

# PARLIAMENT OF KENYA

## THE SENATE

## THE HANSARD

Wednesday, 9<sup>th</sup> March, 2016

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

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

### PRAYERS

### NOTICE OF MOTION

#### APPROVAL OF NOMINATION OF SENATORS TO THE COUNTY PUBLIC ACCOUNTS AND INVESTMENTS COMMITTEE

**Sen. (Prof.) Lonyangapuo:** Mr. Speaker, Sir, pursuant to Standing Orders No. 177(3) and 179(1), I beg to give notice of the following Motion:-

THAT, the Senate approves the following Senators nominated by the Rules and Business Committee to be Members of the Sessional Committee on County Public Accounts and Investments:-

- (1) Sen. (Prof.) Anyang'-Nyong'o
- (2) Sen. George Khaniri
- (3) Sen. Henry ole Ndiema
- (4) Sen. Mshenga Mvita Kisasa

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

### STATEMENTS

**Sen. Madzayo:** On a point of order, Mr. Speaker, Sir. I am ready to respond to the statement listed as "h" on the Order Paper.

**The Speaker** (Hon. Ethuro): Sen. Madzayo, let us first get the requests. Proceed, Sen. Khaniri.

#### DISTRIBUTION OF FERTILIZER TO FARMERS IN THE COUNTRY

**Sen. Khaniri:** Mr. Speaker, Sir, I rise pursuant to Standing Order No. 45(2)(b) to seek a statement from the Chairperson of the Standing Committee on Agriculture, Livestock and Fisheries regarding the distribution of fertilizer to farmers in the country. In the statement, the Chairperson should:-

(1) State the channels used by the Government to distribute fertilizer to farmers across the 47 counties and how often the distribution is done.

(2) State the quantity of fertilizer to be distributed to farmers in Vihiga County during this planting season and explain whether the distribution will continue to be done annually thereby assuring farmers of its sustainability; and,

(3) Explain the criteria used to identify beneficiaries and mechanisms for determining that the fertilizer reaches intended beneficiaries.

**The Speaker** (Hon. Ethuro): Where is the Chairperson of the Committee on Agriculture, Livestock and Fisheries?

**Sen. Ndiema:** Mr. Speaker, Sir, we shall respond to the statement in two weeks.

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

Sen. Elachi, are you requesting or responding to a statement?

**Sen. Elachi:** I am requesting, Mr. Speaker, Sir.

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

#### BOAT SAFETY IN KENYAN LAKES

**Sen. Elachi:** Mr. Speaker, Sir, I rise pursuant to Standing Order No. 45(2)(b) to seek a statement from the Chairperson of the Standing Committee on Roads and Transportation regarding boat safety in the Kenyan lakes. In the statement, the Chairperson should address the following:-

(a) State the number of boat accidents that have occurred in the Kenyan lakes in the past two years and the number of casualties per lake.

(b) Explain whether the Government has put in place safety regulations for life jacket usage, boat capacity and lighting of boats and whether the regulations are adhered to; and,

(c) Explain the measures the Government has put in place, if any, to curb boat accidents.

**The Speaker** (Hon. Ethuro): Could we get a response from the Chairperson?

**Sen. Sijeny:** Mr. Speaker, Sir, I request for two weeks. At least we should have the statement by 22<sup>nd</sup> March, 2016.

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

Now let us have the responses starting with Sen. Madzayo, the Chairperson of the Committee on Labour and Social Welfare.

#### DOPING MENACE IN KENYA

**Sen. Madzayo:** Mr. Speaker, Sir, this is an answer pursuant to the provisions of Standing Order No. 45(2) of the Senate Standing Orders. Sen. Okong'o sought a statement on the doping menace amongst Kenyan athletes on Wednesday, 17<sup>th</sup> February, 2016. In particular, the distinguished Senator sought to be informed the following:-

Explain the steps that the Government has taken to implement the recommendations on anti-doping that were made to governments by the world Anti-Doping Agency (WADA) in South Africa.

The Anti-Doping Agency of Kenya (ADAK) was legally established following the assent of the executive order by His Excellency the President on the approval of a Cabinet memorandum by the Cabinet on the establishment of the Agency.

In January, 2015, a multi lateral partnership was established from an agreement signed by all parties which include the Ministry of Sports, Culture and Arts, China Anti-Doping Agency, Anti-Doping Agency of Norway and the World Anti-Doping Agency (WADA) where partners agreed to support Kenya to establish a robust Anti-Doping Agency.

Mr. Speaker, Sir, the Anti-Doping Policy was a work in progress awaiting legal advice and or recommendations by the WADA legal officer during a meeting planned for 14<sup>th</sup> December, 2015. The Anti-Doping Agency of Kenya (ADAK) has already held level one training of ten doping control officers who will be certified by World Anti-Doping Agency (WADA). On behalf of ADAK Africa zone, regional Anti-Doping organization trained a result management team. ADAK in cooperation with the National Anti-Doping Organization (NADO) has been carrying out off- competition testing of athletes.

Five ADAK board members were appointed and have been through an induction course on issues of anti-doping. The agency has complied with the World Anti-Doping Code by embracing the Africa zone NADO rules before domesticating of WADA model rules.

The Hon. Senator also requested an explanation on whether the ADAK is operational, its composition, roles and the programmes that it has put in place in the campaign on anti-doping.

The Executive order by His Excellency the President and the approved Cabinet Memorandum by the Cabinet has given the agency the legal authority to operate. First, a letter has been written to the State Corporation Advisory Committee requesting that ADAK be officially placed in its official list, in its relevant category of Government Parastatals and Agencies.

Secondly, after categorization, the Director of Public Management Services together with the Human Resource Division and the Ministry of Sports, Culture and Arts will be engaged to develop a valid sustainable structure for ADAK. ADAK board members will be re-gazetted to legalize and make them compliant to the Constitution by embracing the clause on the one-third gender and disability rule.

The roles of the agency include:-

1. Doping control processes which involves in and out of competition testing of all athletes.
2. Outreach programmes, education and awareness campaigns during sports forums.

These programmes are planned to take place in campaign against doping which include:-

- (i) Level two training and certification of Doping Control Officers (DCOs)
- (ii) Train and certify blood control officers
- (iii) Testing of athletes.
- (iv) Outreach programmes, education and awareness campaigns
- (v) Development of ADAK logo
- (vi) Branding of anti-doping materials
- (vii) Development of risk assessment and register testing pool

(viii) Relevant panel to be trained, including investigation, appeal, result management and therapeutic use of exemption teams.

Sen. Okong'o requested for an explanation on what steps the Government has taken to facilitate ADAK to carry out its mandate. His Excellency the President of the Republic of Kenya assented to the Executive Order of the establishment of the agency.

Also, there was an approval of the Anti-Doping Cabinet Memorandum by the national Cabinet which has proposed an annual budget of Kshs500 million. There has also been a re-gazettement of ADAK board members.

In addition, during the current Medium-Term Expenditure Framework (MTEF) budget processes, ADAK will be allocated adequate financial resources.

Finally, Sen. Okong'o wanted an explanation on what actions the Government has taken against institutions and individuals that aid and abet doping amongst Kenyan athletes.

The Government, in collaboration with the Pharmacist and Poisons Board and the Medical and Dentists Board (PPBMDB), has been carrying out raids on chemists, pharmacies and clinics which are suspected to have aided and abet athletes in the use of prohibited substances.

The Ministry of Sports, Culture and Arts is in the process of approaching the security department to carry out investigations on athletes, managers and institutions suspected to be involved in doping. They will also establish an immigration department for vetting foreign agents and managers coming in the country in sports-related occupations.

Thank you.

**Sen. Okong'o:** Mr. Speaker, Sir, what I have heard from the chairperson is one hollow answer. As an expert in this area, having coached athletes for over 15 years, what I have heard the Chairperson say is about plans. The International Association of Athletics Federations (IAAF) gave regulations over three years ago. In this response, I have heard nothing about these plans. From the last one on security agencies, they do not exist.

In collaboration with the PPBMDB to arrest culprits, the Cabinet Secretary (CS) has not indicated how many people have been arrested and where the process of prosecution has reached.

We have also heard about budgets which were supposed to be given---

**The Speaker** (Hon. Ethuro): Order! We were also in the House when the statement was being read. Therefore, you do not have to repeat it.

**Sen. Okong'o:** Mr. Speaker, Sir, this statement is unsatisfactory. I request that we summon the Cabinet Secretary to come and explain to us some of these things. Kenya is three weeks away from getting banned from fielding athletes in various international championships. This is a multi-trillion industry. This answer is hollow. It does not satisfy my questions.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Speaker, Sir, that our athletes have brought fame and glory to this country is not arguable. However, of late, a nightmare is ensuing amongst our athletics. Our athletes are now being cited as being victims of doping.

In our history, whether we are talking of Kipkeino, Ben Jipcho or Samson Kimobwa, all these great athletes were like Caesar's wife; beyond any suspicion. Today, we have Ritah Jeptoo, a very admirable young athlete banned for five years. We have others being mentioned.

Last week, the CEO of Kenya Association of Athletics (KAA) was found culpable of complicity in doping and taking bribes to cover up doping incidents. The result was being sent away from office. No arrest. No prosecution. Is the Government serious in fighting the doping menace? If we do not do this, we are destroying the image of the country, curtailing the growth of young talents and undermining the glory that the athletes have brought to this country.

When you think of young people like Ezekiel Kemboi, Rudisha, Vivian Cheruiyot and others, could the chairperson tell us, first, what the Government is doing to punish the agents who are likely to be the culprits in introducing our athletes to doping so that they can continue fielding them and milking them to make money.

Secondly, what is the Ministry doing in dealing with KAA which is a beehive of corruption? You heard of the billions they have received from Nike Air and other sponsors for athletes that have gone into the accounts of individuals. If they can do so, they can also hide the doping menace. We want a very clear roadmap on how to clean up this otherwise very admirable athletics that have brought glory and fame to our country.

**Sen. Adan:** Mr. Speaker, Sir. On 24<sup>th</sup> February, 2016, Sen. Abdurrahman Ali Hassan requested for a---

**The Speaker** (Hon. Ethuro): Order, Senator! We are still on this matter.

Sen. (Dr.) Khalwale!

**Sen. (Dr.) Khalwale:** Mr. Speaker, Sir, doping is now an international problem. In fact, none other than Maria Sharapova, one of the most renowned athletes in tennis has been caught cheating. The people behind this illicit trade are multi billionaires. It is not different from drug peddlers who also are after our youth. Could the chairperson inform the House two things:

(1) How have they equipped the Customs and Immigration Department by way of equipment and training so that those products that come in disguised as normal products which are then used by athletes are controlled by being denied entry into our market.

(2) I have not heard the chairperson mention anything about legislation. Beyond the plans that the Government has, there is need for us to have legislation that meets the international standards for us to fight doping.

For the information of the House, the Government is sleeping on this issue of legislation so much so that they have left it only to the Hon. Member for Cherangany, Hon. Wesley Korir. He is being frustrated to see a piece of legislation that he wants to push through to help the Government. Could the chairperson tell us what the Government is doing in respect of that?

**Sen. M. Kajwang:** Mr. Speaker, Sir, I want to thank the Chairman for that response. However, just as Sen. Okong'o mentioned, there are a lot of intentions in this, yet time is running out. All sports activities where the State has had a hand are in disarray. There have been scandals with regard to soccer and volleyball. Now the same is coming to athletics. All State sponsored sports initiatives and promises made by the Government have not come to fruition. We all recall that the current Government

promised five stadia. By now we should have seen, at least, two or three stadia, but this has remained a mirage.

The reason I am bringing this up is that the assurances we are getting today from the Chairman of the Committee might as well be a mirage, just like the five stadia that this country was promised. Russia has been suspended from international competitions because of what is called “state sponsored doping”. What is happening in Kenya does not seem to be very different from what has happened in Russia. Kenya is an athletics powerhouse.

We won the world championships in Beijing in 2015, but we should not delude ourselves that because we are good at running we cannot be suspended from international competitions. The Olympics is coming up in August and there is a high likelihood that if we do not meet the deadline that has been set for 6<sup>th</sup> April, our athletes will not be allowed to go to Rio.

Could the Chair of the Committee come back to this House with a more comprehensive undertaking and assure us that our athletes will not in any way be affected? There are many hardworking young men and women who deserve to go to Rio because they do not take performance enhancing drugs. We know that the issue of legislation is a matter in the National Assembly, but---

**The Speaker** (Hon. Ethuro): Order, Senator. This is Statements Time. Please, interrogate.

**Sen. M. Kajwang:** Mr. Speaker, Sir, please, allow me to summarize. The Chair has talked about the anti-doping agency that is being established and issues to do with legislation. The global anti-doping agency has already said that the policy and legislation that Kenya is coming up with does not meet its standards. I would like the Chairman to assure this House that this particular matter that is being pushed in the National Assembly shall be amended so that it meets those requirements. If that does not happen we will not have a Kenyan athlete participating in the Rio athletics in August.

**Sen. (Prof.) Lonyangapuo:** Mr. Speaker, Sir, almost every sport in Kenya has nearly come to a standstill. At one time we were the best in football and volleyball and now, athletics is being attacked. I was listening to the BBC today and the issue of doping and how some athletes in Russia have been affected was being discussed. One of the inventors of---

*(Sen. Murkomen and Sen. Sang walked into the Chamber)*

The Kericho warriors have arrived.

*(Laughter)*

Mr. Speaker, Sir, one of the scientists who discovered the said substance said today that it was not meant for doping. As the Chair seeks further clarification, could there be an attempt to frustrate and kill the natural talent that is found in Kenya through adverts and scientific discoveries, including sports shoes and gear? We would like detailed findings tabled here, so that we can interrogate them.

**The Speaker** (Hon. Ethuro): Let us have the two final contributions. Please, keep to one minute.

Sen. Ongoro.

**Sen. Ongoro:** Mr. Speaker, Sir, this is a very serious issue that, apart from threatening to take the good legacy of this country as a sporting nation, it is now retrogressing on the gains that we have already made in the area of attracting sports tourists. Further to all issues that have been raised, what is the Government doing to set up parallel investigations to confirm these allegations and allay fears that this is not even about competition blackmail? We know that this nation has held for many years some of the records in athletics.

**Sen. (Prof.) Lesan:** Mr. Speaker, Sir, could the Chairman also tell us whether there are any plans by the Government to rehabilitate some of the athletes who could be captives of the drug menace in the country using either funds forfeited by those who have been cheating or elsewhere? We know that there are some medical complications that happened as a result of this medication and some of them are still very useful athletes.

**Sen. Madzayo:** Mr. Speaker, Sir, I do appreciate the concerns of the distinguished Senators. Due to the detailed nature of the response required to quite a number of the questions, with your kind permission, I think it would be important for the Cabinet Secretary himself to appear and answer. I would request for two weeks to be in a position to do the logistics and ensure that the Cabinet Secretary appears before the House.

**The Speaker** (Hon. Ethuro): Why do you not try one week?

**Sen. Madzayo:** Much obliged. I will try my level best to ensure that the Cabinet Secretary responds within the next seven days.

**Sen. Kembi-Gitura:** On a point of order, Mr. Speaker, Sir. The Chairpersons of Committees are very important persons in the new constitutional dispensation, because the Cabinet Secretaries cannot come to the Chamber like they used to do under the old Constitution. However, I am getting a little bit concerned because I have noticed an interesting trend. Every time a Chair gives a statement- almost all Chairpersons - they tell us that they will ask the Cabinet Secretary to come and give a more substantive answer.

This calls to test the purpose of the new system. It shows that the Chairpersons cannot be expected to do the job that they are supposed to do under the new Constitution. Invariably we hear the Chairpersons saying that they will ask the Cabinet Secretary to come and give an answer, which then would save a lot of time instead of attempting to give unsatisfactory answers in the House.

I am not putting blame on the Chairpersons, but it shows a failure in the new dispensation where Chairpersons purport to do what Assistant Ministers used to do under the old constitution; to give answers where they had the full information, including the relevant files to back them up.

**Sen. (Dr.) Khalwale:** Mr. Speaker, Sir, under the old Constitution, the Ministers and their assistants who used to give what Sen. Kembi-Gitura is calling a satisfactory answer were Members of Parliament like us. The only difference was that they were putting pressure on technocrats in the Ministry to give supplementary information. The Chair should direct that the Chairs of the Committee should not come with the answers as asked but with Statements with supplementary information which they can use to give those answers.

As someone who sat in one of the most successful executive as an Assistant Minister during Kibaki's presidency - successful in the sense that President Kibaki was the best performing President in this country – I can tell you for sure that the information you require is readily available in the Ministries. What we should do is to push the Chairs to bring along supplementary information. In fact, we do not like seeing some of the Cabinet Secretaries because they remind us of the corruption that they do in their Ministries.

**The Speaker** (Hon. Ethuro): Order Sen. (Dr.) Khalwale! Corruption is not written on people's faces.

We are belabouring on issues that are not there. We have had one Statement and the matter has been raised on what transpired yesterday. I think Sen. (Dr.) Khalwale has given the way forward because I feel the same. Those Ministers used to be Members of Parliament. Our Chairs need to take their responsibilities more aggressively because they seem just to be conveyers of a paper instead of interrogating the issues with the relevant Cabinet Secretaries. I hope they have heard us.

We have already spent 45 minutes on one Statement. Next Statement!

ISSUANCE OF NATIONAL IDs TO RESIDENTS OF NAIROBI  
WHO HAIL FROM OTHER REGIONS OF THE COUNTRY

**Sen. Adan:** Thank you Mr. Speaker, Sir. On 24<sup>th</sup> February, 2016 Senator Abdirahman requested for a Statement regarding the issuance of identity cards. The Senator particularly sought to be informed on the issuance of the identity cards for Nairobi residents who hail from other regions of the country and whether the Government is aware of the profiling of Somali ethnic community members at the National Registration Bureau headquarters who are being branded aliens.

The Senator also sought to be informed of the measures being taken to ensure that all new persons registered in north eastern region receive their identity cards within the shortest time possible to enable them register as voters in the ongoing exercise.

I wish to respond as follows:-

The policy that guides issuance of identity cards for Nairobi residents who hail from other regions is that every Kenyan is registrable in a place of birth or permanent residence. The government is not aware of the alleged profiling of Somali ethnic community members and the branding of the same as aliens at the National Bureau headquarters.

Mr. Speaker, Sir, the government has employed the following measures to ensure all new persons registered in north eastern region receive the identity cards within the shortest time possible to enable them register as voters in the ongoing exercise:-

1. Prompt submission of registration application forms to the headquarters for identity cards production.
2. Fast-tracking the processing of the submitted registration forms.
3. Personnel in the production centre are working extra hours including weekends.
4. Collection of processed identity cards from the headquarters by the Registrars in person.

In addition to this, we had a lengthy and fruitful meeting with the Registrar of Persons last week. Most of the issues that affect the counties were discussed at length.



We had agreed to visit the Registrar of Persons Headquarters tomorrow but we have postponed it because of another scheduled meeting with the CRA.

Mr. Speaker, Sir, the Committee has planned to invite all the county registrars to deliberate on all the issues that were raised by Members of Parliament. The Cabinet Secretaries of Interior and National Coordination and The National Treasury are also invited.

Thank you.

**Sen. Abdirahman:** Mr. Speaker, Sir, I thank Sen. Adan for the response but the manner in which the response is drafted is casual. I am saying so because I am not looking for an answer on when the road will be done. It is a matter that is sensitive and close to our hearts, including hers. The following are comments that will disapprove the response Sen. Adan---

**The Speaker** (Hon. Ethuro): Order, Sen. Abdirahman. It is Statement Time.

**Sen. Abdirahman:** Mr. Speaker, Sir, I will be direct. When I was asking about the policy that guides registration of persons in Nairobi, I had in mind a particular case in Nairobi West of a citizen who was denied registration even after the area chief formally signed the registration documents. If the Chair allows, I will table the said documents. They were also countersigned by the elder representative from Nairobi West. In fact, he is the son of the sister of the immediate regional coordinator of Rift Valley region, one, Said Osman Warfa.

Nairobi City is a home to many migrants. Everyone is not born in the city. It has a population of about five million people. Three million out of this population may have come from Bungoma, Wajir, and Isiolo among others. This policy is discriminative.

Mr. Speaker, Sir, one ethnic community has been branded as aliens. I have a copy of a letter - I am ready to table it too - duly signed by the Principal Registrar, Legal, to the Assistant Director, Production, at the headquarters. It has a list of about 48 people from one ethnic community labeled as suspected aliens. This is something that happens every day. If registration is done at the county level, with the presence of a vetting committee, what is this other vetting committee at the national level that is denying Kenyans to get their registration?

I table both for purposes of proof.

*(Sen. Abdirahman laid the documents on the table)*

**The Senate Minority Leader** (Sen. Wetangula): Mr. Speaker, Sir, can the Chair inform the House why at every issuance of identity cards station, there is a Criminal Investigation Department officer. What is the role of the CID in the issuance of identity cards?

Could the Chairman assure this House that in accordance with the provisions of the Constitution of the Republic of Kenya, 2010, every adult Kenyan is entitled to an identification (ID) card as of right and should not be taken through the rigmaroles of senseless vetting? Sometimes people are told to bring in chiefs, or they demand titles deeds and ask for ID cards of their grandfathers, grandmothers and everybody along the chain which ends up denying people the right to have ID cards

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

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

Lastly, Madam Temporary Speaker, could the Chairman assure this House that the policy of telling people to go back to their ancestral districts to get ID cards - something which is now unfolding in Nairobi - will stop forthwith? Anybody residing in Nairobi has a right to get an ID card in Nairobi.

**Sen. (Prof.) Lonyangapuo:** Madam Temporary Speaker, like my colleagues, I have further clarifications to seek. Firstly, we are talking about ID cards; this is mandatory for every Kenyan who has attained the age of 18 years and above. In my county, there are over 100,000 people without ID cards. To make it worse, there was a problem of cattle rustling between Turkana and West Pokot counties for a long time. So, people did not even have a chance to acquire ID cards. There were also problems between the people of Turkana and Baringo, West Pokot and Elgeyo-Marakwet and Turkana and Samburu. So, we have a staggering number of people which has---

You saw it on television the other day. Very senior citizens are going through circumcision in the area for the first time because there is peace. So, if they forfeited that activity, where do you think they can get ID cards?

Madam Temporary Speaker, I would like to know how, when and the deliberate steps the Government will put in areas where we have had this problem for a long time. I asked the concerned officers and they said that they do not even have tyres for their vehicles. Could the Chairman confirm the steps they will take to ensure that officers who are on the ground are beefed up and given necessary facilities?

Lastly, every year, we hear of every youth having a waiting card. Is there a way a waiting card can be used especially during registration of voters? It has become chaotic. We have very many people roaming around with waiting cards. I know it is not only my county that is affected but it is a problem affecting other counties as well.

**Sen. Khaniri:** Madam Temporary Speaker, I am very disappointed by the casual way in which the Vice Chairperson has responded to the Statement by Sen. Abdirahman. I remember when Sen. Abdirahman raised this issue, it generated a lot of debate and very many Members rode on the statement; almost half of the House. I remember raising the issue and requesting that when the Chair comes to respond, she must give an explanation why the youth in some regions, particularly regions perceived to be anti-Jubilee wait for as long as even one year to get their ID cards after applying for them while it just takes three or four weeks for the youth in other regions to have them. I have evidence to this. I was waiting for her to respond to that so that we table some of the evidences that we have.

She must be compelled to answer some of these questions because we think it is a deliberate move by the Jubilee Government to disenfranchise areas that are perceived to be the Coalition for Reforms and Democracy (CORD) areas, so that the youth cannot be registered as voters.

**The Temporary Speaker** (Sen. Ongoro): Thank you, Senator.  
Sen. Nabwala, are you on a point of order?

*(Sen. Nabwala spoke off record)*

**The Temporary Speaker** (Sen. Ongoro): Put the right intervention if it is a request.

Sen. Musila.

**Sen. Musila:** Madam Temporary Speaker, I sympathise with the Vice Chair because as you are aware, there is a trend with our chairpersons that whenever we ask questions, they simply get away with it by telling us that they have invited the Cabinet Secretaries (CSs). That is what the hard working Vice Chairperson has said and it is what she said yesterday in respect to another question.

Madam Temporary Speaker, we cannot deny that the Somali community in this country is discriminated against when it comes to issuance of ID cards. More importantly is what Sen. Khaniri has said. Discrimination is also affecting those who come from counties perceived to be CORD areas.

Madam Temporary Speaker, during the last elections – I made this statement on the Floor – our people applied for ID cards and they were not given until after the elections. Therefore, they could not vote. As we speak now, our people applied for ID cards over three months ago. However, they cannot register as voters because they do not have ID cards.

With your permission, I would like the Vice Chair to confirm or deny that the Registrar of Persons was supposed to retire late last year. However, because they want to retain him to continue doing what he has always been doing, his contract is being renewed when he has passed retirement age.

Could the Vice Chair tell us why the Registrar of Persons who has passed retirement age cannot retire to allow others who have no briefing for discrimination of the Somalis and the CORD areas take the position?

**The Temporary Speaker** (Sen. Ongoro): Thank you, Senator.

Sen. Billow.

**Sen. Billow:** Madam Temporary Speaker, the question that has been raised regarding ID cards has not been properly answered. The issue being raised here is how you tell a Kenyan who lives or does business in Mwingi or Kitui County applying for an ID card there to go to his ancestral home because that does not make sense.

Secondly, could the Vice Chairperson clarify why the Ministry carries out special vetting of ID card applications from north eastern and other border regions of the country when vetting has been carried out by security officers and other leaders in the counties? This is a matter that they need to look into. Could she clarify that the Government will stop vetting because that is what is deliberately delaying ID cards issuance in north eastern?

**The Senate Minority Leader** (Sen. Wetangula): Madam Temporary Speaker, as the Vice Chairperson comes to answer the questions, I have a follow-up to the issue raised by the distinguished Senator for West Pokot which I would like her to confirm. We better be attentive to this. Section 5(3) of the Elections Act that deals with registration of voters reads as follows:-

“Any citizen of Kenya who has attained the age of eighteen years as evidenced by either a national identity card or a Kenyan passport and whose name is not in the register of voters shall be registered as a voter upon application, in the prescribed manner, to the Commission.”

The more important one is Section 3(a) which states as follows:-

“(3A) Despite subsection (3), a citizen who has attained the age of `18 years and has registered for an identification card and is in possession of an acknowledgement of registration certificate shall, upon application, be registered as a voter using the acknowledgement of registration certificate, but may only vote using an identification card.”

Could the Vice Chairperson confirm that the on-going registration of voters can and shall accept citizens holding waiting cards to be registered as voters? The law allows this to be done but we know that people are being turned away because they hold waiting cards.

**The Temporary Speaker** (Sen. Ongoro): Thank you, Senate Minority Leader.  
Sen. (Dr.) Khalwale!

**Sen. (Dr.) Khalwale:** Madam Temporary Speaker, there are two facts. The first one is that if you go to the library here, the Members of Parliament (MPs) who came from the then northern frontier districts (NFD) were complaining over 40 years ago, about this same question of Somalis being called aliens. The second fact is that Kenyans of Somali origin are Kenyans.

Could the Jubilee Government tell us whether they are unable to live with Kenyans of Somali origin in this country to the extent of calling Kenyans “aliens”? If the reason is the Immigration Department, what is the Government doing to overhaul the entire incompetent department so that Somalis do not have to apologise for having a DNA of a Somali? It is a lot of rubbish.

**The Temporary Speaker** (Sen. Ongoro): Thank you, Senator.  
Sen. Nabwala, you may take the Floor.

*(Sen. Orengo stood in his place)*

**The Temporary Speaker (Sen. Ongoro):** Okay, Sen. Orengo, proceed although the Floor was for Sen. Nabwala. She will speak after you

**Sen. Orengo:** Madam Temporary Speaker, I am so sorry.

**The Temporary Speaker (Sen. Ongoro):** Proceed. I will give her the Floor after you.

**Sen. Orengo:** Madam Temporary Speaker, I am riding a little bit on what Sen. Wetangula had earlier asked. The passport and identity (ID) cards are entitlements in the Constitution. For any Kenyan, the only thing that you can carry around with you to show that you are Kenyan is a passport or an ID card. You may be denied water or other services but to be denied an ID card which is provided for in Article 12 of the Constitution will be a great betrayal.

Although you are in a little bit of a predicament; sometimes, it has been said that resources are the problem. However, I have just witnessed a problem where the Jubilee Government is spending about Kshs1,000 to buy one single vote in Malindi. An ID card does not cost more than Kshs100. Can those resources be put in the right place instead of having the sky team flying all over the place?

**Sen. Murkomen:** On a point of order, Madam Temporary Speaker.

**The Temporary Speaker** (Sen. Ongoro): Could you use the right channel? I cannot see it reflecting here.

*(Sen. Murkomen spoke off record)*

Okay. There is one intervention, Sen. Orengo.

**Sen. Murkomen:** On a point of order, Madam Temporary Speaker. Is it in order for my mentor and senior, Sen. Orengo, to make statements on Malindi or any other by-elections where he has no evidence? Is it possible for him then, to substantiate what he has said by providing evidence in this House?

**The Temporary Speaker** (Sen. Ongoro): Sen. Orengo, proceed and provide further details.

**Sen. Orengo:** Mr. Temporary Speaker, Sir, the Senate Deputy Majority leader is asking for trouble. I was in Malindi Police Station where one Hon. Gitau was locked in a cell with evidence of having tried to bribe voters with Kshs200,000. I asked him if he needed legal representation. I was in Malindi when one of the MPs from Kiambu County was also arrested while trying to bribe voters. So, there is plenty of evidence out there.

*(Loud consultations)*

**Sen. Murkomen:** Madam Temporary Speaker, I know the senior counsel, Sen. Orengo, as a very intelligent man. I do not know why his examples are selective. He knows that, first of all, the evidence that he is talking about is untested and it is just an allegation. Being a senior counsel, he knows what that means. Two, is the question of why those allegations are only focused on MPs from certain political parties and not the Communication Director of the Orange Democratic Movement (ODM), who also faced even worse allegations.

*(Loud consultations)*

I have not finished. Sen. Orengo is rightfully part of his legal team. Was it because of conflict of interest or anything?

**Sen. (Dr.) Khalwale:** Madam Temporary Speaker, the House cannot allow Sen. Murkomen to get away with this. Is he in order to suggest that there was no bribery when he is one of those MPs who flew in the six helicopters that were flying in Kericho County and being paid for by taxpayers? Is he in order to mislead the country or are you a supporter of corruption, young Sen. Murkomen?

*(Laughter)*

**Sen. Orengo:** On a point of order, Madam Temporary Speaker.

**The Temporary Speaker** (Sen. Ongoro): One minute. I will allow another intervention from Sen. Wetangula and then I will give you the Floor. There are so many interventions.

**The Senate Minority Leader** (Sen. Wetangula): Madam Temporary Speaker, allow me to inform the Senator for Siaya that we were in Malindi and on the polling day,

the Cabinet Secretary (CS) for Mining was arrested by young people exercising the power of citizens arrest.

*(Laughter)*

**The Temporary Speaker** (Sen. Ongoro): Order, Senators! I think we need to ---

**The Senate Minority Leader** (Sen. Wetangula): In his car, they confiscated over a Kshs500,000 and shared it. Equally important is that the Director of Communications of ODM, one Mr. Phillip Etale, was not arrested and charged with bribing voters but for posting a social media message to the effect that Independent Electoral and Boundaries Commission (IEBC) was planning to rig elections at Eden Rock Hotel.

**The Temporary Speaker** (Sen. Ongoro): I will allow only two interventions and then Sen. Orengo will have his chance. I hope the clerks are holding his time. We shall have Sen. (Prof.) Lonyangapuo and then Sen. Murkomen, in that order.

**Sen. (Prof.) Lonyangapuo**: Madam Temporary Speaker, I think Sen. Murkomen should be the last person to talk.

*(Laughter)*

He has been absent the whole week. They were escorting a former Senator who used to sit here and who is suddenly now not behaving as a civil servant. Sen. Murkomen was like his personal assistant. He should be the last one to talk here. We are still talking to see how they won in Kericho County but the talking is on this side of the House.

**Sen. Murkomen**: Madam Temporary Speaker, let me start with the old Sen. (Dr.) Khalwale. He has attempted to confuse between our agility and abilities in campaigning. The substance of the question was voter bribery. I have no problem with what Sen. Orengo raised. If you remember, I said that he should be using the word "allegations". For a senior counsel of the calibre of Sen. Orengo, he should know that there is a difference between tested and confirmed evidence which has led to conviction and a question of allegation.

Those allegations in terms of bribery were all over. I have no problem with that. I was just saying as a lawyer of his repute, he should stick to the fact that allegations are still allegations.

Two and most important is to Sen. (Prof.) Lonyangapuo and Sen. (Dr.) Khalwale. We have absolutely no apology for having done fantastic and successful campaigns which led to Sen. (Prof.) Lonyangapuo getting lost in the last one week of the campaigns. It is because he realised the seriousness with which young people of this country wanted the election of Sen. Aaron Cheruiyot, who is here to be sworn as a Senator in this country.

**The Temporary Speaker** (Sen. Ongoro): Speak to your intervention.

**Sen. Murkomen**: Madam Temporary Speaker, I will not answer Sen. (Prof.) Lonyangapuo for the simple reason that I will allow him to cool down, relax and get his footing because of the loss.

**Sen. Muthama**: Madam Temporary Speaker, mine is to inform Sen. Murkomen that a clear Statement was issued from Mombasa by a great supporter of Jubilee Alliance Party (JAP) where he said that any election held in this country, they will make sure that

they win either by buying votes - which is what was taking place - stealing as it took place in Kericho and beating people which took place in Mombasa and Kericho. So, it is obvious. We have absolutely nothing to prove here. It is clear that Jubilee is out to steal and do all kinds of things to make sure that they win elections.

**The Temporary Speaker** (Sen. Ongoro): I think we have had enough interventions. We must allow Sen. Orengo to proceed.

**Sen. Orengo:** Madam Temporary Speaker, you know whether you call them bribery or allegations of bribery, the bottom line is that, these are serious matters and if they were not serious, Anne Waiguru would not be at home on mere allegations. So, what I am saying is factual, an emulation to Philip Etale, I can tell you authoritatively and I have been talking to the police even 10 minutes ago, they have entirely nothing on Mr. Etale. They told me that they were acting on the basis of directions from above and that is the way it is going to be.

Madam Temporary Speaker, that is the character of the Jubilee Government. What I was saying is that a Government which can spend so much money including the 12 helicopters that I hear Sen. Murkomen was using on top of the military choppers that the Deputy President was using in Malindi, how can they continue to do that when they cannot deliver on any promise they have made even laptops?

At least I can sympathize with you on the question of laptops because they are a bit expensive. But an Identity Card (ID) that this Government cannot give to Kenyans and more so when you have a wonderful person like Sen. Billow whom I have been with in Mandera, that even people in Mandera cannot get IDs because this Government cannot distinguish between Kenyans and Somalis from Somalia and those from Kenya----

Madam Temporary Speaker, soon "Luos from Tanzania" may not get IDs if that is the basis upon which determination has become very difficult. Can the Chairman assure us that the Government will comply with the Constitution and give every Kenyan, irrespective of tribe, race, creed, language and sex, ID cards as provided for in Article 12 of the Constitution and deny Sen. Murkomen one because he is misbehaving?

**The Temporary Speaker** (Sen. Ongoro): Hon. Senators, those were very good---

**The Senate Majority Leader** (Sen. Wetangula): Sen. Nabwala!

**The Temporary Speaker** (Sen. Ongoro): I will allow Sen. Nabwala to speak. In respect of Standing Order Nos. 94 and 110, we will treat all those as allegations because they still do not constitute credible evidence and until we have anything laid on the table of the House, we will treat them as such.

Sen. Nabwala!

**Sen. Nabwala:** Thank you Madam Temporary Speaker. I have evidence from my county where someone applied for an ID card in 2012, but until now, this card has not been issued. I would like to put the Chair of this Committee to test by producing the waiting card belonging to Tripea Wanyama Wafula which was applied for on 5<sup>th</sup> September, 2012. I have the serial number of the ID which is 232025164. I have others but I would like to see that one first.

Thank you.

**The Temporary Speaker** (Sen. Ongoro): Thank you. Sen. Ndiema!

**Sen. Ndiema:** Thank you Madam Temporary Speaker. It is true that Kenyans are undergoing a lot of hardships to get this document which is their right. To become a citizen is a right and it is in the Constitution. An ID is just a confirmation and not what

makes one a citizen. The problems that are experienced in Mandera and Wajir are also being experienced in Trans Nzoia. One reason is because of delays and the second is because there are certain communities in that county that are treated in a similar manner and yet they are Kenyans.

Madam Temporary Speaker, the first reaction is to suspect that they are aliens. This is an area that we would wish the Chairman to investigate and find out. I would suggest that rather than calling the Cabinet Secretary, the committee should make a point of visiting and hearing members of the public. We also have the issue of errors where a man applies for a passport but the photograph which finally appears on the identity card belongs to a lady. We have such cases which need to be rectified.

**The Temporary Speaker** (Sen. Ongoro): Sen. Muthama!

**Sen. Muthama:** Thank you Madam Temporary Speaker. My understating is that the formation of the Government starts from the Executive, the President himself and to the Assistant Chief. If a crime is committed in the office of the President, that is the Government. If crime is committed by an Assistant Chief, that is crime committed by the Government. The issuance of ID cards was done in Mandera by government appointed officers. We are surprised to see the selected names only after Sen. Abdirahman has raised this question.

Madam Temporary Speaker, as far as we are concerned, we are not being told by the Chair that those who registered those Kenyans illegally have been arrested and charged for doing that. It is after they have been issued by the same appointed Government officers and IDs given that the Chair comes here to say these ID cards were issued illegally. Where is the “big” Government and the “small” Government? Which Government should be blamed for committing crimes and which one should be sanctioned for committing crimes?

Madam Temporary Speaker, the answer is not clear, let us hear that they have arrested those who issued those illegal cards, taken them to court, prosecuted and jailed because that is where they belong.

Thank you.

**The Temporary Speaker** (Sen. Ongoro): Because of time, we have to bring that issue to closure. Chair!

**Sen. Adan:** Thank you Madam Temporary Speaker. When we raise issues or statements on the Floor of the House, the main purpose is to get a solution to the problem. Last time when I stood on the Floor, I informed the House that the Registrar was going to appear before the committee and I requested all Members who had issues to bring them out so that we could iron them out with the Registrar face to face.

If I am not wrong, it was Sen. Ndiema who attended that meeting. Again, after ironing out those issues with the Registrar, more issues kept on coming. Therefore, it is good for this House to utilize the avenues that we have, especially when we have these officers with us, so that some of the questions that the Chairpersons are unable to answer can be answered.

The issues that were raised on the Floor regarding discrimination in registration and the documents that were tabled by Sen. Hassan came to the meeting. Clearly, the policy of the Government is that either someone is born within that area or a resident there. Unfortunately, there are so many other requirements that are employed by the registrars in various counties. This issue was discussed at length with the Registrar and it



needs to be dealt with. That is why the Committee felt that we need to summon all the registrars to a meeting so that we can discuss these issues.

I undertake to ensure that the Committee will investigate the documents that were tabled by Sen. Hassan and give a feedback to the House and to Sen. Hassan.

We also discussed the role of Criminal Investigations Department (CID) and other security agencies. The Registrar said that it is not necessary for CID officers to sit in the vetting because this is not a criminal matter. Sen. Wetangula and Sen. Ndiema can attest to that.

In Isiolo County, for example, where I come from, we have two vetting processes taking place; one by the vetting committee and the other one by security, which is not really necessary. These are bureaucracies that are delaying the processes of issuance of national Identity Cards (IDs). This is a matter that we need to discuss and iron out with the Directorate of Immigration and Registration of Persons.

Sen. (Prof.) Lonyangapuo raised the issue of facilitation. This is a matter that affects the department and we have discussed it at length. The Directorate of Immigration and Registrations of Persons is experiencing challenges with budgetary allocations just as various departments of Government. The Committee will discuss the same issues with the Cabinet Secretary for the National Treasury to see how we can increase budgetary allocation to this particular department, so that the registration can be done as quickly as possible, for the purpose of registration of voters.

The proposal of using waiting cards to register as voters was also discussed in the same meeting. According to the Registrar this is not possible, because when one is given a waiting card, there are scrutiny processes that take place within the department. Therefore, this is not a document that will be used for the purpose of registration of voters, but it is a matter that we can further discuss with the relevant departments and give a final verdict.

Delay in issuance of IDs is a matter that is affecting the whole country. The other day, the President gave a directive on this particular matter, because it is affecting the whole country. We need to fast-track the process and make sure that Kenyans who are due to get their IDs get them.

Kenyans of Somali origin---

**The Temporary Speaker** (Sen. Ongoro): Chairman, on a point of clarification. Are you attempting to respond, here and now, to all the clarifications that have been sought by the Senators?

**Sen. Adan:** Yes, Madam Temporary Speaker. I am responding to some of the issues that have been raised since we have tried severally to summon the Registrar of Persons. Nevertheless, we will have a meeting with all the registrars of the 47 counties in the country, to follow up these issues and come up with a solution to the problems that we are facing with regard to the issuance of ID cards.

**The Temporary Speaker** (Sen. Ongoro): Chairman, that is the way to go because the clarifications that have been sought are many and the interventions required by the hon. Senators are serious. In my opinion, in spite of your observation that they failed to attend that meeting you are referring to, as the Chairman, you are still obligated to provide the answers sought. Therefore, the way to go is to give us substantive answers on a date that you will request. I do not think you are in a position right to now to get all the answers to all the issues that have been raised on the Floor, from where you are seated,

without having further meetings with the line Ministries. When will you bring these substantive answers to the Senate?

**Sen. Adan:** Madam Temporary Speaker, I need two weeks. With your permission, I appeal to Members that whenever we have meetings with these officers, they should also avail themselves, so that we can get a solution to these problems. That is the challenge most of the Chairpersons have in this House.

**The Temporary Speaker** (Sen. Ongoro): Hon. Senators, are you generally in agreement with the two weeks period, because of the nature of the answers she has to bring?

**Sen. Obure:** Madam Temporary Speaker, one last clarification---

**The Temporary Speaker** (Sen. Ongoro): We have already brought that to a closure because the Chair has already pronounced herself on this.

**Sen. Obure:** Madam Temporary Speaker, I just want to emphasize one thing.

**The Temporary Speaker** (Sen. Ongoro): Okay. Let us have one last intervention on that.

**Sen. Obure:** Thank you, Madam Temporary Speaker. The question of people using waiting cards to register as voters was raised earlier by my leader, Sen. Wetangula. He cited legislation which allows people to be registered on the basis of those waiting cards, only that during voting, they may not use them. Could the Chair ensure that, that provision is adhered to because it is a piece of law which is valid and should be acted upon? Could she make sure that, that is observed during this period of registration?

**The Temporary Speaker** (Sen. Ongoro): She will just take note of that, because she has already pronounced herself on it. We are constrained on time, but I will give five minutes to Sen. Mutula Kilonzo Jnr. to issue a Statement, as requested earlier.

#### ONGOING VOTER REGISTRATION BY THE IEBC

**Sen. Mutula Kilonzo Jnr.:** Madam Temporary Speaker, this is in response to a Statement sought by Sen. Nabwala, on the ongoing countrywide mass voter registration and the issues concerned. Since the statement is not long and all the issues are important, I propose to read it.

(1) The mandate of the commission on voter registration is governed by Article 88(4)(a) and (b) of the Constitution. It is further guided by several legislations, which include the Independent Electoral and Boundaries Review Commission (IEBRC) Act, 2011, the Elections Act, 2011 and the Elections and Registration of Voters Regulations 2011.

(2) In adherence to the requirements of the Constitution and other enabling legislations, the commission undertakes its operation plan by focusing attention to priority activities and resource allocation for the said activities.

(3) The Constitution, under Article 88 (4) (a), requires the Commission to undertake continuous registration of citizens as voters. After the 2013 General Election and in line with this provision, the Commission has been undertaking continuous voter registration at its 290 constituency offices across the county. The Continuous Voter Registration (CVR), as it is popularly known, will continue after the mass voter registration until May, 2017. The ongoing registration drive is within the continuous registration of voters.

There was a question as to whether the voter registration is limited to one month. The voter registration will go on until 10<sup>th</sup>, May, 2017.

The current mass registration drive has been designed for a timeframe of one month only, that is, 15<sup>th</sup> February, 2016 to 15<sup>th</sup> March, 2016. It is based on the financial resources that Parliament allocated to the commission for the exercise.

In the Financial Year 2016/2017 in the voted for provision, the commission was allocated Kshs500 million which was far below the request of Kshs2 billion forwarded to Treasury. Under the Kshs2 billion budget, the Commission had planned to roll out voter registration campaigns beyond the ward level to the lowest unit, that is, the registration centres.

The next question was whether there was likelihood of disenfranchising a section of the population. The exercise is being undertaken in 1400 county assembly wards across the country. The commission has put in place the underlying principle of accessibility that will govern the exercise. The voter registration will rotate within the county assembly wards at designated registration centres. Each ward has a kit movement schedule to enable those willing to register to know the location of the kit.

On extension of voter registration by two months, the commission states as follows: The extension of mass voter registration exercise will require additional funds to the tune of Kshs1.5 billion. That is the balance on account considering the Kshs500 million allocated. This is to enable the commission put in place the required operational support systems ranging from human resource, security, logistics, transport, wages, information and education material, just to mention but a few.

Therefore, the commission will carry on with the constituency voter registration after 15<sup>th</sup> March, 2015 in line with Article 88(4)(a) supported by the annual ceiling resource allocation. This was signed by Ahmed Issack Hassan, EBS, Chairman.

*(Sen. Nabwala stood up in her place)*

**The Temporary Speaker** (Sen. Ongoro): Why are you upstanding? I have not given you the Floor. I wanted to say that due to time, we shall move on to the next Order. The remaining statements will be taken care of tomorrow.

We now have a Supplementary Order Paper. I hope all Senators have a copy. The Floor is now for the Senate Minority Leader to take us through.

## MOTION

### APPROVAL OF NOMINATION OF SENATORS TO THE COUNTY PUBLIC ACCOUNTS AND INVESTMENTS COMMITTEE

**The Senate Minority Leader** (Sen. Wetangula): Madam Temporary Speaker, I wish to move the following Motion:-

THAT, pursuant to Standing Orders No.178(3) and 179(1), the Senate approves the following Senators, nominated by the Rules and Business Committee (RBC) to be Members of the Sessional Committee on County Public Accounts and Investments:-

1. Sen. (Prof.) Anyang'-Nyong'o
2. Sen. George Khaniri

3. Sen. Henry ole Ndiema
4. Sen. Mshenga Mvita Kisasa

These four names have been nominated to help complete the constitution of the County Public Accounts and Investments Committee (CPAIC) which is so critical for the operation of this Senate in our oversight role in looking at the books of accounts for counties and county assemblies.

There has been a delay in formulating this Committee for reasons that the House is already aware. The nomination of Senators Anyang' -Nyong'o and George Khaniri is coupled with new entrants like Sen. Ndiema and Sen. Mvita Kisasa. We hope that upon passage of this Motion, the Committee will then retreat to elect its leadership and embark on the all-important job of looking at and investigating the many issues that are coming out of counties and county assemblies regarding the manner in which public resources are expended.

We hope that the Committee will, in the discharge of its responsibility, follow the trend set by the former Chairman, Sen. (Dr.) Khalwale, whom we salute for a job well-done. The committee should make sure that the people of this country get value for money. That is the money that is remitted from the Exchequer through revenue allocations to the counties.

More importantly, there are revenues locally collected by the counties. Quite often, there is a tendency by many Kenyans to pay attention to the remittances from the Exchequer while forgetting that each and every county is also empowered by the Constitution and the law to raise local revenues for which accountability is not exempted. It is desirable that as CPAIC does its work, they pay due diligence to matters of procedure of procurement because this is where there is a weakness in pilfering of public funds. There are also irregularities in awarding tenders, inflation of value for goods and services that are being rendered and so on.

We also want this Committee to start broadening its mandate. Three years down the line, counties have also placed money into county investment ventures. We have heard of counties putting up milling and milk processing plants, among other investments that must also be catalogued. The House should then be appraised as to whether the investments are yielding good returns to benefit the people of the county.

Equally important is to ensure, through the CPAIC of this House, is that all governors and all assemblies are responsible in the use of public funds. In helping this House to oversight, we want the Auditor-General to bring timely reports so that this House does not become a mortician, constantly crying over stolen money, two or three years down the line. We must have the capacity and the ability to track expenditure and be contemporaneous in our ability to see that money given in any single financial year has been put to good use. We must be able to detect malpractices in counties.

I want to finish by saluting the media because many of the things we have been seeing about transgressions by the bodies we oversight, have been very well brought to the fore by the media. Some have been brought to our attention without us knowing. This affects procurement, inflation of prices and outright looting of public funds.

This is a point that this House must be seized of. We either get it right early in the day or not, and the nightmare of non-accountability in the counties will become the norm rather than the exception. I, therefore, urge the Committee that once we have approved it,

to elect their leadership so that they can get down to work for this House and the people that we represent in the counties.

Madam Temporary Speaker, allow me to invite my distinguished colleague, The Senate Majority Leader to second the Motion.

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): Madam Temporary Speaker, I beg to support this Motion in an amended form. This is an important Motion because it formalizes the reconstitution of a very critical Committee.

I take this opportunity on the Floor of the House to thank the Members of this Committee for doing a good job last year. It is one of the most active Committees of this House. The importance of this Committee cannot be over emphasized. As we enter the homestretch of the first phase of the devolved system of governance, it is increasingly becoming clear that our counties are doing a good job, but it will require a very strong oversight function of this House through this Committee. It is hoped that issues of corruption and abuse of public resources that we have heard and seen in the counties will be a thing of the past.

I would like to propose a slight amendment.

**The Temporary Speaker** (Sen. Ongoro): Order, Senator! I draw your attention to the Standing Order No.179. You cannot introduce an amendment at this stage because it is not allowed. Your responsibility is to second. You have not even seconded this Motion.

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): Madam Temporary Speaker, I started by saying that I support. However, guided as such, I will not support this Motion. I oppose it because it is contrary to Standing Order No.178.

**The Senate Minority Leader** (Sen. Wetangula): Madam Temporary Speaker, I do not quite understand the trajectory that my distinguished colleague has taken. He accepted to second this Motion. We both sit in the Rules and Business Committee (RBC). This is a RBC Motion. Therefore, he cannot stand to second a Motion and then oppose it in the middle. That is not seconding a Motion. Is the distinguished Senator for Tharaka-Nithi in order, in seconding the Motion, to swing the pendulum and oppose the very Motion that he is seconding?

Secondly, this is not a Motion that can be amended. In any case, you can only amend a Motion if it was amendable after it has been moved and seconded.

**The Temporary Speaker** (Sen. Ongoro): Senator, you have made your point. I will allow two other interventions on this matter and then I pronounce myself.

Please, proceed, Sen. (Dr.) Khalwale.

**Sen. (Dr.) Khalwale**: Madam Temporary Speaker, I would like to I invite the Chair to find that the Senate Majority Leader is grossly out of order.

This is a Motion from the RBC. Therefore, if they agreed that the Senate Minority Leader will move it while the Senate Majority Leader will second it, all he needed to do is second and allow you to propose it. Thereafter, you could have invited anybody else on the other side to oppose or support it. We know that Sen. (Prof.) Kindiki knows these things. He is doing this deliberately. Therefore, I invite you under the Standing Orders to find that he is grossly out of order and punish him accordingly.

**Sen. Kagwe**: Madam Temporary Speaker, I want some guidance from you because the Senate Minority Leader says this Motion is from the RBC. I wonder if the Committee can bring to the Floor of the House a Motion that is contrary to the Standing

Order No.178(1). This Standing Order is very clear about the structure that should be followed in nominating Members of this Committee. As it stands now, these nominations, if approved, would be contrary to Standing Order No.178(1). I need guidance on whether the Motion would then be properly before the House or whether it would be the one that is not properly before the House on grounds that it contradicts our Standing Orders.

**The Temporary Speaker** (Sen. Ongoro): I have heard you Senator. You have pronounced Standing Order No.178(1) quite clearly. However, this Motion has not been seconded and has not been lost yet. Therefore, those interventions and contributions can be considered only after we have owned this Motion. Therefore, at this stage, I ask the Senate Minority Leader to get another seconder and then I will allow interventions and observations after that.

**The Senate Minority Leader** (Sen. Wetangula): Madam Temporary Speaker, before I get another seconder, what happens to the HANSARD where the Senate Majority Leader stood up and said that he begs to second the Motion? In seconding the Motion, one does not have to say anything. Once he has been invited to second a Motion and he says; "I beg to Second", it is seconded.

*(The Senate Majority Leader (Sen. (Prof.) Kindiki) consulted loudly)*

That is my first limb and the HANSARD will bear me out; that you said, "I beg to second" However, if the Senate Majority Leader has become wiser after the event and has retreated from seconding the Motion, I invite the distinguished Senator for West Pokot, Sen. (Prof.) Lonyangapuo, to second the Motion.

**The Temporary Speaker** (Sen. Ongoro): Before we proceed, now that you have made that clarification, I give the Floor to the Senate Majority Leader to pronounce himself on whether he made the statement that he was seconding the Motion.

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): Madam Temporary Speaker, when I rose, I said that I support this Motion in an amended form. Thereafter, I was guided by the Chair---

**The Temporary Speaker** (Sen. Ongoro): Did you or not second the Motion?

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): Madam Temporary Speaker, I am using the exact words that I used. I said that I support this Motion in amended form.

**The Temporary Speaker** (Sen. Ongoro): I did not allow you to do so because you cannot introduce any amendments before we own the Motion.

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): Madam Temporary Speaker, please, allow me to conclude? When I spoke, I said that I support this Motion in an amended form. I wanted to build my case on the amendment and then second later as I close as we normally do, subject to that amendment. I was properly guided by the Chair that, that could not be done. I have no problem with that because it is the position of the Standing Orders. Therefore, what the Senate Minority Leader says is not true.

**The Senate Minority Leader** (Mr. Wetangula): So, you have not seconded the Motion?

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): I have not, Madam Temporary Speaker.

**The Temporary Speaker** (Sen. Ongoro): It has been clarified that the Senate Majority Leader did not second the Motion. Therefore, we will go to earlier ruling. We need a seconder and thereafter, we will allow contributions.

**The Senate Minority Leader** (Sen. Wetangula): Madam Temporary Speaker, as we move to the next level of inviting another seconder, I am embarrassed at the turn of events. I would like to point out that this Motion should be looked at within the context of the Standing Order No.212 which guides the composition of the CPAIC.

*(The Senate Majority Leader (Sen. (Prof.) Kindiki)  
consulted Sen. (Prof.) Lonyangapuo )*

I can see the “virus” from the Senate Majority Leader is spreading backwards. I, therefore, invite the distinguished Senator for Kakamega County, Sen. (Dr.) Khalwale, to second the Motion and then we can debate it thereafter.

**The Temporary Speaker** (Sen. Ongoro): I will allow the seconder to contribute then give the Floor to the Senate Majority Leader.

Please, proceed, Sen. (Dr.) Khalwale.

**Sen. (Dr.) Khalwale:** Madam Temporary Speaker, I rise to second this Motion. This is a straight forward procedural matter which I see no problem with. I am impressed by the arrival of Sen. Ndiema, Sen. Ntutu and Sen. Kisasa on this Committee that I have been privileged to Chair for the last two Sessions.

It is unfortunate that we have come this far about this Committee. This is a critical Committee of oversight. Owing to my track record in fighting corruption, not just among the devolved governments, but in Kenya in general, I make it absolutely clearly that I will be the first person to take the first step if it requires that step be taken to give way for a stronger committee and a stronger Senate.

The media has sold the perception that the Senator for Kakamega was dying to be the Chairman of this Committee. That is not true. I am privileged that I have been the Chairman in the last Parliament for five years and this Parliament for three years. That is a total of eight years. In the history of the Republic of Kenya, there has been no Member of Parliament who has been the Chairman of the Public Accounts Committee for that long. That is why at the end of the election which I recognised, I quickly congratulated Sen. Okong’o and assured him of my support.

I, therefore, in support of this Motion, want to state that when we go for election tomorrow, I discourage Members of my Committee not to bring me where I found myself at the last election; that is, I walked into an election knowing that Sen. (Prof.) Anyang’-Nyong’o was going to be proposed and seconded. That was supposed to be the case from our side of the coalition. However, I was proposed and seconded. Therefore, I wish to confirm that I want to continue fighting strongly within this Committee, but I do not wish to be in the position of the Chair. I will support whoever will win at that election as the Chairman.

Madam Temporary Speaker, I would like to persuade the Senate Majority Leader and my brother Sen. Kagwe regarding their concerns about Standing Order No.178. You cannot read one Standing Order and leave out another one that speaks to the same issues.

Standing Order No.178 is a general statement, but Standing Order No.212 makes it very clear. Allow me to read concerning the CPAIC. Standing Order No.212(1) states:-

“There shall be a Sessional Committee to be known as the County Public Accounts and Investments Committee.

(2) The County Public Accounts and Investments Committee shall consist of a Chairperson, who shall be a member of the second largest party or coalition of parties in the Senate, and not more than eleven other Senators.”

Which is the second largest coalition in this House? It is CORD. That is why we are in the minority. So, member number one is the Chairman. However, the statement then goes on, after the comma, “and not more than eleven other Senators.”

Madam Temporary Speaker, I want to persuade the House. That means that the Chairperson has already been counted and shall be from the CORD Coalition. Then, the eleven new Members to be shared; Jubilee will have the majority of the eleven, which is six by simple arithmetic and CORD will have five. So, when you take the Chairperson plus the five from CORD, it is a total of six. The wisdom of Standing Order No.212, therefore, is that, today we will have a Committee that will comprise of six CORD Members and six Jubilee Members. I wish to read these names.

Sen. Wamatangi, I wish you appreciate my seniority.

*(Sen. Wamatangi spoke off record)*

**Sen. Wamatangi:** I do.

**The Temporary Speaker** (Sen. Ongoro): Let us allow him to finish. I will give you the Floor.

**Sen. (Dr.) Khalwale:** You will have your say. It is called debate.

**The Temporary Speaker** (Sen. Ongoro): Okay. Proceed, with your intervention.

**Sen. Wamatangi:** On a point of order, Madam Temporary Speaker. I have respect for the distinguished Senator for Kakamega. However, notwithstanding and needless to say that in spite of length of period served in either House of Parliament, each one of us is bound not only by the rules of this House, but by these Standing Orders.

**The Temporary Speaker** (Sen. Ongoro): Precisely!

**Sen. Wamatangi:** Secondly, since the first Senate---

**The Temporary Speaker** (Sen. Ongoro): Senator, you rose on a point of order, stick to that. I will give you the Floor to contribute later on. What was out of order?

**Sen. Wamatangi:** Absolutely, Madam Temporary Speaker. After the dissolution of the first Senate in 1965, this is the first Senate after the new Constitution. In this House, there are no older or senior Members. This is the first Senate of the Republic of Kenya under the new constitution. Is the Senator for Kakamega in order to mislead the House and the country that he is more senior than the rest of us all, while we are all equal?

**The Temporary Speaker** (Sen. Ongoro): You have made your point.

**Sen. Wamatangi:** Madam Temporary Speaker, is he in order to mislead the House in interpretation of Standing Order No.212? The Chairperson of the CPAIC is a Member of the Committee. It is not held in isolation.

**The Temporary Speaker** (Sen. Ongoro): Senator, you have already made your point and pointed out what was out of order in your opinion.

Sen. (Dr.) Khalwale, please, conclude.



**Sen. (Dr.) Khalwale:** Madam Temporary Speaker, with all due respect, sometimes I measure my words very carefully. I did not intend to impute any improper motive on my junior colleague, Sen. Wamatangi. It will help you to remember that a Member of Parliament defines two sets of leaders in this country; a Senator and a Member of the National Assembly. So, by seniority I was not referring to Senator; I was referring to Member of Parliament, which we all are. If you are still in doubt about that seniority, let us leave it to the gallery. The observers will judge whether in the meaning of the Constitution of Kenya, your seniority is equal to mine.

Madam Temporary Speaker, I, therefore, urge my colleagues to support this Motion. Perusing these names I see Sen. (Prof.) Anyang'-Nyong'o, CORD; Sen. Khaniri, CORD; and Sen. Ndiema, CORD. These are three. They add to Sen. Hassan, four, Sen. (Dr.) Khalwale, five and, finally, Attorney General *Emeritus*, Sen. Wako, CORD, to make a total of six. So, there should be no beef. Let us go over this thing. This Committee will require that we work as a team so that we vote in the same manner that we have been voting when I was the Chairman.

Finally, as I support, I thank my colleagues for the way we worked. We did a good job. I look forward to us adopting and moving all the reports that we have already prepared.

Madam Temporary Speaker, with those remarks, I beg to second.

*(Question proposed)*

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): Madam Temporary Speaker, I seek guidance from the Chair on whether it is in order to proceed to debate this Motion when we have raised very weighty issues on the legality of the Motion itself.

In particular, Standing Order No.178 is extremely clear. It is unambiguous. Simply put, it says that when constituting committees, one must make references to the relative majorities in this House. I do not know whether it is in order to proceed debating this Motion when the Chair has not made a ruling on whether this Motion is legally before this House or not. Our position, as the Jubilee Coalition, is that this Motion is contrary in all force to the Standing Orders of this House.

**The Senate Minority Leader** (Sen. Wetangula): Madam Temporary Speaker, we are now witnessing degeneration into unhelpful polemics on a matter that is so clear. Once a Motion has been moved, seconded and proposed, no Member of the House has the capacity to question its legal competence because it is properly before the House. It has been moved, seconded and the question has been proposed. Therefore, there is a Motion before the House.

I truly want to see that, in the spirit of the questionable loss in Kericho and the overwhelming victory in Malindi, we approach a bipartisan process of dealing with issues in this House so that we can make progress.

The Standing Order No.178 being quoted by the distinguished Senator for Tharaka-Nithi must be read from No.177 on Nomination of Members of Select Committees. The CPAIC is not a Select Committee. It is a Sessional Committee. If one wants to deal with the issue of CPAIC, one does not look for the details under Select committees because it is not a select committee.

The distinguished colleague Senators Murkomen and Prof. Kindiki, who are lawyers know the Latin maxim in law that; *expression nunius est exclusion alterius* – to specify one is to exclude the other. In dealing with sessional committees like this, then one finds it under Standing Order No.212(1) which I will read *in extenso*;

“There shall be a Sessional Committee to be known as the County Public Accounts and Investments Committee.”

It is not a Select Committee.

212(2) “The County Public Accounts and Investments Committee shall consist of a Chairperson, who shall be a member of the second largest party or coalition of parties in the Senate, and not more than eleven other Senators.”

These Standing Orders were not crafted for this House by the previous Parliament. This particular Standing Order was crafted by a committee chaired by the distinguished Senator for Meru, Sen. Kiraitu, co-chaired by Sen. Orendo and several Members. It was then brought to the RBC, we brought it to this House and unanimously adopted as our Standing Order.

It reads that the committee shall consist of a chairperson, distinct. Specifying chairperson excludes Members.

**Sen. Wamatangi:** On a point of order, Madam Temporary Speaker. Is the Senate Minority Leader in order to mislead the House and the nation by pronouncing to this House that the Committee on Public Accounts is not a select committee?

Secondly, is he on record in this House, that he and the CORD Coalition used Standing Order No.180 to de-whip the former chairperson of the same committee? Is he in order to mislead the House that Standing Order No.178 does not apply to this committee?

180(1) reads;

“(1) A Parliamentary Party that nominated a Senator to a Select Committee may give notice, in writing, to the Chairperson of the Rules and Business Committee that the Senator is to be discharged from a Select Committee.”

Is he in order to mislead the House and quote other Standing Orders when he relied on the same Standing Orders and the definition of the County Public Accounts Committee (PAC) as a Select Committee to de-whip, Sen. Okong’o?

**Temporary Speaker** (Sen. Ongoro): Senate Minority Leader, allow me to give three other interventions so that you will proceed.

**The Senate Leader of Minority** (Sen. Wetangula): Madam Temporary Speaker, will you then come to me?

**Temporary Speaker** (Sen. Ongoro): Yes, I will come back to you.

**Sen. Obure:** Madam Temporary Speaker, I really do not know why we are being dragged into this matter. We have leadership in this House. That entire leadership sits in the RBC. Were these people able to sit and come up with this Motion? My assumption is that they sat somewhere and made a proposal. In fact, item listed as Order No.8 on the Order Paper must be a as a result of a meeting they had before and agreed to bring a Motion in this House.

I just wanted a confirmation on whether Standing Order No.177(1) was followed. If it was followed, we should not have any problem at this stage in the proceedings of this House.

**Sen. Wangari:** Madam Temporary Speaker, I was really hoping we would get guidance before we came to this point. However, I want to raise an issue in terms of Select Committee. The way the Standing Orders are crafted, they are divided into parts. All the committees fall under part XXIII on Select Committees. It begins from Standing Order No.176 all the way to Standing Order No.218. This is where all issues regarding committees are discussed.

Personally, I have no problem with the minority side being the chair of the committee because it is clearly stipulated in the Standing Orders. That is the way it should be. The problem I have with this nomination is the number. That is the equal numbers on both sides. Standing Order No.178 talks about which numbers should represent each coalition or parliamentary party. That notwithstanding, Standing Order No.181 on composition of select committees says as follows:

“Subject to any written law, these Standing Orders or a resolution of the Senate, a Select Committee shall consist of an odd number of Senators, being not less than seven and not more than nine.”

Madam Temporary Speaker, that is the reason the Standing Order envisaged a situation where even numbers will be a problem. Therefore, we need to be serious in deliberating this issue due to its importance to this Committee. We have been in limbo yet a lot of work is pending. Our hope is that we resolve it.

If we resolve to have an even number in the Committee, the Coalition for Reforms and Democracy (CORD) Members must accept a seven and five as the only option. We must have the majority as it is provided in the Standing Order No.178.

**Sen. (Prof.) Lonyangapuo:** Madam Temporary Speaker, the Standing Order No. 208 provides for two types of Committees; Standing Committees, Select Committees and not forgetting there are also the Sessional Committees.

Standing Order No.210(1) provides that:-

“The Select Committees to which this Standing Order refers shall be designated Sessional Committees and shall be nominated by the Rules and Business Committee in consultation with parliamentary parties at the commencement of every Session.”

These parliamentary parties are the same ones which have been given power in Standing Order No.178 to nominate Senators to serve in a Select Committee. You can see that there is no distinction and that the Sessional Committees are also Select Committees.

**Sen. Mutula Kilonzo Jnr.:** Madam Temporary Speaker, on the definition of the Select Committees, I refer Members to Standing Order No. 181. Whether the Committee under Standing Order No.212 is a Select Committee, the answer is in Standing Order No.181. It is not possible that the drafters of the Standing Order No.212 were not aware of Standing Order No.181.

Standing Order No. 181 defines the number of Senators to sit in a Select Committee. It provides thus:-

“Subject to any written law, these Standing Orders or a resolution of the Senate, a Select Committee shall consist of an odd number of Senators, being not less than seven and not more than nine.”

If you look at Standing Order No.212 in terms of the composition, it is not possible to have two definitions of one Committee to the extent that the composition of a

Select Committee can have not less than seven and not more than nine and that under Standing Order No. 212 a Committee of 11 other Senators other than the Chairperson.

Whether the Committee under Standing Order No.212 is a Select Committee or not; it is answered by the definition in Standing Order No. 181. Therefore, the question of odd numbers is only in respect of Standing Order No.181 when it is a Select Committee. The same does not apply to Standing Order No.212. By virtue of the functions stipulated in Standing Order No.212(3), the drafters did not contemplate that there would be partisan positions with respect to other Committees that are defined in the Standing Orders. This point should rest immediately.

Thank you.

**The Senate Minority Leader** (Sen. Wetangula): Madam Temporary Speaker, there is an important point which was raised by Sen. Obure. He asked the source of the Motion. The RBC is a Committee of this House. It sits with the leadership of the Senate Majority Leader and the Senate Minority Leader. Their Whips and their deputies are Members among others.

This matter was canvassed and agreed upon, including the numbers and the names at the RBC before it was brought here. Therefore, to be wise after the event is an assault on the integrity to this House.

Madam Temporary Speaker, Standing Order No.212 is distinct and it does not subject itself to any other Standing Order. If it intended to make reference to Standing Order No.178 or any other, it would have started by the words “subject to Standing Order---” Within the context of the interpretation of the law - the Senate Majority Leader has been a teacher of law and he knows it - a section that comes later has the power of overriding a section preceding it if they are making reference to the same issue. However, that is not the point I am pursuing.

Madam Temporary Speaker, protect me from the symptoms of heckling from Sen. Wamatangi so that I become comfortable in my submissions. Standing Order No.212 is clear.

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

I talked of symptoms of heckling because the Senator was gesturing and looking at me. Those are symptoms of heckling.

**Sen. Wamatangi:** On a point of order, Madam Temporary Speaker. Is the Senate Minority Leader in order to refer to my presence in the House - to my dutiful and proper conduct and by the simple fact that I am keenly following what he is saying - that I am showing symptoms of heckling? Is he in order to try and pave way and forestall correction when he is intentionally misleading the nation?

**The Temporary Speaker** (Sen. Ongoro): Order, Senator! You are also negating the whole thing. The issue here is on the word symptoms and how to read the symptoms of heckling. You have also said you are reading symptoms of his intention to mislead. Let us proceed.

**The Senate Minority Leader** (Sen. Wetangula): Madam Temporary Speaker, let me finalize by reading Standing Order No. 212 (2).

It provides that:-

“The County Public Accounts and Investments Committee shall consist of a Chairperson, whom shall be a Member of the second largest party or a coalition of parties in the Senate, and not more than eleven Senators.”

Therefore, the opposition is given the Chair and the Committee has eleven Members to which the majority party is entitled to six and we are entitled to five. We then provide a Chairperson who shall make the membership to six each. That is the purpose of this Standing Order. It was not enacted for nothing.

*(Loud consultations)*

It is my time. You will have your rebuttal time.

**The Temporary Speaker** (Sen. Ongoro): Order, Senators! Let us allow him time and I will give you your time to dispute.

**The Senate Minority Leader** (Sen. Wetangula): Madam Temporary Speaker, that is what informed the RBC which is chaired by the Speaker. What is before the House, to cut a long story short as Jeffrey Archer would put it, is to refer this matter to the substantive Speaker who chairs the RBC, and who presided over the proceedings that brought this Motion to the House and who in law, we will submit, will be estopped from thinking differently from the position he has taken to make a reasoned ruling and give direction. Otherwise, we are just being disruptive and engaging in arguments that simply show that we want to flex muscles.

Madam Temporary Speaker, we are also seeing signs that are very worrying because the CPAIC is a Senate oversight committee. It will look at accounts of counties regardless of who is the governor. It is a committee that will expose corruption among both the Jubilee Governors and the CORD governors where they find it. However, we are behaving as if we are constituting membership of the Committee to go and protect or defend positions which, is very unfortunate, to say the least.

To me, even if all the Members of the Committee came from across the Floor and they are men and women of unquestionable integrity, I will have no problem as long as they discharge the duties and functions of oversight. However, I can see very clearly from the body language, expressions and spoken words that there are certain colleagues on a mission. If the mission is to convolute, misdirect and undermine the oversight role of this Senate, then we are doing the wrong things.

**Hon. Senators:** On a point of order, Madam Temporary Speaker.

**The Temporary Speaker** (Sen. Ongoro): Hon. Senators, I will give all of you time to contribute instead of interjections, so that you have substantive contributions.

**The Senate Minority Leader** (Sen. Wetangula): Madam Temporary Speaker, my distinguished colleague, the Senate Majority Leader, and I have been holding the same position on oversight issues throughout the years. I do not see why my brother should become hostage of dark forces that are determined to derail the process of oversight of counties.

**The Temporary Speaker** (Sen. Ongoro): Senate Minority Leader, I plead with you to---

**The Senate Minority Leader** (Sen. Wetangula): Madam Temporary Speaker, that is my submission.

**The Temporary Speaker** (Sen. Ongoro): Hon. Senators, I can see a lot of interest and I want everybody to pronounce themselves on this. I will give the Floor to Sen. Murkomen, but before I do so, allow me to pronounce myself on a few issues that have been raised.

The first issue that was raised was on the legality of this Motion and whether it is properly before this House. My pronouncement is that this Motion is properly before the House and it is now owned by the House. All the procedures, including the rules and the Standing Orders have not been contravened, but you are free to pronounce yourself on this matter and reject in totality or make any amendments.

Secondly, an issue arose regarding whether it is a standing committee, a select committee or a sessional committee. The distinction between standing committees is pronounced in Standing Order No.208(1) and sessional committees in Standing Order No.210(1). However, all committees are select committees. So, that was misinformation. So, it is definitely also a select committee.

Lastly before we proceed, remember that this Motion has been brought to the House from the RBC chaired by none other than the Speaker of the Senate. Its membership comprises the entire leadership of this Senate, including the Senate Majority Leader, the Senate Minority Leader, the Majority Chief Whip and the Minority Chief Whip. So, we shall debate on the Motion that is here, but this brings us to a very interesting scenario in the Senate where a Motion brought to the House by the RBC is in contention on its legality. I am wondering whether they did not interrogate these matters at that stage.

Let us proceed. Rather than interventions, I would rather you pronounce yourself freely by just giving a full contribution.

Senate Deputy Majority Leader, Sen. Murkomen.

## PROCEDURAL MOTION

### ADJOURNMENT OF DEBATE UNDER STANDING ORDER NO. 99

**Sen. Murkomen:** Madam Temporary Speaker, I beg to move a Motion for Adjournment, pursuant to Standing Order No.99, that the debate be now adjourned.

The reason for that is because your last sentiments were very important. To me, from what has transpired, the RBC should bring to us a Motion in a more clear and proper manner with greater consultation between both sides of the leadership, so that we do not look awkward. The reason I am saying this is because I know one side of the political divide can vote and we will defeat the other side, but that will not present the kind of leadership we would wish to have for the sake of the select committee.

My argument is that this a committee that will preside over matters related to impropriety in usage of public resources. If it appears as though the composition is procured in a manner showing that one part of the House was fraudulently procured or improper consultation was done – like it has already happened on the question that there is too much controversy – then we will be watering down the stature and the legitimacy of the institution not just as a House, but also as a committee to perform its functions going forward. Therefore, I request members who are here to allow us to adjourn the

debate with an intention of the RBC going for further consultations to come back with a Motion that is more agreed on and uniting the House.

For the reasons that I did not get a chance to consult anyone on the other side, I would like to ask the Senate Majority Whip, Sen. Elachi, to second the said Motion.

**Sen. Elachi:** Madam Temporary Speaker, I rise to second. I was in the RBC meeting and the Senate Minority Leader knows very well what we agreed on. We agreed that he should sit down with the Senate Majority Leader and agree. That is what the Chair said. So, it will be very wrong for us to canvass here when we agreed very well that they must sit down as two leaders and lead the House.

Madam Temporary Speaker, I beg to second that we adjourn the debate and go back on what the Chair had requested us to do.

**The Temporary Speaker (Sen. Ongoro):** That request is properly before the House according to Standing Order No.99(3). So, before I pronounce myself on that, I will allow two or three interventions and then we will proceed. I will propose the question.

*(Question proposed)*

**Sen. (Dr.) Khalwale:** Madam Temporary Speaker, I rise to oppose the Motion for Adjournment not because it is against the Standing Orders, but because whereas the Standing Orders provide that Sen. Murkomen can move that kind of Motion at any time, the reasons advanced for the adjournment do not merit support.

This Motion, as correctly reported to the House by Sen. Elachi and the Senate Minority Leader, was drafted and approved by the Speaker at a session Chaired by the Speaker – the same one who approved – the leadership of this House drawn from both sides of the House sat, debated and resolved that this Motion should be allocated time and put on the Order Paper.

To stand down this Motion at this moment so as to do further consultations, you will be only pursuing two routes. Both routes cannot be allowed to prevail. The first route that you will be pursuing if you stand it down is that you now want to take the matter back to the Speaker for him to make a substantive ruling. What kind of ruling would you expect from the Speaker, when he is the same who chaired the Rules and Business Committee that approved this Motion? So, that route collapses.

Madam Temporary Speaker, the second route, which you must resist, is that you would be attempting to give political parties and /or coalitions, an opportunity to approach and request the Chair to help them sort out their internal issues. You were with me in the Parliament that was chaired by Speaker Ole Kaparo, when he ruled that matters of political parties cannot be drawn into the Plenary and should also be sorted outside the Plenary. Again, you were there with me in the last Parliament.

This kind of heat came when we nominated Members to the East African Legislative Assembly (EALA). It was a big fight and Speaker Marende ruled – the record is there to prove – that the House has made a decision and that was the decision of the House. This matter only came to be revisited when the aggrieved party approached the East African Court of Justice (EACJ) and fought a very big battle outside the soil of the Republic of Kenya in the EACJ. The only reason why they went to the EACJ is because

we were dealing with a matter pertaining to the membership of the legislature of the EALA.

For matters pertaining to a national institution like this, there is nowhere else that anybody would want to go to if you are not satisfied with the Speaker. Maybe, we would want to choose to go to the High Court where we have gone before and we have defeated Jubilee. It is because we always go when we believe it is right. Let us forget this, humble ourselves and let oversight to be strengthened in the country. We should not hide in membership of committees.

Finally, I do not wish to impute any improper motive on the Senate Majority Leader but the fact that he supported this Motion during the sitting of the RBC, maybe he owes this House an explanation. He should make full disclosure who this person outside this Senate is, who has now prevailed upon him and told him: "Go and oppose that which you were part of in creating."

I oppose.

**Sen. Kagwe:** Madam Temporary Speaker, Sir, let me comment very briefly because I will not go into the substance of the Motion itself but as to whether the Motion in the House right now should go back to the RBC. The dignity of this House is so important that it is supreme over and above our parties. Let us agree to that first. This is because parties will come and go but the Senate will stay.

I think that Sen. Murkomen has been generous in his proposal, that we take this Motion back to the Committee so that they can reconsider. There is nothing wrong with reconsidering a position. It is not a position of weakness but that of strength to say to yourself that; maybe, I did not consider a, b, c and d which is something that we should consider.

This House is held very highly in this country. For us to proceed and have a debate which we can see very clearly is one sided on this particular issue and has also become partisan, the Coalition for Reforms and Democracy (CORD) will vote one way and the Jubilee one way. This is not how we have been known to proceed in this country. We have been known to be people of substance and maturity in order to reach a bipartisan position, without alienating the same Committee that we will be relying on to move ahead and which the citizens of this country will have to have confidence in, if our oversight capacity is to be held as legitimate. The last thing that we want to have is a situation where every time that that Committee pronounces a position, it is seen that we did that pronouncement because the position was partisan. Therefore, we derail their work and make them look weak in advance.

Madam Temporary Speaker, I appeal to my colleagues on the other side of the House to agree that we go and consult a little bit on this matter. I do not see the Speaker of the House saying that because you have made a position in one point and people have come back to me and advised that we try and make this process a lot more consultative and in agreement, that that is going against the Speaker's ruling. It is simply advice. Advice has never been directive.

So, I would appeal to my colleagues on the other side of the House to agree to quickly close this matter and we move on to other issues. If no progress is made on the issue, it will come back and we will debate it. However, let us give chance to consultation.



**Sen. M. Kajwang:** Madam Temporary Speaker, considering the mood and the atmosphere in this House on this particular matter, it would be prudent to support the adjournment Motion moved by Sen. Murkomen. Let me talk about the intention or the reasoning behind the postponement of debate on this particular matter, which I do not agree with. This is because, if we are going to base it on Standing Order No.178 and if you are going back to the RBC to say that this Motion breached Standing Order No.178, that then would be an unfortunate position which I would not support. I would support that we postpone discussion on this just to build sufficient goodwill.

If you look at Standing Order No.176 that talks about the RBC, the issue of proportionality that we are trying to talk about when it comes to Standing Order No.212 on the Public Accounts Committee, Standing Order No.176 talks about three people who shall be Members for this Committee. It then talks about “not more than nine other Senators”. If we are agreeing in Standing Order No.176 that the RBC shall have the Speaker, the Senate Majority Leader, the Senate Minority Leader and not more than nine other Senators, it gives you nine plus three, which is 12.

So, the argument that there should be an odd number in this committee does not apply. If we are arguing that the nine in Standing Order No.212 should include the chair, then you would also argue that the nine in Standing Order No.176 should include the first three people.

Madam Temporary Speaker, I therefore, want to urge that if this House is going to adopt the Murkomen Motion, let it not be on the argument that we have Standing Order No.178. Let it be on the basis that we are seeking to build consensus and bring goodwill to this important Committee.

The County Public Accounts and Investments Committee (CPAIC) looks into the affairs of counties. When it comes to counties, there is no Government or opposition. This is unlike the National Assembly where you would say that the Jubilee Government is executing and the Public Accounts Committee and the Public Investments Committee (PIC) are examining the Jubilee Government. In the case of the Senate and counties, there is nothing about opposition or Government counties. All those counties, whether headed by an opposition governor or Jubilee are executives. So, we should not bring party politics in this particular matter.

Madam Temporary Speaker, I have seen serious competition including physical fights when it comes to the composition of the PAC and PIC. For example, in my county, people have fought physically and they are not fighting for the greater good of the county. They are fighting because those who were in these committees have found an avenue for eating and seeking kickbacks from people who are doing the wrong things as highlighted by the Auditor-General. Let us not create the impression in this House that there could be something in PIC or PAC that leads us to fight, which is different from the common good.

Madam Temporary Speaker, as I conclude, I want to urge my colleagues in the Senate that in this particular Committee, let us put out our best 10. It should not matter where someone comes from. Let us put forward a team which when the Council of Governors or the governors whom we oversight look at, they see people who have got spine, people who have got commitment to the good of this nation---

**The Temporary Speaker** (Sen. Ongoro): Conclude, Senator.

**Sen. M. Kajwang:** Madam Temporary Speaker, as I conclude, let us put out our best 10 irrespective of party affiliation and I want to urge my colleagues that we avoid brinkmanship. If we are differing on this and taking it back to the Rules and Business Committee (RBC), let it be for seeking goodwill and avoiding a partisan approach. Let it not be on the basis of Standing Order No.178.

Thank you.

**The Temporary Speaker** (Sen. Ongoro): I will allow one last contribution from Sen. (Prof.) Lonyangapuo.

**Sen. (Prof.) Lonyangapuo:** Thank you, Madam Temporary Speaker. I listened keenly to what my colleague, Sen. M. Kajwang, has said and it is correct. If you look back at the inaugural session that we had for this Committee, we had six Members from the majority side and five from the minority side totaling to 11. In the course of the sitting of that session, one member, Sen. Khaniri pledged allegiance to the minority. So, we continued like that and I liked it because when we were working, we were not partisan; we worked as a team.

Madam Temporary Speaker, if it is during this Fourth Session the majority and the minority leaders have seen that they want to put their membership accordingly, not because this Committee is supposed to protect the Government or the minority side, it is supposed to work for the counties. As we speak, the County Government of West Pokot, particularly the County Assembly has enough problems to the extent that today they ferried a group called “*Bunge la Wananchi*” to look like they are mediating between them and the Speaker. So, the Speaker ferried people from outside to assist him against MCAs.

Madam Temporary Speaker, this same Committee was chaired ably by Sen. (Dr.) Khalwale without any problem at all; we gave him full support. That is why we do not want to hear that there is any kind of problem in this Committee because it does not look at which side you come from. We are addressing malpractices. My county assembly issues were supposed to come next week but the more we continue---

**The Temporary Speaker** (Sen. Ongoro): Sen. (Prof.) Lonyangapuo, there is a point of order.

**Sen. Billow:** On a point of order Madam Temporary Speaker. I rise on Standing Order No.98 (2) that the question be now put on this Adjournment Motion because we are repeating ourselves at the expense of valuable time of this House on a procedural matter.

**The Temporary Speaker** (Sen. Ongoro): Thank you Senator. However, I had already given him the Floor, and so, I will allow him to conclude and then I pronounce myself. Conclude, Senator.

**Sen. (Prof.) Lonyangapuo:** “*Profesa amepewa nafasi.*” Madam Temporary Speaker, I have finished.

(Laughter)

**The Temporary Speaker** (Sen. Ongoro): I like that; you have finished giving your contribution?

**Sen. (Prof.) Lonyangapuo:** Yes, Madam Temporary Speaker.

**The Temporary Speaker** (Sen. Ongoro): Hon. Senators, before I pronounce myself on this, I will proceed to put the question but I have a clarification. There was a

sentiment that if we adjourn, then this Motion is going to be taken back to the Speaker. I am of a different opinion. Adjourning this Motion does not take it back to the Speaker but to the RBC. I want to pronounce that this Adjournment Motion is properly before the House according to Standing Orders.

I will now use my discretion according to Standing Order No.99 (3) and proceed to put the question.

*(Question put and agreed to)*

*(Debate on the Motion was adjourned)*

Next Order! Members, take your seats.

*(Sen. Billow gestured at the Opposition  
as he walked out of the Chamber)*

**The Senate Minority Leader** (Sen. Wetangula): On a point of order Madam Temporary Speaker. Did you notice that as soon as you made your finding, the distinguished Senator for Mandera gestured at us? Whatever it means, this was an obscene gesture and it is not something that should be done in this House.

**The Temporary Speaker** (Sen. Ongoro): Senator for Mandera, you have been adversely mentioned and you have to come back and clarify.

**The Senate Minority Leader** (Sen. Wetangula): Madam Temporary Speaker, he is a very honest man. He just needs to own it up and apologize because he did it.

**The Temporary Speaker** (Sen. Ongoro): It escaped my attention.

**The Senate Minority Leader** (Sen. Wetangula): I have tremendous respect for him but when such things happen, we must bring them to the Floor.

**The Temporary Speaker** (Sen. Ongoro): Did you make that kind of gesture?

**Sen. Billow:** Madam Temporary Speaker, normally, this sign is used for victory. When it is inverted, it means a loss. So, you, guys, have lost and you know it. There is nothing obscene about it. If you do not like that sign of a loss, I withdraw.

**The Temporary Speaker** (Sen. Ongoro): Senator for Mandera, there is no part that has lost, there was a consensus. You saw the Majority and the Minority Leaders talking. They had all agreed that we adjourn. So, just withdraw that.

I think that is now water under the bridge. Let us proceed.

**Sen. (Dr.) Khalwale:** On a point of order Madam Temporary Speaker. Because of the record, maybe you need to be clearer. The Motion which we have all supported is that the debate be adjourned. But your communication is leaving the impression that by adjourning, we have referred the Motion to the RBC.

**The Temporary Speaker** (Sen. Ongoro): Precisely.

**Sen. (Dr.) Khalwale:** Madam Temporary Speaker, there was no Motion before this House asking the leave of the House that this Motion be referred to RBC. That is a totally different Motion.

**The Temporary Speaker** (Sen. Ongoro): My communication is in view of the debate that took place on the Floor of the House and it was a general consensus that the RBC needs to sit and build consensus before we proceed with debate on this Motion so

that we do not appear to be a divided House on a Motion that has come from our own RBC where both leaders of the coalitions and the entire political leadership are Members.

So, if I did not communicate it well, that is exactly what I meant. We are adjourning but we are allowing them time to sit down and agree on these thorny issues that are coming up on the Floor of the House.

**Sen. Wamatangi:** On a point of order, Madam Temporary Speaker.

**The Temporary Speaker** (Sen. Ongoro): On which issue because we do not have any other Motion on the Floor of the House yet?

**Sen. Wamatangi:** On the Adjournment Motion, Madam Temporary Speaker.

**The Temporary Speaker** (Sen. Ongoro): That has now been overtaken by events, Senator. I think we will have to proceed to the next Order. Hon. Senators, according to the Order Paper, we do not seem to have the numbers for all the other subsequent matters. We could then proceed with Order No.16; The County Library Services Bill (Senate Bill No.6 of 2015).

## BILL

### *Second Reading*

THE NATIONAL CEREALS AND PRODUCE BOARD  
(AMENDMENT) BILL (SENATE BILL NO.15 OF 2015)

*(Bill deferred)*

## COMMITTEE OF THE WHOLE

THE KENYA NATIONAL EXAMINATIONS COUNCIL  
(AMENDMENT) BILL (SENATE BILL NO. 7 OF 2015)

THE OFFICE OF THE COUNTY ATTORNEY BILL  
(SENATE BILL NO. 37 OF 2014)

THE OFFICE OF THE COUNTY PRINTER BILL  
(SENATE BILL NO. 42 OF 2014)

THE WATER BILL (NATIONAL ASSEMBLY BILL NO.7 OF 2014)

THE UNIVERSITIES (AMENDMENT) BILL  
(SENATE BILL NO. 31 OF 2014)

THE COUNTY ASSEMBLIES SERVICES BILL  
(SENATE BILL NO.27 OF 2014)

THE COUNTY HALL OF FAME BILL  
(SENATE BILL NO.33 OF 2014)

*(Committee of the Whole deferred)*

**BILL**

*Second Reading*

THE COUNTY LIBRARY SERVICES BILL  
(SENATE BILL NO. 6 OF 2015)

*(Sen. Gwendu on 1.3.2016)*

*(Resumption of Debate interrupted on 8.3.2016)*

**The Temporary Speaker** (Sen. Ongoro): Sen. (Prof.) Lonyangapuo was on the Floor and had a balance of five minutes, but he has just left the House.

Sen. Wamatangi, are you requesting to pronounce yourself on this? Is there any Senator who wants to contribute to this Bill?

**Sen. M. Kajwang:** Madam Temporary Speaker, I wish to lend my support to The County Libraries Services Bill (Senate Bill No. 6 of 2015). I also congratulate the Senator who initiated and moved this Bill, Sen. Gwendu, for accurately identifying a gap in legislation. The Constitution is clear that library services have been devolved to the counties.

The intention of this Bill is quite straightforward. It seeks to establish county libraries and a County Library Development Committee in each county. It also provides for the functions and powers of each county library development committee and for connected purposes. The legislation surrounding libraries in this nation has been guided by the Kenya National Library Services Board Act, which is fairly old. It was, initially, done in 1965 and the last amendment must have been in the 1990s. Therefore, the Kenya National Library Services Board Act is quite outdated and out of touch with the new arrangements that have been introduced by the Constitution (2010).

If you look at the spread of the libraries across the country, you will notice a trend that libraries follow the main highways in this country. In other words, the Kenya National Library Services website has a map with dots of where it has established libraries since 1965, when the Kenya National Library Services Board Act was promulgated. Most of the dots appear from Mombasa along the highway into Nairobi, Bungoma, Kakamega or Kisumu. This means that the development and establishment of libraries has been aligned to that outdated model of the Sessional Paper that was done by Tom Mboya and the former President, Mwai Kibaki, where development was concentrated in those areas that were considered to be of high potential.

In northern Kenya and other marginalized areas, libraries have not been established properly. The Kenya National Library Services Board has always argued that it provides mobile library services to some of these areas. It further argued that in these areas, there are pastoralists who cannot be served by sedentary libraries but the truth is that the mobile libraries have not served the objective of promoting literacy and a reading culture in these parts of the country. Therefore, by advocating for libraries to be

established at the county level, I believe that we will be moving a great step towards promotion of literacy, a reading culture and generally, promoting the standards of education in the country.

Madam Temporary Speaker, librarianship needs to be looked at as a profession. For your information, in my first degree, I studied Information Sciences even though I specialized in information technology. There are certain techniques and arts in librarianship that you will not get anywhere. A librarian is an expert in cataloging, classification of data and information materials, which is a science rather than an art because there are classification schemes. There is the Dewey Classification Scheme and when it comes to cataloging, there is the Library of Congress Scheme. Librarianship need to be looked at as a profession and not just any other job that can be done by someone who loves to read books. That person needs to love books, but must also understand the intricacies of the profession. A librarian is an expert in indexing. Indexing is a science and not an art. There is also archiving, retrieval and building of databases and linking information sources.

I say this because one of the areas that I wish this Bill could address - and these are recommendations that we will bring up when it gets to the Committee stage- is that as we set up these county library development committees, we should also designate the role of a county librarian. He or she will be a professional who is trained in information sciences and well versed in librarianship as a science. That person will ensure that the recommendations of the county library development committee are implemented.

The person should also ensure that all the libraries in the county are managed in a proper and professional manner. This is one area this Bill has not addressed well. We shall make those amendments, so that we respect librarianship as a profession and set up the office of a county librarian, who could also act as a county curator. In other jurisdictions, you would find that due to limitation of resources, the person who takes on the role of a librarian sometimes can also play the role of a curator. They are two different things, but it is possible for both roles to be played by one person.

The other matter that this Bill should have addressed, which I have not seen, is the definition of county and national library facilities. As I speak, all the libraries that have been established under the Kenya National Library Services Board Act are considered to be the property of the parastatal or body established by that Act. If we want to set up county library development committees at the county level, will they inherit certain libraries in those counties or will they start from scratch? What happens to the libraries that already exist in certain counties? For example, here in Nairobi, we have the headquarters of the National Library Service. They are putting up a magnificent building and headquarters. Would that headquarters automatically go to the county government? Could we look at a situation where we do a differentiation in a similar way we did with the health sector, where we designated some hospitals as national referral hospitals and devolved Level 4 hospitals and below to the counties?

This is a fundamental issue that needs to be addressed because as we now take over the libraries as devolved functions. It would be very important that we identify the libraries that should automatically be handed over to the counties as well as identify libraries and information centres that cannot go to the counties and shall remain national Government supported libraries. That is another area that we need to look at.

Madam Temporary Speaker, as we devolve and define the libraries to move from the national to the county governments, there will also be the question of staff members and how we will transfer staff who were previously paid by the KNLS. How will we push them to the counties so that counties take ownership of them? I come from a county where every other time that I meet the County Executive Committee (CEC) Members, they complain about the huge wage Bill. As a county with eight constituencies, we were unlucky or lucky to amalgamate or inherit seven different local authorities which came with a lot of overhead expenditure. The counties are already complaining about the number of people they have in their payrolls and the effect that has on their development expenditure.

We need to have a very clear transition mechanism for the librarians and information professionals who are currently working for the KNLS for them to get to the county governments. In this, there needs to be a debate. We could look at what we have done with teaching service where teachers are still employed and administratively managed by a central Teachers Service Commission (TSC) and compare that with what we have done with doctors where they are now being managed administratively at the county level.

There are certain cases where it is extremely unfortunate that the directors of medical services, the CEC members responsible for health and medical services in the counties are sometimes fairly junior medical professionals who are appointed to those positions simply because they provided some value to the governors during campaigns. You will find that they are the ones who are given responsibility to manage very renowned, highly experienced and trained doctors in our public hospitals. It is no wonder sometimes you find that instructions at the county level are not flowing very seamlessly because of those issues of command structure.

Madam Temporary Speaker, as we talk about moving staff from the KNLS employment to the counties, we might need to pause and ask ourselves whether that is the best thing. Personally, I would have preferred a transitional arrangement where even if the county took over a library, there would be a progressive transfer of staff. The KNLS would still handle the employees because they are professionals up to a point when the counties are mandated and get funds to take over those employees.

I also note that the Bill needs to talk about libraries and librarianship; this is not just about books. Libraries and information centres have become extremely digitized. This Bill attempts to promote the use of appropriate technology at the county level. As we talk about transfer of libraries from the national to the county Government, we must also ensure that if there are electronic subscriptions that the KNLS has undertaken, then that service and that value should also correspondingly be transferred to the county level. It should not remain at the national level.

Madam Temporary Speaker, as I wind up my submission, I would like to talk about the issue of public participation in a Bill as important as this. Last year, I addressed the annual gathering of the KNLS Association. It turned out that they felt they have not been properly consulted in the drafting of this Bill. At the same time, I also discovered that the KNLS had come up with some recommendations to the Act that governs them which were legislative proposals to align their Act to the new Constitution. Those proposals have been sitting in Cabinet and they have not found their way to Parliament so

that they can be legislated upon. We must review the framework for public participation and influence of some of the very important Bills that we bring up in this House.

I say that because the Association that brings together librarians, the Kenya Library Professionals Association, communicated to me that they have not had an opportunity to make any contribution to this Bill which is at the Second Reading. Therefore, we assume that public participation happened. The KNLS felt that they have not made a contribution. I know that we put up a notice and invited stakeholders to come and present memoranda and their views on this. However, we need to look at the effectiveness of the things that we do.

Is it enough to put up a notice in the newspapers and then deal with whoever comes and forget about whoever does not come out? Could we attempt to map stakeholders and make sure that even if they do not respond to the newspaper advertisement, we reach out to them so that when we pass some of these pieces of legislation, we will not have someone doing a postmortem review to say that the Senate, as an important institution as it is, came up with substandard and shoddy Bill. This is an issue that does not just apply to this Bill alone but to many other Bills.

I conclude by saying that as we go to the Committee of the Whole stage where we will make amendments, I will move a number of amendments that will seek to enhance this Bill. The spirit is good because library services are devolved. However, there are certain things that we must look at. We must anchor librarianship as a profession and think about county librarians and how we are going to separate the national libraries from the county libraries. We must also think about the employees who are currently employed by the KNLS.

Madam Temporary Speaker, with those may remarks, I beg to support.

**Sen. Elachi:** Madam Temporary Speaker, I rise to support this Bill. According to the Fourth Schedule of the Constitution, library services are a devolved function. As we discuss this Bill, we need to ensure library services are devolved to serve our people at county levels. However, it is a pity that land where libraries were to be built in counties has been grabbed. Although the Transition Authority (TA) would up its activities, we must make sure we repossess land that was grabbed and build libraries in our counties. We must take the inventory of all existing assets of library facilities. I hope the county governments will take over those facilities and refurbish them.

We must sensitize our young people to understand the importance of library services in the counties. These facilities can benefit them abundantly. Most of the time, you find that one would wish to go to the library to do studies. Some libraries are well equipped. Therefore, our young people should go there and read books. I hope that as we devolve this service, we will find many Kenyans appreciating the services. We should have good customer care service. Staff in libraries must encourage our students to use library services for their own good.

Madam Temporary Speaker, the only gold mine that we have as a country is education. It is the only solid gold that every Kenyan can count on. Parents struggle to give their children quality education. We have a lot of challenges with shortage of teachers. If we can build good libraries, our children will be able to walk into any library to revise and prepare themselves before doing their examinations. We, as parents, must inculcate a reading culture. Most of us do not like reading. We read shallow publications. If you compare a child who is in an international school vis-à-vis one in a public school,



you will discover that the one in an international school like Rusinga School, in year one or two, is able to write and read because they have library services there.

A Child who is in Rusinga School, in year one or two, for example, can write a composition because they read a book every week. For us, we wait until they join Form One, then we instill a culture of reading a book every week. These libraries should be established. The county governments should implement a policy of ensuring that when schools are closed, children go to the library to learn to be innovative and how to read. They should develop a reading culture to enhance the English language and vocabulary.

In addition, we should also encourage the teachers to do research in these libraries. We should ensure that the libraries have the requisite books for teachers to enhance their skills. Nowadays, they do not have time but most of them go to the universities to build their capacity but also the libraries could also assist them. For, example, Kenyatta University has a new library with many books. We have many people who would like to donate books but they do not know where to take them.

I agree with the Senator for Homa Bay that our Bills should be tailored in a manner that will serve Kenyans for many years to come. This will ensure that we do not amend different Bills any other time. As we leave for the campaigns in 2017, to operationalize the functions in the Fourth Schedule, we should ensure that we amend most of the Acts to assist the counties to move forward.

Sen. Gwendo's proposal concerning the committees will facilitate training of librarians in the counties on the principles, procedures and techniques of librarianship. As we advance towards e-learning, we should have libraries where people can learn new technological advancements. We have young people who are innovative. They have come up with e-books, for instance, stored in a tablet. Therefore, one can download and read them.

As we bring in amendments, let us enhance the Bill so that it does not only addresses reading but also new technology. The national Government should provide computers and tablets. As the Government prepares to provide laptops to schools, the libraries must also be given the capacity to manage that.

Madam Temporary Speaker, young people languish in idleness because there are no recreational centres. These libraries should impart knowledge and enable them acquire skills. Internet services should also be provided in support of this. In addition, as we devolve this function, computers should be provided in the libraries so that young people can engage, for instance, in discussion groups and search for information on the internet.

The environment should also be clean. Macmillan Library has been there for many years but the environment is not conducive for learning. There are no books and it is dusty. We should also ensure that library workers get incentives to motivate them. For example, they should be paid allowances. Some of them are complaining that they are not paid. It is not only about the library services, any function that has been devolved has challenges. The employees are suffering. It is time that the Committee on Devolved Government looks at every institution that was devolved. Have the county governments embraced these institutions? Can they manage them? They should take up and rebuild them.

This case is similar with that of the Ministry of Health. By the time the county governments took over, it had many challenges. There are no innovations in the libraries. Some books are old and outdated. In our education system, every year, we have books by

different writers. We need to stock current books in the libraries. There is no need of going to a library only to find a book like the *Government Inspector*. Today, our children read different books. However, if you go to a library, you will find a book that was written way back when we had the 7-4-2-3 system of education. This will not assist our students. We have to advance as the system advances. We also need to build capacity for the librarians to keep up with the changing times. Education is evolving.

I hope that Sen. Gwendo will also look at the issue of newspapers, periodicals, paintings and posters. We need to have place in the library where children can learn how to draw and paint. There should also be books on this. There are also those people who are serious in science and research. We need to support them. We have shortage of researchers and scientists in our country.

As we devolve this function, we need to encourage schools to take students once in a while to the library for two hours, for example. The library should be stocked with the relevant books. Sometimes back, college students also used to go to the library. However, this has changed. We need to bring back a reading culture because information is power. The county governments should have a kitty to support this. The Bill is not a money Bill but this needs resources. This will enable the county governments to provide a conducive environment for learning.

Concerning the executive meetings that she has proposed, that they should be held either once in a month, the chairperson has a right to call a special meeting. Before that is done, there should be consecutive meetings that will assist the committee to ensure that all the libraries in their counties are properly equipped. Libraries which have donors should be given an opportunity to bring in books. The county governments should also be given an opportunity to have exchange programmes to enhance knowledge.

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

**Sen. Elachi:** Madam Temporary Speaker, I request that we defer the Question to a day the Chair will accept pursuant to Standing Order 54 (3).

**The Temporary Speaker** (Sen. Ongoro): The request is in order and hereby granted.

The Question will be put tomorrow.

*(Putting of the Question on the Bill deferred)*

## MOTION

RENEWAL OF MANDATE OF *AD HOC* COMMITTEE TO INQUIRE INTO  
THE RIGHTS OF PERSONS IN PRISONS AND BORSTAL INSTITUTIONS

**Sen. (Dr.) Khalwale:** Madam Temporary Speaker, I beg to move the following Motion:-

THAT, the Senate on 22<sup>th</sup> October, 2015 resolved to establish a Select *ad hoc* Committee on Prisons and Borstal Institutions consisting of 11 Senators to inquire into the rights of detained persons and persons held in custody and other imprisoned persons under the law;

REQUIRING Parliament to enact legislation to provide for human treatment of such persons with due regard to the relevant international human rights instruments and report back to the House within three months of its establishment;

REALISING that the three month period lapsed on the 25<sup>th</sup> February, 2016, and owing to the magnitude of the work involved, the Committee was not able to complete its work within the stipulated period;

NOTING the need for more time to carry out a thorough inquiry into this matter;

NOW therefore, the Senate resolves to renew the mandate of the Committee for a further period of 45 days to enable the Committee to complete its work and report to the House.

Madam Temporary Speaker, this is a straightforward procedural Motion and I persuade the House to support. The Chair is not present because of other commitments. I am a Member of the Committee and I wish to move.

We have made a lot of progress to the extent that we have paid visits to Kakamega, Shimo La Tewa, Kodiaga and Shikusa prisons and Borstal institutions respectively. Currently we are in consultations with the Attorney-General, the Director of Public Prosecutions, Commissioner of Prisons, Solicitor-General, Power of Mercy Committee, Kenya National Human Rights Commission, International Commission of Jurists and the Kituo Cha Sheria.

In view of this positive progression, we had underestimated the volume of work ahead of us. Therefore, we are requesting an additional 45 days. I request Sen. M. Kajwang to second.

**Sen. M. Kajwang:** Madam Temporary Speaker, I am the Vice Chair of the Committee. As I second, I am guided by Standing Order No.89 that prohibits us from referring to the substance of the proceedings of a Select Committee before the Tabling of the Report. I will be guided appropriately.

When the Committee was established, it was late October and the duration that we were given to report was disrupted by the Christmas break and the recess. As a Committee, we are committed to delivering on the mandate that this Senate bestowed upon us. I also thank the office of the Clerk for the support and facilitation that has allowed us to visit the various places that the Mover mentioned.

Madam Temporary Speaker, the magnitude of the task ahead of us is huge. If we were to come up with the proposals to amend the Prisons and Borstal Institutions Acts is not just an issue of changing what is on paper. It is a matter of looking at the entire judicial system and coming up with significant proposals which we have realised will not be possible in the short duration that the Senate gave us.

In addition to the institutions that we have visited so far, we wish to visit more and in particular the women correctional facilities. We have realised that these facilities have been ignored. Some of the cases that we witnessed are extremely sad to the extent that some Members were moved to tears. We shall come up with proposals to reform them. Therefore, we beg the House to consider this and grants us an additional 45 days so that we deliver a Report that is actionable and that will put to an end the suffering of the detained persons.

I second.

*(Question proposed)*

**Sen. Wangari:** Thank you Madam Temporary Speaker. This Committee had its work cut short by the House recess. Therefore, I support that they be granted more time. I wish this Committee will look at the issue of children that are born in detention facilities. We must domesticate the international instruments that provide for persons detained. We must look at international legislation and treaties that we have signed. Most importantly, Article 53 of our Constitution read together with the Children Act talks about the rights of children.

Madam Temporary Speaker, the rights of the children are critical. We need to get a balance; we should strike a balance on these rights as stipulated under Article 53 of the Constitution, especially the right to free and compulsory basic education, the right to basic nutrition, shelter and healthcare, the right to protection from abuse and all the rights that are stipulated in this Article. We hope that the Committee will furnish this House, in its report, on a way forward on how to balance these issues to ensure that children are not deprived of the rights that are enshrined in the Constitution and are not negotiable and; at the same time justice is served to people who have been wronged by the perpetrators of different issues that take women to prison.

I support the Motion and hope that we will get the report in 45 days.

**The Temporary Speaker** (Sen. Ongoro): There being no further requests, I call upon the Mover to reply.

**Sen. (Dr.) Khalwale:** Madam Temporary Speaker, I thank my two colleagues who have found time to contribute to this important procedural Motion. Before I conclude, I want to register my thanks to all the civil servants who have come before the Committee beginning with the Attorney-General and the Director of Public Prosecutions (DPP) as I had said earlier when I was moving the Motion. I also want to register my appreciation, on behalf of the Chairman of the Committee, to the warm reception we continue to receive from prisons and borstal institutions that we have been visiting. I look forward to similar receptions on our way to conclusion of our visits.

Finally, I would like to thank the clerks attached to our Committee led by Ms. Rose Mudibo together with her team. I also thank the Office of the Clerk because they have been very accommodating. The Clerk was so accommodating that he even allowed us to hold a session during Christmas holidays in December. For this, we feel indebted to the Office of the Clerk.

Thank you very much, I beg to move.

**The Temporary Speaker** (Sen. Ongoro): Hon. Senators, I want to remind you that this matter does not affect counties. Therefore, I will proceed to put the question.

*(Question put and agreed to)*

Hon. Senators, all the other matters listed on the Order Paper require numbers, which we do not have. Most of them are Committee of the Whole.

**ADJOURNMENT**

**The Temporary Speaker** (Sen. Ongoro): The time now is 6.05 p.m. It is time to interrupt the business of the House. The Senate now stands adjourned until tomorrow, Thursday, 10<sup>th</sup> March, 2016 at 2.30 p.m.

The Senate rose at 6.05 p.m.