Chairperson answers that question by approaching a CS.

*(Sen. Wetangula spoke off record)*

**The Temporary Speaker** (Sen. Murkomen): Order, Senate Minority Leader.  
However, if the Committee decides that they must do a report, then the relevant Standing Order is Standing Order No. 203.

*(Sen. (Dr.) Khalwale laughed loudly)*

Order, Sen. (Dr.) Khalwale!

*(Laughter)*

Read Standing Order No. 203, which talks about reports of select Committees and it provides that:-

(1) “The report of a Select Committee shall be prepared and kept in the same form as the Votes and Proceedings of a Committee of the Whole and in such other form as may be prescribed in the Committee Manual.

(2) The report of a Select Committee having been adopted by a majority of the Senators shall be signed by the Chairperson on behalf of the Committee.

(3) If the Chairperson or the vice chairperson is absent or is not readily available, the Select Committee shall nominate another member of the Committee to sign the report.”

Then, part Standing Order No.203(4) says:-

(4) “A Select Committee shall adopt its report in a meeting attended by majority of its Members.”

You all know how Committee reports are adopted. Now, what we are unable to decipher from the hands of the Chairperson because the Chairperson has not come out clearly whether they decided to change the format and, therefore, come with a report--- From his answer, he says that, that is a summary of a report; which means, therefore, that it should have followed a format of a Select Report. By the way, hon. Senators, not all reports are debated. You can come up with a report, table it in the House and it is not debated. But because it was a report responding to a question from a Senator, which is then a property of the House, then the proper way would have been to follow the procedure of coming with the report, come up with a Notice of Motion; then later we have a Motion and then debate the report. But, if it is going to be a Statement, then it should be a Statement that is properly so signed - this one is not signed - it could be a Statement as a result of a Committee inquiring into the procedure and, therefore, there is no report. You could just have issued a Statement here without necessarily going through that because it is not a must that it comes signed from the CS.

Now, to make it clear for the Committee - because I can see there is confusion as to whether they were tabling a report or a Statement from the Chairperson - for them to extend and prepare a proper report-----

*(Loud consultations)*

I see what the Senate Minority Leader was trying to shout at me quietly here; I know many of you did not hear what he said about decisions of the Chair to be based on the Constitution, procedure, practices, usages and so on, and so forth. I am totally convinced that I am within the constitutional usages and procedures of Parliament. Therefore, I want to give the Committee another one week to take the right format; whether it is a report or a Statement. If it is a Statement, it should be properly signed by the Chairperson. If it is a statement that you have to seek from the CS, then it should be signed by that CS. Preferably, if you are convinced that it is a report that you collected information to answer on behalf of the Senate and the person who asked the question, then you should table a proper report which has evidence, as Sen. Mutula Kilonzo Jnr. said:- “the necessary documentary evidence” that demonstrates that you consulted the relevant persons to arrive at the answer that hon. Sen. (Dr.) Khalwale has requested. So, if Sen. (Dr.) Khalwale does not mind, I can order that the answer be prepared properly and delivered on Tuesday next week.

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

There are too many points of order.

It is so ordered. Can we proceed?

If there is a very quick clarification, which must be less than a minute---

Sen. Karaba, what are you trying saying?

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

**The Temporary Speaker** (Sen. Murkomen): Order, you are not the one to order but the one to oblige.

**Sen. Karaba:** Mr. Temporary Speaker, Sir, I oblige. Within a week's time, the statement will be ready.

**The Temporary Speaker** (Sen. Murkomen): Let me first listen to your interventions. I will give all of you less than a minute.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Temporary Speaker, Sir, this issue is very critical. The university is closed. Innocent children are suffering while others in other universities are going on with their education. We cannot wait longer than a day. If the Chairman is ready, which I believe he is, let us have the statement. Previously he has done a good job and we have praised him here. That seems to have gone into his head and he has forgotten that he should do a good job.

**The Temporary Speaker** (Sen. Murkomen): Order, Sen. Wetangula.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Temporary Speaker, Sir, I withdraw that.

**The Temporary Speaker** (Sen. Murkomen): What do you withdraw?

**The Senate Minority Leader** (Sen. Wetangula): Mr. Temporary Speaker, Sir, I withdraw the words "it has gone into his head."

**The Temporary Speaker** (Sen. Murkomen): Then you must apologise.

**The Senate Minority Leader** (Sen. Wetangula): He is my great friend. I have no problem tendering an apology to him.

**The Temporary Speaker** (Sen. Murkomen): Tender that apology to him.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Temporary Speaker, Sir, I withdraw and apologise.

We want the Chairman to appreciate, as we have correctly read in the Standing Orders that in trying to bring the statement, we also as a Senate expect a policy statement from the Executive on when the university will reopen and how they will tackle the problem. That cannot just be in the purview of the Committee. This has to come from the Executive and the line Ministry or the Cabinet Secretary who will help re-open the university. The issues they are talking about like dilapidated facilities among others are within the purview of the Executive.

You cannot talk about dissolving the council within six months if things are not resolved when the Executive is holding money that should be used to resolve the issues. Therefore, I want you to direct that the Chairman gets a response from the Ministry and brings a statement tomorrow afternoon. That is not asking for too much. The Ministry offices are close. They can walk there and bring the statement.

**Sen. Sang:** On a point of order, Mr. Temporary Speaker, Sir. The issue that Sen. Khalwale sought from the Chairman was specifically required from the Minister. However, we now know that the Committee engaged in some exercise to find out a few things about the University of Eldoret. Would I be in order to request that you give a direction that we get a statement from the Cabinet Secretary because it is important? We also have a report by the Committee which should be tabled through the normal channels. We should have both processes going on. That is crucial.

**Sen. Orengo:** On a point of order, Mr. Temporary Speaker, Sir. In making your statement, there is some confusion that is arising. That is why there is a problem in procedure. There is a difference between a Sessional Committee, a Standing Committee and a Select Committee. When you were giving your directions, you talked about a Select Committee which is quite a different animal from a Standing Committee.

A Standing Committee can give a statement within a day or two. However, a select committee is appointed for a very special purpose like the Select Committee that was appointed by Parliament to investigate into the murder of J.M Kariuki and others. That would be a select committee. If we proceed by giving my friend, Mr. Karaba, another week, then the whole idea of requesting for these statements will be undermined. Statements are required because of some urgency. That is why the Speaker may direct that the statement be given on the same day. Be that as it may, would it be in order for us to congratulate Mr. Karaba for doing a good job?

He has done extra work and he could lay the Report on the Table. However, with regard to the specific request made by the Senator for Kakamega, could the statement be brought tomorrow? Otherwise, it will lose meaning as it were.

**Sen. Kagwe:** Mr. Temporary Speaker, Sir, I appreciate the urgency as it has been well expressed by Sen. Orengo and Sen. Wetangula. However, it is also important for us to appreciate the practicalities of some of these things. As a Chairman of a Committee, I can tell you that it may be difficult to get a statement that is signed by a Cabinet Secretary. It is difficult to say that you will walk into a Cabinet Secretary's Office to get a statement signed when you do not know whether they are in or not. This is a question of balance between the urgency of the matter which is very clear to all Senators and the importance of coming up with something comprehensive, believable and real. Let us not ask Sen. Karaba to come and make a statement here tomorrow for the benefit of being hanged by this House due to the inadequacy of what he may bring. Let us instead give him the time that he has requested so that he can, on Tuesday, bring a statement that contains the two things; the questions as asked by Sen. Khalwale and the answers from the Minister.

I seek the indulgence of our Members.

**The Temporary Speaker** (Sen. Murkomen): Let me come to a very important issue. I would like to remind Sen. Orengo who was part of the team that revised the Standing Orders that all Standing Committees are Select Committees.

You should have been the one pointing out to me the relevant Standing Order. Standing Order No.208 says;

“There shall be Select Committees to be designated Standing Committees which shall be nominated by the Rules and Business Committee in consultation with parliamentary parties at the commencement of every Parliament.”

Therefore, all committees are Standing Committees even though others are Sessional. However, all of them are Standing Committees.

Secondly, I appreciate, even further, from the interventions of Members, that what Sen. Khalwale wants is a commitment from the Executive. That commitment cannot just come from the Chairperson. It has to come with a signed statement from the policy and

decision makers. This House wants to have a commitment that can be tracked and for the Executive to be held accountable.

Therefore, it is right to order that despite the fact that you did a very good job of working on a report which we are yet to see, I am sufficiently convinced that you need to come with a policy statement from the Ministry. For you to do that, then you must initiate a fresh process so as to get the statement. I have heard many Senators say that the university's closure was not part of the question by Sen. Khalwale. After he had asked the question, he later realised that the university had been closed. So, that was not part of the question that was asked. Be it as it may, from the Chair, I order two things.

One; that the Committee provides a properly signed report from the policy-makers, whether it is an independent commission or the Ministry responsible. Two, the Committee should go ahead to complete the Report and if they so wish, prepare it properly and have it signed so that they come with a Motion to the House so that we debate it. I have said if they so wish meaning that this will happen if a Member so wishes.

Unless a Member demands the report as it stands now - The request was for a Statement but if a Member wishes to say that the report be done in Moi University and so forth, that can be tabled in the House and we will be happy to debate the report. As at now, the request was for a Statement from the relevant decision and policy makers.

Chairman, the reason why I am unable to rule now is because I want to hear from you first. How long will it take you to bring a Statement?

**Sen. Karaba:** Mr. Temporary Speaker, Sir, earlier on, I had stated that this thing is wrong and required more time but some Members still insisted that it was going to take one day. It took us one day to come up with what we have come up with and that time was not even enough. I am still insisting that this is a very weighty matter and if we are not careful, it might lead to precedence to other universities. I am, therefore, requesting that even Tuesday will still be a short time. Give us up to Thursday next week.

**The Temporary Speaker** (Sen. Murkomen): Sen. (Dr.) Khalwale, what do you think about Thursday?

**Sen. (Dr.) Khalwale:** Mr. Temporary Speaker, Sir, the compromise here would be, since the Chairman had given a week and we are requesting that it is shortened, Tuesday next week will do.

**The Temporary Speaker** (Sen. Murkomen): The Chairman of the Committee is saying Thursday, the person requesting the Statement says Tuesday and the Chair says Wednesday next week and it so ordered. That is a proper middle ground.

There was a request by Sen. Musila. Sen. Madzayo, please respond.

#### STATUS OF CASH TRANSFER PROGRAMMES

**Sen. Madzayo:** Thank you, Mr. Temporary Speaker, Sir. I have gone through this Statement that I was supposed to give to the House. I noticed that there are quite a number of discrepancies and I would like to have a proper clarification. It is in that regard that I have had a slight discussion with Sen. Musila and I was going to request that I be given until next week to come up with a substantive response together with a duly authenticated list of beneficiaries of this cash transfer.

**The Temporary Speaker** (Sen. Murkomen): Did you say you do not have the Statement?

**Sen. Madzayo:** Mr. Temporary Speaker, Sir, it is unfortunate that as I was addressing you, you were busy consulting. I have already made that request. I said I need a bit of time until next week, probably Thursday. That is when I will be able to come up with a comprehensive answer. I have gone through the Statement and I have noticed that there are quite a number of discrepancies in the names of the beneficiaries and the constituencies involved. These names are not arranged in order. It is all mixed up. I would request until Thursday to come with a comprehensive answer. I have already discussed with Sen. Musila.

**Sen. Musila:** Mr. Temporary Speaker, Sir, indeed, the Chairman has come to me but when he came to me, he had to freeze because you were on your feet. Yesterday, the Chairman read a Statement ---

I am told that you are not listening but I think you are listening now.

**The Temporary Speaker** (Sen. Murkomen): Order, Sen. Musila! Are you comfortable with the one week or not? Why are you going to many stories?

**Sen. Musila:** Mr. Temporary Speaker, Sir, I am not and I am explaining why.

**The Temporary Speaker** (Sen. Murkomen): So, how long do you want, now that the Chairman does not have the report?

**Sen. Musila:** Mr. Temporary Speaker, Sir, give me time just as you have given others. I seek your indulgence. I was explaining that the distinguished Chairman read a Statement yesterday. The problem was that I had not been given a copy and he undertook to give me a copy, which he did. So, today it was just a matter of him re-reading, if possible, so that I can interrogate it. However, he has requested that we give him more time and I will graciously do that.

Allow me to point out two things. One, this Statement like that one of Sen. Karaba, is not from the Executive. It is actually written by the Chairman but it is not signed. So, if he is asking for more time, let him get more time and even get me a proper Statement signed by the Executive.

Second, I had sought that the Chairman gives the breakdown for the number of people receiving their benefits from each of the 47 counties. The Chairman did not attempt to do that.

Third, the list he has given of the recipients of the cash transfers from Kitui County, are not properly arranged. As I agree that we give him more time – I will give him as much time as he wants – would I be in order to ask that this time round, let us get the correct information that I have been seeking so that it can serve the purpose for which I was intending?

**Sen. Madzayo:** Thank you, Mr. Temporary Speaker, Sir. I have already indicated that I will give a comprehensive response to his inquiry. Therefore, I do not think I need further explanations from him.

**Sen. Musila:** Mr. Temporary Speaker, Sir, with a lot of respect to the distinguished Chairman, I am only pointing out that there is something missing in this document; a list of recipients of cash transfers, per county, with the populations indicated. It is not here and that is important for the House to appreciate.

Second, this list which he has provided for the recipients of Kitui County is not arranged in a manner that you can interrogate. It is mixed up in constituencies. I am humbly requesting the Chairman with a lot of respect, to look at what I requested for in the HANSARD and get the Executive to get me proper information. It would be of great interest to this House when this is done.

**The Temporary Speaker** (Sen. Murkomen): The Chairman of the Committee on Labour and Social Welfare, did you say you need one week?

**Sen. Madzayo:** Yes, Mr. Temporary Speaker, Sir.

**The Temporary Speaker** (Sen. Murkomen): Sen. Musila, if you may indulge the Chairman to get the comprehensive list that you want and I order that on Wednesday, he delivers the list so that it can be part of the report. I was here when the question was asked and many Members were interested across the many other counties. It is, therefore, important that that is done.

*(Loud consultations)*

Order, Senators!

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

**The Temporary Speaker** (Sen. Murkomen): In relation to what I have already ruled?

STATUS OF THE COUNTY GOVERNMENTS  
STAFF PENSION SCHEME

**Sen. Sang:** No. Mr. Temporary Speaker, Sir, I sought a Statement from the Committee on Labour and Social Welfare on the issue of county pension schemes. The Statement was due on 19<sup>th</sup> February, 2015, but the Chairperson has not given any indication on how far he has gone.

**Sen. Madzayo:** Mr. Temporary Speaker, Sir, I request that I be given until Tuesday next week. I have already received the Statement.

**The Temporary Speaker** (Sen. Murkomen): Okay, we do not want to waste more time. Sen. Sang has nodded in acceptance for Tuesday.

**Sen. Madzayo:** Mr. Temporary Speaker, Sir, why do you not want me to finish what I wanted to say?

**The Temporary Speaker** (Sen. Murkomen): It is because I am saving time. Once the other Member is not in contention for Tuesday, that is okay.

**Sen. Madzayo:** Mr. Temporary Speaker, Sir, I think everybody should be given a fair hearing. I should be given a chance to be heard. I was on my feet responding and you put me off.

Thank you, if that is the behaviour moving forward.

**The Temporary Speaker** (Sen. Murkomen): Sen. Madzayo, you have been asked a very simple question and you said that you be given up to Tuesday. I looked at Sen. Sang and he nodded. So, we better save time because this House has been spending a



longer time on issues that we should have gone to the substance. We are spending more time on straightforward issues. In fact, if you would have consulted with Sen. Sang, perhaps he would not even have asked that question here. He would have waited until Tuesday.

**Sen. (Dr.) Khalwale:** Mr. Temporary Speaker, Sir, according to the answer which he gave us yesterday, we had risen to seek further clarifications. Since this is a House of equity, for us to be satisfied that this Fund is going to all counties evenly, it would be useful that when the Chairperson comes, he should give us the population of people over 65 years old in each county---

**The Temporary Speaker** (Sen. Murkomen): Order, Sen. (Dr.) Khalwale. You are raising very important issues but you are proceeding on something that I ruled on a very long time ago. In fact, he was responding to something else. On the issue sought by the Senator for Kitui, we ruled a long time ago, but nothing will stop you from consulting with your colleague there.

**Sen. (Dr.) Khalwale:** Mr. Temporary Speaker, Sir, why do I get this feeling that you have a talent of reading minds?

**The Temporary Speaker** (Sen. Murkomen): It is because as soon as---

*(Laughter)*

Sen. (Dr.) Khalwale, you do not play with the Chair. Hon. Senators, there is a serious concern that has been raised by all Members that we spend more than four hours on Statements, sometimes arguing over small issues when Bills have been pending since September or October last year. If you see me moving that fast, it is because of that concern. The Rules and Business Committee (RBC) decided today that we should be spending an hour on Statements so that we can be able to proceed to prosecute the Bills.

If you look at the Order Paper, you will realize that there are Bills like The Mining Bill (National Assembly Bill No.8 of 2014) which is being awaited by the National Assembly for the final approval. We should actually, going forward, take more seriously matters of Bills, and designate specific time for Statements. Once someone has answered something, we should move forward. If I am sounding a little bit harsh today, it is because Sen. (Prof.) Anyang'-Nyong'o has pushed me to the wall.

Next Order!

## BILL

### *Second Reading*

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

*(Sen. (Prof.) Anyang'-Nyong'o on 5.3.2015)*

*(Resumption of Debate interrupted on 10.3.2015)*

**The Temporary Speaker** (Sen. Murkomen): There was no one on the Floor, so we can take fresh requests.

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): Thank you Mr. Temporary Speaker, Sir. I want to say at the outset that I strongly support the Bill that has been brought to this House under the sponsorship of Sen. (Prof.) Anyang'-Nyong'o, the Senator for Kisumu County. The spirit of public fundraising has been engrained in the life blood of our nation since we got Independence from Britain in 1963. One cannot over-emphasize how important public fundraising has been. Through public fundraising, we have built schools, hospitals and sponsored children some of whom have become adults and very responsible citizens. They have come back to this country and are now driving the economy of this country from various positions of responsibility in the public and private sector.

Through public fundraising and the spirit of harambee, this country has witnessed massive infrastructural development in terms of schools, dispensaries, cattle dips *et cetera*. Even as we speak about regulating this area, we are speaking about a phenomenon that has transformed our nation. I would say that almost every Kenyan has been touched with the impact of public fundraising. However, this phenomenon of public fundraising has had tremendous challenges and I believe the sponsor of this Bill is bringing this Bill, not to stifle a very worthy programme but to provide an answer to some of the pressing challenges that have informed the experience with public fundraising in Kenya for the last half a century.

Mr. Temporary Speaker, Sir, one of the biggest challenges in this area has been misappropriation of funds that are raised by the public to support worthy causes. There used to be anecdotes in the 1980s and 1990s that the issue of theft of funds collected through harambees had reached critical levels including stories of heads of institutions who would connive with the so-called donors and supporters of fundraising to raise money which would be shared among the same people who took part in that fundraising. For example, you donate Kshs50,000 to attract a few other people, most of whom would be unknowingly involved, you collect money and divide amongst the few people who have conspired to have this fundraising done. You would have millions of shillings collected, but you could not pinpoint a project which had been targeted for sponsorship through that fundraising. This was pure theft; criminal behaviour.

The other challenge has been the fact that public fundraisings have been turned into extortion processes. The greatest recipients of that extortionist behaviour have been political leaders. We have made it a culture in this country and erroneously the people who elected us believe that they elected us to do harambees as part of the job description of Members of Parliament or politicians generally.

Mr. Temporary speaker, Sir, every week across this country, in every village, you get about 10 to 20 fundraisers. Some of these fundraisers are worth our attention, contribution and participation. However, the overwhelming majority of these functions or events are nothing but an organized extortionist process to get money especially from politicians. It has now become common to find especially leaders' names being put in harambee cards. You get about ten cards bearing your name on the same day. You

wonder how on earth one person can manage to attend to ten events within one day. So, most of these things are done without us knowing. They know that the moment they include the name of an elected leader, he will be compelled to either come or send somebody.

It is rarely the case, that our people will sometimes ask where that person gets all this money. They saw that he was on the card of a such and such a church, school, dispensary and irrigation project in the same constituency, same county and same day, and you are expected to attend to all of them. This has put tremendous pressure on political leaders in this country. Some have even had to take bank loans to manage harambees. One of the fundamental differences between a legislator in Kenya and another in other countries is that in many parts of the world, a legislator is very accessible person.

It is very easy to access your Member of Parliament, Governor, Senator and Member of County Assembly (MCA) in Canada, Philippines and many parts of the world. It is not like here where it has become a bit difficult and challenging. I will explain why it is easy in other parts of the world to see one's representative than it is the case here in our country. The reason is simple; that in such countries, the public understands the role of legislators very carefully and appropriately, namely:-

(1) To represent the interest of the constituencies they represent, to fight for those interests and to lobby and push for those interests.

(2) To make laws and legislate on things that can transform the lives, businesses, property and interests of the people that they represent.

(3) To act as public watchdogs over the Executive.

That is the role of a legislator, period. So, the reason somebody would want to see their Member of Parliament in Canada or Belgium would be: Since they represent a community of farmers and the prices of dairy products are going down day by day, they believe that if Government reduces certain taxes on dairy products, either processed or semi-processed, they will be able to get better prices for their products and likely therefore to improve their economic wellbeing as a sector of dairy farmers. If that is the only reason that someone wanted to see you over, the legislator would be more than happy to meet those people even at night in a restaurant or anywhere else.

This is because of two reasons. One, the reason you are elected is to help these people achieve those objectives. Secondly, and more importantly, there is self interest in that because by helping me come up with legislation and policy interventions that help the general public, you are helping me to be a more effective leader and representative of the people.

Mr. Temporary Speaker, Sir, in our case here, 95 percent of Kenyans would want to see their Members of Parliament, Governors or MCAs, not about the state of infrastructure in the county, livestock farming, or the price of cereals. They want to see them, because they have taken a loan from bank "X", and they are unable to repay the loan. They want you to help them repay the loan either by organizing a harambee or getting the money from the pocket to help them repay a bank loan. That is total absurdity. How on earth, as philanthropic as one may be, how do they expect one person through

their salary or income to support all loan defaulters and pay maternity fees for every voter who needs maternity services? It is impossible.

Therefore, harambees have been abused. It has put a lot of pressure on politicians. It has actually been one of the biggest drivers of corruption in our nation. This is because the pressure that elected leaders go through to maintain and retain their seats is immense. People can just go crazy and lose their mind by the kind of pressure that is piled on you and your personal resources. I have heard it argued that to sort out this problem of too much pressure because of harambees, salaries of Members of Parliament should be increased. I differ with that approach. In fact, I dare say that even if the salaries of Members of Parliament, Senators and other elected leaders is multiplied by 100, that cannot be enough to sort out the demand for personal resources, especially through public fundraisings.

Mr. Temporary Speaker, Sir, in that connection, time has come for us to ask if this phenomenon of public fundraising is worth continuing with. I dare say it is a very worthy phenomenon. It is true that the majority of our people are poor and that small interventions by pooling resources together through the public can transform a village and location. If we can fundraise and have five children access higher education, tomorrow, there will be an engineer or medical doctor from that village. That can really help in uplifting that local community in the long-term. So, it is a very worthy thing that Kenya continues to have a system where appropriate, vetted, scrutinized and deserving cases are able to mobilise public resources for causes that are worthy.

One of the things that this Bill tries to do and which is highly commendable is to make sure that we know who is fundraising and why they are doing it. We also need to know, after the fundraising, how that money is spent. You cannot collect people's money, put it in some dark bag, disappear into thin air and you have no accountability to anybody. So, you must tell us: I raised Ksh3 million, I told you that we want to construct a social hall and two years down the line, we want to see how that money was spent and the social hall. Otherwise, it should be a criminal act.

I appreciate what the Senators have said; that we need to strengthen the penalty section in this Bill so that if you take people's money and divert it or misuse it, you should pay seriously because you are not only stealing from the public, just like bank robbers do, but you are blocking legitimate people who would have used fundraising as a worthy cause. There are always needy cases of dire medical emergencies which have to be taken care of by the society as we wait for universal health insurance scheme, which the Jubilee Government is working very hard on, to ensure by 2017 every Kenyan is able to access universal care. This will enable us stop fundraising for kidney patients to go to India, day in, day out.

Again, with pride, I reflect on the great efforts that were made by Sen. (Prof.) Anyang'-Nyong'o when he was the Minister for Medical Service alongside other Cabinet colleagues at that time to try and promote universal health insurance. That is a dream that the Jubilee Government has taken over. We are proud to be associated with something like this which can relieve the public from some of these burdens.

Mr. Temporary Speaker, Sir, education is another burden and as much as the Government is trying to do certain interventions to reduce the cost of education, as you

know, thanks to the NARC Government, from 2003, primary education has been free. The intention of the Jubilee Government is to ensure that by 2017/2018, public education in secondary schools is also free. We know it is a very challenging task involving a lot of resources but the Jubilee Government is prepared to remove that burden of education from the shoulders of many Kenyans. It will also reduce the incidences of leaders being required to be sponsors of every poor child within their counties or constituencies.

This Bill will go a long way in regularizing this. You cannot have an industry where people are collecting millions or billions of shillings but we do not know what it does. I am told that sometimes people collect money and buy land or share it out. Some even use a quarter of it. There are also other social amenities that you do not expect funding from the state. For example, faith-based infrastructure like churches, mosques, temples and other religious facilities like rehabilitation centres will continue to benefit from the spirit of fund-raising but then this phenomenon has to be regularized and be done in certain strictures; people have to be vetted, we need to know who is doing this and for what purpose. We must have accountability for funds raised from the public.

Mr. Temporary Speaker, Sir, I just want to say between now and the Committee stage of this Bill, I will make some suggestions. We must strengthen the penalty section. We must make it completely difficult for people to misuse the system. That way, you will protect *bona fide* and legitimate people, groups and institutions that want to use this system. We should make it difficult and harsh for anybody who misappropriates money taken from the public. They must be punished five times more than somebody who took money from one person. That is gross misconduct.

I am speaking now as a former professor of law; in criminal law, there is a distinction between somebody who commits a crime against one person and somebody who commits a crime against numerous people. There is a distinction in terms of the nature of charges and even penalties. If you kill one person, you are charged with murder but if you kill hundreds, thousands or millions of people, you are charged with crimes against humanity. All the consequences attached to those kinds of crimes are horrendous. We must make it difficult for people to use other people and the goodwill of leaders to waste people's time. Therefore, we must strengthen the offences section of this Bill. As I have said, I am willing to look at some suggestions that we can make.

Mr. Temporary Speaker, Sir, lastly, I want to say that the more important reason why Sen. (Prof.) Anyang'-Nyong'o is critical is because in the absence of legislation, the chances that this wonderful idea that was introduced in this country by our forefathers, the founding fathers of this nation, is going to fizzle out and leave out millions of our people in abject poverty. No amount of state intervention will be enough to remove and obviate completely the need for public fund-raising in the foreseeable future. Therefore, without legislation, you are endangering a very good cause. That is why we need this legislation.

I know somebody will say we are over-legislating on things that we should not legislate on. I want to say that this is the best we can do until we reach a point, and I do not see us reaching there soon because it is not easy to transform social software. You can transform Kenya's hardware very easily. You can transform it from a country where people are walking on cattle tracks or footpaths to a country with super-highways within

ten or twenty years, and we have seen that especially in the last ten years of NARC administration and going forward in this Jubilee Administration. Infrastructure which I call hardware can be transformed very easily but the software such as cultural and value system is very difficult to change.

The reason why we are over-legislating is because it has become impossible to change the way we see and do things unless there is a law. Take the example of our efforts to rid this country of the vice of corruption; we have enacted numerous laws and come up with numerous institutions and even fund them but people are still stealing public funds as we speak; people are still being dragged to court. Some people would argue that it is not the law we need but it is the value system, that is, the way people appreciate some of these vices in terms of their consequences.

In some cultures, they do not even have an anti-corruption commission or an anti-corruption law but when the people are caught stealing public money, they are so embarrassed that they either resign from public office by themselves or they commit suicide. My argument is this; it is true that regulating fundraising may not help us solve all the challenges associated with the misuse of this system but given our society and the nature of the value system we have in our society, that is the only way we can get somewhere with this thing. Even corruption continues to straddle the fabric of our nation but at least, there is some restraint which has been brought by enacting the relevant anti-corruption legislation although there is still a long way to go.

Mr. Temporary Speaker, Sir, I fully support this Bill and fully support the strengthening of the penal system in this Bill to make sure we allow harambees to people or institutions that require the support of the public to advance causes that are worthy to our national development.

With those few remarks, I beg to support.

**Sen. Kagwe:** Mr. Temporary Speaker, Sir, from the outset, I support this Bill. In fact, it has been long overdue. If you can recall, in 2012, there was an amendment when the Elections Act was put together. Then, there was the Statute Law (Miscellaneous Amendment) Act in 2012 where the Elections Act was amended so that anybody who is participating in an election would not hold a harambee eight months prior to the election date.

Mr. Temporary Speaker, Sir, you saw for yourself in the last elections how important and powerful that particular amendment was; in terms of bringing together issue-based competition during elections rather than simply pouring of money across the constituencies. Part of the Bill, in my opinion, should include extension of that particular miscellaneous amendment to provide that once elected, an individual should not participate in harambees because this causes a lot of abuses. The first abuse is by those who participate in harambees. The question that arises is; where does the money come from?

Mr. Temporary Speaker, Sir, when an individual goes to a function and we know that his payslip, because we have got pay slips here in the Senate, reads Kshs100,000 and the individual goes on to contribute Kshs600,000 as if he is a tycoon like Sen. (Prof.) Anyang'-Nyong'o, where is that person assumed to have got money from? Where do you get that money from?

Mr. Temporary Speaker, Sir, I am a businessman. I know that after making Kshs600,000, it is very difficult to give it to somebody. However, if somebody gave me Kshs600,000 to come here and make a statement about them, I would not have earned the money. Therefore, it would not pain me and I would give it. So, the first question to be asked about abuse of raising funds is; where does the person who is giving out the money get it from? This should be explained clearly.

Mr. Temporary Speaker, Sir, there is a parastatal called the Kenya Revenue Authority (KRA). The KRA carries out appraisals about an individual's potential tax payment. I propose that the Bill includes a provision that when you contribute Kshs1 million, that must be reflected in your income tax assessment so that you show where the Kshs1 million came from. If you do not know the tax on KShs1 million, it is approximately Kshs300,000. Therefore, you should give Kshs1 million to the harambee and Kshs300,000 as tax because that is income. Otherwise, where did you get the money from? If you can explain where the money came from and show that the money came from donations by individuals who paid taxes, then, perhaps, that would exempt you within the Act. However, people must explain where they get money from.

The second thing, Mr. Temporary Speaker, Sir, is that as Sen. (Prof.) Kindiki has ably demonstrated, politicians have literally become hostages. You have seen for yourself in this House the circulation of all manner of cards to raise money for building cattle dips and all manner of things. Neither the Senators nor the Members of the National Assembly were elected to build cattle dips. That is why we have the Constituencies Development Fund (CDF), and I support the idea of having some money put aside. Whether through the same system that we have today or in an abbreviated or more accommodating system, we must have that kind of kitty so that, that money can go to those sorts of things. Instead of debating a serious matter like this, you will find Senators out there trying to beg and borrow money from people who will then hold them hostage tomorrow in legislative terms.

The advent of county governance – the election of governors, Senators and so on – creates even a bigger problem. This is because when you are the Senator for Kisumu or Senator for Turkana, for example, how can you be invited by every church in the entire county? Nyeri County has 3,000 churches. How in God's name will I attend every single church in Nyeri County? Whom do they pray to in those churches? It is impossible yet if you attend only two, the rest would say: "So, he can only go to that Catholic Church and not the Seventh Day Church! So, he will only attend that PCEA Church and not attend our PCEA Church, which is on the other side of the county." You will find yourself in an extremely difficult situation, which is unnecessary if you ask me.

Mr. Temporary Speaker, Sir, if you want to make a contribution, so that it is not part of corruption, why do you not do so anonymously? We have been contributing to children going to school and in all manner of fundraisings. Why do you not do so anonymously? The abuse comes because I am expected to go to the church or out there to start counting Kshs1000 after another for impact, so that if I have Kshs100,000, then the congregation can clap for me 100,000 times. You will then realize that actually it does not count a cent even if you contribute in those harambees. At least, that is what I would

like to educate the newer members in the political arena. It does not make that much difference.

Mr. Temporary Speaker, Sir, the issue is then compounded by those seeking support. The flipside of corruption is by those who are seeking the harambees. The Bill must answer the following very simple questions:-

- (a) Is the harambee necessary?
- (b) Who is carrying out this harambee?
- (c) How able is the person who is seeking for funding?

For example, I am sure that all elected people have seen cases where a man will drive a BMW right in front of your house and present you with a form for you to attend a harambee to raise Kshs25,000 for his child's secondary school fees; money that is less than the cost of one tyre of his BMW. That is not only an abuse of me, as an individual, but also the system. That is money that is taken away from people who are very deserving. A case of a child who scored 400 marks and has been admitted to Alliance High School but cannot join the school is deserving, especially if the parents are poor. But where the parents are not poor, why would we allow them to subject Members of Parliament and the business community to such abuse just out of selfishness?

We did not know harambee because they are pretty recent and they were poor people. They used to wear shoes that would go so high in terms of the shoe finishing that they would look for firestone tyres, so that they can fix the edge of the shoe so that they can continue using the same shoe. These days, you do not need to do that, you can wear ballet shoes and go for an harambee because other people can finance your children even when you have money. This is what the Bill should address. There are deserving cases that we should continue helping but there are people who must not beg.

Mr. Temporary Speaker, Sir, you know that begging is not something positive. It is actually negative but it has reached to the point where in this country- and it is the politicians who have made it like this - where we are proud of begging. We beg as a last resort because you must. These days, people beg for anything. We have people begging so that they can do a hairdo they say "send me some money so that I can do my hair". It is getting to a point where it is simply not tenable.

I want to very quickly say just one or two other things. First, we should seek for a way through the Bill of involving corporations in fundraising effort in the country, particularly, when it comes to public primary and secondary schools and public institutions that are of benefit to the public. The definition of a public institution is not one that is necessarily used by the public but one that is owned by the public. So that if my company contributes to Kehata Primary School, the money that I contribute from my company should be tax allowable, so that corporations can feel the need to participate in society in terms of their Corporate Social Responsibility (CSR).

This is very important because this is the practice in the United States of America (USA). If you contribute to an area like that, the contribution is tax-exempted. We must look for a way of ensuring that we start involving corporations, so that we can minimize the amount of participation by individuals in the area of fundraising. We cannot ban fundraising but we can certainly control the manner in which we do it. The idea is to bring discipline in an area that is clearly filled with indiscipline. The idea is to change



and move into a culture where you only ask the public to support you when you must and when it is absolutely and totally necessary.

We have reached to a situation where legislators do not even respond to telephone calls because you fear picking up a phone; you think the person on the phone is looking for money and then the public complains that legislators do not pick phones. They do not pick phones because there is no value you are adding. It is just making the legislator poorer like a church mouse. In the church, there is nothing to eat, legislators these days are as poor as church mice, there is nothing to get from them; they have nothing. Therefore, I am proposing that there must be a good reason where an individual is allowed to raise funds.

Finally, as a nation, we must move swiftly to that point where individuals need not to come begging for money especially for worthy causes such as students who have passed exams. It should be the Government's responsibility to ensure that individuals who have passed examinations well in a school should automatically go to the school that has called them notwithstanding their social background. If the situation that exists today is the one that existed during our times, there are many Senators who would not have been here because they would never have been educated.

We must make it mandatory that a child can never miss a school because of the fact that the father is poor or the family cannot afford it.

We cannot depend on harambees to take that effect in society; that effect can only come from a situation where the Government takes responsibility and we ensure that those children go to school.

Therefore, Mr. Temporary Speaker, Sir, it is moving more towards social responsibility for those who are able as a nation. It was John Locke, the English writer, who said that the most able must provide the least requirements for the least able. This was the case then during his time, it is the case today and it will be the case tomorrow. But the amalgamation of that money so that it moves from the rich to the poor is not an exercise for a legislator; it is an exercise for the Government because they collect taxes from those who are wealthy and pass on services to those who are poor. That is why there is a Government. If we cannot do that, then there would be no purpose for a Government to exist. Therefore, since we have a Government – and I believe that the Jubilee Government is willing and able – then we must put into practice what we have promised the people.

Mr. Temporary Speaker, Sir, I just want to finalize by saying that the many committees that---

**The Temporary Speaker** (Sen. Murkomen): Your time is up, Sen. Kagwe; but I can add you three more minutes.

**Sen. Kagwe:** Thank you very much, Mr. Temporary Speaker, Sir, for that gesture because I would like the Mover of the Bill – the very able Professor – to consider this final point.

The Bill proposes numerous committees and, in fact, it creates many centres that are necessarily going to be funded whether by the national Government or by the county administrations. I propose that those committees be eliminated because we will just be creating other centres of corruption. People will go to one of the offices that the Senator

has proposed, for example, in Nyeri County and then pay those people money so that they can approve that I do a harambee. The Office of the Ombudsman is quite able to say that you clearly need to do a harambee for your child and, here you are, you have been authorized to do so.

Therefore, I propose that we do away with these committees; we do not need them and we should remove them from the Bill. So, I hope that in the Committee of the Whole, the Mover will either, one, make the amendments that are necessary to straighten that issue; or, two, those of us who are also contributing will come up with those amendments to the Bill.

Thank you, Mr. Temporary Speaker, Sir. I beg to support.

**Sen. Hargura:** Thank you, Mr. Temporary Speaker, Sir, for giving me this opportunity to contribute to this important Bill. Fundraising is a very noble way of assisting the needy in this country. It is good that the Bill does not do away with harambees especially when it is coming from politicians who, as the Senator who has just spoken before me has said, have been held hostage by this system. The public might think that we are running away from responsibility, but as he said, it is not our responsibility. As members of the public, we have to be sensitive and assist the needy when required.

Harambee is very important because it assists especially in the provision of facilities like schools, health facilities, and other development projects which the communities can do for themselves through fundraising. But also, more importantly, like in my county, I know of communities which have made sure that none of their children drop out of school through fundraising. They have been doing annual fundraisings which have committees that are supposed to be accountable to the communities for whatever they collect. At the end of each year, they have to give back a record or a report of what they collected and how they spent it.

Education is important for people who are pastoralists. These are people whose livelihoods are dependent on animals and with changing climates, it is actually not reliable because you will find that drought might come and all that one owns will perish. Unfortunate incidents like cattle rustling will happen and you will lose everything in a day. So, the whole family will be destitute and children will not continue with their education. So, this is a very noble idea and if used positively, then it will assist the needy. Even in the case of hospital bills, which the families cannot bear, then this is a way out.

However, we have seen in many instances where this fundraising spirit has been abused by people collecting funds from the public and then using it for personal development because they know that they will not be accountable to anybody. I think that is what is being addressed here. There is also no follow up mechanism; somebody will get the money; it is his money and even if he goes to buy a car, then you cannot take him anywhere because you gave it voluntarily. So you cannot again go and hold him responsible for misusing your fund. So it is good, as, legislators, to come up with ways of regulating and controlling how public funds are collected and spent. As the other leaders have stated, the politicians have been very much on the receiving end of this and unless it is regularized and unless there is a system of doing it, then we will always be facing these situations.

There are even cases where harambee cards are printed in your absence without your consent. Somebody will then stand in a gathering and read names; you are not aware but in the eyes of the public, you are just trying to be insensitive to the needs of your constituent. That is why you are not attending those harambees but the reality is that you have not been told. So it is unfair. It is better the way the Bill regulates that you have to give the list of those who are going to be participating in that harambee and they should be aware so that you do not put people in those situations where they incur unnecessary negative publicity because of misuse of some otherwise worthy cause like this one.

The Bill regulates the process in the sense that you have to say why you are collecting the funds in the first place. It even says what amount you expect to collect, because if it is a hospital bill, then you know what amount you are collecting. If it is a development project, then it has an estimated cost. The Bill even says that the fundraisers should be registered people; that is good because you will have to have somebody to follow. If there was a fundraising somewhere, then you will know who was in charge, who will be held accountable if the money is misused and who should be giving the records back to the committee.

However, there is one issue which I find might be an impediment to this process because most of the time a harambee might even be an emergency where somebody is in hospital and the doctor will tell you that you have to raise a certain amount of money before a person is operated on. So, you have to run around and get money from the people yet the Bill says that you have to give that notice 30 days before. So, in some cases, it is not practical and I think we have to change it; in the case of an emergency like health issues, then we will have to adjust. Even in the case of the county, the Board is based at the county headquarters. Some counties are so wide like in my county, there are centres which are 500 kilometers from the county headquarters. The person who is trying to raise funds maybe because he has medical bills to settle or he has children to take to school might be that far from the center.

So, it is better that this Board delegates, through the county government system, some authority to maybe even the ward administrators or the sub-county administrators so that people can easily access that permit at those levels instead of incurring expenses which they do not have in the first place. That is why they are looking for assistance to come all the way 500 kilometers to get a permit from the County Fundraising Board.

With those few amendments, if they will be done, then I find this Bill a very noble way of regularizing a noble idea which is being misused and will make those who deserve lose that chance of getting assistance because somebody has misused or abused that process.

Mr. Temporary Speaker, Sir, I beg to support and hope that maybe the amendments which shall be made by the other Members will be taken into account during the Committee of the Whole so that we can have a Bill which covers all of our concerns.

Thank you.

**Sen. Ndiema:** Thank you, Mr. Temporary Speaker, Sir. I stand to support this Bill and to thank Sen. (Prof.) Anyang'-Nyong'o for bringing it in a timely way. Harambees or public fundraisings have been a noble idea. They have helped us out of many situations in the past and will continue to do so. Many people, in one way or another, in needy

situations, have been helped through harambees. Schools have been built through harambees. Equally, students have had higher education courtesy of harambees; education here and abroad. The skills they have acquired have greatly assisted our economy and country.

As we seek to regulate harambees, we will not be understating the role that public fundraisings have played. However, we all agree that over time the spirit of harambee has been misapplied and abused. Today, even in situations where fundraisings are being sought, it appears as if harambees are being held to support those who are able. Why do I say so? When you attend a harambee today, you will have to give out some money.

There is a Kiswahili saying that goes; *ukarimu waanzia nyumbani* meaning that you must first contribute to others for them to contribute to your needs. Nowadays, you must be “somebody” to benefit from harambees, while initially it was meant to help needy cases; those whom the society felt had no other way. I do not want to go into all the needy cases that are assisted. We have cases of house warming where somebody can build a good house and call people to purportedly open or warm it. Within no time, all those who have attended are forced in some way to contribute. The areas which have been a bother and which have necessitated harambees over time can be isolated. These are areas like education and medical needs.

If, as a Government, we really targeted these areas and assisted those who are unable to get schools or continue with their education; if there is a system that can ensure that there is free public health care, then we should have done away with half of what is required for harambees. However, because we have not fixed these areas and we pay lip service to them, then the issue of harambees must come in.

Mr. Temporary Speaker, Sir, if there were scholarships for needy and bright students, then we would not require harambees. If bursaries that are being given today by the Government went to the really needy cases, we would not require assistance. If the health insurance scheme that our friend, Sen. (Prof.) Anyang’-Nyong’o, used to champion when he was a Minister had come in, then we would not be required to engage in fundraising for the purpose of health provision.

Over time, the line between harambee and extortion has become very thin. If you are approached to contribute, you do not know whether you are being extorted or being forced because it is a condition. If you do not give, then there are consequences. It is like if you choose not to give, then be ready for the consequences. If you are a Member of Parliament, then be ready to go home in the next elections.

Mr. Temporary Speaker, Sir, it has made business expensive particularly for those who hold public offices. This is because they must be seen to be contributing to assist the community and their resources or salaries are not enough. What they do next is to get those whom he is providing services for. These could be contractors who are seeking jobs in Government and a contractor would not refuse. Normally, he will say, yes, I will contribute but down the line, he will cut corners in a way that either the quality of the work done is substandard so that savings are realised or taxes are avoided in order to fund the public. At the end of the day business becomes expensive in Kenya.

Harambees or fundraising, to some extent, have contributed to our uncompetitiveness in terms of productivity. Our products, whether in the private or public

sector, are not competitive because there are hidden costs in form of money paid through harambees. Unfortunately, any money paid as harambee is not taxed. I would have wished that this Bill considers that where there is a genuine reason to contribute by a company or an individual or even an MP, that amount that has been genuinely given is deducted from the tax payable.

Mr. Temporary Speaker, Sir, there is also an element of ethics in all these. As Africans, we used to be proud that if you are able to manage your own affairs, you do not go begging. However, because of harambees, that pride has been eroded because in whatever situation you are, because of the demand of harambees, you have to lower yourself and beg. Unfortunately, this has had a very negative effect on our country. Even visitors who come – we are a good tourist country and others come for business – end up being begged. If you see any foreigner, perhaps, he is able to fund your harambee project at home. Even that junior person in a hotel serving you is carrying a proforma somewhere.

What is the perception of our visitors on who we really are? In a way, we have been perceived to be a nation of beggars. There was a researcher from Malaysia who did a research on the politics of Kenya. His conclusion was that a Member of Parliament in Kenya is not a Member of Parliament as seen in other jurisdictions but a slave of his people. That a Member of Parliament in Kenya must contribute even if he does not have.

Mr. Temporary Speaker, Sir, we now have devolution. As we are all aware, devolution has brought a positive revolution in this country. It is going to change the lives of the people. However, if fundraising is not regulated, all those resources that we are going to give to the counties are going to end up in the wrong hands. Our Governors, MCAs and the County Executive officers are under a lot of pressure. The Constitution requires that there must be public participation in whatever they do, whether it is planning or allocation of resources. But you cannot hold a function today and call people whether they are 500 or 1000 and they listen to you and go away empty handed.

Many county governments allocate a lot of resources for these forums. Sometimes, they are referred to as launching forums where a lot of resources are spent while organizing them and at the end of the day, money is dished out. Many of the projects are not beneficial to the people but are just meant to please them. This mentality was not there but it is developing in the counties, so that if you have to address the public as a politician or a public officer, you will not be listened to unless there is some handout in form of money.

Mr. Temporary Speaker, Sir, today, we are being forced to do harambees. It is another form of taxation which does not go through Parliament. As Senate we are told not to discuss money Bills whereas Money Bills are being discussed at the counties and figures that we are supposed to contribute are set. A roll call is prepared even in funerals where the Governor and the Senator or their representatives are expected to appear. They only accuse you of not attending the function if your contribution has not been seen. It will be good to regulate this sector. I agree that fundraisings are still necessary because of needy situations, but it is important that they are regulated in a manner that we do not kill them but let them die naturally because of their undesirability judging from the direction that it is taking.

With those few remarks, I support and hope that at the right time, there will be some amendments to this Bill to make it better and responsive to the needs of Kenyans. Thank you.

### ADJOURNMENT

**The Temporary Speaker** (Sen. Murkomen): Hon. Senators, it is now time to interrupt the business of the Senate. The Senate stands adjourned until tomorrow Thursday, 12<sup>th</sup> March, 2015, at 2.30 p.m.

The Senate rose at 6.30 p.m.