

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Thursday, 19th September, 2013

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

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

PRAYERS

QUORUM CALL AT COMMENCEMENT OF SITTING

The Temporary Speaker (Sen. Murkomen): Hon. Senators, we have a quorum. Let us proceed with today's business.

PAPERS LAID

REPORTS OF THE FINANCE COMMITTEE ON COUNTY ESTIMATES/CASH DISBURSEMENT SCHEDULE

Sen. Billow: Mr. Temporary Speaker, Sir, I beg to lay the following Papers on the Table of the House, today, Thursday, 19th September, 2013:-

Report of the Finance Committee on the Investigations on Irregular Alteration to the Budget Estimates for Turkana County for the Fiscal Year 2013/2014.

Report of the Finance Committee on the Cash Disbursement Schedule for County Governments for the Fiscal Year 2013/2014.

NOTICES OF MOTIONS

Sen. Billow: Mr. Temporary Speaker, Sir, I beg to give notice of the following Motions:-

ADOPTION OF REPORT ON COUNTY GOVERNMENT CASH DISBURSEMENT SCHEDULE FOR FINANCIAL YEAR 2013/2014

THAT, pursuant to the provisions of sections 17(7) of the Public Finance Management Act, the Senate adopts the Report of the Standing

Committee on Finance, Commerce and Economic Affairs on the County
Government Cash Disbursement Schedule for the year 2013/2014

ADOPTION OF REPORT ON IRREGULAR
ALTERATION OF ESTIMATES FOR
TURKANA COUNTY

THAT, the Senate adopts the Report of the Standing Committee on Finance, Commerce and Economic Affairs on the Investigations carried out by the Controller of Budget on the Irregular Alteration of the Budget Estimates for Turkana County for the Fiscal Year 2013/2014.

STATEMENTS

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

The Temporary Speaker (Sen. Murkomen): Order, Sen. G.G. Kariuki. I will give you a chance last for reasons best known to the Chair.

Let us start with Sen. Haji.

Sen. Haji: Mr. Temporary Speaker, Sir, I agreed with Sen. (Prof.) Lesan that I would issue a Statement for a request he made before we proceeded for the recess. Unfortunately, he is not here. Although I have given him a copy of the Statement, I do not know whether I should proceed.

The Temporary Speaker (Sen. Murkomen): Just proceed.

ABDUCTION OF CONSTABLES JOSEPH MARITIM
AND JOSEPH WAMBUGU BY SOMALI MILITIA

Sen. Haji: Mr. Temporary Speaker, Sir. Sen. (Prof.) Lesan requested for a Ministerial Statement from the Minister for Interior and Co-ordination of National Government regarding the abduction of administration police constables Joseph Maritim and Joseph Wambugu from Damajale area in Garissa on 25th May, 2013 by suspected *Al Shabaab* militia.

The hon. Senator wanted to know:-

1. Why the respective family members are not being informed or updated on the whereabouts of their relatives.
2. Why the family members are not receiving the salaries of the abducted officers and yet they are suffering.
3. What the Ministry is doing to try and secure the officers and ensure their safety.

Mr. Temporary Speaker, Sir, I wish to state as follows:-

On 25th May, 2013 at about 5.45 p.m., a group of heavily armed militias, numbering about 50, who are believed to be *Al Shabaab* from Somalia, simultaneously attacked Damajale and Abdi Sugow Administration Police Posts in Liboi of Dadaab Sub-County. A fierce gun fire ensued where two police officers and three civilians were killed

while other officers, APC Fredrick Chirchir Maritim (not Joseph as the questioner had indicated), and APC Joseph Wambugu were abducted and taken to Somalia.

A contingent of officers down from---

(Loud consultations)

Mr. Temporary Speaker, Sir, could hon. Senators consult in low tones? Their consultations are disturbing my concentration.

The Temporary Speaker (Sen. Murkomen): Actually, I know we have just come from a long recess and hon. Senators had missed each other. But do not get the excitement too high, please. The consultations should be in low tones.

Proceed, Sen. Haji.

Sen. Haji: Mr. Temporary Speaker, Sir, a contingent of officers from the Rural Border Patrol Unit, Regular Police, General Service Unit (GSU) and the Kenya Defence Forces (KDF) were subsequently dispatched to pursue the militia where the footprints were traced up to the border between Kenya and Somalia and, therefore, KDF took over the search.

Mr. Temporary Speaker, Sir, following the incident, the respective family members were informed of the development through the respective District Administration Police Commanders (DAPS). Thereafter, on 15th June, 2013, the respective next of kin were informed in writing of the incident and assured that the Government is employing all necessary efforts to make sure that officers are brought back safely.

Mr. Temporary Speaker, Sir, on 29th June, 2013 and 21st June, 2013, senior police officers from the AP Headquarters visited the Nyeri and Bomet homes of the respective two officers. It has been agreed that the immediate dependants should be paid Kshs7,000 monthly out of the salaries of the abducted officers. This was communicated to the Co-operative Bank through a letter dated 30th August, 2013; a copy of which is hereby enclosed. In addition, the two families have been regularly brought up to date on the matter by the AP Department.

Mr. Temporary Speaker, Sir, lastly, I want to take this opportunity to assure Kenyans and in particular the affected family members that the Government is committed to ensure that the officers are released from Somalia.

Thank you, Mr. Temporary Speaker, Sir.

DEMOLITION OF BUILDINGS AND OTHER STRUCTURES ALONG THE SOUTHERN BYPASS

Sen. Moi: Mr. Temporary Speaker, Sir, I would like to give a Ministerial Statement from the Committee on Energy, Roads and Transportation on questions asked by Sen. Mike Sonko Mbuvi as follows:-

(1) Whether the Committee is aware of the directive issued by the Joint Parliamentary Committee of Administration of Justice and National Security, Lands and

Natural Resources, Local Authorities, Public Works and Housing chaired by Hon. Mutava Musyimi in the Tenth Parliament stopping all evictions and demolitions.

Mr. Temporary Speaker, Sir, the Committee is not aware of the directive.

The second question was:-

(2) When will the Government implement the recommendation of the Joint Committees tabled in the Tenth Parliament?

Mr. Temporary Speaker, Sir, the recommendations of the Joint Committee have not been brought to our attention as there is no communication to that effect.

The third question was:-

(3) Whether the Committee is aware that the demolished structures, including churches, schools and residential homes along the Southern Bypass, were far from the road reserve, some as far as two kilometres away?

Mr. Temporary Speaker, Sir, the answer is, all the demolished structures were within the Nairobi Structure Plan No.4/2/28/85/9 of 5th June, 1985. In this structure plan, a railway reserve and a road reserve were set aside for future construction. However, it is important to note that no churches were demolished apart from the structures on Nairobi block 72/3079 and LRNo.209/11630 which were encroaching on the road reserve. Moreover, it is not true that the structures were two kilometres away from the road reserve. The churches, though not demolished, were on the road reserve.

Mr. Temporary Speaker, Sir, the fourth question was:

(4) Why did the Kenya National Highways Authority demolish Talent Academy, a private school in Lang'ata, despite a High Court order issued vide Case No.ELC879 of 2013, restraining the Authority from demolishing it?

At the time of demolition of Talent Academy, there was no such court order. Otherwise, the buildings would not have not been demolished. Talent Academy was encroaching on the land set aside for the road reserve.

Mr. Temporary Speaker, Sir, the other question was:

(5) Who authorized the demolitions and were the required notices given? If so, could the Chairman table copies of the documents?

Mr. Temporary Speaker, Sir, the Government of Kenya represented by officials of the Ministry of Infrastructure and Transport authorized the demolitions. This was pursuant to Gazette Notice No.3632 of 6th June, 2003 by the former Minister for Roads, Public Works and Housing on encroachment of classified road reserves. Further to this notice, a public notice was again issued by the former Minister for Roads, Public Works and Housing on encroachment of classified road reserves and among those roads listed in this notice was the Nairobi Southern Bypass. This notice was in the Kenya Times of 6th August, 2003.

Mr. Temporary Speaker, Sir, the last question was:-

(6) Are there any plans for the Government to compensate the affected landlords, as provided for in Article 40(4) of the Constitution?

Mr. Temporary Speaker, Sir, the affected landlords had constructed their buildings on land set aside for road and railway reserve. In the circumstances, they cannot be compensated as there were clear plans, including the type of land use for the area in

question. Moreover, some of the affected persons have gone to court and, therefore, we should await the court rulings.

The Temporary Speaker (Sen. Murkomen): Sen. Moi, do you have another Statement to issue?

Sen. Moi: Yes, Mr. Temporary Speaker, Sir.

The Temporary Speaker (Sen. Murkomen): Go ahead.

Sen. Moi: Thank you, Mr. Temporary Speaker, Sir. The Statement was requested by Sen. Daniel---

The Temporary Speaker (Sen. Murkomen): Sorry, Sen. Moi. Is the Statement related to the one you have just given or it is a different one?

Sen. Moi: Mr. Temporary Speaker, Sir, it is a different one.

The Temporary Speaker (Sen. Murkomen): Hon. Senators, if there are any follow up comments to be made on the first Statement, I will ask Sen. Moi to take his seat so that we hear such comments.

Sen. (Dr.) Kuti.

Sen. (Dr.) Kuti: Mr. Temporary Speaker, Sir, I know some of the people affected by these demolitions. I am fully aware that some of them had genuinely issued titles given by the Government of Kenya. My worry is, how was it that a Kenyan citizen, who may have worked very hard and put all his savings and retirement benefits towards building a home or a structure, could have been allocated Government land? The Government later came back and demolished the structures. It is important to know how these titles were issued, in the first place, when they knew that this land was a road reserve. This issue is very critical.

Sen. Billow: On a point of order, Mr. Temporary Speaker, Sir.

The Temporary Speaker (Sen. Murkomen): What is your point of order?

Sen. Billow: Mr. Temporary Speaker, Sir, the matter of demolitions of houses in Nairobi is of great concern. However, the one who sought the Statement is not in the House. It is appropriate if this matter is adjourned to a time when he is in the House.

The Senate Minority Leader (Sen. Wetangula): Mr. Temporary Speaker, Sir, could you allow me to seek further clarifications?

The Temporary Speaker (Sen. Murkomen): Yes.

The Senate Minority Leader (Sen. Wetangula): Mr. Temporary Speaker, Sir, I want to seek further clarification from the distinguished Senator---

The Temporary Speaker (Sen. Murkomen): Sorry, we need to dispose of the point of order by Sen. Billow then you will have the Floor.

The Senate Minority Leader (Sen. Wetangula): Mr. Temporary Speaker, Sir, but once the Statement is requested, it is the property of the House. The House can deal with it whether the requester is there or not.

The Temporary Speaker (Sen. Murkomen): But you are not the Speaker.

(Laughter)

Order, Sen. Wetangula! Whereas your point is correct, you can only guide the Chair if he requests you to do so. It is true that hon. Senators should be available if they

seek a Statement. They had properly been informed that this was the day for bringing those Statements to the House. We all live in Nairobi. The Nairobi delegation is composed of more than six Senators. If any follow up questions were required, they have sufficient representation in this House.

On that note, let us proceed.

The Senate Minority Leader (Sen. Wetangula): Mr. Temporary Speaker, Sir, while we appreciate what the distinguished Senator for Baringo County has said, and while we also appreciate that we must continue expanding our infrastructure and that persons culpable in terms of constructions on reserves and future development land have to bear the consequences, one will invariably find that each and every of these constructions in Nairobi are approved by some authority. While the demolitions may be justified that they are on a road reserve---

(Sen. Moi consulted Sen. Billow)

Mr. Temporary Speaker, Sir, the distinguished Senator for Baringo County is not even listening.

While the Senator is right, there is some authority everywhere that approves these constructions. Even those people who construct *kiosks* with cardboards and iron sheets normally get approvals from some authority. When these demolitions are done properly and in line with the law, some culpability must fall on some table somewhere. It should be incumbent upon the Government to surcharge the officers, departments or whichever authority that dupes members of the public by giving them authority which ought not to be given in the first place and thereby leading them down the garden path for them to borrow loans, take their savings and even sell properties to develop other properties and then eventually these properties are demolished. We want to know from the distinguished Senator whether the Government can undertake to go to the root cause of those who authorize, however lawfully, these constructions.

The Temporary Speaker (Sen. Murkomen): Let us have the second last request from Sen. Hassan Omar.

Sen. Hassan: Mr. Temporary Speaker, Sir, I would like to thank the Senator for Baringo County, who is the Chair of that Committee for his answer. I remember during the time that I was at the Kenya National Commission on Human Rights (KNCHR), we had done extensive work on demolitions and evictions. We had adopted the best practices in terms of the UN Guidelines on Evictions. That was prepared as a paper which was partly included in our land policy on the best practices in terms of the UN Guidelines on Evictions that now serve as a guide to how evictions must be carried out. Evictions must be carried out during the day, the weather must be allowing, there must be adequate notice and there must be sufficient compensation. Those are the guidelines that have been set by our Ministry. I am informed that those were enacted into law. I want to know how much of that process was followed or adhered to by the Ministry and, in addition, whether compensation will suffice for those who have been illegally evicted from their abodes.

The Temporary Speaker (Sen. Murkomen): Last on this, Sen. Mugo.

Sen. Mugo: Mr. Temporary Speaker, Sir, I also appreciate the answer given by the hon. Senator for Baringo County concerning the demolitions in Nairobi and other townships. This has been a problem that has been there for a long time. Some of the people who are targeted have used their last penny. This does not only affect the big buildings, but also the *kiosks* and areas where they make their livelihoods. I would like to ask the Senator whether there is no better way of developing the city, roads and other amenities we want---

Sen. Hassan: On a point of order, Mr. Temporary Speaker, Sir.

The Temporary Speaker (Sen. Murkomen): What is it, Sen. Omar Hassan?

(Sen. Khaniri entered the Chamber using the non-designated entry)

Sen. Hassan: Mr. Temporary Speaker, Sir, is it in order for Sen. Khaniri to use an entrance other than the one designated by the Senate?

Did you not see him walk from this side?

The Temporary Speaker (Sen. Murkomen): Order, Sen. Khaniri!

Sen. Mugo: Mr. Temporary Speaker, Sir, Sen. Omar is my friend---

The Temporary Speaker (Sen. Murkomen): Sen. Omar, you are aware that, that is a consultation room. Whereas we are not sure who Sen. Khaniri was consulting with, the rules do not bar any Senator from having consultations with himself or his maker in that room. So, there is no reason why Sen. Khaniri should justify his actions of coming through that door.

Go on, Sen. Mugo.

Sen. Mugo: Mr. Temporary Speaker, Sir, I would like to request the Senator answering the Statement whether the Government can consider and, particularly the Nairobi administration, a better way of handling these issues other than demolishing these places in the middle of the night. In those demolitions, sometimes there are families involved. As a result, this causes disturbances. We know that sometimes children have even died during these kinds of demolitions. In this era, this should not happen. This means somebody somewhere is not doing their job to make sure these buildings never came up in the first place. The person who allowed such a building to be put up should be taken to task and take responsibility for the loss which these people incurred. There has been cry in Nairobi on this issue. I thank Sen. Sonko for asking this question.

The Temporary Speaker (Sen. Murkomen): Sen. Moi, you can now respond.

Sen. Moi: Mr. Temporary Speaker, Sir, I have listened to what my colleagues have said. I empathize and sympathize with this situation. My heart goes out to those whose houses have been demolished and have lost their life savings in order to try to better their lives by putting up these structures. But I have to be honest that the Government cannot compensate for any illegal structures. The only avenue at this stage, which is open to them, is to seek legal regress.

Mr. Temporary Speaker, Sir, on the issue of modalities of *modus operandi* of evictions, they have assured us that those brutal methods used before during evictions will no longer be used.

Thank you, Mr. Temporary Speaker, Sir.

CONSTRUCTION OF SAGANA-KUTUS-
KERUGOYA-KARATINA ROAD

Sen. Moi: Mr. Temporary Speaker, Sir, I stand to respond to a request for a Ministerial Statement by Sen. Daniel Dickson Karaba of Kirinyaga County.

The Senator rose on the Floor of the House and requested for a statement regarding the construction of Sagana-Kutus-Kiruguya-Karatina, Road C74.

The first question is who the contractor was. The contractor is Ms Ross and Company Kenya Limited of P.O Box 1952-10100 Nyeri, Kenya. The second question was when the construction is supposed to commence and to be completed. The answer is that the project commenced on 23rd March, 2012. The time for completion was 24 months and is, therefore, supposed to be completed by 23rd March, 2014. The last question is the amount of money that has been paid by the Government to the contractor to date. The contractor has been paid a total sum of Kshs144,926,880.24 only for works certified.

Sen. Karaba: Mr. Temporary Speaker, Sir, I thank Sen. Gideon Moi for the brief answer to my question. The purpose of knowing the contractor of this road is because we have very many cowboy contractors on our roads. We were not informed who the contractor was. The contractor is never on site. There is no campsite. Therefore, there is nobody who can be consulted in case of any problem arising along that road.

I come from there and I drive almost daily on that road. The road has caused very many deaths to Kirinyaga residents. We are wondering whether there is anyone who is seriously involved in the construction. I am, therefore, asking the Chairman of the Committee whether he is really aware that the road construction has not commenced. Even if construction has commenced, the road is now in a worse state than it was when they started. The potholes have become bigger. There is nothing happening on the tarmac and all the contractor is doing is to pile heaps of sand. In the evening, some other people come around to collect the sand and take it elsewhere. This is a very pathetic situation and I request the Chairman to take this matter seriously.

This is not the only road that is under poor construction in Kenya. We have Kutus-Kirinyaga Road which is not even covered here. The pathetic situation of roads in Kirinyaga needs to be addressed by the entire Committee. I am, therefore, requesting Sen. Moi to be more serious on this issue. He should tell us the action he will take against this contractor who never begins or completes the construction. The construction of the road has stagnated. It has not gone even halfway. Money has been paid and yet there is nothing that has been done with regard to tarmacking of the road. All that is happening is to make excess culverts which are substandard and do not address the problems that we are facing.

Sen. Kagwe: Mr. Temporary Speaker, Sir, indeed, I was about to raise the same issue because of similar roads that are in Nyeri. On further investigation of this problem, I found out that there is more to it than meets the eye. The truth of the matter is that a contractor cannot continue constructing a road unless they are being paid. We can

condemn the contractor, but if we do that, we will be condemning the messenger instead of the sender of the message. What is happening is that some of these roads were approved. The road that Sen. Karaba is talking about is, probably, estimated to cost over Kshs1 billion. A sum of Kshs100 million has already been paid. We expect the construction of the road to be completed. So, even as we condemn the contractors, let us know the full story. My question to Sen. Moi is whether, indeed, these contractors are being paid for the work they have completed.

Sen. Kittony: Mr. Temporary Speaker, Sir, the issue of roads is not only unique to Sen. Karaba. This is a problem that affects us and our cars, especially when we are driving on rough roads. I would like to support the Senator from Nyeri that we should find out whether these contractors are still being paid or not. About two years ago, the third President of Kenya, retired President Kibaki told the people of North Rift that the road would be ready within six months. However, we have not seen anything up to now. I think you will bear me witness, Mr. Temporary Speaker - because you also use that road - that nothing has happened. We have been seeing one caterpillar machine on site which has been there for very long. I do not know how these things are done and whether such kinds of instructions are taken seriously.

Therefore, the Chairman concerned, the Senator from my home in Baringo, Sen. Moi, should investigate and tell us the truth about what is happening because our roads are causing us a lot of pain.

Sen. Moi: Mr. Temporary Speaker, Sir, my brother, Sen. Karaba, has talked about cowboy contractors. He is very lucky that he has some in his county. There are some counties who do not even have any of those cowboy contractors. I have talked with my colleague, Sen. Karaba and I promised him that we, as a Committee, together with the Ministry officials, will visit his county to specifically assess the construction of this road.

Secondly, as Sen. Kagwe of Nyeri has said, there is a problem which we, as Senators, are all aware of.

Sen. Abdirahman: On a point of order, Mr. Temporary Speaker, Sir. You have heard Sen. Moi say that some counties are fortunate to have cowboy contractors because others have none. Honestly, this is where we expect serious business to be deliberated on and to get concrete answers for questions or statements that are sought. Is Sen. Moi in order to say that some counties have cowboy contractors? We are here to do serious business in this House.

Sen. Moi: Mr. Temporary Speaker, Sir, you will notice, through the HANSARD, that I am not the one who triggered that first. So, I think he will be best placed to ask his colleague, Sen. Karaba. However, what I meant by cowboy contractors is exactly what Sen. Karaba meant. This issue is complicated, as we all know.

The Temporary Speaker (Sen. Murkomen): I have to make a ruling as to whether you were in order to refer to “cowboy” contractors. However, before I do that, Sen. Karaba, I would like to jog your brains on that issue. You were the originator of the terminology “cowboy” contractors.

Sen. Karaba: Mr. Temporary Speaker, Sir, this is not a new terminology. It was coined long before the Ninth Parliament. When I was there, we used to use it. During the Tenth Parliament, it was also used to describe the shoddy work that was being done

on our roads. I think these are contractors who are given construction work although they are not seriously involved in road construction. We have internationally recognized road constructions companies like Isaco Road Construction Company and TMC Road Construction Company. These contractors are known. They are internationally recognized. So, when you give some ambit people construction work, we end up being interested in knowing them. I did not know who this is. Going by the name given by Sen. Moi, I think this is a name that many of you may not know it. So, if you do not know it, who knows it?

(Loud consultations)

Sen. Karaba: Mr. Temporary Speaker, Sir, protect me. That is my stand.

The Temporary Speaker (Sen. Murkomen): What Sen. Moi meant by saying that some counties are lucky to have county contractors is something that he does not need to substantiate. It is correct that some counties would even wish to have someone moving some soil from one place to another. The point we should be discussing as a way forward is whether we should be having cowboy contractors in our country at all. I think there is nothing for him to substantiate.

Sen. Moi: Mr. Temporary Speaker, Sir, Sen. Kagwe raised a very serious issue. He wanted to know whether contractors have been paid and why they are not moving. That is correct. There are challenges that are being faced. We, as Senators, are all aware of what happened when money was sent to counties. We have reached a point where out of the Kshs210 billion, a big chunk of Kshs10 billion has already been disbursed as unconditional grants. Part of that money was to be used to pay Kenya Urban Roads Authority (KURA) and Kenya Rural Roads Authority (KeRRA) for contracts that the Government had already committed itself to. This is an issue we are all grappling with as a Committee. We have called the Commission for Revenue Allocation (CRA), Treasury and the Ministry of Roads to appear before our Committee on Thursday, 26th to deal with the issue. We need to unbundle and to pay the necessary contractors so that they can go ahead and deal with these roads which are a lifeline to our people.

CRITERIA FOR DETERMINING MARGINALISED COUNTIES TO BENEFIT FROM EQUALISATION FUND

Sen. Wangari: Mr. Temporary Speaker, Sir, on behalf of the Chairman of the Sessional Committee on Devolved Government, I want to give one Statement that was sought by the distinguished Senator for Kitui, Sen. Musila.

Mr. Temporary Speaker, Sir, as I had indicated yesterday, we were waiting for more information from the Commission on Revenue Allocation (CRA), that we have received. The Senator wanted to know the criteria for determining marginalized counties to benefit from the Equalisation Fund. As you are aware, Article 204 of the Constitution of Kenya established an Equalisation Fund into which shall be paid 0.5 per cent of all revenue collected by the national Government. The purpose of this fund is to bring basic services such as water, road, health facilities and electricity, in the marginalized areas, to

the extent necessary to bring the quality of those services in those areas to the level generally enjoyed by the rest of the nation.

Mr. Temporary Speaker, Sir, Article 216(4) mandates that the CRA determines and publishes and regularly reviews a policy by which to identify the marginalized areas, for the purpose of allocation of the Equalisation Fund. In accordance with this mandate, the Commission published a criteria for the identification of the marginalized counties for the purposes of the Equalisation Fund in February this year. Identification of these marginalized counties was based on a three-pronged approach as follows:-

1. County Development Index (CDI); County level data was used to develop a composite index which focused on the level of development in a county, as measured by selected county level development statistics in health, education, infrastructure and poverty.

2. County survey on marginalization. Insights from the Commission survey which introduced public participation in identification of marginalized counties.

3. Analysis of historical and legislated injustices. This was based on experts' views and was used to tell part of the story behind the county level development statistics.

Mr. Temporary Speaker, Sir, counties were ranked based on the results under each of the three approaches as follows:-

- (i) Counties with CDI below 0.52 being national average.

- (ii) County survey on marginalization. This is where counties above the average frequency of group questionnaires in which they were mentioned as marginalized.

- (iii) Historical injustices where counties having been identified as having suffered historical injustices in pre and post Independence period.

Mr. Temporary Speaker, Sir, the final identification of marginalized counties was also based on the size of the Equalisation Fund and the need to equalise basic service levels in 20 years. The number of counties identified as marginalized was limited to those that had been identified by, at least, any two of the three approaches. That is how the following were arrived at: Turkana, Mandera, Wajir, Marsabit, Samburu, West Pokot, Tana River, Narok, Kwale, Garissa, Kilifi, Taita Taveta, Isiolo and Lamu.

Mr. Temporary Speaker, Sir, you will notice that from the enclosed booklet, which I will also table in this House, that the determination on marginalization has been made to cover the years from July, 2011 to June, 2014. This, therefore, means that the CRA will review once again the counties identified as marginalized and make fresh determinations to cover the years from July 2014 to June, 2017.

Mr. Temporary Speaker, Sir, I wish to table this booklet.

(Sen. Wangari laid the booklet on the Table)

Mr. Temporary Speaker, Sir, I would want to make a response to a second Statement that was sought by Sen. Daisy Kanainza.

The Temporary Speaker (Sen. Murkomen): Let us dispose of the first Statement.

Sen. Musila!

Sen. Musila: Mr. Temporary Speaker, Sir, I want to thank the gracious Senator for the Statement that she has made in relation to the Equalisation Fund.

Mr. Temporary Speaker, Sir, there are many marginalized areas in this Republic. In accordance with the Constitution, the CRA did a good job, but in accordance with the booklet that the hon. Senator has laid on the Table, there are 21 counties or areas that were identified in that booklet as marginalized. Thereafter, the Commission went down and eliminated some. They were 21 and they eliminated seven. Among those eliminated were Kitui County, Baringo County and others. Can we get an undertaking that those counties that had been identified as marginalized and were left out, are going to be included during the next financial year? If we got this assurance, since it is already past, I think that we will be satisfied. But we cannot allow this marginalization, which has gone on for decades to continue, because this fund is supposed to run for another 20 years. May I get this assurance?

Sen. Hassan: Mr. Temporary Speaker, Sir, many of us, including those from Mombasa, despite the fact that it is Kenya's second capital and, probably, the second biggest contributor to the country's economy, have been brought up knowing that we have been marginalized. I did expect that Mombasa would qualify for that.

Mr. Temporary Speaker, Sir, but that notwithstanding, if we follow Article 204(4) of the Constitution, I think it is partly the work of this Senate to debate on the appropriation of the Equalisation Fund. My view to the Committee on Devolved Government would be that maybe we need to subject this formula to review, on the basis that we can expand the criteria for you to become a beneficiary to this fund, so that it can accommodate some of the concerns that the Senator for Kitui has raised. This will ensure that we bring in a broader basket of persons. This is because if you look at the noble extent envisaged for the usage of the Equalisation Fund, it is said that money shall only be used to provide basic services, including water, roads, health facilities and electricity to marginalized areas. These are essential core services to spur development.

Mr. Temporary Speaker, Sir, could the Vice-Chair of the Committee on Devolved Government assure us that, that Committee, to which I am a Member, will commence a process immediately, to expand the criteria used in the appropriation of the Equalisation Fund?

The Temporary Speaker (Sen. Murkomen): Order, Sen. Omar! You have confessed that you are a Member of that Committee. I do not think that there is anything in the Standing Orders that blocks you from going to initiate that process in the Committee itself. But be that as it may, the Vice-Chair will be able to also respond to that.

Sen. Moi: Mr. Temporary Speaker, Sir, you have heard what Sen. Musila said. It is very clear that when they did the research, they came up with 21 counties which were marginalized, amongst them being Baringo and Kitui. In fact, to be honest with you, No.15 was Kitui and No.16 was Baringo, but they did the cut-off at No.14.

Mr. Temporary Speaker, Sir, you come from the North Rift and know that West Pokot has been counted as marginalized, and we agree. They need all the assistance. We, as Baringo County, border West Pokot County. Families of the same clan are five feet on one side of the boundary and five feet on the other side. It is so difficult to explain to the

people at home why one family has the Equalisation Fund and the other one does not have it.

Sen. Billow: On a point of order, Mr. Temporary Speaker, Sir. Is it in order for the distinguished Senator for Baringo to tell this country that his county is marginalized when we know that “Baringo County” was in power in this county for 24 years? Baringo County has many tarmac roads and piped water. Is it in order for him to tell Kenyans that it is the same as West Pokot County or Mandera County?

(Laughter)

Sen. Kagwe: On a point of order, Mr. Temporary Speaker, Sir. Is the Senator who was on a point of order in order to insinuate that Baringo is Moi, the former President, and the former President is Baringo? There is no relationship between the development of Baringo County and who has been President. For example, why would Mandera County be so marginalized, as it were, and yet, the Senator, a famous man in Kenya, comes from the same County?

(Loud consultations)

The Temporary Speaker (Mr. Murkomen): Order! Order, Senators!

Sen. Haji: On a point of order, Mr. Speaker, Sir. I think that this is not a laughing matter. I really confirm that both Baringo and Kitui counties are marginalized areas. The fact that the former President Moi came from Baringo County is not enough to say that he should have taken all the money from this country to Baringo County. We know that people are being accused in Central Province and other places, because of such behaviour. Former President Moi was a forthright person and never misused the resources of this country to bring up Baringo County over other areas. Similarly, Kitui runs from Mwingi up to Ukasi, which is only 40 kilometres from Garissa County. You will be amazed to know that people are using donkeys all the way, looking for water all over. Similarly, Mombasa, although it contributes a lot of money through taxation, is given peanuts when it comes to the Constituencies Development Fund (CDF) and other things, in spite of the fact that they have over two million people to service. Therefore, I think that the truth must be said. Baringo and Kitui counties are marginalized and should be considered next time.

The Temporary Speaker (Mr. Murkomen): Hon. Senators, we have to bring that issue to a close, as far as the point of order is concerned.

Sen. Gideon Moi, as far as I heard, you quoted a report of the CRA that says that Baringo County is ranked No.16 among the marginalized counties. So, whether or not there was a President called Moi from Baringo County, it is a well researched fact that it is part of the counties that are marginalized. Secondly and most important, as Sen. Kagwe has put it, Baringo County was not and has never been in power. There is only someone who was born in Baringo County, who was a President of Kenya.

Proceed, Sen. Moi!

Sen. Moi: Thank you very much, Mr. Temporary Speaker, Sir, and my colleagues who have spoken the truth. *Asanteni sana*.

Mr. Temporary Speaker, Sir, I just wanted a surety from the Vice-Chair that in the next financial year, Baringo and Kitui counties will be included in the Equalisation Fund. That is all.

Sen. Karaba: Thank you very much, Mr. Temporary Speaker, Sir. I think it is important that we are careful in the way we use the word and the terminology “marginalization”. To me, it appears like the word will never cease to be used because it is always used when you want to describe the position that you are in geographically, historically or otherwise. Of late, you realize that we have had many discoveries of minerals. Turkana has the largest reserve of water, if not oil. In Taveta and Kwale counties, we have discoveries of minerals. I think the term “marginalization” should now be equated to the initiative of the residents living in that area so that they can make sure that the opportunity cost which is labour and land is properly utilized. Otherwise, we will be dragged into confusion when people want to assert themselves as being left behind through marginalization.

Sen. Billow: Thank you, Mr. Temporary Speaker, Sir. The objective in the Constitution of the Equalisation Fund is to bring up those counties that have been marginalized before in the successive regimes to the level of the others within 20 years.

Sen. Kagwe: On a point of information, Mr. Temporary Speaker, Sir.

The Temporary Speaker (Sen. Murkomen): Do you want to be informed?

Sen. Billow: No, Mr. Temporary Speaker, Sir; certainly not by my dear friend.

That was the objective, but given that the percentage in the Constitution is fixed at 0.5 per cent which is only 3.4 billion this year. For instance, that amount over the 14 counties amounted to an average of Kshs200 million. Clearly the rationale here by CRA of limiting the number of marginalized counties is so that the amount that can be given should have a meaning. If you are going to distribute it to over 20 or 30 counties, you will have a situation where the figure will be Kshs10 million to Kshs20 million. It is not going to achieve the objective in the Constitution of bringing up all those counties in terms of infrastructure to that level.

I think the solution to this matter is in the amendment to the Constitution so that that figure should not be less than 5 per cent. That is the only way you can give something meaningful to the counties so that they can come up. But otherwise, spreading Kshs3 billion to over 21 counties will mean each getting about Kshs100 million which is not going to address the problem. For example, Kitui has coal, Baringo has geothermal, Mandera is looking for oil, *et cetera*. Let us try to raise the figure to 5 per cent so that infrastructural issues which is the objective---

Sen. Musila: On a point of order, Mr. Temporary Speaker, Sir.

Sen. Billow: Mr. Temporary Speaker, Sir, I am on a point of order. With due respect, I am glad to say that I was the architect of the Marginalization Fund in the Public Finance chapter at Bomas as the Chairman of the Technical Committee. My objective and the objective of that Committee then was to bring up those counties in terms of infrastructure. Really trying to give Kshs200 million or Kshs100 million is not going to

help us. So the objective really is to raise the percentage to 5 per cent. So, let us all strive as Senate to try and raise the figures to 5 per cent of the revenue.

Sen. Musila: On a point of order, Mr. Temporary Speaker, Sir. We have listened to the lecture from the distinguished Senator for Mandera. As I speak, is he in order to try to say that other counties should not get this money simply because his county is a beneficiary of the Fund?

Sen. Billow: Mr. Temporary Speaker, Sir, I responded to this matter. I explained that matter in my position as the Chairman of the standing Committee on Finance, Commerce and Economic Affairs and with the knowledge of the objective behind that Equalisation Fund. The Kshs200 million that Mandera County got this financial year will definitely not build and tarmac those roads and do all those things that are there in the Constitution. So, it is not really going to be a benefit in the sense in which it was originally envisaged.

The Temporary Speaker (Sen. Murkomen): On the point of order raised by Sen. Musila, if I heard him very clearly, I think what Sen. Billow was trying to say is that the more you spread the amount it becomes too thin to achieve any objective. So, logically, his argument is that we increase the allocation. On the other hand, if we heard the Chairman of the Committee initially, he said that it is being staggered so that after every two years, it is going to be reviewed and I hope that review will capture the counties that have been left behind. So, I think you have some point of convergence.

Sen. (Prof.) Lonyangapuo: Mr. Temporary Speaker, Sir, I see that this Equalisation Fund issue is raising a lot of attention, but I do not know whether we have read this paragraph in the Constitution very well. I can read it for everybody. It reads:-

“The National Government shall use the Equalisation Fund only to provide basic services including water”.

You have to count the pipes and their inches and then you come and compare, measure the length of roads that are tarmacked in your county before you talk. You count also the number of health facilities that somebody can walk in and get treated and go home. Count the number of electricity poles, schools and homes that are lit at night using electricity. These are funds meant for marginalized areas to bring the quality of services in those areas to the level generally enjoyed by the rest of the nation as far as possible.

Mr. Temporary Speaker, Sir, my senior colleague of the big county of Kitui should wait for three years so that we can sort out things. Sen. Moi should also wait for three years. When I looked at the Kshs230 million they have given to my county it cannot do anything substantial in my county. I do not know whether it is true, but I am even told that it may end up going through the hands of the Members of the National Assembly to decide how that money should be utilized. We should seek to see whether what we are actually talking about is making sense.

I was in charge of a university. I had 120 students from Kitui and only four students from West Pokot in that same university. So, if we begin to bring all our issues, including those people who are working in the Civil Service here and we count how many are from which county, you will find that we are automatically marginalized. So, all the money should be ours. You are even lucky that you are number 15 and 16. So, let us leave it up to next year.

As I conclude, we did not look at that formula and see how we can improve on it. The Senate should study that formula because we simply inherited it.

Sen. Moi: On a point of order, Mr. Temporary Speaker, Sir. Sen. (Prof.) Lonyangapuo is a great friend of mine. The people I am fighting for to benefit from this Equalisation Fund are his people in my county. I am shocked to hear him say that they should not be beneficiaries to this Fund. We have agreed that in the next review we want an assurance from the Chairman of the Committee that we will also be considered. That is all we are asking for. As it is right now, we stand at number 21.

The Temporary Speaker (Sen. Murkomen): Sen. Moi that was not a point of order. The only issue I want to correct is that, I thought the people of Baringo County are your people and the people for West Pokot County are for Sen. (Prof.) Lonyangapuo and all of them are our people.

Sen. Hargura: Mr. Temporary Speaker, Sir, I would like to seek clarification on how these funds will be availed to the counties. This money comes from the National Government but of late we have seen a tendency of the National Government trying to use the National Assembly to do many things. We know there are two centres of Government. We also know that one arm centre can delegate the other one to do its core functions if it feels that that is the way it can be done properly. There is the tendency of the National Assembly Members coming in and doing things in the name of the National Government. I would like to seek clarification from the Chairman of the Committee on Devolved Government and also urge the Committee to assure us that the money will be given to the county government in order to avoid that confusion on the ground.

Sen. Kagwe: On a point of order, Mr. Temporary Speaker, Sir. Are we in order as the Senate while discussing this matter to refer to the matter as if the Constitution stipulates that the Equalisation Fund is related to counties which as a matter of fact, it is related to areas and not counties? In other words, even in Kieni Constituency of Nyeri, that is a very disadvantaged and marginalized area. Are we in order to be discussing about counties when some areas in certain counties and Sen. Hassan Omar has just talked about Mombasa which has some of the best beaches and beach hotels as a marginalized area? Some parts of Mombasa are marginalized and, therefore, what we are talking about are areas and not counties.

The Temporary Speaker (Sen. Murkomen): I think the Chairman of the Committee on Devolved Government can clarify that issue.

Sen. Wangari: Mr. Temporary Speaker, Sir, I know many people have ventilated on this issue, but on the very first question by Sen. Musila on getting an assurance that next year we will have Kitui County included, which is also tied with the question by Sen. Moi, I want to say that it is not really in our power to give that assurance as a Committee. In my earlier communication, I said that the CRA will be able to sit down and review this formula. It does not mean that the counties that were cut off will be included; they could still not be considered depending on the prevailing circumstances.

The 21 counties were in a former publication of the CRA that was in our domain, but the one I have laid on the table today does not have the 21 counties. It has 14 counties. I also want to assure this House – even the President reiterated it – devolution is a new thing in this country. That is why even as Senate we are still waiting for certain

issues to be clarified by the Supreme Court. Many things are being done for the first time. This year had a lot of hiccups. A Member of the Committee has said that he will be able to raise this matter at the Committee Stage. I hope that we will do better next year because we have seen what has gone wrong.

We have identified the areas that need our input right from the conception. If we want to challenge that formula when that time comes, we will be able to do so when they make their proposal. As the CRA, all they do is to make proposals that are brought to the Senate for ratification. I know we will be able to do better. I cannot assure the Senate that Baringo or Kitui counties will be included in the list. But the CRA will do a review that we will participate in as the Senate in the next financial year.

I think the question by Sen. Karaba on the term “marginalization” was simply an intervention and I was not meant to respond to it. Sen. Kagwe has also talked about it. The Constitution has also touched the marginalization issue and even the CRA has been guided by the Constitution to come up with counties as devolution units and that is why it has been included in this report. So, I do not want to divorce the idea of having areas with counties. I think it is still constitutional and the counties are recognized. That is why we are considering the marginalized counties.

Sen. Kipchumba: On a point of order, Mr. Temporary Speaker, Sir. Just to build on the marginalization issue now that we are very clear that marginalization is about areas, groups and communities. There is also a new group that we are trying to marginalize at this moment and it is being created by the CRA. This is the group of the county assemblies. We are aware that most of the county assemblies today are adjourning indefinitely. Therefore, it is a national issue that is important and very urgent. Is it an agenda to marginalize the already marginalized communities through the county assemblies that are being locked out at the moment? So, we are increasing the number of marginalized people, including the county assemblies.

The Temporary Speaker (Sen. Murkomen): Order! Sen. Kipchumba, you very well know that what you are raising is not related at all to the Equalisation Fund. But as you have just mentioned, that is a very important issue; an issue of national concern which is key to development and shepherding of the county governments. I would suggest that such an issue would require better ventilation by this House, and you know the rules. Any Member in this House can come up with a substantive Motion. Why not you, Sen. Kipchumba, so that we can debate it on Tuesday? This House can pronounce itself on this matter. I know the Speaker is not meant to guide anyone, but you can borrow those ideas from the Speaker. It is possible that such an issue be ventilated effectively with clear mechanisms on how to handle the matter going forward. So, I think such advice suffices.

Sen. Kipchumba: I am much obliged.

Thank you, Mr. Temporary Speaker.

Sen. Moi: On a point of order Mr. Temporary Speaker, Sir. I want to seek clarification.

The Temporary Speaker (Sen. Murkomen): Order, hon. Senators! There are more Statements---

(Sen. Moi stood up in his place)

What is it, Sen. Gideon Moi? Today I am giving Sen. Gideon Moi more time because he is unusually active.

(Laughter)

Sen. Moi: Mr. Temporary Speaker, Sir, I just want to get clarification from you. As you know, what has happened today around the Republic is that the Members of County Assemblies (MCAs) have downed their tools. We, as the Senate, who are the custodians of the county governments, we are extremely perturbed at what has happened. Am I getting it right so that we can make our plans accordingly; that, on Tuesday next week, we will be discussing this matter as a matter of urgency, if it is so moved?

Thank you, Mr. Temporary Speaker, Sir.

The Temporary Speaker (Sen. Murkomen): I think I have already indicated that the Speaker was aware of the situation where one Member wanted to bring an Adjournment Motion. However, he advised that we have done an Adjournment Motion before on a similar situation and we were never able to extract any actionable points on the same issue. So, as you know, if we want to have clear actionable directives from the Motion, it has to be a substantive Motion. As such, if an hon. Member moves a Motion – and most of you seated here today sit in the Rules and Business Committee (RBC) – if so directed by the RBC, then why not? We can have a Member move that Motion, based on our rules of procedure. Given that our responsibility is to protect the counties, that issue can be ventilated on Tuesday.

Sen. Wangari, the second Statement.

MANAGEMENT OF *UWEZO* FUND

Sen. Wangari: Thank you, Mr. Temporary Speaker, Sir. I actually want to give a status report on a Statement that was requested by Sen. Daisy Kanainza regarding the *Uwezo* Fund. I also want to seek the indulgence of the House to give us more time because we have already made a communication to the Ministry of Devolution and Planning. However, they are asking for more time to supply us with the required information.

The Temporary Speaker (Sen. Murkomen): Sen. Kanainza, do you want to say something about the same?

Up to when, Sen. Wangari?

Sen. Wangari: Two weeks, Mr. Temporary Speaker, Sir.

The Temporary Speaker (Sen. Murkomen): Now that Sen. Kanainza is not here, I think she is agreeable to the two weeks. So, it is so granted.

Sen. Beatrice Elachi?

BUSINESS FOR THE WEEK COMMENCING

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor, Senate.*

24TH SEPTEMBER, 2013

Sen. Elachi: Thank you, Mr. Temporary Speaker, Sir. Hon. Senators, pursuant to the provisions of Standing Order No. 43(2), this is to present the Senate Business for the coming week. On Tuesday, 24th September, 2013, the Rules and Business Committee will meet at 12.00 noon to schedule the Business of the Senate for the week commencing Tuesday, 24th September, 2013. The Senate will continue with the Business in today's Order Paper that will not be concluded.

On Wednesday, 25th September, 2013, in the morning sitting, the Senate will continue with the Business not concluded on Tuesday, 24th September, 2013. The Senate will also commence debate on a Motion by Sen. (Prof.) John Lonyangapuo on creation of a fund to provide for a structured compensation system for services offered by elders at the local level.

In the afternoon, the Senate will continue with the Business not concluded on Tuesday and Wednesday morning, including Motions by the following Senators previously deferred; Sen. Catherine Mukite on rising cases of patient mistreatment, negligence and professional malpractice by medical personnel in public and private health institutions in Kenya; Sen. (Dr.) Agnes Zani on formulation and operationalisation of development agenda for county governments and Sen. Amos Wako on setting up of an institute to give the necessary training to personnel of county governments.

The Senate will commence debate on Motions to adopt the report of the Standing Committee on Finance, Commerce and Economic Affairs on the County Government Cash Disbursement Schedule of Fiscal Year 2013/2014 and irregular alteration to the budget estimates of Turkana County for the Fiscal Year 2013/2014. The Senate will, in addition, debate a Motion by Sen. Peter Mositet on the transfer of functions of KeRRA to the county governments.

Mr. Temporary Speaker, on Thursday, 26th September, 2013, the Senate will continue with the Business not concluded on Wednesday afternoon.

Let me also take this opportunity to remind Senators that information on tentative Business of the Senate for the coming week is usually available on the Parliament of Kenya website every Friday.

I hereby lay the Statement on the Table.

(Sen. Elachi laid the document on the Table)

The Temporary Speaker (Sen. Murkomen): Sen. David Musila.

Sen. Musila: Thank you, Mr. Temporary Speaker. I stand here to seek a Ministerial Statement or a Statement from the Chair of the Committee that is responsible for security. I am pleased to see my friend, Sen. Haji here.

Mr. Temporary Speaker, on the 13th of September, 2013, in a location called Malalani of Kitui County---

The Temporary Speaker (Sen. Murkomen): Order! Order, Sen. Musila! The Chair did not approve your Statement. The Chair does not remember any such statement being given to me in my office.

Sen. Musila: Can I respond, Mr. Temporary Speaker?

The Temporary Speaker (Sen. Murkomen): Proceed.

Sen. Musila: Mr. Temporary Speaker, Sir, yesterday, I sought permission from the substantive Speaker and he did agree. But then you know very well that yesterday, we were delayed in a meeting as Commissioners and, so, when I came, he said that I could give it today. In fact, I did approach you on the Chair and informed you of that.

The Temporary Speaker (Sen. Murkomen): You need to approach me substantially because you just walked here and said there was some statement yesterday; I am not aware of that statement. So, I am giving you a few minutes to approach me.

In the meantime, let us have Sen. Karaba, Sen. (Dr.) Zani and then we will conclude with Sen. G.G. Kariuki.

DELAYED REPLY TO PETITION ON PLIGHT
OF MWEA RICE FARMERS

Sen. Karaba: Thank you very much, Mr. Temporary Speaker, Sir, towards the end of the last session on the 31st of July, 2013, I tabled a Petition from Mwea rice farmers to this august Senate and we were not given directions as to how the Petition was to be handled. I am, therefore, requesting you to direct the Petition to the relevant Committee in the House for further discussion.

The Temporary Speaker (Sen. Murkomen): I have established that this Petition is long overdue. It was first presented on 31st of July, 2013, and I would like to commit that Petition straight away to the Committee on Agriculture, Land and Natural Resources. Where is the Chair of the Committee? What about the Vice Chair? Is there any Member of this Committee present here?

Okay, Senate Majority Leader, we have committed that Petition by Sen. Karaba to the Committee to be tabled back in the House within the stipulated time under the Standing Orders.

Proceed, Sen. (Dr.) Zani.

ESCALATION OF SEXUAL OFFENCES AGAINST MINORS

Sen. (Dr.) Zani: Thank you, Mr. Temporary Speaker, Sir. I rise under Standing Order No.43(2)(c) to seek a Statement from the Chairman of the Standing Committee on National Security and Foreign Relations regarding the current escalation of sexual offences, especially defilement of young girls either by relatives – sometimes immediate relatives like fathers or others. Of late in the media, including yesterday, we heard or saw a case reported from Kaiteni in West Pokot County. But, really, the media, especially for the last two months, has been awash with these sorts of cases. This has serious implications for both the girls and for their educational outcomes.

Mr. Temporary Speaker, in the Statement, I would like the Chairman to address the following issues.

1. Could he reveal how many such cases have been reported to the police in the last two years and provide the details, including the status of investigation and prosecution, if any;

2. What operational strategies has the Government adopted to ensure that incidences of sexual offences against minors are controlled; and,

3. Could the Minister clarify whether the current law, including the Sexual Offences Act, is inadequate in addressing the menace, and if so, could the Government consider tabling amendments to enhance the penalties provided therein?

Thank you, Mr. Temporary Speaker, Sir,

The Temporary Speaker (Sen. Murkomen): Chairman of the Committee?

Sen. Haji: Mr. Temporary Speaker, we will table the Statement on Thursday, next week.

The Temporary Speaker (Sen. Murkomen): Okay, next week on Thursday; so one week it is.

Next is Sen. G.G. Kariuki and then Sen. Musila.

PERSONAL STATEMENTS

MISREPRESENTATION OF FACTS BY THE *DAILY NATION* NEWSPAPER

Sen. G.G. Kariuki: Thank you, Mr. Temporary Speaker, Sir, for this opportunity. I wish to make a Personal Statement under Standing Order No.85.

Mr. Temporary Speaker, Sir, my attention, has been drawn to a report attributed to me by a section of the media, specifically today's issue of the *Daily Nation* of Thursday, 19th September, 2013, on page 16, which has misrepresented my contribution to this House made on 17th September, 2013. In this issue, I have been reported to have suggested that the Council of Governors (CoGs) should be disbanded.

Mr. Temporary Speaker, Sir, nothing can be further from the truth and the HANSARD will bear me out. There was no reference whatsoever to the CoGs in my speech. I am aware that the Council is established under Section 19 of the Inter-Governmental Relations Act. Therefore, it requires the amendment of the relevant legal instruments if it was to be disbanded. I did not even remotely suggest that the council should be disbanded. What I thought was the empowerment of the Senate through legislation for increased direct involvement in the affairs of the counties to achieve objectives of devolution. That is my statement.

I would like to request the media, through you, to report the proceedings of this House accurately, more so, when they are reporting the proceedings of Parliament and the other assemblies. These are very serious institutions. These media houses can cause confusion in the country if we are not careful. They need to report verbatim what we say here and also in other institutions.

Thank you.

The Temporary Speaker (Sen. Murkomen): Sen. G. G. Kariuki has mentioned a very important issue that not only touches on county governments, himself as a person,

but all of us as Parliament. That is, the National Assembly and the Senate. This also affects county assemblies. I want to say from the onset, as the Temporary Speaker here, that the Senate has been very co-operative with the media and we will continue to do so. We believe in transparency and principles of openness. We believe that the media is a strategic partner in terms of engaging the public and broadcasting matters of this House so that people can follow our contributions and also get an opportunity to correct what we do in this House. Unfortunately, as stated by the Senator, any misreporting will cost the Senate or an individual Senator in terms of relations with Governors, Members of the County Assemblies and even put this House on a collision path with its partners, that is, the County Assemblies and the county executives.

For that reason, I would like to request the media to continue being vigilant and observe the provisions of Standing Orders, particularly the Schedule on broadcast rules which require that we should observe guidelines and ensure that accurate reporting is done in terms of matters taking place in this House. I believe that the media has been very fair to this House and also important partners. I do not think they were malicious when reporting Sen. G.G. Kariuki. They might have been erroneous, but not malicious. Therefore, I request our partners in the media to be more cautious and clarify positions before reporting.

Individual Senators have been available for clarifications. I have seen most of them go to media houses to clarify certain legal issues and proceedings in this House. Therefore, I am sure where a journalist is not sure about a particular issue, they can always go to the individual Senator or call them and clarify certain positions. If they are not sure, they can postpone their reporting on a particular matter. We, as a House, cannot assume that journalists know everything we do in this House. There is a possibility that they would be confused. I think our Secretariat should work with the media from time to time and train journalists on matters that relate to legislation in this House. In the past, we had requested the media houses to designate certain reporters so that when we have opportunity to train them then we would easily have a close working relationship.

In the meantime, as the Chair, I would request and so order that the relevant media house provides the same avenue to correct the impression that was given; that Sen. G.G. Kariuki is averse to the existence of the Council of Governors because it is not good for the relationship of this House and its partners in the county governments. It is so ordered.

Finally, Sen. Musila.

INSECURITY AT MALALANI IN KITUI COUNTY

Sen. Musila: Mr. Temporary Speaker, Sir, thank you for giving me this opportunity. For the record, I would also like to state that you agreed that I followed the right procedure in seeking this statement.

I am seeking this Statement from the Chair of the Committee responsible for security. On 13th September, 2013 at Malalani in Kitui County, three people, namely Musanjo Musembi, Mukindo Mulacha and Kisomo Katu, were shot dead by bandits believed to be people from Tana River District because this is at the border of Kitui and

Tana River counties. This is a serious matter. During the last few years, this has been happening. People just cross the border, kill others and disappear. As far as I know, no one has ever been arrested for this.

Mr. Temporary Speaker, Sir, first in seeking a Statement from the Chairman, I want to know how many people have died in this manner at the Kitui-Tana River counties border during the last two years. Secondly, what measures the Government is taking to ensure that the killing of innocent people from my county by the people from Tana River ceases immediately because it is likely to cause tension between the two counties and this can bring bad repercussions which we all do not want to see.

The Temporary Speaker (Sen. Murkomen): Chairman of the Committee on National Security and Foreign Relations.

Sen. Haji: Mr. Temporary Speaker, Sir, we will try to answer it on Thursday, next week.

The Temporary Speaker (Sen. Murkomen): Yes, Thursday, next week.

Next Order!

MOTIONS

APPROVAL OF SENATOR MUTULA KILONZO JUNIOR'S MEMBERSHIP TO THE IMPLEMENTATION COMMITTEE

THAT, pursuant to the provisions of Standing Orders No. 175(3) and 177(3), the Senate approves the nomination by the Rules and Business Committee of Sen. Mutula Kilonzo Junior to replace Sen. Kanainza Daisy Nyongesa in the Sessional Committee on Implementation.

The Temporary Speaker (Sen. Murkomen): Order, Senators! The Motion in Order No.8 has been deferred after consultations with the Speaker to enable the concerned parties to consult further. This request was made by the Senate Minority Leader and Minority Whip to enable them to do further consultations. Therefore, for now the Motion is dropped.

(Motion dropped)

RELEASE OF FUNDS TO POLITICAL PARTIES

Sen. (Prof.) Anyang'-Nyong'o: Mr. Temporary Speaker, Sir, I beg to Move:-

THAT, aware that Article 92(f) of the Constitution mandates Parliament to enact legislation to provide for the establishment and management of a political parties fund; acknowledging that this requirement has been met through the enactment of the Political Parties Act, 2011; noting that section 23 of the Act establishes the Political Parties Fund to be administered by the Registrar of political parties; noting further that Section 24 of the same Act states the sources of the Fund as not being less than zero point three percent of the revenue collected by the national

government, as may be provided by Parliament as well as contributions and donations to the Fund from any other lawful source; cognizant of the fact that Section 25 of the Act requires the Registrar to distribute the fund on a percentage basis, 95 per cent of which is to be distributed proportionately by reference to the total number of votes secured by each political party in the preceding general election; the Senate calls upon the Registrar of Political Parties to immediately release funds to political parties in accordance with the Constitution and the Political Parties Act, 2011.

Mr. Temporary Speaker, Sir, you will recall that there were general and presidential elections held in the Republic of Kenya on 4th March, 2013. As we stand here today on 19th September, 2013, six months down the line since the elections were held, you will also note that in a democratic political system as, indeed, the Constitution recognizes, political parties are major players, not only in representation, but in the constitution of governments. You will also note that in the present Constitution, it states that, there is established in this Republic two levels of government; one at the national level and the second one at the county level.

In the end we are counting 48 governments in this nation which are constituted by individuals selected by political parties to represent them in such government and, therefore, must have means to communicate with those who represent them or who elected them through the vehicle and structure of political parties. It is in that spirit that in the wisdom of the writers of this Constitution, political parties were provided for in terms of resources given by the national government due to the importance of political parties in the institutionalization of democracy.

Mr. Temporary Speaker, Sir, if I may remind the House, Article 91 of the Constitution states very clearly the basic requirements for political parties; one, that every political party shall have a national character as prescribed by an Act of Parliament, have a democratically elected governing body, promote and uphold national unity, abide by the democratic principles of good governance, promote and practice democracy, do regular free and fair elections within the party, respect the rights of all persons to participate in the political process, including minorities and marginalized groups, respect and promote human rights, fundamental freedoms, gender equality and equity, promote the objects and principles of the Constitution, the rule of law and subscribe to and observe the code of conduct for political parties.

Therefore, political parties are given onerous tasks in the Constitution. One constitutional obligation is for the Executive, in preparing a budget, to do it according to the Constitution which means among other things to provide not less than 0.3 per cent of the revenue collected at the national Government as may be provided by Parliament. Parliament has already provided the national Government with a budget with which to meet its obligation in accordance with the Constitution. So, if several months down the line; with a budget in hand, a Constitution in hand and Acts of Parliament in hand the Executive fails to meet its obligations, then the Executive will be committing what I may call Constitutional treason.

It is the responsibility of this Senate and, indeed, of Parliament as a whole to remind the Executive of its responsibility and to ensure that this Constitution is not ignored, undermined and neglected through constitutional irresponsibility by the Executive.

Today, we move a Motion which is extremely important. One; if the Executive attempts to allocate political parties monies other than what is provided for in the Constitution, that will be unconstitutional and illegal. Two; if the Executive continues to delay in undertaking its constitutional obligations, indeed, the very basis of forming political parties and Government will be fundamentally undermined. This is already being fundamentally undermined. As a Secretary General of a major party, the party with the highest number of Members in the current National Assembly, as a single party, it is my responsibility to speak on behalf of other parliamentary political parties and, indeed, political parties in general to ensure that this responsibility is met by the state.

There was a time, before multiparty politics and way before we enacted this progressive Constitution, that even to speak of forming another political party was treasonable. I remember when we were trying to form the National Democratic Party (NDP) in 1991, the precursor of the Forum for Restoration of Democracy (FORD), we had to hide and do things at night. We had to meet in the farm of Dr. Munyua Waiyaki up here in Red Hill at 6.00 a.m. in the morning on Sundays and finish our meetings by 9.00 am so that as people go to church, we also emerge from there to go to church so that we are not suspected by the Special Branch because of what we were doing.

Those days, my friend, G.G. Kariuki, was ready to pounce on anybody who was undermining the security of the State. I was lucky because I escaped to Mexico as he had my name on his desk ready to sign it to detention. We have come a long way. Therefore, we should not subject political parties to unnecessary torture by not being able to carry out activities which are constitutionally provided for.

Today, we as individuals are compelled to lend money to our political parties to operate under very difficult circumstances and yet we know this should be provided for by the State. It is not a favour. It is a right for political parties. Therefore, there should be no attempt to roll back or wind the clock back so that political parties beg the state to undertake its constitutional obligation. I hope that with immediate effect, what this Motion is demanding for from the State will be responded to immediately. However, we understand that the Independent Electoral and Boundaries Commission (IEBC) does not have valid figures to rely on while distributing money to political parties.

Remember the Constitution says very clearly that the Registrar should distribute the Fund on a percentage basis, 95 per cent of which is supposed to be distributed proportionately by reference to the total number of votes secured by each political party in the preceding general election. The general election was held in March and up to now, that aspect of constitutional obligation has not been met. As we understand it, the IEBC does not have valid figures to effect this provision. We have had a record number of petitions, about 171 because of the incompetence of the IEBC. If that is so, then this Commission should be disbanded forthwith and men and women of competence should take up the responsibility of managing elections because this has already put the nation in

jeopardy. If, indeed, these are valid figures, the aspect of constitutional degradation should be implemented immediately so that political parties can play their democratic roles.

I beg to move and ask Sen. Omar Hassan Omar to come and say something.

Sen. Hassan: Mr. Temporary Speaker, Sir, for the record, my names are Sen. Hassan Omar Hassan. First and foremost, I want to appreciate this Motion by the Senator for Kisumu County, Sen. (Prof.) Peter Anyang'-Nyong'o. I am here to second this Motion.

First of all, I would like to emphasise that in the conceptualization of our Constitution, Kenya had for too long been bedeviled by the fact that we had weak institutions in the name of political parties. Until recently, political parties were personal vehicles; arbitrary vehicles that did not have the right capacity to discharge the functions that are required democratically for them to enhance democratic participation and rule in this country.

An attempt to cripple the functions of political parties is a further attempt to cripple our democratic growth. You will realise that notwithstanding the personal feelings of any individual in the Government, constitutional obligations remain just that. I reiterate that any person charged with any responsibility must respect those responsibilities. Parties have emerged from elections and many parties are now reorganizing their political structures to ensure that they continue to be competitive and to prepare for the next round of elections that will come up in 2017.

It is unfortunate that to date, most of our parties are yet to enjoy the funding that is not a preserve of the Executive, national Government, but a demand of the Constitution. This money has already been allocated. However, it falls way below the constitutional threshold that is required of political parties to be allocated. Therefore, it is not just an allocation, but an allocation with respect to the Constitution and with respect to the laws that govern allocation of resources to political parties. It is unfortunate that we will cripple accountability and cripple the role of parties that are not in Government by ensuring that we suffocate funding for these parties so that they do not roll out their programmes.

Mr. Temporary Speaker, Sir, you will also realise that I am also associated to a political party and a coalition. I know that our coalition is ready to roll out programmes and ensure that it energises and reenergizes itself to meet its obligations and the objectives of the capital state power. However, that has been suffocated by mere bureaucratic bottlenecks that now need to be unlocked. This does not only apply to one coalition, but to all parties.

All parties need to be managed in a manner that is stipulated in the Constitution. You will realise that once these parties are funded, there are constitutional obligations that they have to meet. The parties will have to continue living within the tenets of the Constitution as Article 91 stipulates. These Articles can only be discharged if these parties are funded adequately to create the structures and mechanisms that facilitate them to meet the requirements as stipulated in the Constitution. We need to have democratic practice in these parties. We cannot have democratic practice without sufficient capacity which parties need to develop to conduct certain obligations that will make the parties live up to the expectations of the Constitution.

Prof. Anyang'-Nyong'o alluded to the democratization struggle of this country. Many of us have read about it in history. Many of us may not have been there. However, one thing for sure is that we do not want to return this country to where it was. We are lucky that we did not suffer detention without trial. We have not been subjected to extreme torture. None of us, probably, spend endless nights *incommunicado* in detention or out of the reach of a legal representative.

We regard ourselves as an extremely lucky generation of Kenyans to have benefited from the sacrifices of others. These sacrifices also led us to develop one of the most dynamic constitutions in the world. However, this Constitution will render far less than the standard if those charged with its implementation give less than what is demanded of them. Therefore, you can be well assured that some of us, younger Kenyans, who came and found an expanded democratic space will continue to expand the space and to protect what has already been expanded.

Therefore, any Government that acts in a manner *ultra vires* to the spirit of this Constitution must be held to account. All successive governments that will come must be urged to meet their constitutional obligations, and political parties are the cornerstone of democratic competition. Therefore, those who attempt to suffocate or stifle the operations of these parties are stifling the growth of democratic competition and the very institutionalisation of these parties.

Therefore, I second this Motion because I believe that it is extremely timely. I hear of KANU's one party rule. However, we cannot now have a one party state by simply crippling the functions of other parties. We know, those of you who understand politics better than me, that resources and facilitation of parties is extremely important for parties to meet part of their obligations.

As the Secretary General of the ODM Party who is also the Mover of this Motion has stated, the parties need to start rolling out their programmes. It is *ultra vires* and negates the very spirit of this Constitution that after an election that was held in March, months after that, we have not put our house in order to capacitate these political parties to move forward. I wish to reiterate the fact that after a democratic struggle in this country it was felt necessary to depersonalise political parties. Therefore, the political parties provision in one of the most reformist movements forward was enshrined in the Constitution, it is very disheartening that at this point in time, six months after cash has been released and everything else, money has been released to the *Uwezo* Fund and any other thing we think is a pet project, we still try to stifle where we have constitutional obligations.

I, therefore, ask and demand of the Government, in seconding this Motion to ensure that they release this money forthwith so that the parties that we have justly and rightfully earn their appropriation. Democratic competition should be accorded the resources it needs so that parties continue to conduct the good work of democratization. We are critical of many of our institutions because we want to improve them, but we cannot allow anybody to stifle that improvement, because these parties have metamorphosed and continued to grow. Until and unless they are accorded that right, as much as we might have many things to say, these parties did provide the framework for democratic competition to all of us here. You belong to a political party and the Deputy

Speaker belongs to a political party. All of us belong to a political party. Therefore, it is important and incumbent that these parties are supported to be able to discharge their obligations under the Constitution, and meet the levels of accountability and expectations of the Kenyan public in terms of the discharge of the functions and objects of these parties.

Mr. Temporary Speaker, Sir, I can see that the Senate Majority Leader is also here. It is incumbent upon him to walk out of this Senate and go and urge that Government that he represents very competently or ably here, that it is important that if they want to honour their obligations under this Constitution, they must ensure that this money is released to political parties with immediate effect.

Mr. Temporary Speaker, Sir, I want to thank the Mover of this Motion. I think that this Senate is seized of matters that improve us, as a State.

Mr. Temporary Speaker, Sir, with those many remarks, I beg to second this Motion and urge my fellow Senators to support it, so that we can guarantee funding, which is not a privilege or discretion, but a right that accrues to all our political parties.

(Question proposed)

Sen. Ong'era: Thank you, Mr. Temporary Speaker, Sir, for giving me this opportunity to support the Motion that has been moved in this House by the Senator for Kisumu, who happens to be also the Secretary General of the largest and most popular party, the Orange Democratic Movement (ODM).

Mr. Temporary Speaker, Sir, this is a very important Motion, as it regards the management of political parties. As we are aware, political parties until recently did not have any funding. They have been relying on money that is donated by people who call themselves owners of political parties. This Fund was established in 2010, specifically to deal with the issue of briefcase party owners. It was meant to regulate and create a level playing field for all political parties. As you know, Section 23 of the Political Parties Act has created and also shown how the money from the fund is supposed to be distributed. The Political Parties Act was enacted in 2011 under the Tenth Parliament. Under Section 24, the Fund was established and created to be 0.3 per cent of targeted revenues. This was to be based on the 2013/2014 Annual Estimates. In my calculation, it meant that political parties were to receive 0.3 per cent of the targeted revenue, which was Kshs986 billion. If we calculate this, we find that averagely, the money that should have gone to the Registrar should have been Kshs58 billion. This is a lot of money that would have gone a long way in helping political parties.

Mr. Temporary Speaker, Sir, to our dismay the Treasury decided to cut this money and give the Registrar of Political Parties Kshs344 million only. It is a tragedy really, that when a law has been passed, some people sitting somewhere, just decide on their own to allocate the money, without respect to what the legislators have passed. Therefore, apart from demanding that this Kshs344 million should be released immediately to political parties, we are also demanding – and I hope that the Senator for Kisumu when he is going to reply will include this – that the 0.3 per cent should be actually the Kshs3 billion that should be given by the Exchequer. We know that political

parties right now are ragtag in this country. They have no money to pay rent for the offices that they have opened.

As we know, it is a requirement by law that they must open offices throughout the country, in the 47 counties. Political parties cannot pay for rent and have gone into great debts. They are not able even to pay their personnel. Recently, I read in the newspapers about political parties which had to lay-off their staff because they could not afford to pay them. I think that I saw the Senate Majority Leader here. He can help us on this, because I think that he knows the political party that I am talking about. This is very serious. We are reducing political parties to become beggars and going back to the principle of relying on briefcase owners of political parties. We might go back to the one-man rule, where people cannot have democracy. They cannot say what they want to say within their political parties because they fear that the owners of those political parties will maybe de-whip them.

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

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

Madam Temporary Speaker, this is a very serious issue, especially for those of us who are creatures of political parties. All the Members in this House came through political parties. Therefore, this Motion is very important and we need to support our political parties. Funding must be released immediately, so that programmes within the grassroots can be effected by political parties. They need to recruit new members and carry out their policies within the grassroots. Also, it will lead to very good competition within the grassroots amongst the political parties.

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

The Senate Majority Leader (Sen. (Prof.) Kindiki): Madam Temporary Speaker, Sir, I rise to also make my contribution to this Motion, which has been moved by my friend, the Senator for Kisumu, Prof. Anyang'-Nyong'o.

Madam Temporary Speaker, from the outset, we all know as Kenyans that multiparty democracy is extremely central to our constitutional order. We all know also, as Kenyans, that effective vibrant political parties are a crucial stabilizer of the functioning of our democracy. So, I do not think that anybody is challenging the fact that for political parties to make their contribution in accordance with the law and Constitution, there is need for money. I do not think that anybody would dispute that. However, I have looked at this Motion and I am in agreement with most parts of it. This is because most parts of it are just reciting the legal position, as it should. For example, the Constitution says this; the Political Parties Act says this, *et cetera*.

Madam Temporary Speaker, however, the Motion is defective because it is addressed to the wrong person. It is addressed to the Registrar of Political Parties. It is not the duty of the Registrar of Political Parties to release money, because she does not have it. Money comes from the Treasury. But even then, money does not come immediately.

Once money is appropriated and approved by the relevant House, it comes in quarters. So, you cannot put an obligation, first of all, to the wrong person and, secondly, with an immediate duty to release funds. That would not be the right thing to do. So, other than agreeing that there is need for political parties to be funded--- I understand that some of the political parties are not doing very well, because other than that funding, they are not in a position to raise money. Remember that political parties can raise money from other sources. But I think that the nature of our political parties is that after the election, some of the seemingly active parties die because the fundraising channels are no longer working.

Madam Temporary Speaker, I would support this Motion on a formal condition that it is addressed to the national Treasury. The other formal condition is that it is subject to the usual procedures, as opposed to the use of the word “immediately.” In fact, we can delete the word “immediately.” But informally, also, I hope that my good friend, the Mover of this Motion, who is also the Secretary General of ODM, which is one of the key pillars of the Minority, is not looking for funds to start bashing me left, right and centre. I hope that he is just looking for funds for the political party to perform its constitutional and legal obligations and not start bashing Jubilee right, left and centre. This is because instead of my brother here and his party concentrating on their duty---

Sen. Ong’era: On a point of order, Madam Temporary Speaker. Is the distinguished Senator, who is also the Senate Majority Leader, trying to tell this House that the money that we are seeking, as a Senate, for the political party fund is meant to bash the Jubilee Government? Is that the reason the money is not being released?

The Temporary Speaker (Sen. Ongoro): Senate Majority Leader, what do you mean because this is a constitutional requirement?

The Senate Majority Leader (Sen. (Prof.) Kindiki): Madam Temporary Speaker, I appreciate the point of order raised by my sister, Sen. Ong’era. But I began my contribution by saying that the things that the Mover of this Motion is citing are constitutional and legal issues. We have not debated about that, but we have also to contextualize things. That is why I said that in terms of political parties getting money, we are agreed. In terms of who is responsible, we are not agreed, because I think that it is the national Treasury. Thirdly, in terms of how that money should come, we believe that it should not be immediately, because normally money is released in quarters. If you say immediately, we do not know what that means. But having said that, I said informally – it is not even informally because that is the truth – many parties that appear to be doing well are not doing well and yet they are all waiting for money from the Political Parties Fund. I want to remind those political parties that the Fund is not supposed to solve all your financial problems. You are supposed to look for other sources of funding. So, this money from the Government is supposed to support your programmes. It is in that context that we said that we hope the Mover of the Motion who is the Secretary-General of the Orange Democratic Party (ODM), a key pillar of the Opposition, is looking at their party getting those funds so that they can fulfill their legal and constitutional obligations because, sometimes, they are known to go overboard with their obsession of the Jubilee Coalition and what it has not done. We do not want this money to be utilized for rallies

and I hope they have read the Political Parties Act. We do not want rallies to start talking about---

Sen. (Prof.) Anyang'-Nyong'o: On a point of order, Madam Temporary Speaker. Is the Senate Majority Leader in order to subvert the spirit of the Motion which he accepts concentrates on legal and constitutional matters and to bring his own subjective feelings about the most popular party in this nation so that he can distort the Motion and the debate?

The Temporary Speaker (Sen. Ongoro): Sen. (Prof.) Kindiki, are you trying to control the activities of another political party or you are contributing to this Motion?

The Senate Majority Leader (Sen. (Prof.) Kindiki): Madam Temporary Speaker, I am contributing to this Motion and I think I should be given my freedom of debate. I should not be curtailed from saying what I think. That is the purpose of parliamentary debates. All I am saying is that we are urging the political parties who will benefit from the funding, first of all, to look for money elsewhere and also to use this money for the right objectives. In the past, we have seen parties claiming money for use on other things.

Madam Temporary Speaker, when Sen. (Prof.) Anyang'-Nyong'o rose here to challenge this, he even brought another controversy about the most popular party. This popularity business and the idea that my brothers have refused to accept the reality that they lost the elections free and square, and in a long time, they are likely to remain in the minority which is an honourable position; it is not to say that being in the minority is in any way a lesser position, but the earlier they accept that position, the better for this country. So, this idea of---

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

The Senate Majority Leader (Sen. (Prof.) Kindiki): Yes.

Sen. Ong'era: Thank you, Senator for Tharaka Nithi. I want to inform the distinguished Senator that the Orange Democratic Party (ODM) happens to have the largest number of Members of Parliament as a single political party.

The Senate Majority Leader (Sen. (Prof.) Kindiki): Madam Temporary Speaker, this Motion is not about how many Members of Parliament each political party has. The popularity thing is a theory and it exists only in the imagination of the minority. They believe they are very popular but we have never seen that popularity. Last week I was here with my troops and I did not see that popularity. What I saw was a defence mechanism of a group which had been reminded where it belongs. I think seriously what we need in this country is the truth. People should accept where they are. That way, we will have a better country tomorrow.

I just want to caution that while I have no serious objections to this Motion, I think I am tempted to introduce those two amendments on the target which should be the national Treasury and secondly, we remove the word "immediately". Subject to that, I support this Motion and I hope one of these days Sen. (Prof.) Anyang'-Nyong'o will pay me by supporting my Motion.

Sen. Elachi: Thank you Madam Temporary Speaker. I also want to thank the Senator for Kisumu, knowing very well that the issue of political parties is very critical. As much as we are taking it as a joke, today somebody went to court because of the same Fund. Therefore, even as much as political parties would wish the Registrar to release the

money, I think at the moment, it would be very difficult because the Fund is already in court because of how it was shared out.

It is also important when we talk about political parties to understand that the Office of the Registrar has worked for so long in a very strenuous manner. It is time Parliament looked at the Office of the Registrar and empowered it so that it can also take on board the issues that are raised by political parties. Today if you look at what has been allocated to the Registrar, it is not even enough for her to have staff that can be able to monitor the political parties while we know that the reason the Fund was introduced was because we had reached a point where individuals had taken political parties and made them their own. Therefore, you had to dance to their tune in order to survive within that political party.

Madam Temporary Speaker, especially for us, women politicians, we need to see political parties funded so that nobody can come and say that it is my money that is sustaining the party and, therefore, I will do what is within my powers to have who I want to be elected or given a nomination certificate. For me, it is very critical that we are talking about the Fund. It is also important to look back to the Act and amend it. When you look at what the Tenth Parliament amended, it was that you cannot get funding if you cannot get 5 per cent of the votes. This means that we in the coalitions, as much as we are calling for the Registrar to release the money, the coalitions have to sit down and agree on how to share the money they have received because we are only considering the Presidential vote. We have parties which entered into a coalition and supported one presidential candidate. What happens in this case? For me, the most important thing - I want to urge the Senator for Kisumu who is also the Secretary-General of ODM and other Secretary-Generals that it is time they looked at the Act and see how it can be amended. The law should be amended to ensure that we do not kill what we have struggled for since 1992 during the struggle for multipartyism. Where we are heading now, it means that only three parties are eligible to get funding.

It is important to note that many political parties were not happy with the way the fund was shared and if we do not sit down and agree, we might end up spending a lot of time in the courts and the money will not be released until next year. We shall even get to the next financial year and the same thing will happen. Some people can just decide to do that so that they derail the process. I think we need to look at the Act and make the necessary amendments. We should sit down with the IEBC and make those amendments or agree as political parties that this is the way we would like it to be. The parties which had over one million votes, I believe are parties that should be eligible for funding.

Madam Temporary Speaker, when you look at the Act, you find that as much as we are talking about the funding, many political parties, even the so called large political parties have not been able to sustain the 24 offices that we were told we must have. I know the most challenging part in this country is that after elections, nobody even cares about membership until we are just about to go for an election. But the money we are requesting for will help the parties to continue retaining their members because we will have outreach programmes to run within the counties. We also need to have offices of the parties within the counties. Therefore, it is not just something to play politics with.

I think we need to support the Registrar who has been very supportive without looking at the political party's biasness. She has always been partial to all of us and I think it is important that we support her office and what she is doing. We should push Treasury to release the Fund and ensure that it follows the formula that was given. This was a formula that was passed through law and if they want to respect the law, then this is the right time. They must respect the law and release the Fund as it is in the Act.

Madam Temporary Speaker, the Constitution is also very strong on political parties and that is why political parties have powers to de-whip parliamentarians and even send them back for a by-election if they feel that you are not doing the right thing. The Fund will assist citizens to continue understanding that we have political parties. Right now if you ask citizens about the parties, they only know Jubilee and CORD. They have forgotten that there were parties within those coalitions. It is important for us to remind Kenyans that the parties are still there and that they are institutions we should respect. They are no-longer vehicles to bring an individual to the House, but they have powers to ensure that you toe the line of the party.

I beg to support.

The Temporary Speaker (Sen. Ongoro): Sen. Chris Obure.

Sen. Obure: Thank you very much, Madam Temporary Speaker, for allowing me to make very brief comments on this Motion. First of all, I want to appreciate the initiative taken by the Senator for Kisumu and, in particular, to appreciate his interest in deepening democracy, which has been demonstrated through his interest in raising this matter here.

Madam Temporary Speaker, the objective of the Political Parties Fund is to provide financial support to registered political parties with a view to strengthening the parties as critical vehicles for anchoring and promoting democracy and nurturing good governance and leadership. The political parties, therefore, play a critical role and those functions of political parties must be sustained at all times. Any delay in distributing these funds to the political parties disrupts and, indeed, compromises the effectiveness of the political parties in the performance of their functions. The law provides that the amount to be distributed to the political parties be based on a formula of 0.3 per cent of annual estimates. My calculation will, therefore, indicate that the parties will be entitled to approximately Kshs3 billion out of the Consolidated Fund, based on the annual estimates of the current financial year – although I hear that only Kshs344 million has been set aside for distribution to the various political parties.

Madam Temporary Speaker, the law also provides that this money should be distributed to the political parties immediately at the start of every financial year. The law does not say that the money would be paid out in tranches or in installments. Continued delay in releasing the funds to the political parties is clearly in violation of the law and cannot be justified in any way; of course, there is no way we will justify violation of the law.

Madam Temporary Speaker, the same law also prevents political parties from receiving foreign donations or from relying on a few individuals – the owners or the top management of those parties. The law prevents parties from relying on funds from foreign sources or from a few individuals because it is that control and the influence from

external philosophies, and so on, that we are trying to prevent. Parties are, therefore, confined to relying largely on public funds from the Consolidated Fund in particular.

Madam Temporary Speaker, by causing delays in releasing these funds to the political parties, *wananchi* out there are beginning to ask questions. What is the motive of delaying the release of these funds? Could there be some secret maneuver or some ulterior motives somewhere? Does somebody want to cripple, weaken or even kill political parties so that we are driven back to the dark days of yesteryears?

Madam Temporary Speaker, a majority of our political parties are now – as you have heard before from those who know better, Sen. Janet Ong’era and others – facing serious financial constraints because of the delay in the release of these funds. This, of course, could lead to temptations on the part of those officers leading political parties and officials to seek bail outs from other sources; maybe some of those sources could be fraudulent and criminal such as drug barons or unscrupulous business people. If this happens, it could seriously compromise the quality and integrity of our political parties, and that is something we must avoid. We must take every measure to ensure that this is avoided. The political parties in this country that we are talking about have obligations to fulfill. They have employed staff in their own secretariats; and these staff also have their individual personal family obligations, and so on. They have offices and they have branches scattered all over the country. They have entered into contracts, including lease agreements, and so on; and they have an obligation to honor those contracts.

Madam Temporary Speaker, by failing or delaying in providing funds to political parties, we are easily undermining these parties; parties which stand out to contribute to the good of society as a whole. I, therefore, want to appeal to the Registrar of Political Parties in particular, because the law places this responsibility squarely on her shoulders, and to appeal to the national Treasury and, of course, the Independent Electoral and Boundaries Commission (IEBC). I would like to urge them to ensure that this money is paid out in accordance with what the law requires. It should be paid out at the beginning of every financial year; but it is now several months down the line. The Consolidated Fund should be empowered to promptly distribute the money to political parties when it is due, and it was due immediately after the beginning of this financial year.

Madam Temporary Speaker, in concluding my brief remarks, I want to, once again, thank the Senator for Kisumu and urge all those who are concerned to ensure that we support political parties in this country so that they can perform and discharge the critical mandate that they are charged with.

Madam Temporary Speaker, I beg to support.

The Temporary Speaker (Sen. Ogoro): Yes, Sen. Kiarie Mungai.

Sen. Mungai: Thank you, Madam Temporary Speaker. I rise to support this Motion by Sen. (Prof.) Anyang’-Nyong’o. But as I support, I would like to request the Senator to ensure that some of the bodies that have been created by our Constitution, like the IEBC, are given the kind of respect they are supposed to be given. The reason I say this is because the Senator talked about the IEBC being disbanded; and that he would like it to be disbanded. I do not think that is in good taste in that a majority of Kenyans have confidence in the IEBC. We will be setting a very bad precedent if after every election,

we will be disbanding the bodies that are mandated by our Constitution to apparently carry out the exercise of elections.

Madam Temporary Speaker, the issue concerning funding for political parties is something that was supposed to have been concluded sometimes back. What has happened is that since the time of elections, a lot of political parties have been grappling with a lot of hardships, and I know several that have even been unable to pay agents who helped the parties during the elections. I also know of parties that are even unable now to pay rent for their county offices because of lack of money. So, it is important that this Motion be supported because when we talk about parties that have no finances, it becomes very difficult for democracy to be exercised by the said parties. As a result, particular individuals can get in and start financing the parties, thereby making the parties appear like personal parties.

Madam Temporary Speaker, on the other item concerning the amendments to the Motion, I would also support the amendments in order to ensure that the Motion is addressed to the Treasury rather than the Registrar of Political Parties. I also support the removal of the word “immediately” because we are supposed to deliberate on the matter without apparently giving ultimatums.

Madam Temporary Speaker, with those few remarks, I apparently support that Motion.

Thank you, Madam Temporary Speaker.

The Temporary Speaker (Sen. Ongoro): Sen. Murkomen.

Sen. Murkomen: Thank you very much, Madam Temporary Speaker, for giving me this opportunity to contribute to this very important Motion. First of all, I want to mention very clearly here that I am a member of a political party and I am not an independent candidate. I am a member of a vibrant political party known as the United Republican Party (URP), one of the few youngest parties which grew very fast, with almost over 90 Members in both the National Assembly and the Senate, more than 400 Members of County Assemblies (MCAs) and over 10 governors, yet the party was born less than a year ago.

Madam Temporary Speaker, I believe that parties are very important institutions when it comes to building our democracy. For example, the URP is the only party in Kenya that recognizes family values as very integral in terms of national development. I have a dream that the URP shall be in existence for the next 100 years. For that reason, it cannot be in existence for even one year, two years, 10 years or even 20 years if we stifle our political parties from getting resources; resources are very important. If you ask yourself, why is KANU still in existence despite the challenges they have gone through? Why does a political party like KANU – which for over ten years has not contributed a president - have representation both at the National Assembly and at the Senate, but not as it was from 1963 to 2002? The reason is because KANU has a considerable number of assets, and so for the members to leave their assets and resources, they will feel like it is a loss if someone else was to come and inherit them and move on.

So, we must create an attachment between the members and the party; and the attachment will come by giving the party the necessary resources. If the Kshs3 billion anticipated in the Constitution was to be divided to various political parties, I am sure that

my political party would have more than Kshs500 million. This amount every year for the next four years would come to Kshs2 billion. It would be unimaginable for anyone to run away from URP five years down the line and leave assets and resources worth more than Kshs2 billion behind. That means that the members would be motivated to build the party; the party would be strong because it would have representation across the country. As we continue, we have the possibility of reducing the number of political parties in the country and, therefore, our democracy will grow. That is why I believe that when this money is shared to the various political parties in the manner it was anticipated in the Constitution and in the Political Parties Act, it becomes a benefit, not only to the parties that have formed the Government, but even to those that are checking the Government.

We have said time and again that the Jubilee Government believes that we need a strong Opposition. I was even discussing this with a friend and I said that in areas where we think that Jubilee may not produce a candidate in the upcoming elections, we can support CORD so that their candidate can succeed to become a stronger Opposition. That is better than anyone imagining that we are here to stifle democracy and stifle political parties. What would be wrong if you support an ODM Governor in Siaya County and say that we are not fielding any candidate as URP and we want them to remain in Opposition so that it can become strong?

In other words, I am trying to say that it is important for the political parties to remain strong and it is important that we have strong political parties. I have a dream that URP will have the necessary resources to invest in 47 offices in all the counties, 290 strong offices in all the constituencies and 1,450 offices in all the wards across the country. If we have those offices, then we can for sure say that even in the next five or ten years in places like Kisumu where we do not do well, we will be able to compete effectively. If we do not have offices, recruitment centres, computers, well remunerated staff and motivated volunteers, then we will not move. We need to ensure that we have the necessary resources.

Madam Temporary Speaker, I have a dream that URP can have a strategic relationship with other republican parties all over the world so that we can exchange ideas and have a network. As the Constitution states, you may not receive financial support from foreign sources but you can have technical support. It is important for us to receive technical support from the Republican Party in the United States of America (USA) and it is also important for us to give them technical support because we also believe that we are not deficient in giving support to the so-called progressing democracies.

That is why I appreciate this Motion and believe that the money should come in the quantities envisaged in the Constitution. I am a believer in political parties, democracy and good governance but for people to have faith in political parties, then we must allow democracy. I wish the Mover of the Motion was here. I would have suggested that time has come for Sen. (Prof.) Anyang'-Nyong'o to let go of being Secretary-General of that political party and bring up younger leaders like hon. Ken Obura and others, so that there is sufficient motivation in the membership of political parties to want to invest in them. There is a problem in this country because we have zoned ourselves in various regions through political parties. The other day, I was going to a region where we

are not very popular as URP and we usually wear our party gear. I told someone that I cannot wear this one because you never know. We need to reach a stage where everyone is comfortable to don party colours anywhere in the country so that party colours are not only seen three months before elections. It should be possible for party members to proudly wear colours of their political party, sell the policies of their political parties and try to convert other members to join the party because they have better policies, better leadership structures and resources. If we do this, we will address the issues of negative ethnicity, further cultural integration in this country and live peacefully.

Madam Temporary Speaker, I do not want to see those parties that are now represented in this House die because we denied them resources. Therefore, I support this Motion because it is good for the future, it is good for the country and it is also good for the integration of this nation. For those reasons, I want to congratulate the Mover, Sen. (Prof.) Anyang'-Nyong'o for coming up with it. The necessary steps should be taken to ensure that the Motion is implemented through the Committee on Implementation.

Sen. Karaba: Madam Temporary Speaker, thank you for allowing me to contribute to this Motion. I beg to support and say that the way political parties are designed in Kenya is like they must fete the founder. For example, when it is somebody from Lake Victoria, without naming anybody, he will make sure that all those people who come from that region belong to that party. Another one from Eastern will do the same. Therefore, we end up creating regional parties. As far as I am concerned, political parties are tools to articulate the policies of that party in trying to democratize the ideas of the members. Once the party is formed, it is important to be national and not confine itself to the borders of a region. Therefore, it should include in its membership, members from a number of counties. As much as we support this Motion, the parties should be encouraged to recruit as many people as possible so that it appears like it is national. We should fund parties that are not national so that they can recruit members. That party that is not national is what is called a tribal grouping. This can create even more problems in future.

Therefore, funding political parties is important as stipulated in the Constitution but once the party has been formed, we should get to know what qualities we are looking for, for it to become a national party. Once the party is formed and funded, the funds should be used properly and not go to the pockets of a few founder members. This money should be well controlled and used in a proper manner as designed in the Budget. We should have annual budgetary allocations and audits so that money is not misused.

Madam Temporary Speaker, you may find leaders of certain parties going around spreading rumours and hatred in the country. When such things happen, we should use the Fund as a tool for discipline by reducing the funding so that such things are not done. We also need to use those parties as tools of spreading nationalism. The party which does not have nationalistic ideals should be denied funds so that members do not move from one place to another spreading falsehood. When a political party is given funds, it should appoint leaders from various regions. This has happened in South Africa where the ANC is so powerful that they even appoint political leaders like Members of Parliament, Senators or Governors and Mayors. When things are done this way, I am sure that the leaders will be loyal to their parties and through such loyalty, we can also have loyalty in

the leadership of the country. This is very important because if you do not give out this money, we are going to have lopsided leadership in the country and people will be appointed through corruption. As a result, we shall have poor leadership in the party and by extension, poor leadership in the country.

Madam Temporary Speaker, it is, therefore, important that as much as we think about funding of these parties, we should form another team that will control the use and misuse of the funds. It is also important to note that such monies cannot only be used for political rallies. We should find ways of making use of that money by educating the party officials especially in the use of ICT. The officials should get informed on how to interact with other parties from other places and so on. We should not only use the money for political rallies where people gather and insult one another and the opposing parties. That is not the essence of funding political parties. They should be seen to be serious and articulate the policies and development projects of the country. It is also important to make sure that once the money is provided parties can even start issuing bursaries or come up with school foundations so that they are seen to be strong on the ground. When that happens, we are going to develop very sound foundations for our political parties which can be used to spur development projects within the country.

I commend the Mover, Sen. (Prof.) Anyang'-Nyong'o, and I hope that this Motion will pass. When it passes, it should recognize the person who is leading. For example, in Jubilee, the person who has won is the one who should be respected. We should not cast aspersions at the party that won because elections were conducted and there was a winner who should therefore be respected as having won. We should not go backwards and try to challenge the success of such a party. Once a party has won in any election, we should recognize the institution which conducts the elections and even recognize the leader of the party as the President of the ruling party in the Republic.

With those few remarks, I support.

Sen. Boy Juma Boy: Asante, Bi. Spika wa Muda, kwa kunipa nafasi hii. Kwanza, ningependa kumshukuru Sen. Anyang'-Nyong'o kwa kuileta Hoja hii. Ningependa kwanza kuichambua Hoja hii. Hoja hii yasema nini? Hoja hii yataka vyama vya kisiasa vipewe ufadhili. Hoja hii haisemi kwamba Chama Cha Jubilee, ODM ama chama kingine kipewe ufadhili. Kinachoonekana katika Hoja hii ambacho ni cha muhimu ni swala la ufadhili ama hela kutoka kwa Serikali. Vyama vinafaa kupewa hela.

Je kuna umuhimu wa vyama kupewa hela? Umuhimu upo. Umuhimu huu ni upi? Tunajua maana ya demokrasia. Tukitaka mambo yafanyike kulingana na Katiba, ni lazima tutumie fedha. Tutaimarisha demokrasia vipi kama vyama vyetu ni masikini hohe hahe? Hoja hii inataka tuwe na ufadhili. Hii ndiyo sababu tunasema Bwana huyu kweli ni Profesa. Mkisikia watu wengine wakiitwa maprofesa, msije mukasema ni uongo. Ni ukweli anafaa kuitwa Profesa. Hii ndiyo sababa anaitwa Sen. (Prof.) Anyang'-Nyong'o.

Huu uprofesa ndio umemfanya akaona kwamba vyama vya kisiasa vina shida. Twakubaliana, bila pingamizi yoyote kwamba ni kweli, vyama vina shida. Shida kubwa iliyo katika vyama vyetu ni shida ya mishahara. Wafanyikazi ambao wameajiriwa na vyama wanahitaji mishahara. Hawali upepo. Ili kuhakikisha mishahara inapatikana, ni lazima fedha zipatikane.

Kuna Rais mmoja wa zamani wa Tanzania, Rais Nyerere, aliyesema kwamba hakuna demokrasia itakayopatikana kama hatuna vyama vinavyojitegemea. Sio mimi Boy niliyesema hivyo bali ni Mwalimu Julius Kabirage Nyerere. Hakuna vyama vya kidemokrasia vitakavyokamilika kama havijitawali kifedha. Ndio maana Hoja hii ina umuhimu sana.

Tutazame hali ya vyama hapa Kenya. Tumezoea kwamba vyama ni vyombo vya kisiasa. Kesho na kesho kutwa, kila mtu huwa akiwania chama chake. Kura inapokwisha, vyama huwa havina maana. Demokrasia haiwezi kuendelea hivi. Ni lazima tuhakikishe ya kwamba tumekita mizizi ya kidemokrasia. Demokrasia si kusema tu. Demokrasia ni vitendo na kuhakikisha kwamba yaendelea. Kuendelea kwake ni sisi kuwa tayari kutoa pesa. Hoja hii yasema kwamba sheria ipo. Serikali yaelezwa na kufahamishwa kwamba vyama vipo. Kwa sababu uchaguzi umekwisha, kawaida tunangoja hadi wakati mwingine wa uchaguzi. Huo ndio ukweli wa mambo. Kila mtu ana chama chake; chama baba, chama cha shangazi, chama mjomba na katika wakati wa uchaguzi, vyote vitafufuka. Hatutaki hivi viwe ni vitu vya kawaida.

Hatutaki kuwa na manifesto kila wakati wa uchaguzi. Hatutaki kila mtu awe na manifesto yake. Leo, manifesto tulizokuwa nazo wakati wa uchaguzi ziko wapi? Ziko chini ya makabati ama wapi? Zilitangazwa katika mikutano kubwa. Katika wakati wa uchaguzi, manifesto zinaelezwa kila mahali. Wanasiasa hueleza vijana vile watakapofaidika uchaguzi utakapoisha lakini uchaguzi unapoisha, mambo ya vijana yanasahaulika. Uchaguzi unapokwisha, demokrasia pia huisha. Maendeleo pia hayafanyiki uchaguzi unapokwisha. Haya ndiyo mambo tunayosisitiza katika Hoja hii. Hoja hii yasisitiza umuhimu wa kuwepo kwa fedha.

Nimemsikiza vizuri Kiongozi wa Wengi, Sen. (Prof.) Kindiki akisema fedha hazifai kupeanwa na Msajili wa Vyama vya Kisiya lakini ziombwe kutoka *Treasury*. Msajili wa Vyama atazigawa vipi kama *Treasury* haijampa? Mkono wa kulia unasema mambo ambayo mkono wa kushoto hauoni. Msajili wa Vyama ndiye anayefaa kuzigawa pesa na anajulikana.

Bi. Spika wa Muda, wewe hapa wajulikana kama *Madam Temporary Speaker*. Akija mwingine mwanamme ataitwa *Mr. Speaker*. Tunaposema *Speaker*, tunamaanisha mamlaka. Huu ndio ukweli, upende usipende. Ukitakata kukasirika, basi kasirika lakini huo ndio ukweli wa mambo. Uspika ni kile kiti. Akikaa mwanamme, ataitwa Bwana Spika. Akikaa mwanamke, anaitwa Bi. Spika.

Sisi twajua wazi kwamba pesa za Serikali hutoka *Treasury*. Kama zitagawanywa na Msajili wa Vyama, basi pia zitakuwa zimetoka *Treasury*. Tunachosema ni kwamba *Treasury* inafaa kumpa Msajili wa Vyama pesa. Msajili wa Vyama anafaa kugawanya pesa hizi kwa vyama. Vyama hivi vitafika mashinani vitakapopewa ufadhili. Hivi sasa, vyama vingi vimefungua maofisi ambayo yanadaiwa kodi. Ofisi zingine zimefungwa.

Kule ambako kuna uchaguzi mdogo, maofisi yatafunguliwa lakini kule ambapo hakuna uchaguzi mdogo, ofisi hizo zitafungwa. Huo ndio ukweli. Tuuseme ukweli ulivyo. Wengine ukiwaambia ukweli wanakasirika. Hiyo ndiyo tabia yetu. Tunachosema ni kwamba demokrasia haifai kuonekana siku moja tu bali inafaa kuwa inaendelea. Inafaa kuonekana leo, kesho na kesho kutwa.

Hatufai kuwa tunamwomba Mfadhili wa Vyama ila sheria ipo. Wale walioleta sheria hii kweli walikuwa *mabuzuranga*? *Mabuzuranga* ni watu wasilolote. Waliopanga sheria hii walijua wazi ungefika wakati ambapo vyama vingehitaji hela. Kinachonishangaza ni kwamba ni lazima uambiwe kwamba leo ni Jumatatu bali unajua kwamba leo ni Jumatatu? Hayo ni mambo ya kushangaza. Tukiunga mkono Hoja hii, tunachosema ni kwamba vyama haviwezi kupewa pesa mpaka Hoja zije kutoka Seneti. Naiunga Seneti hii kwa sababu ina wazee na vijana ambao wamekomaa. Iko pia na Spika anayeona mbali. *Treasury* inafaa kumpatia Msajili wa Vyama pesa ili vyama navyo vianze kutumia pesa hizo.

Bi. Spika wa Muda, nimewasikiliza wasemaji wenzangu wakisema kwamba vyama visitumie pesa hizi kwa mikutano. Sasa wewe unasema pesa zisitumike kwa mikutano na hazijakuja?

Bi. Spika wa Muda, kwa hayo machache, naunga mkono kikamilifu Hoja hii.

Sen. Gwendo: Thank you, Madam Temporary Speaker, for giving me this chance.

(Loud consultations)

Madam Temporary Speaker, can you protect me from the noisy hon. Senators?

The Temporary Speaker (Sen. Ongoro): Hon. Senators, please, consult quietly!

Sen. Gwendo: Madam Temporary Speaker, I rise to support this Motion, first, because I was nominated through a political party that I am still loyal to. The party campaigned and worked hard with so many people in it, and came up with a President, Senators, Members of Parliament, Governors and County Representatives. But right now, if you go to the party, do we have a functioning office? That is a rhetorical question. Is there a county office or any functioning office that you can actually ask somebody for a document when you want it? That is not a question that you can answer with respect, because the offices are not functioning, due to lack of funds. So, if at all the parties can be given these funds, the offices will be able to function. When these offices are functioning, even the communities can gain. This is because most of the people back at home – the women, children and those who supported these parties – do not even understand what devolution is.

Madam Temporary Speaker, one of my Committee Chairmen always tells us that devolution is not an event, but a process. This process involves everyone, including us, leaders in the Senate, the leaders in the National Assembly and those back in the grassroots. In my opinion, it is the responsibility of the parties to do this capacity building, to ensure that people actually understand what devolution is. People should understand the role of their leaders. This cannot happen if the parties are not funded. That is why it is our responsibility, as Senators, to push hard, so that parties are funded and our people are able to understand the role of their Senators or who they should approach in case of a problem.

Madam Temporary Speaker, the other day I went to Nakuru County and was listening to a group of women who own hostels. They were complaining about young ladies leaving the hostels to go and stand along the streets to do other businesses late at

night. They were complaining that they went to see the Governor and could not approach him. I asked them: “Is that a problem that you should see the Governor with?” They did not know who they were supposed to see. In my opinion they should have gone to their various county representatives, so that they would then debate this in their assembly. They did not even know that the county representatives have chambers. They only knew of the Members of Parliament in the National Assembly. If the parties were funded, then we would be able to capacity build, empower and enlighten these people on the roles of the leaders. They would know who to approach and what each and every leader is supposed to be providing to the people.

We would also make these parties active throughout as opposed to being active only during elections. Like the previous speaker said, when there are by-elections, the party offices are opened. You will see party cards being sold during elections and by-elections. We make these parties irrelevant, yet they are the ones that bring us to these Houses. Why do we want to kill these parties, yet during the campaigns we sell very beautiful policies? The only way we can support these policies and stand by them is if the parties are sufficiently funded and on time.

Madam Temporary Speaker, I support this Motion passionately because I believe that people like me and many other nominated women gained from parties that still need support. If parties are funded, we can still empower other women to support parties that they believe have policies that make sense to them.

Madam Temporary Speaker, I beg to support.

Sen. Kagwe: Thank you very much, Madam Temporary Speaker, for giving me this opportunity to contribute to this very important Motion.

Madam Temporary Speaker, while I support the Motion, my conscience tears me apart when we talk about political parties. I ask myself: Do we really have political parties in Kenya? If you look at the Oxford Dictionary and go to the definition of a political party, you will find that what is popularly known as a political party here is not what is in the dictionary or any other definition remotely related to “political party” as a definition.

Madam Temporary Speaker, political parties are organizations that will typically seek to influence governance of a nation or actively control government policy. When you think about it and go back to the history of Kenya’s political parties, you ask yourself at what point we heard of a debate that related to the difference in political ideology of these political parties. For example, we know that President Barrack Obama has been trying to move the medicare Bill in the United States of America and one of the issues has been: Is this ideologically an issue of the Government, as far as the Democratic Party is concerned, or individuals, as far as the Republic Party is concerned?

Madam Temporary Speaker, when you come to Kenya and talk about political parties disagreeing on different things, rarely if ever, do we hear of a position that has been taken by a party from a point of ideology and say: Our ideology as a party is to do the following. For example, for a while, I served as Secretary General of the Social Democratic Party and learnt a lot of things about political parties. The Social Democratic Party has got extremely attractive philosophies and ideologies, and I believe in social democracy as an individual.

For example, I believe that there should be a party, following social democracy that should be asking: Even as we construct all these roads and pavements all over our country, where will the bicycles ride? If, indeed, we believe in social democracy, in spite of reading manifestos and claiming to be social democrats, why is it that to date, no political party has said that whenever you build a road for a car, you must have a path for somebody to walk on? Why do we let cars that have got tyres drive on very smooth tarmac roads and let beautiful women, with beautiful shoes, walk on dust? They all carry a piece of cloth to wipe their shoes when they get to the office. That should be an ideology of a political party. That is social democracy and equity. Why is it that we never hear of such things? The reason is because there is no party that actually says that we are socially democrats and lives up to the ideology of social democracy.

Most of the so-called political parties that we have are organizations that are similar to cults; almost like religious cults. If you want to know that this is the truth, all you need to do is to remove the head of that party. Once the head of that party is not there, in 99.99 per cent of the parties, there will be no party. Notwithstanding the words of Mark Twain, that in truth he cared very little about any political party philosophy or any party politics; what he was looking for is the head of that party.

In this country, except for one old party that has passed through one leader after another called KANU, when you actually think about it, even the new parties we belong to--- I am a Member of NARC and I was elected to this House as a Member of NARC; I am the only Member of the NARC Party.

An hon. Senator: What about your party leader?

Sen. Kagwe: My party leader--- There are individuals who are not addressing the Chair.

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

Sen. Kagwe: Madam Temporary Speaker, I will let you know that the party leader of NARC was recognized by no less than the President of Kenya and given a powerful position in Government because of her contribution to the well being and development of the party. Indeed, that does not, however, change my position that a lot of these parties are simply cults that are almost near religious cults. In fact, were I the head of some of these political parties, I would just make it a religion and everyday people would come to my church and contribute to me. The only thing that is true of these political parties is their sycophancy and serious believers in whoever leads that political party.

Therefore, even as we debate and, indeed, support this Motion, we must ask ourselves some very serious questions regarding the Political Parties Act. Should it continue the way it is? We saw, in the last elections, fly by night political parties where people just register and go around with a briefcase literally dishing out certificates for money. There are people who have registered political parties for no other reason; it is a business of gaining money.

We must ask ourselves some very serious questions: What do we mean by a political party in today's generation and today's age and who should we actually give money to? We are also aware that the manner in which we are funding these political parties in terms of the number of votes cast for the President, the Member of County

Assembly *et cetera*, and say that these are the votes cast, I am not sure what Mathematics this is. We really should think a little bit more and see whether what we are doing is the correct way to do it or not. We are talking about opening 1, 1450 party offices. Honestly, what for? Does anybody seriously believe that somewhere in a ward in Kasipul Kabondo or Mukurweini, that that office is going to be so active 365 days in a year, 24 hours per day? Never have I seen it.

I would like somebody to stand here and show me in which ward this is happening for all the political parties. As my Committee on Education, Information and Technology has been going around the country, we have seen a lot of offices, but I have not seen one opened. They are all locked. Is it necessary? Should the party not put that money into better use than having an office in the middle of nowhere? In any event, should it not be a party decision which offices they want to open and which ones they do not want to open rather than force me to open a party office in an area where frankly I am not going to get any votes? I heard my colleague saying that there are areas they do not want to float a candidate in their generosity. They do not want to float a candidate to support the opposition and *vice versa*. Sometimes it is just self-interest. If you know you cannot win, then what is the point?

Madam Temporary Speaker, my point is to do with the efficiency and operations of a political party. Who is going to oversight this money? Who makes sure that this money is properly spent? With regard to the oversight role, what happens is that at the end of every year, the Secretary-General of a party puts together documents that go to the Registrar of Political Parties. In my experience, the operation itself, unless you have a very efficient and financially based political party Secretary-General, you will find that those documents are not in place. When the documents are eventually taken to the Registrar of Political Parties, the capacity of the Registrar of Political Parties offices is really wanting as far as oversighting is concerned.

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

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

Sen. Kagwe: Indeed, Madam Temporary Speaker.

Sen. Ong'era: Madam Temporary Speaker, I would like to inform the distinguished Senator that the Political Parties Act provides for very clear mechanism of audit and oversight in terms of monitoring how the Fund is used. This is done by none other than the Auditor-General's Office.

Sen. Kagwe: Madam Temporary Speaker, indeed, I am aware that the Auditor-General looks at the document, but I am also aware that the Auditor-General looks at the document after the goats have bolted. I know it is horses, but in our country, we use goats. By that time, all you are talking about is how money was spent and how we should try and recover it. By that time, even the guy who was the Secretary-General of the party is nowhere to be seen because it was just a briefcase party. In my view, we should fund serious parties but as far as the other fly night by night parties are concerned, I do not think we should fund them.

With those few remarks, I beg to support.

Sen. Wangari: Madam Temporary Speaker, I want to start by saying that I am a founder Member of a political party and I am also a national Treasurer of a very serious

political party known as the United Democratic Forum Party (UDF). I can tell you for sure that what we went through to get this party registered was not a walk in the park especially for the new upcoming parties. The reason the African National Congress Party (ANC) in South Africa celebrated their 100 years of existence is because it has been built on a very serious foundation as was spoken to by the Senator for Kwale. That also applies to *Chama Cha Mapinduzi* (CCM) in Tanzania which has also been in existence for some time. I have been to Tanzania and met the Muungano wa Vijana wa Chama cha Mapinduzi (MVCCM) which is like the youth wing of CCM. I can tell you right now if it is not complete already, they are putting up the tallest building in Dar es Salaam. That is a way of ensuring that it is self-dependant. That will take care of what Sen. Kagwe talked about; briefcase parties.

When we founded the UDF party, I personally was looking forward to a party that can be owned by the people as a public entity; that will not have the cult-like following that we have seen in the parties in this country; that even if the leader of that party exits – God forbid, either by death or even by moving to another party – that party outlives the leadership of that party.

Madam Temporary Speaker, some of us who were born in the late 1970s or in the 1980s may have read a lot about the single party regime. I know some have lived through it – and we have Senator Number one in the House – we know they have gone through the single party regime in this country which, by the way, they had an idea. As KANU – and it has been noted by one of the Senators as they contributed – it has gone on and on. Why has KANU survived that long? It has survived because it has an asset base. I think it was the richest when we submitted wealth declarations to the Registrar of Political Parties as it has the biggest asset base to sustain and run itself without waiting for someone to donate to it.

Madam Temporary Speaker, if I am running a party that is supposed to sponsor candidates to leadership in this country and I am the one who is taking care of its financial needs, there must be the question of what is in it for me. We cannot run away from that; I have to be given a very good reason why I need to put my hard earned money into a political party as a person. It would mean that whatever I need done has to be done. First of all, even the officials in that party have to take care of my interests so that any time I want anything moved anywhere, they do not even have the moral standing to question me because I am funding the party.

I think we have come a long way in ensuring that this is taken care of; the new laws that are guiding our elections – the Elections Act, the Constitution and the Political Parties Act – have tried to address this issue. When we were registering parties – and I know many of us who were officials of political parties or have been even in the run up to the election – will tell you that it was not easy. First of all, the threshold that was put, you had to ensure that you had more than 1,000 members registered with your party in more than half of the counties; that is 24 counties. Then you had to have offices in more than half of the counties that were operational. The Registrar of Political Parties even went round looking at what type of furniture you had put in that office. If you borrowed a room, painted it and put in it a plastic chair, they would tell you that is not permanent. Those queries were raised.

Madam Temporary Speaker, by the end of this month, all political parties are expected to submit their audited accounts to the Registrar of Political Parties. This cannot be achieved without having proper regulations, and I think this House is in agreement that we do need money, because how do you then ensure that political parties keep on engaging in activities in the counties and at the national level in order to sustain the discussion on political parties?

Madam Temporary Speaker, even as we speak of cohesion and integration in this country, if the political players are not doing their role – even the drafters of Vision 2030 had seen it, because they had not only put the political pillar, but they had also put the social and economic pillars. So, when we talk of cohesion, this cannot be achieved if the political leadership of this country is not taking their role in ensuring that we are doing enough civic education. We cannot leave civic education to the Non-Governmental Organizations. I think political parties must take up their role and they must put their feet on the ground. As we agree that this devolution model is a new thing to this country, it is up to the political players, even through the political parties, to take an active role in ensuring that there is enough sensitization of what is expected to be done by the citizenry and by the political players.

At the same time, Madam Temporary Speaker, there is also need – and I keep saying this – to understand that laws are made for people, not people for the laws. That is why we must not shy away from reviewing these laws. If the interpretation of the percentage or the threshold that has been put so that you qualify for this money still remains the way it is right now or the way it has been interpreted to mean – that the percentage of votes cast means that we take all votes cast for the governors, president, senators, women's representative and Members of Parliament--- It is coming to I think about Kshs72 million; I stand to be guided. What does that mean? It means that only three parties or so in this country would be able to access that kitty. I know the Senator for Nyeri has already said that he is alone here as a NARC Member. Even if we want to control the numbers of these political parties, we must not also kill the democratic space of these parties to operate; we must also give them space for growth.

Then it would mean that in the consequent elections, if you do not qualify for this money and you have to compete with these three parties that have qualified for this money, you are already at a disadvantaged point. I think we also need to be open minded. We should also allow a discussion of reviewing this interpretation of this percentage so that we can talk about the 12 million votes that were cast. It is really a matter of interpretation, and I think as leaders, we have a duty to take part in that discussion open-mindedly without really caring to say we do not want 50 parties; I think that would be a blanket condemnation. We have come a long way from having one single party and, for me, this is a success that we can have 50 parties in this country.

It is definitely important that we manage the parties so that they do not also become money making machines or personal entities. We need to just put in place regulations like we do for other public entities. That way, we will be able to streamline and, at the same time, give opportunity for upcoming leadership and people who feel that what they are looking for in a political party has not been addressed by the existing political parties. I think the Elections Act, the Political Parties Act and the Constitution

have put enough stringent measures to ensure that you do not become a regional party by making sure that as a party, you are, first of all, very sure that you have presence in 24 counties. This should not be construed to mean that you only have an office where you put someone to sit there the whole day and do registrations or issue brochures. It means having registered members to your party. These measures are already sufficient to limit that. By limiting this democratic space, we will be retrogressing and going backwards.

So, Madam Temporary Speaker, I want to support this Motion but, at the same time, support it with a rider that we need to be open minded; we need to give space for people to express themselves in political parties in line with the freedom of expression and freedom of association. Let parties take part in other roles apart from just sponsoring candidates to Parliament or to other elective positions.

Madam Temporary Speaker, I want to give you a very quick experience I had. When we were starting UDF, we did it in a very special way. We went round the country to more than half of the counties seeking views from citizens on what a political party is. The definitions we were given--- We would hear some saying that a political party is a vehicle or a dress that you wear, and then after you cross to the other side and you are in Parliament, you discard it! Others would say that it is a ladder that you use as you climb up and when you get there, you fold it up. I think this can only be addressed by making sure that political parties are self-sustaining; political parties do not depend on one person who is then also given the mandate to---

The Temporary Speaker (Sen. Ongoro): Order, Sen. Wangari! Your time is up.

Sen. Wangari: Okay.

Madam Temporary Speaker, I beg to support.

The Temporary Speaker (Sen. Ongoro): There are three Senators who really want to contribute to this Motion but if we will continue with 10 minutes only one will contribute. So, with your permission, if you are in agreement, we limit them to four minutes each so that they can all speak.

Sen. G. G. Kariuki: Madam Temporary Speaker, I have been thinking of not contributing to this Motion but having thought twice, I think I should say something about it.

We have a history of political parties in this country and that is why we landed in this area of contribution from the Government to support political parties. We have to ask ourselves, if people support your ideology and they support what you think is good for the country or people understand that ideology, they will contribute money and you can survive without government contribution, but this displayed nothing but weakness of Kenyan politics where we have to depend on the Government to keep our political parties. This is most unfortunate because we started political parties because of a certain purpose. People had the idea of achieving certain objectives.

The Kenya African National Union (KANU) started because they wanted to throw out white people from this country. That situation was fully supported by all the Kenyans. Therefore, they were able to contribute money from their pockets and yet there was no money those days. We went on and on, and the issue of people contributing almost came to an end. It was now left to the individual politicians. That is where we

started going wrong. The politician who wanted to become president or prime minister of this country had to look for money all over the world. That brought us into ideological conflicts. This brought many problems because everybody went out to look for money to come and seek political power instead of looking for money to educate his people to understand the meaning of a political power. Nobody went to seek for funds for Kenyans to be more enlightened. It became an individual game.

Madam Temporary Speaker, therefore, we have to think whether we can be proud that money will come from the Exchequer to be given to political parties. We should ask ourselves: What are these political parties? We have big names there. Look at the manifesto of these political parties. They just pick a copy from somewhere and make it their manifesto. So, there is nothing new.

The other thing that I think will be a problem is the issue of the Auditor-General to audit politicians in a country called Kenya. That auditor will have a lot of problems because in this country, we have not changed our mindset. First of all, we should decide which direction we want to take. Do we want to promote political parties to become like the political parties we know or do we just want to sing a song here? For example, if you release about Kshs10 million and give it to an office in Nyeri or somewhere else, the first question is, who is going to manage that money? We have failed our institutions because of corruption which started many years ago and we do not want to hand it over or distribute it to political officials.

I think this country needs serious thinking about our future but for the current leadership in positions today, we can accept money for political parties but what next? It is in the Constitution that political parties need to be supported by the Exchequer but our challenge today is how this money will be used. Our challenge today is whether we are ready from top to bottom to manage our political parties differently. When you look at them now, they are all ethnic movements and not political parties. It is not even a political party but a movement of individuals who sit together and connive about who is going to be the president. It is the various tribes like Kisii, Kikuyu or Kamba and other people who decide where to go.

So, let us not deceive the country that we are in a position to run this country the way it is envisaged in our Constitution. I think we have to think twice but since we cannot stop this situation, time has come when we should change the situation.

Sen. Musila: Madam Temporary Speaker, I stand here to support this Motion and also applaud my colleagues, Senators, for the very valuable contributions they have made to this Motion.

This Motion calls upon the Registrar of Political Parties to immediately release funds to political parties in accordance with the Act and the Constitution. When this Act was enacted, the whole idea was to strengthen political parties. Unfortunately, those of us who run parties have gone round to defeat the principles of the Act which was to strengthen them and by extension reduce their numbers. As long as we have so many parties, we will have so many ideologies which are not real but just meant to confuse the other party, and Sen. G. G. Kariuki is very clear on what I am saying.

Madam Temporary Speaker, the growth of political parties has been hampered by lack of funds, but the parties themselves have not done enough to demonstrate that they

want to strengthen their parties. For example, when it comes to registration, you will find that they are even giving free membership. If you really want finances to strengthen your party, how do you give free membership to members? They even go to the extent of registering people through M-Pesa accounts so that you appear to have many members yet they are not real. This is one of the reasons why political parties have failed to grow.

We, as legislators, have to also share in the blame of lack of growth of political parties. We had very good intentions of putting legislation in place to stop party hopping because this is one of the biggest killers of political parties, where loyalty of members of political parties is questionable. When one fails in the nominations, instead of bowing and supporting his opponents, he hops to another party. If you recall, we had passed legislation to stop party hopping but when we were nearing elections, that law was amended. This did a lot of damage to political parties. People move to other parties not because they subscribe to the ideologies of that party but simply because they want to have power and to be elected.

We should instill discipline in our political systems and parties and reduce the numbers to a manageable level. Why should we have 50 political parties? How should the Exchequer fund them? Thank God we have a limitation of 5 per cent of all the votes. However, as Sen. Kagwe said, how do you calculate that? The same voter who voted for the Member of County Assembly (MCA) is the same one who voted for the Senators and for the Members of the National Assembly and yet these are counted as separate votes. The formula is wrong. As I support that the Registrar of Political Parties should release funds immediately as the Motion requests, I also think that this Act needs to be reviewed. We need to set guidelines so that we have a thoroughly researched law that aims at strengthening political parties.

Fifty years after Independence - G. G. Kariuki was there and thank God he is still around - the development of political parties has completely deteriorated. There are no political systems or loyalty to political parties. There are no ideologies. However, if we worked hard to put legislation that would curtail party hopping and make sure that if one is a member of a political party, they subscribe to the party and regularly pay money to the party, that would make people be committed to their parties. They would know their party of choice.

I support.

The Temporary Speaker (Sen. Ongoro): I now call upon the Mover to reply. Sen. (Prof.) Anyang'-Nyong'o is not in the House. However, before he left, he brought it to my attention that Prof. Lonyangapuo would be replying on his behalf and that was accepted.

Sen. (Prof.) Lonyangapuo: Madam Temporary Speaker, as I stand, I want to thank all my colleagues who have spoken to this Motion and given all their valuable comments. They have supported this Motion so that parties can be funded as envisaged in the Constitution under the Political Parties Act.

The formula that my colleagues have raised is something that we need to look at. We cannot look at the numbers of people who voted for individuals. We would rather look at the people who have been elected. We should check the number of Senators we

have and which parties brought them and tabulate this with regard to governors, Members of County Assemblies and other elective positions.

There are some parties that brought only one person. How could one party in Nyeri bring in a Senator and then get nothing else? We can sum this up and probably, out of 100 per cent, come up with 0.0 per cent and give this party some little money to run its affairs for the period that it will be in place. I think the formula can be looked at.

As I conclude, for how long will we move around with many parties in our nation? At what stage will we say that enough is enough? Democratically, this is okay but how have some countries managed to maintain four or five parties? We have new parties coming up after every five years.

I beg to move.

The Temporary Speaker (Sen. Ongoro): Hon. Senators, this Motion does not affect counties and, therefore, we shall proceed to put the question. The Senate Majority Leader, in his contribution, indicated that he would have wanted to move an amendment, but did not proceed to do so. Nothing was presented before me.

I will, therefore, proceed to put the Question.

(Question put and agreed to)

ADJOURNMENT

The Temporary Speaker (Sen. Ongoro): Hon. Senators, that brings us to the end of our business. The Senate stands adjourned until Tuesday, 24th September, 2013, at 2.30 p.m.

The Senate rose at 6.30 p.m.