

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Thursday, 20th June, 2013

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

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

PRAYERS

QUORUM CALL AT COMMENCEMENT OF SITTING

The Temporary Speaker (Sen. Ongoro): Order, Hon. Senators! Could we confirm if we have a quorum? Yes, we have a quorum. So, we can proceed.

PETITIONS

REPORT FROM THE SPEAKER: REPEAL OF THE NATIONAL GOVERNMENT COORDINATION ACT, 2013

The Temporary Speaker (Sen. Ongoro): Yes, Sen. G.G. Kariuki. Sen. G.G. Kariuki is not here?

Where is Sen. (Dr.) Khalwale? You gave notice.

Sen. (Dr.) Khalwale: Yes, Madam Temporary Speaker, but it will come under Statements.

The Temporary Speaker (Sen. Ongoro): Okay. Today we are supposed to debate the Petition from Ms. Wanjiru Gikonyo on repeal of the National Government Coordination Act, 2013. Are there any Members interested in deliberating on it? That notice was given and granted by the Speaker last week.

Yes, if nobody is interested, I refer it the Committee on Devolved Government.

There is another Petition from Mr. Joseph Kalinga on Tarmacking of the Kibwezi-Kitui-Mwingi Road. The notice is supposed to be given by Sen. David Musila. Is he in the House?

TARMACKING OF THE KIBWEZI-KITUI-MWINGI ROAD

The Temporary Speaker (Sen. Ongoro): Since Sen. Musila is not in the House, could we then move on to the next Order?

NOTICE OF MOTION

PROFILING AND RESETTLING OF INTERNALLY DISPLACED PERSONS

Sen. G.G. Kariuki: Madam Temporary Speaker, I beg to give notice of the following Motion---

Sen. (Dr.) Kuti: Madam Temporary Speaker, we are at Order No.6 on Notices of Motions.

An hon. Senator: That is what he is doing!

Sen. (Dr.) Kuti: Is he moving or---?

The Temporary Speaker (Sen. Ongoro): He is giving a Notice of Motion. He is in order.

Proceed, Sen. G.G. Kariuki.

Sen. G.G. Kariuki: Madam Temporary Speaker, I beg to give notice of the following Motion:-

THAT, aware that over the last twenty years thousands of people in some counties in Kenya, especially within the Rift Valley, Western, North Eastern and Coast regions have suffered displacement due to politically and ethnically instigated violence, violation of the nation's sovereignty, natural disasters, resource-based conflicts and forced evictions; noting that during displacement people lost lives, livelihoods and property with some families losing their bread winners; aware that thousands of families live in deplorable conditions and their economic life has been disrupted; appreciating the efforts undertaken by the government, donors, civil society groups and individuals to alleviate the suffering of Internally Displaced Persons (IDP's) and resettle them; concerned that the problem of internal displacement has been worsening and that the budget for feeding IDPs currently living in tents continues to grow by the day and that the number of IDPs continues to rise, partly aggravated by individuals posing as IDPs; further concerned that the country has no reliable, comprehensive and disaggregated data on IDPs; the Senate urges the Government to profile all the current Internally Displaced Persons and to take urgent and immediate steps towards resettling IDPs and finding a lasting solution to their plight.

Thank you, Madam Temporary Speaker.

The Temporary Speaker (Sen. Ongoro): Sen. (Dr.) Khalwale, give your Statement.

STATEMENTSTRANSFER OF NATIONAL GOVERNMENT
FUNCTIONS TO COUNTY GOVERNMENTS

Sen. (Dr.) Khalwale: Thank you, Madam Temporary Speaker. I rise to request the Chairman of the Committee on Devolution to bring here a Government Statement

relating to the issue of the Transfer of National Government Functions to County Governments.

Madam Temporary Speaker, yesterday, the 19th of June, 2013, at a Summit meeting with governors, the President is reported to have directed that all Government functions that are supposed to be discharged by the county governments be transferred *en masse* to the county governments with effect from 1st of July, 2013.

Madam Temporary Speaker, this brings to light a serious constitutional matter found in Section 15 of the Sixth Schedule of the Constitution. With your permission, it reads as follows:-

“Parliament shall, by legislation, make provision for the phased transfer, over a period of not more than three years from the date of the first election of county assemblies, from the national government to county governments of the functions assigned to them under Article 185.”

Madam Temporary Speaker, Article 185(2) emphasizes the following:-

“A county assembly may make any laws that are necessary for, or incidental to, the effective performance of the functions and exercise of the powers of the county government under the Fourth Schedule.”

Madam Temporary Speaker, the country is aware that not many county governments, if not none at all, have had any deliberations on the legislative agenda of their respective counties. The President is going ahead and is directing that all these functions go to the county governments with immediate effect *en masse*. Could the Chairman clarify what informed the President’s decision to direct like this and whether the Executive is deliberately bypassing the Senate in its exercise, in spite of the provisions of Section 15 of the Sixth Schedule of the Constitution?

We would like the Government also, through that Statement, to give Kenyans an assurance whether this transfer of national Government services to county governments will be done strictly in adherence to the provisions of this Constitution – which, obviously, they are contradicting – to the provisions of the Transition to Devolved Government Act, 2012, and the provisions of the Public Finance Management Act?

Thank you, Madam Temporary Speaker.

The Temporary Speaker (Sen. Ongoro): Is the Chairman on Devolution Committee in the House?

Majority Whip, could you, on behalf of the Chairman, give an undertaking when that Statement will be issued?

Sen. Elachi: Thank you, Madam Temporary Speaker. I know the Chairman has travelled out of the country. However, I request the hon. Senator to give him two weeks to issue a comprehensive Statement on that matter.

The Temporary Speaker (Sen. Ongoro): Sen. (Dr.) Khalwale, two weeks? That will be after the implementation dates, as directed by the President.

Sen. (Dr.) Khalwale: Madam Temporary Speaker, I have no problem giving them two weeks or even more on condition that the Government takes an undertaking that if they are not going to give this Statement, especially an assurance before the effective date of when the President decided, then they should hold implementation of that directive. So, if she can guide me that they will not attempt to do so, then I have no problem.

Madam Temporary Speaker, the reason I am requesting this is because these national Government functions will be transferred to the county governments en masse when they do not have legislation on how to handle them. Those functions will be transferred when county governments do not have the necessary human resource by way of capacity. How will they handle those functions? What will happen if services could grind to a halt?

In fact, Madam Temporary Speaker, I already have a petition from all the thousands of nurses and all the hundreds of doctors of Kenya. They have petitioned that they do not want their remuneration and emoluments to be transferred to the county governments. They fear that the county governments, at the time being, do not have the capacity to handle Kshs58 billion.

So, could she give us an assurance that they will hold implementation of that unconstitutional directive from the President?

The Temporary Speaker (Sen. Ongoro): Sen. (Dr.) Khalwale and, maybe, Majority Whip; it is my opinion that the urgency of that Statement is valid. However, at the same time, I am aware that you might not be able to revoke a directive issued by the Presidency. Therefore, I rule that we get that Statement on Thursday, next week. That will still be before the implementation date. I think that is sufficient time.

I also take note that the Senate Majority Leader is not there to give us the Senate Business for the following week. In his absence, the Chief Whip should undertake that responsibility.

Proceed, Majority Whip.

BUSINESS OF THE WEEK COMMENCING TUESDAY, 25TH JUNE, 2013

Sen. Elachi: Thank you, Madam Temporary Speaker. Hon. Senators, pursuant to the provisions of Standing Order No.43(2), I present to the Senate Business for the coming week.

On Tuesday, 25th June, 2013, the Rules and Business Committee will meet at 12.00 noon to schedule Business for the Senate for the next week commencing Tuesday, 25th June, 2013. The Senate will continue with the Business that will not be concluded in today's Order Paper.

In addition, the Senate will conclude debate on the Motions by Sen. Catherine Nabwala concerning the establishment of Graduates Enterprise Fund. The Senate will also debate Sen. James Orengo's Motion on review of legislation that may undermine the authority and functions of county governments.

The Senate will also commence debate on the Motion by Sen. Kipchumba Murkomen on the transfer of functions relating to development of institutions of learning to county governments.

On Wednesday, 26th June, 2013, during the morning sitting, the Senate will continue with Business that was not concluded on Tuesday, 25th June, 2013. We will also consider any other Business scheduled by the Rules and Business Committee.

In the afternoon sitting, the Senate will continue with the Business not concluded on Tuesday and Wednesday morning, and consider any other Business scheduled by the Rules and Business Committee. The Senate will also undertake divisions on Motions by Sen. (Dr.) Machage and Sen. (Dr.) Zani.

On Thursday, 27th June, 2013, the Senate will continue with Business not concluded on Wednesday afternoon and consider any other Business scheduled by the Rules and Business Committee.

I hereby lay the Statement on the Table.

Thank you, Madam Temporary Deputy Speaker.

(Sen. Elachi laid the document on the Table)

The Temporary Speaker (Sen. Ongoro): Next Order.

On the Order on Motions, I want to state that I have already granted leave to Sen. G.G. Kariuki to move his Motion today, which he just gave a notice.

Sen. G.G. Kariuki: Madam Temporary Speaker, I must thank you very much for according me this opportunity to move this Motion, which I think I need to read it first before I start.

MOTION

PROFILING AND RESETTLING OF INTERNALLY DISPLACED PERSONS

Sen. G.G. Kariuki: Madam Temporary Speaker, I beg to move the following Motion:-

THAT, aware that over the last twenty years thousands of people in some counties in Kenya especially within the Rift Valley, Western, North Eastern and Coast regions have suffered displacement due to politically and ethnically instigated violence, violation of the nation's sovereignty, natural disasters, resource-based conflicts and forced evictions; noting that during displacement people lost lives, livelihoods and property with some families losing their bread winners; aware that thousands of families live in deplorable conditions and their economic life has been disrupted; appreciating the efforts undertaken by the government, donors, civil society groups and individuals to alleviate the suffering of Internally Displaced Persons (IDP's) and resettle them; concerned that the problem of internal displacement has been worsening and that the budget for feeding IDPs currently living in tents continues to grow by the day and that the number of IDPs continues to rise, partly aggravated by individuals posing as IDPs; further concerned that the country has no reliable, comprehensive and disaggregated data on IDPs; the Senate urges the Government to profile all the current Internally Displaced Persons and to take urgent and immediate steps towards resettling IDPs and finding a lasting solution to their plight.

Madam Temporary Speaker, the problem of Internally Displaced Persons (IDPs) has been with us for many years and is known to all of us. However, we have not taken into account how IDPs are affected as a result of displacement. The country continues to pretend that this not a very major problem. If this matter had been in the eyes and think-tanks of those in Government, it would have been dealt with by now. By now, we should have known the number of IDPs we have in this country.

Madam Temporary Speaker, with your permission, I would like to read out how the United Nations (UN) describes an IDP. According to the United Nations Guiding Principles on Internal Displacement and the Kampala Convention, IDPs are defined as:-

"Persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular, as a result of or in order to avoid the effects of armed conflict, situations of generalised violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognised State border."

Further, Madam Temporary Speaker, we can also benefit from the Waki definition of IDPs. This is what he says:-

"IDPs are those forced to migrate from their natural locations due to clashes. Contrary to refugees, they lack adequate relief support and security and only receive occasional food and blankets from politicians and other well-wishers without any follow up and no resettlement or economic programme to aid them."

Madam Temporary Speaker, this House needs to attempt to bring this matter to an end. How to do this is the big question. This Motion is urging us to profile these groups so that they are known by Kenyans. We need to give Kenyans the statistics on the number of IDPs we have in this country. This Motion will also aid in showing what the Government has so far done to address this issue. This Motion is seeking to compel the Government to do something about the situation. The country is operating as if there are no people who think about the welfare of others. We keep on talking of rising cases of insecurity that have often resulted in investors shying away. In the recent past, there have also been several cases of tribal clashes.

Madam Temporary Speaker, we need to understand the source of these problems. Actually, this problem started in 1960 when people were chased away from Lamu County. Again, in 1991, the same issue recurred at a place called Miteitei in Rift Valley Province. This is where tribal clashes started. In 1992, tribal clashes spread to other parts of the country. This was a very serious matter where many people, due to political instigations, left their homes and nobody cared to know where they went to. Where would they have gone? They moved to places in urban centres and by the road sides. The population of such people continued rising. For example, in 1992, if they were 20, by now a child who was born by the roadside is now 21 years. Some of these people end up as criminals. As a result, cases of crimes have risen in the recent past. We, as leaders of this nation, what are we doing to address this issue? Have we attempted to find out where criminals come from?

During national events, we spend a lot of time talking about these issues and even forming committees such as the Kiliku Committee to investigate the cause of tribal clashes. This committee went round the country and gave its recommendations. There was also the Akiwumi Commission on Tribal Clashes. This Committee also gave its recommendations. Our Speaker, Hon. Ethuro, also headed a Committee, in the Tenth Parliament, which also did a comprehensive report on issues affecting IDPs in this country. There is no report that the Government has taken seriously. Why are Kenyan politicians, including myself, so naïve? We compete just to take over power, but we never compete to get rid of problems that affect the citizens of this country. In every

election, except the just concluded one, from 1992 when the multi party system was about to be introduced, leaders have been fighting for survival using underhand tactics. Some of the people who were in power then thought that they were going to be removed. So, they thought the only way for them to survive was to get rid of the people who were not supporting them.

Madam Temporary Speaker, it is upon this House to put aside political inclinations and think like people of goodwill. Personally, I do not think power has anything to do with my life. I have written a book on this issue; that people die seeking power. Power is nothing but an illusion. I believe that progressive power is the one that changes other people's lives. This Senate cannot get this kind of power from the people of Kenya or from the heavenly father unless we decide to publicise the good things we have done. This is a very emotive matter. We must tackle it as it is.

In 1986 a number of people were moved from forest areas by the Government where they had lived for over 40 years. This affected several tribes of this country. Surprisingly, after five years, other people were brought in to occupy these forest areas. The people who were moved from these areas became destitute, they multiplied and bred nothing, but criminals yet we keep on lamenting that we are suffering. We keep on asking ourselves: What do we do with criminals in this country? Criminals are our own making--

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

The Temporary Speaker (Sen. Ongoro): Yes, Chief Whip, what is your point of order?

Sen. Elachi: Madam Temporary Speaker, is the hon. Senator in order to say that our IDPs have given birth to criminals? It would be wrong and a bad impression to say so. I know there are some of us living in good environment, but we have given birth to criminals.

Sen. G.G. Kariuki: Madam Temporary Speaker, I wish to dismiss that as a cheap statement---

The Temporary Speaker (Sen. Ongoro): Order, Sen. G.G. Kariuki! Please, take note that you can only respond to the point of order. You cannot say you dismiss it. Give us points that will negate that statement.

(Sen. Elachi withdrew from the Chamber)

Sen. G. G. Kariuki: Thank you, Madam Temporary Speaker for controlling my feelings about this issue. I come from where this problem is. If the gracious lady had not left the Chamber, I would have explained to her how I think we are encouraging criminals. This is by keeping people in tents and allowing them to give birth to children who have no opportunities. What do you expect of those children to become? They have to look for their livelihoods. That is why I am saying they could be criminals. However, not all of them are criminals. Some of them have relatives who take them to school. But for the majority, those are breeding centres for criminals. I beg to repeat that. The moment we herd people together in an area and fence them in, they have no facilities to feel like human beings. When children from such areas grow up, they will want to fend for themselves. How do they do this? They may get their food, for example, from

Sen.(Dr.) Khalwale. It is not because these people have no brains. They exercise their brains by looking for what to survive on.

Madam Temporary Speaker, on the issue I was addressing of people who were moved from forest areas, during the 2007/2008 post election violence crisis, 663,991 people were displaced. From this number 350,000 sought refuge in some other areas. Another group of 118,000 disappeared to our neighbouring countries such as Uganda and Tanzania. Can you imagine a situation where people get out of Kenya; a country known to have one of the best systems of Government? It is considered as the best democratic country in East and Central Africa. Kenya is considered by other countries as the best example in the region. With all those kinds of expectations, we had people running away to Uganda where there were perpetual wars. We have never had the kind of wars that Uganda went through. It was such a shame for our people to run away to Uganda. This was quite embarrassing. They could have run away to Tanzania, which is a bit stable. But is this a credit to our leadership even if they went there?

We are living in very interesting times. We fail to understand ourselves. We are not capable of investigating ourselves so that we understand the kind of political environment we are giving to this nation. Our political life is simple. At any time we either want a Kikuyu, a Luo or a Luhya President. That is what we concentrate on. Would you tell the people in camps that we attained Independence in 1963? They would prefer that that Independence never happened if they are going to continue living in the camps. If I was in their place, I would do the same. I would hate to hear that there is something called Independence if my mother and other family members are living in a tent.

Madam Temporary Speaker, I hope that good minds like Sen.(Dr.) Khalwale and other hon. Senators will manage to describe the situation better than I have. I am older than Sen. Nyong'o, but he is my Professor and my teacher.

Sen. (Prof.) Anyang'-Nyong'o: On a point of order, Madam Temporary Speaker.

The Temporary Speaker (Sen. Ongoro): Professor, what is out of order?

Sen. (Prof.) Anyang'-Nyong'o: Is the hon. G.G. Kariuki, who is my student and my friend, in order to call me Nyong' when my name is Sen. (Prof.) Anyang'-Nyong'o?

Sen. G. G. Kariuki: Oh my God! I do not know that.

(Laughter)

The Temporary Speaker (Sen. Ongoro): Order, Sen. G.G. Kariuki! Could you correct that?

Sen. G. G. Kariuki: Madam Temporary Speaker, he did not allow me, as a student, to describe him properly because of fear that he might take action against me. But I know that he is called Prof. Anyang'-Nyong'o.

Sen. (Prof.) Anyang'-Nyong'o: That is a good student, indeed!

Sen. G. G. Kariuki: Madam Temporary Speaker, since I left out the word "Professor", that is why I am suffering.

(Laughter)

The Professor has gone through this kind of life. People who are friendly to books try as much as possible to understand the cause and effect of a situation. But in this case, this issue is highly political.

Madam Temporary Speaker, God will bless us if we forget politics now and do something for Kenyans. This problem is all over the country. If you go to the former North Eastern Province people have been moved from one area to another. Many other problems have arisen through disarmament. In the process of disarmament, people disappear from their own areas and become IDPs. You cannot allow people to have guns for 30 years and then you wake up one morning and start disarming them. Who are you deceiving in this country? It is not possible to disarm them. They will voluntarily give you old guns which are non-functional. Then you come out and say that the Government has managed to recover 20,000 guns.

I have been a Minister and I know all these intrigues. It is high time we declared our faith. We have to change and become new people. Kenya is blessed because we got a Senate of intelligent men and women who are elderly enough in politics. They can forget politics and think of the future of their children and country. It is not how much power you want to wield more than others. We want to take care of our children.

Madam Temporary Speaker, if you come to Nairobi, a lot of displacement has taken place. For example, a person is allowed to stay in a place for over 20 years, but one morning, City Council *askaris* supported by the Administration Police officers come and throw them out of that area. What would you feel? Those people did not go to stay there because they had left their fabulous homes. They are there, because they have no alternative. I think time has come for us to understand the causes of this violence.

Partly, private developers are also not to be blamed because it is their property and you allow people to come and settle there. Where has the law of trespass gone to? Nobody should come and settle on your property if there is a Government. But if you have nothing, but corrupt officials of the system, what do you expect? This matter is so critical that I challenge my brothers here that we have to lead and show the way and make sure that we know what Government is.

All these problems come about because of corruption, abuse of power and politicization of security and administration agencies. When any displacement occurs, the rights of the affected persons are infringed as they are forced to live in situations that do not guarantee their dignity. So, we have to say, again and again, that this country needs a complete rebuilding in terms of structure, especially our political concept and the power concept as well. Today we are lucky because we have a President who is not messed up with scandals like most people in this country. There is no reason he should not change this country for the better because there is nothing that he requires; he has the power and the wealth. This is the time that we should support him 100 per cent so that he can at least do something that people can go with. If his ideas can solve the problems of this country, we should all support him.

I beg to move and ask Sen. Mositet to second.

Sen. Mositet: Thank you, Madam Temporary Speaker. I also thank the Mover of the Motion because I can see that he has done thorough research, only that he has been out of Parliament for many years. I support and second the Motion.

Even though the Mover of the Motion described the IDPs the way they were described by the former Attorney-General, Amos Wako, I would want to personally

describe IDPs as people who may have been shifted from one place because of political reasons and they have never gone back to the same place. In that regard, I would say that the Maasais, particularly have suffered a lot. This is known to all Kenyans. In fact, if you go to many areas of this country you will wonder how we got the name Olomuruti and yet the Maasai do not leave there. If you went to Ol Kalou where we used to have shrines and our cultural activities taking place all the way from the 1890s, up to now, nobody has bothered to consider them. I believe with the new Constitution which addresses the historical injustices, we are going to be there.

Madam Temporary Speaker, as I support this Motion, the Mover mentioned very strong and good words when he was describing our President. The whole country is so happy to have Hon. Uhuru Kenyatta as our President. For sure, we are seeing---

An hon. Senator: Aah!

Sen. Mositet: This is true! Ooh, not everybody?

Sen. Muthama: On a point of order, Madam Temporary Speaker. Is the Senator in order to stand here and tell this House that President Uhuru Kenyatta has been accepted by all Kenyans and yet we know very well that we have the CORD coalition which opposed Uhuru Kenyatta's presidency and we continue to oppose it?

Sen. Mositet: Madam Temporary Speaker, I may not say that this is my personal opinion, but that is what democracy presupposes. After you go to the polls and the majority wins, even those who lost the elections have to join those who won in building the nation. I agree with what he says because that is his personal opinion, but the fact remains that Hon. Uhuru Kenyatta is our President. He is also one of the most focused leaders we have in this country. That is why this morning we had prayers of healing this nation, so that the IDPs do not stay in the tents. What has been causing people to be displaced will not arise again.

(Loud consultations)

The Temporary Speaker (Sen. Ongoro): Order, hon. Senators! If you feel that something is out of order, simply stand up, you will be given an opportunity to point it out.

Sen. Mositet: Madam Temporary Speaker, as I stand here to second this Motion, I will also in future come up with a Motion to also consider those who were displaced earlier, so that we may not have problems like the ones we are having at the coast. The hon. Senator mentioned how in the 1960s people were chased from Lamu. Knowing very well that in Mombasa and the entire coast region we have a lot of problems as a result of people being displaced, it is an issue I feel that we need to look at comprehensively.

With regard to settling these IDPs, I think it is now quite possible because we have a President and a Deputy President whose communities were most affected, especially in the Rift Valley. It was the Kikuyu community which was fighting with the Kalenjins. Since we went to the elections, the two communities have reconciled.

Sen. (Dr.) Khalwale: On a point of order, Madam Temporary Speaker. Is the distinguished Senator for Kajiado in order to suggest that the 2007/2008 problem only adversely affected the Kikuyus and Kalenjins when all Kenyans know that just about every community lost something and even more so, the Luhyas were displaced from

Trans Nzoia? We were butchered and our property was destroyed. The Luos in Naivasha, Nairobi and Nakuru were also displaced.

Sen. Mositet: Madam Temporary Speaker, when I mentioned the two communities, it was just an example. There were quite a number of communities which were affected.

Sen. Muthama: On a point of order, Madam Temporary Speaker. Is the hon. Senator in order to continue provoking this House and issuing statements which suggest that the problem of IDPs only affects two communities? Is he trying to prove that because the two communities are in power that is why there were no displacement of people in 2013? Is he suggesting that unless the two communities are in power, there will be no peace in this country and that we will continue having IDPs?

Sen. Mositet: Madam Temporary Speaker, I am here to support the idea of IDPs. I gave an example of our good leaders who will solve this problem. I do not want to isolate any community because all of us are here to find a permanent solution to this problem. This is the time when the Government needs to act and take a major roll call in all IDP camps in various parts of this country. The Government should settle them in areas where they will live with dignity.

I second the Motion.

(Question proposed)

The Temporary Speaker (Sen. Ongoro): Sen. Wamatangi!

Sen. Njoroge: Madam Temporary Speaker, Sir, I am sure that it is much easier for everybody to use that name. It is, indeed, my name. Sen. Wamatangi is a name that I was given by my community because of trying to change the livelihoods of people in tandem with the Motion we are discussing, by focusing on alleviating poverty and solving problems that affect communities.

I rise to support this Motion. As it has been well enumerated by the Mover of this Motion, Sen. G. G. Kariuki, this is not only a Motion that is spot-on at this time when we have a new devoted and very dedicated Government that has not only promised but shown that, indeed, it is ready to start tackling the problems that affect this country and have not been resolved.

The Bible admonishes us to be our brothers' keepers. It is profoundly sad for all these years, since Independence, that we have different types of IDPs in this country, as it has been said by the Mover of the Motion. This is from land disputes, disputes between property owners and squatters and from natural calamities like landslides.

As I speak, in Kiambu County, I am dealing with IDPs in Lari Constituency. Since the last landslide took place, they are living by the roadside as they wait to see how they will be resettled. Therefore, indeed, this is the time for us, as a country, to deal with the issues that hitherto have not been dealt with. When we took oath of office, we undertook to uphold the livelihoods of our people.

When Kenyans passed the new Constitution, we knew as Legislators that the Constitution entitles all Kenyans to a decent livelihood, the right to life, right to education and to all other rights as enshrined in the Constitution. We passed it unanimously. It is our duty as legislators to ensure that because we have been given that power by

delegations - the people who voted us in - that we stand up and do what we must do and ensure that we deal with the problem of IDPs, once and for all.

I support this Motion because the Mover of the Motion has carefully crafted and written it in a way that will offer and give us a prolific solution to this problem. To begin with, first, we need to have all the IDPs enumerated as he has said. You should pay a visit to counties that one may not even know have IDPs like Nyeri where people were displaced a long time ago because they were living in forests. They have been living by the roadside for ages. On the way to Nakuru, new slums have mushroomed along the road. These slums host IDPs who formerly owned acres and acres of land. These are Kenyans who previously lived very decent lives, but are now forced to live in squalor. It is, indeed, the time for our Government to deal with this.

I believe that the Jubilee Government led by His Excellency Uhuru Kenyatta, has not only determined, but decided to deal firmly with the issue of settling IDPs. I have no doubt in my mind that any country that practices and professes democracy should deal with this issue. There is no doubt, as I speak now, who the President of this country is. This country is a democratic. It upholds democratic values and systems. Therefore, when we go into elections, the winner is declared and accepted by all. That becomes the leader. We must be leaders who say what we mean and mean what we say. So, when we say that we acceded and conceded, indeed, we must move together as one nation and find solutions for all of us. We cannot afford to backtrack for political convenience and start casting doubt on the minds of our own people when they should be moving alongside with us to bring a lasting and permanent solution. I am sure that this problem will now be solved.

Many people in Mombasa, Nairobi and Kiambu do not live their lives the way they should be living because they were displaced from where they had settled. We should make sure that the children of those people live in decent areas. They should see the Jubilee Government delivering on the promises that we have made.

I support this Motion.

Sen. (Prof.) Anyang'-Nyong'o: Thank you, Madam Temporary Speaker. I stand to support the Motion by my friend, Sen. G. G. Kariuki, Senator for Laikipia, a veteran politician, former Minister of State for Provincial Administration and Internal Security in the Nyayo regime.

I will begin by debunking one falsehood. Yes, democracy says that when elections are held, winners are upheld while the losers accept the elections as legitimate. However, that only assumes that the elections were free and fair and truly competitive. When the elections are not competitive or semi-competitive, the consequences do not follow because choices have consequences. When it is non-competitive or semi-competitive, it does not follow what has been said here.

Sen. Njoroge: On a point of order, Madam Temporary Speaker. Is the Senator in order to continue to cast aspersions when he knows very well that the Supreme Court of this land said elections were held in a fair and competitive manner? We all know the results. We cannot continue to belabour that point. It has been ruled and a decision made and accepted by all.

The Temporary Speaker (Sen. Ongoro): Stick to the point of order. What is out of order?

Sen. Njoroge: Madam Temporary Speaker, it is in order for him to continue to mislead the nation that a decision made by court is not binding?

The Temporary Speaker (Sen. Ongoro): I need to give a ruling on this. Senator Wamatangi. I appreciate your concern, but this is a debating Chamber. Rules of debate cannot subject a debater to gagging. So, let us hear Prof. Anyang'-Nyong'o.

Let us sustain the Debate.

Sen. (Prof.) Anyang'-Nyong'o: Madam Temporary Speaker, hon. Wamatangi was advancing an argument, but not a point of order. However many times you shout a lie, it will never become the truth. The truth in Africa today – I am not referring to him. I am just making a statement and so do not feel guilty – is that we are having leaders, who once they lose, persist to stay in power. This has happened in Zimbabwe, Cote d'Ivoire and much nearer home, there was a recent experience.

Let me now come to the issue of IDPs. I congratulate my friend, G.G. Kariuki. He knows and I know that there is one fundamental cause to the IDP problem. That is the issue of land. Unless we deal with the issue of land and have proper land reforms and redistribution, we will continue to have IDPs. Even if we think that currently there is an impasse, this is not a solution. As it has happened elsewhere in history, impasses usually wait for an hour when they again rear their ugly heads in commotion.

Therefore, I would like to urge that as we seek to settle the present problem of IDPs which we have even in my own county--- There are people who in January and February 2008 were “bussed” out of various parts of Kenya. There was, indeed, a camp in Limuru where we picked people and took them to Kisumu. The only difference between IDPs in Nyanza and those that you will find elsewhere is that they were absorbed within the family systems. They were promised some Kshs10,000 per family. I do not know what that compensation can do for the families. Many of them never even received that Kshs10,000. The former Coalition Government had a Ministry of State for Special Programmes. That Ministry's mission was to deal with the IDPs issue. Part of the mission was to disaggregate data on IDPs. If you have a Ministry which has existed for five years and cannot even tell the nation how many IDPs there were, something is wrong somewhere. But I do know that in a report given to the Cabinet by the Attorney General, sometimes either in 2008 or 2009, the Government had pretty good data on IDPs. Therefore, I would like to inform my friend, G.G. Kariuki, that one of the requirements of his Motion; having a comprehensive and disaggregated data on IDPs, actually exists. So, you will find that if, indeed, there are records in the Government from the Ministry of State for Special Programmes, as it existed then. There should be no doubt whatsoever in the annals of the history of this nation, that the previous Government had data on IDPs. Therefore, we should move expeditiously to deal with this issue.

Madam Temporary Speaker, I agree that we have an appropriate President at this point in time to settle the issue of IDPs, because we know that the old Mzee Jomo Kenyatta, when he came out of detention, had hardly five acres of land to his name. But by the time he died, he had the equivalent of a whole province to his name. This was not the result of willing buyer, willing seller. History books and, indeed, the land question in Kenya--- We have the data showing very clearly that land---

Sen. Njoroge: On a point of order, Madam Temporary Speaker. This is, indeed, going out of the way. The hon. Senator stood to contribute to a Motion on resettling of IDPs, but instead, he is taking a long route to create an atmosphere that is not conducive.

It would be in order for the Chair to confine him to the debate that he is contributing to. It is also not in order for him to continue to live in denial.

The Temporary Speaker (Sen. Ongoro): Denial about what? Can you be specific?

Sen. Njoroge: Madam Temporary Speaker, that there is a leadership in this country, in the name of President Uhuru Muigai Kenyatta.

The Temporary Speaker (Sen. Ongoro): Sen. Anyang'-Nyong'o, stick to the Motion, but we are not gagging you and there should not be any attempt at all to do so.

Sen. (Prof.) Anyang'-Nyong'o: Madam Temporary Speaker, I did say that there is, indeed, a leadership in this country in the name of Uhuru Muigai Kenyatta who inherited the size of a province in terms of land. He can use it to resettle the IDPs. That is the fact that I am making. I was saying that 500,000 acres of land---

Sen. Haji: On a point of order, Madam Temporary Speaker. I am raising this point order from the bottom of my heart. I think that it is not in order for us to discuss about the late former President Jomo Kenyatta and also the land ownership of the current President, because it is not only him who owns land. There are many other leaders who own land. So, he should desist from dragging the names of these leaders.

The Temporary Speaker (Sen. Ongoro): Sen. Anyang'-Nyong'o, while you should proceed, take note that you cannot extensively mention the President in this Chamber, without---

Sen. (Prof.) Anyang'-Nyong'o: Madam Temporary Speaker, I do concur that there is a minimal number of people who inappropriately own land in this country, which needs redistribution if we have to resettle IDPs. But at the same time, I do accept that we cannot alter history. Revisionism died with Hitler in terms of altering history and facts that exist.

Madam Temporary Speaker, having said that, let me add that if you look at the pattern of land distribution--- If you are going to recommend to the Government that the IDPs should be resettled, help the Government by telling it where you can resettle these IDPs. Also find out why it is that over the last five years there have been difficulties to resettle these IDPs. This Senate should be in a position to think critically. We cannot reduce ourselves to singing like parrots. I remember during the Nyayo regime, Kenyans were asked to sing like parrots. You had to sing what the President sang. That is what we rose up against in 1992, when we fought for multipartism. We did it at a high cost. Several decades later, I cannot stand in this Senate with a clear conscience and be preached to that I must sing like a parrot. That is not why we brought multipartism.

Madam Temporary Speaker, in order to deal with the issue of IDPs, please, confront the issue of land ownership, redistribution and reforms. This is because these IDPs have resettled somewhere. I have done a lot of research on land ownership in this country and know the history of how these IDPs came about. It is not out of the context of that history. You have to look at it in terms of the context of that history. One of the reasons the Rift Valley has been a theatre of conflict every elections since 1963, is because of the issue of land. Your cousins who were taken to be settled in the Rift Valley---

(Sen. Mungai stood up in his place)

It is not you. I am not addressing you. I am saying: “Your cousins.” It cannot be our cousins. Do not feel guilty because I am not addressing you, but the House. The cousins of this Senate who went to be settled in the Rift Valley came from somewhere. They came from that place because the people who had acquired land in that place did not want them there. So, they externalized their class contradictions to the Rift Valley.

Sen. Mungai: On a point of order, Madam Temporary Speaker. Apparently I have heard Sen. Anyang’-Nyong’o very well talking about the cousins of whoever. I come from Nakuru County. I believe that each and every person in this country came from somewhere. I was born in Rift Valley and do not know any other place that I can call home apart from Rift Valley. So, if we start talking about that in this House, then some of us came from very far away. So, I would pray that the Senator refrains from that kind of talk.

The Temporary Speaker (Sen. Ongoro): Sen. Anyang’-Nyong’o, take note that we are all brothers and sisters in this nation, as you proceed.

Sen. Muthama: On a point of order, Madam Temporary Speaker. Are the Senators who stood up here on points of order in order to tell this honourable House that the crimes that were committed by people who were given the mandate by Kenyans to protect them, cannot be talked about or mentioned? The Constitution that we have today gives us the freedom of speech. It must be noted that the first President, the second President and the third President are the owners of the biggest chunks of land in this country. We are here talking about those who do not have land. Are they in order to tell us that we should not mention what happened?

The Temporary Speaker (Sen. Ongoro): Sen. Muthama, you are now debating.

Hon. Senators, I think that we have to bring some sanity to our debate. Let us debate with restraint and also limit points of order. Instead when you are given time to speak, you can then negate the points raised by another speaker.

Sen. (Prof.) Anyang’-Nyong’o: Madam Temporary Speaker, thank you for protecting me. Actually, they have eaten into my time. But when you say something which is true, it pricks people. So, I am not surprised.

Madam Temporary Speaker, the point that I am making is that if we are going to solve the IDPs problem - I am just being very truthful – we must understand the genesis of the problem. You cannot run away from it because it exists in history. The genesis of a problem must be limited to a certain time. In this regard, we are not talking about since Kenya became a colony and since it became an independent nation. We are more concerned now about how these issues of IDPs start after Independence. It is more reasonable. If we do that, then we shall know what kind of policies we have - Sen. G.G has asked for the kind of Government policies that realistically address this IDPs issue. But if we are going to do it by pretences, excuses and so on, it will be there perpetually. We may hold elections in future, but if we do not have serious policies on land reform and redistribution, which take into account the historical antecedents of land conflicts in this country, we shall be going nowhere. This is as true as it is that Tuesday follows from Monday.

Madam Temporary Speaker, secondly, at the moment, power politics in this country is very much associated with land ownership. That is why it is also going to be very difficult to solve the IDPs problem realistically. This is because we have very vested interests in solving the land question. Unless this Senate can confront that truism, we

shall sit here and be partisan one way or the other and not get an answer. That is my honest opinion. This is because we seem to be offering a very simple solution, which politicians always offer, which says: "We have the correct person who will do it." That is not enough. You must say whether that correct person has the tools for doing what you are saying that he is going to do. Those tools must come from conviction and proper social relations in society. But at the moment, for example, the very leaders being applauded now, are busy in politics that will take us back to the 1960s; buying and inducing people with money to join them on their side. This is not going to help. We will go back to the one-party system which will not help us at all.

Sen. Wangari: On a point of order, Madam Temporary Speaker. Is the Senator in order to drag the names of the leadership of this country in an inappropriate manner and actually peddle information that has no bearing or backing in law or anywhere in this country?

Sen. (Prof.) Anyang'-Nyong'o: Madam Temporary Speaker, the words "peddle" and "drag" are very popular with Jubilee Senators, but I do not think that they are very important words in the English language, in the issue that we are talking about today. We are talking about land redistribution and IDPs. If we talk about that and think that, that is dragging anything from one to the other, it makes very little sense. But as I said, because I am telling the truth, it is pricking people in the right place and I am happy about that.

Madam Temporary Speaker, finally to my colleague, Sen. G.G, whom really I must say is one of the few people in this country who understand power politics, and really has come of age to know the limits of the arrogance of power--- If you read his book I was once his victim and he almost detained me. But I escaped while the notes were on his desk. When we eventually met in the Seventh Parliament, we became very good friends because I understood where he was coming from then and he also appreciated where I was coming from. I think that this House should listen carefully to my friend, G.G. Kariuki, when it comes to the arrogance of political power.

Madam Temporary Speaker, I can see it in this House by some kind of defensive statements being made without any rational basis. One of the things that we must know---

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

The Temporary Speaker (Sen. Ongoro): Please allow the Senator to conclude.

Sen. (Prof.) Anyang'-Nyong'o: I am almost completing, then you will have time to raise points of orders even in the bar outside.

(Laughter)

The Temporary Speaker (Sen. Ongoro): Order Sen. (Dr.) Khalwale! We are in the Senate, the Upper House of Parliament.

Sen. (Prof.) Anyang'-Nyong'o: Madam Temporary Speaker, one of the things that I think is important in the spirit of Sen. G. G. Kariuki's Motion is the concern for social deprivation. I talked about this yesterday in this House and I think we really must have a feeling for it as Senators. When somebody lives in a shelter made of cellophane, it is really the lowest level of existence. Right now Nairobi is very cold. Some of us are dressing in three-piece suits for the first time, the standard dressing during the Nyayo period, but nonetheless---

The Temporary Speaker (Sen. Ongoro): Your time is up.

Sen. (Prof.) Anyang'-Nyong'o: I beg to support.

The Temporary Speaker (Sen. Ongoro): Majority Whip.

Sen. Elachi: Madam Temporary Speaker, I also rise to support this Motion. When I look at history and I want us to take this as leaders in the Senate knowing very well that the Constitution also gives us the mandate to look at our boundaries and knowing very well that we have Internally Displaced People (IDPs) across the whole country and not just in the Rift Valley and Central provinces. When we talk about IDPs, the issue of land comes in and it becomes emotional. I want to challenge the Members of the 10th Parliament and I know many of them are here and others were Ministers in this country and when you are a Minister, you are supposed to do your duty in terms of serving all Kenyans.

Madam Temporary Speaker, when you look at the issue of IDPs in this country, it goes way back to 1963. At that time, we were struggling with structures of Independence and building a country. As we speak today, when you look at what happened in 2007 and when we visited Rift Valley, we realized that we needed to address the root cause of our problems, which are land issues. It was not just the Kikuyu, the Kalenjin, the Kisii but all communities. It is the same politicians who are now talking differently that made us to go through the challenges that our citizens went through. Today, if we want to solve this problem, then we have to look at all the researches that have been done by the Government. I went round and even stayed in Burnt Forest for not less than three weeks, there was clear data. We segregated for every household of IDPs. The retired President wanted to solve the problem of IDPs but as leaders here, we know what the challenge has been. We have seen that they have identified land but if they cannot negotiate with those who live in those areas, conflicts will always be there. The reason why most of them have not been settled is because of the issue of agreeing with the indigenous community that is within that area and the people who are supposed to be settled there.

Therefore, if we think we can assist the Government to deal with the issue of IDPs, then we need to ask ourselves as Senators how we are going to go about it especially in the hotspots. How do we sit down together with the community so that we integrate each other to accept a brother who is coming? We have reached a point in Kenya where we need to know that land is diminishing because of the population that we are bringing up as we continue with productive health. We also need to ask ourselves whether we want to continue only believing that the economic livelihood of one is land. This is where the challenge is. Is there a way we can improve on different ways of ensuring that every Kenyan, regardless of who has land, is able to put food on the table? The root cause of all this is poverty. If every family in this country today would have a small piece of land where they can get their food, we would live as brothers and sisters. But to come and start pointing fingers at those who have huge tracts of land, we only look at ourselves but we forget that the same leaders have also decided to give the international community very huge tracts of land. We have given them ranches while our brothers and sisters are looking for only one acre to live in but we have decided that a *Mzungu* can have thousands of acres. So, let us not pretend and debate in a way that shows only a few benefitted. I think many of us have done wrong to this country and it is time, we, as leaders, accepted that we went wrong. The new Constitution now gives us life to reconstruct what went wrong.

When my father inherits or buys land, I do not think as a daughter or son, I am supposed to be accused of taking that land because it was not my land. It is my father's property. I am also trying to struggle and get my own. Therefore, when we drag His Excellency the President into the debate, it would be very wrong because he is also struggling to bring his three children up and maybe he does not know where the land will come from. Maybe he is also looking for land just the way most of us are doing. So, let us be honest with ourselves.

(Loud consultations)

Yes, we all live in Kenya and it is only that we know him very well but we have the Mazruis and many others who have huge tracts of land in the Coast but why not talk about them? Why can we not ask about the many absentee landlords? Our brothers at the coast region are struggling so we need to question that. If the Senate wants to be honest to this country and stand firm beyond the politics of the National Assembly, let us look at things across the board with one knife so that when you cut, you do so as a leader. If we try to be imbalanced, then we will be playing the same politics we play.

Madam Temporary Speaker, regarding the issue of IDPs, the Government had already identified land in Nakuru, 5,000 acres in Molo. They have also identified another one in Burnt Forest but the challenge we face is how to agree. I know as Kenyans, we have continued taking advantage of the process. I remember after the post-election violence, the Malaysia Government wanted to help us with the issue of IDPs but they said they will not give us money but bring the facilities like timber. But since our people wanted money, we refused the offer. Therefore, we have to blame ourselves across the board because we took advantage of the IDP situation and made it a business. We now need to help the Government to remove the bureaucracy that is around even in acquiring land and many other issues. Therefore, we should help the Government to ensure that everyone is resettled.

Madam Temporary Speaker, I support the Motion because it is important now to get the realistic data of IDPs, not just in Rift Valley but also in places like Likoni. Some of them were displaced in 1997 and up today, we do not know where they are. We have those who were integrated with their families. We need to know the numbers so that when we are helping, we should not repeat the mistake we have done with the Mau Mau; to compensate others and leave others out. This would bring us to a very serious scenario where you will find again people fighting for the reason that you have compensated one community and left another one out. It is important to also say what happened and that is why we are in such a scenario. I believe in the new Government and I hope the President will look at it holistically.

We now have a Cabinet Secretary concerned with land and I believe Mama Ngilu will do her best to bring out more and to deal with the issue of land because "she says and she does." Let us agree that for once Mama Ngilu has done her best in many of the things she has done, regardless of how you look at her. When she goes to a Ministry, she does her work. Let us do what is right. She does her work and she will deal with the issue of land. I do not think there was any other better Cabinet Secretary that would have dealt with land than her. She is there and she will deal with it. It is up to the Committee in the Senate that deals with land that needs to meet her and agree with her.

I want to tell Kenyans that it would be very sad if we would be looking at people based on their personalities because tomorrow, you will be there. Tomorrow, you will be somewhere being vetted. Do you want to be vetted on how you are or based on what you know and what you do best and not personal issues? So, let us look at the Cabinet Secretary considering what she has done and she has done a lot for this country. So, she would definitely tackle the issue of land.

Madam Temporary Speaker, I would wish to request the Mover to go and do more research so that we can know what the former Minister, Ms. Murugi Mathenge, handed over. I believe she had done a lot and we need to know what she handed over to the department. This will guide us in finalizing what she had planned. She had very good plans on IDPs. Let us not ignore that report. It is important for us to go through it.

Thank you.

Sen. Ndiema: Madam Temporary Speaker, first of all, I want to thank the honourable Senator for Laikipia for moving this very important Motion concerning the citizens of this country who have continued to suffer without a place called home. While supporting the Motion, I would want to propose and move an amendment.

I beg to move that the Motion be amended by deleting the words “over the last 20 years” appearing in the first line and substituting thereof the words “since 1895.” And further by deleting the word “current” appearing in the second last line.

Madam Temporary Speaker, the history of IDPs in this country is long and it is not restricted to 20 years. It is on record that when the colonialists set foot in Kenya and admired our land, they started scheming how to forcibly remove citizens from their land. Some of those families which were displaced from the colonial times are really the original IDPs, some of whom have never been resettled.

Madam Temporary Speaker, this is not only restricted to one area. If you went to the former Coast Province and the Rift Valley, and particularly Trans Nzoia where I come from, the same thing happened. Families were deprived of their land. Some of them were moved to forests and later on, the same forests where they took refuge were gazetted as Government forests or national parks and people have continued to be displaced. Some Kenyans had to seek refuge in foreign lands. We have Kenyans who used to be residents of Trans Nzoia and they were forced by the colonialists to move to Uganda where they have never been accepted as citizens of that country. Some moved to Tanzania and beyond. The Constitution which we overwhelmingly passed took cognisance of the problems of those citizens. The National Land Commission has been given the mandate to look into the past injustices visited on Kenyans.

Madam Temporary Speaker, it is not proper for us to ethnicize or personalize issues of land because they are emotive. In the Constitution, we know that a person has a right to own land anywhere in this Republic but what we need is to objectively, in a unified manner, look at the problem of the IDPs right from the beginning. Perhaps that is where we have failed.

Now, coming to the recent IDP resettlement programmes, the Government has tried, but I think sometimes the manner in which it has been done has not been well informed. Arising from the conflicts that we had, some IDPs went to camps and some went to be accommodated by relatives, neighbours and so on. There are communities that do not believe in being in camps. This is a category that looks like it was not taken care

of and we need to take stock. I thank Sen. G.G. Kariuki for bringing this Motion, but let us revisit and do a proper census of all these IDPs.

Madam Temporary Speaker, the Trans Nzoia communities are known to be welcoming. They have welcomed people from other communities to live there, yet they are the ones who suffered most from colonial deprivation of land. We have the original IDPs and the recent ones that also came about because of the recent conflicts. If you go to Kabolet and Teldet camps, there are IDPs. No IDP from Trans Nzoia has been settled yet we have willingly received and settled IDPs from other counties. In a situation like that, how do you expect the residents of those counties to feel? Are we not unnecessarily setting citizens against each other? If there is any land to be shared – the Constitution talks of the quotas – why do we not apply that principle, so that even as you settle IDPs from other areas, you also consider the local IDPs?

Land for settlement has become very scarce in this country. It is scarce all over the world and even China could be worse, but we have to look at settlement from the perspective of at least every citizen having a place called home; a shelter. If you cannot get agricultural land, at least the beginning point is to have a place you can call home perhaps even in an urban setting. Why does one take an IDP who is used to urban life and is not an agriculturalist and go and give him two acres of land to start agriculture? This is not viable. Sometimes they have had to sell their land and go back to where they came from. So, we have to look at the whole issue of resettlement of our people.

Madam Temporary Speaker, there are IDPs who were in their traditional lands, for example, the Ndorobo, the Ogiek and so forth, whose land was really in the forest. When the forests were gazetted, they had to be removed from what they called their home. Some of them are still living on the roadside where they are suffering. Will they really be proud to be Kenyans? While we are doing that, we are not taking care of them but continue politicking over who owns what and so forth and so on. Really, we should look at our people to ensure they are all settled.

With those few remarks, I want to support this Motion but beg to move those amendments and ask Sen. (Dr.) Machage to second.

Sen. (Dr.) Khalwale: On a point of order, Madam Temporary Speaker. Now that the Mover of the amendment has successfully done so, before we give it an opportunity to be seconded, I would like the Chair to make a determination. Before any Motion is debated in this House or even in the Lower House, a determination must be made whether that Motion is constitutional or not. I want to invite you to look at Article 67 of the Constitution of Kenya on the National Land Commission. It says:-

“There shall be established the National Land Commission whose function would be as tabulated”.

But I would like you to look at function No.2 (e) which says:-

“The National Land Commission shall initiate investigations on its own initiative or on a complaint into present or historical land injustices and recommend appropriate redress”.

Madam Temporary Speaker, I am saying that you make this consideration, because, to open up this discussion to 1895 as he says, you are now taking the national debate into an area where documentation of facts might not necessarily be authentic. In so doing, we could engage in debate in this very serious House, which could destabilize the country. I beg that we continue with the debate in the original form so that we uphold

the provision of the Constitution in Article 67 (2) (e) and do so cognizant of the fact that when the people who sat in Serena thought these things and that is why we had the Truth and Justice and Reconciliation Commission (TJRC). The reason why it was created was that we speak to these things but then not stock the flames.

The Temporary Speaker (Sen. Ongoro): Sen. (Dr.) Khalwale, I have made reference to the Article you have pointed out and it is my opinion that this Article does not limit the kind of debate that we are undertaking. It talks about initiating investigations on its own initiative or on a complaint into present or historical injustices. The word “historical” in my opinion does not limit us to any timeframe. It is only the outcome of this debate that will inform such a Commission on how far back to extend the historical injustice that we are going to discuss because some historical injustices currently being discussed have their basis in pre-colonial era. But I think that is a valid point but all recommendations and points that will be raised on the Floor during debate shall form the basis of the kind of action and the policy that will come from this debate. I do not think that we can limit the word “historical” to only mean 20 or 50 years back. Let us debate it as it is. Now that we have already allowed Sen. Ndiema to move these amendments, you can give your proposal or your points when you are debating on the amendment.

Sen. (Dr.) Machage: Thank you Madam Temporary Speaker. As I thank Sen. G. G. Kariuki for coming up with this timely Motion, I would like to support and second the amendment as proposed---

Sen. G.G. Kariuki: On a point of order, Madam Temporary Speaker

The Temporary Speaker (Sen. Ongoro): We shall grant that point of order because you are the Mover of the Motion. What is out of order, Senator?

Sen. G.G. Kariuki: On a point of order, Madam Temporary Speaker. I invite you to look at the Standing Order which I do not have here. The Standing Order says that no one is allowed to amend any Motion or whatever is presented here to include something that is outside the scope of the main Motion. The Chair will look at that Standing Order because we are getting out of the scope of the Motion.

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

The Temporary Speaker (Sen. Ongoro): Sen. (Dr.) Machage, just allow us one minute. Let us take that point of information. .

Sen. (Dr.) Khalwale: Indeed, what Sen. G. G. Kariuki has alluded to is very important. The Standing Order say;

“No amendment to a moved Motion shall be made that renders the Motion materially different.”

So, the intention of his Motion was not where this amendment is taking it. Basically, the amendment is rendering the Motion materially different. Therefore, if Sen. Ndiema is in the mood of creating such a Motion, he can always file his own but allow us to conclude this one of Sen. G. G. Kariuki. *Tunaenda wapi na mambo ya mwaka wa 1895?*

The Temporary Speaker (Sen. Ongoro): Senator, further to the Standing Order you have given us, I would like to draw your attention to Standing Order No.54. It is my opinion that the amendment is not changing the substance of the Motion. It simply allows us to use the word “historical” and to backdate the Motion to 1895 as opposed to having it as from 1963. You have not given us enough reasons to convince the Chair why you want the word “history” to be limited to 1963 and not, for instance, 1959. You have not

convinced the Chair and it is my opinion that we are not deviating. The amendment is within what is allowed by the Standing Orders.

Can we proceed with the Seconder?

Sen. (Dr.) Machage: Thank you, Madam Temporary Speaker. When a lady sweeps her house, she does so properly. She does not stuff some dirt in a corner, sweep out some little dirt and conclude that she has cleaned the room. She has to sweep out everything.

Sen. Ndiema has quoted a Government Policy Paper on land policy; Sessional Paper No.3 of 2008, which talks about addressing historical injustices on land from 1895 because that is when Kenya became a British Protectorate. This is what is in black and white; on paper and it has been a Government Land Policy. Nobody has ever objected to it. In any case, why should we only pick 20 years just because those years have affected the majority communities of this country? There are other communities, however small, insignificant or unknown, that were affected by this injustice of history and this must be addressed.

Sen. Murungi: On a point of order, Madam Temporary Speaker. I have a problem in the manner we are proceeding with the debate on this amendment. The substantive Motion reads in part;

“The Senate urges the Government to profile all the current Internally Displaced Persons and to take urgent and immediate steps towards resettling IDPs and finding a lasting solution to their plight.”

The use of the word “current,” to me, by any stretch of language or imagination should not be seen to refer to any IDPs whether from 1895 or 1920s. “Current” refers to those who are present right now. Anybody talking about an amendment which takes us out of the word “current” cannot be within the Standing Orders of this House as far as amendments to the Motion are concerned. Therefore, I would like us to revisit this issue on whether this amendment is properly before the House before we proceed.

The Temporary Speaker (Sen. Ongoro): Senators, I want us to be very sober with regard to this. Let me have your attention.

If somebody said that we need to give a list of all the current patients or people suffering from malaria, would that limit us to people who contracted malaria only under the current dispensation or to people who also could have been suffering from malaria for the last 20 years and who are still currently suffering from malaria? Where would you classify those people? I still want to believe that the word “current” cannot be construed in this instance to mean only those who are currently living as IDPs. If we have a 90 year old man or somebody who is 120 years old, who is an IDP but was displaced in 1950, does that disqualify him from being considered when we are resettling IDPs? You must convince the Chair.

In my opinion, when we talk about the word “current”, this simply limits us to have updates of whatever we are referring to. However, this does not limit us on where to start the investigations. All these points you are bringing are points you can bring during debate when you are given an opportunity and they will all be factored in the final statement that will proceed from the Senate.

However, I believe that we cannot limit or leave out our old men who are also IDPs. When we are settling others, we should not be telling them that their status, as IDPs, is not current and, therefore, we will not sort them out as a Government or that we

are sorting out people who are 40 years and below because they happened to be IDPs in the last 20 or 10 years. We now have to proceed with the Secorder of this amendment. It is in order.

Sen. (Dr.) Machage: Madam Temporary Speaker, thank you for that protection. I am only seconding the amendment and with good reasons. While a pandora's box may have been opened, yes, it had to at one point in the history of this country because the truth cannot be concealed always. Historical injustices have to be addressed as they are. We can only talk about them to seek solutions. This is the House of the Senate. We have to appear to protect and defend every Kenyan, whatever their status or source of origin. We have to be seen to be non-partisan in protecting Kenyans in all counties.

Let us pick one issue of the Mau Mau. These are people who our former colonizers have seen the need to compensate. You know what the Mau Mau uprising was all about in the early 1950s to the late 1950s. We cannot exclude these people who fought for our Independence, lost their land and limit ourselves to a period that addresses our small communities. We will be making the Mau Mau case with the British totally irrelevant. We have to be seen to say that these people lost their land and that their land was taken by colonial masters.

The community that some people may be focusing on suffered a lot; the Kikuyus. The people of Mount Kenya suffered a lot because they were evicted by the colonial masters at that time. We cannot just bury our heads in the sand. Some of the families of these people are still alive. Some of the old men are also still alive. They see their land being cultivated by other masters. We cannot bury our heads in the sand. We must address this issue in totality. It is known, whether we talk about it or not.

The people of Baringo have taken their time to go to court over the years to try and regain their land of origin; their home. They won the case and yet the Senate purports to bury its head in the sand and not to address the issue. The truth is that unless land issues are addressed, we will never go anywhere. This also affects the people of Coast Province because of the ten miles coastal strip. We cannot refuse to address that. They were forcefully evicted from those places. Their land was given to the colonial masters at that time who allocated their land to the Zanzibar Government. Now that we have Independence, these people have not been considered and have not been given back their land. They are squatters in their own land. We, from other areas, have occupied that land. That is cultivating anarchy. We must address that as the Senate. We must address it.

When hon. Sen. G.G. Kariuki was a Minister in the late 1970s, my own people from Migori were evicted from Trans Mara. We have people now living in marshland. They always pray to God not to send rain when the rest of Kenya is praying for rain because God forbid, when the rains come, they have nowhere to put their heads. Do you want those people to be forgotten? There are IDPs in Trans Nzoia; the Sabaots. If you go and resettle other IDPs in those places without considering the others who were there, will they accept it? So, really, expanding and enlarging this period to start from 1895 is really to address the genesis of the problem. You can only treat a disease if you know the cause. Otherwise, we will operate the tumor out and then after a few years, it grows. We will keep on operating and finally, kill the patient. That is exactly what is going to happen if we do not, as the Senate, look at this issue as a problem that needs to be addressed holistically with wisdom that is expected of this House; of course, while upholding that respect to our country and not punishing other people for injustices that were done by

other people who had nothing to do with them, and then trying to see how we can get a solution that will last.

Madam Temporary Speaker, yes, it is true that over the last 20 years, maybe we have had an escalation of a few people as IDPs, but we have had more in those other years. It is true that this is a Pandora's box, but let us open it with all the courage, see what is in the box and wash it out. Clean it once and for all, as the Senate. We have lost people. Why did the late Father Kaiser die? It is because he was writing information that was not very conducive and acceptable to some people at that time in power. He died for trying to show the truth. Why did J.M. Kariuki, Tom Mboya and other martyrs of this country die? It is because of the politics of land. That is my understanding. Everybody has his or her own understanding, but the truth will never be hidden. Like Sen. Anyang'-Nyong'o said, just by shouting something that is not true will not change the untruth to be the truth by the number of times you shout. It may not be a very popular topic to some people in power or who are rich and have a lot of property, maybe with a history behind that might depict that, that property was found as an injustice at that time. We are not talking about that. I completely do not support anybody who wants to mention the name of the President here. It is not proper, but let us look at the gist of the whole issue. Evictions by whichever name you give it, either by the colonial masters, fellow tribesmen, governments or political parties, still remain evictions.

Madam Temporary Speaker, the term "current" is subjective. It depends on what scholar you are. The 20th and 21st Centuries are current centuries, if you look at the history of the world which is in millions of years. So, this is a subjective term. I believe that anything that occurred in the last century and early this century is so current because it is documented clearly in our books and should not be forgotten. Of course, we have other Commissions which have addressed these issues and submitted their reports. We have land Commissions which came and submitted their reports. They include the Akiwumi Commission and so on. The reports are buried somewhere. All this information is written and there, but just because we ignore, it does not make it right. I beg the House that we discuss this issue with all the dignity that it deserves, without raising any animosities amongst communities. We should just tell the communities that we want to see where the problem arose without instigating any anarchy. In this way, we will be understood by Kenyans. But if we limit ourselves to only 20 years, as the Senator has put it, then the gist and wisdom that he has put to give us this important Motion will be lost and we will be judged by history for having forgotten others.

Madam Temporary Speaker, I beg to support.

The Temporary Speaker (Sen. Ongoro): Hon. Senators, you can now understand why this is rightfully referred to as the Upper House, because of the thorough manner in which you interrogate all issues.

Senators, before I propose the Question, I want to revisit the issues that have been raised, because specific reference has been made to the Constitution. Because of the supremacy of the Constitution, let us revisit what was raised by Dr. Boni Khalwale, under Article 67(2)(e) on the Land Commission which reads:-

"to initiate investigations, on its own initiative or on a complaint, into present or historical land injustices, and recommend appropriate redress;"

This is in reference to the National Land Commission. That is in order, but it is my opinion, as I stated earlier, that what we discuss here and forward, either to the relevant

Committee, and by extension finds its way as a policy statement, can form the basis of a complaint that can then qualify for the Land Commission to act. Otherwise, in all honesty, we have Commissions, departments and Ministries dealing with everything that we will be discussing in this House. If we limit ourselves not to discuss something because there is a relevant Commission that is mandated to discuss it or because there is a Ministry whose mandate is actually supposed to take care of health, then really we should not have even discussed the Motion on health. So, I still want to think and encourage you that we are operating within our mandate.

Further to that, when we make reference to our Standing Order No.46, on the amendment of Notice of Motion, I still want to confirm to you that the amendment was forwarded procedurally. It states very clearly:-

“The Speaker may permit a Senator to move in amended form a Motion of which notice has been given if in the opinion of the Speaker the amendment does not materially alter any principle embodied in the Motion of which notice has been given.”

I believe that in debating this Motion, the amendment that has been forwarded, in my opinion, as stipulated by the Standing Order, does not materially alter the base content of the Motion.

Senators, in debating, I also want to make a further statement that a debater may always draw parallel, give relevant input or talk on a different subject, but which in his opinion, has a bearing on the matter being discussed or by extension either directly or indirectly has a connection, relevance or ripple effect on what is being discussed. So, I think that we are within our mandate.

I will now propose the question of the amendment as proposed by Sen. Ndiema, by deleting the words “over the last 20 years appearing in the first line and replacing them with the words “since 1895.”

(Question of the amendment proposed)

Sen. Njoroge: Madam Temporary Speaker, I rise to oppose the amendment.

Madam Temporary Speaker, I oppose the amendment because I believe that the Motion itself has been brought in absolute good faith. I also believe that the amendment has been brought in absolute good faith. But it is my opinion that as we debate, we also need to look at the end result. What do we want to get from the Motion? Like you have rightly said, we are the Upper House and, hence, as we debate the Motion, we also need to project and see where we want to rest the case. So, if it will form the basis of a complaint, then it should be something that we can deal with.

Madam Temporary Speaker, by making an amendment that will draw back the timeline up to 1895, we are bound to also discuss and bring up issues and facts that cannot be substantiated or supported even by documents. For example, if I come and make an allegation or contribution, which is just my word against history, that this happened to a particular group, me or certain community in 1897, there is no way that anyone of us in this Chamber today or even our grandfathers can attest to the truth. There are no documents that we can produce to support that kind of allegation. So, although our---

Sen. (Dr.) Machage: On a point of order, Madam Temporary Speaker. Is Sen. Wamatangi trying to mislead this House that there are no documents on historical injustices in this country since 1895? There are plenty.

Sen. Njoroge: Madam Temporary Speaker, my point is that even though there could be some documents, there will even be no system of verification or authentication of those documents. But as Sen. (Dr.) Machage said, indeed, we can dare to open the Pandora's Box.

Sen. Ong'era: On a point of information, Madam Temporary Speaker.

The Temporary Speaker (Sen. Ongoro): Do you wish to be informed, Senator?

Sen. Njoroge: Yes, Madam Temporary Speaker.

Sen. Ong'era: Madam Temporary Speaker, I would like to inform my very good friend, Sen. Wamatangi, that we have the National Archives which has plenty of all these documents and information that we can use for interrogating these facts.

Sen. Njoroge: Madam Temporary Speaker, I take that information well. But I will still stand by my point that, yes, we do and may have some documents, but it is almost impossible to call up to absolute convictions that any fact adduced here in this House, over this Motion, when it is referring to events that date as far back as 1895, can be absolutely authenticated or affirmed beyond reasonable doubt.

Madam Temporary Speaker, having said that, Sen. (Dr.) Machage also said that, indeed, we can dare open the Pandora's Box and see what is inside there. Bring it on! But if we open that Pandora's Box, we also must remember that we should open it with responsibility. This is because we must also realize that we are leaders in a nation that is looking at us. Whatever debate or discussions that we hold, have got overbearing reverberations and consequences in the country and population. As a responsible Senate, we should only discuss and pass Motions that we can stand by.

Madam Temporary Speaker, I oppose the amendment to the Motion.

Sen. Mwakulegwa: Asante, Bi Spika wa Muda.

Ningependa kuwashukuru waliozungumza mbele yangu na kuunga mkono mabadiliko yaliofanywa kwa sababu nchi ambayo haina historia haiwezi kustawi. Lazima tuangalie yaliopita ili tubadilishe historia kwa vizazi vijavyo.

Bi Spika wa Muda, katika swala hili la watu ambao walifurushwa makwao, ni lazima tuangalie kwa historia. Watu wa Pwani walifurushwa kutoka kwao na Mwarabu na mpaka leo hawajawahi kupata ardhi yao kando ya bahari ya Kenya. Kwa hivyo, tukisema tuangalie tu ya sasa, basi tutakuwa tunasema kuwa tuponye mmoja na wengi waumie. Hiyo si haki au sheria ya Kenya. Kwa hivyo, naunga mkono turudi nyuma itakavyowezekana. Tatizo hili lilitokea hasa kuanzia mwaka wa 1992 kama tatizo la kisiasa, lakini tuwache siasa. Tusizingatie ni Wakenya wangapi walifurushwa makwao na makaazi yao na kuwekwa hohe hahe na kulala barabarani. Tukifuatilia hayo, basi mazungumzo haya hayatakuwa ya kisiasa bali ya kuboresha maisha ya Wakenya kwa kutatua matatizo haya.

Bi Spika wa Muda, pili, tukianza kuangalia mambo ya kuboresha au kutatua matatizo na ardhi peke yake, nafikiri kuwa hiyo italetu vurumai. Unapozungumza mambo ya ardhi, basi Wakenya wanapata tumbo joto kwa sababu ardhi ndio imeletea misukosuko katika nchi hii. Kama tunataka kuhakikisha kuwa Wakenya wanaishi maisha bora kama ulikuwa na *kiosk*, urudishiwe *kiosk*. Kama ni nyumba upewe nyumba, basi tutakuwa tunasema tuangalie Wakenya wawe na haki, wawe na nyumba nzuri na makao

mazuri. Lakini tunapozungumza jambo la Internally Displaced Persons (IDPs) tunazungumza habari ya mashamba na hiyo ndio inapingwa. Unaona inapingwa kwamba wanaotolewa kutoka mahali pengine wakiletwa kaunti nyingine basi watu wa pale wanapinga kwa sababu tunaangalia mashamba. Kwa hivyo, nataka nitoe tofauti kwamba waliofurushwa makwao basi warudishwe. Kwa mfano, tunasema watu walioelewana na kuna maelewano na kama ulikuwa na shamba ekari hamsini limechukuliwa na nani, si liko mahali lilikuwa? Kwa hivyo rudi pale pale na Serikali itakupa usalama. Kwa hivyo, tukiangalia mambo haya tuwaulize kwa nini walifurushwa. Tusiangalie ya siasa peke yake, tuangalie ya zama maanake tulianza pale. Tulianza kupotea barabara miaka ya zamani. Sasa tunazidi kupotea. Tuangalie tulipotelea wapi, tupate ramani, turekebishe na Kenya iwe na amani.

Makusudio yangu ni kwamba kila kaunti ingeangalia maslahi ya waliofurushwa katika makaazi yao ili kuwe na makaratasi, historia na hesabu kamili. Vile sasa tuko na Serikali mbili, Serikali ya Kitaifa na Serikali ya majimbo, Serikali ya majimbo, kwa mfano Taita Taveta County kuna watu 10,000, basi ichukue jukumu hilo ikishirikiana na Serikali ya Kitaifa ili wale 10,000 watendewe haki, iwe ni mashamba ama ili wapate haki waishi katika hali ya heshima. Lakini tukianza kusema kwamba tunatoa watu kutoka kona ya ng'ambo ile na kuwapeleka kule kwingine, tumeona Wakenya wakikataa. Tutaongeza chuki na ukabila. Kwa hivyo, katika madhumuni yangu, kwa mfano, jana nilikuwa mjini nikaona vijana wanakimbizana wakisema wametolewa kwa boma ambalo wamekaa zaidi ya miaka ishirini. Hiyo ni kufurushwa kutoka makaazi yao. Si lazima iwe ni miaka mingi. Hata jana walifurushwa na wamekaa pale kwa miaka zaidi 25. Kwa hivyo, kama tunataka tutatue tatizo kama la jana basi tufikirie tutawapatia nini ili waendeleo kupata riziki. Lakini tukisema kwamba vile walifurushwa ni lazima wapewe shamba basi swala hilo litakuwa ngumu kulitatua. Tulitatue kulingana na shida ya mtu.

Nimekuwa Bunge tangu mwaka 2008, pesa zilirundikwa nyingi mwaka 2009. Tukiangalia ile ripoti iliyotolewa na Waziri aliyekuwa wa Mipango Maalum na Maendeleo, watu wale ambao walikuwepo walipewa mashamba - Walioko sasa ni watu wanachukulia uhamishaji kama biashara. It is now being commercialized. Ndio unaona watu wanatoka wanya wanaenda kujiandikisha kwa maana wanajua Serikali itawapatia pesa na mashamba. Ndio maana nikasema kwamba kila kaunti ipewe jukumu la kuangalia watu wao kwa sababu wanajuana. Leo nikija hapa nimetoka kwangu na kabla sijapigiwa kura, niko na kwetu. Mambo yakiwa moto Nairobi nitarudi kwetu. Kila mtu ana mahali alitoka kwa hivyo arudi pale na akirudi pale kama hana makao atatengenezewa makao na watu wa pale. Tukifanya hivyo, basi, tutatutua swala la mashamba. Kama IDP ni mashamba basi mkisema mnawaleta kwetu watu wataandamana.

Kwa mfano kama wale vijana wa Grogan, kama mtu alikuwa na kioski basi apewe kioski mahali pengine na hiyo tutakuwa tumemsaidia kustawi. Lakini kama itakuwa kwamba alitolewa Grogan na alikuwa na kioski na tunampeleka kwengine apewe mashamba ekari mbili, tutakuwa tumekosea. Kwa hivyo ilivyo sasa, haikusema mashamba bali ilisema kwamba Serikali iweke mikakati ili waliofurushwa makwao wapate mahali pa kuishi. Kama ulikuwa na nyumba, kwa nini upewe shamba? Kama ulikuwa na kioski, kwa nini upewe shamba? Tuangalie alikuwa akifanya nini. Kama alikuwa ni fundi wa viatu na akatolewa mahali basi apewe mahali pengine aendeleo kushona viatu. Ninafahamu kwamba umrudishie riziki yake ili apate kuendelea na maisha

yake ya kawaida. Lakini tunavyozungumzia suala la IDP hapa Kenya, tunalenga mashamba. Tukilenga mashamba, basi, italeta ukabila. Kwa sababu watu wanaona kwamba hawa wanatolewa makwao na kuletwa kwetu kugawanya nchi yetu.

Naomba kwamba tuweke utaratibu na kila kaunti ipate hesabu ya watu wao na ipewe jukumu ili iwapatie makao pale. Kama ni pwani basi wapewe mkanda wa kilomita kumi na watu wa pale wakae. Tukisema warudishiwe mashamba yao kutakuwa na vurumai kwa sababu kumejengwa. Kwa hivyo, yafaa wapewe mahali pengine. Pia Serikali ya Kenya ikitaka kupatia watu wake makao ni lazima tubadilishe misingi, tuanze kujenga nyumba ya ghorofa na watu wapewe makao. Si tutakuwa tumewapa nyumba? Kwa hivyo hakutakuwa na haja kumpatia plot kwa sababu amepata makao. Tukifanya hivyo, tutamaliza mambo haya lakini tukisema kwamba IDP lazima wapewe shamba nina hakika tutazungumza mpaka kesho asubuhi. Mashamba yamepungua na ukweli ni kwamba tusibadilishe kwamba IDP ni shamba, tujue kwamba IDP ni watu ambao walifurushwa makwao na tunataka warudishwe walipokuwa.

Naunga mkono mabadiliko haya ili tupate historia; bila historia hatuwezi kutibu ya sasa.

Sen. Murungi: Madam Temporary Speaker, I want to thank you for giving me this opportunity. I like what my colleagues in the Senate have been saying that indeed this is the Upper House and this is the place for mature debate. This is a place where we should remove emotions from our debates, look at issues very realistically and in a practical manner knowing that our core business and the very fundamental reason why we are here is to ensure justice for all Kenyans irrespective of where they come from. It is from that approach that I would like us to look at this Motion. Nobody is saying that those who have suffered historical injustices should not be given one form of redress or another. We should remove that from this debate. We have too many issues in this country. Even within central Kenya, there are historical injustices which might require to be resolved. This particular Motion is talking about a specific category of people and indeed, there have been very many Motions like this dealing with certain categories of people. So, we should not deny those people their rights or justice because we have not dealt with other categories. We should be able to deal with some categories today and others tomorrow.

Madam Temporary Speaker, the issue of IDPs gained currency in this country after 2007/2008 post-election violence. There are people who were displaced in 1992 but we did not think of resettling them then. There are also others who had been displaced before. Do not forget about the mass displacement of the Maasai Community by the British in 1904 to 1911. A whole population was removed from Laikipia and brought to Kajiado, south of Rift Valley. Nobody has talked about taking the Maasai Community back to Laikipia because they were also displaced. They even went to court in 1914. We recognize that historical injustice and we are not saying that it should be ignored but what Sen. G. G. Kariuki brought to this House are the current IDPs. Those are the people living in the tents today. Are we saying that we should not look at their plight because others who were there in 1995 have not been looked at? Why can we not address these ones today and tomorrow we look at those others?

It is that spirit that I am opposing the amendment because I see that we are generalizing the problem and therefore making it difficult for it to be resolved. Let us deal with that category today. We were very embarrassed while trying to solve that problem in

the Government. I do agree with Sen. (Dr.) Machage and my deputy in the energy committee that the solution might not be giving land to the IDPs. We have tried but it has brought the same problems. In fact, I think the best way to deal with IDPs is to establish how many they are, line them up, give one of them a cheque and tell them to either go and do business or get out to negotiate their own piece of land from individuals elsewhere. So long as we keep looking for land for them, it will be difficult to find land for all of them. In fact, if the money we have spent as a Government in trying to resettle IDPs was given to them in cash and we do not patronize them but allowed them to go elsewhere and buy land, many of them would have found ways of surviving. We need to look at this Motion as a final attempt to bring justice to this people who are suffering in the IDP camps today.

Having said so, I also know as a fact, and we should also learn how to appreciate painful facts, a woman might give birth today to a child she loves very much and tomorrow Dr. Khalwale can pronounce that child dead. That is a painful fact but it is a fact. I want to state on the Floor of this House today that there are certain historical injustices which would be very difficult to resolve and I think we have to live with that fact. Personally, I do not believe that it would be possible to give every Kenyan land. It is not possible. In another 20 to 30 years, most Kenyans would be living in towns and not on land. When I used to spend some time in the United States of America (USA), I attended a human rights conference. Three of the participants came and stayed the whole afternoon trying to convince us that the Government of Canada is illegal. They were calling the story "Hunting the Moose." They said when you hunt the moose, you do not take breakfast, you do not take lunch and you do not take dinner; you only eat after the moose is dead. And they said that this is the spirit that the Red Indians should adopt; that they should not have breakfast, lunch or dinner until they have driven out the British and the French from Canada, because that is their land. And we asked them: "Surely, how realistic is this demand?" and they said "Our grandfathers died fighting for that land; our fathers died too and we are also going to die doing so." Now, do you foresee a situation where the British and the French are going to leave Canada so that the Native Americans can recover their land? Even in this country, the Maasai will never go back to the land they were forcefully removed from by the British in Laikipia. There could be other ways of trying to alleviate and improve their community, but I think that is not something that we should be thinking about.

Similarly, these claims of 1895, many of them will be resolved; but not in that manner. What we should do is to look at the marginalized communities, now that we have the county governments, and see what we can do to improve education, health and infrastructure in their areas so that these communities can come up.

Madam Temporary Speaker, we in Meru came from a place called *Mbwa*, which is around Manda Islands; we were driven from there by Arabs. That is where we came from. We live in a very cold place in Mt. Kenya; we would like to go home, if it is possible!

(Laughter)

But I have come to accept that we may never be able to go back to that home. *Tutakaa kwa hii baridi*. So, I am asking other Kenyans to take it the way we are taking it;

let us appreciate the realities that we live in and do not always try to say: “Because my brother cannot get it, let me also not get it.” Let us support the Internally Displaced Persons (IDPs) who are in the camps today, as the Motion by Sen. G.G. Kariuki pleads, and then we can sit down and see what we can do about the Merus and the Maasais. What do we do about those other very complicated historical circumstances that we cannot undo today? I think that way, we will be doing justice for this country. Let us not always say “O, you people of Mt. Kenya, you are very privileged; *mnapata hii, hatujapata hii;*” you know, let us accept some historical facts. It is only that the British came there first, all right?

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

The Temporary Speaker (Sen. Ongoro): Yes, Sen. ole Ndiema?

Sen. Ndiema: Is it in order for Sen. Murungi to insinuate that there are some communities which are being discussed here negatively, because we are discussing about individual IDPs regardless of whichever communities they come from? Is he in order?

The Temporary Speaker (Sen. Ongoro): Sen. Murungi?

Sen. Murungi: Madam Temporary Speaker, I am seeing a number of Motions which have come here saying “These communities were highly privileged; there are more things there than in the others; these ones are like this---” Most of these IDPs also tend to come from a certain place, and if you read in between the lines, some people could feel that, maybe, the reason why we are expanding the debate to 1895 is because we do not want this particular group of IDPs to benefit.

So, Madam Temporary Speaker, let us not always have in mind these groups where we come from and all that. Let us talk about Kenyans as Kenyans. And if you are disadvantaged, let us correct that situation in the Senate.

I thank you, Madam Temporary Speaker.

The Temporary Speaker (Sen. Ongoro): Sen. Janet Ong’era.

Sen. Ong’era: Thank you, Madam Temporary Speaker. I rise to support the Motion and also support the amendment that was raised here by Sen. ole Ndiema.

Madam Temporary Speaker, for the first time in the history of this country, we are faced with a monster and in order for us to slay that monster, we must see how big that monster is. We must see whether it is the size of this Senate; or is it the size of the whole Kenyatta International Conference Centre (KICC)? But we cannot be told that we look at the monster in a very small, microcosm way. We must slay the monster, and the monster of land impunity lies at the root of all these issues. This monster can never be slayed unless we go back to where the real genesis of the problem started; and I think that 1895 is the most appropriate way to look at this issue.

Madam Temporary Speaker, I want to, first of all, congratulate the contributors, especially those who spoke on the issue of looking at this issue in a holistic manner. It is not a subject that we can just gloss over and look at only the current problems without looking at the emotions that were also felt and which people went through in 1920, 1940, 1950 and in 1985 when all these problems occurred. The very same thing that the people felt is the very same thing we are faced with by what arose in 2007.

Therefore, Madam Temporary Speaker, it is important that we, being the Upper House, should come up with lasting solutions on how to deal with the issue of the IDPs in Kenya. Yes, we can look at the current ones and we also need to look at the historical injustices so that we can return those people whose land was also taken from them.

Unless we do this, Kenya will never have the peace that we are talking about. We may gloss about it, we may speak about it and say that we are now peaceful, but we cannot truly have peace unless we look at the real genesis of this problem. If we talk about resettling IDPs without looking at the question of land distribution in Kenya and how it has been acquired, we will not have sorted out anything.

Finally, Madam Temporary Speaker, I want to look at the last point, on the issue of those who are posing as IDPs. If we go to the IDP camps today, we have more people who are posing as IDPs and who are not really genuine IDPs. In Rift Valley, for example, there are many camps that I have seen on the road as you go down to Naivasha and Burnt Forest. If you were actually to interrogate this issue, you will find that most of these people are just newly created IDPs, and I think the Government should deal with this issue immediately by having them removed from the camps and returned to where they came from. The genuinely displaced people, including those of 1895, should also be looked at so that the issue is dealt with holistically.

I, therefore, Madam Temporary Speaker, support the amendment raised by Sen. ole Ndiema and congratulate him for bringing it.

Thank you, Madam Temporary Speaker.

The Temporary Speaker (Sen. Ongoro): Sen. (Dr.) Khalwale.

Sen. (Dr.) Khalwale: Thank you, Madam Temporary Speaker. I want to go into the mind of Sen. G.G. Kariuki, and it is best stated if you look at the last sentence where it says:-

“ The Senate urges the Government to profile all the current Internally Displaced Persons and to take urgent and immediate steps towards resettling IDPs and finding a lasting solution to their plight.”

That is all that he is looking for; he is looking for action. We cannot be debating for nothing. Now, that action he is seeking seems to be misunderstood by Sen. ole Ndiema. Sen. ole Ndiema wants to ride on this Motion by addressing historical injustices, and he is perfectly right. Soon, we must address historical injustices.

But, please, Madam Temporary Speaker, allow me to oppose this Motion so that we can give Sen. ole Ndiema an opportunity to draft a proper Motion on historical injustices so that we can fix these urgent issues of IDPs.

(Applause)

Madam Temporary Speaker, my second point follows the contribution from the Senator for Taita Taveta---

(Sen. (Dr.) Machage stood up in his place)

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

Sen. (Dr.) Machage: Madam Temporary Speaker, we have no quorum.

The Temporary Speaker (Sen. Ongoro): Clerk-at-the-Table, could you confirm if we have quorum?

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

QUORUM

The Temporary Speaker (Sen. Ongoro): We actually do have a quorum. Proceed.

Sen. (Dr.) Khalwale: Thank you, Madam Temporary Speaker---

The Temporary Speaker (Sen. Ongoro): We actually do not have a quorum; we are 14. So, can we not continue---

Sen. (Dr.) Khalwale: On a point of order, Madam Temporary Speaker. Before you ring the Division Bell, you probably want to guide me a little bit; I might be confused. Is it not that if the Speaker who is in the Chair is not the substantive Speaker, then in terms of determination of quorum and even voting, the Speaker who is in the Chair is part of the House? If that is true, then we are 15!

(Laughter)

The Temporary Speaker (Sen. Ongoro): Well, first and foremost, whenever any Senator – whether it is the substantive Speaker or not – is on the Chair, he or she does not form part of the quorum. Secondly, we are now even one Senator less; so, we do not have a quorum.

Ring the Division Bell.

(The Division Bell was rung)

ADJOURNMENT

The Temporary Speaker (Sen. Ongoro): Hon. Senators, we have not been able to raise the quorum and, therefore, the Senate stands adjourned until Tuesday, 25th June, 2013 at 2.30 a.m.

The Senate rose at 5.25 p.m.