

# PARLIAMENT OF KENYA

## THE SENATE

## THE HANSARD

Wednesday, 6<sup>th</sup> November, 2013

*The Senate met at the Kenyatta International  
Conference Centre at 2.30 p.m.*

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

### PRAYERS

#### QUORUM CALL AT COMMENCEMENT OF SITTING

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

**The Speaker** (Hon. Ethuro): Hon. Senators, we have the requisite quorum; we may commence our business.

### STATEMENTS

#### GOVERNMENT'S POSITION ON THE INTEGRITY OF IEBC

**Sen. Orengo:** Mr. Speaker, Sir, with your permission, I rise to request for a Statement from the Standing Committee on Legal Affairs and Human Rights. The Statement that I request is in the following terms:

Knowing the high standards of integrity, transparency and accountability which are required of the Independent Electoral and Boundaries Commission (IEBC) and the central place which the Commission together with the Judiciary occupy as pillars of democracy and justice, is the Government satisfied that the IEBC as presently constituted and with the problems and challenges facing it including prosecutions undertaken against its senior members, that it can still discharge its constitutional and legal mandate including the conduct of general elections in 2017?

Secondly, since the commissioners were appointed to serve on a full-time basis and on account of Article 10 of the Constitution with the expectation that with the conduct of free and fair elections, there will be no corruption and the elections must be administered in an impartial, neutral, efficient, accurate and accountable manner, is the Government satisfied that the Commission has the competence, capacity, independence and integrity to meet this and other ethical and guiding principles of leadership?

Thirdly, has the Government taken note of reports emanating from the UK's Serious Fraud Office that election authorities in Kenya were recipients of bribes from a supplier

of election materials from that country? If so, what has the Government or the institutions concerned done to inquire into this matter with a view of establishing the truth?

Thank you, Mr. Speaker, Sir.

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

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

**Sen. (Dr.) Khalwale:** Mr. Speaker, Sir, Sen. Orengo is seeking a very important Statement. We all know that these are full-time commissioners and involved in a matter of impropriety running into billions. It is not possible that these full-time commissioners had no idea what the three officers who have been taken to court were doing. I request that in that Statement, the Chair should come up with a report on what the Chairman of the Commission himself would have told the Committee in particular on this matter.

**The Speaker** (Hon. Ethuro): Chairman.

**Sen. Sang:** Mr. Speaker, Sir, on behalf of the Chair of the Legal Affairs and Human Rights Committee, we undertake to respond to the issues raised by Sen. Orengo and Sen. (Dr.) Khalwale in three weeks' time.

**Sen. Orengo:** Mr. Speaker, Sir, in view of what I know about the Chairman's mother who passed away recently, I am inclined to accept that.

**The Speaker** (Hon. Ethuro): So, the statement will be made in three weeks' time.

#### TRANSFER OF HEALTH SERVICES TO COUNTY GOVERNMENTS

**Sen. Elachi:** Mr. Speaker, Sir, I also rise to seek a Statement from the Chairperson of the Standing Committee on Health, Labour and Social Welfare regarding the transfer of health services to the county governments which has been a matter of concern to the members of the Kenya Medical Practitioners and Dentist Board, the Kenya National Union of Nurses and the Kenya Health Professionals Society.

In the Statement, I would wish the Chairman to:

1. Confirm whether the Ministry of Health has met the stakeholders in the health sector to discuss the contentious issues of salary, pension and compensation for years of service.

2. Explain how the process of transfer will be managed to ensure the concerned personnel are not disadvantaged when they move to the devolved governments.

3. State whether arrangements can be made for the national Government to handle the payroll of the affected personnel.

4. Explain if the governors are ready to manage the function of health.

5. State how many counties have indicated they can manage the function and how many have requested for it to remain as national function due to lack of capacity.

**The Speaker** (Hon. Ethuro): Chairman of the Committee.

**Sen. (Dr.) Kuti:** Mr. Speaker, Sir, as you may be aware, there was a petition on this matter of salaries. I would like to state here that while I will be able to give a Statement on the other part, the issue of salaries was dealt with comprehensively through that petition where the nurses and clinical officers petitioned this House. So, we brought back results that the Ministry of Health will not devolve payrolls until 31<sup>st</sup> December, 2013 and even then, it will be devolved according to the readiness of each county and each county will be considered separately according to its capacities. Only those counties

with capacities to manage the payroll, after evaluation, will then be given that payroll function. For these other additional questions, I am sure that the situation has remained so up to now. For all other issues, I will respond to them next Thursday.

STATUS OF "ONE MILLION ACRES"  
IRRIGATION PROGRAMME

**Sen. (Prof.) Lonyangapuo:** Mr. Speaker, Sir, over three weeks ago, I stood here to seek a Statement from the Chair of the Committee on Agriculture, Land and Natural Resources in relation to the promise by the Jubilee Government to facilitate irrigation for over one million acres of land. I just wanted to know whether the process has started, where the land is---

**The Speaker** (Hon. Ethuro): Order, Senator! You are only doing a reminder and I suppose you raised all those issues when you sought the Statement. When was it due?

**Sen. (Prof.) Lonyangapuo:** It was due a week ago.

**The Speaker** (Hon. Ethuro): Is the Chair of the Committee on Agriculture, Land and Natural Resources here? What about the Vice Chair? Any other Member? Majority Leader?

Let us take Sen. Chelule. I am sure she is a Member of the Committee. Are you?

**Sen. Chelule:** Mr. Speaker, Sir, our Committee will be ready with his answers after two weeks from now.

**Sen. (Prof. Lonyangapuo:** As you noted, this is not a new question. I am told by the Clerk that a copy of the answer is there. It means they have the answer. Maybe you can ask them to respond tomorrow or the nearest date from today.

**Sen. Chelule:** Mr. Speaker, Sir, if the report is ready, then I will table it here tomorrow afternoon.

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

**BILL**

*First Reading*

THE COUNTY GOVERNMENTS (AMENDMENT) BILL

*(Order for First Reading read – Read the First Time and ordered to be referred to the relevant Senate Committee)*

**MOTIONS**

APPROVAL OF SENATORS TO MEMBERSHIP OF  
SENATE COMMITTEES

**Sen. Elachi:** Mr. Speaker, Sir, I beg to move:-

THAT, pursuant to Standing Order Nos. 175 (3), 177 (3) and 178, the Senate approves the following Senators nominated by the Rules and Business Committee to be members of the respective Committees as indicated below:

(i) The Rules and Business Committee - Sen. Abdirahman Ali Hassan to replace Sen. Moses Wetangula

(ii) The Standing Committee on Finance, Commerce and Economic Affairs -

(a) Sen. Mutula Kilonzo Junior to replace Sen. Harold Kimunge Kipchumba

(b) Sen. (Dr.) Boni Khalwale to replace Sen. Moses Wetangula

(iii) The Standing Committee on National Security and Foreign Relations - Sen. Kennedy Mong'are Okong'o to replace Sen. Moses Wetang'ula

(iv) The Joint Committee on National Cohesion and Equal Opportunity - Sen. Godliver Nanjira Omondi to replace Sen. Harold Kimunge Kipchumba

(v) The Joint Committee on Parliamentary Broadcasting and Library - Sen. Godliver Nanjira Omondi to replace Sen. Kanainza Daisy Nyongesa

(vi) The Standing Committee on Health, Labour and Social Welfare - Sen. Paul Njoroge Ben to replace Sen. Linet Kemunto Nyakeriga

(vii) The Sessional Committee on Implementation - Sen. Paul Njoroge Ben to replace Sen. Linet Kemunto Nyakeriga.

Mr. Speaker, Sir, I know that within Committees, we have had a very difficult time in terms of getting a quorum. So, by bringing in these Senators, it will help us to ensure that the Committee goes ahead and to even get input from the Minority side. I know that we have had fewer Members in the Committee for Finance, Commerce and Economic Affairs because two Members left. I know Sen. (Dr.) Khalwale will bring in his experience.

I remember last time we dewhipped him in the same Committee and I think this time, definitely, he is going to do a better job. We are also bringing in Sen. Mutula Kilonzo Jr. who has vast experience as a lawyer and also as somebody who has represented many people in the field of trade and commerce.

For the Committee on National Security and Foreign Relations, I believe that Sen. Okong'o, having been a journalist, will bring in his expertise in terms of foreign relations. It is very important to know that the two Senators who replaced Sen. Harold Kimunge Kipchumba and Sen. Nyakeriga will be very crucial because the Committee has been lacking the numbers. It is also important for them to join those Committees and bring in their expertise. I believe Sen. Njoroge coming from the sector of people living with disabilities will bring in new insights into the challenges facing people with disabilities and how the Committee can now engage more with people with disability.

I beg to move and call upon Sen. Sang to second.

*(Sen. Orengo consulted loudly)*

**The Speaker** (Sen. Ethuro): Order, Sen. Orengo.

I heard the Mover call a name but it was not Sen. Orengo to second, although I appreciate your concerns.

**Sen. Elachi:** Sorry, Mr. Speaker, Sir. I know he was making noise but yes, Sen. Orengo.

**The Speaker** (Hon. Ethuro): Order, Sen. Elachi! Distinguished Senators never ever make noise.

**Sen. Elachi:** Sorry, Mr. Speaker, Sir. I apologise. He was consulting loudly.

**Sen. Orengo:** Mr. Speaker, Sir, it should go on record that I was consulting very senior, able and distinguished Senators; Sen. Sang himself and Sen. (Dr.) Khalwale.

Mr. Speaker, Sir, I beg to second. Essentially, this is a house-keeping process in which by way of this Motion, we are trying to fill in gaps that have arisen out of vacancies, some of them which may be temporary and some which may not be temporary. Essentially, they were as a result of election petitions. Therefore, this is something that is necessary so that the requisite number of Senators of the Committee are in place to avoid the issue of lack of quorum.

I am also excited, and I must say that Sen. (Dr.) Khalwale's choice of Committee was this Committee on Finance, Commerce and Economic Affairs. On my own account as the Chair of the Committee on Implementation, he suffered immensely as Sen. Elachi has mentioned. Therefore, it is nice to see him back to the Committee that he really wanted to serve.

Mr. Speaker, Sir, let it go on record that Sen. (Dr.) Khalwale has the necessary experience that will make him serve well in this Committee. The other thing I want to add here is that there is some sign of maturity that I have seen in the Senate Committees that we do not tend to talk about matters which are before the Committee. We wait until there is something to report or talk about. When we sit as committees, we do so as Committees of the Senate and when an issue is before a committee, traditionally, the Committee or the House should not be seen to be addressing an issue that has not been resolved in the Committee or in the House or in a fora outside Parliament. This is for a good cause because when a matter is before a Committee under consideration and you see that the Committee is already divided on a bipartisan basis or ethnic basis, because that is what happens, it undermines the authority and the work of these Committees.

My recommendation, if it can be accepted by the House, is that we desist from taking positions publicly on a matter which is before a Committee until the Committee has resolved that particular issue. I have said that, as a Member of the Committee on National Security and Foreign Affairs, I will not comment on a matter which is before that Committee until it is resolved by the Committee. I hope that the practice going on elsewhere which I shall not talk about-- That even before a matter lands in that Committee, you can even guess that if it is a Luo whose matter is under consideration, then all the Luo Members of Parliament will take a particular position which is pre-ordained even before you consider the rationale or the merits of the matter. Therefore, I beg my brothers and sisters here that we should let the Committees to work but they cannot do so if the authority of the Committee is placed in doubt.

With those few remarks, I beg to second.

*(Question proposed)*

**Sen. (Dr.) Khalwale:** Mr. Speaker, Sir, very quickly, I would like to support this Motion not because I am on the list but because it gives me an opportunity to speak on the critical role of the work of a committee. I would like us to urge ourselves that under the presidential system, Parliament can only exercise its oversight role effectively

through committees. Therefore, when I see some of the things I see in the media about how committees are conducting themselves in some of the Houses of this Parliament, I am very disturbed. As we speak now, it is already on record that during the case of Westgate, even before investigations were concluded, the joint chairs of the committees that were seized of that matter went public and told Kenyans that soldiers had conducted themselves properly. It was very embarrassing to the institution of Parliament that the boss of Kenya Defence Force (KDF)---

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

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

**Sen. Haji:** Mr. Speaker, Sir, is the hon. Senator in order to insinuate that the Committee for National Security and Foreign Affairs had made any remark about Westgate outside this House?

**Sen. (Dr.) Khalwale:** Mr. Speaker, Sir, the HANSARD will bear me out. I never said those things.

**The Speaker** (Hon. Ethuro): Order, Sen. Khalwale! It is not only the HANSARD that will bear you out, but even the Speaker. But you cannot say that you never said those things. You said those things, but in reference to another Committee elsewhere. It was not in reference to the Committee chaired by one Sen. Yusuf Haji.

**Sen. (Dr.) Khalwale:** Thank you, Mr. Speaker, Sir, for having listened to me very well.

Mr. Speaker, Sir, it was, therefore, very embarrassing to the institution of Parliament of Kenya that none other than the boss of the Kenya Defence Forces (KDF) came out and admitted that, indeed, his soldiers fell short of the glory. This shows how it is important that we take the work of our committees very seriously.

Mr. Speaker, Sir, similarly, we have a case where a Committee is seized of the issue of cane poaching, which is threatening the sugar industry in our county and the neighbouring counties of Siaya, Kisumu and Bungoma. Now even before the Committee concludes its investigations, having met only one of the players, it goes and says that they are planning to close down Butali Sugar Company. Closing down Butali Sugar Company is closing down the livelihoods of our people and, therefore, killing them. When the right time comes, I would like to be given an opportunity to see how best we can exercise ourselves in the cordial working relationship between the Senate and the National Assembly, so that should they come up with that kind of threat that they are threatening to effect, we will be given a chance to play our part.

Mr. Speaker, Sir, finally, as I support this Committee, I want to lament how unfortunately the law cuts both ways. There is the issue of by-elections. If it was not because of petitions---

**The Speaker** (Hon. Ethuro): Order! Sen. Khalwale, you are talking about a Committee and this Motion has many Committees. So, you have to specify.

**Sen. (Dr.) Khalwale:** Mr. Speaker, Sir, as I support this Motion, I want to comment on the misfortune of something called petitions and by-elections. Indeed, the law cuts both ways. If it was not because of this thing, I would not be today replacing my able friend and brother, Sen. Masika Moses Wetangula. But even as this House has demonstrated that it has confidence in all the Senators, it is my hope that the people of Bungoma will find wisdom in re-electing Sen. Moses Wetangula as Senator for Bungoma County.

Mr. Speaker, Sir, I beg to support.

**Sen. (Dr.) Machage:** On a point of order, Mr. Speaker, Sir. With all humility, I beg for guidance from the Chair on this Motion, where we are actually discussing the appointed Senators. Is it in order, therefore, that the candidates for these appointments themselves contribute?

**The Speaker** (Hon. Ethuro): Order! Sen. Machage, you had made a very positive impression on the Chair all along, as having a good command of the Standing Orders. With that understanding you, definitely, know that a Motion is a Motion and nobody is excluded on any account. The only time that a Member has issues, he is not even excluded from the debate, but just declares some interest if he or she has any. Of course, those interests must be very special and not obvious like being a Member of a Committee. So, each Member has an equal opportunity to contribute to the Motion. Indeed, discussing the composition and the calibre of the nominees is even more pertinent, because you must demonstrate that they will make some impact to the Committee.

**Sen. Orengo:** On a point of order, Mr. Speaker, Sir. I rise to seek your directions. Sen. Machage stood on a point of order. Maybe before you judge him, is it right to ask him which Standing Order is being breached? If he cannot demonstrate, could he suffer further sanctions instead of just a lashing from the Chair?

**The Speaker** (Hon. Ethuro): Sen. Machage!

**Sen. (Dr.) Machage:** Mr. Speaker, Sir, if Sen. Orengo listed to me very carefully, I did humbly seek guidance from the Chair.

**The Speaker** (Hon. Ethuro): In fact, I cannot agree more. Sen. Machage started by saying: "I am humbly requesting for your guidance." When you underline the words "humbly, request and guidance," you cannot pin down a man on such. So, I am extremely satisfied that he just sought guidance. I know that he has enough information already and appreciated the guidance. So, let us proceed.

**Sen. Billow:** Mr. Speaker, Sir, I rise to support this Motion by the Rules and Business Committee on nominations of various Senators to various Committees; specifically on the Committee that I Chair, that is, the Committee on Finance, Commerce and Economic Affairs, where we lost two distinguished Senators to the by-elections. Indeed, we are pleased to note that the Committee has nominated very capable people. Mr. Speaker, Sir, I have a lot of confidence in Sen. Mutula Kilonzo Jnr. I am sure that he will be useful to the Committee. There is also Sen. Boni Khalwale from Kakamega, although immediately he did---

**Sen. Kanainza:** On a point of order, Mr. Speaker, Sir. I rise on a point of order to ask Sen. Billow whether we have any Senator here who is not capable.

**Sen. Billow:** Mr. Speaker, Sir, in the school that I went to, you can use adjectives to describe people. When I say "very capable", it is in the context of the position for which these people have been nominated. So, you may be capable, but if I say that so-and-so is, indeed, very capable, it means that he is a suitable person. So, you can describe someone using those adjectives. It does not mean that the rest are not capable but thanks to the hon. Senator for her insight.

Mr. Speaker, Sir, as I was saying, Sen. Mutula Kilonzo Jnr. is a lawyer and I think that he will add value to our Committee. In that respect, the hon. Senator from Kakamega is a pseudo-finance person, although he did give this Committee a bit of difficulties in those

early days. Nonetheless, he is very welcome to make amends on the times that we spent because of that.

Mr. Speaker, Sir, I agree with him also with regard to---

**Sen. (Dr.) Khalwale:** On a point of order, Mr. Speaker, Sir. Is my good friend and Chairman of the Committee on Finance, Commerce and Economic Affairs in order to suggest that I have at any time given this Committee any problem, when the only thing that he knows is that when we contested with him three times, I defeated him? Can I use this opportunity to assure him that there is no election in the Committee and, therefore, he should not feel threatened?

**The Speaker** (Hon. Ethuro): Sen. Khalwale, assuming that he was defeated three times, those are enough problems.

**Sen. Billow:** Mr. Speaker, Sir, if, indeed, he won three times, he would have been the Chair. But we spent three weeks not doing useful work because of his unending desire to pursue that office.

Mr. Speaker, Sir, I want to conclude by saying that one of the challenges that we have seen in the past is the need to balance the desire to call the Executive to answer and give them time to deal with policy matters and execution of their work. I think that there is need to do a balance of that, because we have been reading also that some of the Committees, not particularly this House, spend quite a bit of time--- We want to focus particularly on our work to ensure that the Government is held to account with regard to their responsibility. So far, I know that none of the Committees in this House has been accused on questions of integrity. We have had questions in the past where some Committees announce that they are going to do this and that, but in the last minute, you do not realize anything.

Mr. Speaker, Sir, I want to support the other hon. Senators who have been nominated to various Committees and hope that we will be able to carry out our work successfully.

**Sen. Ong'era:** Mr. Speaker, Sir, I rise also to support this Motion. All of these are very, very, very capable Senators and they can serve very well in these Committees. I hope that Sen. Billow heard that I used the word "very" three times.

Mr. Speaker, Sir, this is long overdue because quite a number of these Committees have been going on without proper composition.

Mr. Speaker, Sir, I beg to support the Motion.

**Sen. Leshore:** Mr. Speaker, Sir, I support these changes.

Mr. Speaker, Sir, since I became Senator and the Constitution has separated the powers of the Executive and the Legislature, I have observed that the Chairmen of these Committees have not changed the tone that I used to hear in the Ninth and Tenth Parliament. The same trend that the Ministers used to answer questions is appearing here in the House. I was listening this morning to the Senator for Taita-Taveta replying to a question from Sen. Mutula Kilonzo Jnr. about the roads. The Committees under their Chairmen must go out and see for themselves the roads or water points and not just rely on the Executive to give them answers which are mostly false.

Mr. Speaker, Sir, with those few observations, I support the Motion.

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

**Sen. Murkomen:** Mr. Speaker, Sir, I would also like to support this very important Motion that will ensure that the business of the House is running; and that our former Members, who dearly served this House, are replaced accordingly.



Mr. Speaker, Sir, I think going forward – because I have no doubt in terms of legislative, representation, competence of the Members who have been pointed out here – but I think there is the more important question in terms of even our Standing Orders as to who nominates who to a Committee. I will blame Sen. Kajwang if I am wrong; I have sought advice and I think it is the position of our Standing Orders that nominations to Committees are from parties or coalitions. If that is true, questions will arise in future that, suppose somebody is an independent or quasi-independent, like Sen. (Dr.) Khalwale, what happens in terms of that nomination? Can one coalition cede their space to give it to an errant Member of another coalition, for example?

So, I think those are some of the things, going forward, that we should answer in our Standing Orders, because in future or maybe even in the upcoming by-elections or in future elections, we might have situations where we have an independent candidate being a Senator. Is it possible, then, to provide proper mechanisms of who nominates who to that Committee and whether another coalition can take over somebody's Member, for example, if he is dewhipped, and appoint them in another coalition?

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

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

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

**Sen. (Dr.) Khalwale:** Mr. Speaker, Sir, the mark of humility is respect for others. The young Senator from Elgeyo-Marakwet can very well be forgiven because of his inexperience with respect to parliamentary issues.

*(Laughter)*

But is he in order to go round, trying to refer to me? When you say I am an errant Member---

**Sen. Murkomen:** I did not say that.

**Sen. (Dr.) Khalwale:** That is what you said by reference.

Mr. Speaker, Sir, if, indeed, you would think that I am errant, what am I an errant from? Mr. Speaker, Sir, even if that word is allowed to pass as parliamentary, it should be on record that I am a Member of the United Democratic Forum (UDF) and, therefore, because I do not subscribe to Jubilee, I am free to serve on any Committee if it so fits the Jubilee side or the CORD side. I am like-minded with CORD; why are you insisting on me pushing your agenda? Is he in order?

*(Applause)*

**Sen. Murkomen:** Mr. Speaker, Sir---

**The Speaker** (Hon. Ethuro): Order, Sen. Kipchumba! Why are you just confirming what Sen. (Dr.) Khalwale has just said about you, that you are inexperienced?

*(Laughter)*

Experienced Senators will request for their time!

**Sen. Murkomen:** Okay; I thought it was my time.

**The Speaker** (Hon. Ethuro): You express your interest by standing and the Chair will allow you.

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

Now you have acquired experience!

*(Laughter)*

**Sen. Murkomen:** Mr. Speaker, Sir, for the last about eight months since I came to this House, one of my best friends whose debate I admire most is Sen. (Dr.) Khalwale. So, the issue I raised here – and that is why I support the Motion – was for posterity. I questioned, for example, what you do in a situation where we have 10 independent candidates, if parties are going to be the ones to nominate Members to committees. We are in a situation where we are amending our Standing Orders; we should, therefore, provide for that mechanism.

What happens in a situation where a Member disagrees with his coalition and would like to take up an independent stand and be dewhipped, for example? Or what happens in a situation where a Member is an errant Member, literally? I did not say it is Sen. (Dr.) Khalwale; but there will be situations in future where there will be an errant Member who has been dewhipped by his party and another party gives that Member an opportunity. I am not opposed to this Motion; I am just saying that we should use such opportunities that will inform future amendments that we will put in our Standing Orders so that those scenarios are catered for. But for my respectable friend, Sen. (Dr.) Khalwale, to imagine that when I say “future errant Members” will be himself, I think it is imputing improper motive not only on his friend, but on a serious Jubilee Senator.

**The Speaker** (Hon. Ethuro): Let us have the last bite from Sen. Kajwang.

**Sen. Kajwang:** Thank you, Mr. Speaker, Sir. The Senator mentioned me as one of the people who gave him this advice. Sincerely, when we wrote the new Standing Orders, we were thinking in terms of the new Constitution, which gave parties a very strong and central part in the management of the affairs of the House. So, parties nominate Members to all these Committees, and if you decide to be independent, then you are independent; you may not even get to any Committee. If, of course, as an independent, you make yourself a friend of Jubilee or another party or coalition, they may consider you for nomination to that Committee. So, there is really nothing that has happened that will not happen; and if you decide to be errant, then the Standing Orders provide that you can be dewhipped, and you can hang around until somebody sympathizes with you.

Thank you very much, Mr. Speaker, Sir.

*(Loud consultations)*

**The Speaker** (Hon. Ethuro): Order, Senators! Sen. Murkomen has raised quite a fundamental issue in terms of an errant Member who has been dewhipped by a party, and then he is brought by another party. That is a matter that might defeat the purpose why, in the first place, that Member was dewhipped. Because if the Member is to be brought back

by another party and, perhaps, a party opposed to that other party, you can really understand the dilemma there. I think that is something we need to think through in the light of what Sen. Kajwang has also said about the position of parties within the House. But on the issue of whether a party or a coalition of parties can nominate a Member from another party, that has happened before in the Parliament of the Republic of Kenya and, so, a precedent has already been set including, I suppose, even if we had an independent who, for some reason, decides to work with a particular party; or if the party felt that, that independent Senator can make a more useful contribution to a particular Committee, then I see nothing in my view to stop that party from doing so. So, that is the position.

As for the argument whether Sen. Murkomen referred to Sen. (Dr.) Khalwale as errant, and for Sen. (Dr.) Khalwale owning it up, I tend to agree with Sen. (Dr.) Khalwale, because my favorite author, Chinua Achebe in *Things Fall Apart* wrote that “Every person---” and I have used the word “person” because those days, he was not that gender sensitive as I am paraphrasing – “becomes uneasy when dry bones are mentioned in a proverb.” So, there is every reason for Sen. (Dr.) Khalwale to become very uneasy with your references.

Thank you.

**Sen. Murkomen:** Mr. Speaker, Sir, I know constitutional lawyers here, and anyone who would like to pursue this matter further, the Constitution says that if an independent candidate joins a political party or is seen to support policies of a political party, he will lose his or her seat. So, going forward, memberships of Committees perhaps may not just be supporting a political party, but perhaps even that Committee they join together to push policies of a political party. It will be a very dangerous line with the possibility of that Member losing his seat. I think these are things we have to keep thinking, going forward.

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

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

**Sen. Murungi:** Mr. Speaker, Sir, we do respect Sen. Murkomen as an academic--

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*(Laughter)*

But I think he is quite out of order to engage this House in academic issues, because there is no Senator here who is an independent Senator; we all come from various political parties or coalitions of political parties. So, the issue about an independent Senator taking any position in the Committees is academic and we should not have time for such matters.

Mr. Speaker, Sir, I would also like to refer to Section 14 of the Political Parties Act which prohibits a member of a political party from promoting the interests of another political party. Any Member who proposes a Member of another political party to be a member of a Committee other than a Member of a coalition to which he belongs will be violating Section 14 of the Political Parties Act and, consequently, the consequences, including loss of a seat, which as spelt out in the Act, will apply.

*(Applause)*

So, Mr. Speaker, Sir, let us not be engaged in these academic exercises.  
I thank you, Mr. Speaker, Sir.

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

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

**Sen. Orengo:** Mr. Speaker, Sir, one of the things I admire about the *Lion King*, the distinguished Senator for Meru, is that he is not only a distinguished lawyer, but also a very practical politician. But is he also in order to carry us through a process of speculation without any foundation? Because the list that has been placed before the House was brought before the Rules and Business Committee, where the 30 leaders who are here sit, or the head of those coalitions sit and approve this list – and he was there. In fact, he attended the meeting; the *Lion King* was there. So, I find it a matter of really taking too much time because we have got a division to go through.

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

*(Laughter)*

**Sen. Orengo:** The distinguished Senator for Meru was there. Therefore, Mr. Speaker, Sir, the rules are clear, the Constitution is clear and if anybody has got a complaint, you know what to do. The Constitution is clear on this issue about membership of political parties and the conduct of Members who belong to political parties; the Political Parties Act is also clear. There is a history behind it, as Sen. Kajwang was saying; some of these things did not---

**The Speaker** (Hon. Ethuro): Order, Sen. Orengo! I find it interesting that you and your predecessor came to the Dispatch Box to say that we should terminate these discussions, but you use the same opportunity to lengthen it!

*(Laughter)*

I think you have put your case.

**Sen. Orengo:** Mr. Speaker, Sir, I rarely speak. I was looking at you to see if the Speaker shows discomfort, then I can go on and on; but the moment I will realize that the Chair is not comfortable, I will sit down; and I sit down!

Thank you, Mr. Speaker, Sir.

*(Sen. Orengo took his seat)*

*(Laughter)*

**The Speaker** (Hon. Ethuro): Sen. (Dr.) Khalwale?

**Sen. (Dr.) Khalwale:** Thank you, Mr. Speaker, Sir. The funny thing about lawyers is that they at times forget just like doctors tend to forget at times. Medical books are not

only read by doctors alone. Patients also read them. Similarly, statutory books are also read by non-lawyers.

I am, therefore, impressed that the hon. Senator wants to impute in anticipation of some theoretical exercise that he so wishes to contemplate forgetting that the same Political Parties Act, Section 14(5)(d) and (e), in fact, for your interest, specify that the things he is saying do not apply. They apply when they are being applied in relation to a party. However, as far as UDF is concerned here, when you refer to it, you will be doing so on the strength of the coalition called "Jubilee".

Mr. Speaker, Sir, sub-sections (d) and (e) emphasise that the contemplated disciplinary actions cannot be taken if a Member is seen to be taking a position contrary to a coalition. For the benefit of the Senator from Meru, Sen. Murungi, the same Act, Section 14 also provides that---

*(Sen. Murungi pointed fingers at  
Sen. (Dr.) Khalwale)*

**The Speaker** (Hon. Ethuro): Order, hon. Murungi! You will not point fingers at Senators. You have to speak through the Chair.

**Sen. (Dr.) Khalwale:** Mr. Speaker, Sir, I would like to bring this to your attention because the public is following this debate and we do not want to appear ignorant.

The same section of the Political Parties Act, sub section 6, provides that anybody who infringes on a Member from enjoying the rights that I am purported not to enjoy commits an offence and is liable to a fine of Kshs1 million or a two years imprisonment or both.

**The Speaker** (Hon. Ethuro): Order! That is a natural opportunity to bring this debate to a close. However, as I do so, I want to clarify a few things.

First, it is perfectly in order for the Senator from Elgeyo-Marakwet to engage us in what you may consider academic debate and that is constitutional law. The Senator who was engaged in academics went ahead to specify another section of the Political Parties Act which was a bit of law. This House becomes richer when Senators engage in debates including those from other disciplines like the Medical Science of Sen. (Dr.) Khalwale who has just confirmed that he may know more about law in *extensor* more than lawyers who contributed to the making of the laws.

This is a debating Chamber and I will not allow further debate when I feel that it has gone too far. However, if the debate is pertinent and addresses issues at hand, we should entertain contributions. The debate is important.

You will recall that this came as a result of having Senators who elected Chairpersons that were not from their parties. That matter is pending before us and may be construed to be demeaning with regard to the Political Parties Act.

In other countries, it is very clear that the Senate Majority Leader and the Senate Minority Leader can write letters to the Speaker for a Senator to be removed on account of voting on a particular issue. However, for us, we may apply a bit of flexibility. However, we need to anticipate those situations when they occur. For now, I do not think there should be a committee, in my view, that can be construed to have suffered defection.

I will now put the question. This matter does not affect the counties and, therefore, every Senator has a vote.

*(Question put and agreed to)*

**The Speaker** (Hon. Ethuro): Hon. Senators, the next Motion requires us to vote. However, I see that the numbers have dwindled again. We will vote on the two Motions, No.10 and 11 using the same Division Bell. I, therefore, order that the Division Bell be rang for both Motions. We will then proceed to vote.

FORMULATION OF WATER HARVESTING  
POLICIES FOR COUNTIES

THAT, aware that water is a basic need and that the country cannot exclusively depend on primary sources of water to satisfy all its water needs; deeply concerned that the sole dependence on derivative water sources leads to interruption of water related activities due to insufficiency; recognizing that water harvesting is a crucial secondary source of water; noting that a lot of water has dissipated due to ineffective programmes and initiatives for harnessing water; cognizant of the fact that rain water that is not harvested causes environmental degradation and damage to infrastructural facilities; recognizing that Article 69 (2) of the Constitution confers to every person a duty to cooperate with state organs and other persons to protect and conserve the environment and ensure ecologically sustainable development and use of natural resources; the Senate urges the national Government to initiate and formulate water harvesting policies to guide water harvesting programmes in all the 47 counties to reduce over-dependence on primary water sources.

*(Sen. Kittony on 30.10.2013 – Morning Sitting)*

*(Resumption of Debate interrupted on 30.10.2013 – Morning Sitting)*

*(The Division Bell was rung)*

**DIVISION**

ROLL CALL VOTING

*(Question put and the Senate proceeded  
to vote by County Delegations)*

**AYES:** Sen. Abdirahman, Wajir County; Sen. Boy Juma Boy, Kwale County; Sen. Chiaba, Lamu County; Sen. Kagwe, Nyeri County; Sen. Kajwang, Homa Bay County; Sen. G. G. Kariuki, Laikipia County; Sen. Kembu-Gitura, Murang'a County; Sen. (Dr.) Khalwale, Kakamega County; Sen. Khaniri, Vihiga County; Sen. (Dr.) Kuti,

Isiolo County; Sen. (Prof.) Lonyangapuo, West Pokot County; Sen. (Dr.) Machage, Migori County; Sen. Mositet, Kajiado County; Sen. Mungai, Nakuru County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Murungi, Meru County; 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. Okong'o, Nyamira County; Sen. Orengo, Siaya County and Sen. Sang, Nandi County.

**Teller of the Ayes:** Sen. Mohamud.

**NOES:** Nil

**Teller of the Noes:** Sen. Sijeny.

**Sen. Kajwang:** On a point of order, Mr. Speaker, Sir. Before we closed the counting, as the names were being called, we were all wondering where the Senate Minority Whip was because we did not hear him.

**Sen. Muthama:** Mr. Speaker, Sir, I voted yes.

**Sen. Kajwang:** Mr. Speaker, Sir, if he voted, then it is okay because we were going to whip him.

**Sen. Muthama:** Mr. Speaker, Sir, Sen. Kajwang is used to seeing me seated at the front so because I was at that corner, he could not see or hear me.

**Sen. Ong'era:** On a point of order, Mr. Speaker, Sir.

**The Speaker** (Hon. Ethuro): What is it? As you approach the Dispatch Box, I thought Sen. Muthama was in the House when I was making some references to Sen. Murkomen.

**Sen. Ong'era:** Mr. Speaker, Sir, just a small point of clarification. Is it in order for Sen. Wetangula's name to be called out when we know that the writs have been issued with regard to the Bungoma by-election?

**The Speaker** (Hon. Ethuro): You are absolutely right. That position should read vacant.

**Sen. Orengo:** Mr. Speaker, Sir, maybe the Clerk could delegate somebody.

**The Speaker** (Hon. Ethuro): Sen. Orengo, you may wish to hear things but you will never hear anything from the Clerk.

Order, Senators! The results are as follows:

**AYES:** 25

**NOES:** Nil

**ABSENTIONS:** Nil

*(Question carried by 25 votes to nil)*

**The Speaker** (Hon. Ethuro): Hon. Senators, we said that the first Bell will serve for the two Motions and therefore we will proceed on the Roll Call Division again for the next Motion.

ADOPTION OF REPORT ON VISITS TO LAIKIPIA, NYERI, KIRINYAGA,  
KISII, NYAMIRA, KISUMU, KAKAMEGA AND VIHIGA COUNTIES

THAT, the Senate adopts the report of the Standing Committee on Education, Information and Technology on the visits to Kisii, Nyamira, Kisumu,

Kakamega and Vihiga counties laid on the Table of the House on Thursday, 17th October, 2013.

*(Sen. Gwendo on 30.10.2013)*

*(Resumption of Debate interrupted on 5.11.2013)*

## DIVISION

### ROLL CALL VOTING

*(Question put and the Senate proceeded  
to vote by County Delegations)*

**AYES:** Sen. Abdirahman, Wajir County; Sen. Boy Juma Boy, Kwale County; Sen. Chiaba, Lamu County; Sen. Kagwe, Nyeri County; Sen. Kajwang, Homa Bay County; Sen. G. G. Kariuki, Laikipia County; Sen. Kembu-Gitura, Murang'a County; Sen. (Dr.) Khalwale, Kakamega County; Sen. Khaniri, Vihiga County; Sen. (Dr.) Kuti, Isiolo County; Sen. (Prof.) Lonyangapuo, West Pokot County; Sen. (Dr.) Machinga, Migori County; Sen. Mositot, Kajiado County; Sen. Mungai, Nakuru County; Sen. Murkomen, Elgeyo-Marakwet County, Sen. Murungi, Meru County; 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. Okong'o, Nyamira County; Sen. Orengo, Siaya County and Sen. Sang, Nandi County.

**Teller of the Ayes:** Sen. Mohamud.

**NOES:** Nil

**Teller of the Noes:** Sen. Sijeny.

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

**AYES:** 25

**NOES:** Nil

**ABSENCES:** Nil

*(Question carried by 25 votes to nil)*

**The Speaker** (Hon. Ethuro): Unlock the doors.

*(The doors were opened)*

Hon. Senators, I did not respond to the issue raised by Sen. Kajwang. It is quite a substantive issue in the sense that if you look at Standing Order No.77, it says:-

“(1) “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.”

**Sen. Kajwang:** Thank you very much, Mr. Speaker, Sir. I thought that I was just guessing, but now I am grounded on the rules.

**The Speaker** (Hon. Ethuro): I felt that you had actually raised a very fundamental issue and I think that the Senators are guided. So, Sen. Muthama, next time you may wish to maintain one position during voting and there will be no doubts from your neighbours.

Next Order!

ISSUANCE OF FIREARM LICENSES  
TO KENYANS ABOVE THE AGE OF 30

**Sen. (Dr.) Khalwale:** On a point of order, Mr. Speaker, Sir. I rise to request that you give us some guidance. To my understanding, an Act of Parliament ranks a notch higher than a Bill, and a Bill a notch higher than a Motion, for the simple reason that it is a Motion which is a precursor to a Bill, and a Bill is a precursor to an Act. When I look at this Motion, we want, as a Senate, to urge the national Government to issue licences to possess firearms to Kenyans above the age of 30 years, who apply to be issued with firearms and that this be done after thorough vetting to ensure that those licensed can handle firearms that they are issued with responsibly.

Mr. Speaker, Sir, it should not be lost to this Senate that we already have the Firearms Act. Therefore, if the intention of this Senate is that the Firearms Act does not sufficiently provide for the handling, licensing and use of firearms, then we should move an amendment to the Act through a Bill and not a Motion, just to make a wish. I would like you to guide us on this, because to me, the time of this Senate would be better used on debating the Bill to amend the Firearms Act.

Mr. Speaker, Sir, finally, this Motion attempts to remove the discretion from the licensing officer, because the licensing officer enjoys discretion of deciding amongst the applicants, after you have gone through vetting, to either give you without explaining or not. I know that the Motion is quite properly before the House, but maybe you would like to help us on that particular score.

**Sen. G.G Kariuki:** On a point of order, Mr. Speaker, Sir. Do you not think that Sen. (Dr.) Khalwale was almost challenging your decision to have approved this Motion? If that is the case, is he not out of order?

**The Speaker** (Hon. Ethuro): Order, Senators! While I appreciate the support from Sen. G.G. Kariuki, I think that any Member of the House can actually challenge a decision of the Chair. Sen. (Dr.) Khalwale was asking for guidance.

Even when we were approving the Motion, we had kind of similar concerns. But if you look at the operational Standing Order 45 (3), it says:-

“If the Speaker is of the opinion that any proposed Motion –

- (a) is one which infringes, or the debate on which is likely to infringe, any of these Standing Orders;
- (b) is contrary to the Constitution or an Act of Parliament, without expressly proposing appropriate amendment to the Constitution or the Act of Parliament;
- (c) is too long;
- (d) is framed in terms which are inconsistent with the dignity of the Senate; or
- (e) contains or implies allegations which the Speaker is not satisfied that the Mover can substantiate; the Speaker may direct either that, the Motion is inadmissible, or that notice of it cannot be given without such alteration as the Speaker may approve.”

When you really look at the things that I would use to deny the Motion, none of those will really fit the bill. So, you have to look at the value of a Motion in the only sense that--- You will remember that before we brought the changes to the Standing Orders, Members could actually not bring Bills directly. It used to be the previous tradition that you bring a Motion in order to ventilate and canvass support to an idea, concept or issues and then, that way, when you have gained some currency and acceptance, you can now translate that into a Bill. So, for purposes of deliberating, especially on matters of security, it is under those circumstances that we approved the Motion. So, the Motion is proper and admissible.

In any event, Sen. (Dr.) Khalwale who purported to oppose it, also admitted that the Motion is attempting to remove the discretion from the licensing officer, which I think is also a contribution that you may wish to make or otherwise.

Hon. Senators, please, ignore the “resumption of debate” indicated on the Order Paper. As you know, these Order Papers are prepared a day before. So, the assumption was that this was supposed to have started in the Morning Sitting and that in the event that it had not been conclude, then we would proceed in the afternoon. So, we are beginning afresh.

**Sen. Mositet:** Mr. Speaker, Sir, I beg to move the following Motion:

THAT, aware that many Kenyans in their prime years have lost their lives in the hands of criminals and terrorists; concerned that majority of those killed are either employers or employees who form Kenya’s labour force and therefore contribute immensely to the economy of the country; further concerned that many children are orphaned and, in many instances, property lost as a result of the criminal acts; noting that this problem has caused numerous investors to relocate elsewhere in the continent since they are unable to protect themselves and their property; the Senate urges the national Government to issue licenses to possess firearms to Kenyans above the age of 30 years who apply to be issued with firearms and that this be done after thorough vetting to ensure those licensed can handle the firearms they are issued with responsibly.

Mr. Speaker, Sir, I came up with this Motion after a lot of concern even from my county, and I know that it is also a concern to the whole country. Looking back and knowing the many lives that we have lost through the hands of criminals and people who may not even know what they are doing, first of all, I salute the patience of Kenyans. Kenyans have really been disciplined and law-abiding. Even having been tormented so much by criminals, they have still continued to make sure that they are law-abiding citizens.

Mr. Speaker, Sir, many Kenyans have lost their lives, and when I say that, I know that many Kenyans have even been maimed and terrorized to an extent that they live in fear. Just to mention a few cases in my county in which we have really lost lives through the crimes---- After researching all over the country, these crimes are really of concern because they are committed by very young fellows who are aged between 14 and 28 years.

Mr. Speaker, Sir, in my county, to mention just a few prominent people we have lost; we lost Christopher Melolo, who was shot as he was going to his home; we have lost Mr. Wambaa, who was, in fact, killed by a known criminal by the name Matheri, who was also killed later. We have lost Mr. Kirumba; we have lost Tony Kago, who was a known journalist – I think it is about two weeks since we buried him; a Mr. Rotich, who used to be a very senior manager with the Kenya Commercial Bank (KCB); Amos Muli, a banker, Charles Mutuku, a banker; Wa Kaminde, who was a renowned entrepreneur in Kware, Ongata Rongai; a Mr. Ngatia, who used to be a renowned transporter; Eng. Muindi, who used to be a very senior engineer in the Ministry of Roads; Mrs. Sokorte, who was the wife of a renowned businessman; Eng. Shikalu, who used to be the Managing Director of National Water Conservation and Pipeline Corporation, who was just killed in Kitengela, and the list goes on. Those are lives which we lost and these are people who were really in the prime of their lives.

Mr. Speaker, Sir, we still have those who have lived to tell the tales of what they have gone through, and some of them have really been tormented. We have people who are running businesses like The Exciting Hotel, the proprietor, Mr. Kanake; Mr. Mwandawiro, who is a leading and prominent businessman in Kiserian; Mr. James Muiruri Kimani, a renowned transporter; Leornard Mukuria Kimani, who is also a renowned transporter; a Mr. Naimasia, Mr. Brown Muchangi; Katei Tipango, the proprietor of one of the biggest hardware shops in Ongata Rongai, Stemer Hardware; a renowned lecturer, Gitu Chege and the list is long.

Mr. Speaker, Sir, the story is almost the same in the whole country. I even went to the extent of writing a letter to the Inspector-General of Police (IGP) to get the list of how many people have lost their lives for the last five years, only for an officer to come to my office yesterday to tell me that I will get the report today, but we have not received it yet. But I do believe that we must have lost more than 100,000 people in this country for the last five years through the hands of criminals.

Mr. Speaker, Sir, just as I said, these people who have really caused a lot of fear into the lives of Kenyans are very young people who are, maybe, also desperate, because they have been tarmacking and looking for work; or they might be young people who have really been intoxicated with drugs, and as I said, they are aged between 14 and 28 years. Sometimes, we are even told by those who lived to tell the story that sometimes they just show their pistols and people think they are toys; and from there, they are told “let us try whether it is a toy” and they shoot. Because of that, many Kenyans live in fear.

Mr. Speaker, Sir, you can imagine such a huge number of people just dying simply because of the negligence of young people who have not even been taught on how to handle guns. As we speak, we have quite a number of orphans who were simply created by a single pull of the trigger. Because of that, the lives of those families changed completely. Some of these children were going to the best schools in the country, but now you might find them not even going to school at all. These are families which used

to live well and feed well, but right now; you will find that they are a burden to the society just because of the reckless acts of these criminals.

Mr. Speaker, Sir, just look at what we have just gone through because of acts of terrorism. For example in the 1998 bombing, some terrorists drove through some gates manned by unarmed guards; also consider what happened just the other day in Westgate. That is why this Motion is requesting the Government to consider vetting all those who apply for firearms; and when they see that they are capable of handling them – where they could even go through some firearms handling training before being licensed – they should allow them to own guns. I do believe that if they are allowed to have firearms – just like the example of the many people we know who own guns and they have always lived happily – they will also live happily.

That is why I am requesting in this Motion that the national Government should not just allow one person to vet the applicants and issue the licences; but it should be their responsibility to know that after losing prominent Kenyans, our economy has also been affected. Many of these people we know have been running their enterprises; many have been running big companies; many have been senior employees who have been contributing positively to the companies they worked for. When we lose such people, you might find those companies crumble and we end up having so many people losing their jobs simply because of the crimes brought about by these criminals.

Mr. Speaker, Sir, big dreams are shattered when we lose these lives. You will find that at times, for people to start or run their enterprises, they have to go to the banks to charge their properties so that they can get money to run those firms. Sometimes, they even charge their matrimonial homes. But when those people are lost, their families also end up losing their properties. So, their children actually end up becoming beggars or even criminals.

That is why we are saying in this Motion that time has come when the Government should ensure that each and every capable Kenyan; any serious businessman in this country; any serious entrepreneur, maybe even a farmer or those people living in Lokichoggio or Samburu having big herds of animals, they need to be armed. I am suggesting that they be given just licences, but I think I should even talk of them being given the best guns to handle, over and above the licences, so that any time those criminals come, they should not be allowed to threaten them or pull the triggers of their small guns. Because of that, I believe that, as Kenyans, we are going to live a happy life.

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

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

Madam Temporary Speaker, I know that many Kenyans have even relocated their businesses because of fear. We know very well of such a situation in a place like Kiambu, where you will find big homes, but you will wonder where the owners of those homes are. On asking, you will be told that they relocated and they no longer live there. If you ask where they live, you will be told that they either live in my county or in Nairobi.

Madam Temporary Speaker, I do believe that if only the Government can license and allow the very able Kenyans to have guns, they will manage to defend themselves and,

also, I do believe they will defend their homes, properties and their families, just like what we saw in Westgate; we could also say that they could also offer State protection. We saw quite a number of civilians who saved other civilians in the Westgate saga. So, I do believe that when we allow many serious Kenyans to own guns, we will also be assisting the State because those civilians will also give protection to the State.

Madam Temporary Speaker, I know very well that we have something we call community policing. But it is unfortunate that you tell people to be engaged in community policing and the only weapons they have are sticks or sometimes kitchen knives. It is quite difficult for those people to confront the criminals who sometimes come armed with AK47s. Because of that, I know very well that if only we had quite a number of people with firearms who are also engaged in community policing, our security would improve. We saw what very respectable citizens of this country – who actually require to be given medals – did in the Westgate saga. We were never told if any of the civilians were ever trained, or whether they have ever gone into the army or the police, but we are happy that, at least, they saved the lives of the good citizens of this nation.

Madam Temporary Speaker, a research by Dr. Gary Click, a criminologist in Florida State University estimated that 2.5 million people use their guns in self-defense or to prevent a crime each year often just by displaying a weapon or a gun, and just because of that, 2.5 million lives get saved. States like Israel, Canada and Switzerland have the highest rates of gun distribution and also very low crime rates. That is why I do support and move this Motion that, at least, a time has reached that we need to allow serious Kenyans to own firearms so that they can defend themselves, their properties, their families and also even assist the State in making sure that there is order.

Madam Temporary Speaker, our people are very well known to be law abiding citizens, just like I had said earlier. I do believe that even if they are given guns. I know many people may wonder; suppose many of them are armed, maybe we will have problems, but I do not believe so. The community I come from, the Maa Community, who are found mainly in Kajiado, Narok, Samburu, Baringo and even in Mt. Elgon, we carry swords and *rungus*; and some people fear when they see these weapons. But we know very well that those weapons are just used to make sure that the people can defend themselves and protect their families. No incidents of misuse have ever been reported. In fact, in my county, I can say that maybe in all the police stations there, I do not think there is any report in any Occurrence Book (OB) where a Maasai has ever used his sword against his fellow Maasai or even somebody else.

Madam Temporary Speaker, if Kenyans are given permission to carry firearms, I believe that they will not misuse them because they are well disciplined. On 4<sup>th</sup> November, 2013, the Inspector General of Police indicated that he would consider increasing the number of civilians with firearms.

I believe that if this Motion passes, it will strengthen the position of the Inspector General of Police. Some people may wonder why I am talking about this issue because if you want a gun, all you have to do is to apply and you will be allowed to carry a gun after you have been vetted. Although that is what the law says, it is very difficult for someone to get a firearm in this country. Some people use the backdoor to acquire the guns, but legally it is very difficult to be issued with a license to carry a gun. I have been a victim of crime. In fact, this has happened to me about five times. I have applied for a firearm

three times, but all in vain. There was a time, I thought I would get a license to carry a gun, but I was disappointed when I was asked to resubmit my application again. Many other investors in my county are also facing the same challenge.

Many homes where the owners are known to have firearms are not visited by criminals in this country. Why do people talk about Karen and Muthaiga being safe areas? Most of the residents in these areas are white men. They have shot guns or other forms of firearms. Even if there was a slum not very far from Karen, there would hardly be any cases of people ambushing the good citizens of Karen.

I move this Motion and call upon my good colleague from Pokot to second.

**Sen. (Prof.) Lonyangapuo:** Thank you, Madam Temporary Speaker. As I stand to second this Motion, I would like to remind my colleague that I am the Senator for West Pokot County and not Pokot County.

This Motion has come at a time when there is a lot of soul searching and many regulations are being crafted to check the spiraling insecurity in Kenya. The most recent that we witnessed was the Westgate Mall terror attack. This was very recent and it caught very many people unaware while doing their own businesses. Some people had gone to buy things while others had gone to sell in Westgate Mall. Others thought the security apparatus were on top of things.

When people ask for permission for citizens to arm themselves, this brings about queries to the extent that one wonders what is happening. We are calling upon Senators to deliberate upon this Motion, cautiously and carefully. We want Kenyans to follow what we are up to.

In 1963 when we got Independence, the country was safer than it is today. We have listened to harrowing testimonies from Kiambu and Murang'a counties. Last year, I had a function at Kirinyaga County when I was the Permanent Secretary, Ministry of Public Works. I realised that people would wake up very early to drive on the road. If you asked them where they were going, they would say to the safer areas of Nairobi. They left behind very well built homes in central Kenya. Kiambu and Kajiado counties which neighbour Nairobi should be the bedroom of people who work in Nairobi. However, the situation now is vice-versa. People spend a lot of money paying rent for small flats in Nairobi whilst they have left spacious houses in the countryside due to insecurity. The acts of insecurity are carried out by Kenyans. Someone who does not have anything imagines that those who have many things should share their properties by force. That will not be entertained at all.

This Motion calls upon the national Government to rethink about the security situation in Kenya. This Motion proposes to arm anybody who is above 30 years of age who thinks that his life is in danger. Here we are talking about a person who is very productive to the economy, an investor, employee and employer. These groups of people should be allowed to carry guns after they have been vetted. This measure has worked well in many countries. In fact, in such countries, cases of violence and robberies have reduced significantly.

The National Police Service (NPS) should, indeed, consider arming more civilians and police reservists. Recently, in this House, we discussed about the training of police reservists so that they help in the war against crime. The criminals are such a big menace in this country. Once this is done, there will be few cases of robbery. Cattle rustling which has become as a cancer in this country will reduce drastically.

Increasing the number of privately licenced gun owners is seen as a wider part of the strategy to tackle crime. Recently, the Inspector General of Police, David Kimaiyo, admitted that if more civilians - during the Westgate offensive - had guns, the damage would have been minimal. The clips that were being played on television showed that majority of the people were rescued by civilians who had guns with them.

The laws of Kenya provide that anybody can apply for a permit to own a gun after meeting certain qualifications or standards. However, there are some firearms, for example, AK 47 and G3 Rifle, ordinary Kenyans cannot be allowed to possess.

The Senator for Kajiado County mentioned that there are areas like Karen where insecurity is very minimal because residents have guns. The moment criminals know that you own a gun, they will never come near your place. It is also good to note that the NPS agrees totally to engage the services of police reservists and other armed civilians in enforcing security in communities and battling crimes.

This Motion proposes to raise the level of awareness in Kenya. It says that more stringent measures should be applied on people who are applying for guns considering that they are the ones who will be shielding our country.

In other jurisdictions like the US, firearms possession is a fundamental human right. In fact, it is related to the right to life. Certain areas like Garissa and others which border Somalia should have senior citizens who own guns. Surveillance should first be done to see how many people know how to use arms. The right to keep and use arms is said to belong to every citizen who comes from states like Alabama, Mississippi and Missouri, among others. From statistics, we know that areas where people have been allowed to defend themselves, crimes have reduced drastically. Some countries, instead of arming civilians as we are suggesting here, have recruited more police officers, police reservists and anti-stock theft police officers. The security personnel have been planted strategically in areas which are said to experience insecurity. In Kenya, for example, we have not gone that direction.

This Motion should prick our minds to think what we should do to solve our problems. We heard about a businessman, sole proprietor, who was kidnapped from his place in Kirinyaga recently. Everybody shed tears in that county because of that one man. Why do tiny fellows do that? Supposing this man was armed? Would these fellows do that? The Senator Kajiado, Sen. Mositet listed very many people from this county who have been killed by criminals. Recently, a prominent lawyer was killed in Bungoma County at a very wrong time when an election petition was being heard. People then began thinking that it was people from the other camp that had killed him.

We should stand on our feet and agree with what was proposed yesterday. We should have a Committee of the Whole House where will sit with all security personnel so that they tell us what steps they are taking to curb cases of insecurity in this country. We are provoking them in this Motion by saying that one way of containing crime is by issuing guns to people above the age of 30 who are immensely contributing to the welfare of Kenyans. We should not shy away from saying this. I know that whether we like it or not, with the helter-skelter behaviour around, many people will soon own guns. You will find somebody buying it on the black market.

For very many years, people in the West Pokot County stayed under attack and had no guns to protect their families and animals. This was a long time ago, 20 to 30 years ago. However, now, the Government has responded positively. This problem is not

just at the periphery. It is facing all of us here. We have security guards in companies like the G4S and others who are well trained. There are others like the ones who work here at the Kenyatta International Convention Centre (KICC) who are not well trained. The only thing that makes you recognize them is their uniform. There is nothing else. What was the reason of wasting money on somebody who cannot defend anybody beyond the presence of a body? I call upon my colleagues to look at this thoroughly and think of how we can move this forward.

I second the Motion.

*(Question proposed)*

**Sen. G.G. Kariuki:** Madam Temporary Speaker, Sir, this afternoon I may sound unusual because of trying to do what I should never have done. I am wondering why Sen. Mositet decided to bring this kind of Motion. He did not just want to come and be heard talking, but it is as a result of desperation. This country is so desperate because of insecurity. From desperation what follows is anarchy or chaos. We are just about there. There is nobody in this country who will tell you that his life is guaranteed by anyone. I am saying this with a lot of pain because I have gone through these things. People in Laikipia County and all over Kenya have suffered. I do not know what miracle will avert the situation which is becoming very dangerous. All Kenyans feel that they are not protected. Every evening a person must be abducted or somebody has been killed at his gate as he enters his compound. Here you are telling the people of Kenya that you are protecting them. Time has come when they think they should protect themselves. It is good that we are trying to do this legitimately through the Senate and other institutions.

Madam Temporary Speaker, it is the climax of desperation and people are willing to do anything to protect themselves. We cannot have criminals coming to our houses where they find us sitting with our families and they are not after anything else, but just to kill because they have been given some money. This is a matter of grave concern. Let whoever wants to challenge what I am saying do so, but let us stand firm and be counted. I have a Motion which is coming before the Floor of the House on the same issue and that is why I thought I should not contribute to this Motion. I was going to draft a Motion which will touch on the entire national security situation in this country. I have done a lot of research and I really do not know what we are going to do to have people at home feel secure.

For example, in Laikipia County, we settled about 42,000 families who bought their own farms. It is not the Government which settled them. The former Provincial Commissioner (PC) who is here knows this very well. We spend a lot of money and bought about 380,000 acres and settled about 42,000 families. If you go there right now, you will only find 8,000 families left while others have been chased away as if there is no Government in this country. The law of trespass has been abandoned.

In this country if you want to get protection, you should either be the President, a Cabinet Secretary, a Member of Parliament or a Senator. All these people have been elected by people who think that when we come here we forget about our lives and take care of them. If you were to do some small mathematics and multiply 400 Members of the National Assembly by two *askaris*, you are talking about 800 *askaris* surrounding them. If you talk about the 67 Senators here and each one of you has one or two *askaris*;



one here and the other at home, they are 134 *askaris* in total. What does that show? Is it that we are running a desperate country where the rule of law is not respected and that is why we cannot feel secure? That is why Sen. (Dr.) Khalwale and I want to be protected. Who is protecting other Kenyans? It is a very sad situation and we cannot even be ashamed. We just look at people dying because they are not privileged.

Madam Temporary Speaker, this matter is very serious. I was in charge of security in this country and I know where the problem started. I am convinced beyond any reasonable doubt that unless you do a complete overhaul of the armed forces in this country, we are not going to get anywhere. We are in such a terrible situation. Here we have people whom we have employed to promote Kenya abroad forgetting that those people have eyes and they know that we are incapable of protecting them, but we still want the foreign tourists to come. When you see a country starting to think about employing private guards and yet you have people in uniform with all the authority who are being paid by the Government, we are simply heading nowhere. Sen. Musila would remember the time when he was a Provincial Commissioner this matter would be taken very seriously, but at the moment, we are dealing with this matter casually. We have allowed politicians to transfer police officers from one place to the other. If you allow, for example, an Officer Commanding Police Division (OCPD) to misbehave because Inspector-General is misbehaving in terms of corruption, where are we heading to?

Madam Temporary Speaker, this is a matter of great concern. Today you will find the so called County Commissioners just sitting in their offices; they do not have jobs to do because they have no power over the police or the chief. In fact they look for jobs from the chiefs. Jobs which were being done by chiefs are now being done by County Commissioners and former district officers. This is because they have no authority to direct the police on what to do. If he tries to direct the police officers, they turn against them with unknown consequences. If you were to look at statistics, how many police officers have been found stealing and killing and nothing has happened to them? This is a very sad matter. Sen. Musila whispered to me that this is not a good idea and I know he will make his contribution, I feel sorry for him because what do we do if we do not deal with this matter? All these guns we are talking about here are given at a price. For example, how many guns were given out last year before the retirement of the former Commissioner of Police and how were they issued? They were too many and they were given at an accepted price. So, whether you agree or not, it is high time we legalized possession of guns by Kenyans. If the country does not have money then we should be allowed to make our own home made guns. The Kikuyus fought the Europeans with homemade guns.

**Sen. Muthama:** On a point of order, Madam Temporary Speaker. I want to know whether it is in order to correct Sen. G.G. Kariuki for saying that the Kikuyus fought for the Independence of this country. The correct position is that Kenyans fought for the Independence of this country.

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

**The Temporary Speaker** (Sen. Ongoro): Sen. Muthama is on a point of order. Could we allow Sen. G.G. Kariuki to respond?

**Sen. (Dr.) Khalwale:** It is on the same, Madam Temporary Speaker.

**The Temporary Speaker** (Sen. Ongoro): Okay, proceed.

**Sen. (Dr.) Khalwale:** Madam Temporary Speaker, the point of order being raised by Sen. Muthama is very critical. The Senator for Laikipia is implying that it is only the Kikuyus who fought for Independence. Is he in order given that in Kapenguria, Elijah Masinde who was not even a politician was detained alongside Jomo Kenyatta? When he came out and refused to tow the line, Kenyatta went on and detained him for a further 15 years. Is he in order to suggest that it is only the Kikuyus who fought for Independence?

**Sen. G.G. Kariuki:** Madam Temporary Speaker, it is unfortunate that we never take this House seriously. At no time did I say that it was only the Kikuyus who did “a,” “b,” “c” and “d.” I chose my words and, in fact, you are much younger than me and you should listen to what I am saying. You should not feel like boiling when you hear a Kikuyu being mentioned somewhere because they are here to stay. You can take them nowhere. Therefore---

**Sen. Muthama:** On a point of order, Madam Temporary Speaker. Is it in order for Sen. G.G. Kariuki to keep on provoking Kenyans? What we are challenging here is the statement he made that Kikuyus used homemade guns to fight for Independence. The correct position is that Kenyans fought for Independence. In Kapenguria, there were six Kenyans who were not drawn from one community. We all fought for the Independence of this country. For the purpose of the HANSARD, it is important for Sen. G.G. Kariuki to state that Kenyans fought for Independence and not to bring up the issue of a certain community.

*(Sen. G.G. Kariuki stood up in his place)*

**The Temporary Speaker** (Sen. Ongoro): Order! The two of you cannot be upstanding at the same time. Could you conclude your statement?

**Sen. Muthama:** Madam Temporary Speaker, he has the perception that he owns Kenya. What Sen. G.G. Kariuki should know is that the correct position is that Kenyans fought for Independence and nobody is jittery because of simple mention of the Kikuyu. The communities in this country---

**The Temporary Speaker** (Sen. Ongoro): Sen. Muthama, you are not contributing. You have already made your point. Can we proceed?

**Sen. Ndiema:** On a point of order, Madam Temporary Speaker. We are handling a very sensitive issue of licensing firearms. Is the Senator for Laikipia, therefore, in order to say that people should be allowed to make their own homemade guns, when that is strictly against the law?

**The Temporary Speaker** (Sen. Ongoro): Let us allow Sen. G.G. Kariuki to respond to the various points of order that have been raised. Let him clarify his position and statements.

**Sen. G.G. Kariuki:** Thank you, Madam Temporary Speaker. I am not amused because I said that we be allowed to make homemade guns because the Kikuyus used home-made guns to fight Europeans. I do not know where all these other matters are coming from. I did not say that the Kambas did not fight for Independence or that Kenyatta, Ngei, Masinde Muliro and others did not fight for Independence. However, they did not use the homemade guns. The homemade guns were specifically used by those who went to the forests. That is my position.

Madam Temporary Speaker, since my time was taken, would you give me five more minutes?

**The Temporary Speaker** (Sen. Ongoro): One minute! Please, conclude your statement.

**Sen. G.G. Kariuki:** Madam Temporary Speaker, I want to apologize if I disappointed anyone of you, but I cannot help your ears to listen. This is because what I said is not exactly what you are trying to say.

Madam Temporary Speaker, thank you very much. I wish I had more time.

**Sen. Muthama:** Madam Temporary Speaker, I rise to support this Motion with a slight amendment.

Madam Temporary Speaker, I beg to move that the Motion be amended by inserting the following phrase immediately after the word “licensed” appearing in the ninth line; “are either business people, Government employees or other deserving persons with special interests who”

Madam Temporary Speaker, I am proposing this amendment because, currently, vetting is being done. You can apply for a weapon and it can be given to anyone. But by opening it up now and going up to the age of 30 years, I can see anybody rushing to apply for the weapons, including even the criminals. Given the terrorists attacks and the cases of insecurity that have been raised here, I think that it would better if some controls were put in place, so that not everybody can apply for a licence to possess a gun and get it.

Madam Temporary Speaker, with those few remarks on the amendment, I wish to ask Sen. Khalwale to second it.

**Sen. (Dr.) Khalwale:** Madam Temporary Speaker, I was originally going to oppose this Motion, not because I am against the Mover. I really must congratulate him because he is actually capturing the mood of the nation; that is, we do not have security. For that much, I must applaud you.

Madam Temporary Speaker, however, because Sen. Muthama has amended the Motion, I would like to support the amendment because it is attempting to bring it closer to the Firearms Act. Whenever we make an amendment on a Motion intended to give birth to a Bill, to amend an Act of Parliament, there must be something that we are trying to cure. So, in this Motion, which hopefully, will one day give way to a Bill to amend this Act, you must go out of your way to persuade us what it is that we are trying to cure.

Madam Temporary Speaker, you have pointed out the issue of loss of lives and property, investors relocating to other countries and regions, which is true. You have also cited the presence of criminals and terrorists in their numbers. That is true, but you have not persuaded us why, in your Motion, you have brought in the issue of the age of 30 years. What is it that 30 years will change? Nothing! Therefore, Sen. Muthama’s amendment brings us slightly closer and I support it.

Madam Temporary Speaker, as I support Sen. Muthama, we should be asking ourselves: Are we trying to re-invent the wheel or are there other experiences in other countries? Go to the USA. Sen. (Prof.) Lonyangapuo has ably referred to the liberal laws that we have in Alabama and Mississippi and stopped to tell us that in spite of those liberal laws, it is in those places where President Obama is having a serious headache. He wants the gun law in the USA to be amended, because people are abusing it.

Madam Temporary Speaker, our Act is better because, with all due respect to the Mover of the Motion, if you look at Section 5(2), it is very clear. It does not prevent a youth of 30 years from asking for a gun. It says partly:-

“The firearm certificate shall be granted by the licensing officer if he is satisfied that the applicant has a good reason for purchasing, acquiring or having in his possession the firearm or ammunition in respect of which the application is made, and can be permitted to have in his possession that firearm or ammunition without danger to the public safety or to the peace:”

Nowhere do they discriminate against people who are 30 years old. Unless we qualify 30 years, the way Sen. Muthama has done, the Motion then become superfluous. I beg you to see my point of view.

Madam Temporary Speaker, Section 5 (2) of the Firearms Act goes further to say:-

“Provided that a firearm certificate shall not be granted to a person whom the licensing officer has reason to believe to be prohibited by or under this Act from possessing a firearm, or to be of intemperate habits or unsound mind, or to be for any reason unfitted to be entrusted with such a firearm, or who has not satisfied a licensing officer that he will at all times keep the firearm securely and in safe custody and in a safe condition and take all reasonable precautions to ensure that the firearm is not lost or stolen and is not at any time available to any person not lawfully entitled to possess it.”

Madam Temporary Speaker, are you telling us that anybody who is above 30 years, because this Senate has directed the chief licensing officer or his representative, should be given a firearms licence when he is of unsound mind? There are youth who walk around with Maasai swords and I have a lot of respect for Morans because I have a relative of Morans in my house. The youth that we are talking about, after enjoying a glass of traditional liquor or commercial beer in Kitengela, will not keep their firearms secure, because they will be in discos, where the youth go. The licensing officer has to protect the rest of the society.

I do not know whether you have ever talked to somebody who owns a gun. You can actually be jailed for being found not to have kept your firearm safely. I know of a case of my best friend and cousin, an agricultural scientist by the name Mathews Shitsetse. He was licensed and given a firearm, but then the wife, when they disagreed on domestic issues, hid the firearm away. My cousin was arrested and arraigned before court for allowing the wife to take away the gun from him. You can see how difficult it is for a married man. How about a youth with a girlfriend? A youth will even give the girlfriend the gun to show her that he is a deadly man and so on.

Madam Temporary Speaker, I wish to add that as we refer to the American debate, there is also a raging debate in this country about our pastors and bishops requesting that they be allowed to carry firearms. If the contributions that I am following on social media are true, Kenyans are reluctant to give bishops and pastors, disciplined as they are, firearms. So, if we can deny people of such high integrity, like pastors and bishops, firearms, how about the country being told that the Senate has resolved that our youth, irrespective of their status, so long as they are 30 years and above, be allowed to carry firearms?

Madam Temporary Speaker, I would like to conclude this, as I support Sen. Muthama, that there is currently a lot of confusion in our counties as far as security is concerned. We now have the following officers in charge of security in counties. We have the County Commissioner, who is supposed to be in charge of security in the county. The Administration Police have also posted there an administration police officer in the rank of an Assistant Commissioner to be in charge of security. The Regular Police and the Criminal Investigation Department have also posted officers there. All these people have no chain of command. None of them can command the others and summon them to a meeting. Currently, in fact, our problem is not the absence of those firearms, but lack of a security command structure in the counties. As a result, criminals and unscrupulous people are taking advantage of the same.

Madam Temporary Speaker, I beg to second the amendment for those reasons.

*(Question of the amendment proposed)*

**Sen. Musila:** Madam Temporary Speaker, I have a lot respect for my colleague, Sen. Mositet, as well as my brother, Sen. Muthama. But with utmost respect, I want to oppose this amendment and even the main Motion.

Madam Temporary Speaker, I want to confirm that the problems that have been narrated by my senior Senator and former Minister for Internal Security, Sen. G.G Kariuki, are real. It is happening and I want to confirm that in Kitui County we have a lot of insecurity. As you aware, we spend a lot of time here, yesterday afternoon, talking about the insecurity that is prevailing in our respective counties. There is virtually no county that cannot narrate incidents of insecurity. Even those areas that hitherto were considered “safe” are now worse.

Madam Temporary Speaker, I want to be very clear from the onset that there is a lot of insecurity in this country; there are a lot of killings, cattle rustling, rapes and all kinds of crimes that you can think of. But the answer to all these problems is not in arming our citizens. I know and I agree that we are desperate. However, let us not be so desperate as to cause more problems to ourselves, thinking that we are solving them. Yesterday, I requested the Government to give us arms, but direct them to homeguards to guard selected people who have been trained and identified. One of the biggest problems we can face in this country is to let loose or to allow people to go with firearms, because we will be killing each other every day in bigger numbers than we are doing today.

Madam Temporary Speaker, it has been quoted here that in the USA, it is a constitutional right for some states to possess firearms, but we must look at the history of that right. Why was it a constitutional right for Americans in the southern states to possess firearms? It was because of the civil war that they had. After that civil war, they said “before we come to the union, we want to retain our rights to own firearms because of the insecurity that was prevailing then; and that right has been maintained”. But today in the USA, which is supposed to be a civilized country, there are so many killings. People are walking with guns to schools and spraying children with bullets. Last Saturday, a gunman walked into Los Angeles Airport and killed people there. It is happening every day. So, what are they doing? They are now trying to limit ownership of firearms.

Madam Temporary Speaker, we have the Firearms Act in this country, which I know very well as I have gone through it many times and it is adequate. Sometimes it requires administrative amendments, for example, up to a few years ago, you could only be licensed by coming to the Licensing Officer in Nairobi. But that was liberalized; it was decentralized to say that it is the District Security Committee which vets applicants for firearms licensing. When that Committee approves the application, then the firearm is issued by the licensing officer. We cannot go below that because even in the world today, only in February this year, the United Nations (UN) passed the Arms Trade Treaty. Why was this treaty passed? Because there is so much proliferation of small arms and light weapons in the world that people are not secure. Let us not justify our bad governance, which has been cited here; lack of command structures and try to think that we can resolve it by arming people.

Madam Temporary Speaker, yesterday or I think last week, at the Administration Police College, the District Commissioners (DCs) – or call them County Commissioners (CCs) – who were hitherto responsible for the administration police--- The administration police refused to take orders from DCs. What I am trying to say is that we have a complete breakdown of governance structures. We have gone so low that the sentiments expressed by Sen. G.G. Kariuki were so touching to my heart that I agreed with every word that he said. But I asked myself: Is this the solution? It is not the solution.

Madam Temporary Speaker, we are already trying to see how we can get the guns that are in illegal hands to prevent more killings of our people, but how can we do that? I, therefore, want to oppose this Motion. With a lot of respect to my brother, the answer for insecurity in the country is not to arm our citizens, but rather, to find ways of improving governance. One, we should recruit additional police because we are told that the number of people in this country that are policed by one person is far below the world average. So, let us have Motions here to ask the Government to recruit more policemen. Let us also have Motions here to ask the Government to supplement the policemen that are recruited with reservists. You will remember that we used to have police reservists – we used to have Mr. Shaw, if you remember; and he used to be on the spot whenever a crime was committed, but he was not a policeman. He was a reservist.

So, we need to have adequate policemen supplemented by police reservists, an efficient chain of command structures and effective law enforcement, where courts do not release people who have raped or where courts do not take offences seriously and release people. This is because if this continues, then those who are inclined to commit crimes will be doing so because they know, after all, nothing serious will happen.

Madam Temporary Speaker, the long and the short of this is that we increase police officers, we increase reservists, where possible we have home guards – like in my case in Kitui County, I would like to see them. But for goodness sake, let us follow the Firearms Act. Where possible, liberalize it and make sure that when Sen. Mositet applies, he is looked at by his character and issued with a firearm, not just to be denied his right. But I do not think for once that by opening up, everybody coming in and getting firearms in addition to the firearms which are already being held illegally - I do not think that is the answer. Therefore, I oppose this Motion and the amendment.

Thank you, Madam Temporary Speaker.

**Sen. (Dr.) Zani:** Thank you, Madam Temporary Speaker. I look at this Motion as a Motion that is publicizing something that is already being done. We already have a Firearms Act which is very specific. In fact, it goes into definitional issues where it states what are the firearms, what are the rifles, it talks about stun guns, it talks about a licensing officer and the requirements of those licensing officers, as the Sen. (Dr.) Khalwale has already stipulated here. So, this is something that is already being done; it is already there. What I am trying to figure out exactly is what we are trying to get out of it.

In fact, the way I look at it is that, I look at it as a Motion which is asking us to do the wrong thing because it is right. There is a twist in it because it is asking us to do the wrong thing because it is right. It is a wrong thing. In fact, this is something that we do not need to talk about in public. Here we are talking about people being armed. The other day, we were talking about the issue of small arms. Again, we were discouraging the same thing. However, on the flipside of the argument, you have innocent people who are also being killed. I always wonder about a situation where am attacked in my home and I have children to protect. I think it was just the other day I was sharing with Sen. Haji and saying that if I was being attacked, I would want to fight back and defend my children. I saw the possibility of a stun gun that is less lethal than the actual gun.

In short, all Kenyans are looking for possibilities of protecting themselves and their loved ones. But I think we need to ask ourselves a long and very hard question about the way to actually achieve that end. It is about security. It is about ensuring that security is enhanced within the country, but exactly how we go about it, is the problem. We know that in Kenya now, life has been so cheapened that from here to your way home, you are not sure whether you will be finished on the way. You are not very sure whether you will have somebody attacking you and just ending your life all of a sudden. That becomes very critical for people to always think about exactly what to do.

But, Madam Temporary Speaker, if I look at the Motion, there are serious gaps. For example, so far as the Firearms Licensing Act stands, it specifies that it is the licensing officer. Even the process of finally deciding whether to give that license or not seems to be through an application process only. So, there is nothing more than that. We are talking about doing that through a vetting process. What is the process? What are the logistics? What are the steps for that vetting that we are talking about? What are the suggestions for that vetting? How do we know who is whom?

The issue of the age limit has been given. Therefore, we might have somebody who is 50 or 60 years, but he or she should not own a gun because, maybe, they have the highest level of rage or maybe they have their own personal vendetta. So, the fear that we---

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

**The Temporary Speaker** (Sen. Ongoro): What is out of order, Sen. (Dr.) Khalwale? Take your seat, Sen. (Dr.) Zani?

**Sen. (Dr.) Khalwale:** Madam Temporary Speaker, I am very sorry to interrupt the doctor, but I would like her to bear with me---

*(Sen. (Dr.) Zani remained standing in her place)*

**The Temporary Speaker** (Sen. Ongoro): Sen. (Dr.) Zani, the two of you cannot be on your feet. Please, take your seat, Sen. (Dr.) Zani?

*(Sen. (Dr.) Zani took her seat)*

**Sen. (Dr.) Khalwale:** Madam Temporary Speaker, I would like her to bear with me on the understanding that what transacts here goes on official record of the Senate. It will be unfair to allow her assertion to go, that when you apply, your application is not subject to vetting.

Madam Temporary Speaker, the truth is that under this law, which I have been quoting from extensively, there is provision for vetting. We even have District Vetting Committees. I think she should correct that notion before she continues.

I am saying that she is out of order to suggest that once you apply for a firearm, you are not subjected to vetting. The truth on the ground is that, yes, there is vetting because we have a District Vetting Committee. You will not be licensed on the spot until a full record of your character and the things I read about are made open to this Committee before you are allowed a license to own a firearm.

**The Temporary Speaker** (Sen. Ongoro): Sen. (Dr.) Khalwale, do you mean she is out of order to misinform the House?

**Sen. (Dr.) Khalwale:** Madam Temporary Speaker, she is out of order to mislead the House.

**The Temporary Speaker** (Sen. Ongoro): Is it to mislead the House and misinform?

**Sen. (Dr.) Khalwale:** Yes, Madam Temporary Speaker.

**The Temporary Speaker** (Sen. Ongoro): Sen. G.G. Kariuki?

**Sen. G.G. Kariuki:** Madam Temporary Speaker, is it in order for Sen. (Dr.) Khalwale to allocate himself the responsibility of the Speaker to decide who is out of order and who is in order? He ought to have addressed the Chair and not to decide issues by himself.

**The Temporary Speaker** (Sen. Ongoro): Sen. G.G. Kariuki, in my understanding, Sen. (Dr.) Khalwale did not make that assumption. He is pointing out what, in his opinion, is out of order. The Chair has not yet ruled. I want Sen. (Dr.) Zani to be given the opportunity to clarify her points before I make that ruling.

**Sen. (Dr.) Zani:** Thank you, Madam Temporary Speaker. I would like to clarify and say that even with the vetting that Sen. (Dr.) Khalwale is talking about, even with the information that is given, because according to the Act, the licensing officer will finally, through the other district committees, give the certificate--- But still, when talking about human beings, Sen. (Dr.) Khalwale, the way you behave here is not the way you behave on Sunday, for example, when you go to Church. When you go to church on Sunday, you are humbled by the fact that this becomes a different person.

What vetting can give us a 100 per cent surety that the person who has been vetted is the one who should own a firearm? I affirm my position that when dealing with human life, it is very difficult to discern who is capable of handling a firearm unless there are other laws which are put into place to ensure that people behave in a certain way.



According to the Act, there are stipulations for the sanctions, for instance, if they misuse of firearms. If, for example, these are people in the military or the police, they are told that they will not be paid their pension or they will lose their jobs. Therefore, there is a direct sanction that is applied on them as a result of misusing the firearm.

**Mr. Muthama:** On a point of information Madam Temporary Speaker.

**The Temporary Deputy Speaker** (Sen. Ongoro): Would you like to be informed?

**Sen. (Dr.) Zani:** Yes, I would like to be informed.

**Sen. Muthama:** Madam Temporary Speaker, the process of vetting has been there. The Motion by Sen. Mositet gives more powers to the Authority to give guns to as many people as possible. For the sake of informing Sen. (Dr.) Zani, the Motion clarifies, in details, regarding who should be considered for weapons.

The amendment talks about business people, Government employees and to cover everybody, it also talks about other persons with special interests. That will allow the vetting to be done widely because, first of all, those who are not known, for instance, people with special interests, will have to be investigated by consulting people who know them from their villages and sub locations, so that we know what type of people we are dealing with.

**The Temporary Speaker** (Sen. Ongoro): Sen. (Dr.) Zani, you can proceed.

**Sen. (Dr.) Zani:** Thank you, Madam Temporary Speaker, for that information. The reason I have gone into those details is because the severity of the consequences of having armed people are very dire. It would be wrong for us, as a Senate, to debate and support without looking at the flipside.

We, as Senators, have to admit that this is a complex situation. We are looking at the negatives and positives, the advantages and disadvantages. It is impossible to discuss this Motion without presenting both sides of the coin. The information I have been given by Sen. Muthama is that they will be giving businesspeople, Government workers and people in special categories. That adds merit in classifying those who can be given guns, but it does not stop the problems that exist in terms of gun ownership and guns being in wrong hands and being used for criminal activities. This is something that has already been documented. At times, we have police officers who hire out their guns to criminals. This is a reality.

The killing of spouses and children which has become a reality is creating worry in terms of the social fabric that we have. However, we will be aiding these crimes when we make it easy for everybody to express themselves. People have different temperaments. There are those who react in different ways to different situations. Being armed does not reduce the number of attacks. In fact, most studies that have been carried out on criminology suggest that those who end up being killed are killed using their own guns. Probably, they would not have been killed if they did not have those guns. Those are the dynamics.

The Motion refers to the national Government. I would like to put a question mark regarding what specific organ we are referring to and how the issue will be implemented in ensuring that licences are given to the right people. The problem of having arms with very many people is clear.

As Sen. (Dr.) Khalwale has said, in USA, many people own guns and their stories turn to be very tragic. Let me now talk as a sociologist. We have people with different

problems. We have youth who are disturbed who did not have enough time with their mothers. We also have youth who are psychopaths and others who have different problems. We have seen children being killed in schools by other children who have guns. You may say something that is against what someone else thinks and they just shoot you. So, what are we talking about here? We are talking about a society that has not developed enough so as to talk about arming people.

Let us instead talk about arming a specific group of people through a specific process, through a very careful process.

### COMMUNICATION FROM THE CHAIR

#### VISITING DELEGATION FROM THE 2<sup>ND</sup> AFRICA COLLOQUIUM OF LEGAL COUNSEL TO PARLIAMENTS

**The Temporary Speaker** (Sen. Ongoro): Thank you, Sen. (Dr.) Zani. Before we proceed, I would like to take this opportunity to introduce and welcome this evening some representatives of delegates attending a second meeting of legal counsels to Parliaments which is being hosted by Parliament of Kenya here in Nairobi. They are drawn from national and regional parliaments of the following countries; Kenya, Benin, Botswana, Burkina Faso, Democratic Republic of Congo, Ghana, Liberia, Madagascar, Malawi, Nigeria, Rwanda, Seychelles, South Africa, South Sudan, Sudan, Uganda, Zambia, Zanzibar, Zimbabwe, East African Legislative Assembly (EALA) and Economic Community of West African States (ECOWAS) parliaments. Proceed, Sen. Omondi.

*(Applause)*

*(Debate on the Motion resumed)*

**Sen. Omondi:** Thank you, Madam Temporary Speaker, for giving me a chance to contribute to this very important Motion. For sure I want to say that this is a very important Motion although there are many challenges that we need to consider as we debate it. I will contribute to this Motion considering the fact that it is specific people who should be given firearms. I feel sorry whenever I see watchmen standing at different gates. I remember the issue of Westgate Mall where the guards at the door were shot while lying down. These are people who protect buildings worth billions and yet they have no weapons. Their lives are endangered most of the time. This category of people should be considered for guns if this Motion becomes law. I also support this Motion because criminals, after knowing that Kenyan citizens do not have weapons to fight back, have made us their targets. Criminals have taken that opportunity to kill, steal and to kidnap at their own will. This is something we should think about even though it has its own disadvantages. We should allow everybody who is qualified to have a firearm to own it. However, there are certain people that I would support the Motion if they were put into consideration.

The law should allow families that have been victims of crime due to high insecurity to have guns so that they protect themselves. These people are genuinely in

need of firearms. Once given the firearms, they would protect themselves. This Motion should also cater for such families. I also want to contribute by saying that once vetting is done; because from the village level it is easy to identify the behavior of different people, it will be easy to tell whether people who have been given firearms will use them properly or not.

At times, you will find that we have people who are short tempered or the “short-wired” people whose tempers are not predictable. Village elders know such people and these people, during vetting, cannot be given a go-ahead to own firearms.

With those few remarks, I support the amendment to the Motion.

**The Temporary Speaker** (Sen. Ongoro): Hon. Senators, I want to draw your attention to Standing Order No.69 (1) and (2). This Motion does not affect counties. I will then proceed to put the question.

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

*(Question of the Motion as amended proposed)*

We will now continue debate on the amended Motion.

Hon. Senators, those who have spoken to the Motion before can only now speak to the amendment and not to the Motion as amended. Therefore, Sen. Muthama, who introduced the amendment, in my opinion, has already spoken to the Motion.

Hon. Senators, sorry for that mix up. You can speak to the Motion. Let Sen. Lonyangapuo take the Floor first.

**Sen. Muthama:** Madam Temporary Speaker, Sen. (Prof.) Lonyangapuo is the one who seconded the original Motion.

**The Temporary Speaker** (Sen. Ongoro): I do not have the list, but I am well informed that the Senator who seconded was Sen. (Prof.) Lonyangapuo. So, he will not also speak.

However, Sen. Muthama, you have also spoken to this Motion. The only people who can speak to this Motion are Sen. Joy and Sen. Wamatangi.

**Sen. Gwendu:** Thank you, Madam Temporary Speaker. I was afraid to support this Motion because of what Sen. (Dr.) Zani said, that we are supporting something because it is right. I support this Motion because of the criminal activities that happen in our country due to the fact that we are unable to defend ourselves. I am looking at a scenario where a person wants to rob you, but discovers that you are armed. This will dissipate the confidence of the robber and you will remain safe. What would happen if you are armed and you are in an entertainment place? Will you be disciplined? What of if you get annoyed? What will happen? We need to be disciplined while carrying firearms. We are aware that there are several Senators amongst us who are armed for the sake of protection. We need to protect ourselves---

**Sen. Muthama:** On a point of information, Madam Speaker.

**The Temporary Speaker** (Sen. Ongoro): Sen. Gwendu, do you wish to be informed?

**Sen. Gwendu:** Yes, Madam Temporary Speaker.

**Sen. Muthama:** Madam Temporary Speaker, I wish to inform Sen. Gwendu that it is not just members of the public who cannot be in control of their firearms, it just depends on an individual. We have even seen police officers killing their colleagues. For example, Hon. Manandu, the first Member of Parliament for Mwingi North was eliminated by an Administration policeman. So, it just depends on somebody's character. So, it is not everybody who will misuse his or her weapon.

**Sen. Gwendu:** Madam Temporary Speaker, we also know that there are incidents of police officers killing their colleagues. In this case if we are going to provide firearms for Government officers and businessmen and women, they need to go through some form of training. We are only looking at a case where a police officer kills another one. What of if a Senator kills another? We need the arms to protect ourselves, but there should be some discipline. We need the firearms to protect ourselves and our families, but there should be some vetting and training.

I support.

**Sen. Wamatangi:** Thank you, Madam Temporary Speaker. I stand to support the Motion. I come from Kiambu County where we have a lot of security challenges. Recently I got a call from my Vicar whose house had been broken into by thugs. They went into his bedroom where he was with his wife. They took the whole family hostage for a long time, tortured them, ransacked the whole house, took all his household goods and then left. Incidents like these ones happen every time, not only in Kiambu, but the entire country. We have several cases in point which speak for themselves. What will happen when a well informed and properly trained civilian is armed to protect himself? Before the last general elections, I had a very sad episode in my county where thugs broke into a home. They found a father and his three daughters. They wanted to rape the daughters in front of their father. The father told them they could not rape his daughters as he was watching. So, they gave him an option either to let them carry on with their act or they kill him. The father chose to sacrifice his life. They killed him and raped the daughters. I am sure it would have been different if that father was armed.

I have been a victim of carjacking. I stopped at my gate and in a few minutes people came and surrounded my vehicle. They ejected me and took my vehicle plus all what I had with me. There are several incidents happening daily. It is important for one to be armed in order to protect himself or herself.

I also wish to speak to the positive side of this Motion because recently during the Westgate Mall terrorist attack, several heroes emerged. One of them was a son of our colleague Senator who is in this House. He was not a police officer, but luckily he was armed. He managed to save several lives. Therefore, we need to look at the positive side of this Motion.

Madam Temporary Speaker, in the past we had many police reservists. These were civilians who were armed after being vetted or chosen in a systematic way. We need to streamline the process of recruiting police reservists so that we have responsible citizens armed to take charge of particular situations. We know that it will weigh heavily on the Government wage bill to recruit more policemen. We also know that it is not possible for police officers to provide security to every Kenyan with the current ratio of one policeman to thousands whereas the internationally accepted ratio is one policeman to 400 civilians. Our statistics are way below that. I know the Government is not in a

position to recruit more police officers and pay them. If we pass this Motion, we will be able to deal with the issue of providing personal security.

During campaigns it is very dangerous for us, as leaders, to traverse various constituencies, especially at night. During that time, we meet people of all walks of life, including criminals. I would hate to imagine a scenario where I am in situation where I am confronted by thugs and I am helpless.

I believe this Motion is well intended. We have test cases in many other countries. For example, in the USA, responsible citizens purchase firearms without any fuss and people do not kill each other every day because they own guns. Before we liberalized mobile telephony in Kenya, it was a big deal to own a mobile phone. Today, at least everybody has a mobile telephone and we use them responsibly. I believe if we arm our citizens selectively and responsibly, we will have better protection for the people of this country.

With those few remarks, I beg to support.

**The Temporary Speaker** (Sen. Ongoro): Hon. Senators, before I call upon the Mover to reply, I would like to clarify an earlier ruling that I just made and going by the expression on several Senators' faces, it looks like most of them were not convinced. I made reference to Standing Order No.94 (3) which directs us on how to proceed with debate before amendments and after. It states:-

“Where the Speaker issues directions under paragraph (2), a Senator who speaks to the amendment shall not be entitled, after the amendment has been disposed of, to speak to the Motion, and any Senator who has already spoken to the Motion may in speaking to the amendment speak, only to any new matter raised thereby”.

In my opinion, no new matter was raised, but the mistake that was done was that we introduced the amendments to this Motion very early in the debate. Therefore, it completely made it impossible for most Senators to contribute to the Motion before it was amended. If and when you want to allow Senators to speak to the amendment, then the person moving the amendment should ordinarily wait and introduce it after most of the Senators have spoken. That gives those Senators who have spoken an opportunity to speak to the amendment. That is what happened in this case.

If we do not have any further interest, I now call upon the Mover to reply.

**Sen. Mositet:** Thank you, Madam Temporary Speaker. I sincerely thank Senators for their contributions. I know it has been a long day since morning. However, they have soldiered on to make sure that they make their contributions.

Madam Temporary Speaker, I appreciate the amendment because it is just giving the Motion more substance. All what we are saying is that it has reached a time when Kenyans should not helplessly be killed in their homes without any means of defending their families, properties, neighbourhoods and the nation.

In Ngong, there is an area called Olepolos or Zambia. Of late some armed criminals make sure that they intimidate people when they are going home. At night, they rampage through the homes in that area. I was imagining if a few families in that area were armed, I do believe these people will stop their activities.

Sen. Wamatangi reminded us of a particular incident in Kiambu County. There are quite a number of families who have gone through such distress. Criminals just walk into homes, find families having dinner and rape the daughters and their mother while the

father looks helplessly. With the passage of this Motion, the days of the criminals are numbered. I hope the Inspector General will now have reason to make sure that some Kenyans are licensed to own firearms in order to protect their families and the country.

Madam Temporary Speaker, with those few remarks, I beg to move.

**The Temporary Speaker** (Sen. Ongoro): Hon. Senators, I make further reference to Standing Order No.69. In my considered opinion, this Motion does not affect counties. I will, therefore, proceed to put the Question.

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

*Resolved accordingly:-*

THAT, aware that many Kenyans in their prime years have lost their lives in the hands of criminals and terrorists; concerned that majority of those killed are either employers or employees who form Kenya's labour force and, therefore, contribute immensely to the economy of the country; further concerned that many children are orphaned and, in many instances, property lost as a result of the criminal acts; noting that this problem has caused numerous investors to relocate elsewhere in the continent since they are unable to protect themselves and their property; the Senate urges the National Government to issue licenses to possess firearms to Kenyans above the age of 30 years who apply to be issued with firearms and that this be done after thorough vetting to ensure those licensed are either business people, Government employees or other deserving persons with special interests who can handle the firearms they are issued with responsibly.

**The Temporary Speaker** (Sen. Ongoro): Hon. Senators, we shall now move on to the next Order!

## BILL

### *Second Reading*

#### THE NATIONAL FLAG, EMBLEMS AND NAMES (AMENDMENT) BILL

**Sen. (Dr.) Khalwale:** Madam Temporary Speaker, I beg to move that The National Flag, Emblems and Names (Amendment) Bill (2013) be now read a Second Time.

Madam Temporary Speaker, before I clarify the need for this amendment, I want to start by reassuring all the 47 Governors of the Republic of Kenya that this is not a Bill meant to trim or regulate them or interfere with the way they carry out their business. Indeed, if anything, this Bill has got very clear objectives. They are only three. The first one is that this Bill attempts, for the first time, to create a statute for titles. It wants, for the first time, to create a statute to put the issue of precedence at public functions. It sets out to create a schedule of those people who will be allowed to fly the national flag.

It is important that we remember that up to now, it is only regulations to the old National Flags and Emblems Act that have been governing the flying of flags. But now that we have a new Constitution, it is important for people to know that under the new Constitution, we went out and stated that we have four cardinal national symbols. The first cardinal national symbol is the national flag, followed by the national anthem, the crown and finally, the public seal.

Madam Temporary Speaker, the importance of the public seal is that the President, who uses the public seal cannot use it on any other document other than official business. It is so respected. The national crown, which is put on by officers who serve in our military and the police cannot be worn by an officer on any other attire other than the military or police uniform. They cannot put it on their ordinary civilian wear. That is the respect of the crown. As far as the national anthem is concerned, it is reserved for special occasions. All of you who are old enough, and I believe that applies to all of us other than Joy, will remember that when we broke the announcement that President Kenyatta was dead---

**Sen. (Dr.) Zani:** On a point of order, Madam Temporary Speaker. Is Sen. Khalwale in order to refer to Sen. Joy as only "Joy?"

**The Temporary Speaker** (Sen. Ongoro): Sen. Khalwale, you are out of order! Address Sen. Joy appropriately.

**Sen. (Dr.) Khalwale:** Madam Temporary Speaker, I am very sorry. It is just that I got carried away by the fact that she is younger than my firstborn son. She can easily become my daughter-in-law, but that is not the point.

*(Laughter)*

**Sen. Gwendo:** On a point of order, Madam Temporary Speaker. Is the hon. Senator in order to insinuate that I am as young as his child, who is probably 16 or 17 years old?

**The Temporary Speaker** (Sen. Ongoro): How old is your firstborn son, for purposes of clarity, so that Sen. Joy can feel comfortable?

**Sen. (Dr.) Khalwale:** Madam Temporary Speaker, my firstborn son is 20 years my junior and 33 years old. My second-born daughters are twins and 29 years old. My fourth-born is a son, who is 27 years old. So, she will forgive me for thinking that she is a potential daughter-in-law. But I respect---

**The Temporary Speaker** (Sen. Ongoro): Order, Sen. Khalwale! You are making it even worse. Sen. Joy has not made an announcement that she is shopping around for a husband.

Sen. Joy!

**Sen. Gwendo:** On a point of order, Madam Temporary Speaker. Is the hon. Senator in order to even further insinuate that I am looking for a partner and I am below 34 years of age?

**The Temporary Speaker** (Sen. Ongoro): Sen. (Dr.) Khalwale, you are out of order! Sen. Joy has clarified she is not younger than 34 years? So, withdraw and apologize.

**Sen. (Dr.) Khalwale:** Madam Temporary Speaker, I want to profusely and in good faith, apologize for thinking that the hon. Senator is younger than she is.

**The Temporary Speaker** (Sen. Ongoro): Very well! You may now proceed.

**Sen. (Dr.) Khalwale:** Thank you, Madam Temporary Speaker. I was making the important point that, at the moment, the National Anthem is taken seriously. In 1978, when the late President Kenyatta died, they started by playing the National Anthem to bring the country together. Therefore, it is a serious thing. We play the National Anthem and hoist the National Flag only when a Kenyan athlete has won a gold medal, but not even when he has won silver or bronze. Therefore, the National Anthem is taken seriously.

Finally, Madam Temporary Speaker, because of the absence of regulations, the National Flag has been abused because you have seen, for many years, the Provincial Commissioners (PS) fly the National Flag on their motor vehicles. There is no law that allows our Governors today to fly the National Flag on their motorcades, but they can be forgiven because it was only provided for in a regulation of the Statute.

Madam Temporary Speaker, I move this afternoon to request that the House supports this Amendment Bill so that we can achieve the following. I would like that we amend the principal Act by inserting the following new sections immediately after Section 2(a). The section I would like us to insert is supposed to provide for State Officers who are entitled to fly the National Flag, which should be flown on their official motor vehicles and not their private cars. They include the following: The President, the Deputy President, the Chief Justice, and a Speaker of the House of Parliament. At the moment, the Speaker of the Senate has, unfortunately, been illegally flying the National Flag. There is no law that allows the Speaker of the Senate to fly the flag. So, if we enact this particular Bill into law, now the Speaker of the Senate will have an opportunity to legally fly the flag.

I am providing that a Cabinet Secretary (CS) and the Attorney-General be allowed to fly the flag. There was a small error when we were publishing this Bill, which I will be correcting in the Committee Stage, if the House so allows. I would like to provide that a critical officer who we always overlook, the Auditor-General, who is at par with the Attorney-General, be recognized both by way of flying a flag and also at public fora. This is because without this man, there is no way you will kill corruption in this country. It is thanks to the Auditor-General that we can now return the Kshs300 billion that we lose in every financial year for purposes of causing development in the country.

Madam Temporary Speaker, I would like, subject to Sub-Section 2, to allow the Governor of the county to fly the flag. If this Bill will allow, we can entitle the Governor of the county to fly the National Flag on an official motor vehicle only within the boundaries of his or her county. Let me tell you why. I had originally been persuaded that the Governor should not fly the flag at all because, ordinarily, he should not fly a flag. However, what persuaded me, otherwise, was the benefit of hindsight; that I was seeing down there in Mombasa some people shouting "*Pwani si Kenya.*" Originally I wanted Governors to fly the county flags, because this is the best thing. But then I said, if you do this, then the guy who is the Governor in Pwani, because he is not reminded that he is a Governor within Kenya by seeing a flag ahead of him, he can easily start imagining and thinking that *Pwani si Kenya* or *Turkana si Kenya*, because really, what drives our people is the question of the selfish desire that local resources should not be treated as the common wealth of the Republic of Kenya. So, I am proposing that we allow the Governor to fly the flag on his official car within the county. Once he leaves the county,



he has no business flying the flag whatsoever, because what is the Governor of Kakamega trying to remind the people of Kisumu when he arrives in Kisumu Town? Who cares that he is the Governor of Kakamega in Kisumu?

Madam Temporary Speaker, the other critical issue is that of the use of titles; this is very important. I have created a new schedule to this Act called Schedule Four. This schedule is as follows. It gives the official titles of State Officers. I am proposing that the President be referred, if it is a man, as His Excellency; and if it is a lady, as Her Excellency; and that his or her deputy be referred to as His or Her Excellency the Deputy President. The Speakers of either House to now be elevated, not to be called 'honorable' but "The Right Honorable Speaker" and by extension, the Deputy Speaker will be called "The Right Honorable Deputy Speaker."

There has been a lot of confusion about the title of the Senator; we are being called "*Mheshimiwa*;" or "honorable;" we are being called all manner of things. The practice in the USA, where the presidential system obtains, is that a Senator is referred to by the plain term "Senator." For example, "Senator Mositet, the Senator for Kajiado" or "Senator (Prof.) Lonyangapuo, the Senator for West Pokot."

Madam Temporary Speaker, the title of Governor is another area where we really have to put a lot of thought. I saw it in the eyes of the Governors when we met at a common sitting. I saw the way my own elder brother, the Governor for Vihiga, addressed me and begged me; he told me "do not take it away" I also saw the way Governor Kabogo looked at me. He asked me: What is wrong with you? If you did not want to be a Governor, why are you worried if we are calling ourselves our Excellency?" I am begging this House to bring order in the Republic of Kenya. This attempt by Governors to think that they are mini presidents should be controlled by this law.

*(Laughter and applause)*

Madam Temporary Speaker, I have done my lobbying in the National Assembly and Members of Parliament there are waiting with bated breath that we send this Bill as a message to them. They also want to give their contribution by saying it is wrong for us to imagine that the Constitution was creating mini presidents. The Constitution of Kenya does not contemplate a mini president at the county level; the Constitution of Kenya contemplates 47 county governments run by Governors, who are answerable to the people of the county and who are forever being over sighted by the county assembly, led at the top by the Senator of that particular county. If you give them anything more than that, we shall run into problems. So, we shall borrow from the USA, where a Governor is respectively referred to as "Mr. Governor." You saw it in the debate between Mitt Romney and Obama, where Obama would respectively during those debates say "Governor Romney;" that is the way it is. So, how come the Governor of California, who controls the worlds' fifth largest economy accepts to be called Governor and the Governor of Kakamega, where they do not even have public toilets, wants to say he is "His Excellency?" Why is he not doing those toilets first, with all due respect?

*(Laughter)*

Madam Temporary Speaker, the Member of Parliament, under this arrangement, should enjoy the respect that they deserve. They are honorable Members representing the people in their constituencies. So, I propose that they be called "Honorable Members of the National Assembly."

Last but not least, MCAs are county representatives. Therefore, they should hold the title "Honourable Assembly Men or Women" as the case may be. I have also borrowed this from the practice in the USA.

Madam Temporary Speaker, I would like to drive this point home by finally begging this House to remember that I have, on two occasions in two different counties, heard somebody referring to a Governor this way - allow me to say it in Swahili - *sasa tuinuke ili Rais wa Kaunti yetu azungumze*. I also heard the same speaker say, in a different county, that in the company of the Governor is "Her Excellency, the First Lady" in reference to the Governor's wife. We should stop this. Those who fought for the Constitution - incidentally, we were young boys at the University of Nairobi. They were arrested and expelled from the university and beaten up by the police did not go through this to devolve the "African big man syndrome" to the counties.

We did it because we wanted resources to flow to all corners of Kenya. Devolution was not about creating "big men." It was about empowering our people on the ground. We are going to fight this whether that will mean that we do not like other people or not, but we will do it for the sake of law and order.

This Bill intends to create law and order in public functions. Those of you who have attended public functions will agree with me that there is a lot of confusion with regard to who will speak first or last in public functions. There is also confusion with regard to who will sit where. In fact, in the Kirinyaga County, during the just ended Mashujaa Day, there were two parallel functions. One led by the Senator in one corner and another one led by the Governor in another corner.

In the Bomet County, there were again two functions, one led by the Governor and the other one led by the county commissioner. We want, once and for all, to bring order into this so that people will come before the public knowing that they are servants of the members of the public.

I am proposing that we debate this issue because it is not cast in stone. I suggest that the highest ranking officer of the Republic should be the President of the Republic of Kenya followed by the Deputy President, the Chief Justice and followed by the Speaker of either of the Houses who may be present.

One may ask why we are putting the President above the Chief Justice and the Speakers. This is because, once elected, the deputy is both the heir, apparent to the President and the heir presumably, to the extent that as the Americans put it, he is a heartbeat away from the presidency. God forbid if the heart beat of the incumbent President stopped, then this man automatically becomes President without being referred to the people for election. To that extent in recognition, we should see him as enjoying a notch---

**An hon. Senator:** There is no choice!

**Sen. (Dr.) Khalwale:** Yes, there is no choice. So, I do not have to belabour that point. The second one is that Members might ask why I have not distinguished between the two Speakers of the two Houses. It is because I want to avoid an unnecessary debate here and in the Lower House. This is because the moment you put the Speaker of the

National Assembly above, the Senate will also demand that the Speaker of the Senate be above and *vice versa*. So, to avoid that, whichever Speaker is present on that day should be given his or her respect. But if both Speakers are present, common sense will prevail.

During drafting, there was an attempt to change my thinking, but I encourage that thinking at the Committee Stage. I had wanted that part (e) would be the Senator, followed by the Governor, then the Cabinet Secretary and then the Attorney-General. This is because a Cabinet Secretary and the Attorney-General are appointees of the President. They are in fact vetted by Members of Parliament. The others who are elected are a notch higher. Why do I put a Senator above a Governor? This is because the Governor – to say the truth - is voted for by the same number of people like the Senator, but the Governor has a small constituency called the county. The Senator represents that county alongside his or her jurisdiction also including the Republic of Kenya. So, it should be clear to Governors that much as we are elected, functionally we have an expanded mandate because we speak for the nation while they speak for a county.

Madam Temporary Speaker, the other area where I would like colleague Senators to help me is my thinking that a Member of Parliament should be above the Cabinet Secretary because a Member of Parliament is elected and he or she is the one who vets those Cabinet Secretaries. How do you make a person who vets another one junior to the person he or she is vetting? It is time we showed Cabinet Secretaries that they are no longer politicians. They just sit as good Secretaries who we have given flags and they should be contended with the same. When Members of Parliament are present, they should enjoy their respect and recognition.

I want to follow that with the Speaker of the County Assembly and finally a Member of the County Assembly. I have already spoken to the issue of the Schedule that I have already attached.

With those many remarks, I beg to move and request Sen. Wamatangi to second.

**Sen. Wamatangi:** Madam Temporary Speaker, I rise to second the Bill as moved by Sen. (Dr.) Khalwale. I wish just to raise two issues in support of this Bill because the Mover has elaborately prosecuted and presented his facts.

First, it is important to create order now. In the current Constitution, we have several new titles which have been given to Government officers and leaders. In the previous Constitution, we did not have Cabinet Secretaries, but Ministers. We also did not have Principal Secretaries, but Permanent Secretaries. Neither did we have Senators and Governors. That has brought a lot of confusion in public gatherings, for example, when the Salaries and Remuneration Committee (SRC) did the evaluations and set the salaries. They have been almost silently using that free thought, although it is not constitutional, that they would place some officers above elected leaders. Therefore, this Bill is simply trying to set that order.

Secondly, I laud the Senator for Kakamega for distinguishing and making it clear. From the onset, there was some disquiet within the ranks of the Governors that this Bill is seeking to trim their powers.

**ADJOURNMENT**

**The Temporary Speaker** (Sen. Ongoro): Order hon. Senator! You will have 20 minutes to conclude your contribution when we next commence debate on this Bill. It is not a timed Bill and every Senator will be entitled to 30 minutes. It is time to adjourn the Senate. The Senate, therefore, stands adjourned to tomorrow, Thursday 7<sup>th</sup> November, 2013, at 2.30 p.m.

The Senate rose at 6.30 p.m.