

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Wednesday, 18th February, 2015

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

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

PRAYERS

ADMINISTRATION OF OATH

*(The Senator-Elect for Homa Bay County entered the Chamber
escorted by the Senate Minority Leader
(Sen. Wetangula) and Sen. Orengo)*

The Senate Minority Leader (Sen. Wetangula): Mr. Speaker, Sir, I beg to introduce the Senator-Elect for Homa Bay County, Moses Otieno Kajwang.

(Applause)

The Speaker (Hon. Ethuro): Welcome, Senator.

The Oath of Allegiance was administered to the following Senator:-
Sen. Moses Otieno Kajwang.

(Sen. Kajwang approached the bar)

The Speaker (Hon. Ethuro): Hon. Senators, let us appreciate our new Member.

(Applause)

(Sen. Hassan stood up in his place)

Sen. Hassan, what is it? Are you on a point of order?

Sen. Hassan: Mr. Speaker, Sir, if you allow me, I take this opportunity to welcome Sen. Moses Kajwang to this Senate and to congratulate him on his victory as the Senator for Homa Bay County to fill in the extraordinary shoes of his late brother, hon. Otieno Kajwang. I have known Sen. Kajwang for many years. If you allow me---

The Speaker (Hon. Ethuro): Order, Sen. Hassan! That should suffice.

Sen. Murkomen.

Sen. Murkomen: Mr. Speaker, Sir, I congratulate the new Member of the House, Sen. Moses Otieno Kajwang. I did not know that he was such a young man.

(Laughter)

Mr. Speaker, Sir, there is a club of younger Senators like myself, Sen. Mutula Kilonzo Jnr., Sen. Hassan, Sen. Sang and Sen. Lesuuda. This is our own club where we consult together. I wish him a successful time as a Senator in this House. In the spirit of bipartisanship, I shall buy him a cup of tea today in the Senators' lounge.

Thank you.

(Laughter)

The Speaker (Hon. Ethuro): Maybe on behalf of the rest of the Senators who would have spoken, I gave them the opportunity to appreciate and acknowledge a new Member by the normal applause. I also want to welcome you to the Senate and congratulate you for your victory and to wish you well.

Where is the applause for the Speaker? I thought I was doing it on your behalf.

(Applause)

Next Order!

COMMUNICATION FROM THE CHAIR

VISITING DELEGATION FROM PARLIAMENT OF ZAMBIA IN THE SPEAKER'S GALLERY

The Speaker (Hon. Ethuro): Hon. Members, I am pleased to acknowledge and to welcome to the Senate this afternoon, a delegation from the Parliament of Zambia which is seated at the Speaker's Gallery. The delegation comprises Members of the Parliamentary Reforms and Modernization Committee of the Parliament of Zambia and they are in Kenya on a study visit to benchmark on the development, implementation and management of strategic plans and the operations of Parliament and the Parliamentary Service Commission (PSC) with a focus on parliamentary reforms.

I wish to request Members of the delegation, that when your name is called out, you stand so that you may be acknowledged by the Senators in their typical Kenyan tradition.

Hon. Senators, the delegation comprises the following Members:-

1. Hon. P.A. Mucheleka, MP - Chairperson and Leader of Delegation
2. Hon. C.K. Banda, AC, MP - Deputy Chairperson of Committees of the Whole House
3. Hon. S. Katuka, MP
4. Hon. K.N. Simbao, MP
5. Hon. I.K. Banda, MP

6. Hon. M. Lubeshi, MP

7. Hon. E.C. Lungu, MP

The delegation is also accompanied by the following Members of staff:-

1. Mr. T. Kamanga - Principal Clerk

2. Mr. M.K. Phiri - Assistant Programme Officer.

Hon. Senators, I take this opportunity, on behalf of the Senate, and on my own behalf to wish the delegation success in their visit to Kenya. Thank you.

(Applause)

STATEMENTS

PREVAILING CHAOS AT THE UNIVERSITY OF ELDORET

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, I rise to request for a Statement from the Chairperson of the Committee on Education regarding the chaos at the University of Eldoret that took place early this morning and which were triggered by an attempt by some local leaders who include a Senator, who attempted to eject Prof. Teresa Akenga, Phd, M.A, R.C, MBS, *et cetera*, out of the office as the Vice Chancellor of that University.

Mr. Speaker, Sir, Prof. Akenga was born and bred in Vihiga County. She is being ejected out of the university because she is being accused of hiring people principally from an ethnic community called Abaluhya. I would like the Chairperson to accept this file which I have extracted from the university showing that at that university, the former Western Province has got an establishment of 18.4 per cent and the former Rift Valley Province has got 56.5 per cent. It also shows that the county where this lady comes from has got 3.4 per cent and Uasin Gishu County where the Senator comes from has got---

The Speaker (Hon. Ethuro): Order! Sen. (Dr.) Khalwale, are you seeking a Statement or providing one?

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, this matter is so sensitive that a Senator went and locked the office one week ago.

Sen. (Prof.) Lonyangapuo: On a point of order, Mr. Speaker, Sir.

Sen. (Dr.) Khalwale: You will have your chance. I respect you inspite of your being a very junior Member of this House.

(Laughter)

The Speaker (Hon. Ethuro): Order, hon. Members! Let me deal with the Member who has the Floor. The rest of you do not have capacity to deal with him.

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, I am handing over this file to the Chairperson of the Committee and so as to move away quickly from the insinuations that the professor is practicing tribalism, it is important that I highlight this statistic with your indulgence.

I had just shown that Uasin Gishu has got---

The Speaker (Hon. Ethuro): My problem is the procedure. You can still highlight things, but formulate them in a manner where you are seeking a Statement. But to put it as if you are already confirming, then you have a problem.

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, could the Chairperson confirm to this House that the former Western Province has got a staff establishment of 18.4 per cent as opposed to the Rift Valley which has got 56.5 per cent and that Elgeyo Marakwet County has got 13.2 per cent, Nandi County 13.7 per cent and Uasin Gishu County 15.4 per cent, whereas Vihiga County where she comes from has got only 3.4 per cent?

Mr. Speaker, Sir, could the Chairperson confirm that at the University of Eldoret, under the senior management, western region---

Sen. (Prof.) Lonyangapuo: On a point of order, Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): What is it, Sen. (Prof.) Lonyangapuo? Sen. (Prof.) Lonyangapuo, you may be a junior Member as he claims, but you are a professor in university matters.

Sen. (Prof.) Lonyangapuo: Mr. Speaker, Sir, I am the professor who was the boss of that university for five years. Is it in order for Sen. (Dr.) Khalwale to come and give us finer details when I thought he was seeking a Statement which we would then interrogate later on? If he is going that direction, he is at liberty to bring us the details of staff ratio in every public university in Kenya.

The Speaker (Hon. Ethuro): Order, Sen. (Prof.) Lonyangapuo! Sen. (Dr.) Khalwale is at liberty to raise the issues he is raising in the manner he has done, because he is formulating questions asking for the Chairperson to confirm or deny. However, he has no obligation to go beyond what he is interested in. If you are interested in some more information, that is up to you.

Proceed, Sen. (Dr.) Khalwale!

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, in summary, could he also confirm that under the senior management of the university, the former Western Province has got 25 per cent and the former Rift Valley has got 75 per cent in senior management?

In the balance of establishment at the university, could the Chairperson confirm that the former Rift Valley Province has got 77.3 per cent, Nyanza 13.6 per cent and Western 4.5 per cent?

Mr. Speaker, Sir, because of the chaos that are going on at the university, I would request that the answer comes in an expedient manner. I have listed all the regions. I was highlighting the ones that will guide the Chairperson to respond quickly.

(Loud consultations)

The Speaker (Hon. Ethuro): Order, hon. Members!

Sen. Khaniri: On a point of order, Mr. Speaker, Sir. I rise to seek for further information. But before I do so, I take this opportunity to thank my good neighbour, Sen. (Dr.) Khalwale, for raising this matter. It came to my knowledge sometime last week—

The Speaker (Hon. Ethuro): Order, Sen. Khaniri! This is not a Motion.

Sen. Khaniri: Mr. Speaker, Sir, as we wait for this Statement, I do not know how long the Chairperson will require to issue it. But could he assure the House that the Professor will not be harassed by the community and the leaders like they have been doing in the last one week, until this matter is concluded?

Sen. (Dr.) Machage: On a point of order, Mr. Speaker, Sir, Sen. (Dr.) Khalwale alleged that a Senator is leading demonstrations. That holds this House in bad repute because none of us is doing so. Would I be in order for the purposes of clearing the names of all the Senators in this House to request Sen. (Dr.) Khalwale to mention who he has in mind?

The Speaker (Hon. Ethuro): You are completely out of order!

Sen. Hassan: Mr. Speaker, Sir, in seeking further addendum to this question, could the Chairperson explain further what the Government is doing to detribalize higher institutions of learning that over years have been tribalized and ethnized by successive regimes?

Sen. Sang: Mr. Speaker, Sir, I want to thank Sen. (Dr.) Khalwale for seeking that Statement. I also I want to seek further information on the same, so that when the Chairperson responds, he responds to both. This challenge is not limited to the University of Eldoret (UoE); we have also had challenges in Masinde Muliro University. Could we expand that Statement also to include Masinde Muliro University in asking the same information in terms of the ethnic composition of the various positions at the lower level and senior management level?

(Loud consultations)

The Speaker (Hon. Ethuro): Order, Members! Now that the foot is on the other shoe, we should not be excited; it is a fair legitimate question.

Sen. Orengo: On a point of order, Mr. Speaker, Sir, for Sen. Sang's comfort in regard to Masinde Murilo University, for a start, Hon. Mwai Kibaki is the Chancellor –

(Laughter)

The Speaker (Hon. Ethuro): Order! Sen. Orengo, you are completely out of order. If you are so knowledgeable in such matters, you could as well have gone to respond to all the previous requests. Unfortunately, you are not the Chairperson of the Committee. Let the Chairperson respond.

Sen. Karaba: Mr. Speaker, Sir, this is unfortunate, coming from universities in Western Kenya and Rift Valley. I undertake to look into the details with my Committee, not only with regard to the University of Eldoret and Masinde Muliro University, but all the universities in the country, so that we establish whether there are irregularities or not in hiring.

(Loud consultations)

The Speaker (Hon. Ethuro): Order! Allow him to finish. By when?

Sen. Karaba: Mr. Speaker, Sir, we will start with University of Eldoret and move to Masinde Murilo University. I do not know whether Masinde Muliro University is included in the Statement. I only have a Statement from the University of Eldoret that is what I have already taken here. The rest will come as circumstances of that. Give me one month because this is a very serious matter.

(Loud Consultations)

The Speaker (Hon. Ethuro): Order, Senators! The Hon. Chairperson of Education, unless you do not live in this great Republic, not to know what is happening in the University of Eldoret. I direct you to concentrate for now on the matters of the University of Eldoret and give us feedback by Tuesday. Of course, you are at liberty to take additional three weeks in order to get to your one month for the rest.

DELAY IN SUBMISSION OF REPORT OF THE COUNTY
ACCOUNTS FOR THE FINANCIAL YEAR 2013/2014

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, I rise to issue a Statement under Standing Order No. 45(2) (a) regarding the delayed submission of the Reports of county accounts for the Financial Year 2013/2014 by the Auditor-General, pursuant to Article 229(4) (a) and (b) of the Constitution.

Article 229(4), of the Constitution of Kenya provides that:-

“The Auditor-General, shall within six month after the end of each financial year, audit and report in respective of that financial year

(a) On the accounts of the national and the county governments”.

(b) The accounts of all funds and authorities of the national and the county governments”.

That Article further, in sub-article 8 states that:-

“Within three months after receiving an audit report, Parliament or the county assembly shall consider that report and take appropriate action”

Mr. Speaker, Sir, I am making this Statement because as Members realize the deadline ended in December 2014. My Committee has made attempts; written and physical visits to the office of the Auditor-General so as to get this particular report to Table in this House and execute, but they have not been forthcoming. We are disturbed that the Constitution of Kenya is being breached, because the Auditor-General has in the past been very efficient.

We are further concerned that the attention of the Auditor- General, who has been very efficient in the past, might be diverted by a resolution that took place in the last Session in the “Lower” House. In the “Lower” House a resolution was passed that the entire Constitution of Kenya be audited and, in fact, a vote of Kshs80 million was provided for. This was then marked to the Auditor-General. Could the Chairperson clarify to the House whether he is aware of this? If he is aware, what can my Committee do so as not to be part of the breach of the Constitution?

Mr. Speaker, Sir, also in the “Lower” House, we have the Public Audit Bill. Our Committee would like assurance from you that before that debate started, the Speaker of the “Lower” House and you went through Article 110(3) to confirm that, indeed, this very important Bill concerning counties will come to this House.

Finally, my Committee has not been able to table the reports of the interim audits on the county governments that the Auditor-General carried out last year, the reasons being obvious; because of the injunctions. We are, therefore, seeking the indulgence of the Chairperson to allow us further time, so as to be able to give a report. But in the

meantime, we will be retreating at the end of next week to do an interim report on the few reports that we had worked on, for purposes of briefing the House.

I thank you, Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): To whom is your request?

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, all these matters can only be resolved by a Statement from your “high” office.

The Speaker (Hon. Ethuro): Order, Sen. Khalwale! You know better than that.

First, you are misleading the House because you said that you wanted to make a Statement to the House, so that at least you can be exonerated for not observing those timelines. Now you have introduced other things directed to me, which I agree are quite legitimate. So, let us see what is mine and what is yours.

From the deliberations of this morning’s *Kamukunji*, we will take up to only 3.10 p.m. to entertain the Statements.

CLOSURE OF LIVESTOCK MARKETS IN WEST POKOT COUNTY

Sen. (Prof.) Lonyangapuo: Mr. Speaker, Sir, I wish to seek a Statement from the Chairperson of the Standing Committee on Agriculture, Livestock and Fisheries. The Statement relates to the closure of livestock markets by the Director of Livestock in West Pokot County on 15th January, 2015 because of an outbreak of foot and mouth disease affecting cows.

In the Statement, I would like the Chairperson to:-

(a) State whether he is aware that the closure has adversely affected parents, because they are now unable to take their children to secondary schools, especially Form One.

(b) State how long the ban will last.

(c) Explain why this ban covers goats, sheep and chicken.

(d) State whether there are plans by the Ministry of Agriculture, Livestock and Fisheries together with the Ministry of Education to intervene and provide school fees for the students who are affected.

The Speaker (Hon. Ethuro): Sen. Obure, do you want to respond to Sen. (Prof.) Lonyangapuo’s request?

Sen. Murungi: Mr. Speaker, Sir, for a moment I thought that my brother had overthrown me as the Chairperson of this Committee.

We will contact the relevant Ministry and give this Statement in two weeks’ time.

POINT OF ORDER

FORMATION OF JOINT COMMITTEE TO VET THE NOMINEE FOR THE POSITION OF INSPECTOR- GENERAL OF THE NATIONAL POLICE SERVICE

The Senate Minority Leader (Sen. Wetangula): Mr. Speaker, Sir, my point of order is directed at the Chair.

This morning two Committees, one from the National Assembly and one from the Senate started a joint sitting to vet the nominee person for Inspector-General. The

Constitution provides that the nominee shall be appointed upon approval by Parliament. My understanding is that each House of Parliament will have an opportunity to vet the nominee. I am reliably informed that the two Committees are sitting as a joint Committee. Looking at the Standing Orders, joint committees are only provided for under Standing Order Nos.216, 217 and 218. In fact, the Standing Orders provide for only three Joint Committees; the Joint Committee on National Cohesion and Equal Opportunity, Joint Committee on Parliamentary Broadcasting and Library and any other Joint Committee as may be established by a resolution of the Houses of Parliament or under any law.

Mr. Speaker, Sir, I am not aware of any resolution passed by this House to establish a Joint Committee to carry out joint vetting of the nominee person for Inspector-General. The procedural difficulties that arise are that joint committees are governed by provisions under the Fourth Schedule on procedure. Reading the Fourth Schedule of the Standing Orders, again, I do not see how it will apply to this Joint Committee. More importantly, the Committee from the National Assembly is about three or four times the size of our Committee. So, if they were even to vote on House lines, our team is grossly outnumbered.

Thirdly, the natural interpretation and expectation from the Standing Orders and, in fact, the Constitution itself, is that the National Assembly should have carried out a sitting to vet the nominee. Likewise, our House would have sat on its own to vet the nominee. Their reports would be presented before the respective Houses and passed on to the counterpart Houses, as the procedure has been on such matters; where after, if they are all approved by either House the nominee is forwarded for appointment. Where this is disagreement, one would then expect mediation, as has been going on in other situations of the same nature.

Mr. Speaker, Sir, my questions to the Chair are:

(1) Where did we, as a House, pass a resolution for the two Committees to sit together?

(2) How are they going to vote given the numerical strength that the National Assembly enjoys in that Committee *vis-à-vis* the Senate Committee?

(3) When the report is done, in which House will it originate? Will it originate from the National Assembly or the Senate?

(4) What will be the result and outcome if a Committee sitting together sends a report, like one can envisage in such a confusion and the report comes to one House, it is adopted and rejected in another House? Who will then mediate? This is my concern.

I believe that it is legitimate and well founded in law, Constitution and facts.

The Speaker (Hon. Ethuro): Sen. Wetangula, are you directing your Statement to the Chair, who is your Speaker?

The Senate Minority Leader] (Sen. Wetangula): Yes, I am.

The Speaker (Hon. Ethuro): Okay. I am asking that to confirm that it was not directed to Sen. Murkomen.

Sen. Murkomen: Mr. Speaker, Sir, I do not pretend to be the Speaker. I actually assist the Speaker once in awhile. I would like to find out under what Standing Order – the Senate Minority Leader always talks about being a stickler of the law and Standing Orders – he raised that point of order to you.

Secondly, if there is no business which is ongoing related to the same matter, I was seated in this House when you read a very long Statement. I am sure that you will make a similar clarification. You made Communication from the Chair and addressed all the issues that are being raised. However, the point that I want to raise is: under what Standing Order does a Member come to raise a point of order on an issue that has been dispensed with on a different day? It is not part of the business at the moment.

The Speaker (Hon. Ethuro): You do not need to respond to that, Sen. Wetangula. I take it that it will be part of my considered opinion on the matter which shall be final. I am equally surprised that some of the issues the Senate Minority Leader is seeking were actually sought by the Senator, that he usually likes calling his “kid brother”, Sen. (Dr.) Khalwale, yesterday. I will give a further Communication because I had done it yesterday.

Appreciating your position in the House, ordinarily, I would have dismissed it. However, since you are convinced that the matter is factual, lawful and constitutional, then I may have an opportunity to address some of those issues, including the lack of tomorrow.

Sen. Orengo: On a point of Order, Mr. Speaker, Sir. If you may allow me?

The Speaker (Hon. Ethuro): The problem with you, Sen. Orengo, is that you are always on your feet even before you have been allowed.

(Laughter)

Please, proceed Sen. Orengo.

Sen. Orengo: Thank you, Mr. Speaker, Sir. I was actually here yesterday when you made a Statement from the Chair. On the basis of the comments made by the Senator for Kakamega, you made several responses to the issue, which the Senate Minority Leader has repeated. However, there is an aspect that he has raised that I think was not raised yesterday. I do not want to revisit this whole point, but I request that the Chair allows Members who may have a position on this matter, but do not wish to raise it on the Floor, to send some memoranda to you or through a discussion with you. It is a very critical matter that if we start the wrong way, for the right reasons, one day, somebody may use the right way for the wrong reasons. As a matter of precedent, in future it may be used to gaggle the Senate.

All the time, when we are carrying out, for example, vetting, the perspective of the Senate is very different. If you look at the Constitution design, what we are looking at is quite different from the National Assembly. It is not just the voting, but the views that are coming out at the interview.

Without belabouring it, if we could be allowed to send a memo to you so that when you are giving your ruling, you would consider those views.

The Speaker (Hon. Ethuro): You are allowed Sen. Orengo. The Chair always appreciates more information, input and industry.

I had said that we should stop this business 3.10 p.m. However, the Deputy Speaker says that he just needs a date for his Statement to be made by the Chairperson of the Committee on Lands and Natural Resources. So, there will be no discussion. It is just when he will respond to it.

STATEMENT**ONGOING PROPERTY DEVELOPMENT AT THE JUNCTION OF
LORESHO RIDGE ROAD AND KAPTAGAT ROAD**

Sen. Kembi-Gitura: Thank you, Mr. Speaker, Sir. Last week, I sought a Statement from the Chairperson of the Committee on Lands and Natural Resources regarding the ongoing development at the junction of Loresho Ridge and Kaptagat Road in Loresho. You directed that the Statement be given latest today. The development is still going on and there is a risk that by the time this matter is sorted out, it could be a matter beyond redemption.

Could the Chairperson of the Committee on Lands and Natural Resources indicate why he has not given a Statement?

Sen. Kivuti: Thank you, Mr. Speaker, Sir. We took this matter very seriously because construction was going on the site and the proponent wanted it stopped. We wrote to the Cabinet Secretary on 12th February 2015. I actually tried to contact her by phone because the matter was urgent, if we were supposed to record by today, but we have neither got a reply nor have I managed to get her on phone. I need your indulgence so that I try again and report back next week.

The Speaker (Hon. Ethuro): When next week?

Sen. Kivuti: Mr. Speaker, Sir, on Tuesday.

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

Next Order.

MOTION**ADOPTION OF FINANCE COMMITTEE REPORT
ON CONSIDERATION OF SECOND GENERATION
CRITERIA FOR RESOURCE ALLOCATION**

THAT, this House adopts the Report of the Standing Committee on Finance, Commerce and Budget on the Consideration of the Second Generation Criteria for Resource Allocation for 2015/16, 2016/17 and 2017/18 laid on the Table of the House on Wednesday, 11th February, 2015.

(Sen. Billow on 12.2.2015)

(Resumption of Debate interrupted on 17.2.2015)

The Speaker (Hon. Ethuro): Sen. (Prof.) Lonyangapuo, you had the Floor and you have a balance of 10 minutes. We really must conclude this matter and the interest is still huge. So, if you can just prioritize the issues that you think are really important, we make progress. Chances are that the rest might be covered by other Members. Remember that at 5.30 p.m., we still have a Motion of Adjournment.

Proceed, Sen. (Prof.) Lonyangapuo.

Sen. (Prof.) Lonyangapuo: Thank you, Mr. Speaker, Sir. I was saying I support the proposed formula that has been presented for the sharing of the funds for the next three years. As we support it, we will need a thorough scrutiny of the formula so that we do it the way other countries have already done it; countries like South Africa, that began their devolution in 1997 and their formulas have been changed almost three times now. So, whatever is proposed for now is not really cast on stone; but it will us to get funds going to the counties so that work can be seen to be done.

Mr. Speaker, Sir, we must look at the issues that need to be addressed, like the parameters that we may need to refine so that they are included in the forthcoming one. For example, it will be better to look at sector-wise parameters so that when we are talking about the health sector, we will be talking about a parameter called the health parameter, which can address the health sector of the people of Kenya across all the counties. It will require then that even conditional funds are sent to every county so that at least a hospital of substance which can treat the people in those counties is fully equipped. This should be at least a Level Five Hospital so that the pressure on referral hospitals, which are quite few, is reduced. When we do that, it means that we will have to factor a percentage already here in the Senate---

(Loud consultations)

Mr. Speaker, Sir, protect me from the loud consultations which are going on.

The Speaker (Hon. Ethuro): Order! Order, Senators! Sen. (Prof.) Lonyangapuo has the Floor and he must be heard.

Sen. (Prof.) Lonyangapuo: Thank you, Mr. Speaker, Sir. We also need to look at the social development parameter, which is meant to look at the poor people. We also have the education parameter, which must be addressed. Initially, some countries like Ethiopia and South Africa began with some of those parameters, but Ethiopia today has about eight parameters. Some of the parameters they consider are population, distance from higher *per capita* income, poverty, revenue to budget ratio and land. So, we will need to refine ours which are about five factors or parameters.

As we do this, it is also essential to mention that the people we have entrusted to spend these funds – the Governor and his executive; and the oversight from the Members of County Assembly (MCAs) – need to prioritize the money that we have sent to the extent that they should not think they alone or they are the people who have the wisdom to imagine that they can do projects without consulting all the other elected leaders. This is why this Senate passed a law that created the County Development Boards (CDBs), where all the Members of the National Assembly, Senators, Women Representative and the MCAs from a county would sit together once in a while to look at the priority areas. Today, you will be surprised that rather than initiating some of the key things that would touch and change the lives of the people in the counties, some very interesting projects are ongoing, which are simply like a one-man-show. It is a tragedy that, that is the type of devolution that we have begun with.

Mr. Speaker, Sir, we need to have some standards. The national Government should have set some standards and given them to the county governments. For example, we send money to counties for recruitment. Today we find that fresh graduates are holding positions of heavy responsibility and are in charge of the senior officers who

were devolved from the national Government to work in the counties. This brings a lot of stress in the work place. This is because a junior officer enters at Job Group “P”. Other officers have stagnated on Job Group “K,” “L” or “M” for many years. We must come up with some standards to address some of these anomalies. What is supposed to be done, for example, in the construction of roads? Are there no standards to be followed by county governments in the construction of roads? If it is murraming a road, it is not just about opening up a road and leaving it there. Murraming the road means that you open the road, gravel it, bring the murram, compact it as well as putting in culverts and so on, and so forth, so that water does not spoil the road. But right now, scattered across our counties, roads are being opened, but which become like new rivers. That is, indeed, a waste of money although we are asking for more money to be devolved in counties. I know we are supporting development of our counties. Personally, I want more funds to go to my county because we lag behind in terms of development. I look at and admire development in the neighbouring counties. It is important to this formulation of funds sharing alongside the sectors and issues that have been devolved.

Mr. Speaker, Sir, I rest my case. I beg to support.

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

Even as Sen. Murungi raises his point of order, I notice that there are many requests, but I do not see the Members present.

Hon. Senators: We are here!

(Loud consultations)

The Speaker (Hon. Ethuro): Order! Hon. Senators, of course, if you are present, I can correlate with what is registered here on my panel. I am referring to others who are not present and there is no way they can say they are here. So, what I was suggesting is that just in case that is a carryover of the last order, you can withdraw the cards and put your requests afresh.

What is it, Sen. Murungi?

Sen. Murungi: Mr. Speaker, Sir, I am rising on a point of order because yesterday I moved an amendment to this Motion and Members spoke to it. After the disposal of the amendment, either way then we can proceed with the debate on the Motion, either as amended or in its original form. I know that the previous speaker has not spoken to the amendment. So, can we have some directions on this?

The Speaker (Hon. Ethuro): He is supposed to be speaking to the amendment. You should have raised that point of order immediately so that I would have dealt with the matter.

Hon. Senators: What was the amendment?

The Speaker (Hon.) Ethuro): So, further contributions should speak to the amendment first. I suggest that since it is an amendment, we can as well just dispose of it.

An Hon. Senator: Dispose of!

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

The Speaker (Hon. Ethuro): We are still consulting; let me give it to Sen. Hargura. But we are discussing the amendment.

Sen. Hargura: Thank you, Mr. Speaker, Sir. If I can remember very well, the amendment was about setting aside one per cent of the allocation for monitoring and evaluation. I think that is a very noble idea. What was raised by other Members is the issue of Article 219 of the Constitution, which says that we cannot reduce any allocation to the county. We will require guidance on this. But as for the formula, I would like to refer you to paragraph (g) on page 9 of the Report. It says:-

“The ideal formula for sharing of revenue among counties should be simple, based on available official data, contain incentives for efficient fiscal management and, more importantly, minimize inequalities among counties and should be in line with the provisions of the Constitution of Kenya.”

Mr. Speaker, Sir, looking at this formula, it is almost similar to what was there last time. However, if you look at the effect it has on the allocation to the counties; if you look at the allocation ratios, the losers are mostly from the marginalized areas. In fact, the top ten losers are from the marginalized areas.

(Applause)

Hon. Senators: Yeah, yeah!

Sen. Hargura: That is not what we are expecting. When you revise something, you revise to improve, not to make others lose. In this case, we are losing. That is why I do not support the formula as it is. I would like to suggest that the formula be changed and the parameter of equal share be given more weight than it is now because we all have basic services which need to be delivered. In any case, we are here to reduce inequalities; that is why we voted for a new Constitution so that we can have funds going to the counties directly.

We know the history of this country. When the colonialists came, they took the better parts of this country and called them “white highlands,” but they also discovered that to the North, there was also an African kingdom; an empire which they needed to protect themselves from - that is the Ethiopian Empire. They put a very big buffer zone between them and called it the Northern Frontier District (NFD) which was not supposed to be developed; it was supposed to be closed. After Independence, unfortunately, the first Kenyan Government also did the same; it institutionalized that marginalization through Sessional Paper No.10 of 1965. That is why those areas are marginalized, not because that is how they are. That is what we need to address.

The characteristics of these marginalized areas are sparse population, vast land mass and poor infrastructure. To address that, in my opinion, the parameter which needs to be given more weight should be the equal share parameter, which should at least give all the counties a good starting point. The land area also needs to be considered because it has just been given eight per cent. We know that with service provision, the cost increases with the area of the land. For example, if you talk of the roads, vast land areas and larger counties like mine, which is the biggest in the country, requires a longer road network than the smaller counties. Because of that, land area is relevant and the way it is treated, eight per cent is not enough; we need to increase the land area and, more importantly, we need to reduce the weight on population because that has been used since Independence to marginalize the areas with the least population.

Mr. Speaker, Sir, we also have new parameters like personal emoluments. This one is also a factor of population. If it is given weight, as it is now, it might even lead to an incentive to employ more people to bloat the wage bill. The way it is used now, it is like we are rewarding employing more people; increasing the wage bill, which is not in line with where the Government is heading. The Government is busy trying to freeze employment to reduce the wage bill, but we are now rewarding the bloating of the wage bill at the county level. If it is necessary, then it should be done, not directly, but maybe as a conditional funding to assist those counties which have a lot of personnel.

The development factor is important and I thought this could also be used to improve on the funding to the marginalized areas. My understanding is that it looks at the number of children in school and the availability or access to health facilities. These will all affect positively the reduction of marginalization.

Mr. Speaker, Sir, with those few remarks, I would like to state clearly that I do not support the formula as it is. I would like to have it changed in line with the recommendations I have made.

Thank you, Mr. Speaker, Sir.

(Applause)

Sen. Boy Juma Boy: Asante sana, Bw. Spika, kwa kunipa nafasi hii niongee machache kuhusu mabadiliko katika Hoja hii. Mambo yote ambayo yameandikwa katika Ripoti hii ni mazuri na matamu sana. Yameandikwa vizuri kwa njia ya kiutaalamu. Ni maneno ambayo yamepangwa kwa ufasaha kabisa. Hata hivyo, kwa mtu kama mimi ambaye ametoka Kaunti ya Kwale, hayanifai jambo lolote.

(Laughter)

Bw. Spika, mgao wa asilimia 45 unaambatanishwa na idadi ya watu.

Hon. Senators: It is wrong!

Sen. Boy Juma Boy: Bw. Spika, wakati nchi yetu ilipopata Uhuru, sisi watu wa Pwani tuliambiwa tupange uzazi au *family planning* ilhali wengine waliendelea kuzaana.

(Laughter)

Sasa kigezo cha idadi ya watu kikipewa asilimia 45. Ndugu zetu wa sehemu fulani za nchi washazaana. Wao wako mamilioni kadha na sisi bado tuko laki tatu. Mgao wa asilimia 45 kulingana na laki tatu, ni ini? Hakuna usawa hapo. Kigezo hiki cha *population* hakifai katika Kaunti ya Kwale. Ndio maana nasema kwamba wale ambao walikaa wakapanga mgao huu, waliwapangia watu maalum na watu wengi katika nchi hii hawatafaidika. Kuna pia mgao mwingine wa asilimia 25 ambao unajulikana kama Equalization Fund. Kwa nini vigezo hivi na ilhali pesa za *Constituency Development Funds* hugawa sawa? Lakini sisi tunaeleza kwamba lazima tukubali mgao huu wa asilimia 45 ambao haumfaidi mtu wa kawaida.

Bw. Spika, chukua mfano wa eneo ninalotoka la Kinango. Hii ni sehemu kame na hakuna chochote. Ukiangalia mgao wake ni asilimia nane. Ndio maana ukaona kwamba *amendments* hizi zinasema asilimia moja tu.

The Speaker (Hon. Ethuro): Sen. Boy Juma Boy, unajua kwamba hauwezi kuchanganya lugha mbili. Ikiwa unaongea Kiswahili, basi ni hivyo lakini ikiwa utasema maneno kama “population”, “amendment” au “family planning” haya maneno si ya Lugha ya Kiswahili.

Sen. Boy Juma Boy: Bw. Spika, unajua kuna Kiswahili cha zamani na cha kisasa. Hicho kinaitwa Kiswahili cha *dot.com*, yaani Kiswahili cha leo. Kiswahili cha leo kina mambo mapya yanayokuja. Sasa huu mchanganyiko ni Kiswahili cha leo ama cha kisasa. Hauwezi ukazuia neno moja au mawili kuingia hapa na pale bora tuelewane. Mtiririko ni ule ule. Mambo ya Kiswahili kuingiliana na kimombo hauwezi ukayatenganisha sana.

Bw. Spika, mimi kama Seneta wa Kwale, ningewaomba Maseneta wenzangu kutoka sehemu ambazo zimekandamizwa tangu enzi ya Nabii Nuhu, waupinge mgao huu. Hii ni kwa sababu sisi kama Maseneta ingekuwa ni jukumu letu kusimamia maslahi ya *county*.

Bw. Spika utaniambia kwamba *county* ni kizungu. Maanake unasema kwamba nisichanganye na ni kitu ambacho lazima kiwepo.

The Speaker (Hon. Ethuro): Order, Senator! These are your own Standing Orders as amended by the Senate on 27th February, 2014. You were a Senator by then. This is what you resolved in Standing Order No.81(2):-

“A Senator who begins a speech in any of the languages provided for under paragraph one shall continue in the same language until the conclusion of the Senator’s speech.”

The choice is yours. If you have difficulties in certain words in Kiswahili then you use the preferred language. However, since you decided to use it, it is also up to you to look for the correct translation.

Sen. Boy Juma Boy: Bw. Spika, hizi ni eneo zetu za ugatuzi. Sisi ni wale wasomi wa kileo. Hiyo inaitwa lugha gongana. Hii haiwezi kukatalika lakini kutoka mwanzo wa hotuba yangu, naongea Kiswahili ambacho unakielewa lakini neno moja au mawili ni kama inaitwa “chombeza time” lazima iingie kidogo.

Bw. Spika, nikiendelea kuipinga Hoja hii, ningependa kuwaomba Maseneta wenzangu wanaotoka katika maeneo tunayotoka sisi tuipinga Hoja hii kwa hali na mali. Ni lazima tuhakikishe kwamba haitapita. Ni heri kujua vile maeneo yetu yatakavyofaidika katika mgao huu. Mgao huu unabagua maeneo mengine. Imepatia maeneo mengine kipao umbele na maeneo mengine hayafaidiki.

Kwa hivyo, naungana na wale wanaendelea kuipinga Hoja hii. Kwa hayo machache, naipinga sana Hoja hii na sitaipigia kura.

Sen. (Prof.) Anyang’-Nyong’o: Mr. Speaker, Sir, I fully support Sen. Boy Juma Boy for what he has said. A colleague who spoke before said that the historical model of development in this country has historically and structurally disfavoured marginalized areas. That is a fact that this nation has tended to contend with, but which over the last ten years or so---

(Loud consultations)

If my fellow Senators can listen to me so that I make my humble contribution, I will be very grateful. I know that Sen. Hassan and Sen. (Dr.) Machage will abide by the request. Protect me, Mr. Speaker, Sir.

It is truly definite that this history has marginalized many counties, but since the NARC Government in 2003, there has been progressive attempt at structural reforms to make sure that there is fairness in public investments nationally. Indeed, that is why the Constitution was structured the way it is and that is why devolution was established so that we have two levels of government; the national and the county and that, it is the responsibility of this Senate to look after the affairs of the counties. Any policy of the Government or any budgeting system that does not respect counties and allocate resources accordingly, must, indeed, be critically examined by this Senate.

Mr. Speaker, Sir, the budget-making system says very well that the budget-making begins with a process of producing a budget-policy statement or what previously was called a budget outlook paper which should precede all other draft Bills, for example, the Division of Revenue Bill, the County Allocation of Revenue Bill and the Medium Term Debt Management Strategy. This sequence has not been followed strictly to the extent that this Senate is presented with documents which do not follow that sequence to make it possible for us, as a Committee for Finance, Commerce and Budget, to bring to this Senate reports that can allow us first to talk about the policy-making itself before we go to the drafting of Bills.

Therefore, the sequence brings a problem and obviously if we had the budget policy paper presented to this House earlier, we can discuss that and progressively proceed to the others, the mistake that Senator---

(Loud consultations)

Mr. Speaker, Sir, can you protect me because I cannot compete against the loud consultations led, unfortunately by my leader and followed by my very aged colleague on this side?

The Speaker (Hon. Ethuro): Order, Senators! Consult, but in low tones so that Sen. (Prof.) Anyang'-Nyong'o can be heard.

Senator, you do not abrogate yourself the responsibility of naming who is who. Just put your request and it shall be granted.

Proceed.

Sen. (Prof.) Anyang-Nyongo: Mr. Speaker, Sir, it could be easier for this Senate to follow this argument and we could be in a position to shape the policy before we come to the Bills themselves.

Secondly, there is one issue that we must not forget. The percentage going to fiscal responsibility is what we call "reward for returns on investment". The Treasury would like to see that the money they give to the counties leads to most fiscal responsibility and, therefore, helps the counties produce more revenue, which would then progressively be a greater percentage of their expenditure from time to time. However, if this Senate votes money to the counties and the returns to our investment is not worth it, in other words, counties do not demonstrate higher levels of responsibility as more money go to them. This percentage that is allocated to fiscal responsibility cannot increase. That means that however much we want to give more money to the counties, we

are not getting returns to our investments. So, that is something that we should look at. If you are making an argument that fiscal responsibility should be increased, obviously, all other factors should be increased and so on. Let us really also look at fiscal responsibility for every county. I am afraid, at the moment, if we look at many counties – especially if we are able to discuss the World Bank report in this House – that item of fiscal responsibility is very disappointing.

Having said all that, having agreed with my colleague, Sen. Boy Juma Boy, and having discussed this matter in the Committee on Finance, Commerce and Budget, I would like to plead with the House that, if we reject these percentages of the division of revenue and the basis of which it is calculated, which we disagree with, it means that all the other Bills that the Committee is going to present before you become nullities. We cannot discuss them because the basis of discussing them is that, somehow, we have agreed to the percentages allocation in the County Allocation of Revenue Bill, 2014 to the various factors in that Bill, which I agree with Sen. Boy Juma Boy, definitely disfavours marginalized counties.

Unfortunately for us because the Treasury did not present these documents; Bills or Papers before us in good time for us to discuss and make amendments, if we do that, then the Treasury will be forced by law to use the Budget of the previous year. This is because that is what will have been approved by Parliament to allocate resources to our counties. You know very well that the Budget of the previous year was something we thoroughly disagreed with. This one is a little bit of an improvement.

Hon. Members, my proposal is that we record our concern for this County Allocation of Revenue Bill, 2015, which will be taken by the Committee on Finance, Commerce and Budget. After we have recorded our concerns, which I agree with completely, that a process of budget making from now on must follow the sequence that the Committee will recommend. It must be a sequence which is logical and give both the Committee on Finance, Budget and Commerce and this House, ample time to discuss the various Papers and Bills. The two will then suggest amendments so that the Treasury can make them. The amendments can then go into these documents, be presented to this House and we shall be satisfied with them.

Mr. Speaker, Sir, I am afraid that I have agreed, and I know, that we are more or less involved in a ritual. However, one of the things we must do is make sure that we record our strongest objection and point the weaknesses as we are having, then present them to the Committee on Finance, Commerce and Budget. We are going to discuss them and sit down with people making this Budget and say that this obviously, as far as the Senate and the Committee is concerned, is unsatisfactory. However, given the time factor and the constitutional provisions for making the Budget, we are afraid we cannot make substantial amendments at the moment and we go on. That is my modest submission.

Subordinate to that, but equally important, that where amendments can be done without affecting the presenting of the Budget on time for Parliament to pass those amendments may be done. However, I know and having discussed this matter in detail in the Committee and that time is of the essence, I am afraid that the Treasury has put us in a kind of a quagmire, but then in the interest of the counties and making sure that the Budget is passed in good time, this must be done.

Mr. Speaker, Sir, purely on a rational basis, that is what I will try to recommend. It may not be emotionally appealing, obviously, but at least we must examine these things

factually and in the context of time. Thereafter, we can make decisions that will be both functional, operational and make it possible for this Senate to make sure that resources go to our counties.

Obviously my colleagues are in a position to disagree. However, I will be very grateful if, indeed, we can make suggestions to the Committee on Finance, Commerce and Budget and decisions in this House, that one will ensure that the future budgeting process and discussions of these Bills and Papers are substantive and give time for amendments to be effected rather than continue engaging ourselves in rituals. When I was the Minister for Planning and National Development people know that prior to that in the previous years, the Budget used to be brought to Parliament in huge books like this. We could comment and criticize and so on, but it changed nothing. The new Constitution has now eliminated that. Having eliminated that, we would like the bureaucrats at the Treasury to catch up with the current requirements of the new Constitution and not follow the rhythm of work that their colleagues followed before the new Constitution became operational, which made it very difficult for parliamentarians to comment on the Budget and make sure that substantive amendments were done, changed issues objectively, substantially and effectively.

That is my submission. I beg to support the passing of the Motion, but with the House making substantive comments that can then be used in the future in the Budget making process.

The Speaker(Hon. Ethuro): Order, Members! Let us dispose of the amendment. Before I put the Question, this is a matter affecting counties. We will, therefore, vote by delegations.

I propose that the Division Bell be rang for five minutes.

(The Division Bell was rung)

DIVISION

ELECTRONIC VOTING

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

The Speaker (Hon. Ethuro): Order, Senators! You may resume your seats.

(The Senators resumed their seats)

Sen. Murungi: On a point of order, Mr. Speaker, Sir, I rise under Standing Order No.54(3) to request you to defer the putting of the question on the amendment to the Motion to Wednesday next week. This is to enable the House to develop some consensus on the Motion because it is quite clear that this is a very important Motion. There is need for Members to consult a little more before we come to vote on it.

The Speaker (Hon. Ethuro): That is Standing Order number?

Sen. Murungi: Standing Order No.54(3).

(The Speaker consulted with the Clerks-at-the-Table)

The Speaker (Hon. Ethuro): Hon. Senators, owing to the interest on the matter and the need to consult, I allow the request by Sen. Murungi. However, instead of Wednesday, because we would like to dispense this matter as soon as possible, we can still do it on Tuesday, next week. That will be the first day of next week. Therefore, the amendment shall be deferred. I have powers to defer amendments. The Standing Order says in part: “the Speaker shall thereupon nominate a time at which the question shall be put.” So, we will put the question on Tuesday, next week.

(Applause)

(Putting of the Question on the amendment to the Motion deferred)

What is it Sen. Billow, the Chairperson, Committee on Finance, Commerce and Budget?

Sen. Billow: Mr. Speaker, Sir, I want to point out to the House that the revenue generation formula has a timeline that is pretty short. There are other Bills like the Division of Revenue Bill and the County Allocation of Revenue Bill that are supposed to be finalised very soon.

Article 217 of the Constitution is very clear, that, within 10 days after we pass this resolution, the National Assembly has up to 60 days. They can amend it even with the two-thirds majority. If the time lapses, the Constitution states very clearly in Article 217(7) that the existing one will be binding until a subsequent resolution is approved. I want to tell Members who think we have time that if we do not fast-track the passage of this formula, we will end up using the existing one as per the Constitution. There is no time and we need to move.

The Speaker (Hon. Ethuro): Order! Chairman, if it is not fast-tracked, do we risk losing the existing one?

Sen. Billow: Mr. Speaker, Sir, we will end up using the current one if we do not pass the new one.

The Speaker (Hon. Ethuro): Hon. Senators, I think that is a very important consideration and that is why we are allowing this timeframe for these consultations to take place. It is also important that we get the views of the majority of the Membership so that whatever decision we make on Tuesday, most Members would have participated, sought clarifications and agreed.

That is the end of that particular Order. I now direct that we go to the other business on the Adjournment of the House until 6.30 p.m.

MOTION OF ADJOURNMENT UNDER STANDING ORDER NO.33

SHUTDOWN OF NTV, QTV, CITIZEN TV AND KTN STATIONS

Sen. Orendo: Mr. Speaker, Sir, I beg to move that the House do now adjourn to discuss a definite matter of urgent national importance and that is the shutting down of *NTV*, *QTV*, *Citizen* and *KTN* television stations.

It is now common knowledge that the four main television stations have been shut down. Here, I am not worried about talking about who did it and for what reasons but I am only worried about the kind of society we are trying to create. The society that we want to create is based on the current Constitution which requires that all State organs and all of us, in applying any law, we must be aware and take into consideration the Constitution of Kenya as established.

Those who over the years saw what Kenya was many years ago know that it was more or less a closed society where access to information was very difficult and Kenyans had to resort to informal media in order to get information or to express themselves. They did this with great risk to life. Those days, in order to mobilize Kenyans, it is known that many people who were in the movement for change resorted to using pamphlets which would be distributed at night. I remember when we were at the university you would find some of these pamphlets under the door in the morning.

Mr. Speaker, Sir, the new constitutional dispensation has made this kind of life completely out of tune with the modern Kenya that we are trying to build. In this regard, I want to say that every Kenyan and every state organ has a responsibility; whenever you apply the law, you must always remember that Kenya consists of persons who are free and who enjoy certain rights. In the Constitution, the definition of persons includes companies, incorporated or unincorporated bodies and associations. Therefore, to the extent that we enjoy constitutional rights, even corporations and State organs enjoy certain rights and not just privileges.

The Government has powers to do many things under the law. Even this Senate has powers to apply the law or to make decisions so long as they are in accordance with the Constitution. Article 19 of the Constitution says that the Bill of Rights is an integral part of Kenya's democratic State and it is a framework of social, economic and cultural policies. When making a decision or implementing a decision, any State organ must always be aware that the Bill of Rights is the fundamental law of the land. We have had experiences in the past including when the *KTN* headquarters were invaded some years ago. There may have been a justification to do it but was it done in accordance with the law? Was it done with dignity and on the basis of the rights accorded to every citizen under the Constitution?

Mr. Speaker, Sir, I have brought this matter because some of these television stations have become part of the Kenyan cultural heritage. I can never imagine that you can have the United States of America (USA) without some of the television stations like *CBS*, *ABC* and *CNN*. This is part of America's culture. In Kenya, we are also developing a culture in which we speak through various media including electronic and print media. Some of these stations and particularly the print media have found opportunity to go even beyond Kenya's borders to try and do the same things they have done in Kenya. Therefore, when you find a situation where the State uses brute force to try and dismantle equipment, and in this case, equipment belonging to the four television stations, this cannot be in accordance with the Constitution or in accordance with the Kenya that we want to build.

I have been told and I have it as a matter of fact that these television stations are not against digital migration at all but they are all asking for, part of which has already been granted by the Supreme Court, is to be given broadcast signal distribution licences. This was given because it was initially taken away but upon intervention by the Supreme Court, it was granted. They should continue to have frequencies in each of the 56 digital sites to be able to broadcast digitally countrywide and not to broadcast through an analogue process and also to have time to install the infrastructure. The background of this - this is what I find critical and amazing - is that Kenyan companies are now finding it difficult to do business in Kenya. If you look at the Budget Policy Statement - I am not anticipating debate - one of the pillars is to create an enabling business environment for people who are operating businesses in Kenya.

Mr. Speaker, Sir, you remember many years ago what happened to the Royal Media Services, during the KANU regime, when their premises were invaded and equipment taken away and they took a long time to re-establish themselves. You can also remember what happened to *KTN*. This is not the way to run a government.

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

[The Deputy Speaker (Sen. Kembi-Gitura) took the Chair]

If you look at this in the background of what has been happening with regard to legislation affecting the Bill of Rights, the Media Bill that was passed by the National Assembly without the consideration of this House. This pattern is evident that the democratic space is being narrowed and limited contrary to Article 34 of the Constitution. There is no Article in the Kenyan Constitution that is formulated like Article 34 which spells out various rights and freedoms. If you look at Article 34(2) (b), it speaks of these rights in the same language like the American Constitution. It states:-

“The State shall not-

(a) exercise control over or interfere with any person engaged in broadcasting, the production or circulation of any publication or the dissemination of information by any medium”.

If you look at Article 34(3) (a), it states that:-

“Broadcasting and other electronic media have freedom of establishment, subject only to licensing procedures that –

(a) are necessary to regulate the airwaves and other forms of signal distribution”.

The four media stations were trying to ensure that their content would not be edited or their competitive edge will not be taken away by that content being broadcast in a platform that is controlled by a competitor. For example, when you are watching a football match which is being relayed from the Barclays Premier League, depending on what type of arrangement you have, you may have a delay of two or three minutes on your screen. It will show that the programme is coming out live but it will be delayed by two or three minutes. So, if you have a competitor who owns the platforms, you will not have your content and timing of your programmes relayed at a time when you want them to be done. It will always be suspect.

Mr. Deputy Speaker, Sir, I would urge the Government to enter into discussions, give time to these media houses to import their infrastructure and put their systems in

place so that they can also abide by what is good for us using the digital platform in accordance with the international agreement. International agreements are important but they are subject to the Kenyan Constitution. Unless this Government is saying they have a direct interest in establishing these broadcast houses, then I do not see how they are having difficulties talking to these media houses. It is emerging that probably some people in the establishment have arrangements with some of their companies which are coming into this market to control content and maneuver in the way that they will have a competitive edge. Unless it can prove to the contrary that the extent which the Government is taking an interest in this matter, instead of leaving it to the Communication Authority of Kenya (CAK), is evidence enough that right in the centre of Government there are people with interest in this matter and they do not want these four media houses to operate like they have done over the years and without favouring any side of the political divide or advancing any particular policies or political ideologies.

Mr. Deputy Speaker, Sir, I invite the Members of this House to condemn what the Government has done and urge the Government that it is right and proper for them to sit down with the media houses to find a way forward. This Government has made commitments like the Laptop Project. They have not been able to do it in the manner they wanted despite the promises and Kenyans have not condemned them in a manner that is brutal but by way of criticism.

With those few remarks, I beg to move.

The Deputy Speaker (Sen. Kembi-Gitura): This is a Motion of adjournment and as you are aware, it is a debate without resolution.

Sen. Lesuuda: Mr. Deputy Speaker, Sir, thank you for giving me this opportunity to add my voice to this very important Motion. I know it is a Motion that is important to Kenyans because for the last couple of days, Kenyans have been waiting to watch the channel that they love and that has not been the case. We need to be looking at facts. We need to look at the facts to know that, for example, this is not an issue that is just synonymous to Kenya alone, it is an international issue. It is an issue that we knew as a country that we were going to move to the digital platform. Internationally, the deadline is June, 2015. So, in a couple of months, the analogue signal will be switched off.

In Kenya, we had set a deadline for the year 2012. Of course, all the needed procedures should have been followed. This also speaks to the culture that we have as a people where we wait until the last minute to beat the deadlines. It will be good that all the deadlines that are normally put whether the Millennium Development Goals (MDGs) and every other deadlines that are there, there should be a penalty for it so that we can actually adhere to some of them. It is very important at this point that since it is a matter of national importance, the Communication Authority of Kenya (CAK) and the media houses sit down and come up with a solution to the issue instead of what we are currently hearing, where CAK and the media houses have taken a very hard stance. We are even seeing some of them saying that the media switched themselves off, others are saying that it is the Government that switched them off from the digital platform. It is very important and prudent that the relevant Committees of this House sit with both CAK and media houses to enable them come up with a report which they will present to this House. It is also good for us, as leaders, to be honest with ourselves. In 2012, the then Minister for Information and Communication, Hon. Samuel Poghio and the former Prime Minister are the ones who launched *Star Times* or PANG who have been mandated to carry the

signal. Therefore, as leaders, we should also be honest and look at all sides of the coin and see how we can speak to these issues genuinely so that Kenyans can be able to view the various channels that are there.

Mr. Deputy Speaker, Sir, it is also important to look at the facts. It is not good for us to assume that the Government wants to take us back to the dark past years where we can only watch one TV channel. The truth of the matter as I had said is that this is an international matter, this is something that we are all aware of and the courts also ruled on this matter. I know that you are also asking for more time but as I said, by June, analogue broadcasting will be switched off even if we ask for two more months. We should be asking whether CAK and the media houses can sit down and come up with a possible solution instead of asking for more time. The time was given and then the matter went back to court again and the Supreme Court gave a ruling. I think it is prudent that this matter be resolved as quickly as possible. I hope that the relevant Committees will also look into this matter.

Thank you.

Sen. (Prof.) Anyang'-Nyong'o: Thank you very much, Mr. Deputy Speaker, Sir. I rise to contribute to this Motion by my colleague and friend, Sen. Orengo; a long standing civil rights advocate.

First, I would like to make the following points. I do agree with Sen. Lesuada, who is sometimes confused with Bensouda. Your last recommendation is very useful. Let them sit down and resolve the problem. Let us reason together. But you do not cause national anguish and then tell people to come and reason together, particularly if you are a government. I think governments are not in the business of grandstanding. Governments are in the business of governing and providing leadership both to the big and small and the prosperous and the poor.

Indeed, this dialogue has been going on for a long time, but we know that the deadline for switching off is June. We are penalizing these people before June. Obviously, they know that June is the deadline and they have certain problems to solve. They can continue dialoguing with the Government over this issue. The Government too is not forbidden from dialoguing with the international community or organization which set these deadlines. I know for a fact that China is not going to meet that deadline. China has a population of over one billion people, but it is not just about to switch off its television stations because of an international deadline that they cannot meet.

Mr. Deputy Speaker, Sir, let me add on to what Sen. Orengo has said. Access to information and freedom of information is part and parcel of the national values and principles of governance of this country.

Article 10 (2) (a) of our Constitution says:-

“The national values and principles of governance include—

(a) patriotism, national unity, sharing and devolution of power, the rule of law, democracy and participation of the people.”

If you go to Switzerland, you would see that a plebiscite or referendum is held on almost every important issue. Even cutting a tree on your compound, if you think that the law should be otherwise, the Swiss will hold a referendum on that issue but they never make noise about it. You can go to Geneva and find that they have just finished a referendum on one issue. When you go back two months later, you will find them doing a referendum on another issue. But the difference is that Switzerland is a smaller country

than ours and it has a higher communication network and more civilized human beings. They get involved in dialogue more successfully than our nations where governments like grandstanding.

Participation of the people on an issue like this, which affects the nation as a whole, is very important. I am afraid that we are not listening to the cries of the people. In my own village where people have televisions, they came to my house and asked: "What is happening, Mr. Senator, we cannot watch our televisions?" I said: "Well, the Government has switched off the television stations." They could not understand it and it is a long story that I could not explain to them. If you tell them about the June deadline and so on, they will tell you that they are going to be in darkness up to June. It does not make sense to them. Therefore, there are certain things that you should not do however much the law says so. If you do not consult, the people are unlikely to support you in that venture.

Mr. Deputy Speaker, Sir, let me look at Article 20 (1) of our Constitution which says:-

"The Bill of Rights applies to all law and binds all State organs and all persons."

I believe that the Communication Authority of Kenya is a State organ.

The Deputy Speaker (Sen. Kembi-Gitura): Order! Your time is up.

Sen. (Prof.) Anyang'-Nyong'o: I still had a lot to say.

The Deputy Speaker (Sen. Kembi-Gitura): Under the Motion of Adjournment, you are allocated only five minutes each.

Sen. (Prof.) Anyang'-Nyong'o: Mr. Deputy Speaker, Sir, I apologize, but I thought that it was ten minutes.

The Deputy Speaker (Sen. Kembi-Gitura): I will allow you to finish your point, because it may not have been clear to everybody. Let me clarify that this is a Motion of Adjournment and every Senator has five minute to contribute as stipulated in the Standing Orders.

I will allow you two minutes.

Sen. (Prof.) Anyang'-Nyong'o: Thank you, Mr. Deputy Speaker, Sir, for your magnanimity.

Article 21 (1) says:-

"It is a fundamental duty of the State and every State organ to observe, respect, protect, promote and fulfill the rights and fundamental freedoms in the Bill of Rights."

Sen. Orengo was very clear that the Bill of Rights leaves nobody out. It compels everybody, including State organs to fulfill it. If you make a decision or law contrary to the Bill of Rights, I am sorry that the people of Kenya will say: "Since we have the sovereignty, we do not approve of what you are doing." These are the fundamental truths of our Constitution.

Finally, my sister, Sen. Beth Mugo, knows that we really never made the Millennium Development Goals (MDGs) in the sector of health and this affects a lot of other countries. The MDGs were very demanding. For example, according to the Abuja Treaty, we need to allocate 15 per cent of our Budget to health. We never made that, but the international community did not ostracize us from access to support. Although we are signatories to this agreement, they understand the difficulties that we are going through. Every year, the Government presented its position in international fora and it was understood. These deadlines were never cast in stone. Finally, when the MDGs were

being revised, there was also latitude for change on how to meet them. So, the fact that media houses did not meet the deadline – in fact the deadline is still June – I think it is rather harsh to begin punishing them and the people of Kenya too early. I am speaking on behalf of the people of Kenya. I am not a very ardent television watcher, but, surely, access to and freedom of information is extremely important. We are bound by the Bill of Rights to live by it.

I beg to support.

The Deputy Speaker (Sen. Kembi-Gitura): You have five minutes each from now.

Sen. Mugo: Thank you, Mr. Deputy Speaker, Sir, for the opportunity to also add my voice to this Motion. From the outset, I beg to differ with my brother because we did our best with regard to the MDGs. There is nothing that we could do more and everybody understood that.

Digital migration is not something that we cannot do. It has actually been going on for the last six years even when we were in Government. We even know who launched some of these gadgets here in this country. There was no opposition. We must have agreements and also honour international agreements.

From what we understand, over 30 stations have already gone digital. So, it does not make sense that prominent stations, as we know them, cannot go digital on time if it is reluctance, I do not think that we should encourage different laws and regulations for different companies, people and institutions. We must have law and order in regulating media houses. From what we have followed, it was quite clear that everybody participated from the very beginning and they knew that this was going to happen, including the stations in question. So, there must be another reason that has made them not to be ready to migrate to digital broadcasting. I do not think that it is fair to hold everybody else; that we cannot migrate because somebody thinks that it is not very good climate for them from what we understand.

Kenya has always been at the forefront, but now, we hear that our neighbours, including small countries like Rwanda have migrated. Does it mean that we cannot comply with something that is within reach? We cannot explain unlike the Millennium Development Goals (MDGs), why we cannot migrate. At least, we could explain that with MDGs, we have done the very best and we continue to do the very best. Moreover, it is many countries that did not realise them.

Mr. Deputy Speaker, Sir, this issue has been going on for six years, even during the term of the other Government where we all were, including the Mover of this Motion, the Senate Minority Leader and my colleague who was in the Ministry of Health with me. We know these issues. We cannot all of a sudden turn around and say that the Government is doing this or not doing that. It was all by agreement that we should honour. It is something that is within reach. If we cannot do it now, how is it that we are going to do it by June? In fact, the deadline passed many times already. I believe in 2012, during President Kibaki's Government, the deadline had already been agreed on. We should not be the ones to move goal posts for things that these stations can do if they wish to. It is only that they do not want to do them at this time. The question we should be asking is: "Should everybody do what they want, when they want or are we going to have the same regulations for all media houses?"

Mr. Deputy Speaker, Sir, I would urge the Communication Authority of Kenya (CA) as well as the television stations concerned to sit down and agree on the way forward, but certainly not to move Kenya backwards. We have never been the ones to be left behind. We have always led the way.

I oppose this Motion, but not the idea of people sitting down to negotiate on how best we can move forward but not going back to analogue.

I do not support.

Sen. Murkomen: Mr. Deputy Speaker, Sir, from the outset, I would like to say, for the avoidance of doubt, that I am believer in the freedom of the media. I am also a believer in the freedom of other people to criticize me and the Government and that they have a right to have a channel within which they should transmit their views. Before I came here, I used to teach law. One of the courses I used to teach at the University of Nairobi was Law and Journalism.

I remember very well how I would give assignments to my students to debate whether media as an institution is also influenced by media as a business entity or media as a medium for transcending information, but also as a business entity. The challenge that we are facing in the country now is dealing with the business interests of the media owners *vis-à-vis* providing a platform which is a right for the people of Kenya to continue receiving and also transmit information.

Mr. Deputy Speaker, Sir, if you look at this scenario which we have been put into, you will find that there are serious conflicting positions. On one hand, the media reporters and the journalist's right to livelihood is threatened because their jobs are also under threat. Most of them are now sitting at home, yet they are people who would have been broadcasting news, researching and writing for broadcast. I sympathize with the journalists and other media practitioners. My sympathy here is based on the fact that, that is a career. It is unfortunate that their careers are being interrupted because of a fight between the regulator and the media owners.

The question that I keep asking myself is: Why are we not able, as a nation, to beat any deadline? This is not just a challenge to everybody; I included. In this country, if there is a job advertisement that says: "Submit your Curriculum Vitae (CVs) in one month, on a Friday at 5.00 p.m.", everybody will arrive on Friday at 5.00 p.m. Since July 2012, when the former Prime Minister, Rt. Hon. Raila Odinga, launched *Star Times* and announced - I remember because I was a close follower of his politics and his position as a Prime Minister - that *Star Times* is the entity that will move this nation from analogue to digital. What happened between 2012 up to now cannot compare with what the former Prime Minister said at that point in time and beat that deadline.

Mr. Deputy Speaker, Sir, I also see a serious contradiction when politicians, who the other day were the ones pushing, and actually launching the companies that now have the license are now telling us that: "You know this country is not serious". Honestly, the videos and news are there, showing very clearly that the former Prime Minister was the one who did all these things. My call is that the Government of the day should assist in getting the regulator; the CA, to sit together with the media owners and solve this problem for the benefit of Kenyans and the media practitioners who are journalists.

I have no problem, with Kenyans distributing the digital boxes; *KTN*, *Citizen* and *NTV*. Some of them could be or not be Kenyans but they practice in this country. They are doing business in Kenya and have a right to be the ones buying and distributing the

digital boxes. I support them. However, the fact that, that delay has occasioned a situation where we are not able to watch news in the country every evening or morning, as we are used to is very unfortunate. I would prefer a situation where the Cabinet Secretary will sit down with the CA and media owners and solve this problem.

The other thing that I do not understand is why I am being denied to watch news if I have Zuku, DSTV or any other channel, until the time the media owners are able to own these digital boxes. They should be able to continue. I have seen some of the news they are posting online. They should continue in that manner. This is because, as Murkomen, I am a firm believer and defender of the media because it is through it that I have also had an opportunity to propagate my ideas, debate and agree with other people.

The Deputy Speaker (Sen. Kembi-Gitura): Order Sen. Murkomen. Your time is up.

Please proceed, Sen. Wetangula

(Sen. Bule stood up in his place)

Order, Sen. Bule! Do you have a problem? You know that the way to show yourself is to insert your card and to make a request. For the avoidance of doubt, I can assure you that I do not have your request.

Proceed, Sen. Wetangula.

The Senate Minority Leader (Sen. Wetangula): Thank you, Mr. Deputy Speaker, Sir. What is happening in this country today is a clear indication of a country whose direction is not clear; a country where we have lost direction. We have taken leave of some of our senses and we are engaged in talking at each other instead of talking with each other.

Mr. Deputy Speaker, Sir, I see no difficulty whatsoever in the Government stepping down from its pedestal and talking to media houses with dignity and respect in order to get an agreement on this matter. If you remember Kofi Annan and his MDG, we have heard of so many countries saying: "We succeeded; we succeeded;" but there is not a single country that achieved the eight MDGs. In Kenya, we only achieved one---

An hon. Senator: Three!

The Senate Minority Leader (Sen. Wetangula): In Kenya, we only achieved one MDG; former President Kibaki's universal primary education, and no other. People can say that we achieved three or four, but we only achieved one. The United Nations (UN) itself has changed direction. They now call them Sustainable Development Goals (SDGs) and they have now set another period within which to meet the targets. If the difficulty is that what we set is not achievable, it does no harm and it will not leave anybody with egg on the face by changing the time frame. It is little wonder that the intransigence, obstinacy and arrogance we are seeing from the Government is borne out of the fact that two stations are, of course, working and they are now raking in revenue on the basis of advertisements; on the basis of channeling out one-sided information – *KBC* and *K24* – while the rest are closed down.

Hon. Senators: Shame!

The Senate Minority Leader (Sen. Wetangula): We want everybody to be given an opportunity to do what they can do within the confines of the law. There is no law in this country where anybody has cited Matiang'i or anybody else saying that the media

houses have violated these laws. There is only a target and the target is June this year. So, before we reach June this year to meet the target, what is so difficult about sitting down to talk and agree? Why would the Government be in the business of creating monopolies?

Mr. Deputy Speaker, Sir, what the media houses are asking for is not unreasonable. Let us talk and agree how to distribute our news. How do we determine our content? How do we distribute the set top boxes? And so on, and so forth. When you hear the retorts that are coming, it frightens and worries me. I want to see a situation where we do not go back to the old days where everybody was rushing to watch news on *KBC* at 1.00 O'clock to listen to whether they have been appointed or dismissed and we are headed in that direction. We do not want all to be jammed on to *K24* or *KBC* because it is owned by so-and-so, so that we can get the news of the day. We want the people to enjoy diversity.

Mr. Deputy Speaker, Sir, freedom of information is guaranteed by the Constitution. We know – we can say this – that the Communication Authority of Kenya (CAK) is, in fact, a pawn in this game. It is those mandarins at the top within the Jubilee setup who are part of this dirty game. We want the media houses to know that within this country, there are people who stand by them and that this standoff will eventually come to an end. If you are the Government, look at how much revenue you collect from *KTN*, *NTV* and *Citizen* television stations and weigh the options and see whether it is a lesser evil allowing them to go under and close down or to continue operating up to the last day of the deadline as you collect revenue for the running of your Government.

Mr. Deputy Speaker, Sir, this matter---

Sen. Wangari: On a point of order, Mr. Deputy Speaker, Sir. Is it really in order for a Member, especially the Senate Minority Leader, to cast aspersions on leaders of an institution that is constitutional without substantiation at all? He has said that it is the Jubilee and the CAK leadership. We have rules in this House on how things should be done. If I feel that someone has been implicated in something, there is a procedure of doing that. Is he in order?

The Senate Minority Leader (Sen. Wetangula): First, Mr. Deputy Speaker, Sir, I know who prompted her to rise to the point of order; the person should have done so herself.

(Laughter)

Secondly, Mr. Deputy Speaker, Sir, I mentioned the CAK and I said that they are a pawn in the game. I did not cast any aspersions.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Wangari, are you satisfied?

Sen. Wangari: No; not at all, Mr. Deputy Speaker, Sir. We are in this House in our own right. What the Senator is implying is that I do not have a brain myself.

(Applause)

Is he in order and can he say who it is that he is referring to?

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Wetangula, what did you say?

Sen. Wangari: Sen. Beth Mugo is not my mind!

The Senate Minority Leader (Sen. Wetangula): Mr. Deputy Speaker, Sir, I said that I know who prompted her to rise on a point of order. I never said that she has no brains. In fact, I have tremendous respect for this distinguished Senator. She is very articulate; she speaks fantastic Kiswahili; she speaks great English; she has great ideas and you can engage her on any issue. Above all, she used to work for my brother. She is a very decent lady and I have tremendous respect for her.

The Deputy Speaker (Sen. Kembi-Gitura): Order, Senator! Let us deal with issues. Shall we deal with the issues that are before us?

The Senate Minority Leader (Sen. Wetangula): Mr. Deputy Speaker, Sir, what I said is – I will say it again – Sen. Wangari Maathai--- Sorry! Sen. Wangari Martha had no intention of standing on a point of order. I saw her being prompted to stand on a point of order and I stand by this.

Sen. Lesuuda: On a point of order, Mr. Deputy Speaker, Sir. Is it in order for the distinguished Senator to continue insinuating that Sen. Wangari was prompted? In this House, we consult. He should tell us how Sen. Wangari was prompted to speak and by who.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Wetangula is completely out of order.

Proceed, Sen. Wetangula.

The Senate Minority Leader (Sen. Wetangula): Mr. Deputy Speaker, Sir, I have said it here before and I can say it again. We have a saying where I come from, that “a dog that steals, when you raise your stick, it starts crying and running before you even point the stick at it.”

The Deputy Speaker (Sen. Kembi-Gitura): Order, Sen. Wetangula, your time is up.

(Sen. Mugo stood up in her place)

Is it not a bit late now? What is your point of order, Sen. Mugo?

Sen. Mugo: Mr. Deputy Speaker, Sir, is it in order for the Senator – I do not know whether he is distinguished or not – from Bungoma to continue insinuating and even calling someone a dog? I do not know if he is calling me a dog. He is saying that I prompted Sen. Wangari while I did not even say a word or do anything? She can vouch for that. Does he mean that Sen. Wangari has no brains of her own? Can he apologize?

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Beth Mugo, I ruled Sen. Wetangula out of order. You are the ones who are raising the issue after the fact, but I ruled him out of order and I think Sen. Wangari was satisfied at that point. So, I think it is good that we should put that matter to rest for now, unless you want to open up this issue which is not going to be useful or helpful.

You understand that, normally, I prefer a situation where you raise a point of order when the person against whom you are raising a point of order is on his or her feet. I ruled him out of order and, therefore, I regret I will not deal with the situation.

Sen. Elachi!

Sen. Elachi: Thank you, Mr. Deputy Speaker, Sir. I rise today to look at the country and to say, first of all, there is no way the Jubilee Government will ever want to close down any media house. When you look at the history of digital migration, it started

way back in 2003. In 2004 we went to the International Postal Union (IPU), in 2005 we came and agreed. At that time, His Excellency, President Mwai Kibaki established a taskforce. All the media owners were present and have been members of this taskforce and, to date, they have been working very closely.

Indeed, we need to thank the Cabinet Secretary (CS) for Information, Communications and Technology, Mr. Matiang'I, because for once, he realized that we needed to be more serious. This is because he knew that as Kenyans, we have the culture of always coming in at the last minute. At the same time, we know as a Government that indeed we must look at the interest of the people and, indeed, the Government is doing that. We need to ask ourselves how we can move on. The media houses should also appreciate what both sides have done. They cannot say that they are fully right and, the Government will agree that we are not fully right, but at the same time as Government, we must come in, appreciate and show that there is interest for the world to move to digital. Today, we want to see someone logging in or trying to look for any channel that they wish to watch. If I am a farmer, I would want to go on the digital channels and see what farmers are saying. If I am a teacher, I would want to go through a stream that shows me exactly how to become a better teacher and how I can join other teachers in what we are thinking. That is what the world is moving to.

Mr. Deputy Speaker, Sir, more importantly, this country has very many young people who have, indeed, already moved on with the digital. They are even wondering what we are talking about. It is important for us to also urge the government that, indeed, we have to look at, first, the journalists and their livelihoods. We have to look at all those media houses and give them the right, like any other, like *Star Times* to bring in digital set top boxes and transmitters. Now it is up to the Director-General of the CAK, Mr. Wangusi, to reduce his rhetorical way of advancing and engaging. I hope he can also tell the Government and also advise the President whether we have the set top boxes. Indeed Kenyans are ready for it, but do we have the set top boxes? How are they going to purchase them? Those are the critical issues that we need to look at as a country. In terms of moving to the digital platform, I think we are ready to migrate but in terms of Kenyans accepting it and ensuring that they do not subscribe to any set top box that they would be paying for every month, I think we are yet to be informed as a country.

Thank you.

Sen. G.G. Kariuki: Thank you, Mr. Deputy Speaker, Sir. As I listen to my colleagues when they contribute, I get to more problems than I was before because of few reasons. One, the CAK is a creation of this House and also a creation of the Government and, therefore, it is legitimately where it is. The media which was operating in Kenya even before this confusion came is also equally legitimate and has the authority to disseminate their news without any interruption.

My biggest question here is why we have to wait as a nation until there is confrontation between the two forces. The work of any Government in this world which has been legitimately created by the people and for the people is to bring people together when they get out of their way. But when you look at the Director-General of the CAK when he is talking, you wonder where this gentleman has just come from. It is as if he does not come from Kenya.

(Applause)

You can say what you are saying today but tomorrow, someone else takes over from you. So, one needs to be guided by intelligence and understanding and not by serving certain quarters of a certain area. Even if you want to have a sycophant, I believe you need the most intelligent sycophant.

(Laughter)

Not just a fellow who will just make noise and think he has done any job. We have been in this country long enough to understand that a situation like this need not come here because we have the CS and everybody. They can sit down and sort out the matter. Why is it not possible? There could be a business war that we are not aware of. Where you introduce business wars, then you cannot find a good solution or you may not find a solution that can last long.

Therefore, we have been given a job to do by the CAK that does not belong to us. We will stand here and try to condemn the Government, but, in fact you must understand from the word “go” that the Government is not composed of crazy people who do not understand; they even understand better than we are because they have the information, but, here, we pretend we know more than they do.

Mr. Deputy Speaker, Sir, the biggest question here is what they waiting for to sort out this matter. If our people want to stay for six months or even one year to buy the set top boxes, what is the problem? They have been here for many years than the new companies which have brought a lot of confusion.

Mr. Deputy Speaker, Sir, you must understand that if you have been running a monopolized industry, you are always scared of newcomers. In fact, that could also be a big war between our local and external investors. Therefore, we must always understand the situations. Now, quite a number of people are going to lose their jobs. Imagine the amount of money which these media houses are going to lose if we go on like this for another two months? All these money is going into people’s pockets and yet we claim that we want to employ Kenyans. How do you employ when you render 2,000 people unemployed within a very short time? I think we have come from very far; Kenyans are not Kenyans of yesterday. We have Kenyans of tomorrow and the day after and, they understand what is happening. They even know the war. If you listen to their comments--

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The Deputy Speaker (Sen. Kembi-Gitura): Your time is up! Sen. (Dr.) Khalwale!

Sen. (Dr.) Khalwale: Mr. Deputy Speaker, Sir, I thank you for this chance to speak. I stand to condemn the Government of Kenya for the unprecedented switch of the popular *KTN*, *Citizen* and *NTV* television stations. I condemn them because they are the ones who have control of the regulatory authority. You can imagine if the Governor of the Central Bank; the regulator in the monetary sector was to become this arrogant and refuse to talk to private banks and private financial institutions. What crisis would be there?

The Government must take charge and accept that the reason why they find themselves in this embarrassing situation is because they have refused to uphold the Constitution. It is the same Constitution that gives freedom of access to information and

freedom to the media that also prescribes that when Kenya is a signatory to an international law or treaty, it is part of our law. So, if the switch off is supposed to be in June, why is the Government humiliating *KTN*, *Citizen* and *NTV* four months to that time?

Mr. Deputy Speaker, Sir, the issues that have been raised by these popular media stations are genuine. These stations are willing to migrate, however, they want to be given time to organize their houses. How come it is very difficult for the Government to realize that *Star Times*, *GoTV* and *DSTV* have foreign players in terms of ownership? Why would the Government be going out of its way to support foreign entrepreneurs at the expense of local ones? The Communications Authority must swallow its pride, sit on the table and talk to the management of these popular television stations. We do not want the misconception that this is there to continue. When I say misconception, I meant that Kenyans are now confused. We know very well that the things at play are who will access the free to air channels and who will access the Pay Per View channels? For those of us who own *DSTV* and *GoTV*, we know that whenever you fail, they not only switch you off air, from the subscribed channels, but all the channels including the free to air channels. This is what is making Kenyans apprehensive.

I can see somebody deliberately promoting somebody who has already imported the set top boxes or somebody is deliberately happy that now that the other competitors have been switched off, he is now hogging all the advertisements. Some of us read in the social media that *K24* television station is owned by some powerful politician in this country. If this powerful politician might be using his position to frustrate other players in this industry, he should know that just as that office was handed to him, at some time, he will also hand over to somebody else and he will still be in business. Does he want his business to be killed by whoever will take over the office?

Mr. Deputy Speaker, Sir, we want to protect *wanyonge wa nchi hii* by strongly saying that unless it is clear, you go to Mfangano Island, for example, there is a person with a little red television set and you expect that person to be pay Ksh500, Kshs1,000 or Kshs2,000 per month. This is asking for too much. This kind of money is not there amongst the people of Kakamega, Bungoma and some in Murang'a. We must protect these people. The Government must stop looking like they are doing business. They should instead regulate the business environment.

It is true that the Government is strongly persuaded, but when you switch off everybody like that, to me the Government is behaving in a sadistic way. How can you switch off ---

The Deputy Speaker (Sen. Kembi-Gitura): Order! Your time is up. Sen. Wangari!

Sen. Wangari: Thank you, Mr. Deputy Speaker, Sir. I want to thank Sen. Orengo for bringing this Motion of Adjournment because it is an important issue of national importance. I do not want to talk like I am an ICT expert, because I am not an expert in this migration business. I think as representatives of the people, we must weigh in and give direction to our people.

The benefits of digital migration have been in the public domain. First of all we stand to gain better pictures and sound quality which I am looking forward to. We are looking for more channels and a review of local production. I am actually hoping that we will get to a point where we will be able to generate news. For example, if I am doing

something in Nakuru, I can be able to generate my own news and have it broadcast the way I would like to see it.

Mr. Deputy Speaker, Sir, we must also realize that this migration deadline is not a *Jubilee* Government deadline; it is a global deadline. It has not just come to us, but it has been there since 2012. It was there when Kibaki was the President, Kalonzo was the Vice President and Raila the Prime Minister. We cannot act like it is something that was decided today. In fact, it has had its own benefits, because I have realized that we have many other stations that we were not paying attention to. I have realized that there are very interesting vernacular stations. I even realized that the *Kass* F.M. also broadcasts in English. I always thought that it was only in English. It is quite an interesting time, not to say that it should remain like that because that freedom is also protected in Article 34 of the Constitution. However, this chest thumping that is going on is not going to help this country.

When I heard that the Supreme Court directed that on 13th February, 2015 that analogue broadcasting be switched off, I thought that because I was one of the few who could afford a DSTV decoder, I could still be able to access those stations. I still do not understand and maybe the Committee on ICT will explain to us what happened. I was hoping that if it is analogue that has been switched off, I should be able to access those stations digitally because it is being done on-line and also has live streams. I still do not know why I cannot access those media houses on a DSTV or Zuku decoder.

Mr. Deputy Speaker, Sir, I think as leaders, everything we say even outside there, we are judged by it. We cannot act like we are experts on this digital migration when we do not understand anything. I listened to some very troubling declaration done on a political platform by leaders including Senators in this House, saying that because, for example, Wangari has shares in some media house, it is now called Wangari television. You do not even know whether I have shares in another one out of the four that we are talking about. As leaders we must be very careful on what we utter. It is not fair for people who were in Government to go to political platforms and settle political scores out of castigating the same process that was endorsed when they were there.

Mr. Deputy Speaker, Sir, we should tell the people the truth. The CAK has not done its job in terms of sensitizing the public on what exactly this digital migration is. The media house should also play a role in making sure that Kenyans understand what digital migration is all about. If as leaders we are grappling with it and misinforming people; that the Government has switched them off so that they can only watch a Government channel and a Government friendly channel, we are doing a disservice to the leadership positions that we have been given.

We want to have as many of these set top boxes as possible. We want to have competition because the more the merrier.

Sen. (Prof.) Lonyangapuo: Thank you Mr. Deputy Speaker, Sir. I join my colleagues in sympathising with what is happening in Kenya. For the first time, we are totally in the dark and Kenyans are unable to follow the current affairs of the country and the world. It brings in the question as to whether the regulations and the laws we have always put in place are good for this country.

When we speak and say that for the last five or six years this issue has been on, what has ever happened to enforce these laws such that it reaches a point where we are completely in the dark? I do not want to believe that there is a deliberate attempt to

frustrate and remove the people that are working in the media sector. This is because right now the *KTN*, *Citizen*, *NTV* and *QTV* employ a sizeable number of Kenyans. That Cabinet Secretary (CS) responsible in Government should be able to call a meeting and sort out this matter, rather than reaching a point where we have seen drama being displayed before all of us from the Government and media side.

As a person and as a House that has been elected by the people, we want to get a substantive and substantial presentation here may be from the relevant Committee so that I have answers when I go to West Pokot County and people ask me why we are in the dark, why suddenly, we are told we are supposed to go digital, where these gadgets that are supposed to be brought are, who was supposed to bring them and whether there was sabotage. These are some of the things that must come out very clearly because we do not want to look like we are condemning the Government or the media owners. An amicable solution should be found because, like we are saying, universities and other institutions of higher learning are training people in this sector; they have even done the digital bit. However, at the moment, we are unable to enjoy the variety of choices that we have. It brings in question; could there be more than meets the eye? As legislators, we must be told the truth so that we can address it and tell the people as such. As to whether there are other interests, we do not want to know. What we simply want is an amicable solution to this issue so that openness can set in for us to see.

Mr. Deputy Speaker, Sir, we have been hearing that the deadline is June, but deadline for what? June is four months from now. We are also hearing that it should have been there earlier. This issue should be resolved as soon as possible. This is because we have not been given the complete facts on the table. I would ask that the relevant Departmental Committee of the Senate presents this issue here so that we can speak from an informed position rather than just being told the Government or the media is on the wrong.

We have played into a scenario where we think the Kenya Broadcasting Corporation (KBC) is very good. It is very good but do you know it also not a very good employer? The staff that are working there are paid very little amount of money. There are even some new ones I heard there is another one called Stone. I have never known it exists but now they are there. We want to see all these things coming out clearly so that as legislators, who the people depend on, we can give the way forward. We would ask in a simple way that let there be a quick resolution to this matter so that we can enjoy.

Sen. Gwendu: Thank you, Mr. Deputy Speaker, Sir, for giving me a chance to contribute to this Motion of Adjournment by my friend, Sen. Orengo. I stand as a person who is in the Committee on Information Communication and Technology (ICT) and also with a previous background in the media. I am looking at a situation where Kenyans are suffering due to what I call selfishness of media owners and lack of creation of awareness to the public.

In the first place, I remember when we went to the International Telecommunication Union (ITU) Conference in Bangkok the participants were 160 countries. When it got to the time to discuss digital migration, we remained only five countries that had not migrated. Why? It is because we are politicizing it, we are selfish and lack knowledge. We have not taken time to create awareness and tell Kenyans what benefits this migration has for them. Again, we are a country of last minute. If you tell people to go and pay their Kenya Revenue Authority (KRA) dues, you will get them

lining up on the last day. Tell them to get their voters' cards and you get them lining up on the last day. As leaders, what are we doing about it?

First of all, the benefits of this thing will help us as a country. We have countries where we, leaders, have travelled to and they are on 4G Network. This is because there are freed frequencies. There is market for other investors to come in and participate in one thing that we Kenyans are not able to do. Why are we being the last minute people and making Kenyans lose on something that will benefit them? Go to other countries that have migrated and you will find that wireless is more affordable. They are on 4G Network and some are on 5G Network and we are struggling with 3G Network because of this digital migration. In this Senate right now, some of you struggle with the network itself but we fail to understand that we are struggling due to the fact that we have not migrated.

Mr. Deputy Speaker, Sir, when we migrate, other than having clear channels, we will free frequencies that will enable people, a part from the networks, create jobs and other programmes that can be watched. These are things that the Communications Authority of Kenya (CAK), as an organization, should have created awareness to the people and told them this is how digital migration will benefit you. However as leaders, I think we need to take it as our responsibility to make Kenyans aware of the benefits of this thing, so that when people are fighting and the media owners decide to switch off televisions --- I hear other legislators saying that they were switched off by the Government. These media houses decided to switch themselves off to prove a point. Look at who is suffering; Kenyans. We are not able to pass information to them and yet the media owners are looking at it as a business sense. That, when we move to digital signal we will lose viewers who will not have been able to buy the set top boxes. They are looking at it in terms of losing viewers and we know very well that the media makes their money from how many viewers they have at a time. They are looking at it in a way that if we move digitally, it will take Kenyans a long time to get these set top boxes, thus they will be losing business and yet for the first time we were told about this digital migration, we even had banking institutions that were ready to help Kenyans purchase these things. Why are we denying Kenyans something that they will gain from? Why are we giving Kenyans a difficult time in something that we can just explain to them that this is what you will get from this? Other countries have moved, so, what is so unique about Kenyans? Why are we refusing to try something before knowing the benefits and letting everybody else enjoy the benefits?

Thank you.

Sen. (Dr.) Kuti: Thank you, Mr. Deputy Speaker, Sir. I stand to contribute to this Motion of Adjournment. First, I would like to clearly say that this is an international requirement and, therefore, Kenya is not about just the Government and the media owners. This is an international agreement that Kenya is a part of and the whole world is moving in that direction. That, I think, must be very clear.

An Hon. Senator: The ICC!

Sen. (Dr.) Kuti: I just overheard a friend mention the International Criminal Court (ICC) which we are a signatory to. That is why our President had to travel to The Hague, even relinquishing his position, to attend the proceedings in order to uphold what Kenya has agreed to. Therefore, everything that we have agreed to, it is upon us as a country to uphold.

Mr. Deputy Speaker, Sir, the people who are making noise now were serving in the Kibaki Administration. The former Prime Minister, Raila Odinga, the then Minister for Information and Technology, Mr. Poghisio and the former Vice President are the ones who launched this migration process.

The other issue I will put clearly is that the media owners have never said that they will not migrate. This is all about time. They want to be given more time. The media owners have been given a lot of time and, therefore, a time must come when things must be put to a stop so that we move on. The issue of migration has been agreed upon even by the media owners. The only problem is the timing.

We must be fully aware that the Government has created a digital platform to be used by all media houses including the ones that have refused to migrate. The signal that has been switched of is the analogue one. That is what has been switched off. The deadline has been moved and we have come to a point where we must switch off the analogue signal. However, a provision has been made.

We have the Signet digital platform that has already been created by the Government of Kenya. The media owners are refusing to use this channel because it belongs to the State. However, most countries in the world have their digital platforms created by the State. I would like to equate this with the Thika Highway and the *matatu* owners. You will remember the state of Thika Road before it was reconstructed. We now have the Thika Super Highway. The *matatu* owners can decide not to use Thika Super Highway until they construct their own besides the one that was constructed by the Government.

Sen. (Prof.) Anyang'-Nyong'o: On a point of order, Mr. Deputy Speaker, Sir. Is the Member aware that part of the provisions in our Bill of Rights Chapter in the Constitution stipulates that, in exercising freedom of information, especially by the media, nobody should be compelled to use State institutions for that purpose?

Secondly, there are Senators who have constantly hyped on the point that the Prime Minister was responsible for setting up the digital platform. The Coalition Government was responsible and the Government should not forsake that responsibility. Is the Senator aware that what we are questioning is about the digital system itself and the process of compelling media companies to meet unreasonable time limits which are not even compelled by international standards that he has spoken about?

Sen. (Dr.) Kuti: Mr. Deputy Speaker, Sir, the Senator is entitled to his own opinion. However, it is very clear that the person making the Kenyan people to suffer is the media owners who have an option to use an existing digital platform and are, therefore, keeping people in darkness. This is not about switching the signal off. The issue of being switched off must be made very clear. The only switch off has been on the analogue signal which we have to get over. We have to be weaned out of this. Even a child is weaned out of breastfeeding no matter how sweet the milk is. We have to move on. Even a mother, as much as she loves her baby, must say no and hold on to her breasts so that her grown baby does not breastfeed. Therefore, the analogue switch must go. We must move on. The benefits of digital platforms have been explained to us. We will have more channels, clearer television viewing and this will create more job opportunities. All

this has been spelt out. However, Kenyans are being denied this because of selfish business interests.

Sen. Njoroge: Thank you Mr. Deputy Speaker, Sir, for giving me this opportunity to contribute. I would like to thank the Mover of this Motion because he has given us an opportunity to give advice to the three media houses.

The three media houses went overboard and played politics during the time of campaign. It now seems as if they are fighting with the current Government forgetting that the system or the idea of digital is an exercise which cannot be stopped at any one point. As one speaker said, this is one international rule which Kenya is a signatory to.

If the three media houses were not switched off, the customers or Kenyans would not get enough time to prepare themselves come the month of June which is the deadline. They have televisions which are not digital and they had to be prepared to go purchase televisions which would suit our digital systems. This is not about the three media houses or television stations. There are radio stations which are working. The issue here is about Kenyans themselves. The media owners of those three television stations also need to be digital. If they do not prepare themselves at this stage, that means that come June, they will still be using old gadgets in their houses. Therefore, closing those three media houses was a wise idea at this stage. This will help Kenyans to prepare themselves. Kenyans are more important than the three television stations.

Anybody trying to support the three media houses should advise them to go digital so that they help their customers. At the end of the day, they are the beneficiaries. I, therefore, do not see any importance in supporting the three media houses. They are misleading the public by not giving them what they require. The world is going digital and that cannot be stopped.

I rest at that.

The Deputy Speaker (Sen. Kembi-Gitura): Order, hon. Members. This was a Motion without any resolution. There are no further requests. Sen. Bule has left the Chamber.

ADJOURNMENT

The Deputy Speaker (Sen. Kembi-Gitura): Hon. Senators, there being no other Senators interested in contributing to this Motion of Adjournment, the House stands adjourned until tomorrow, Thursday, 19th February, 2015 at 2.30 p.m.

The House rose at 5.42 p.m.