

**PARLIAMENT OF KENYA****THE SENATE****THE HANSARD****Thursday, 3<sup>rd</sup> December, 2015**

*The House met at the Senate Chambers,  
Parliament Buildings at 9.00 a.m.*

*[The Temporary Speaker (Sen (Dr.)  
Machage) in the Chair]*

**PRAYERS****COMMUNICATION FROM THE CHAIR****SUPPLEMENTARY ORDER PAPER**

**The Temporary Speaker** (Sen (Dr.) Machage): Hon. Senators, we have a Supplementary Order Paper which I did approve and there is little rearrangement on what had been written yesterday. My request is that we need to finish all the work that we have on this Order Paper this morning because they are all of important, especially the Motion by Sen. (Prof.) Anyang' - Nyong'o and others.

So, my request is that the House gives us the opportunity to move fast and try to finish what is on the Order Paper.

**NOTICE OF MOTION****ADJOURNMENT OF THE HOUSE IN ACCORDANCE WITH THE  
APPROVED CALENDAR FOR THE 2015 SESSION**

**The Senate Majority** (Sen. (Prof.) Kindiki): Thank you Mr. Temporary Speaker, Sir. I beg to give notice of the following Motion:-

That, pursuant to Standing Order Nos. 27 and 28 (3), the Senate do adjourn until Tuesday 9<sup>th</sup> February, 2016.

Thank you.

**BILL**

*Second reading*

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

*(Sen. (Prof.) Kindiki on 1.12.2015)*

*(Resumption of Debate interrupted on 1.12.2015)*

**The Temporary Speaker** (Sen (Dr.) Machage): Sen. Wetangula was seconding this Motion and he is not in the House this morning. Therefore, I assume that he concluded. I will now propose the Question.

*(Question proposed)*

**Sen. (Eng.) Muriuki:** On a point of order, Mr. Temporary Speaker, Sir. We seem not to have that Order Paper that you are referring to.

**The Temporary Speaker** (Sen (Dr.) Machage): Can the Serjeant-At-Arms make sure that every Member has the Supplementary Order Paper immediately?

**Sen. (Dr.) Khalwale:** Mr. Temporary Speaker, Sir, this is a very important Bill, whose main thrust is to give rise to legislation that will provide for regulation, management, conservation, use and development of water and sewerage services. It is elaborate and clear, and it was adequately moved. I support it and hope that when it goes to the Committee of the Whole, we will do justice.

I support.

**The Temporary Speaker** (Sen. (Dr.) Machage): Since I see no other interest, could the Mover reply?

**The Senate Majority Leader** (Sen. (Prof) Kindiki): Mr. Temporary Speaker, Sir, I beg to reply.

**The Temporary Speaker** (Sen. (Dr.) Machage): Very well. I will defer Division to another time.

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

If you look at the Supplementary Order Paper, there is a problem with the numbering. The next Order, which is a Motion, is Order No.9. Subsequently, increase the numbers by one. Therefore, we have concluded Order No.8 and Order No.9 is the Motion by the Chairperson of the Select Committee Inquiring into the Affairs of Kenya Airways. What is indicating as Order No. 9 should be Order No. 10. Order No. 10 will be Order No.11 and so on.

Next Order!

## MOTIONS

### ADOPTION OF THE REPORT OF THE SELECT COMMITTEE ON INQUIRY INTO THE AFFAIRS OF KENYA AIRWAYS LIMITED AND ITS SUBSIDIARIES

**Sen. (Prof.) Anyang'-Nyong'o:** Mr. Temporary Speaker, Sir, I beg to move the following Motion:-

THAT, this House adopts the Report of the Select Committee on Inquiry into the Affairs of the Kenya Airways Limited and its Subsidiaries, tabled in the Senate on 1<sup>st</sup> December, 2015.

First, I would like to thank this House for having given us the opportunity to serve in this Select Committee and produce this Report within the time which we were given, which was, first, three months and then extended for another two months. I am happy to say that we met the deadline on 30<sup>th</sup> November, 2015.

The Select Committee on the Inquiry into the Affairs of Kenya Airways Limited and its subsidiaries was established by this House on Thursday 18<sup>th</sup> June, 2015. The mandate and life of the Committee was further extended on Wednesday 30<sup>th</sup> September, 2015. The Committee was mandated to conduct an inquiry on the Kenya Airways, taking into account the following:-

(1) The leasing and buying arrangement of aircrafts since 1996, when Kenya Airways was privatised.

(2) The role of offshore companies in the investment affairs of the airline.

(3) The identity of the shareholders of these offshore companies and their relationship with the management of Kenya Airways Limited.

(4) The employment policies and practices of personnel, including engineers, pilots, cabin crew and ground personnel.

(5) The reason for delayed and cancelled flights, their frequency and the magnitude of losses attendant therein.

(6) Any other matter that may shed light on the financial and management crisis currently facing the airline.

Early this week, it was reported in the media that the airline cannot pay salaries for its workers, including pilots, cabin crew and ground personnel.

The Committee comprised of the following Senators:-

(1) Sen. (Prof.) Anyang' Nyong'o	-	Chairperson
(2) Sen. Mutahi Kagwe	-	Vice Chairperson
(3) Sen. James Orendo	-	Member
(4) Sen. Billow Kerrow	-	Member
(5) Sen. Hassan Omar	-	Member
(6) Sen. Mutula Kilonzo Jr.	-	Member
(7) Sen. Peter Mositet	-	Member
(8) Sen. Daniel Karaba	-	Member
(9) Sen. (Prof.) Wilfred Lesan	-	Member
(10) Sen. Naisula Lesuuda	-	Member
(11) Sen. (Dr.) Agnes Zani	-	Member
(12) Sen. Boni Khalwale	-	Member
(13) Sen. Stephen Sang	-	Member

Pursuant to Standing Order No.187, the Select Committee established a sub-committee to analyse documents and issues submitted before the Committee. This sub-committee comprised of the following Members:-

(1) Sen. James Orendo	-	Convenor
(2) Sen. Hassan Omar		
(3) Sen. Mutula Kilonzo Jr.		
(4) Sen. Stephen Sang		

I would like to extend gratitude to my Committee, which comprised Senators with the requisite qualifications and added value to the Committee. Sen. Kagwe with his experience in human resource management and information technology; Sen. Orenge, a Senior Counsel; Sen. Billow with his experience in accounting; Sen. Hassan's experience on human rights and law; Sen. Mutula Kilonzo Jnr., the young budding Senator with extensive experience in Corporate Law; Sen. Mositet, an engineer; Sen. Karaba, a teacher with outstanding experience; Sen. (Prof.) Lesan, a professor from the university; Sen. Lesuuda who has distinguished herself in human relations; Sen.(Dr.) Zani, a sociologist; Sen. (Dr.) Khalwale, Chairperson of the County Public Accounts and Investment Committee(CPAIC), the experience of which we needed in the Committee and Sen. Sang, the young Senator from Nandi County who chairs one of the Committees in the Senate.

The legal sub-committee delved deeply into the court cases that have bedeviled the airline in terms of industrial relations and also looked carefully into the contractual obligations of the airline with its partners and service providers. Sen. Billow helped us deeply in looking into management letters and Board minutes of the airline to find out whether the discussions in the board were reflected in the decisions that the management made.

Mr. Temporary Speaker, Sir, when the Government of Kenya privatized Kenya Airways in 1996, it was dubbed the most successful privatization process in the country's history. The coming on board of a strategic partner, KLM Royal Dutch Airline in 1995, and the subsequent listing at the Nairobi Securities Exchange, was viewed as the beginning of a new era of vibrancy, transparency, profit making and national pride in the carrier. Subsequently, the airline dominated the skies of Africa and beyond. Unfortunately, as I stand here today, the airline, just this November, announced a half year loss of close to Ksh.12 billion and this follows a Kshs28 billion loss for the period ending 31<sup>st</sup> March, 2015.

Pursuant to the mandate bestowed upon the Select Committee on Inquiry into the Affairs of Kenya Airways and its subsidiaries, the Committee has conducted an in depth and substantive inquiry on the areas of concern during the last five months.

In executing its mandate, the Committee was motivated by the desire to see Kenya Airways retain and live up to its slogan; "The Pride of Africa". The Committee also wishes to make it very clear that it acted within its mandate as espoused in Articles 94 and 96 of the Constitution. Indeed, the people of Kenya, through their Government, collectively own 29 percent shares in the company, and for that very reason, this Senate must oversight and protect the interests of the people of Kenya.

The Committee, during the inquiry, held a total of 41 meetings, visited the Kenya Airways hub and received submissions from a large number of both individuals and corporate entities. The Committee also held a number of meetings with the Kenya Airways Board. When we could not meet certain individuals and entities, we wrote letters with specific questions seeking answers that could shed light on the issues at hand.

Mr. Temporary Speaker, Sir, among the submissions that were received by the Committee and that revealed vital information included the minutes of the Board of Directors, financial statements, confidential management letters from the airlines' auditors and aircraft purchase and leasing contracts. The Committee analyzed these and other documents and submissions and deciphered a trail of actions and decisions

indicating poor management practices over time. In this regard, the Committee established a legal sub-committee which carefully interrogated the submissions.

It is imperative to note that Kenya Airways may not have done anything illegal, but our Committee can conclusively state that the current situation bedeviling the national airline is a direct result of bad decisions made over time by individuals given the responsibility to steer the company. In that regard, the Committee is unanimous that those decision makers must be held to account for the sorry state of affairs in which the company now finds itself.

Mr. Temporary Speaker, Sir, The Committee was cognizant that even as this inquiry progressed, various court cases touching on human resources matters in the organization were still pending in court. The Committee was throughout the progress guided by our Standing Order No.92 on the rules of natural justice.

The Committee unearthed, among other issues, a deliberate attempt by management to force dubitable expansion plans of the Airline despite expert advice against this. The much famed *Mawingu* 10 year project was a highlight of these schemes; a grand project, no doubt costing the airline colossal sums of money and eventually landing the company into unsustainable debt levels and a diminishing market share, both locally and abroad. This coupled with a loss inflicting fuel hedging regime and a shift towards outsourcing of critical labour had sunk the company to lows never witnessed before.

Mr. Temporary Speaker, Sir, granted that the global environment in the aviation industry has proved difficult for many airlines over the last decade, there are many examples where sound and imaginative management has made certain airlines to weather these storms. This has been achieved by minimizing risks, reducing on operation costs, capitalizing on efficiency gains, improving customer satisfaction, motivating the workforce to maximize productivity and maintaining sound profit margins.

Mr. Temporary Speaker, Sir other airlines, faced with grueling competition from the Gulf airlines have kept afloat admirably led by management team capable of rising to the occasion. As I speak today, for example, Malaysian Airline has just entered into a partnership with Emirates with a code-sharing agreement which is likely to make Malaysian Airline recover from its terrible loss of two Boeing Aircraft in the year 2014.

The Committee, therefore, made the following observations: The committee has observed, and this report will show that Kenya Airways has been mismanaged and any bail out from taxpayers must be preceded by a visible and top level management shakeup.

The Committee during its inquiry observed a myriad of issues; among these is;

(i) The current group Managing Director and Chief Executive Officer (CEO), Mr. Mbuvi Ngunze, was a former Chief Operating Officer (COO) of Kenya Airways for three years. The Committee observed that at the point of being recruited to the position of COO, Mr. Ngunze was not qualified for that position as outlined in the Kenya Airways operations manual which is found in our Appendix, page 31 of 118. The Board of Kenya Airways submitted to the Committee that it exercised its discretion to waive the requirement for 8 to 10 years' experience which allowed the current group Director and Chief Executive Officer to be recruited as Chief Operating Officer before the current appointment to Group Managing Director and Chief Executive Officer.

(II) Kenya Airways has severally received funds in the form of cash bail outs from the Government. The most recent of the bailout was an amount of Kshs4.2 billion approved by the National Assembly in May, 2015. It only follows, therefore, that the principles of public finance contained at Article 201 of the Constitution, especially the principle of openness and accountability must be adhered to by the airline.

Secondly, Article 229(5) and (6) of the Constitution which provides that the Auditor-General may audit and report on the accounts of any entity that is funded from public funds, and an audit report shall confirm whether or not public money has been applied lawfully and in an effective way, must equally be adhered to.

(iii) Having gone through the above, the Committee observed that in order to solve the current fiscal crisis in Kenya Airways, there can only be three options opened to Kenya Airways;

- (i) Dissolution of the company.
- (ii) Recapitalization of the company through a rights issue or bringing on board additional share holders.
- (iii) Sale of Government shares of 29 per cent.

The Committee observed that Kenya Airways as at 20<sup>th</sup> November, 2015 had appointed McKinsey and Company as lead consultants to ensure the turnaround of the company within the next 18 months. Of the three options, the Committee preferred the recapitalization of the company.

Mr. Temporary Speaker, Sir, having observed these very serious issues, the Committee recommends a plethora of curative measures. Key among them;

1. Given the importance of the Kenya Airways to the Kenyan economy, the Committee recommends that the shareholders inject new capital into the airline to facilitate the turnaround of the airline.
2. That shareholders should provide a financial bailout in form of equity under the following conditions. These conditions must be met before any capital is interjected into the airline:-

- (i) A reconstitution of the Board of Directors by the major share holders.
- (ii) Restructuring and putting in place a management team with sufficient skills and experience in the aviation industry and with the ability to turn around and build the company.
- (iv) Hire a new commercial director with proven international experience to turn around its ticketing system and ensure a proper counting of revenue from the market sales.

It should be noted that infusion capital can only be made upon meeting the condition stated above. The Committee does not recommend any bailout that is not sufficient to meet the company's outstanding obligations. In other words, the bailout should be sufficient to turn around the company, not peanuts just to keep the company going.

3. The shareholders should review and restructure the Board of Directors composition since in the current composition the management team is over-represented. This over-representation undermines the Board's advisory role.
4. The Committee further recommends that a new management team should:-
  - (i) Explore arbitration alternatives with the employees and their unions with an aim of ending the long standing litigation.

My Committee and I have never seen an enterprise that engages in a long drawn out litigation with its employees, creating sour industrial relations atmosphere in the company.

(ii) Apply prudence in outsourcing of services without compromising the morale and efficiency of the existing employees.

(iii) Review the joint venture with KLM especially on the provisions of code sharing, revenue management and sales tracking to ensure equity in revenue sharing.

5. The Committee welcomes the McKinsey initiative and emphasizes the importance of taking into account this Report, its observations and recommendations.

Mr. Temporary Speaker, Sir, the Committee takes this opportunity to thank the offices of the Speaker and the Clerk of the Senate for facilitating the technical and administrative work of the Committee. The Clerk to the Senate, Mr. Nyegenye was extremely useful to the Committee in making himself and his office available at all times that we needed letters to be written to those that we expected to appear before us to give evidence whether locally or internationally.

The Committee is also grateful to the Chairman of the Board and the entire management of the Kenya Airways Limited for appearing before the Committee on various occasions and submitting documents required by the Committee, notwithstanding that for about a month, there was a standoff between us and the Board of Management with regard to access to minutes and management letters. However, we assiduously followed this until the impasse was resolved.

The Committee further thanks the employees and the unions that are representing the employees of the airline for patriotically presenting concerns on ways and means to redeem “the pride of Africa”.

Mr. Temporary Speaker, Sir, it is my pleasant duty, therefore, pursuant to Standing Order No.203, to table the Report of the Select Committee of the inquiry into Kenya Airways for discussion today and to initiate the discussion this morning with a view to the Senate adopting the Report which we believe should help the airline in its turn-around exercise particularly as McKinsey begins the work of doing the turn-around.

We know that Mackinsey has had tremendous experience in the turn-around of companies and, in particular, airlines and we know from record that McKinsey’s curriculum vitae includes at least 120 such initiatives globally. We have confidence in what he is going to do. However, the test of the pudding is in the eating.

*(Sen. (Prof.) Anyang’-Nyong’o laid the document on the Table)*

Mr. Temporary Speaker, Sir, let me go into the details of the Report which are important for Members when they are reading it to digest.

Chapter II gives the background of the Report. This is historical information that perhaps has been available in the public domain and I do not need to dwell on it so much. However, it is important to know that when the airline was privatized - these facts are important hence the role of the Senate - in 1996, when there was a rights issue, KLM or Dutch Airlines purchased 26 percent of the equity and the Kenya Government through the National Treasury received over US\$ 70million from that sale. Over 113 000 Kenyans bought 22 per cent of the shares in the airline.

The majority bought the equivalent of about US\$ 200 worth of shares. Kenyan financial institutions bought 12 per cent and the international financial investors got 14 per cent and the employees of the airline acquired 3 per cent. This shows the extent to which there is national interest in the fate of the national airline. Our local banks have an interest because they have shares in the company. We ourselves and the local financial institutions have an interest. Therefore, this House cannot sit pretty when the national pride carrier is going down. Necessary measures must be taken to make sure that it is buoyant and it lives up to its motto; 'the pride of Africa.'

Mr. Temporary Speaker, Sir, a couple of years ago, under the leadership of the previous chief executive officer, the airline involved herself in an ambitious 10 year expansion plan called the *Mawingu* plan. This was a plan to acquire nine Dreamliners and 19 Embraers. The airline sold some of its old crafts like the Boeing 777 series which had served the airline very well.

In the aviation industry, it is not how old the plane is but how airworthy the plane is. The age is not the issue but its airworthiness. When leasing, buying or selling an aircraft, the company must be aware of the extent of its capacity to carry passengers on the routes that they are to ply on. These matters guide the lease, sale and purchase of airlines.

Mr. Temporary Speaker, Sir, after extensive discussion with specialists and after extensive research by both our budget and legal secretariat, we came to a conclusion that the manner in which the *Mawingu* plan was conceived, and the manner in which the national flag carrier has engaged herself in the buying and leasing of aircrafts, has been part of the problem. That is one of the reasons why we are calling upon McKinsey in his turn-around initiative and the Board to look carefully at the management, the structure of the Board and the decisions that have been made and the extent to which there has been sound practice in the aviation industry.

We also received presentations from the workers and the unions. Three things stood out. Industrial relations is something delicate in the aviation industry. Here, it involves people who are qualified but people who must work with high morale because of security reasons. Kenya Airways decided to deal with these human resource problems by outsourcing the hiring of crew from outside service providers. This, in the end led to two tiers of crew members up in the sky. One tier of crew members was outsourced from a service provider called Career Directions Limited and another employed directly by KQ. The two enjoyed two different terms of service.

Mr. Temporary Speaker, Sir, this is extremely dangerous. We think that when you are up in the sky, we want teams of workers who are not competing with each other. Both teams should be patriotic to the airline and have confidence in each other. We discussed this sensitive issue and we are putting before the McKinsey team to review the outsourcing method. Outsourcing on its own is not bad in any business but care must be taken on how to outsource and the profitability it brings and how safe it is in terms of industrial relations. It is an area in which we are raising a query and putting a red flag to be looked into in the turn-around exercise of the airline.

Secondly, on the issue of human resource, is the redundancy practice that Kenya Airways has involved herself and which has led to long drawn litigation and controversy with workers. We recommend, as the Constitution provides, that there are other methods of dispute resolution which are friendly to labour relations and friendly to productivity



and profitability. We encourage the Ministry under which Kenya Airways falls as the mediator to come in strongly and ensure that these bad industrial relations are erased from our books as we turn around our flag carrier.

Let there be hiring that adds value to our business. It should not unnecessarily repress the development of certain skills locally and bring substitution where it is not necessary. I am quite sure that Members of the legal sub-committee will expound on this issue extensively when they come to contribute.

Let me now touch on the issue of fuel hedging. In the aviation industry, there are two things that are extremely important in operations. The first one is fuel and the second one is financial resources and other service provisions follow. An airline cannot operate successfully, having settled the issues of industrial relations if it does not get its fuel at the right price for purposes of profitability. An airline too cannot operate successfully if it does not access financial resources at a cost it can afford, for purposes of running the airline; either acquiring planes and leasing them and so on. The arrangement of access to finance or capital and fuel is very critical.

In the aviation industry, there is something called fuel hedging, which is a very simple thing. In other words, you look at the market and decide how much you want to bet on the cost of fuel for a certain period of time. In the event that the fuel prices go higher, you do not lose but gain, because you will still get fuel at a price you can afford. If it goes too low that your price becomes higher in the international market, you would have secured yourselves a certain profit when it was above what you had hedged. Nonetheless, it is important to hedge for a reasonable period of time and at a reasonable price. This requires market sensitivity studies and marketing experts that will give you the right information to hedge.

Mr. Temporary Speaker, Sir, we raised concerns about the ability of the commercial and marketing directors of the Kenya Airways to correctly advise the Board and management in this exercise. No doubt, when the Kenya Airways made huge losses, they said that they made losses partly because of hedging. We are not experts. However, having discussed with both the management and experts in this area, we believe that as we continue with hedging, the two concerns must be taken into account properly. We believe that Mr. McKinsey will obviously, with his wide experience, come up with a formula and a model of hedging that will help the airline in future. That is why we are confident that in spite of its trials and tribulations, the national flag carrier must be recapitalized, provided the management decisions and practices are improved upon.

Mr. Temporary Speaker, Sir, if you go to the Jomo Kenyatta International Airport (JKIA), you will see that there has been expansion over the last couple of years. The expansion plan started with the National Alliance Rainbow Coalition (NARC) Government and Vision 2030. It continued in the Coalition Government and it is now being implemented. The aim of the NARC as well as the Grand Coalition Government---

I was the Minister for Planning and National Development during the initial period of developing Vision 2030, when the concept of the hub of the JKIA was developed. The idea of a hub is that Nairobi is situated very strategically in this world that God created. We are on the Equator and also equidistant from the two Time Zones. If you go right, I think you gain 12 hours and if you go left, you lose 12 hours or the other way round. It depends on how you are standing. Nonetheless, it means that we are awake when the Americans are sleeping and we are asleep when the people in China are awake.

Therefore, we can do business in the airlines industry very easily and become a productive hub.

Mr. Temporary Speaker, Sir, we must have an infrastructure which meets the requirements of a hub at the JKIA. We must have a national airline which is the heartbeat of this hub; an international airline which brings or makes other airlines bring passengers here before lifting and taking them to the rest of the world like the Emirates is doing in Dubai and the Ethiopian Airlines is doing in Bole International Airport, Addis Ababa. However, if you have a hub where our national flag carrier is a junior player, it does not become a hub in national interest.

The Kenya Airways, definitely, must develop the capability and ability of developing this hub in conjunction with Kenya Airports Authority (KAA) and Kenya Civil Aviation Authority (KCAA). The three are like the head and must work together. They are God the Father, God the Son and God the Holy Ghost. In this case, Kenya Airways is God the Father, KCAA is God the Holy Ghost and KAA is God the Son, whichever you like.

**The Temporary Speaker** (Sen. (Dr.) Machage): Are you serious with that comparison?

**Sen. (Prof.) Anyang'-Nyong'o**: It is with a light touch, Mr. Temporary Speaker, Sir. Nonetheless, the three must work together very coherently. We discussed with the three and we think that it is still far from being realised. The infrastructure, including the Greenfield Initiative, should be realised as fast as possible, so that we compete effectively with Dubai, Addis Ababa and other international hubs.

Let me now move to the issue of flight disruptions and ticketing, which we need to enlighten this House on. You will realise that over the last couple of months – most of us must have experienced it – there have been tremendous delays and cancellation of flights by the Kenya Airways. According to the Kenya Airways management, the delays and cancellation of flights are because of a crisis with its pilots. A good management team cannot, possibly, give this as a reason for cancellation of flights. If you know that it is because of disagreements with your pilots and they are key to your operations, you should move as fast as possible to settle the causes of the disagreement.

Mr. Temporary Speaker, Sir, it should not last the company more than a few days or weeks to sort out that problem. It is like the Kenyan Government sitting back and saying that schools are closed because of disagreements with teachers and doing nothing about it. We found that excuse not tolerable. We believe that cancellation of flights – if, indeed, it is caused by pilots – is solvable very quickly. The airline should not inconvenience passengers and make losses because of simple disagreements with pilots over terms of service, pay and conditions of service.

Secondly, flight disruptions caused by infrastructural problems like the extension of the runway is something that is also not excusable because when that is being done, it affects other airlines as well. It is not the national flag carrier which should suffer the inconveniences without making appropriate adjustment and frequency of their flights so that the passengers do not suffer. This is because when passengers suffer, they take off to other airlines.

The third issue is what we have in our appendices. Most Members have this information because it has been in the public domain. The cost of Kenya Airways tickets compared to other airlines is not excusable. Many people now prefer to travel to Dar-es-

Salaam via Addis Ababa because the tickets are cheaper. Many people prefer to fly to Addis Ababa and then fly to London because Ethiopian Airlines' tickets are cheaper. I have done it before. If that is happening, then, the concept of having a hub in Nairobi to the advantage of the Kenya Airways is defeated.

If it is the question of pricing our tickets to be competitive with other airlines, that is a management, marketing and commercial issue. It cannot go on for many years and the Kenya Airways does nothing about it. Therefore, we have recommended very strongly in our Report that the non-competitiveness of our ticketing system must be rectified. It can only be rectified if we have a commercial and marketing manager who can properly study the market and present the airline with a model of ticketing and pricing that will make full use of the hub concept and be competitive with other airlines.

Mr. Temporary Speaker, Sir, I will not dwell much on the human resources issues. They are detailed with unions and so on. I know members of the Legal Affairs and Human Rights sub-committee will go into it. Let me now go into another issue which is very important. That is, injecting capital into the airline. I gave you the shareholding of the airline earlier and as we sit here today, our Government is the single majority shareholder in the airline followed by KLM, individuals – I gave the percentage – and then the International Financing Corporation (IFC).

The IFC with 9 per cent shareholding is now claiming that they want to be members of the Board on the basis of the fact that 9 per cent shareholding. On this basis and because the IFC was there at the beginning when Project *Mawingu* was being conceived, it supported and encouraged it. Indeed, we have letters and documents where the IFC actually poured accolades onto the initiative and promised that it would give managerial and expertise advice as the project was being rolled out.

However when we looked at the document and minutes of the Board, we were surprised, notwithstanding its original accolades and support for the Project *Mawingu* plan, IFC did not come out as having given adequate managerial skills or advice and the airline was heading towards failure with the *Mawingu* Project. So, we wanted to have a discussion with the IFC to find out what was happening. Unfortunately, we tried twice and failed to get positive reaction from the IFC.

Mr. Temporary Speaker, Sir, indeed, let me quote from one of the letters that we got from the IFC on our second attempt to invite them on 16<sup>th</sup> October, 2015. Our Clerk was very good in writing this letter detailing to the IFC to come and give us information. The only thing that the IFC was willing to give us was what was called the Environmental and Social Review Summary of the IFC Investment in Kenya Airways Limited, a document which was available in the public domain and we did not need them to give us.

They said in their letter - this is very important for this House especially given that as I said earlier, constitutionally, this House has the responsibility of overseeing public finances wherever they are invested in any entity in this nation – I quote from the IFC:-

“In accordance with the World Bank Group (WBG) policies on providing information to legislative bodies, we must respectfully inform you that it is not possible for us to share any confidential information on these investments such as the ones requested in your letter.”

Our letter to the IFC had requested the following:-

One, to tell us, as an investor and advisor to Kenya Airways during the initiation of Project *Mawingu*, whether the IFC, as a major investor, was satisfied with the qualifications of the chief officers of the company. This is because if you are buying a 9 per cent share in a company, it must be a company which you have confidence in. If you do, you must have confidence, first and foremost, in the management of the company.

Secondly, we asked them whether when the *Mawingu* plan was being initiated, they as investors and advisors to Kenya Airways were satisfied that sensitivity tests and risk analysis had been done that showed that this plan was viable.

Thirdly, we asked them whether investment in the company as the IFC would in any way compromise their judgement in advising the company in this new initiative. This is because if you are investing, obviously, you are also interested. To what extent will you be objective in advice?

Mr. Temporary Speaker, Sir, finally, we asked them about their optimism in Kenya Airways. This is because there was a difference between their optimism in Kenya Airways based on the fact that they could see Kenya Airways doubling their labour force from 4,000 to 8,000 at a time that Kenya Airways itself was retrenching. So, we asked, why is there this contradiction between your optimism and the fact that the airline is retrenching? We wanted an explanation but they turned us down, saying that there is something called “access to information” policy.

After that, both our Legal Affairs and Human Resources team and ourselves started looking at all kinds of international laws including the IFC Act, which is a domestic Act here, the extent to which that access to information policy – given our new Constitution – barred us, as the Senate, in discussing with them as an investor in our own local firm called Kenya Airways, to what extent these laws protected the IFC. We were not satisfied that they were thus protected.

Therefore, one of our recommendations in this Report is for this House – particularly the lawyers in the House and necessary Committees – to look into the IFC Act and our relations with the IFC, now that it even wants to sit in the Board of Kenya Airways as an investor and, therefore, it should be subject to our laws. It is very important because it also touches on the sovereignty of the land.

I will leave the issue of disputes with the pilots and crew to the Members of the sub-committee on Legal Affairs and Human Rights. I see Sen. Hassan has come in, and I am sure he can handle that with dexterity. That is together with employment policies and matters personnel.

Mr. Temporary Speaker, Sir, let me now come to the issue of auditors. After we looked at the minutes of the Board since 1996 and management letters since then, we are really happy that the various auditors that have been working with Kenya Airways over time have, from time to time, raised the red flag over many issues. We met with auditors and they told us this, especially when we raised the management letters.

It baffled us, after auditors had raised flags over the issues that are finally bedeviling the airline, why the management did not take action. You can see in our Report from pages 53 onwards, that we have documented here our meeting with PricewaterhouseCoopers (PwC) which audited the accounts from 2011 to 2014; Deloitte & Touché which audited the accounts from 2004 to 2010; and KPMG which now took over this year. Therefore, we had more discussions with Deloitte and Touché and PwC.

What we say in this Report is based on evidence. We were not out to speculate, whatsoever.

When we analysed all these documents, we came to the following observation and I would like to read all our observations and recommendations. Although I did a summary of them, I would like to read them so that those in the House who may not have had the time to read the Report will be apprised of our observations.

Our first observation was that the Committee was not persuaded that the Kenya Airways management understood the environment and market that they were operating in so as to maintain a competitive edge, make strategic decisions in key areas that required constant vigilance in studying global and regional markets and destinations; the vagaries or ups and downs in the oil industry, planning of routes and networks, leverage, partnerships with KLM and the Sky Team, sale of tickets and capitalizing the potential and dynamic of its own local and regional base where it had inherent hegemony in Kenya and Africa. We were not satisfied that they were well up to date on these issues and we have thus summarized them.

Secondly, the Government of Kenya is represented in the board of directors by the Principal Secretaries for the National Treasury and Ministry of Transport and Infrastructure. The Government is under obligation to ensure that public funds are employed lawfully and efficiently hence the need to have the representatives in the board. However, the Committee noted that the two representatives were not constant in the attendance of board meetings, therefore, reneging on the responsibility assigned to them.

Mr. Temporary Speaker, Sir, when we had discussions with both the Cabinet Secretary in charge of Transport and Infrastructure and the Cabinet Secretary for the National Treasury, we were surprised that in both Ministries, there is a department called corporate affairs. In other words, it deals with relations with parastatals in both Ministries and was not very strong. No wonder participation in boards of Kenya Airways is rather taken at a low tier and quite often maybe those going to those boards are not up to date with the information.

However, in such Ministries, we need a department of corporate affairs with individuals tasked with following up such major investments of Kenya Airways on a regular basis, giving the Government up to date information and having research capacities to know what is happening in such companies, so that when Government representatives go to boards, they go not just as bodies but as brains.

Thirdly, the management of Kenya Airways is over represented in the Board, consequently undermining the Board's control and oversight. The Committee was unable to tell the skills the members offered to the Board.

Fourthly, the current Group Managing Director and Chief Executive officer of Kenya Airways, as said earlier, at the point of his appointment, it was done--- according to the manual not according to us. At that point in time, he was not qualified to be appointed yet the board waived that qualification on grounds that did not persuade us.

Fifth, The Board of Kenya Airways submitted to the Committee that it exercised its discretion to waive the requirement for 8 to 10 years' experience which allowed the current Group Director and Chief Executive Officer to be recruited as Chief Operating Officer. I had said this before in my earlier summary and I do not need to repeat it.

Sixth, the Board of Kenya Airways does not have the latitude to waive employment qualifications which form part of its own labour requirements. Professional

qualification and minimum level of experience and the genre of work experience for accountable managers and technical staff must always prevail against the discretion of the Board, however well founded.

Mr. Temporary Speaker, Sir, discretion, as lawyers know, is a very delicate thing. You can use it wisely but you can also use it opportunistically. The outcome of how you use it will be seen subsequently. So, we raised a red flag over that discretionary role of the Board at that point in time because we believe that companies like Kenya Airways with tremendous investments and capital – we visited the airline, it is a fantastic business notwithstanding their problems. The crew and the pilot management have under the circumstances done a job that is appreciable. Nonetheless, even then, these failures cannot be overlooked.

Seventh, the data submitted to the Committee by Kenya Airways on the savings made on operational costs were un-instructive to enable the Committee to draw any conclusions as to whether the airline actually saved on costs through outsourcing. One of the reasons given for outsourcing staff and services and so on is that you save on costs. But we asked for data and the data submitted to us after several analysis, we came to the conclusion that it was not convincing that costs have been saved.

Eighth, the outsourcing model embraced by Kenya Airways exposes employees performing the same tasks to varied remuneration. Kenya Airways submitted a document with employee cost comparison between employees performing the same duties directly employed by Kenya Airways and those employed through Career Directions Limited.

This raises questions of fair labour practices. Article 41(1) and 41(2) of the Constitution provides as follows-

(1) Every person has the right to fair labour practices.

(2) Every worker has the right—

(a) To fair remuneration;

(b) To reasonable working conditions;

(c) To form, join or participate in the activities and programmes of a trade union;

and

(d) To go on strike.

One of the tenets of fair labour practices is equal pay for equal work. Fair labour practices lead to increased productivity, staff retention and improved customer satisfaction. While the staff recruited by Kenya Airways enjoyed the benefits attendant to belonging to a union, the staff recruited under Career Directions and Insight Limited do not.

Mr. Temporary Speaker, Sir, as I said earlier, these are issues which can raise security issues when people are up there in the air. We have an example, of a dissatisfied pilot in Botswana who once went into a plane, flew into the air and came and landed at Gaborone Airport setting ablaze all the planes that were on the ground because of such labour relations which are not solved on time. We would like to avoid this at Kenya Airways.

Since I see that the light has become amber, I encourage Members to read our observations and recommendations which come towards the end of the report which are readable. I do not want to continue repeating them *ad nauseam*.

Finally, we would like to call upon the Government, at a time when Kenya Airways needs capital injection, to revisit the issue of taxation, one of the reasons why

airlines like Ethiopian Airways do well is because when they are acquiring aircraft, engines, spare parts and so on, in this very competitive industry, the Government waives certain taxes of the airline. We talked with the management extensively on this issue and we were convinced that they had a point.

Therefore, our eighth recommendation is that the National Treasury should initiate the process of providing a favourable tax regime; possible tax breaks for the Kenya Airways as its success is vital to the realization of creation of Jomo Kenyatta International Airport as a hub, as I said earlier.

The Committee further recommends that whenever it is necessary to hire foreign workers –this is very important because they are paid in foreign exchange and if you are getting a tax break, it means that the Government is also losing foreign exchange so the airline must also be in a position to help the Government.

Further, Kenya Airways should seek exchange programmes from those airlines to benefit from shared experiences and passenger success.

In other words, if we need certain expertise from Malaysia, for example, we should get it. However, in return, Malaysia should also take some of our people to work there to gain the experience that we may need in running our aviation industry. Kenya Airways can only do this in close collaboration with the two parent Ministries, the National Treasury and the Ministry of Transport and Infrastructure Development.

Finally, we welcome the Mckinsey Initiative. We emphasize that as that initiative to turn around the airline is on, that Mckinsey takes into full account, together with this report, detailed as it is, sometimes harsh in its recommendations, but since it is based on the evidence received during the many hearings and documents we have gone through, we believe that it is a useful tool that should enter the discussions of turning around our national flag carrier. We believe this is a must to this nation. We have no other alternative but to make sure that Kenya Airways flies high and lives up to the motto: The Pride of Africa.

Mr. Temporary Speaker, Sir, I would like to ask my dear friend, Sen. Omar, since he was in the Legal Sub-committee to second this Motion, given that they have delved deeply into the issues of industrial relations which are critical to the future of the airline. Those issues that I have not touched on will be espoused by Senator No.1 from Mombasa County.

With those remarks, Mr. Temporary Speaker, Sir, I beg to move.

**The Temporary Speaker** (Sen. (Dr.) Machage): Sen. Omar, as is the tradition, if you are seconding, come and do so from the Dispatch Box.

**Sen. Hassan:** Thank you, Mr. Temporary Speaker, Sir, for this opportunity. It gives me extra ordinary pride to second this Motion.

First, before I second the Motion, I want to acknowledge the extra ordinary leadership of Sen. (Prof.) Anyang-Nyong'o, the Senator for Kisumu County. This acknowledgement also goes to the Vice Chairperson, Sen. Kagwe, who also provided outstanding leadership. This is probably one of the most thorough investigations this Senate has undertaken. The Clerk too offered enormous support to this Committee. We also acknowledge the enormous task that was done by literally every department of this Senate; the budget, finance, human resource and legal departments. Everybody contributed heavily towards the finalization of this Report.

This report, in my view, has come up with findings that will help turn around the fortunes of Kenya Airways. “The Pride of Africa” must be restored to its pride. There is no doubt that “The Pride of Africa” still has a special place in the hearts of many Kenyans. It is upon this premise that we have in good faith presented this Report to the Senate. It has quite far reaching recommendations that as the Chairperson said, harsh as they might appear, these recommendations are intended to better the management of Kenya Airways and return it to its profitability.

Sen. (Prof.) Anyang’-Nyong’o asked me to second this Motion because I also sat in the Legal sub-committee together with my brothers Sen. Sang and Sen. Mutula Kilonzo Jnr. The Chairperson to that Sub-committee was none other than Senior Counsel Sen. James Orengo. We sieved through a wide array of documents – from contracts entered into between Kenya Airways management and its staff to those of outsourcing with the various companies that offer services to Kenya Airways. We tried to interrogate the probity and financial values of these contracts.

I must first and foremost point out that for us, while we said the Special Purpose Vehicles (SPVs) are common practice in terms of business or finance streams, we were not able to verify the various memberships of these SPVs. We were also not sufficiently able to interrogate whether these SPVs were value for money. We were informed that we were able to attract a financing of 0.6 per cent interest that was far one of the best financing the airline had received.

However, when we heard from the Kenya Airline Pilots Association (KAPA), they were of the view that in the first place it was not good value for money in terms of the many aircraft that we had acquired particularly the Embrears. In addition to that, it could have been competitive financing but on already inflated prices of aircraft.

Mr. Temporary Speaker, Sir, in particular I want to flag out the issue of the Embrears. These aircraft were supposed to connect our African routes. Unfortunately, they were not the type of aircraft desirable for Kenya Airways to dominate the African market. As a result of that, they were unable to deliver luggage and goods on time with respect to passengers. Eventually, we started losing most of the clientele to other emerging airlines including Emirates and Turkish Airlines. Currently, there is some kind of dominance by Ethiopian Airlines. That is why we brought up the issue of public finance, having to demonstrate that it is the best value for money for the Kenyan taxpayers.

Therefore, we emphasized on the role of the Auditor-General with respect to ensuring that he is able to interrogate any business practices or transactions that are entered into by any public entity which receives public money. Therefore, as we try to revamp this airline, we will look at pricing *vis-à-vis* the low of cost of finance or credit that Kenya Airways received.

Mr. Temporary Speaker, Sir, we, as the Committee were pained by the volumes of labour disputes that are at Kenya Airways. In my assessment of the many of the companies that we have dealt with as the Senate or as individuals, we have never had an organisation with a more adversarial human resource approach than Kenya Airways. We had a number of matters that were still in court. Some of these matters have stayed in court for quite a long time. It is our view that we must look for alternative dispute resolution mechanisms so that we are able to end some of these protracted disputes, but also be able to engineer a level of confidence within the airline.



Once we work on the issue of the staff formation of airline, we will inject the necessary morale for a revamp. We did not find it common practice that the airline is in one court matter after another with its own staff. Since we cannot direct the courts, we adopted an approach. We hope the courts will be expeditious in dispensing off these matters. We are proposing a progressive step of the airline having some kind of alternative dispute resolution with its staff formation.

Mr. Temporary Speaker, Sir, we also interrogated the kinds of legal implications or standards that are set in terms of recruitment. I remember we interrogated whether the former CEO, Dr. Titus Naikuni was the right candidate. Since the law that placed a certain caveat on the kind of requirements necessary for the CEO of an airline had not come in place, it is probable that the board acted within its mandate. However, we said that discretion should have been limited to people who have a thorough and sound knowledge of the airline.

Therefore, in a span of time, the airline appeared to be doing well. The airline is in the business of selling seats. Unfortunately, Dr. Titus Naikuni came from the business of selling salt. It was very difficult for him to connect the business of selling salt *vis-à-vis* the business of selling seats. At some point we were in this bubble that Kenya Airways was becoming a market leader in Africa. That is where the blind ambition of the *Mawingu* plan came into force.

Why do we regard it as a blind ambition? This is because the plan was no doubt ambitious. We, as a country, must be ambitious, but we must temper foolish optimism. The foolish optimism forecasted a growth that in terms of realistic terms was not feasible because it did not factor market issues and developments. They did not even look at issues of insecurity where we live in a hostile neighbourhood. These were threats to the *Mawingu* plan. So, the 10-year plan was very ambitious. However, in our assessment, that plan ought to have been truncated with realism. This plan was probably the starting point of the problems that Kenya Airways has.

As we moved forward, we felt that if you have suggested a very ambitious plan and it has not succeeded, there must be room for accountability. We were not quite convinced by the management that you can sink us and remove us from the hole using your own terms. The management is proposing its terms for a crisis they have manifestly been party to. That is why we felt in accountability terms that we needed to move robustly in terms of ensuring that we bring in a new management.

There is something quite interesting to note as we inquired into the dealings of Kenya Airways. They have literally out-sourced everything. They have out-sourced human resource, financing streams and so on. So you ask yourself what the management is doing if they have outsourced almost all the key functions of the organisation. We felt that some of this outsourcing could not demonstrate that there was revenue saved or it had some financial benefit for Kenya Airways. It is important that we turn around the fortunes of this airline by proposing a management that is efficient in taking this airline forward.

Kenya Airways requires a US\$1 billion capital injection. Sen. (Prof.) Kindiki knows that we live in a country where we have to manage the affairs of poor people. If we must put in this amount of money, there must be conditionalities that have been stipulated in this Report that must be adhered to. If we, as a nation, invest US\$1 billion, it is only incumbent upon us to set up certain conditions. We cannot sink in another US\$1

billion into an airline without taking firm measures on accountability. The Cabinet Secretary in charge of the National Treasury and other investors who hold the interest of the Kenyan people must ensure that whatever investment is made, must be made on the conditionalities that this Report has set out.

Finally, I support what the Chairperson reiterated, that we must salvage Kenya Airways. Letting it sink is not an option. We must do everything incidental towards ensuring a financing programme for Kenya Airways. However, it must also have harsh conditionalities for those who are to undertake this process of revamping this airline. There must be accountability if we have to put in the US\$1 billion. We must track, if necessary, how the money was lost in the place. Those who bear the greatest responsibility must take responsibility. We have given our faith to McKinsey because they have undertaken similar processes before. They have given us an 18 month window upon which we might want to see results.

At the moment, Kenya Airways is sitting on shaky ground. It will default on its debt repayment. Therefore, it is necessary not only for us to act swiftly but also in a manner that demonstrates a certain resolute of the nation to revamp Kenya Airways with certain conditions. Tied to Kenya Airways are other strategic investments. We are expanding and have given Kenya Airways Terminal 1A. This is investment from the taxpayers. There are many other strategic investments that are taking place that build around Kenya Airways. It is necessary that as we revamp Kenya Airways, we speak to these issues, that there are massive investments by the Kenyan people and, therefore, if we need to bail out Kenya Airways, we must do so on our terms, not on the terms of the management. The management is going around thinking that it is easy to incur a US\$300 million of loss. They are going around saying: "We are trying to sort things out."

Mr. Temporary Speaker, Sir, we must acknowledge that we saw a beautiful element of Kenya Airways. When Sen. (Prof.) Anyang'-Nyong'o, Sen. Orengo and I were taken to the Kenya Airways Pride Centre and the headquarters, we must acknowledge that, that is an airline which gives us so much pride in terms of its infrastructure. That is why we need to salvage the airline. Letting the airline sink is not an option for the Kenyan people and the taxpayers.

It is important as we think through the process of revival, that we look at the issues of human resource. We must bring down the adversarial relationship and refinance the Kenya Airways in an adequate format, as the Chairman has alluded to. We must ensure that we mitigate the massive legal issues that surround Kenya Airways. We must also interrogate the management decisions that were made in terms of the Mawingu Plan. Further, we must ensure that we reconstitute an airline that is a First Class Business model that responds to the market.

We keep hearing that Ethiopian Airlines is unique. We will never do what Ethiopian Airlines does because Kenya is a free market economy and democracy. A democracy responds differently to challenges of business and, therefore, you cannot constantly give excuses for failures. We heard that the Emirates Airlines is part of an economy and that a particular airline is supported in a particular way. It is important that we mitigate the excuses. If we need to continue with Kenya Airways we must be confident that we will deal with it in the contextual reality that it is operating in an arena where there are competitors who have different political and economic realities.

Finally, the issue of pricing is not negotiable. Kenya Airways must be competitive to grow a homegrown client base.

For those many remarks, I beg to second.

*(Question proposed)*

**Sen. Murkomen:** On a point of order, Mr. Temporary Speaker. I do not want to interrupt this important debate, but I have a very small Motion, which I have discussed with you about. Could you allow me to move it immediately?

**The Temporary Speaker** (Sen. (Dr.) Machage): You are allowed.

### PROCEDURAL MOTION

#### ELECTION OF SENATOR TO PRESIDE OVER SITTING PURSUANT TO STANDING ORDER NO.18 AND ARTICLE 107(1) OF THE CONSTITUTION

**Sen. Murkomen:** Mr. Temporary Speaker, Sir, I beg to move the following Motion:-

THAT, pursuant to Standing Order 18 and Article 107(1)(c) of the Constitution, Sen. Sang be elected to preside over the Sittings of the Senate in the absence of the Speaker, Deputy Speaker and Members of the Chairperson's Panel today, Thursday, 3<sup>rd</sup> December, 2015.

The reason for this Motion is that our Member of the Chairperson's Panel, Sen. Ongoro, is away on official duty. Sen. Mositet is out of the country, again, on official duty. I will also attend to another official function thereafter. Therefore, it will be impossible for you, as the Chair, to sit alone the whole morning and afternoon. As we know, the Speaker and Deputy Speaker are out of the country on official duty.

**Sen. (Dr.) Khalwale:** On a point of order, Mr. Temporary Speaker, Sir. The Senator for Eleyo-Marakwet has alleged that he will not be in a position to sit on that Chair because he will be attending another important function. Is he in order, given that parliamentary work takes precedence over any other business?

**Sen. Murkomen:** Mr. Temporary Speaker, Sir, I have your permission and many Senators are not here because they are out on official responsibilities.

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

Mr. Temporary Speaker, Sir, I think we should put more effort on the issue of Kenya Airways than on me.

I beg to move and request Sen. Lesuuda to second the Motion.

**Sen. Lesuuda** seconded.

*(Question proposed)*

**Sen. Hassan:** On a point of order, Mr. Temporary Speaker, Sir. My point of order is for the purposes of the HANSARD. When Sen. Murkomen asked Sen. Lesuuda to

second, she did not need to bow. At least, for the purposes of the HANSARD she should have said: "I second."

**The Temporary Speaker** (Sen. (Dr.) Machage): Order! Sen. Lesuuda was quite in order. I think you are now old enough in this House to know that.

**The Senate Minority Leader** (Sen. Wetangula): I have no difficulty with Sen. Sang being given the privilege and opportunity to sit on the Chair. However, in the tradition, practice and good order in the House, such a process ought to be consultative. At the very least, we have two sides. I would have expected my brother who is sitting in front of me, to consult with me. The authority to appoint panelists lies with the Speaker. However, when it comes to a situation such as this, where the House is obligated to make a decision, both sides should be involved. It is just decent that we do so.

I am not opposing the Motion, but raising a concern that should make things neater in future. It is not right to take our side for granted; that we will acquiesce to anything that is proposed in the House.

**The Temporary Speaker** (Sen. (Dr.) Machage): Very well.

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): Mr. Temporary Speaker, Sir, I support the sentiments that have been made by my brother, the Senate Minority Leader, that issues to do with business in this House should be consultative. That is what we have done all along. However, on this one I want to assure the Senate Minority Leader that I was also not consulted. The explanation which I have accepted was that, that consultation took place among Members of the Chairperson's Panel. Since we have Members from both sides sitting or represented in the Chairperson's Panel, I acquiesced to that consultation. It should not be a big issue unless somebody is opposed to the person being proposed, in which case, they can contribute to the Motion.

**The Temporary Speaker** (Sen. (Dr.) Machage): Order! For those who were in the House yesterday, you realized that I was on the Chair for three hours, as I am expected. However, you also realize that I am as human as you are. There is nothing so special with being a Chair or Speaker; you are still a human being with all the necessary issues to be attended to. In any case, I, as the Chair, must be in a position to make sure that the House runs smoothly. If there is a problem or issue where there might be nobody to assist the Chair on this long day, then it is my duty to make that decision. I took that duty to make the decision, within the powers bestowed to me as the Chair. That ends the matter.

I wish to put the Question.

What is it, Sen. Godliver? I would not want this to be a long issue because we have very important business to transact.

**Sen. Omondi**: On a point of order, Mr. Temporary Speaker, Sir. I have a concern. Is it in order for all Members of the Chairperson's Panel to go out of the country and paralyze the business of the House? Also, must it be a male Senator to take over the Chair? Why is it that women are not given the opportunity to preside over this Senate?

**The Temporary Speaker** (Sen. (Dr.) Machage): That is quite a legitimate concern. Unfortunately, I may not be able to answer that in my capacity today and the way the hierarchy of the leadership of this Senate is. That point of order will reach the powers that be.

Yes, Sen. Elachi.

**Sen. Elachi:** Mr. Temporary Speaker, Sir, I always like to remind the House of precedent. There was a time that we also elected Sen. Mutula Kilonzo Jnr. to preside over the House and we used the same procedure that we are using. Before Sen. Mositet became a Member of the Chairperson's Panel, we used the same procedure. Therefore, it is always good to be consistent in our procedures.

**The Temporary Speaker** (Sen. (Dr.) Machage): I also got nominated in the same way and learnt a few of the tricks to be where I am. It is good to mentor a few of the Members of this House, including the female Senators. It is unfortunate that the proposal was for a man, but the point has been noted.

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

What is it, Sen. Wetangula?

**The Senate Minority Leader** (Sen. Wetangula): Mr. Temporary Speaker, Sir, nobody is questioning the procedure or the competence of Sen. Sang; we have tremendous respect for him. All we are saying is that in future, we must be consultative and my brother has said that it is true that we must consult. These are not issues of precedent. We need to consult and agree. If it is Sen. (Prof.) Lesan or Sen. Hassan, we need to agree on it. That is the simple point that we are raising.

**The Temporary Speaker** (Sen. (Dr.) Machage): The simple point is noted with all the nobility that it carries.

I, therefore, put the Question.

*(Question put and agreed to)*

We will now continue with the Motion on the Kenya Airways.

Sen. Wako.

*(Resumption of debate on Motion)*

**Sen. Wako:** Mr. Temporary Speaker, Sir, thank you very much for giving me this opportunity to speak on this very important report. First of all, I wish to highly commend the Committee for the excellent work that they have done. If I were marking, I would give them a straight Grade A. The Chairperson is an Alliance High School product and has lived up to what we expect of Alliance High School products. I know that Members of my Committee were also in that Committee and the result is excellent.

From the outset, I agree entirely with the recommendations that have been made by the Committee which should be embraced by all. Kenya Airways is in a sense special to me because when I was practising in the private sector, I was actually the advocate of the Kenya Airlines Pilots Association. I represented them in many cases before the industrial court.

Secondly, when I was in New York, chairing the International Bar Association meeting, I got an appointment by the then President, Daniel Toroitich arap Moi, to be on the board of Kenya Airways. I was appointed at the same time as the late Sen. Mutula Kilonzo.

Mr. Temporary Speaker, Sir, at that moment, when I received the appointment as the Attorney-General, I was chairing the board of the KQ. So, the KQ has been close to me. After being appointed the Attorney-General, and as the Chairman said, the privatization of the KQ has been lauded as the most successful privatization process by the World Bank. If you came to visit me, you will see a plaque in my house giving me certification from the World Bank for my involvement and contribution to that process. I was a director for 11 or so years.

Mr. Temporary Speaker, Sir, to me, the KQ is special in many ways. The Report talks about many causes of how the KQ has come to be where it is, one of them being pricing. In order for the KQ to get out of the situation they are in, they have hiked the prices. I heard the Managing Director say that they have not hiked the prices, but they have done a structural change on the pricing. However, it has really gone up to the extent that on the route from Nairobi to London, many Kenyans and others are now choosing to go either by British Airways---. That means flying all the way to Amsterdam and connecting to London because of overpricing.

Mr. Temporary Speaker, Sir, on the Kisumu-Nairobi route, even I myself, travel by Fly 540 because of the pricing that has gone up. So, the rise in pricing, instead of helping the KQ, it is taking them in the opposite direction. People are running away from the KQ because of the issue of pricing. I found that if I wanted to go to America by the KQ in business class, I only have to add about Kshs20,000 and I am in first class on Emirates which is very good service. So, that is an issue to be looked at, but I will not go into all those many causes. I just want to focus on one cause and this is Project Mawingu.

Mr. Temporary Speaker, Sir, Project Mawingu which is on page eight of the Report, the Committee says that there was a deliberate attempt by the management to force a doubtful expansion plans of the airline despite expert advice against this. In other words, Project Mawingu was implemented contrary to the expert opinion against that. It goes on to state that Project Mawingu has caused the airline colossal sums of money and eventually, it is that project which has landed the company into unsustainable debt levels and a diminishing market share, both locally and abroad. The Committee goes further to state on page 20 that the deal of Project Mawingu is very questionable. It states that these contracts were chiefly responsible for the rapid and crippling deterioration of revenue and capital accounts of KQ.

*[The Temporary Speaker (Sen. (Dr.) Machage) left the Chair]*

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

Mr. Temporary Speaker, Sir, as I focus on this Project Mawingu, I want to ask if it is enough for the Committee just to regard that as a bad management decision and recommend the firing of the executives who were involved with that case or is it more than just a bad decision that was taken against expert advice? Is it just a bad management issue or is there more than meets the eye? Those are the questions that I want to ask the Committee. I have looked at fleet financing from page 29---

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): On a point of order, Mr. Temporary Speaker, Sir. I want to request your direction on a procedural issue. I have noticed that we have three agenda which we must finish in the next two hours because we

are here up to 1.00 p.m., as per the resolution yesterday. We have this very important Report on the KQ, we have the Motion on the extension of the term of the Commission on Implementation of the Constitution (CIC) and we also have a Motion by the Senator for Kakamega, Sen. (Dr.) Khalwale, on the issue of non-compliance to the summons by Governor Oparanya.

Would I be in order to request if this House deems appropriate we limit all speakers to five minutes so that we can discharge this debate? Otherwise, if we proceed at this rate, we will not be able to finish the agenda of today.

I beg to move that we restrict all speakers to five minutes so that we can finish all the three agenda.

**The Temporary Speaker** (Sen. Sang): I will give directions on that in a few minutes.

Proceed Sen. Wako.

**Sen. Wako:** Thank you, Mr. Temporary Speaker, Sir. Whatever decision you make, I hope it will not act retroactively, that the present speaker will continue under the former rules. I hope the Senate Majority Leader accepts that because he is the Mover.

I will be very brief. If you look at page 30, I would like to question the purchase of the various planes of the KQ. The list is on page 30. We are not told in this Report how the decision to purchase the Embraers was arrived at and who went to negotiate. We are not told that.

Mr. Temporary Speaker, Sir, we are not told who are behind the Special Purpose Vehicles (SPV) which are mentioned on page 30. There are several of them; Simba, Nyati, Kifaru, Chui and others. Who are behind it? As a practicing lawyer, you will find that those who are behind it are very faceless people, lawyers from those countries and so on. However, we are required to pierce the veil and find out whose interests they were representing in this SPV although it is stated on the face of it that it was to ensure that money was paid and so on. We know that there was more to it than meets the eye. Whereas I agree that the Committee did not have time to go into that, to me, it appears that because this was the major cause of putting the airline to where it is today, we require a forensic audit on that Project Mawingu because we want to know the truth.

It has been said that it must have been tainted with a bit of corruption. There is nowhere in this report they have investigated that. It is not an issue of corruption, but management. They have left that hanging in the air. However, I do not blame them because they did not have time or the capacity to do so. That capacity can only come to the fore through a forensic audit or a judicial commission of inquiry into Project Mawingu.

As I support the Report, I urge that we do not stop there. There should be a forensic audit and judicial commission of inquiry into Project Mawingu, which was the major cause responsible for putting the airline where it is now. This will dispel any rumours and suspicions which surround the project. At the end of the day, we can say that it was just a bad management decision. However, I cannot accept that it was a bad management decision, because when they were making that decision, they knew it was bad. All the experts had agreed that it was not a proper decision to make. There are many technical legal issues involved. We should take into account the legal consequences to determine the way forward. The KQ should get out of Project Mawingu and focus more on the routes where they have a comparative advantage.

We were proud of the KQ; the pride of Africa. They had a comparative advantage and were giving the Ethiopian Airlines and other airlines a run for their money. But all of a sudden, before they had mastered the African market, they went into international routes. As we contract, maybe we should focus on managing Africa and having the price ceilings for the various tickets, so that we can move forward.

Mr. Temporary Speaker, Sir, I want to talk about the issue of recruitment of staff. The KQ and many corporations must learn a lesson. Let us not put into office people who do not qualify and meet the standards required for that office. Although we may think that, that person is good and is a know-it-all, we should look at where we have reached. This is happening not only in the KQ, but also in many corporations. People are being appointed to be Chief Executive Officers (CEOs) in areas where they do not have the expertise. They are not being appointed because of the interest of the corporation, but in the interests of some people who may want to benefit from the particular contract.

Taking into account the appeal by the Senate Majority Leader and knowing that the next Motion is mine, I want to stop there, so that I can give more time to other people to contribute.

I beg to support.

**The Temporary Speaker** (Sen. Sang): For your information, Senator for Busia, you have only saved 30 seconds. You had already exhausted the entire time allocated to you.

Based on the request by the Senate Majority Leader and bearing in mind that we have two important Motions that we have dispose of, I direct that the next speakers will speak for five minutes.

**Sen. (Eng.) Muriuki:** Mr. Temporary Speaker, Sir, let me start by complimenting the Committee, headed the very able Sen. (Prof.) Anyang'-Nyong'o. KQ was doing very well before privatization. In 1995 or 1996 there was a decision to privatize, which also brought the KLM strategic partner. Kenyans thought that besides the concept of a strategic partner coming in with some money, they would, perhaps, come in with some expertise, which will check some of the excesses that we are seeing in the management of KQ.

The bulk of the Report surrounds decisions by the board. It becomes difficult to distinguish bad decisions of the board, which come from incapability of the people in the management or bad decisions because of fears of one type or the other. KQ are happy to write on the airplanes "the pride of Africa" which we have been proud of for a long time. But if you look at the origin of this and the Report of the Committee, what is ailing KQ is wild expansion; establishing routes all over Africa, buying aircraft left, right and centre without caring whether or not there are passengers on those routes. I believe that many of us in this House have had occasions to be on KQ flights on some of those routes. You will find that the passengers on the planes on some routes are hardly a quarter or a third of the sitting capacity. This means that no proper survey or scrutiny of those routes vis-a-vis the competition which is there had been done. It also did not go with the service.

Recently, a number of non-Kenyans, mostly from Europe, have been writing to the editors of various newspapers. One of them said that he has been coming to Kenya on holiday for many decades and always used KQ, but recently he found that the service in the cabin is very poor. When KQ cancels flights in European countries, like Britain, within an hour to the flight, and everybody else is on time, people just change the airline



and go to another one. Although the Committee did not dwell so much on the fact that we are talking about the immediate past CEO, there have been other CEOs. I do not think that the problems ailing KQ have happened now; it is a history of activities and mis-activities.

Finally, KQ started off as a Government corporation. Even now we are interrogating it because it has public funds in it. Once a board, a parastatal or public corporation has been set up, we do not want to micromanage it, because we have set up a board to do it. However, by the look of things, we must re-think how these parastatals will run, because we are now dealing with postmortem after problems have come. It is about time Parliament rethinks the whole idea of the Public Investment Committee, so that there can be an opportunity to raise a red flag before the airline virtually collapses. We are talking about reviving the airline because it is a national airline, but if it was a purely commercial enterprise we could have closed it. We want to be proud of our national airline and that is why we want to revive it.

Let me start by saying that the Public Investments Committee must have a way of looking into things in various parastatals before so that red flag can be raised before it collapses completely.

With those few words, I beg to support.

**The Senate minority Leader** (Sen. Wetangula): Thank you, Mr. Temporary Speaker, Sir. I will make very few remarks. I congratulate Sen. (Prof.) Anyang-Nyong'o and the entire Committee for a job well done. KQ is dubbed the pride of Africa; it ought to be the pride of Kenya. It has through time degenerated to the shame of Kenya and the shame of the region. This is an airline that if you compare with the importance of airlines to economies like what Emirates is doing to UAE what it has done to Ethiopia. KQ had all systems go; a monopoly, government supported, carrying our national name and literally with limited bound of expansion.

I agree with the distinguished Senator for Busia that what the professor and his team have not fingered on is a recommendation for forensic audit and a possible criminal inquiry and subsequent prosecution for those who are culpable. In law, Mr. Temporary Speaker, Sir, you are a lawyer; you know we have a maxim that *res ipsa loquitur*. Things do not just happen; airlines do not just crumble, human beings cause them to crumble. Those who have done so must be held responsible. This airline, apart from enjoying a near monopoly in the region, the airline is obscenely expensive. If you take the local routes, take flight 540 to Eldoret, you pay KShs5,000 to Kshs6,000 KQ, you pay Kshs18,000 one way. From here to Kampala on KQ, you pay more than you pay on Ethiopia Airlines from here to China, it is extremely expensive.

Mr. Temporary Speaker, Sir, it is so costly that you would want to believe that this airline is making astronomical and obscene profits yet we are told that the airline has deep holes that it is difficult to explain. If today you go to KQ, and the Chairman of the Committee was relating for us the other day how he was looking for a ticket just to go to Johannesburg and the cost of the ticket was more expensive than going to New York and back. On KQ -- you can get an economy class ticket to Guangzhou and back on Emirates at Kshs60,000; but for KQ, from here to Kigali, it is over Kshs60,000.

If this airline has to survive, it has to change tactics; even calling itself a dominant African Airline is fallacious. Innovative thinking management like Ethiopian Airlines,

has a subsidiary in West Africa that simply flies Cotonou, Lagos, Bamako, Dakar, Free Town and then offloads the rest of passengers to Etihad to fly to Ethiopia and elsewhere.

These days, KQ--- even their routes to West Africa, let us not be told that Ebola affected the airline; it did not. Ebola came the other day when the Airline was already on its knees. If Ebola did, why did it not affect Ethiopian Airlines or Emirates that also flies to West Africa? Today, if you take a flight from Nairobi to Accra, Ghana, you will be lucky if you have one third loads on the flight. Why? Because we are overpriced, our services are poor, the flights are delayed, and above all, even the configuration of our cabins. You are given a ticket and you are told that you are going to sit in business cabin. The difference between business and the rest of the airline is a little funny looking curtain separating the front of about five rows and the rest of the airline and nothing else.

You cannot run an airline like that. If you go to airlines like Emirates, a First Class is truly first class, a business class is truly a business class, it is not defined by a funny looking curtain that separates one area of the cabin from another. I urge the House to adopt the Report. However, adopting the Report is not enough. The Committee on implementation must follow the adopted Report to the logical conclusion to see that we save this Airline as a carrier and bearer of our national image and name. Get proper people to manage the Airline and hold those who have brought the airline to where it is accountable.

Mr. Temporary Speaker, Sir, I support.

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): Thank you, Mr. Temporary Speaker, Sir. I also support the wonderful and in-depth report by the Committee headed by my friend, Sen. (Prof.) Anyang'-Nyong'o. Very briefly, I want to say that national airlines are a source of national pride. It is, therefore, important for us to save our airline and make sure that we have a national carrier that is not only profitable, but it is also offering world class service.

Secondly, it is unfortunate that KQ has chosen to engage in endless litigation and disputes with its employees. There must be a legal audit and a legal risk assessment done about this airline to bring this litigation to an end.

Thirdly, I want to concur that time has come for the KQ to re-look at the composition of the Board of Directors, because if a company is not performing, those who are responsible for steering that company must have something to do with it. If they do not have something to do with it, it is only fair that other people be given an opportunity to try and bring that company into success.

Fourthly, I think the action that KQ took of hedging fuel for a protracted period of time may have contributed to this unsustainable business model. That is an area that the KQ needs to relook at as proposed by the Sen. (Prof.) Anyang'-Nyong'o's Committee in this Report.

Fifth, I also want to echo the sentiments by the previous speakers that we cannot have a national carrier having a contradiction on firing local Staff, Kenyan citizens and, at the same time, through the backdoor hiring foreign nationals to do the same jobs that Kenyans would have done. I have nothing against foreigners, but the law is very clear on what foreign engagement is supposed to be permitted under our laws.

Mr. Temporary Speaker, Sir, I found a very interesting observation by the Committee which I think should be pursued, that there were discrepancies between the list supplied by the Director of Immigration Services on how many foreign workers are

working for KQ *vis-à-vis* the list that was availed by the Airline themselves and, therefore, it is not just a labour issue, not an industrial issue or a management issue. It poses security challenges if there is a disconnect between the records the Immigration Department has and what the Airline is supplying in terms of foreign workers.

Mr. Temporary Speaker, Sir, the issue of capital injection is welcome, but I support what Sen. Hassan said. If we are putting this enormous amount of money to resuscitate KQ, then we must do it under stringent conditions. The missing recommendation here is to prosecute people who are culpable. I do not know why the Committee shied away from facing the issue of accountability. This airline has collapsed under the leadership of human beings and because of bad practices and it is not enough to ask for resignation or replacement. We need to see accountability and a proper inquiry that leads us to point fingers at the people that are responsible for the collapse of our airline. National carriers are a big pull factor for foreign investments, tourism and generally trade in goods and services. Therefore, we have no option, but to revive KQ.

Finally, if Jomo Kenyatta International Airport (JKIA) is to be a regional hub for transport and aviation, then making it viable is not optional. It is not conceivable why and neither is it convincing that a ticket to Dar es Salaam on KQ business class is almost the same amount that a passenger spends on Ethiopian Airlines between Nairobi and London through Addis Ababa. There is no reason for that.

Mr. Temporary Speaker, Sir, recently I flew from some capital in an Asian country - which I do not want to name because it is a friendly country to Kenya - I was astonished that in a big Boeing 777 we were hardly 30 passengers. In fact, the cabin crew was more than the passengers. That is an indictment of the marketing intelligence and the capability of KQ in terms of approving some of the routes like they have done in the last few days. It is not enough to approve every other destination, but it must be backed by good market intelligence and research.

Mr. Temporary Speaker, Sir, I strongly request that methods of holding those who have made our airline sink accountable be pursued beyond this Report.

I support.

**Sen. Keter:** Thank you, Mr. Speaker, Sir. I congratulate the Chair and his team for a good Report although I have not read through the whole of it. It is sad that in the year 2015 we are still talking about KQ issue. I remember Sen. (Dr.) Khalwale in the last Parliament - I was a Member of the Committee on Labour and Social Welfare - when the issue of KQ was initiated and we made a good report then. The management and the board of directors of KQ literally refused to appear before the Committee. They sent lawyers and arrogantly absconded the summons.

In our report, we made far reaching recommendations that the management should be dealt with. It is a pity that they continued with their bad practices to date which has resulted in the collapse of the airline. The issue of special vehicles was also raised. The question was why they were registered in the Cayman Islands and who were involved. If it was cheap, what was the beneficiary and how much were the Embrears bought from Brazil through the Cayman Islands.

The Embrears were bought under Simba, Nyati, Samburu, Tsavo and Chui Finance Limited companies. These are Kenyan names used by someone to register companies in the Cayman Islands. The argument they are advancing is that it was cheap and that the country offers good financial systems. Looking at it, is Chui and the other

companies outside Kenya? When one claims that it is better for Kenya to do an intermediary business between KQ and the Embreair from Brazil, there should be a forensic audit.

Mr. Temporary Speaker, Sir, the Committee just highlighted the issues, but we need to go deep and carry out a forensic audit. Who are these people who registered these companies? What were the benefits to Kenyans? It is a pity that most of us fly KQ and we are always happy when we are outside Kenya and we see a KQ sign. You feel at home. We are not happy when we see an airline going down. Therefore, thorough investigations must be done.

The issues of outsourcing were raised in the last Parliament and I remember KQ staff went to court to challenge the rationale that was used. The KQ management was avoiding the labour and the cost cutting issues. In essence, they went and outsourced, but retained the staff doing the same duties earning more than those outsourced. The new employees found their colleagues in the same position, but on different pay rolls. Therefore, there was no way to expect them to work in a fair environment and be productive. These are some of the issues that were raised in 2012 and are being raised again this time. This time round, we should not let it go.

I support.

**Sen. (Dr.) Khalwale:** Thank you, Mr. Temporary Speaker, Sir. I thank Sen. (Prof.) Anyang'-Nyong'o for leading us in this Committee, and especially giving me an opportunity to sit as an *ex officio*. It gave me a chance to see how poor and how weak the KQ management is. It is so weak that it is unable to make strategic decisions on fundamental issues that can make KQ profitable. What do I mean? This team is unable to make strategic decisions on planning of routes and networks across Africa where Kenya is obviously the lead airline.

Mr. Temporary Speaker, Sir, having gone into partnership, which is something nice, they have concentrated on it with European airlines, where competition is impossible, instead of making such strategic partnerships with local airlines in Africa, especially the eastern region of Africa. What is more is that the team is not in control even of the benefits that accrue out of the partnership. They even have no idea of how much they get as their rightful share from their partnership with KLM. The KQ is in partnership with KLM, but when you land in Amsterdam using the KQ to go to other European Union (EU) capitals, it is KLM that takes you there. However, when KLM lands in Nairobi – it is in partnership with the KQ – it goes ahead to fly to other capital cities of Africa. What is the benefit of being in partnership with KLM? My understanding is that as soon as KLM lands in Nairobi, it should allow the other passengers on transit to be taken to Dar es Salaam, Moshi, Kigali, Entebbe and so on, by the KQ. However, that is not being done.

Secondly, this report should serve to hold some people accountable. Two of the members of the board who represented Kenya, on behalf of the Government – because of our majority holding in this franchise – should be held accountable. This is because we found that they were not attending board meetings. So, there was no way the taxpayer could be protected because the two Principal Secretaries (PSs) – one at the National Treasury and another one for Transport and Infrastructure – have not been sitting in meetings.

Thirdly, I wish we had been more aggressive, but because I was also a Member of the Committee, I have to move with what the entire Committee said. We should not just have pointed to the fact that the Chief Executive Officer (CEO) is not qualified. A clear recommendation should have been made that the CEO, Mr. Ngunze Mbuvi, must be sacked because he is not qualified at all. That is the evidence.

Fourthly, several people have spoken on the issue of forensic audit. Maybe Members do not know. The truth is that the KQ is shielded from being probed by the Auditor-General. It is true that the KQ is not being probed by the Auditor-General. I hear some legal experts have said that the KQ is a private enterprise and so on. How I wish I was a legal advisor; I would have told them that because the Government of Kenya is the single largest shareholder in the KQ, our Auditor-General should be taking priority in making sure that the KQ is audited. What is more, we all know that just a few days ago, the National Assembly voted Kshs4.5 billion as a bailout. Then you tell the Auditor-General---

Allow me just one minute, Mr. Temporary Speaker, Sir.

**The Temporary Speaker** (Sen. Sang): You have a half a minute.

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

The KQ management deliberately starved this Committee of strategic documents that would have helped us to get to the bottom of the corruption that is currently ongoing. We were not given documents. In fact, we have no idea as a Committee, as we report back to you, about the operating costs, which are very high and pose liquidity problems to the company. The management refused to give us documents. The Ethics and Anti-Corruption Commission (EACC) and the Criminal Investigation Department (CID) should move in to make arrests because all these people, especially Mr. Titus Naikuni, are corrupt. Mr. Naikuni joined the KQ when he was an ordinary Kenyan. Today, he is a celebrity by way of wealth.

**The Temporary Speaker** (Sen. Sang): Your time is up!

**Sen. Murkomen:** Mr. Temporary Speaker, Sir, the issues have been raised extensively. However, I wish to start by thanking the Committee for doing a very sterling job, particularly, the manner in which the report is presented. It is for posterity, easy to read and has a very good flow. That means that a lot of time was invested by the Special Committee to do this work. I also thank my friend and mentor, Sen. (Prof.) Anyang'-Nyong'o, for moving this report very ably. I listened to him and think his better days are still ahead, as a Professor and a teacher, after he is done with his term as a governor.

Mr. Temporary Speaker, Sir, I want to support two things. There is the question whether entities where the Government owns part of the shares can be audited by the Auditor-General and whether there is an oversight mechanism by all of us. If you read Article 229 of Constitution, it says that one of the functions of the Auditor-General is to audit and report on the accounts of an entity that is funded from public funds. It also states that the Auditor-General can audit accounts of any other entity that the legislation requires him to audit. Therefore, there are two ways to go about this.

The first one is to assume that because of the challenges we are already facing, if the Auditor-General, *suo motu* - "on its own motion"- cannot do the auditing, he should at least do an audit for the 29 per cent shares that the public owns. For the reasons that we are being asked that the taxpayer should inject money into the KQ, it would also be

prudent – I hope this could be the case in improving this report – that we amend the Auditor-General’s Act to include that “the Auditor-General will audit all public entities where the public invests money.” I know that those companies have their own auditors, but for purposes of safeguarding public interest and situations where you have companies like the KQ where the public has a lot to lose, it is very important that that is done.

In the interest of time, the second issue I want to talk about is the management structure of the KQ. It is prudent that the recommendations that the Committee has come up with are adopted, for example, the strengthening of the internal oversight by ensuring that the board of directors is not composed of too many people, because that creates conflict of interest. Anyone who has studied Company Law will appreciate that in the management structure of a company, it is important that you do not convolute the work of the directors and managers. Therefore, it is important these recommendations be expeditiously implemented.

The Committee has insinuated that the person in charge is not qualified to run the company as the Managing Director, and I have heard Sen. (Dr.) Khalwale also saying so. I beg to differ. One can manage salt and something else well. It is not a question of the background of the person, but a management responsibility. I would rather we assess the current manager by his managerial abilities as a person or from his track record as a manager, than to worry very much as to whether he was managing cement or salt and now he is managing the KQ. All over the world, experience has shown that people who manage even eggs can manage other sectors, like roads, because it is about management, which involves running people, but not a question of technical expertise.

One of the things that Mr. Naikuni failed to do was managing human beings. The industrial conflicts and fights within the corporation really bothered me. If you look at the structure of staff, where you have those who are paid more and those who are paid less, we should recommend a person on basis of abilities to manage.

Mr. Temporary Speaker, Sir, I beg to support and, once again, congratulate the Committee for doing a good job.

**Sen. Lesuuda:** Mr. Temporary Speaker, Sir, I also add my voice in supporting this report. We sat in this Committee under the able stewardship of the Chairperson, Sen. (Prof.) Anyang'-Nyong'o, who was very diligent and passionate and the Vice Chairperson, Sen. Kagwe, who ensured that we had so many meetings with the management, the Treasury and everybody else to get to the bottom of why KQ is not the pride of Kenya, leave alone Africa.

Having sat through the Committee, there are various issues just as they have been put in the recommendations which I would like to agree with. One of them is the whole aspect, just as Sen. Murkomen has said, about managing and treatment of the human resource. I think human beings are the greatest resource for any organisation or company. Even as the KQ relooks into the turn-around of the Airline, it is important that the many litigations that are in court are looked into. We also hope that the Judiciary will fast-track the cases so that this issue is put to rest. In the handling of the human resource, we see some of the people who work in other airlines being paid more money for the same services that KQ staff are doing. It demoralizes them even in offering services to the airline.

Secondly, there is the whole issue of the management. There were various reasons that were given to the Committee as to why we are where we are with KQ. One of them

was the issue of terrorism and Ebola. I know these are factors that were, probably, not thought through even by the management. We recommended and still do, that the management of KQ needs to foresee, look through the market and put in place measures that can ensure that the airline withstands some of these challenges that cannot be prevented.

Mr. Temporary Speaker, Sir, on the whole issue of fuel hedging, we definitely know that the airline industry is not a simple, but complex matter. We hope that the new management will rather even spend more resources to get expertise and people who totally understand the aviation industry to give KQ the turnaround so that it can continue to be the pride of Kenya and Africa.

We also agreed that we look into the law. It is unfortunate that taxpayers give money – that is what we have also said – that Equity and the --- financial bailout from the shareholders and we know the Kenyan Government is one of them through taxpayers money. However, you cannot audit this money. It is important that we recommend that the Constitution be looked into to see that the Auditor-General can audit the funds that are given to the KQ to ensure that it does the job that it is supposed to do.

On the issue of responsibility and accountability, I agree with my colleagues that it is not just enough for us to give very good recommendations while someone somewhere is responsible. It did not just happen. The Project Mawingu was there for 10 years. It cannot possibly be that we just woke up one morning and found ourselves in the situation that we are in. Definitely, this was a progressive thing that happened. As we have the long term plan, it is important for KQ to sit back and re-look into their short term plan, say, after three years. If there are things that they are not doing which will have consequences like the ones that we are in, then the plans should be reviewed at an appropriate time and not say that because we had a ten year plan, we have to go with the way it is. It is something which does not happen even in our own lives. You sit back, re-look at what you are doing and make reviews and recommendations to ensure that you are still on the right track. Responsibility and accountability is also important.

As you can see from the report, from the initial stages, we said we do not want to be vindictive and that we wanted to give recommendations as the Committee and even being the “Upper” House that will definitely help KQ make the turnaround that is needed.

With those very many remarks, I beg support.

**The Temporary Speaker** (Sen. Sang): Who is temporary one? For your information, you have four minutes before the yellow light is turned on and then you have one minute to the end of your presentation. Just organise yourselves.

**Sen. Elachi:** Mr. Temporary Speaker, Sir, I also thank the Committee and its Chairperson. First of all, it is unfortunate that the National Assembly approved money again to the same institution that we are trying to see how to remove from the darkness that they are in.

Let me also send a message to the Committee on Budget and Appropriation of the National Assembly. Some of the challenges that we are facing today in finances is because of some of the agreements and resolutions that they passed. It is time that they looked at the new Constitution and understood when they were given those powers, they were to ensure that the country is stable in how it is running its finances.

The attitude and character of workers of Kenya Airways does not show that they have in mind that we are using public funds to ensure that we sustain them. You enter

into an aircraft for a trip of eight hours and the crew itself is already angry and anxious. You cannot even understand. Therefore, if you want to start reviving such an airline which is a brand and images your country, then you must start with the human resource that is there. For KQ, that one they lost. It is because they took advantage of the fact that nobody questions. Therefore, the same clients that you would want to give you resources are the same ones that will run away.

Mr. Temporary Speaker, Sir, another key issue that we need to ask ourselves is, when you are going down, you already have losses in your company, why should you create subsidiaries? All KQ did was start Jambo Jet and make more profit for the individuals who have just killed this airline. They will tell you it is Jambo Jet, but it is KQ by the same people. In this country, people do not care and they can decide that you are better off dying with your children as long as, I, as an individual moves on with my children. It is a man-eat-man society. It is wanting.

What was Mr. Titus Naikuni thinking when he was leaving? As much as we are blaming Mr. Mbuvi Ngunze, we need to ask ourselves where Mr. Naikuni is because he is the person we need to put into jail. It is time, if indeed, my Government is serious about corruption; we stopped these inquiries and took action. We know so-and-so led to the collapse of Uchumi chain of supermarkets or KQ. We should take stern action against them. We should not think of appointing them to other institutions to mess them up. These appointments do not make sense at all in Kenya any more. It is time we stopped inquiries and said enough is enough. If it is Beatrice Elachi or so-and-so who has "finished" this institution, let her be jailed. That is when we will stand up and say that we are fighting this corruption in this country.

Mr. Temporary Speaker, Sir, we also need to look at our character and not hide in the skeletons of the things that we have done. That is why we find it very hard to point out that so-and-so is corrupt. You know that you have a skeleton locked somewhere behind you and you do not want anyone to point at it. So, let us not pretend. Let us be honest. The Government should use this report to begin its war on corruption. Let the management of Kenya Airways remember that if they want clients to come back, the first service is a smile.

A new terminal has been constructed as a facility for Kenya Airways. However, this occupies a bigger area than where the Immigration Section sits. I wonder if they deserve that. It can be shared.

Thank you, Mr. Temporary Speaker, Sir.

**Sen. Kagwe:** Mr. Temporary Speaker, Sir, I congratulate my boss, Sen. (Prof.) Anyang'-Nyong'o. He took that leadership very seriously. I am glad to have been elected the Vice-Chair of the Committee. We had a very strong team that worked very well.

Mr. Temporary Speaker, Sir, US\$700 million is a lot of money by any standards. Kenya Airways requires this amount as an injection of capital to be revived and thrive. When a country spends that kind of money on a company, then it must demand that at some point, at the end of the tunnel, there must be some light and a return on an investment like that.

Secondly, we must ask ourselves why it is necessary for us to inject that kind of money into the organisation. Various speakers have spoken on the matter and indeed, pointed out why this is necessary. I support them. It would be a big loss for Kenya if Kenya Airways were to sink. During the investigations that we carried out, there were



people who recommended that we let Kenya Airways collapse. However, when you think about the benefit of the airline in terms of the hub nature, the general economy, infusion in tourism and other areas of our economy, then we have no choice but to revive the airline. But in order for us to put in the Ksh70 billion, we must ensure that the conditions that have been recommended by the Committee are kept to date.

Mr. Temporary Speaker, Sir, Sen. Keter has just said that there was another inquiry into Kenya Airways. It made certain recommendations that were never followed. The issue is whether this time round, we will follow the recommendations that the Committee has made.

It has been said that all that is necessary for the triumph of evil is that good men do nothing. All we need to do is give these recommendations and nothing is done. We can guarantee that unless something is done on the recommendations that we have made, including the complete restructuring of the board and management, it is then not of any use for us to put the money there.

Kenya Airways has made a litany of management mistakes that should make very good study for institutions such as universities on how not to do business; how not to run airlines. This study must be made useful and given to other management institutions so that in future, nothing is repeated.

Sen. Wako spoke about the Special Purpose Vehicles (SPVs). They are normal business management tools in many organisations. However, when there is a public institution such as this one, it is necessary for transparency and accountability to reign supreme. It is necessary for Kenyans to understand that out of the US\$700 million that we need to infuse in this company, the Kenya Government is supposed to infuse 29 per cent because we only own 29 per cent of the airline. The rest of the money is supposed to come from KLM and other shareholders.

Mr. Temporary Speaker, when we spoke to KLM during the interview with them, it was not clear to us whether they are willing to put in part of their money or not; which means that if the Kenya Government puts in the entire US\$700 million, it must be clear that the shareholding of the Government would then increase to a level where Kenya Airways virtually becomes a parastatal unless the other way of reviving the airline will be to attract a new partner into it.

We also found out that it is necessary for us to separate two things; KLM as a shareholder of Kenya Airways alongside other shareholders and KLM as a code-share---

Mr. Temporary Speaker, Sir, I beg that you give me one or two minutes.

**The Temporary Speaker** (Sen. Sang): You are the Vice Chairperson, so you have one more minute.

**Sen. Kagwe:** Mr. Temporary Speaker, Sir, there is a difference between code-sharing and shareholding. The code-sharing arrangement must be studied and revised by the new structure of Kenya Airways.

Finally, we recommended about the marketing director. The issue of how Kenya Airways is pricing its tickets is so serious and severe. However, one of the reasons is because in Kenya Airways, the marketing team that sells the tickets and the corporation's team that sets the price of the tickets are completely different. In other words, the right hand does not know what the left hand is doing. We will not micromanage Kenya Airways. This House does not have the capacity to micromanage Kenya Airways but we

have the capacity to advise the Government; that if you want to put in money; get the conditions correct.

Thank you, Mr. Temporary Speaker, Sir.

**The Temporary Speaker** (Sen. Sang): Hon. Senators, we have one hour and 10 minutes before we end this morning session. We have two very important Motions ahead of us. I propose that the next set of speakers; we have about five Members who will do three minutes each so that we can prosecute the two other equally important Motions.

**Sen. Obure:** Mr. Temporary Speaker, Sir, first, I take this opportunity to congratulate you on your election to chair the proceedings of this House. In the short while you have been there, you have demonstrated quality and authority.

**Hon. Senators:** *Kabisa!*

**Sen. Obure:** Kenya Airways as the national carrier is critical to the economy of Kenya considering the impact of its operations in terms of foreign exchange earnings. Furthermore, it plays a major role in promoting tourism in this country.

There is also need to make Jomo Kenyatta International Airport (JKIA) a regional hub, so that we can accrue the benefits that go with the achievement of such a status. We cannot achieve this status without a strong national carrier.

The situation at Kenya Airways today could have been caused and, in fact, is attributable to an inappropriate structure in the management of the board of directors, then a very poor quality management which has been in place; a board of directors in which management is overrepresented which dilutes the power of the board to give policy direction and carry out its oversight functions.

We have been told of a management which did not understand the environment in which it operated leading to all sorts of poor decisions which have adversely affected the achievements of the airline. Overpricing, poor ticketing and poor routing have been detrimental to the operations of the Airline.

Mr. Temporary Speaker, Sir, one other feature which I have noted from this Report is the various human resource issues; labour disputes and protracted litigations in court. This will obviously have a huge impact on the morale of the staff and the quality of service that the airline is expected to deliver. These matters have been affected.

Finally, Mr. Temporary Speaker, Sir, I want to say that the recommendations which have been made in this Report are important and they must be implemented for the survival of the Airline, and we need it to survive.

Thank you.

**Sen. Gwendu:** Thank you, Mr. Temporary Speaker, Sir, for giving me a chance to add my voice to this Motion.

First, I take the opportunity to thank Sen. (Prof.) Anyang' Nyong'o and Sen. Kagwe for a job well done. As much as we are trying to support this Airline, it is painful. I want to echo the sentiments brought about by Sen. Wetangula when he said that as much as this Airline was going down, we need to bring to book and punish or do something to people who brought this airline down.

Mr. Temporary Speaker, Sir, we look at the costing of tickets and it is also sad to hear Sen. Kagwe say that the right hand does not know what the left hand is doing, and then you pay expensively for this Airline and when you get into them, you are given groundnuts. You look at it and wonder if it is the cost of what you paid for. As much as we want to support this Airline, we also need to advise them on how they will manage

their resources and how they will manage the money we pay when we pay for those tickets because it is expensive and we expect that when you get into KQ, you expect to be treated much better. When you get into Emirates, for example, the treatment is very good. If you look at it and compare with what you have paid, you feel satisfied. As a Senate, this is a job well done and we need to continue supporting and also recommending things that will help them and help Kenyans who use KQ to see value for their money.

Thank you. I beg to support.

**Sen. Nabwala:** Thank you, Mr. Temporary Speaker, Sir. I would also like to add my voice to the Report by the Select Committee on the Inquiry into the Affairs of Kenya Airways.

I have looked at the observations that the Committee made and I see that the most contributing factors to the mismanagement of the company touches on the top management and mismanagement of funds. The human resource issue is also one of them. When KQ partnered with KLM, I thought it was going to be for the better. If we have continued bailing out KQ, what has happened to that partnership? We need to look into the partnership and find out where it went wrong because I would not see how you can partner with someone to improve and yet you are doing poorly.

Mr. Temporary Speaker, Sir, on the part of mismanagement of the company, I think the top management and the board should be investigated and action taken. We want to see the thieves taken to court. If someone has stolen money, like the National Youth Service (NYS) where huge houses were shown on television, we want those assets frozen so that they are reverted back to the Government.

I would like to emphasize that we need a forensic audit into how the Kshs4.2 billion was spent. If the Government has been bailing out KQ, how is this money being spent? Have they shown their cash flow and where they have gone wrong so that we can interrogate some of the expenditures which are abnormal?

I would like to support this Report and urge the Government to take action because bailing out KQ every time is not a solution. We need to hold those people who have run KQ down to account.

**Sen. (Prof.) Lesan:** Thank you, Mr. Temporary Speaker, Sir. I would like to thank the Chair of the Committee who was very patriotic and for having brought up the issue when KQ was still afloat. We have heard issues where institutions have gone down before we can have commissions to look at them. For example KenRen, Halaal, Macadamias and all those other projects which siphoned a lot of our money.

Mr. Temporary Speaker, Sir, I want to mention only one thing which I experienced as I sat in this Committee. The very non-strategic decisions that were made by the management are so stirring. For example, the management of KQ after entering into agreement with other airlines to transport passengers and goods to Nairobi went out of their way and made a decision to buy Embraer planes. These are the planes that are known all over that they do not have capacity to carry cargo. In fact, they have a difficulty carrying hand luggage.

This has been the big problem where airlines have deposited passengers and goods at the hub of Jomo Kenyatta International Airport, and KQ with its Embraers cannot carry luggage. This is the biggest complaint that passengers who have had to make connections in Nairobi have had to leave their luggage in Nairobi because there is no capacity in the Embraer airlines that the management decided to buy even after

entering into agreement with other airlines. These are the very non-strategic decisions that cause some of these problems.

Mr. Temporary Speaker, Sir, secondly, the decision on the promotion of KQ is not selling. For example, you have something called “flying blue” where you accumulate your miles so that you can be able to use later to travel, I do not think there is any Senator in this House that has been able to use this even if they have thousands of miles. This is very bad in terms of promotion because it does not help KQ. These are some of the things that derail KQ. They have engaged a consultant to help to manage and I can see a short fall because there is no mechanism which you can use to evaluate what the consultant is going to recommend. There must be a mechanism which we can monitor even the opinions of the consultant as they try to resuscitate KQ.

I want to support this Report and hope that some implementation can be carried out on the recommendations that have been made.

Thank you.

**Sen. Karaba:** Thank you, Mr. Temporary Speaker, Sir, for recognizing that I have to say something as a Member of the same Committee. First, I want to congratulate you for taking the Chair. It is a wonderful seat and I wish everybody else can have a test of it. It is important to know that the composition of that Committee is and will be remembered by many others even in future. It was composed of serious Members who were very patriotic to the business and the recommendations, therefore, arrived at should be taken seriously.

**The Temporary Speaker (Sen. Sang):** Sen. Karaba, are you suggesting that in this House there are other Members who, if they sat in that Committee they would not be serious?

**Sen. Karaba:** No, Mr. Temporary Speaker, Sir. If that is what you have understood, I am saying that we are all serious but they were taking the business very seriously including you, the Chair, because I know you are also a Member of that Committee. What has been recommended, therefore, should not be altered. It is as a result of sitting for long hours. It took the Committee time to visit the KQ hub. What is recommended, therefore, should be implemented.

Mr. Temporary Speaker, Sir, it is important to know that in Africa, KQ used to be the Pride of Africa and it is no longer because it has been overtaken by even other small airlines. We need to find out why it has gone down and it is explained in that document. So, if it is true that Ethiopian Airways is doing better than Kenya Airways, then we need to go the Ethiopian way. If they are strict with their management, that is what we should do because our KQ is in jeopardy and it is declining. Kenya itself – because without KQ operating in Kenya – would not be known to be a country because the national airline carrier is the country at large.

Mr. Temporary Speaker, Sir, we should embark on the Committee’s Report and recommend that everything which is contained there should be implemented to the letter and those who were involved to be taken to the gallows. That is my recommendation.

Thank you.

**Sen. Omondi:** Mr. Temporary Speaker, Sir, thank you for allowing me to contribute in support of this Report. Many Kenyans are suffering due to the looting of taxpayers’ money by some people. We then establish commissions of inquiry which

spend more money. We are impoverishing this country because money is being lost everyday. The way the issue of corruption is being handled is not promising at all.

I remember Sen. Elachi saying that since some people who were in leadership used to loot, if they are given an opportunity to serve in a commission of inquiry, they will not disclose what happened. The way things are run in this country is questionable. It appears like we are selling our own country together with our people.

On a lighter note, why can we not sell the whole country and everybody be given a share and we forget about Kenya, because where we are heading is not promising? Is it fair for us to go on with the current trend in addressing issues of corruption? When somebody loots from one company, he is transferred to another company to continue looting, instead of charging and sentencing them. If we did that, Kenyans will be accountable for their actions.

I support.

**Sen. Leshore:** Mr. Temporary Speaker, Sir, first, I would like to thank the Committee and particularly the Chairperson, who was my Chairman in the Public Investments Committee in 1993 and 1994, when we were young legislators. We were the first to recommend that such characters who have committed economic crimes must not be given any other chance to hold any public office. They must be hanged, the way the Chinese hang those who commit economic crimes.

Kenya Airways is no longer the pride of Africa, but the pride of those looters who have run it down, built big hotels and amassed a lot of wealth. On my first trip to Europe in April, 1994, I used Kenya Airways to Rome. It was a fantastic flight and I really enjoyed it. Recently, I used other airlines, including Air France and Lufthansa, to go to Rome. That route is still very profitable. Likewise, the route between here and Cairo, Peru and Turkey is still profitable because of many Kenyans going to do trade. I am ashamed that Ethiopian Airlines, which is as old as 70 or 80 years, is making profit on those routes.

I support the Chairman's sentiments that Kenya should be the hub to the East and West. There is no reason Dubai should be the hub and it is one hour ahead of us. The Jomo Kenyatta International Airport (JKIA) should be the hub of the flights going to America and to the East.

I heard Sen. (Prof.) Lesan talk about sky miles. Last week, I had to pay an extra £200 to upgrade my wife's ticket, yet she had more than 30,000 miles. There are many thieves in that company. Therefore, I want to support what the Committee has recommended. They should be the first people to be hanged to show Kenyans that corruption is no longer tolerated in this country.

**Sen. (Dr.) Zani:** Thank you, Mr. Temporary Speaker, Sir, for this opportunity. I want to thank the Chairperson of this Committee, Sen. (Prof.) Anyang'-Nyong'o. I have never seen the level of dedication and commitment that I have seen from many who chair committees. He was always there on time.

This Committee did a lot of investigations and went out of its way to call a number of people from the various sectors and went through the paperwork. Therefore, this Report is very comprehensive and a good effort that we have put together as Members of that Committee. We are addressing an issue that is very important because we are talking about "the Pride of Africa," no longer being the pride of Africa and the circumstances where others did not sink. For example, why were the market forces

against Kenya Airways and not other airlines that were able to thrive? This means that there were certain specific wrong decisions that were made at specific times and the Report outlines this well.

The redundancy issue of 2011 and the way it was done has been outlined. It was de-motivating for the workers who remained. We heard stories of workers who were informed that they had been retrenched when they were in the air and in other countries and were expected to fly back. This even became a security issue for those who were left behind, because they were not sure whether they would maintain their jobs.

Therefore, this created a situation where the human resource became a critical issue and took the airline even further down. There were cases of hiring of foreign workers for certain routes in Thailand, Ghana and Cameroon, when there are locals who can be hired. This was against the clear law that says that you cannot hire from outside when you have labour from within. This created a huge wage bill and problems with the union because most people who were offered employment externally were not members of the union. This created the problem.

Project Mawingu was not well conceptualized. The capital revenue and processes that were to be encountered during those particular projects were not taken into consideration and that brought about the problem of cancellation of flights. The fuel hedging issue has been mentioned, which was completely against the practice and the norms. One wonders where the financial advisors were, unless, obviously, there was a scheme to ensure that at the end of the day, the money was put aside and not used for what it was meant for. Flight cancellations and delays became the norm of the day. Things like code-share process that are normal have not worked for Kenya Airways, but they have worked for other airlines.

I support the Report.

**The Temporary Speaker** (Sen. Sang): There being no other interest on this matter, I now call upon the Mover to reply. In the same spirit, I hope you can take the shortest time, so that we can proceed.

**Sen. (Prof) Anyang'-Nyong'o**: Thank you very much, Mr. Temporary Speaker, Sir. I would really want to thank my colleagues who have contributed to this Motion and the proposals that they have made. . Thank you for your accolades. Each and every one of us who has spoken here this morning has made very useful suggestions which will go a long way in the implementation of this Report. There is consensus in the House that a forensic audit should be undertaken of Kenya Airways. I want to propose that the final recommendation in this report: Recommendation No.14 should read;-

“The Committee further recommends that a forensic audit be carried out into the operations of the airline, so as to establish any misappropriations and those culpable should then be dealt with in accordance with law.”

I think that will capture the misappropriation and corruption.

**Sen. (Dr.) Khalwale**: On point of order. Mr. Temporary Speaker, Sir. I rise on a point of order on purely a matter of procedure. I support what Sen. (Prof.) Anyang'-Nyong'o is doing but that is not the way to do it. He would require to move an amendment and he does not require to give notice because he is the Mover of the Motion. He has to move an amendment in the normal manner so that then it becomes part of the report for it to be tidy because these are matters that have got legal implications. I request the Chair to direct that he does it in the normal way.

**Sen. (Prof.) Anyang'-Nyong'o:** Mr. Temporary Speaker, Sir, I thank my friend, Sen. (Dr.) Khalwale, and therefore, I would like to move an amendment to the Report to the extent that we add Recommendation No.14 which should read:-

“The Committee further recommends that a forensic audit be carried out into the operations of the Airline, so as to establish any misappropriations or corruption and those culpable, who should then be dealt with in accordance with law.”

**The Temporary Speaker** (Sen. Sang): Sen. (Prof.) Anyang' - Nyong'o, according to the Standing Orders, you cannot make an amendment when you are replying but in any case the HANSARD has captured what you are saying. Just conclude making your reply.

**Sen. (Prof.) Anyang'- Nyong'o:** Mr. Temporary Speaker, Sir, in my reply, that will be recorded and I am sure that the Committee on Implementation when they are forwarding the report to the implementers will include that summary of the expression in the House during the debate.

**The Temporary Speaker** (Sen. Sang): I really do not want us to stretch that far.

**Sen. (Dr. Khalwale):** Mr. Temporary Speaker, Sir, what will go to the Committee on Implementation and indeed any other agencies like Ethics and Anti-Corruption Commission (EACC) or CID will use the report and not the HANSARD. At this stage, the Chair needs to guide the House on what we can do so that it is part of the report. These are very serious issues.

**The Temporary Speaker** (Sen. Sang): We are saying that we should have had that amendment at an earlier time, you cannot move it when you are replying to the Motion. Since the Committee on Implementation is a Committee of this House, they will be properly seized of the Report but also of the HANSARD. We hope that then the Committee can proceed on that line.

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

**Sen. (Prof.) Anyang'-Nyong'o:** Mr. Temporary Speaker Sir, I get your point and I fully support it .Just two more points. In implementation, I would like to support and underscore Sen. Keter's observations that the Airline adopted the issue of outsourcing labour as a way of avoiding labour unions which is unconstitutional. In the Report, we have pointed that fact that you cannot outsource simply to avoid labour law unions. All workers under this Republic have the constitutional right to join a union. Even if it is painful to their employers, it is their right and no step should be taken by an employer to punish that or try to circumvent that fact.

The second thing I want to observe before concluding is the observation made by Sen. Lesuuda, that indeed the Airline tried to use excuses like Ebola, terrorism and so on .We do not deny that these things were risks in the environment but what is more important is that the Airline should have done sensitivity test and risk analysis to know what could provide risk in the implementation of Mawingu plan. In as much as we asked, we did not receive any kind of mathematical analysis of these risks before Mawingu was started so that when they did occur, they would know the magnitude or the reason and how to avoid them. All these just leads to what Sen (Dr.) Khalwale said; management weakness which should have been avoided and which has led the Airline into the current calamity.

Having said all that, Mr. Temporary Speaker, Sir, it is the opinion of this House and we are happy in this regard that this House solidly feels and recommends that the Airline be revived and recapitalized on condition that the recommendation to restructure

management and now the recommendation to ensure that those culpable face the wrath of the law are taken to account.

I beg to move.

*(Question put and agreed to)*

**The Temporary Speaker** (Sen. Sang): Members, having discussed with the Chairpersons of the two Committees, I direct that we reorganize the business of the House so that we start with Order No.11, and then Order No.10.

RESOLUTION OF THE HOUSE TO GRANT LEAVE TO SENATE  
STAFF TO RECORD STATEMENTS REGARDING THE FAILURE  
BY THE GOVERNOR FOR KAKAMEGA TO APPEAR BEFORE CPAIC

**The Temporary Speaker** (Sen. Sang): this is a procedural Motion, so I hope that the Mover will take the shortest time.

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

THAT, whereas Article 125 of the Constitution empowers any House of Parliament and any of its committees to summon any person to appear before it for purposes of giving evidence or providing information;

And further whereas the Senate has mandated the Sessional Committee on County Public Accounts and Investments to, among other things;

(a) Pursuant to Article 96(3) of the Constitution, to exercise oversight over national revenue allocated to the county governments;

(b) Pursuant to Article 229(7) and (8), to examine the reports of the Auditor-General on the annual accounts of the county governments; examine special reports, if any, of the Auditor-General on county government funds, and

(c) exercise oversight over County Public Accounts and Investments;

Observing that the Senate Sessional Committee on County Public Accounts and Investments extended an invitation to the Governor of Kakamega County to appear before the Select Committee on 15<sup>th</sup> September, 2015 and respond to audit queries arising from the Auditor-General in the Report on the Financial Operations of Kakamega County Executive for the Financial Year 2013/2014;

Further Observing that the Senate Sessional Committee on County Public Accounts and Investments also extended another invitation to the Governor of Kakamega County to appear before the Select Committee on 2<sup>nd</sup> October, 2015 and respond to audit queries arising from the Auditor-General in the Report on the financial operations of Kakamega County Executive for the Financial year 2013/2014;

Aware that the Governor of Kakamega County has failed to appear before the Select Committee on 15<sup>th</sup> September, 2015 and on 2<sup>nd</sup> October, 2015;

Noting that the Select Committee issued witness summons dated 10<sup>th</sup> November, 2015, pursuant to Article 125 of the Constitution and Sections 14 and 15 of the National



Assembly (Powers and Privileges) Act as read together with Section 7 of the Sixth Schedule to the Constitution, for the Governor of Kakamega County to appear before the Select Committee on 13<sup>th</sup> November, 2015;

Further noting that the Governor of Kakamega County has failed to honour the witness summons;

Observing that the Select Committee has written to the Director of Public Prosecution seeking that the Director of Public Prosecution takes up this matter and take necessary action;

Further observing that the Director of Public Prosecution has directed that the Director of Criminal Investigations record a statement on this matter from the Clerk of the Senate and from the person who served the summons on the Governor of Kakamega County;

Now therefore, the Senate resolves to grant special leave, pursuant to Section 19 of the National Assembly (Powers and Privileges) Act as read together with Section 7 of the Sixth Schedule to the Constitution, to the Clerk of the Senate and the officer who served the summons and any other officer as may be required, to record statements on this matter with the Directorate of Criminal Investigations and to provide such information or evidence as may be required for the purposes of this matter.

Mr. Temporary Speaker, Sir, the House recalls this long story and its culmination. I thank the Director of Public Prosecutions because he responded with quick speed and dispatched officers here to record statements from various officers in the Senate. However, it became a technicality that it was impossible without leave of this House. The Clerk approached me and we prepared this Motion to seek leave so that this procedure can be actualised.

I move and request the Senate Majority Leader to second me.

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): Mr. Temporary Speaker, Sir, as I second this Motion, Article 125 of the Constitution empowers both Houses of Parliament to summon any person to appear before its Committees. The words used in Article 125 are 'any person.' If the drafters intended to exempt governors from Article 125 and its operations, they would have stated so.

Secondly, this matter has been given judicial interpretation. The Council of Governors undertook a misguided route by litigating against the appearance of governors before the Committees of the Senate. They believed that they are big; that they cannot be summoned by this House. The courts, which I thank in my remarks here, came out emphatically clear that the governors must submit themselves to the authority and jurisdiction of the Senate and its Committees.

Having run out of options, two things happened: First, we have seen a number of governors who have voluntarily offered themselves for scrutiny and questioning and appearing before the Committees. For purposes of record, I commend them. Some of them have been voluntarily appearing before the Senate Committee even when the matter was pending in court while others think that the governorship is the most important thing that ever happened in the history of our country. Little do they know that governors are servants of the people in the counties and that there is nothing more dignifying than a governor committed to the rule of law.

Mr. Temporary Speaker, Sir, thirdly, some other governors have resorted to a game of hide and seek. In the morning, they allege they are unwell and in the afternoon,

they claim they have taken their children to school and the following day they claim other manner of things to try and escape from the scrutiny of this House and its Committees.

Time has come for this Senate to stamp its authority. I thank Sen. (Dr.) Khalwale and his Committee for being steadfast, committed and focused and for refusing to be intimidated. Similarly, I thank the Director of Public Prosecutions (DPP) who in my view as a citizen of Kenya, and as the Leader of Government Business in this House, is in the circumstances doing his job well. In my view, he is impartial because we have seen him investigating and prosecuting both members from the Government side and the opposition whenever there have been issues related to his work. It is good to appreciate public officers who are doing their job well.

On this matter, I thank the DPP for acting swiftly and I end my remarks by speaking to the Governor of Kakamega County wherever he is, in or outside this country. I tell him that you can run but you cannot hide. You can give all manner of excuses but ultimately, your fate in terms of the Report of the Auditor-General of the Republic of Kenya and in the County Public Accounts and Investments Committee of the Senate of the Republic of Kenya, lies here. The earlier he digested, accepted and appeared before the Committee, the better.

Mr. Temporary Speaker, Sir, I plead with my colleagues to pass this Motion so that we allow our Clerk and other staff to give their statements to the Criminal Investigation Department so that Governor Wycliffe Oparanya will be an example to others who think they can flout the law and get away with it.

I beg to second.

*(Question proposed)*

*(Question put and agreed to)*

**The Temporary Speaker** (Sen. Sang): Hon. Members, we have one more important matter to discuss.

#### EXTENSION OF THE MANDATE OF THE CIC

**Sen. Wako:** Mr. Temporary Speaker, Sir, I beg to move the following Motion:-

THAT, this House adopts the Report of the Standing Committee on Legal Affairs and Human Rights on the extension of the mandate of the Commission for the Implementation of the Constitution (CIC).

The mandate of the Commission is clearly set out under our Constitution.

**The Temporary Speaker** (Sen. Sang): Sen. Wako, for information's sake, we have 25 minutes only for the entire process.

**Sen. Wako:** Mr. Temporary Speaker, Sir, I will make sure that I summarise.

The mandate of the CIC is to coordinate with the Attorney-General and the Kenya Law Reform Commission (KLRC) in preparing for tabling in Parliament, the legislation required to implement the Constitution. The timelines have been set out in the Fifth Schedule. They are like a watchdog over that legislation. That being the work of the Commission, Section 5 (7) of the Sixth Schedule of the Constitution sets the term of the CIC as five years, and this will come to an end on 27<sup>th</sup> December, 2015. It provides that

the National Assembly can extend its life. However, it also provides that we have to concur that the work has been done by the Commission.

In the exercise of that function, we called members of the CIC to appear before us and give us a report on what they have achieved so far and what remains to be done between now and 27<sup>th</sup> December, 2015. To summarise, they said that 18 pieces of legislation still require to be enacted by the Parliament. Secondly, 80 per cent of the legislations already enacted do not have the regulations implementing those Acts. We are in a position where 18 pieces of legislation still need to be passed and what has already been passed cannot be implemented properly, because the regulations to implement them are not in place. It is because of that reason that the National Assembly gave itself, through a Motion, another one year to enact the 18 legislations and put in place, where necessary, regulations to implement that. I will not say very much because of time.

The simple argument before us is that to the extent that the National Assembly has admitted that the legislation required, under the Fifth Schedule, has not been completed and 18 pieces of legislation are still to be done and the regulations to implement 80 per cent of the legislation are still required to be done, the watchdog – the CIC – should also run that period, so that everything is implemented properly, as envisaged under the Constitution. Therefore, the Committee saw the need that we should extend the life of the Commission for at least another two years.

I beg to move and ask Sen. Omar to second the Motion.

**Sen. Hassan:** Mr. Temporary Speaker, Sir, I thank my Chairman for moving the Motion and I am here to second it. Just to highlight, according to the Sixth Schedule of the Constitution – Commission for Implementation of the Constitution - Section 5(7) says very clearly that:-

“The Commission for the Implementation of the Constitution shall stand dissolved five years after it is established or at the full implementation of this Constitution as determined by Parliament, whichever is sooner, but the National Assembly may, by resolution, extend its life.”

Mr. Temporary Speaker, Sir, it envisages that the CIC shall stand dissolved at the full implementation of the Constitution. Whichever is sooner; which means either we implement it in five years or if they will have finished the implementation after five years, then we have the prerogative to extend it. Therefore, in the circumstances, it is evident that we have not realised the full implementation of the Constitution. This Parliament is duty-bound to ensure that this Commission serves the full life of the implementation of the Constitution for reasons stated by my Chairperson; the outstanding work. This discretion must be exercised with respect to reality.

When the National Assembly, in its own resolution, says that it does not need the extension, it is burying its head in the sand. We need to give them the mandate to fully implement the Constitution.

Quite a number of Bills have not been processed to Parliament and some are outstanding including the one year extension this year which we granted for the implementation of the Constitution. So, it is a contradiction on one side to extend your own term with respect to enacting laws that are provided within the implementation time frame and at the same time disband the Commission that is supposed to deal with the matters of implementation. The Senate must speak to this matter so that that defect is

cured. We have not implemented the Constitution so therefore, we cannot disband the CIC.

I beg to second.

*(Question proposed)*

**Sen. Wangari:** Mr. Temporary Speaker, Sir, from the outset, I oppose this Motion. I do not feel convinced on why we need to extend the term of this Commission. For one, we must, as a country, get to a point where when you are given some work to do, you do it diligently within the time given. I say that because we have had a habit as a country and especially the Commissions and the different taskforces that are established in this country, where you ensure that you do not finish what you are supposed to so that when your term ends, you ask for an extension for obvious reasons.

**Sen. Hassan:** On a point of order, Mr. Temporary Speaker, Sir. It is in public record that the CIC itself has not sought an extension of their term. Is the Senator in order to insinuate that this Commission deliberately decided not to finish its work so that it can ask for an extension?

**Sen. Wangari:** Mr. Temporary Speaker, Sir, I only alluded to the habit of Kenyans. I did not say this specific Commission has done that but I have said that, as a people, we have seen such habits of seeking extensions. I did not say that the CIC is seeking extension through the Committee.

Whatever the case, I think, as a country, we must come to a point where if you are given three years, it is something that you knew that you will need to finish within three years. The balance of the implementation of these laws can be done through the established organs in Government; that is Parliament – we are here for that purpose – and whichever existing organ that needs to do its work for that work to be finished.

In any case, the Chairperson of the Commission has alluded in public that he is not even interested. Whether it is playing reverse so that you feel pity and extend, I do not know why he did that. It is on record and in the public domain. For me, what is underlining is that we must develop a culture of finishing our job within the stipulated time. As a Commission, if you are given a mandate of five years, make sure you execute it within those five years. Let us deal with the balance after your term has come to an end but do not hope for an extension.

I oppose.

**The Temporary Speaker** (Sen. Sang): Members, because of the constraints of time, let us limit our contributions to three minutes.

**Sen. (Prof.) Anyang'-Nyong'o:** Mr. Temporary Speaker, Sir, the Constitution is an extremely important document. We should not be in a hurry to implement it in a shoddy manner. The CIC does not set the agenda; Parliament does. The Committee is there to referee what Parliament does and make sure that it is in line with the Constitution. So, if 18 laws have not been passed, it is not a mistake of the CIC. It is a shortcoming in Parliament. Therefore, what is being asked for is more time for the CIC to exist while Parliament is doing its work and presenting the law so made to the CIC to do its work and responsibility.

Having said that, while supporting the extension of time for the CIC so that it can superintend the passing of these laws by Parliament, I would like the Committee on Legal

Affairs and Human Rights to come up with a schedule that says that these laws will now be done within a specific period, so that we do not extend the life of the CIC and yet we do not give ourselves a deadline. We should do another Fifth Schedule so that the passing of these laws and regulation are specific to a timetable. This is very important.

For example, I know that there is no county in the Republic of Kenya which has set up a village council. Yet, when you read the Constitution as well as the County Governments Act, village councils are actually the foundation of devolution. The way that village councils are to be established is dependent on laws passed by the Senate, the National Assembly and also on regulation on how village councils will be paid by county assemblies. Therefore, this is extremely important work ahead of us and I think that we should be humble enough to understand that we have failed the CIC. The CIC should be there for a specific period and we should also have a schedule of what we will do.

Finally, the Commission is not the Chairman. In fact, the Commission is not the commissioner. The Commission is the Commission. If any member dies, goes away from Kenya or is not willing to serve in the Commission, other people will be accordingly appointed according to law to be in the Commission. So, whether the Chairman has committed himself to serving or not, that is not material. What is material is that we have a Commission for the Implementation of the Constitution composed according to law, which will be there in the time period necessary for Parliament to pass the 18 remaining laws and their regulations superintended by the CIC.

I beg to support.

**Sen. Leshore:** Mr. Temporary Speaker, Sir, I stand to oppose. This is because even when the time came for the Chairperson of the Committee on Legal Affairs and Human Rights to retire, he did so. He is here to tell us. He did not seek for an extension of his time.

The watchdogs are in this House and the National Assembly. Whatever the limits, we are here to oversee that the Constitution will be implemented within the set time limits.

I stand to oppose and I tell the Chairperson of that Committee, please, do not recommend to us something you do not believe in.

**Sen. Sen. (Dr.) Khalwale:** Mr. Temporary Speaker, Sir, I rise to support this Motion on two points. The first one is that it is our tradition in this House for a technical issue like this, we, normally, leave it to the Committee to be the resource. So, the Committee having tabled it, I am sure they have sufficiently been informed to ask us to support them and this, I do.

My second reason is that implementation of this Constitution is not a simple matter. Therefore, there are certain institutional strategies, procedures and tactics that have been tabled by Mr. Charles Nyachae and his colleagues that would benefit the country, if we allowed that institutional memory to carry on for a further two years or so. We should not look at CIC as Mr. Charles Nyachae. I am not saying that Mr. Charles Nyachae has failed. However, if anybody has any preferences other than Mr. Nyachae or any of his colleagues, that should not be the reason why we should kill this Motion.

I support.

**Sen. Omondi:** Mr. Temporary Speaker, Sir, I rise to support the extension of the term of the Commission. I do so because at this time, when we have teething problems on the implementation of the Constitution, those who are providing services to Kenyans do

not understand what they are supposed to do. We all go to the Committee for the Implementation of the Constitution (CIC) for interpretation. As a Senator representing persons with disabilities (PWDs); they are beneficiaries of the Commission. We always consult and have meetings with them as far as the implementation of the Constitution is concerned.

I support the extension to allow them assist Kenyans get quality service delivery and give us a way forward that we can deliver to Kenyans what is contained in the Constitution the way is supposed to be done.

*(An hon. Senator spoke off record)*

For us not to extend the term of this Commission is like killing the Constitution. We will all lose direction simply because nobody will be there to interpret and give us direction on how to implement the Constitution in a way it is supposed to serve Kenyans.

Mr. Temporary Speaker, Sir, with those remarks, I beg to support.

**Sen. Adan:** Mr. Temporary Speaker, Sir, I rise to support this proposal. I am a Member of the Committee on Legal Affairs and Human Rights. We had a lengthy discussion with this Commission. The Commission is not Mr. Nyachae. Let me confirm to this House that he personally confirmed to the Committee that he is not interested in serving this Commission even if it is given an extension. This clearly indicates that the Commission is not Mr. Nyachae.

Secondly, there is a lacuna within the provision of the legislation that is currently governing CIC in terms of handing over the work of the Commission. In that case, it is important for us to see how this Commission's work can be taken over. The Constitution is a legal instrument. It is the Bible for this country. We need to read between the lines and ensure that it is implemented to that last spirit within those provisions.

Mr. Temporary Speaker, Sir, we have looked at the counties. As a Committee on Legal Affairs and Human Rights, we have also looked at the legislations that are coming up at the county level. Most of them are inconsistent with the Constitution. It is important for the CIC to remain so that they can oversee that whatever they are doing is within the provision of the Constitution and we do not have any legislations that are developed by the county governments that are inconsistent with the Constitution.

It is important for us to retain the CIC so that it continues to build the capacity of the county structure that we have within our counties.

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

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): Mr. Temporary Speaker, Sir, on this Motion, I would like to say following:-

First, I believe that the success of the CIC has been mixed in the last five years. I also hold a personal view, which I shared with the Chairman, Mr. Nyachae. At some point, I held the view that some of the advisories and statements that the CIC was making were biased against the Senate. I confronted the Chairman and I told him I hoped that it was not his influence that resulted to this. I also told him at that time that it was not connected with his intention to become a governor.

Having said that, I would like to support three things:-

First, the view that institutions are bigger than the individuals who occupy those positions in them;

Secondly, I am of the view that there is a reason why the Constitution anticipated an extension. In my estimation, the reason the Constitution estimated the extension of the CIC mandate is because it was felt that five years may not be adequate to complete their task.

Thirdly and finally, the tradition of this House and indeed, Parliaments all over the world is to respect deliberations, products and reports of its Committees. These are the experts. They sat down, deliberated, looked at the whole picture and all the circumstances around this issue. For that reason the report of the Standing Committee on Legal Affairs and Human Rights must not only be respected but must also be supported.

Mr. Temporary Speaker, with those remarks, I beg to support.

**Sen. Lesuuda:** Mr. Temporary Speaker, Sir, time is up but I would like to add my voice in support of this Motion and probably say what has not been said. I also agree that institutions are greater than individuals. We might not like the current Chairperson for various reasons but the institution is very important as we continue to implement our Constitution.

In addition, we hope that during the extension period, we will not find ourselves in the same situation after that period. I hope the Committee on Legal Affairs and Human Rights will look into these issues once it is agreed that the term be extended.

Finally, CIC also added its voice then that governors must be accountable and come before this House or any Committee that summons them. The Judiciary also supported this. Governors and all other leaders must respect the law and institutions that are there.

Mr. Temporary Speaker, with those remarks, I beg to support.

**The Temporary Speaker** (Sen. Sang): Mover, you have one minute to reply.

**Sen. Wako:** Mr. Temporary Speaker, Sir, I thank all those who have spoken in support of this Motion led by none other than the Senate Majority Leader. I appreciate. Just like you, I have had my quarrels with Mr. Nyachae; actually, professional ones because some of the opinions which he has stated off the cuff have not been consistent with the Constitution of the land. He has been a bit too loose.

However, a Commission is put there by the framers of this Constitution to be a watchdog on a legislative process. So, they have been forced into this situation because Parliament has not finalised what it is supposed to do under the Fifth Schedule of the Constitution, to enact all that legislation. Parliament admits that 18 legislations are yet to be passed by the National Assembly. Therefore, to that extent, it is necessary that the watchdog continues to be in existence until those 18 legislations are passed.

**The Temporary Speaker** (Sen. Sang): Time is up.

**Sen. Wako:** Mr. Temporary Speaker, I beg to reply.

**The Temporary Speaker** (Sen. Sang): Hon. Senators, I now put the question. This matter does not affect counties and, therefore, it will be a voice vote.

*(Question put and agreed to)*

**ADJOURNMENT**

**The Temporary Speaker** (Sen. Sang): Hon. Senators, it is now 1.00 p.m. It is time to interrupt the proceedings of the Senate. The Senate stands adjourned until today, Thursday, 3<sup>rd</sup> December, 2015, at 2.30 p.m.

The Senate rose at 1.00 p.m.