

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Tuesday, 4th March, 2014

*The Senate met at the County Hall,
Parliament Buildings at 2.30 p.m.*

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

PRAYERS

STATEMENTS

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, you will pardon me if you have not given me an okay on this Statement because I did not consult after I submitted it.

Mr. Speaker, Sir, I rise to---

The Speaker (Hon. Ethuro): No! No! Last week, I said I will not pardon you on that account. But I have seen it. You must restrict yourself to the same.

Proceed.

ACTIVITIES OF MR. ERIK DEAN PRINCE IN THE COUNTRY

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, I rise to seek a Statement from the Chairperson of the Standing Committee on National Security and Foreign Relations concerning the presence and operations of a Mr. Erik Dean Prince, an American mogul and former officer in the navy of the United States of America (USA).

In the Statement, I seek to establish the following:-

(1) Whether the national Government is aware of his presence and activities and/or transactions in Kenya.

(2) Whether the national Government knows that he has acquired Kijipwa Aviation in Kilifi and the circumstances surrounding such acquisition and whether due diligence was carried out by the national Government before that acquisition.

(3) Whether the national Government is aware that the aviation industry in any country is a high security undertaking and that the same falls under the letter, spirit and meaning of Articles 238(1)(a)(b) and 239(1)(4) of the Constitution.

(4) Whether the national Government knows the history and track record of the said Erik Dean Prince and his notorious undertakings at the Black Water Worldwide Company, especially but not limited to their activities in Iraq and Afghanistan.

(5) Whether the national Government, in view of the international notoriety of Mr. Erik Dean Prince, will veto his acquisition of Kijipwa Aviation and declare him *persona non grata* in Kenya in view of the fact that even the Congress of the USA recommended that Erik Prince Dean, under his Black Water Company, could not do business with the Government of the United States of America.

Mr. Speaker, Sir, I thank you.

The Speaker (Hon. Ethuro): Chairperson of the Committee, Sen. Yusuf Haji.

Sen. Haji: Mr. Speaker, Sir, we will be able to respond to that Statement on Thursday, next week, since most of these people are on a retreat in Nyanyuki.

The Speaker (Hon. Ethuro): Thursday, next week.

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

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

Sen. Murkomen: You bungled an election---

Sen. Hassan: Mr. Speaker, Sir, I am being falsely accused by Sen. Murkomen of bungling an election. I do not know what he means.

However, I want to seek your direction as to---

The Speaker (Hon. Ethuro): Order, Sen. Hassan Omar! You know how to communicate in this House. I did not hear anybody standing on a point of order to contradict you. So, you can assume there was no intervention from any quarters.

Proceed.

Sen. Hassan: Mr. Speaker, Sir, I want to ask a specific question to the Committee on National Security and Foreign Relations, particularly over an incident that took place last month. This is the first opportunity for us to convene as a House since that incident happened.

The Speaker (Hon. Ethuro): Order, Sen. Hassan Omar! First, this is not question time. Secondly, Question Time is not available in this House. But more fundamentally, there is a procedure in which these kinds of things are processed. If you heard Sen. (Dr.) Khalwale, he was trying to apologise for not consulting in good time. But I allowed him because I had already seen it. So, what you are trying to say, you need to get the support of the Chair first before you proceed.

Sen. Hassan: Mr. Speaker, Sir, I want to then beg leave from your esteemed Chair for me to ask for a Statement from the Chair of the Committee on National Security and Foreign Relations on an incident which---

The Speaker (Hon. Ethuro): Order, Sen. Hassan! You are not getting it. I am telling you how to get that leave. Make your statement request available to the Chair for approval. Every business you see here has been approved. So, make use of today to do so. Probably, tomorrow you will have the opportunity to seek a statement and not to ask a question.

Sen. Hassan: I am so guided, Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): Sen. Hassan, maybe you were away and do not ask me how I got to know about it. Last week, we agreed this is session two of the House. So, we must comply fully with all the requirements. Hon. Senators, you may wish to help others who may not have been privy to such information.

Sen. Hassan: Mr. Speaker, Sir, I had taken it for granted that I sent the request to you by email because coming from the “digital government” I thought your ipad and other facilities were constantly at work. But I stand guided.

The Speaker (Hon. Ethuro): That is correct, we accept messages digitally. You must also accept we acknowledge receipt of the message digitally. However, in this case, your Chair was also in other meetings related to the business coming before this House. So, we did not have the opportunity to look at the ipad.

Next order.

Sen. (Dr.) Khalwale, please, hold on.

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

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

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

Sen. Adan: Mr. Speaker, Sir I want to give a notice of Motion that reads:-
THAT, aware that the film industry---

The Speaker (Hon. Ethuro): Order, hon. Senators! I have allowed Sen. Dullo to take us two steps backwards because of the nature of the matter she is raising.

Proceed, Senator.

NOTICE OF MOTION

COMMENDATION TO MS. LUPITA NYONG’O FOR WINNING AN OSCAR AWARD

Sen. Adan: Mr. Speaker, Sir, I gave this notice a bit late, but it has been approved. Unfortunately, you may not have a copy of it. But I will read it out.

I beg to give notice of the following Motion:-

THAT, aware that the film industry is one of the leading and prestigious occupations; noting that Ms. Lupita Amondi Nyong’o is a Kenyan actress who featured in the movie “*12 years a Slave*”; further aware that she made history by being the first African woman to win an Oscar Award for the best supporting actress at the 86th Academy Award held in Los Angeles, United States of America, for her role in the movie; appreciating that it is through relevant education, training and hard work that she was able to win this award and many others; realizing that she is an inspiration and a role model to many including the African women and youth; cognizant of the fact that she has uplifted the Kenyan profile in the world; the Senate records its commendation to Ms. Lupita Amondi Nyong’o for her exemplary performance.

(Applause)

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

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

An hon. Senator: What is out of order?

Sen. Murkomen: Mr. Speaker, Sir, considering the important nature of what Sen. Adan Dullo has said, and particularly because Ms. Lupita Nyong'o is the daughter of a Member of this House, am I in order to say that her intended Motion be fast tracked, so that it can be discussed today?

(Applause)

The Speaker (Hon. Ethuro): That is one proposal. What is the counter proposal?

Sen. Ong'era: Mr. Speaker, Sir, since this is the first time that a Kenyan is receiving an Oscar Award, we need to research on this matter. I beg that the House could consider that we discuss this Motion tomorrow afternoon.

The Speaker (Hon. Ethuro): It is so ordered, the Motion will be debated tomorrow afternoon.

Sen. Orengo: Under Order Number?

The Speaker (Hon. Ethuro): Order, Sen. Orengo! Now you are going to tell me about the ordering. Tomorrow afternoon should be sufficient for your purposes. You will have completed your research and, therefore, you should avail yourself. You will communicate at that particular time. There are things you do not try to anticipate.

Sen. (Dr.) Khalwale, we will now move on to your order. Please, note that you had spoken for three minutes. You have a balance of 12 minutes.

Proceed.

MOTION

COMPENSATION FOR VICTIMS OF DETENTION AND OTHER HUMAN RIGHTS ABUSES

THAT, aware that the Bill of Rights in the Constitution is an integral part of Kenya's democratic state and its framework for social, economic and cultural policies whose main objective is recognition and protection of human rights to, among other things, preserve the dignity of individuals and to promote social justice; recognizing that many Kenyans suffered from human rights abuses perpetrated by government agencies, especially between 1970s and 1980s including detention without trial and against those suspected of complicity in the coup attempt of August 1982; noting with concern that the victims of these abuses were treated inhumanely leading to painful deaths while others were dismissed from employment exposing them and all their families to undignified social, economic and psychological conditions; further noting that the High Court has in the past awarded several former detainees millions of shillings in damages for torture; concerned that most of the surviving victims are poor and cannot afford to access the court processes; this Senate calls on the

national Government to comprehensively deal with the compensation of former detainees and those unfairly dismissed from employment after the August 1982 coup so as to facilitate reconciliation and entrench the development of a just society in Kenya.

(Sen. (Dr.) Khalwale on 27.2.2014)

(Resumption of debate interrupted on 27.2.2014)

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, we adjourned when I was registering my tributes to the heroes and heroines of the struggle for the second liberation. I had reached the name of Dr. Chivule Wa Tsuma. I wanted to include hon. Koigi wa Wamwere, the former Prime Minister, hon. Raila Odinga, hon. James Orengo and hon. Charles Rubia. At the end, I have deliberately put the following names in my tribute because one of them wanted to be a President, and he could have been our President in 1992, hon. Kenneth Njindo Matiba.

Mr. Speaker, Sir, I have also deliberately left at the end the ones who paid with their lives. I want to pay my tribute to the family of Nairobi University Student Leader, Titus Tito Adungosi, the late hon. Chelagat Mutai, the late hon. Dr. Robert Ouko and the late hon. Josiah Mwangi Kariuki. These Kenyans are dead; they are no longer with us. The truth which is sometimes unspoken is that there is a lot of deep bitterness in the country sometimes wrongly directed at institutions and communities instead of that anger being directed at the perpetrators of that particular injustice.

That is to say there are people in the countryside who when they hear the mention of particular ethnic communities, they feel bitter that a hero from their own community lost his or her life because of struggling for us. We must heal this particular bitterness. The reason there is this bitterness is because people feel that they were denied justice. Justice demanded then, as it still demands now, that those whose basic human rights were violated or negated, must be compensated in favour of their memories or survivors, heirs, offsprings and families in general.

Mr. Speaker, Sir, through this Motion, I seek to persuade this Senate and, therefore, the leadership of the country, that the time for healing should not be through church services and political rallies, but through decisive action by the Executive to give effect, not only to the resolution of this House, if we shall so resolve, but also to the decisions of our courts. I am talking about courts because I want to bring to the attention of this country that judges of the Republic of Kenya have been hearing these kinds of cases and they have been making determinations. Successive attorney-general's, including the current one, all the time go to court to oppose compensation of the victims, their dependants or their families.

Mr. Speaker, Sir, when the longest serving Attorney-General whose name I have forgotten was the Attorney-General of Kenya, he opposed the award to Otieno Mak' Onyango of Kshs20 million, but it was granted. The Government of President Uhuru is yet to honour this award of Kshs20 million. Justice Lenaola sitting in the High Court in Nairobi awarded David Njau and ten others Kshs55 million. Mr. Njau and the others

were awarded Kshs10 million, Kshs7 million and Kshs400,000 five times, respectively. However, this award has not been granted.

Mr. Speaker, Sir, Mr. Mbewa Ndege was vehemently opposed by the then Attorney-General, but that did not stop the High Court sitting in Kisumu from awarding him Kshs12.5 million which the Government has refused to pay. The High Court sitting in Nairobi awarded Mr. Dominic Amolo Kshs2.5 million and the Government has refused to pay. I will not stop there. Judge Isaac Lenaola awarded Kshs15 million to Hon. Gitobu Imanyara because of the detention in the infamous Nyayo Torture Chambers. Hon. Wanyiri Kihoro, the former MP for Nyeri Town, was awarded Kshs400,000. It was opposed by the former Attorney-General and even up to now, the Executive has refused to pay him.

Mr. Speaker, Sir, before I conclude, I want to remember a particular gallant son of this country. This young man was Wallace Gichere. Mr. Gichere committed only one crime, that he was a trained journalist and a friend of Kenneth Matiba. The infamous flying squad went to the estate where the late Gichere was staying and threw him from the fourth floor of a building to the ground. The late Gichere became paralyzed. He left the country, was treated, lived on a wheel chair and fought a war where he wanted to be given Kshs245 million. He did not get that award because the then Attorney-General, whose name I have forgotten, vehemently opposed this award.

(Laughter)

An hon. Senator: Who was this Attorney-General?

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

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

Sen. Hassan: Mr. Speaker, Sir, Sen. (Dr.) Khalwale has just said he forgot the name of an Attorney-General. I just want to remind Sen.(Dr.) Khalwale that Sen. Amos Wako was the Attorney-General. He is right beside him.

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

The Speaker (Hon. Ethuro): Sen. (Dr.) Khalwale, do you wish to be informed?

Sen. (Dr.) Khalwale: Yes, Mr. Speaker, Sir, because I have forgotten the name of the former Attorney-General.

Sen. Murkomen: Is he the one?

(Laughter)

(Sen. Wako spoke off the record)

Sen. Murkomen: He has even forgotten to use the microphone!

The Speaker (Hon. Ethuro): Order, Sen. Wako! I thought last time you were advised by your good neighbour, Sen. Orengo, that you only push the microphone button once then you speak.

Sen. Wako: Mr. Speaker, Sir, I want to inform him that the Attorney-Generals of the Republic of Kenya during the 1970s and 1980s were two or three. We had Mr. Kamere who was followed by Justice Muli.

Hon. Senators: And the 1990s?

Sen. Wako: Mr. Speaker, Sir, the Motion read between the 1970s and 1980s". The first Attorney-General of the Republic of Kenya was Mr. Charles Njonjo who retired in the late 1970s, followed by Mr. Karugu, Mr. Kamere and Justice Muli, in that order. Those were the Attorney-Generals who served in the 1970s and the 1980s. In the 1990s, we then had an Attorney-General who was a reformist and who undid a number of these things that happened in the 1970s and 1980s.

An hon. Senator: And who is he?

Sen. Wako: Mr. Speaker, Sir, in the 1990s, the reformist Attorney-General who begun undoing some of those things was none other than Sitswila Amos Wako. He served from 1991 to August, 2011. That is 20 years and four months. That is when the reforms took place during my time. We are here courtesy of the new Constitution which was promulgated when I was the Attorney-General of the Republic of Kenya.

Sen. (Dr.) Khalwale: Thank you, Mr. Speaker, Sir. He has taken five minutes and the other Senator took three minutes of my time. I beg you, because I want to state my case, to allow me eight more minutes to cater for them.

The Speaker (Hon. Ethuro): I will allow you eight more minutes.

Sen. (Dr.) Khalwale: Thank you, Mr. Speaker, Sir. Now that the former Attorney-General was attempting to inform me, he forced me to go back to my notes. I have discovered that the case of the late Wallace Gichere was case No.1235 of 2002. So, the Attorney-General who was opposing him was none other than Amos Wako.

Since I am speaking from the Floor of the Senate, if you looked at the experience of South Africa, people went and apoloigised to others. Therefore, if we want to heal this country, we, the leaders, using the privileges that we enjoy when we go wrong, where we went wrong because maybe we did not have a chance to do otherwise, we should be brave enough and tell the people; "we are sorry." I say this because on the issue of the late Wallace Gichere, when I came to Parliament---

The Speaker (Hon. Ethuro): Order! Sen. (Dr.) Khalwale, I think you need to inform us whether or not that information was useful to you. Two, while I agree with the latter bit of the contribution of one Amos Wako, he misread your Motion. The period that he was referring to was when the atrocities were taking place. But your submission now was about the cases; people who sought for compensation. That is just a basic fact that you needed to clarify.

Sen. (Dr.) Khalwale: Thank you, Mr. Speaker, Sir. I hope that he has heard.

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

The Speaker (Hon. Ethuro): Order! Order! I was also to give a further order that we cannot discuss another Senator adversely without bringing a substantive Motion. Sen. Wako, I think that some of these positions that we occupy go into the annals of history and records, and references will be made. So, I do not think that it is fair to interrupt the honourable Mover. I will ensure that you get your opportunity to contribute and maybe clarify some of those issues, unless they are really---

Sen. Wako: On a point of order, Mr. Speaker, Sir. Is the Senator in order to refer to the case of Wallace, when it is the Attorney General at that time, Amos Wako, who facilitated a compensation to Wallace of over Kshs9 million, which was, in fact, also duly recorded in the national Parliament?

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, if that point of order passes, then he should also apologize for having misled the House a few minutes ago by denying that he had no idea about Wallace, but that is not my case. My case is that when this matter came to the House, I was a Member of Parliament and the then Attorney General, who I did not want to go into, opposed this award of Kshs245 million and only conceded after it was revised down to Kshs9.4 million.

Mr. Speaker, Sir, before Wallace died he married a beautiful girl when he came back from hospital. This girl was again snatched away from him by a prominent politician whose name I do not want to mention.

Sen. Haji: On a point of order, Mr. Speaker, Sir. Is the hon. Senator in order to take this House back to an issue which was facilitated through Kiplagat and Kenyans were given the opportunity to appear before the Kiplagat Commission to state their problem and anyone who aggrieved others was asked to apologize? Is he in order now to take us back to something that we have already passed?

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, they are eating into my time. I want to request colleagues that you will have time to contribute. You can then bring those issues. But if it may serve you, the same Report that you are referring to has been rejected.

Mr. Speaker, Sir, I want to read to you a statement from the Judge about Wallace. The Judge said:-

“He may have died without winning compensation that he so hard sought. But Gichere has left a legacy of a fighting spirit that was not cowed by the might of State machinery.”

Mr. Speaker, Sir, you will remember that - you were a Backbencher then like myself – whenever we would walk to Jogoo House, Wallace used to sit in a wheelchair on Harambee Avenue, facing the Office of the President. You could pass Wallace and another day go and find Omutata has chained himself on a police post. These are not jokes, but serious issues which, as a Senate, the Upper House of this Republic, must confront and address.

Mr. Speaker, Sir, through this resolution, I beg that the Government be forced to honour those awards and a total audit be done. This is because the majority of the people are not able to afford the legal process of getting justice. The majority of the 1982 youth who participated in the *coup de tat* have either become drunkards, mad or died because of being denied a livelihood. I have the distinction of having had three relatives affected. One of them, my brother-in-law, died and the other one was retired prematurely. He was a captain of the Kenya Air Force. The other one was an aeronautical engineer, my own elder brother, the one that I follow, Capt. Khalwale. So, these are real issues. If it does not prick you, just go through the daily happenings in the country. You will find that as late as the week before last, there were two former employees of the 1982 Air Force who have approached the court. Last week, a man in Kitale called Alexander Barasa went to the High Court. Yesterday, Kenneth Njindo Matiba went to court. If you are the age of

somebody like Sen. Daisy Kanainza, you might get confused when we mention Kenneth Matiba. But if you are the age of G.G. Kariuki, you know who Kenneth Matiba was. That was one of the most vibrant leaders of the Republic of Kenya.

Sen. Lesuuda: On a point of order, Mr. Speaker, Sir. Is the honourable distinguished Senator in order to insinuate that Sen. Daisy, I assume by age, does not know some of our leaders? We have gone to school and done history.

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, I think that if you had heard me keenly, I said: "Might not know." Not everybody reads history; probably others read Medicine and so on.

Mr. Speaker, Sir, Kenneth Matiba was one of the first billionaires of this country. He had some of the most flamboyant five-star hotels in the South Coast. Kenneth Matiba, to be today suing for Kshs9 million, is a statement to all of us who wish to be remembered in this country, as having fought for justice---. It is a statement that we should not just sit there, but come out and stand up to be counted and ensure that he is paid; and so should the others who did not and cannot afford to go to court.

Mr. Speaker, Sir, the injustice is so serious that even some of it went against communities. In those days, because of the so-called the act of the State, the Chief Executive used to just award land to senior military officers, members of the then Provincial Administration and communities mainly from the Coast and Rift Valley, whose land was being taken away and given to friends of the Executive, could do pretty little. It, therefore, calls upon me to request the leadership of the country, that in instances like when you go out and give title deeds to, say, the people of Coast Province, please, as you do it, do not do it the way that you are doing it. First of all, start with an audit and find out how much land that particular person or persons might have lost. So, it is a mockery for you to give somebody a title deed for a two acre piece of land, when this person and his family, for example, the Maasais, were driven out of a ranch that might have been 200 or 300 hectares. We have to do this carefully.

Mr. Speaker, Sir, because my time is up, I want to conclude by mentioning the families of Dr. Robert Ouko and Josiah Mwangi Kariuki. These two people died in a very similar way. They lost their lives through a bullet. One body was thrown in a forest in Ngong. The other one was found in a forest in Got Alila. The bodies were mutilated so as to destroy any evidence. I know for a fact, being an African polygamist; and that Dr. Ouko had Christabel as his wife, but he had also another lady who was then called Ogembo, according to the documents, and they had children. Where are those children of Robert Ouko? The DNA of a prominent man like Dr. Robert Ouko is gone. These are the things that we have to take seriously, so that we are seen to be addressing the plight of the weak.

Mr. Speaker, Sir, since Kibaki had told them that even if it took 100 years, whoever killed J.M. would be found, and he has come out of leadership after 40 years, the family of Josiah Mwangi Kariuki wants to be assured that the balance of 61 years---

Sen. Kittony: On a point of Order, Mr. Speaker, Sir. Is it in order for Sen. (Dr.) Khalwale to insinuate that Dr. Robert Ouko had another wife somewhere, and yet some of us did not know that?

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, the hon. Senator who I respect and she knows so, Coretta King, the wife of Martin Luther King, when she was matching a white friend of hers asked her: “Why are you matching?” She told her: “If you are black you would know why I am matching.” So, as far as this is concerned, you are not black and do not know why I cry for the widows that all these men normally have and they do not tell their wives, anyway.

(Laughter)

The Speaker (Hon. Ethuro): Order! Your time is up!

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, I wish to move and request a hero of the struggle, Sen. James Orengo, to second me.

Sen. Orengo: Mr. Speaker, Sir, thank you very much. I commend the Mover for moving this very important Motion.

Mr. Speaker, Sir, I want to begin by quoting the words of a Kenyan heroine, Lupita Nyong'o, when she was accepting the Oscar for the best supporting actress, during the award ceremony in Hollywood. She said that her joy came out of the pain of a little girl known as Patsy, who had lived 150 years ago. Today, we are here in this august Chamber of the Senate, but I must emphasize that our privilege and joy of being here as Senators is out of the pain of the struggles of the so many Kenyans, beginning with Harry Thuku, who over the years were tortured and detained. The tragedy in Kenya is that we only remember our heroes appropriately during their funeral. I was very ashamed, although at that time I was also in the Government, that the whole Government in Kenya went for the burial of Bildad Kaggia. The things that were being said about him, as a dead man, are things that we could not say when he was living. This is a trend that you see all the time. That should really stop, so that we remember our heroes when they are alive.

Mr. Speaker, Sir, if you read the Kenyan Constitution, at the preamble, it is appropriately honouring those who heroically struggled to bring about freedom and justice to our land. In recognition of their struggles and pains, in the preamble, the people of Kenya have said that we aspire towards the creation of a Government based on essential or fundamental values of human rights, equality, freedom, democracy, social justice and the rule of law. This same Constitution has gone beyond what was in the old Constitution. In Articles 2, 5 and 6, it says that the general rules of international law shall form part of the Kenyan law and any treaty or convention ratified by Kenya will form part of the Kenyan law.

Further, in Article 10, on national values, again the Constitution talks in very exalted terms on the principles and values of governance, which include human dignity, equality and human rights. In the Bill of Rights, we have said that the fundamental rights and freedoms as enumerated in the Constitution are an integral part of the Kenyan democratic State. These are very good ideals and we hope and pray that, as people to whom trust has been bestowed by the people of Kenya, to have a Government that would be established or has been established on the basis of this Constitution. But our conduct will not just be based on what is happening today or tomorrow, but it will be based on our

history. That history, if we forget it, we will not move ahead and make sure that Kenya becomes the State that we endeavour it to become.

Mr. Speaker, Sir, this is a matter on which I could speak for a very long time, but I have only 10 minutes. But on the brunt of detention, when you hear the stories of people like Kenneth Matiba and others, the conditions in which they were kept were inhumane. These heroic Kenyans were not criminals. If you read the stories about their experiences, that somebody was put in a water logged cell for 24 hours. If you are able to go out of the cell, it was for 10 or 20 minutes for sunshine. I had that experience at Naivasha. Only then do you begin to understand the condition of Kenneth Matiba today. I knew Kenneth Matiba when I was a school boy at Alliance High School. We had never known a person with such a disciplined way of life. As a school, we visited his home in Tigoni. He was a teetotaler and a very committed athlete. You know, none of you has ever climbed even a small hill around your village, but he had climbed the Kilimanjaro, not once, but many times. But if you look at Kenneth Matiba today, it is an intense part of our story.

Thank you very much, Sen. (Dr.) Khalwale, because the last time I visited him, the conditions were outrageous. I think he is somebody with so much fight that he would not want to sue a Government like the Government of Kenya because he is not seeking any reward. However, because we have forgotten about him and his family, and with his business going down, he has been put into a situation where now he has to go to court to seek redress. The same can be said about people I knew like Masinde Muliro and Achieng Oneko. Many of them have been talked about here by the Mover, even including the Prime Minister, Raila Amolo Odinga and myself. You know one of my fingers here was cracked by the police. You would never know how important a finger is until you lose a finger like I did.

Mr. Speaker, Sir, under this Constitution, what I would now encourage the Kenya National Human Rights and Equality Commission which Sen. Hassan knows a lot about, is to investigate all these abuses and give recommendations to this Government for redress, including compensation, because that would be a way of honoring our heroes. These heroes come from across all Kenya. It is not from any particular place in Kenya, but they come from all the communities in Kenya who have contributed very positively to the freedoms that we enjoy today.

Mr. Speaker, Sir, I want to end up by saying that the struggles of these people should always make us remember that we are one country. I want to emphasize this; be your brother's keeper!

(Applause)

In Kenya, sometimes we play politics until we forget that we are brothers and sisters. These struggles of men and women across Kenya require of us that one day I will be seen to stand up for Sen. G.G. Kariuki as a brother with whom we share, not just the leadership in terms of this Senate, but as a true Kenyan who has made a contribution. These are the things that can bring the nation together. You see this thing across many countries such as the United States of America (USA); that the likes of Martin Luther King, have brought the nation together. In USA, it is no longer a black America or a

white America, but through the life of Martin Luther King, they are seeing one America and one nation. So, in the lives of our heroes, we can see Kenya as one country and neither Jubilee nor CORD; but we are CORD and Jubilee for purposes of making sure that we have got the kind of governance as contemplated by the Constitution of Kenya. So, I hope that in the next two years, we may see some signs that we are ready and willing to compensate or give redress for those who contributed so much in our lives.

I was a little bit pained when Sen. (Dr.) Khalwale was talking about the late Dr. Ouko because, as I speak today, the skull of Dr. Ouko is still with the Scotland Yard. I did that case and I know that what was buried was a restructured human skull because of the political heat at that time and the investigations that were going on. They had to restructure that body. Now, what is the pain of that family when they know that, not only that their loved one was brutally murdered, but for the convenience of the State at that time, they had to restructure his body so that, at least, Dr. Ouko, would be buried and we begin to forget?

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

(Question proposed)

Sen. Murungi: Thank you, Mr. Speaker, Sir. Allow me to start by thanking, once again, the ‘bull fighter’ for taking this other ‘bull’ by the horns.

(Applause)

Mr. Speaker, Sir, also allow me to exonerate the Attorney-General *Emeritus*, Sen. Amos Wako, from some of the insinuations. This is because I served as a Minister for Justice and Constitutional Affairs while the *emeritus* was the Attorney-General. We discussed this matter regarding the torture, inhumane and cruel punishment that had been meted out to the people who were struggling for the second liberation in this country. Both of us agreed that, indeed, those people needed to be compensated. I do recall that he even had some meetings with the then Kenya Human Rights Commission to try and prepare a report which the Government could look at. So, I think we have to give credit to Sen. Amos Wako for recognizing that need. If they were not paid, it is only because of the usual complications in Government.

Mr. Speaker, Sir, I do recall Walter Rodney’s book “How Europe Underdeveloped Africa,” and he was saying that whenever he used to walk in New York and he saw the highest skyscrapers there, he always used to sit down and weep when he remembered that so many black people died. How many black people died in the US so that those skyscrapers could be constructed?

Mr. Speaker, Sir, I know we, Kenyans, are celebrating the new Constitution. We are enjoying immense benefits of the new Constitution, but little do we remember how many people have died, how many people have been tortured, how many people have been subjected to various forms of degrading and inhuman treatment so that this Constitution can be what it is today.

Mr. Speaker, Sir, I had the opportunity to serve as an advocate of the High Court of Kenya for 90 per cent of all the persons detained without trial in this country. I am one of the few people who met them in the detention camps where other people were not allowed to go. Therefore, I am painfully aware of the immense suffering that people were taken through. I am aware of cases of some people who ate their own faeces and drank their own urine. I am also aware of some people in this town who were physically castrated. It is very shameful to talk about them because we cannot even disclose their identities, but they are there. You know, these are people who cannot even have normal relations that other human beings have, all in the name of the struggle for this Constitution.

Mr. Speaker, Sir, there are others who died during that struggle. Very many people were economically destroyed; Mr. Kenneth Matiba being one of them. He was one of the richest people in this country, but you can see where he is now. He would not be going to court if he had the vast resources that he used to have. That is a very dark page of our history, but we cannot pluck it out. The only way to deal with it is to confront it the way the ‘bull fighter’ is proposing that we confront it.

(Applause)

Mr. Speaker, Sir, I do recall that on one occasion, I also represented the current Chief Justice when he was detained without trial. I know that he is also painfully aware of what we are talking about. I also had occasion to represent the Prime Minister, Raila Odinga, when he staged a hunger strike in Shimo la Tewa Prison. He was almost on the verge of death; then some urgent measures were taken.

Mr. Speaker, Sir, I do recall the case of Mukaru Ng’ang’a who was at Manyani Prison. He had concluded that he was no longer a human being because he had evolved from the level of human beings to the level of animals and that is why he was taken to a national park in Manyani. When I met him there he had only one request; “because I am going to die here, please arrange for them to bring a priest to bless me before I go”. I am sorry to say that our various pleas to get that man a priest did not succeed. We were not given a priest. When I met him lastly, he said that since they had denied him his personality as a human being and that he had no soul, he made a request that he should not even be treated in accordance with the Constitution of Kenya then because the Constitution actually prohibited torture and inhuman treatment.

He said that he did not even want to be treated in accordance with the laws that other human beings were treated. He said he wanted to be treated in accordance with the law of animals which is Prevention of Cruelty to Animals Act. This Act makes it illegal for any person to put an animal in a cage. So, he said he wants to be treated according to that law because he was virtually being put in a cage. Even that one was rejected. Finally, he died. He was a young man of my age, but he died likely because of frustrations, high blood pressure, blood sugar and very many painful things.

I am happy the High Court has come up to award compensation to those who have gone to court. The shame is that even those who have been awarded are not getting the money. Are we waiting for them to die so that this money is not paid? For instance, I

know hon. Gitobu Imanyara has been awarded, I think Kshs9 million, Mak' Onyango has been awarded some money. I believe that even this case of Matiba is going to win because the stroke that he suffered was as a result of being denied medicine for high blood pressure when he was in detention.

Mr. Speaker, Sir, we, as a Senate, should stand up to be counted by urging the Government to pay those who have been awarded those compensations so that they can start enjoying the little rest of their lives. There are many others who have not gone to court; for instance, the family of Mukaru Ng'ang'a. They cannot even afford to file a case, but they paid the highest prize for this freedom. The only way we can reach out to those people is to start a compensation fund. We start a fund for all those people who were treated in that manner, those who were detained without trial, those who were tortured, those who were maimed and there are those who were ashamed to come to court to say they were castrated because it is very embarrassing to bring that kind of case in court. We should have a mechanism where they can be treated in a confidential manner and they can be compensated.

Mr. Speaker, Sir, time has come for us to put our money where our role models are. We are talking about respect for dignity and respect for human beings. Since the time of Hitler in 1940s, the Jews have been pressuring for apology and haunting those people who committed those crimes against humanity all over the globe. So, there is no reason we should treat our people as if their lives are not important. If this new Constitution is going to add a meaning and if people are going to fight for freedoms in future, the manner in which we treat these detainees is going to be very important.

Mr. Speaker, Sir, mine is just to add that voice and congratulate the "bull-fighter" for taking up this matter. I think as a Senate or Upper House, this is a worthy course for us to pursue.

With those few remarks, I beg to support.

Sen. Hassan: Mr. Speaker, Sir, I also want to congratulate Sen. (Dr.) Khalwale for this extra-ordinary Motion. Some people in this Senate do embody the struggle of this nation. I remember meeting Sen. (Dr.) Khalwale, way back in 2001 in Kakamega when I was the national coordinator for Muungano wa Mageuzi and he was one of our executive members. Today many Kenyans look up to this men and women who are in this Senate and National Assembly to articulate the cause of those who paid quite a heavy prize in the struggle for the liberation of Kenya. I also remember meeting Sen. Murungi. He met me when I had just been chased out of school when he was a lawyer practicing in the firm of Gibson Kuria and Kiraitu Advocates. I do believe that he filed a case for me for my return to school. When I told him that I did not have court fees, Sen. Murungi, took care of that fee and also instructed one of his lawyers, Kathurima, to do my case *pro bono*. Those symbolized some of the many sacrifices that Kenyans have made in this journey. Today the Chief Justice who sits at the helm of the Kenya's Judiciary was also a victim of the excesses of the past regimes. I think it would be very unethical for us, as a country, not to recognise these men and women who were so gallant in the struggle for this nation.

Mr. Speaker, Sir, just to reflect on the case of Wallace Gichere; I do recall in 2003 we were shortlisted to be commissioners in the Kenya National Human Rights Commission (KNHRC), unfortunately Wallace Gichere was not appointed commissioner

and he declined to reapply in the subsequent appointments, but I re-applied one more time and, at that time, I was appointed commissioner. For many of those who were in the democratic struggle, the expectations were that we would use that framework of the commission to argue, highlight and articulate some of these rights and pursue the necessary compensation to those who were victims of the rules of that time, both the Kenyatta and Moi Rule.

That said, I think there are two forms of justice in this type of work. I was the head of the transitional justice; a programme in the KNHRC. There is restorative justice, where you give people a bit of money and redistributive justice where we punish those who committed these crimes. Just the fact that we award a few of these gallant Kenyans a bit of money does not take away the pain. We must subvert the possibility of those excesses ever happening in this country again. That can only come if those perpetrators of this constitutional crimes - I believe some no longer fall within the purview of statutory limitation because these are heinous crimes - are taken to book. I do believe that some of those who presided over the Nyayo torture and all forms of torture and degradation of human dignity are men and women who are known to us; they walk on the streets of Nairobi, Kisumu and in other part of Kenya, scot-free.

Mr. Speaker, Sir, you recall this year we marked 30 years of the Wagalla Massacre. This is Kenya's most heinous crime and yet no compensation or even an attempt towards the resolution of the victims of this massacre has been taken into consideration. The military officers who conducted this operation are known, the men and women who sanctioned these operations are known yet the country lacks the courage to take on some of these challenges. Until and unless justice is done the question of integration and healing cannot only be about cuddling and kissing but has to encompass an important component of justice.

Therefore, there are other men whom we might not have mentioned, for example, there was the Islamic Party of Kenya, the then spiritual leader of that party Khalib Balala was equally detained. After his detention, he was denied his citizenship. Today, he roams the streets of Mombasa aimlessly because of a life that was taken away by a ruthless and dictatorial regime. It is important for us to consider all these men. Alamin Mazrui was equally detained together with Willy Mutunga. I have heard horrific stories of these men and women who were put through so much pain. In fact, sometimes I congratulate their soul and resistance. I have been able to interact with so many of them in my little time at the KCHR. I continue to interact with some of them who regularly come to us for certain discussions. This would be an important avenue to anchor Kenya's healing process.

Mr. Speaker, Sir, you will recall that the transitional Truth, Justice and Reconciliation Commission (TJRC) made certain recommendations to ensure that we restore people who we wrongly and systematically abused over the years from extra judicial killings, land grabbing and all forms of excesses that disposes and disfranchise certain section of the community. I think it is important for this Senate to find creative ways to ensure that we take up part of the recommendations of the TJRC. I know they upset some of us. However, in this process of finding justice, it does not matter who gets upset or who gets too emotional, the process of justice itself is very resilient.

I urge those who are holding power, therefore, to ensure that this report is implemented in its fullest. Towards 2007 general elections, Mwai Kibaki, the then President of Kenya, constituted a committee to look at the concerns of the Muslim community. Massive information was shared about the transgression of the past and present regimes; of what crimes have been committed, including alienation and marginalization. For example, there are small issues like getting identity cards which is a major issue to some of the people who bear our names. There are issues around issuance of passports and other issues around citizenship. For a long time, we ignored these issues.

Mr. Speaker, Sir, this is a report also that President Kenyatta should ensure is implemented fully and its recommendations taken on board so that we can bring a formula where justice is accorded to all those who were dispossessed or disfranchised over the 50 years of Uhuru. Therefore, I am here to support this Motion. It is a timely one and I think many of us, including yourself, are known to be progressive actors when it comes to matters of human rights and social justice. I think the Senate has the direct responsibility in protecting this Constitution. We have a committee in this House that is very seized of its mandate. It is called the Legal Affairs and Human Rights Committee. That is how seriously the Senate regards its human rights mandate.

I want to accolade Sen. (Dr.) Khalwale for bringing this Motion to our fore. That Committee is chaired by none other than the former Attorney-General, Sen. Wako. I believe he will help us to unpack some of those excesses he talked about. He talked about excesses that he tried to unbundle or to unpack when he was the Attorney-General for 21 years. I think he is an asset in giving us the moral radar to find some of the perpetrators. Surely, as I said earlier, monetary value does not take away the pain. However, it gives people an acknowledgment that, first and foremost, transgressions were committed against them. Secondly, there is the issue that hon. Khalwale talked about; that the state must have the courage to apologise to people it has violated in writing. Many countries do so. These are countries in the West and other democracies. We need to acknowledge the mistakes that we have made and unequivocally apologise. Nonetheless we must punish the transgressors so that this country moves forward.

I beg to support.

Sen. Haji: Thank you, Mr. Speaker, Sir. I am very angry with myself that I raised a point of order when hon. Dr. Khalwale was speaking. I want to apologise to the victims as narrated.

(Applause)

I have really been touched by what hon. Kiraitu Murungi has talked about. I knew people were being detained, but I did not know that some people were made to eat their faeces. If that is the case, then that is very sad. We have gone through a very sad history.

I support this Motion because I cannot stay away from it.

Sen. Wako: Thank you, Mr. Speaker, Sir, for giving me this opportunity to speak on this very important Motion. On the onset, it is clear to say that I support this Motion. In particular, it calls upon the national Government to comprehensively deal with the compensation of former detainees. I should add the words “comprehensively” and

“expeditiously.” What is lacking there is the word “expeditiously.” I do not think that it is true that Sen. Khalwale had forgotten the name of his in-law who was the Attorney-General of the Republic of Kenya. What he had forgotten were the Attorney-General’s during the 1970s and 1980s. Those, he had forgotten. However, he had not forgotten the one who took command at the beginning of 1990s.

I took command at the beginning of 1990s when most of the serious allegations had already taken place. In fact, it was said, at that time that I was appointed because of the very bad human rights record that Kenya had. I was appointed because of the very bad acts that had happened in gross violation of human rights during the 1970s and 1980s. Indeed, that became my focus.

The Speaker (Hon. Ethuro): Order, Sen. Wako! I appreciate that clarification. I was very concerned about it, but since nobody challenged it, I allowed it to pass. However, Sen. (Dr.) Khalwale had forgotten you.

Sen. (Dr.) Khalwale, you are responsible for the accuracy of your statements. You should have told us that you are not willing to disclose. At that time, we would have appreciated that he is your in-law. We could have understood why you did not want to disclose.

Sen. Wako: Mr. Speaker, Sir, the other thing I was a bit concerned about – with a bit of light touch – is when Sen. Lesuuda raised a point of order because Sen. Khalwale said she and Daisy were not aware of what was going on since they were too young. The response of my fellow Senator is that in school, some students are taught history while some are taught medicine. In other words, he was not aware that history was being taught and that these young Senators were aware of the problems that were taking place. However, since he is a doctor, I want to assume that he was not aware of what was going on because he was confined to a hospital treating people and so on. Let him tell us his experiences and whether he treated some people whose rights had been violated physically.

I do not want to go into history. The issue here is “comprehensively” and “expeditiously” compensate. The principle of compensation of these victims had been agreed to as Sen. Murungi pointed out. People here may not appreciate that the agreement was in itself momentous. It was momentous because legally and technically, as at that time, there was a law. There were no decisions of the court which said that if you did not institute a case against the Government within one year of the occurrence of what you are complaining about, your case is time barred.

In other words, we had a statute of limitation as far as that was concerned. With regard to a number of these people, I could have easily gone to court and said that their cases are time barred under the statutes of limitation. With the situation that existed as at that time, it was very difficult for some of them to have the courage to go to court and file a case. Therefore, a deliberate decision was made by the Attorney-General in consultation with the Minister for Justice and Constitutional Affairs. I had already decided that we do not tell the court that the cases are time barred. In other words, we said that however late it was, we asked someone to come and the case would be listened to. If the person proved the case, then they would be compensated. That was a very good point.

The other issue that has been dealt with by Hassan Omar is that of Wallace. Wallace was one such case. Wallace's case is very important because he was one of those brave souls who went to court to file a case. Other people were very timid to file a case at that time. Unfortunately, because of the way our legal profession was, people wanted to make a killing. The advocate asked for Kshs250 million plus more money. If you calculated the interest among other things, this figure translated to Kshs500 million. He was told to either pay that or forget.

Fortunately, I established a very good rapport with the Wallace himself, everybody and the Parliament which was concerned with the matter and came up with a compensation that could be justified in law. That compensation was Kshs10 million plus interests and costs and I recommended that he be paid. I do not want to tell this Senate that the money was not awarded to Wallace, at the end of the day, owing to our legal profession. Wallace was my friend and I fought very hard. I fought that advocate until the money was paid and because of that many more cases were filed. That is what Sen. Murungi was saying. There were many cases and some forces in the Government who said that this was too much. We said no, these people must be compensated and we agreed on compensations. The more we agreed, the more cases were filed. It was the Attorney-General's opinion that human rights abuses of the past must be addressed effectively.

What has happened is that actual payment becomes difficult to pay. That is why I support this Motion that the Government should address this problem comprehensively. Sen. Orendo mentioned that there should be a compensation fund for this. That is something that can be taken up. I know that my successor is also supportive of the compensation being paid expeditiously. I have seen him writing a number of letters saying that these are court orders and that they must pay.

The problem of Government not paying, if I may put it in perspective, is a problem that attaches all types of judgments against the Government and not just those who have to be paid due to human rights abuses. However, on civil claims and so on, the Government has always been very difficult to make payment. I am sure that with the Treasury, arrangements are being made to ensure that payments are made. This Motion will add that impetus; that payments must be effected immediately.

I do not want to go into details on the types of tortures and so on because that can make someone cry. On Sunday, I almost cried about some human rights abuses when I read the diary of JM which said that 8.00 a.m., in the morning, somebody went to his bedroom. The diary said that at 10.00 a.m, this also happened and even 11.00 a.m. This went on until very late. Going through this diary, I am sure Sen. Haji would have cried. Tears almost came out. That reminded us very vividly of the things that went on during that time.

I am glad that Sen. Hassan said something here with regard to JM Kariuki, Dr. Ouko and others. As an Attorney-General, it was not upon me to say that the file must be closed. When you look the files of the Ninth and Tenth Parliament—

The Speaker (Sen. Ethuro): Order, your time is up!

Sen. Wako: Please, give me one minute.

Sen. Kembi-Gitura: Thank you, Mr. Speaker, Sir. From the outset, I want to indicate my total and undivided support for this Motion as far as it is possible to perpetuate it the way it is drawn. It talks about being unfairly dismissed and somebody may have to prove the fairness or otherwise of the dismissal, pursuant to other things that have happened.

On this Motion, I cannot afford not to be personal in my contribution. We have all grown up in this country and gone to universities here. Many of us here went to the University of Nairobi. We were there in the 1980s when there was the clamour for the second liberation of this nation. Some of us saw what happened all the way from the days of *Saba Saba* and beyond, leading to what we have today, a multiparty democracy.

Some of us, as young lawyers, saw technically and fully what happened because we took interest in it; followed it and even took part in the things that happened. The reason I say I cannot afford not to be personal is because, many times, I have talked about the heroes of this nation, all the way from the 1920s when we were looking for the Independence of this country from the colonialists all through history to the time that we clamoured for Independence with the Mau Mau. You will recall that no so long ago, the Mau Mau who were rebellions, but who in truth, were freedom fighters came out, sued the British and have been paid some compensation. The biggest thing that happened in the case between the Mau Mau and the British is not so much the money that they got because they got Kshs300, 000 for all the suffering and the time spend in the forests fighting for the Independence of this country may not be sufficient.

It may not be sufficient compensation, but that the British Government finally came out and said that they were sorry for what happened. What they did was wrong; they apologized and hoped that it never happens ever again to anybody in the world. This was a great expression and that was not satisfactory, but I am sure the people that were involved in this like Mr. Gitu Kahengeri, at least, can sleep comfortably knowing that those people realized what they put us through. We have got very great heroes in this country. I was there and I saw it at the Kamukunji during the *Saba Saba* days of the 1990s as a young lawyer and we saw what happened. At that time, I was a voter in a place called Mbiri Constituency in Murang'a County which is now called Kiharu Constituency which I had the privilege to subsequently represent as a Member of Parliament.

My Member of Parliament was called hon. Kenneth Stanley Njindo Matiba. Hon. Matiba, amongst other people, were the ones who said, enough was enough, He said this alongside Messrs. Martin Shikuku and Charles Rubia. There were also other great people from this country. I also saw Sen. Orengo on that green Toyota Hilux Pick Up which belonged to a client of mine. We all saw these things and it was not a small issue at all. I saw my Member of Parliament and that is maybe why I went to politics because I had a role model. This was somebody I could look up to. He is somebody who believed in his country and in his people. I also know that he was a very well to do businessman. He was very astute and principled. He earned money through sheer hard work. He went to politics because he believed he could help change this country. What happened to him and those other great heroes of this country like the late Martin Shikuku?

During the Ninth Parliament, I know those who were with me including Sen. Murungi, Sen. Wetangula and others will remember that that is when my former Member of Parliament started being tribulated by banks taking over his property and also selling his schools like Hillcrest. I remember issuing a Statement from the precincts of Parliament with the support of many Members of Parliament and I am sure Sen. (Dr.) Khalwale signed that petition.

Sen. (Dr.) Khalwale: I did!

Sen. Kembi-Gitura: Mr. Speaker, Sir, at that time we were asking the Government, that it cannot sit back and watch people like Matiba who helped us get the second liberation, who lost their wealth not because they were careless in their businesses, or less astute, but because they stood for this country. We saw his property being auctioned. We saw his hotels in South Coast, Naromoru and Nairobi being auctioned while we sat back and watched. I do not know whether those are historical injustices or those are things that we need to think about as leaders. We can now talk of the Limitation of Actions Act and say that they were delimited from claiming. What is going to happen to the likes of those heroes who should be inscribed in the history of this county languishing in poverty? Not the ones that Sen. (Dr.) Khalwale is talking about here, but people who knew what they wanted and people who did not wrong anybody. The only wrong they did was to stand up to for this nation. I want to submit that we have a duty as elected leaders to stand up for those people.

Mr. Speaker, Sir, this Motion is so important because this morning when I read a newspaper and saw that hon. K.S.N. Matiba has sued for Kshs9 million, I almost cried tears because that would have been loose change for him. He is now suing for Kshs9 million for the suffering he has gone through because of this country whereas others have benefited from the largesse of those kind of people not monetarily, but we can sit here now and talk about our nation the way we are doing right now. We should be ashamed of ourselves. I think it is time we started looking seriously even about that Act of Parliament that was brought about to honour the heroes and heroines of this country and also thinking about this seriously and being ashamed that hon. K.S.N. Matiba can go to court to talk about Kshs9 million for the suffering that he went through.

I am not only talking about hon. K.S.N. Matiba, but the people I truly admired and respected like the late Martin Shikuku, Sen. Orendo and all those that I saw on that green Toyota Hilux Pick up, whose owner I knew because I was acting for him. I went to look for the pick up from the Nairobi Area police station and I was almost locked in because of going to ask for its release because it was being held for having ferried people who were talking about the new liberation. I know Sen. Murungi can remember this.

Mr. Speaker, Sir, I think it is important that we look into this matters and almost legislate them so that there is no confusion when we talk about these kinds of situations because for Sen. Haji to stand up and say what he said, I felt pity when he apologized to Sen. (Dr.) Khalwale for having stood up on a point of order because that is great. Even for a duly elected Government to say that they are sorry for the wrongs that they did and they are going to make amends, we know we cannot amend fully what we have done wrong monetarily but we should stand up now as a nation, a people and a Government

and say that we are sorry for what we did and we ought not to have done it, and we appreciate the work those great heroes did for this country.

I wish to support this Motion. It may require a bit of touching up here and there because of the wording, but in its totality and as pertains to what it is addressing, I fully support.

The Senate Minority Leader (Sen. Wetangula): Mr. Speaker, Sir, allow me to salute Sen. (Dr.) Khalwale for bringing this important Motion. The Holy Book tells us that the beginning of healing is the acknowledgement of wrongdoing. Until and unless we acknowledge that we were wrong, we cannot heal. That is why a country like South Africa set up a truly Truth, Justice and Reconciliation Commission (TJRC). We attempted here, but we all know how we ended up. Everybody wanted to doctor the report to remove their name and we ended up with a TJRC Report that was not a report. This is because everybody wanted not to be there even when they ought to be there.

This country has come a long way and I want to single out that man there, the Senator for Meru, Sen. Murungi. When The National Rainbow Coalition (NARC) came to power, he did an act of courage. He was the first Minister of Government in the history of this country to acknowledge that people had been wronged and that these wrongs needed to be addressed. Sen. Murungi, we salute you. You did not complete the job, but you started it. I recall very well a man called Mwandawiro Mghanga. We were with him in the other Parliament. I acted for Mwandawiro Mghanga who was a student leader. He was arrested on trumped up charges, taken to court at 6.00 p.m., when no lawyer could be available and jailed for 15 years. When a lady called Njeri Kabeberi instructed me to save the life of Mwandawiro Mghanga, I went to Kodiaga Prison in Kisumu and I saw the heap of Mwandawiro Mghanga on the floor dying. I shed tears. I managed to go to court and within two days I got an order for him to be taken to hospital. They had just left him lying on the cold cement and he was dying. Mwandawiro lived to join us in the Ninth Parliament.

We have talked about Matiba and I do not need to repeat that. There is the late Martin Shikuku. When he was in his last days, I went with Sen. (Dr.) Khalwale here and other Members to see him in a third rate terminal care centre. We looked at the late Shikuku and we asked ourselves whether that was the man who fought for the Independence of this country. When Shikuku died, not a single Government person could even bother to ask how his family was going to survive beyond him. When we saw him in hospital with Sen. (Dr.) Khalwale and others, we broke down, but he told us: “Young men do not cry. I was only waiting for only one thing in this county; the delivery of the new Constitution. It has come and I am ready to face my Maker”. He did go to face his Maker.

Mr. Speaker, Sir, this country has gone through very difficult times. The first regime had terrible human rights abuses. The second regime was the same. We must also salute where it is due. When Mwai Kibaki came to power, the torture chambers disappeared and the molestation of people disappeared. You remember a man from Meru called Ndambiri or something like that who was jailed for 15 years for an entry in his diary. An entry in his private personal diary resulted in him being picked up and locked up for 15 years.

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

The Senate Minority Leader (Sen. Wetangula): I will have it, Mr. Speaker, Sir.

Sen. Murungi: Mr. Speaker, Sir, that man was a minister of the Presbyterian Church and he was called Rev. Imundi. They had put a can on his head in Karura Forest and shot through the tin on his head. So he thought he was dead and when he recovered and was brought to court the same day that is when he pleaded guilty to having been a member of *Mwakenya* for many years and he was jailed for six years.

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

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

The Senate Minority Leader (Sen. Wetangula): Thank you, Sen. Murungi. Those are some of the dark days in this country.

Mr. Deputy Speaker, Sir, you remember how Martin Shikuku and George Anyona were arrested in Parliament for making a contribution and simply saying: “Do you want to kill Parliament the way you killed the party?” That was enough. I know who signed the detention order and I will not say it here. If the colonial regime can acknowledge the torture to our people in Mau Mau---

Sen. Hassan Omar: On a point of order, Mr. Deputy Speaker, Sir. You realize that some of us were not there at that time. So, it will be nice in the narrative of history if he could be more specific on his facts.

The Deputy Speaker (Sen. Kembi-Gitura): You can always read history because it is written everywhere. It is all very well documented and I am not going to direct Sen. Wetangula on how he is going to conduct his debate.

The Senate Minority Leader (Sen. Wetangula): Mr. Deputy Speaker, Sir, neither shall I swallow that bait.

If Mau Mau detainees and those who were tortured can be compensated by an illegal colonial regime—

Sen. G.G. Kariuki: On a point of order, Mr. Deputy Speaker, Sir. I think it is very unfair for us to let Sen. Wetangula go without mentioning who signed the detention order. He said he knows him very well. Why can he not name him?

The Deputy Speaker (Sen. Kembi-Gitura): Sen. G.G. Kariuki, I want to think Sen. Wetangula made that statement as a matter of fact that is known. Are you asking him to clarify?

The Senate Minority Leader (Sen. Wetangula): Mr. Deputy Speaker, Sir, under the new Constitution. This information is publicly available to anybody.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Wetangula I am holding your time so there should not be too much of a rush. Sen. G.G. Kariuki, are you asking for substantiation?

Sen. G.G. Kariuki: Mr. Deputy Speaker, Sir, I am asking for clarification. He should substantiate in this House because he is a gentleman we all respect. I think nothing should happen without it being clear to the Members. Let us know who signed the document he is talking about.

The Deputy Speaker (Sen. Kembi-Gitura): Do you have that information, because then you may have to give it?

The Senate Minority Leader (Sen. Wetangula): Mr. Deputy Speaker, Sir, it is public knowledge. I know that my brother, G.G., signed some detention orders, but certainly not Shikuku's, because he was not the Minister then. So, if the worry is that he did, he did not. He was a Minister after.

Sen. G. G. Kariuki: On a point of order, Mr. Deputy Speaker, Sir. I respect the hon. Member very much, but it is not very good to speculate. I feel very strongly that he needs to be specific as to who signed this thing that he is talking about. He should also tell the House how many orders were signed by G.G. Kariuki. I think there is need to say so because I will find time to talk. Some people are taking this matter very casually, yet it is a very serious matter for somebody to think that so-and-so was keeping quiet because he did "a", "b", "c" and "d". That is the impression which my friend wants to create, which is very unfair. I think that he better be straight. The scope of this Motion is very wide and you can use it without mentioning people.

The Senate Minority Leader (Sen. Wetangula): Mr. Deputy Speaker, Sir, I wish to carry on. I can tell the House without any fear or favour that my very good friend, G.G. Kariuki, in fact, once told me that he signed a detention order for Orengo, but before they caught up with him, he crossed the border to Tanzania. But that is not what we are debating here.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Wetangula, I want to be fair and reasonable. I have told you that I am holding your time. So, just relax for now. When it is said by Sen. G.G. Kariuki that you said that you know who signed the detention order, who were you referring to? Were you discussing a specific detainee?

The Senate Minority Leader (Sen. Wetangula): Mr. Deputy Speaker, Sir, it is common knowledge. I was mentioning two detainees; Martin Shikuku and George Anyona, who were arrested in the precincts of Parliament for saying that the regime then was trying to kill Parliament, the same way that it killed the only party then. Everybody knows - because my brother G.G. was in Parliament - that at that time the only person or office that signed detention orders was the Minister for Home Affairs. I am sure that you can go to the books of history and check. These are matters of common knowledge and are even taught in civics in primary schools.

Can I go on, Mr. Deputy Speaker, Sir?

The Deputy Speaker (Sen. Kembi-Gitura): I heard you also say that, that person was not hon. G.G. Kariuki. So, if that is the issue, then I think that by exclusion, it must have been somebody else. Probably, we should rest that matter now.

Sen. G. G. Kariuki: On a point of order, Mr. Deputy Speaker, Sir. Is the hon. Member in order to continue making further allegations shamelessly, that I told him that I signed the detention order for hon. Orengo? The Minister of State never signed any detention order. I think that it is the high time my friend became mature in this House. It is unfortunate.

The Senate Minority Leader (Sen. Wetangula): Mr. Deputy Speaker, Sir, I do not want to engage in unhelpful altercations with my very good friend. Sen. James

Orengo is my witness because when he told me, he was standing next to me. Allow me to go on.

Sen. G.G. Kariuki: No, Mr. Deputy Speaker, Sir. Let us be as honest as we are expected to be by the public in this House; that whatever you say, you do not need to go round and round, but be specific and say what the truth actually is. This is not true and I think that the hon. Member needs to withdraw because it is a total lie.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Wetangula, we are going out of the ambit of what we were discussing. As far as I am concerned, you have clarified the position as was raised by Sen. G.G. Kariuki, as pertains to the detention of hon. Martin Shikuku and hon. Anyona.

The Senate Minority Leader (Sen. Wetangula): And Seroney.

The Deputy Speaker (Sen. Kembi-Gitura): And you have said that it was not Sen. G.G. Kariuki.

The Senate Minority Leader (Sen. Wetangula): It was not him, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. Kembi-Gitura): Now, you have gone to another level which has nothing to do with the issues before us. That is why I think, justifiably, Sen. G.G. Kariuki is asking you to withdraw that part of your debate, so that you can proceed. I request that you withdraw that last part, because it does not help us at all.

The Senate Minority Leader (Sen. Wetangula): Mr. Deputy Speaker, Sir, I withdraw and we forgive hon. G.G. Kariuki for anything that he did when he was a Minister in the Office of the President at his time, because we are forgiving everybody.

(Laughter)

The Deputy Speaker (Sen. Kembi-Gitura): Order, Members! This is a serious issue and it is touching on personalities who are in this House. I would request you, Sen. Wetangula---

(Loud consultations)

Order! The position that we are in is not helpful. I am happy that, at least, we have dealt with the larger part of it. On the second part that Sen. G.G. Kariuki has taken issue with, you have withdrawn. But I would like you to withdraw the other statement you made after that, so that we can proceed.

The Senate Minority Leader (Sen. Wetangula): Mr. Deputy Speaker, Sir, I abide by your order.

Mr. Deputy Speaker, Sir, like I said---

Sen. Omondi: On a point of order, Mr. Deputy Speaker, Sir. I am getting worried because when we talk about injustices that happen to Kenyans and want to discuss the perpetrators during that time and ask the Government to apologize on their behalf---

The Deputy Speaker (Sen. Kembi-Gitura): What is your point of order?

Sen. Omondi: Mr. Deputy Speaker, Sir, my point of order is: Why is it that we are saying that we should not mention names? If the perpetrator is still alive, why do we want to protect that perpetrator?

The Deputy Speaker (Sen. Kembi-Gitura): Order! Order! I do not think that you are following the debate. I would request you to follow the debate, so that when you make a point of order, it is in context of the debate that is going on. Nobody has stopped anybody from mentioning names if they want to. The only thing that you cannot do is to mention people's names unjustifiably. Sen. Wetangula is an extremely experienced debater and politician, and you can see that he has himself, on his feet, withdrawn the statement that he had made. So, I do not know what point of order you are making subsequent to that.

Go on, Senator!

The Senate Minority Leader (Sen. Wetangula): Mr. Deputy Speaker, Sir, I would wish to see that this House actually goes beyond this Motion. I agree with the distinguished Senator for Busia – and I think that it is you who said – that we need to set up a fund to compensate the victims of injustices in this country. They are many. We can stand here and mention hon. Matiba, the late Martin Shikuku, the late George Anyona and the late Seroney. But there are those hundreds and thousands of Kenyans without an address, who equally suffered similar injustices.

Mr. Deputy Speaker, Sir, you will remember the Wagalla Massacre, where the Army moved in and mowed down people like flies. We have documents to this effect. We have had situations where there was a white policeman in this country called Patrick Shaw. He used to castrate young boys in the forests, torture and shoot people. Everybody knows this and the State must take the ultimate vicarious responsibility for the acts and omissions of its officers. That is how the United Kingdom (UK) Government took responsibility for roguish colonial officers who tortured our people here and paid compensation. Compensation is never adequate; it is the spirit and principle that we talk about. A time will come when states will have to behave like the State of Israel, which is still kidnapping Nazi criminals from Argentina, Brazil and all over the world. There is a man who was kidnapped at the age of 90. They went and kept him in jail until he died there. Sometimes that may help.

Mr. Deputy Speaker, Sir, let me talk about the 1982 coup. That coup was a culmination of serious violations of human rights in this country and injustices that people got tired of. While the generals could not do anything, junior officers, including privates; the highest was a lieutenant, took up the courage and said that enough was enough. As a very young lawyer, I represented Hezekiah Ochuka. He went through a court martial and was hanged. I also represented his partner, Okumu. He went through a court martial and when we went to the High Court to appeal, as we were making our submission, the judges were just yawning and recording nothing. Immediately after the submissions, they said: "Case dismissed." The man was hanged.

Mr. Deputy Speaker, Sir, there was another one called Oburu. He still lives in Kisumu. He was sentenced to death. Luckily I went before a bench of three judges, who were not yawning and looking in the air, but recording proceedings. They returned a verdict of "not guilty" and Oburu is still living. His comrades and colleagues were

hanged and nobody cares about their families. These are the unsung heroes of the freedom that we are enjoying today. The 1982 coup was the turning point in this country. People started to talk. They realized that when you see something going wrong, you can speak it out. People spoke until we culminated in the removal of Section 2A from the Constitution and the momentum towards the new Constitution that we are enjoying today. This Constitution is meaningless to Kenyans if those who sacrifice their lives, comfort and everything to bring it to where it is are forgotten. I support that we have a compensation that is expeditious and adequate for not only the victims, but where the victims have died, for their families, so that they can also live decent lives like many Kenyans.

Mr. Deputy Speaker, Sir, finally, I want to encourage my colleagues - Ngugi wa Thiong'o wrote a book called *The Man Died*. I believe that by "man" he meant "woman" as well. He said that the man dies who keeps quiet in the face of injustice. Equally, the man dies who denies that there was an injustice when there was an injustice. Even more importantly, those who want to aspire to high offices, and I am happy that the current leadership is of young people who saw people being tortured --- I have not heard the President or his Deputy even mention once that victims of torture and injustices are going to be compensated. We have reduced injustices in this country to only one issue – land. Everytime we talk about injustice, we mean land. We have forgotten that there are uncountable people, including university students who were picked from classrooms and people who were picked from churches and punished and tortured. Those people must get justice and be compensated. I can assure you that when the CORD Government comes in power, you will see the difference.

Mr. Deputy Speaker, Sir, I beg to support.

Sen. Mugo: Thank you, Mr. Deputy Speaker, Sir, for the opportunity to also speak on the Motion on the Floor, which I do support.

Mr. Speaker, Sir, let me start by reminding the House that we passed a law in the National Assembly on forgiveness and the truth, justice and reconciliation commission. I think if the report can be implemented fully, we can realize some of the issues which are arising here. That is truth, justice and reconciliation. It is true that there have been a lot of injustice to so many people that I do not even know if we start putting the numbers together, if they can be compensated. But a big sorry or an apology would go a long way in making people realize that we appreciate what they went through. We cannot start looking at injustices yesterday or just in the last regime, the last two regimes or whatever we are saying here, because injustices in this country started a long time ago. There are those who fought for freedom---

The Senate Minority Leader (Sen. Wetangula): On a point of order, Mr. Deputy Speaker, Sir. Is the distinguished Sen. Beth Mugo, in order to say that we have singled out the last two regimes when, in fact, we have been talking about the Mau Mau, the colonial state and the injustices that happened from those times?

Sen. Mugo: Mr. Deputy Speaker, Sir, I do appreciate that they have been mentioned, but in passing; they have not explained it as well as the others. As a young girl growing up, I saw a lot of injustices. I saw a girl being shot through the stomach, the intestines were coming out and she put a *shuka* around herself because she was taking

food to the so-called ‘terrorists.’ She was shot by home guards and what we used to call ‘johnnies.’ They are forgotten. I would say the real heroes who brought Independence here are especially those we call the Mau Mau, who fought for this land. If we are going to do anything like that, that is especially where we should start. Even if we do not compensate all, let us, at least, have data of those who really served this nation.

There was a time when a whole *jamii* or tribe was demonized; we needed a path even to go to Nairobi. You could not leave your area. If you did, a whole lot was detained. Those are, first and foremost, the injustices that we should really record and say ‘thank you’ to them and ‘sorry’ for those who still have not been compensated. Then there are those who suffered for years when their families had been jailed or in detention. I remember I was thrown out of school from Kikuyu because my family was suspected to be that of Mau Mau. Many other children went through that kind of suffering. So, when we speak of injustices, let us go back to where it started.

Mr. Speaker, Sir, I now come to the modern day cases. On the modern injustices, there are very many people who are not recorded and they come from across the board. When history is written, if ever, because some people have tried to make it look like some were terrorists or some did not bring Independence; we must move away from that and really record the history of this country. My own younger brother, Kibathi Muigai was arrested on the charge that he was a member of *Mwakenya*. He was tortured in Nyayo House for over two weeks. He was then taken to court at 6.00 p.m. in the evening and taken to Naivasha. We ran there – and I will not mention names – but he still did not get a fair trial or justice; they said he was a member of *Mwakenya* and that he was in a group that was planning to overthrow the Government. So, when we talk of injustice, there are many other young people who were branded as *Mwakenya* adherents and other names. I support that they should either be compensated or apologies be given to them.

I just want to caution on compensation; how far and how many people can we compensate? We need to answer that even as we speak instead of putting generalizations so that we can get action out of these Motions. It is not just about being very emotional and then, at the end of the day, it cannot be implemented. Let us come up with what can be implemented. There are others, like hon. Matiba and many others; for those ones, definitely, it should have happened yesterday, because they are suffering. We know what hon. Matiba did. Let us come up with ways in which we are going to sort out these injustices. There are some which are very urgent; let us not wait until hon. Matiba dies and then we start saying or doing---

(Several hon. Senators stood up in their places)

The Deputy Speaker (Sen. Kembi-Gitura): Order, Sen. Hassan! Order, Sen. Bule! Do I need to remind you of the provisions of Standing Order No.105? You cannot stand in direct line between the contributor and the Speaker; or even stand in the passages of the Senate! Please, may I request Senators to look at Standing Order No.105, because it is very clear?

Thank you.

Sen. Beth Mugo, I am very sorry about that interruption.

Sen. Mugo: Thank you, Mr. Deputy Speaker, Sir. I want to congratulate Sen. (Dr.) Khalwale for bringing this Motion; it is really a very serious Motion. It is a Motion in which we should come up with a way of its implementation. Even if we do not get everybody together, we should start somewhere. There are some issues which are urgent, like that one of hon. Matiba, Rubia and others. There are also some families who we might not be able to give compensation to, like the Shikuku family, Mrs. Kimathi and others, but we should find somewhere we can start and do something. So, let us, as we debate this Motion, remove the personal side. We all have suffered at one time or another; it is not one *jamii* or one family that suffered; it is Kenyans who have suffered and we must be concerned for them all without demonizing any particular person who was in an office at a certain time.

Mr. Deputy Speaker, Sir, I beg to support.

Sen. Madzayo: Asante sana, Bw. Naibu Spika. Kwanza, nataka kumshukuru sana ndugu yetu, Sen. (Dr.) Boni Khalwale, Seneta wa Kakamega, kwa kuleta Hoja huu na umuhimu wake ili tuweze kuelewa maonevu kama haya.

Mimi, kama mtu aliyekuwa Hakimu hapo awali na nikastaafu, ni jambo la kusikitisha hasa tukizingatia maswala ya wale watu waliopigania Uhuru katika nchi hii. Swali letu ni hili: Kwa nini watu walipigana? Tumesema ni kwa sababu ya mashamba. Mashamba ni mojawapo kati ya maonevu ambayo watu wa Pwani na sehemu zingine kama Bonde la Ufa waliyofanyiwa. Mashamba mengi ya watu wa Pwani yalitolewa kama zawadi kwa wale watu ambao walisadia Serikali.

Jambo muhimu pia ni kuona ya kwamba maonevu mengine ni kama vile wewe kama unatoka Pwani na unaitwa Suleiman, Omar ama Khamis, wewe ni mtu unayetakikana ulete kitambulisho cha babu yako, nyanya yako, babako na mamako ili upate kitambulisho cha kitaifa. Ikiwa wewe ni Stewart Madzayo, wewe unaambiwa hauna haja ya kuleta vitambulisho za wazazi wako ili upate kitambulisho cha kitaifa. Mambo yanakamilishwa kama kawaida. Haya ni maonevu na huu ni kama ubaguzi mambo leo siku hizi.

(Applause)

Bw. Naibu Spika, nataka kugusia haswa wale watu wa zamani wa upande wa Pwani. Sio Mau Mau peke yao waliopigania Uhuru; tuko na watu kama Mekatilili wa Menza, aliyekufa na hadi wa leo jamii yeke inapata taabu sana kwa sababu ya maonevu na huyu mama kupigania ya kwamba mashamba ya watu wa Pwani yasichukuliwe na watu wengine ama yasichukuliwe na Wazungu ila wenyewe wapate kama hivyo.

(Applause)

Sasa, kumezuka Wazungu weusi ambao walikuwa na njia zao walizokuwa wakitumia; wakienda njia ambazo wengine hawawezi kufika na wakipewa ile *signature* ya rangi ya kijani; halafu wanakuja huko, wanatengeneza *fence* na wanawaondoa wale wakaazi wa maeneo kama yale. Tunasema kwamba maonevu kama haya ni mojawapo ya

yale tunayosema kwamba wale waliofurushwa kutoka katika mashamba yao pia waregeshewe mashamba hayo.

Jambo lingine ambalo ningependa kulitaja ni kwamba mimi nilipokuwa nikianza uanasheria mwaka wa 1988, niliweza kumtetea Emmanuel Karisa Maitha, ambaye alikuwa kiongozi wa watu wa Pwani. Bw. Karisa Maitha alikuwa akitetea haki za watu wa Pwani na hatimaye, alishikwa na kuwekwa korokoroni Manyani. Nilipata nafasi ya kwenda huko kumuona na alikuwa amefungwa kama mnyama. Mikono na miguu yake yote ilikuwa imefungwa. Alikuwa amewekwa katika chumba kilichokuwa kimejaa maji mpaka kwenye kiuno chake.

Sen. Hassan: Aibu! Aibu!

Sen. Madzayo: Wakati wa kulala usiku, alikuwa analala katika hali hiyo, nusu ya mwili wake ukiwa ndani ya maji. Kwa sababu ya jambo kama hili, ilibidi niende kortini kuielezea hali yake. Ninamshukuru sana Justice Ang'awa ingawa sasa ni hakimku kwa sababu aliamuru aachiliwe mara moja.

(Applause)

Jambo lingine ambalo ningependa kugusia ni juu ya Wakili Rumba Kinuthia. Yeye ni wakili maarufu sana. Lakini ukiona hali yake ya kiafya hivi sasa, ni ya kusikitisha. Yeye ni wakili ambaye nimeangalia hata katika ule uamuzi uliotolewa alipokuwa ameenda kortini, ya kuambiwa kwamba yeye hawezi kupewa ridhaa kwa sababu hakuweza kutoa kithibitisho kuwa aliumia alipokuwa mfungwa korokoroni; kufungwa bila haki na kukosa kuwa na jinsia ya familia yake, kukosa kuwa na mkewe ndani ya nyumba na kwa miaka isiyojulikana kufungiwa korokoroni, hiyo ni haki kweli? Tunasema watu kama hao ambao judgement zao zilikuwa kutupiliwa mbali waweze kuangaliwa. Watu kama Kenneth Matiba, mzee ambaye namjua kwa sababu natoka Pwani na wakati mwingi nimekuwa nikienda South Coast, mzee ambaye alikuwa na afya yake kamili kimwili, ni mtu alikuwa akitembea utamuona kama mtu wa mwili ya kisawa sawa. Hivi leo, ukimwalia, machozi yanaweza kukudondoka. Yeye ni Mkenya ambaye alisimama kidede akitutetea sisi wengine ambao tuko ndani ya Seneti ili tupate uhuru kama huu.

Mimi naunga mkono sana Hoja hii. Kuna umuhimu na kwa haraka zaidi kabla mzee wetu, hatusemi mabaya; Mwenyezi Mungu yuko naye, lakini, je, leo akienda mbele ya haki, nani atamlipa kwa aliyopitia? Kwa hivyo, tunasema kwamba ikiwa inawezekana tuweze kutengeneza Compensation Fund ili aweze kulipwa na kuangaliwa hali yake kabla hajaenda mbele zaidi.

Pia, ukiangalia kiongozi wa CORD, Raila Amolo Odinga, mtu amefungwa detention mara tatu. Hakuna Mkenya ambaye amefungwa mara tatu isipokuwa yeye. Amepigania uhuru katika nchi hii. Hivi leo hata akiwa anaongea, mimi namuonea huruma. Utaona wakati wote akiwa anaongea mkono wa kushoto unaenda kwenye jicho. Anafuta machozi, yanatoka tu yenyewe hawezi kuyazuia na yeye hajakwenda kortini kusema kwamba anadai lakini watu kama wale ndio wanafaa kuangaliwa.

Tukiangalia upande wa makazi, bibi yake mwenyewe, Ida, wakati Raila alipokuwa korokoroni amefungwa bila hatia, bibi yake alifukuzwa kutoka kwa nyumba

saa sita za usiku, akiwa na watoto wachanga na akafutwa kazi na Serikali. Ni nani atamlipa Ida Odinga leo? Tunasema kwamba ni lazima kuwe na Compensation Fund kama hii ili waweze kuangaliwa.

Mimi naunga Hoja hii ambayo imeletwa na ndugu yangu, Sen. (Dr.) Khalwale. Asante sana.

Sen. G. G. Kariuki: Mr. Deputy Speaker, Sir, none of us in this House has any quarrel with this Motion. This Motion is nothing but something to remind Kenyans through this House what happened many years back. It does not mean that this situation has changed, it will continue for reasons that I am going to explain.

First of all, I need to say a little bit of my political history. I think all the Members here seem not to be reading their papers or their books because I joined Parliament in 1963 and I left in 1983. When people are talking about Wagalla or detention, some of the hon. Members think I was there. When I was a Minister, none of the Ministers who came after me was able to fit in my shoes. That is why everybody thought I was still a Minister all that time which is not very true. I left in 1983. So, between 1983 up to 2002, I was not anywhere in the Government. So, if *akina* Shikuku and Koigi Wa Wamwere and others were detained and I was in Parliament, I had nothing to do with it because for nine years, I was a back bencher and for another nine years, I was an Assistant Minister.

I have written a very interesting book which I need to ask my honourable friends to look at and understand where I come from. It is always good to note that no political crime was committed during my time. No assassination took place during my time as a Minister of State. For those who were detained, if any, the Minister of State was not supposed to sign the detention orders. The Minister of State is actually a personal assistant to the President. They just do what they are told to do by the President.

Sen. (Dr.) Khalwale: On a point of order, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. (Dr.) Khalwale.

Sen. (Dr.) Khalwale: Mr. Deputy Speaker, Sir, I do not want to interrupt my brother because he is moving on very well but I just thought for purpose of record, it should reflect correctly that Martin Shikuku was detained along with John Marie in 1975 and Moi released them when he became President in 1978 and that time you were a Minister. Maybe just for record, it should be corrected.

The Senate Minority Leader (Sen. Wetangula): On a point of order, Mr. Deputy Speaker, Sir. I do not want to interrupt my good friend but is it in order for him to miss the facts? Raila Odinga was detained immediately after 1982 coup when my brother here was the Minister. We are not saying that he signed the detention order but he was a Minister when Raila Odinga was detained.

Sen. G. G. Kariuki: Mr. Deputy Speaker, Sir, that is why I am saying we are losing some points. I think my friend needs to read clearly what happened. I was not a Minister when Raila Odinga was detained. I left the Office of the President in May 1983 May and the coup took place in August.

An hon. Senator: Is it 1983 or 1982?

Sen. G. G. Kariuki: It was in 1982 in May and I went to become the Minister for Lands and Settlement. So, I think these matters need to be put where they belong.

When Sironey and Martin Shikuku were detained in 1975, I was only three years as an Assistant Minister for Lands and Settlement. That needs to be clear here because I can see from my observation - I think there is some ignorance about the political history of this country. Here, we are dealing with political history and you must have facts because the intention of this Motion was not to scandalize anybody but it is for those who suffered to be compensated. It was clear from the Mover of this Motion and I also want to tell hon. Senators that let us not speak as though it is something that we have just known. The problem of this country started when we acquired the British Constitution. This constitution is the one that messed everybody in this country and there was no room for opposition. This is a matter that needs to be understood.

Therefore, it is very important for us, as a Senate, to go beyond individuals or personalities because all these things happened but what should we do? We are charged with the responsibility by Kenyans to put things right and that is what we are trying to do. When one talks about Matiba, Seroney, Martin Shikuku, Anyona, Koigi Wamwere and others, we all know that it happened and we cannot spend a lot of our time on what we know has happened. Let us look at the future. What are we going to do to stop this from happening again? Did it happen because of the constitution and those who were in power were acting outside the constitution? Were they acting within the constitution? That is what we need to be scared about.

Even the Constitution we have today, if we are not careful we might find ourselves in the same problem. The reason why I am saying so is that if 42 per cent of Kenyans are below the poverty line, it means that only 46 per cent of Kenyans are above the poverty line. It is now a very serious matter that we are talking about compensating few people, time will come when we are not prepared and we need to be prepared and I am saying this through my political research, that those things can happen and if we are not going to make things right especially to those who are poor, because if you are living below the poverty line, what are you? You are just a slave of others. You have no place, no home and you have no hope in this world. That is why time will come when there will be no Luhya, Luo, Kikuyu and Kalenjin. The forces of poverty will unite against us and against those who have.

We have to be extremely careful because we are dealing with human beings. So, if you are talking about 15 people as enumerated by Sen. (Dr.) Khalwale---

The Deputy Speaker (Sen. Kembi-Gitura): Time is up, Sen. G. G. Kariuki.

Sen. G. G. Kariuki: I beg to support.

Sen. (Dr.) Zani: Mr. Deputy Speaker, Sir, thank you for this opportunity to contribute to this very emotive Motion this afternoon. Let me start by recognizing those whom we have not honoured enough. We should have recognized them enough. We have not done enough as a society to appreciate what they have done in terms of trying to ensure that we have a better Kenya. Thank God also that we have a new Constitution that recognizes the Bill of Rights and emphasizes the need for freedom, social, economic and cultural rights that are envisaged and must be exercised by everybody. I think it is truly important that everybody lives a life of dignity, a life of justification and that social justice is upheld. Unfortunately, many Kenyans have not been able to do that.

During the 1970s and the 1980s, there were a lot of human rights abuses. There was no freedom and people could not speak up their minds. I remember when I was in the University of Nairobi, you never knew who had been planted in lecture rooms to give information. Many people went into detention. When you spoke and you were found to have said certain things, then you were taken in. It was not possible to go through proper trials. All that culminated in the coup of 1982; this was symbolic of the misgivings that the Kenyan society had at that time. During the 1982 coup, we lost about 100 soldiers and more than 200 of them were hurt. Two Asian women took away their lives because they had been raped during the *coup d'état*. It is very sad that as a result, many people suffered. I think it is the aftermath and the way the situation was handled that brought more catastrophes. It was impossible to go into detail in making sure that justice is given to those who were involved. We ended up with about 900 soldiers being jailed. This had terrible effects on their families because no one would handle livelihoods since they would be in jail. This meant that the same freedoms, socio-economic rights, their education that was catered for, housing and security went away at once.

It is unfortunate that even as the socio-economic privileges were taken away, the impact, especially the psychological impact for those families have not been taken into consideration. So, we have a generation of people who are suffering from psychological effects. They have not addressed the issues of the suffering that they went through because their parents and loved ones suffered these social injustices. Most soldiers who went through Court Martial did not have a chance to defend themselves. Some ended up losing their jobs. I know of one particular young man that I met two years ago. He was looking for help so that he could take care of his family. He said that he was one of the people who lost their jobs after the 1982 coup and he could not take his children to school or cater for himself. That one gentleman is symbolic of many others who could not play their rightful roles.

Others were not lucky enough and people like Jinan and Ojode were hanged. They made appeals which they lost. They finally lost their lives. This happened in a very fast mode and pace which reflects the injustices that were meted on such people.

I am looking at the constitutional provision in terms of the Bill of Rights; not only now but even how those victims can benefit from the Bill of rights as per now. The question we should ask ourselves is; what can we do? The aspect of perpetrators seeking for forgiveness is very important and that was why the Truth Justice and Reconciliation Commission (TJRC) was set up. The TJRC also had a provision that there would be an implementation clause automatically. You create wounds and open the wounds when you begin a process of reconciliation but do not take it to the end. The victims of the Wagalla massacre, for instance, had stopped talking about it. However, they began to talk about it because they realized that it was possible for some issues to be solved as much as they were historical and very painful. It would be a pity if they were left high and dry because people must go back to understand what happened, why it happened and how it will be resolved.

The issue of perpetrators asking for forgiveness and victims offering forgiveness becomes very critical so that they feel appeased. The issue of compensation that the Motion calls for, therefore, is very important and key. This Motion appeals to the national

Government to compensate the victims of such injustices. However, we need to be more specific, see how the process will be initiated and how it will be enhanced. Where will the money come from? Will this be a kitty that people will be ready to contribute to once they are aware of its importance to address and give back in terms of compensation?

There are other forms of enhancing compensation because most of them are poor and may not have access to legal services. It is important that we begin to look for ways and avenues of having legal services rendered to such victims and to go through an educational process so that people can begin the process of seeking compensation, the same way as the Mau Mau have done as a beginning point. That can be extended to others so that they understand their rights and the fact that it is important to fight for those rights. There is a big proportion of people who do not know where to begin to seek justice. I am afraid that if we do not speak out, go to them and explain to them ways of dealing with these injustices and seeking compensation, they will go on with the pain.

At times, that pain is carried from one generation to another. When we talked to some of the victims of the Wagalla massacre, some of them told us about their parents, their grandparents and what they had gone through. This is something that will be generational. It will follow through sons and great grand children. So, it is important that it be addressed expeditiously.

I support this Motion and congratulate Sen. (Dr.) Khalwale for bringing this to the fore. We should look at our history, remember the social injustice, but more importantly, seek avenues to address them.

Sen. Elachi: Thank you, Mr. Deputy Speaker, Sir. I thank the Mover of the Motion, knowing that for many years, Kenya has gone through a lot of challenges in terms of addressing the human rights injustices that have cut across this country.

In the Constitution, Article 23 is very clear about the authority of courts to uphold and enforce the Bill of Rights. Within that, they should ensure that the injustices that were done are compensated. When I look at the Mover's Motion, I hope that my fellow Senators will bring in an amendment so that we deal with the issue holistically.

When we talk about the 1982 coup, we realise that the Kenyans who went through trials went through martial courts. As much as we would have wanted to know how proceedings in those courts were conducted, owing to the rules and regulations, the business there was determined by military personnel.

The Senate Minority Leader (Sen. Wetangula): On a point of information. Let me inform the gracious lady that--

The Deputy Speaker (Sen. Kembi-Gitura): When you call out on a point of information and the lady sits, does that automatically mean that you have been allowed to give that information or does the Speaker have a role in that?

The Senate Minority Leader (Sen. Wetangula): She said "yes".

The Deputy Speaker (Sen. Kembi-Gitura): She may have said "yes" but does the Speaker have a role? Do you just rise and start informing? I thought she may allow you to inform her but until the Speaker allows, it is not assumed that it is allowed. These are important points for clarification. It is important and for the good order of the House that you rise on a point of order but you cannot proceed until the Speaker allows you.

Sen.(Dr.) Khalwale: On a point of order.

The Deputy Speaker (Sen. Kembi-Gitura): We will deal with the point of order after Sen. Wetangula has informed the Senator who wishes to be informed.

The Senate Minority Leader (Sen. Wetangula): Thank you, Mr. Deputy Speaker, Sir. I want to inform my sister, the gracious lady, that in a court martial, there is an officer known as a judge advocate who is a trained lawyer and invaluable a senior magistrate who sits with the military martials. Those who are accused are allowed to come in with lawyers.

In fact, I represented all the people I narrated about in the court martial before I moved to the High Court after they were sentenced to death without any reasons being cited.

Sen. (Dr.) Khalwale: On a point of order, Mr. Deputy Speaker, Sir. In fact, I want to agree with you. The point you have raised seems to be building a tradition in this House on two points. The issue is about “point of information” and “point of order.” You will notice that whenever somebody shouts for a particular order, all speakers, invariably, freeze and stop speaking even before you have intervened.

Whereas the practice has been that when somebody calls out for a “point of order”, you continue speaking until the Speaker so commands you. The issue you have raised about point of information, our practice has been that when somebody shouts “point of information”, the Speaker asks the person who has the Floor whether he wants to be informed. It is only after that person has accepted to be informed that the Speaker allows the person who proposed to inform to go ahead and inform. That practice seems to be dying.

The Deputy Speaker (Sen. Kembi-Gitura): Thank you, Sen. (Dr.) Khalwale. That is the position I had taken and that it is the position I always take. For me, there are no compromises in matters of decorum of the House. What you have said is the correct position and as a direction to the House, a point of order is not on the Floor until the Speaker has allowed the point of order to be given and, as the case may be, a point of information and whether the Member agrees to be informed. The Speaker is the final determinant on that issue and that is the matter I expect hon. Members, colleagues, will adhere to an honour as we go forward.

Sen. G. G. Kariuki: On a point of order, Mr. Deputy Speaker Sir. Is Sen. (Dr.) Khalwale in order to interrupt you when you are talking to someone else? Why should he start calling out for points of order while the Speaker is still talking? Was he in order?

The Deputy Speaker (Sen. Kembi-Gitura): He was completely out of order and that is why I asked him to wait until I had finished with the other issues. I am sure he understood where I was coming from.

The Senate Minority Leader (Sen. Wetangula): On a point of order, Mr. Deputy Speaker, Sir. Since we are making things right in the House, is it in order for---

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Wetangula, you are making the same mistake. You just stood up and started talking. That is the mischief I am trying to kill. I think it would be disrespectful, not to the seat of the Speaker, but to the House to rise and start talking. That is why we have the blue book, the Standing Orders. Many times, we do not consider these Standing Orders because whereas the rules allow you to consult when the House is going on, this should not be in such a way that it interferes

with debate in the House. The rules are clear that you cannot, for instance, walk around the House when it is in session. This being the House it is, the Senate, I request all of us to honour the decorum that is tested in other jurisdictions and which we want to taste and follow in this House.

The Senate Minority Leader (Sen. Wetangula): On a point of order, Mr. Deputy Speaker, Sir. Is Sen. G. G. Kariuki in order to say that the Speaker was talking? The Speaker does not talk. The Speaker communicates, directs, orders and rules. The Speaker does not talk.

The Deputy Speaker (Sen. Kembi-Gitura): I accept. Sen. G.G. Kariuki, you are informed by Sen. Wetangula. Sen. Elachi, I hope they are holding your time.

Sen. Elachi: I believe so.

Mr. Deputy Speaker, Sir, it would also be important for us – as much as we are saying that we have put aside the TJRC Report – to look at the TJRC Report because there were recommendations and some of them will guide us as we move forward in terms of dealing with some of these issues. When you look at what happened in 1982, you will find that there were ten ex-military officers who were compensated each being awarded Kshs5.5 million. This means that in terms of jurisdiction, they felt that these officers were there to be compensated, but someone needs to ask, while they were compensating the ten officers, what happened to the rest?

To make the Motion take care of many other issues that the Senators have brought up, I will bring an amendment where I propose the words “and against those suspected of complicity in the coup attempt of August 1982” appearing between the word “trial” on the seventh line and the semi colon on the eighth line. If we delete those words---

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Elachi, I have a proposed amendment on the Motion right in front of me. It has been brought by Sen. Mugo. I have no problem with approving the amendment, but in what capacity are you bringing your amendment? Is it on authority from Sen. Mugo?

Sen. Elachi: Mr. Deputy Speaker, Sir, it is on authority of Sen. Mugo because she had already contributed.

The Deputy Speaker (Sen. Kembi-Gitura): Any Member can speak to the amendment; even those who have already spoken. When the amendment comes to the Floor of the House, any Member can contribute to it because it is a different Motion altogether.

Sen. (Dr.) Khalwale: On a point of order, Mr. Deputy Speaker, Sir. The rules of debate guide us to the effect that when an attempt is made to amend a Motion, it is only permissible if that amendment does not change the Motion materially. If we allow---

The Deputy Speaker (Sen. Kembi-Gitura): Sen. (Dr.) Khalwale, we are very far from there. For purposes of the HANSARD, I do not even know what is coming. Are you anticipating debate?

Sen. (Dr.) Khalwale: Mr. Deputy Speaker, Sir, I was reacting to---

The Deputy Speaker (Sen. Kembi-Gitura): We shall be able to deal with that when the Motion finally comes to the Floor of the House.

The Senate Minority Leader (Sen. Wetangula): On a point of order, Mr. Deputy Speaker, Sir. I heard the Chair communicate that the amendment before you is by Sen.

Mugo. The rules, the usage, the precedence, the norms and the practice of the House are very clear that you cannot speak on a Motion and then thereafter purport to amend it. You cannot do that. Either Sen. Elachi is bringing a Motion of amendment by herself which she is entitled to do, but she cannot be hired to prosecute an amendment where the intended Mover of the amendment shied away from moving it and then submits an amendment---

Sen. Mugo: On a point of order, Mr. Deputy Speaker, Sir.

The Senate Minority Leader (Sen. Wetangula): Mr. Deputy Speaker, Sir, I am on a point of order and the rules say that when I am on a point of order, there cannot be another point of order. That intended amendment under the Standing Orders is grossly incompetent and should be disallowed.

Sen. Muthama: On a point of order, Mr. Deputy Speaker, Sir. We are in this House to assist and guide one another. Despite the fact that Sen. Mugo has made her contribution to the current Motion that is before the House, if she cannot move an amendment, then Sen. Elachi is in a position to do that. We should assist her and guide her on how to bring the amendment and the business of the House continues. She cannot be restricted because she took the amendment from Sen. Mugo. We should assist each other so that we can move the business of this House perfectly.

The Deputy Speaker (Sen. Kembi-Gitura): All I want us to understand – this is important and procedural – is that I have a Motion before me for amendment which I have approved and it is signed by Sen. Mugo. If Sen. Elachi gives me her word that she has taken over the Motion and she is moving it, I have no issue. As Sen. Muthama says, at the end of the day, the idea is to ventilate the issues that are before us and I am not going to kill a Motion of amendment barely on matters of procedure. So, I think, with that, Sen. Elachi, you can proceed. I take it that you are moving the amendment with the consent of Sen. Mugo.

The Senate Minority Leader (Sen. Wetangula): On a point of order, Mr. Deputy Speaker, Sir. I am sorry for standing up again. I am not opposing the right to amend the Motion because that is part of our Standing Orders, but is it proper that, for example, I spoke on this Motion and supported it, so did Sen. Mugo without qualification, and then she sits back and sponsors an amendment through a third party?

The Deputy Speaker (Sen. Kembi-Gitura): I followed the contribution of Sen. Mugo, she indicated that she expected that the amendment to be brought and that she will bring an amendment. I think that is what she said and I was following the debate.

Sen. Mugo: Yes, Mr. Deputy Speaker, Sir.

The Senate Minority Leader (Sen. Wetangula): Mr. Deputy Speaker, Sir, that notwithstanding, once you have spoken on a Motion, you are *functus officio*. So then, you cannot come back on the Floor through a proxy and pursue an argument, that you had an opportunity to pursue. This is procedural.

The Deputy Speaker (Sen. Kembi-Gitura): I am saying that – I think that is the point Sen. Muthama was making – somebody else can say they are the ones bringing it, but for me that would be taking procedure to a level that maybe it does not need to get to because at the end of the day, that Motion of amendment is going to be moved and we are going to debate it. So, I am not going to curtail debate barely on a matter of procedure

because the Motion as debated and as voted upon becomes enriched by the debate that we have on it or by the will of the Members to bring amendments either to enrich it or make it look different so that it can be of benefit to the people. You should remember that even if it is moved, it does not have to pass; you will still debate it and vote on it. For me, it is neither here nor there and we can spend a lot of time on this, but at the end of the day I am not going to curtail debate.

Sen. Sang: Mr. Deputy Speaker, Sir, this is a House of rules, as you have always repeated.

The Deputy Speaker (Sen. Kembi-Gitura): True! True! True! I am at the verge of making my decision and I do not know whether you are engaging me in debate on this issue. I have made it clear and I do not think I can make it clearer than that; that I have a Motion of amendment right in front of me and I am not going to stop or anticipate debate on it. It would not be right to stop anybody from bringing a Motion of amendment merely because one may like or not like it. The point is that you must not like the amendment, but we are going to debate it. It could win or lose the day. If it loses, we will go back to the original Motion. I think that is satisfactory unless you want us to engage in a debate on this issue.

Sen. (Dr.) Khalwale: On a point of order, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. Kembi-Gitura): On the same issue?

Sen. (Dr.) Khalwale: No, Mr. Deputy Speaker, Sir. I would like you to make a ruling on an issue of interpretation. I have raised the concern that if under the rules of procedure an amendment materially changes a Motion. In this particular Motion, there is the issue of the decisions of the High Court which are then ignored by the Executive.

The Deputy Speaker (Sen. (Kembi-Gitura): I hear you, Sen. (Dr.) Khalwale, and you could be very right. I respect the position you are taking, but I am saying that you are anticipating debate. Once the amendment is on the Floor of the House, it is going to be proposed, seconded and debated. At the end of the debate, we are going to vote on it. If it wins, it wins. You should be able to bring those strong arguments that you may have; that is it materially changing the Motion that you brought to the House. If the Members present agree with you, then that will be it.

The Senate Minority Leader (Sen. Wetangula): On a point of order, Mr. Deputy Speaker, Sir. We do not want to irritate the Chair or the House by being restrictive on procedure. Every ruling the Chair makes goes down as a precedent in this House and the future. The rules prohibit any Member to have a second bite on the same issue. Having a second bite through a proxy is the same as having a primary bite. Our argument is very clear; we are not even debating the merit of the amendment. Sen. Elachi could very well bring a Motion of amendment in her own right and prosecute it, get seconded and we debate it. But Sen. Mugo is stopped by practice, precedent and procedure to use a proxy to amend a Motion she has already debated on whether she said in general terms that she wished it amended or not. Very many times we also speak here and say, "I wish somebody amends this Motion" because we have views that will help the House better, but I cannot go back, draft an amendment, sign it, bring it to the Chair and then ask young Sang here to prosecute it for me. It is unprocedural and it distorts the rules of this House. I beg you that you give guidance to the House that is in consonant with the rules.

The Deputy Speaker (Sen. Kembi-Gitura): This is how we are going to proceed; I hear all of you and the arguments that you have brought before this House. Procedure is good and rules are good. They are made for us, we are not made for them. We should be able to ventilate and debate a Motion so that it satisfies the need for which it was brought and so that the Members are able to say their piece on that debate. I am sure Sen. (Dr.) Khalwale or any Mover of a Motion would not stand in the way of an amendment just because they do not want their Motion to be changed because, then that negates the purpose for which the Standing Orders are passed.

I am sure I am correct in saying that Sen. Elachi can move that Motion in whatever capacity. But for the satisfaction of Members and so that the HANSARD can read correctly and so that we can now proceed correctly, and since Sen. Elachi is still contributing to this Motion, she has brought to my attention an amendment to the Motion in the same manner under her name which I have now approved and for which we will proceed under Standing Order No.53 (2) as an approved Motion so that we can stop the debate on this issue and proceed with the bottom-line of the Motion, which is, to ventilate it, reach where we can albeit all the issues that are before us. I think that, that satisfies Members. Does it not?

(Applause)

Sen. Elachi, you may proceed.

Sen. Elachi: Thank you, Mr. Deputy Speaker, Sir. As I had said, I had proposed an amendment, by deleting the words “and against those suspected of complicity in the coup attempt of August 1982,” appearing between the word “trial” in the seventh line and a semi-colon in the eight line.

Mr. Deputy Speaker, Sir, I propose this amendment based on the debate that we have just had. We have gone beyond the coup and are looking at issues that are dealing with Kenneth Matiba, Charles Rubia and many others, some of whom are still alive. Therefore, if we are talking about the Senate ensuring that the Government compensates everyone who has undergone gross injustices, I think that the amendment now broadens and brings out a holistic approach in terms of dealing with the issues.

Mr. Deputy Speaker, Sir, I know that the Mover of the Motion had good intentions in terms of dealing with the issues of the coup. But you realize that if we leave it that way and think that we have finished the issues of 1982, we might open a Pandora’s Box. Other people will come out, some of whom were victims of that attempted coup. They will come out and ask: “Who will compensate us?” So, we should talk of all the injustices that the Truth, Justice and Reconciliation Commission looked into. Since that Report is there, let us look at the recommendations that were made and see how we can help our people. We should see how we can help the Ouko family, the J.M. Kariuki family, the university students, like Kabando, and many others. Some of them were even denied the chance of sitting for examinations.

Mr. Deputy Speaker, Sir, sometimes these are very hard issues to agree on. The issues are so sensitive that sometimes when you put them on the platform it opens up different ways of looking at things and individuals. But as a nation, we had agreed that

we were going to forgive people. We had also agreed that as we move on, as a country – and we are talking of 50 years – we can forgive, but ensure that our brothers and sisters are compensated. We should not just look at how they have languished in poverty.

We should not just talk about Matiba without giving solutions. I believe that this Senate must give a solution in terms of first dealing with the issue of hon. Matiba. I know that the President and the Deputy President visited him at home and said something. It is only that they cannot shout about it. But it is high time that they looked and asked themselves: Does he deserve Kshs9 million or more? I believe that he deserves more. But let us call a spade a spade. I think that it was very unfair for the Kibaki Government not to remember hon. Matiba, who was part of the struggle. It is sad but important to say that they lost it. But we know that within the Jubilee Government, the President will take the necessary and humanitarian actions.

Mr. Deputy Speaker, Sir, the other day, I was reading the newspapers and realized that even the family of Dr. Guracha Galgalo is being told to pay Kshs104,000 that he owed the Parliamentary Service Commission (PSC). This is a person who passed on fighting for this country. He was going to Marsabit for a peace meeting, and up to date, they are still fighting. So, it is something that we need to ask ourselves as leaders whether that is the way we should handle this issue. It is very sensitive to the family. Therefore, as a House of legislation, we must come up with laws that will also take care of those who have gone, but they were fighting for this country. They include people like hon. Mirugi Kariuki and hon. Godana. What happened to their families? Did we really follow up? When we are talking about compensation, they must also be included.

Mr. Deputy Speaker, Sir, I beg to support the amendment.

The Deputy Speaker (Sen. Kembi-Gitura): Senator, I thought that you were moving the amendment. You started correctly and now you do not just support it, but tell us who is seconding it and then we can proceed and propose the question of the amendment.

Sen. Elachi: Mr. Deputy Speaker, Sir, Sen. Bule will support the amendment.

Sen. Bule: Mr. Deputy Speaker, Sir, I second the Motion as amended. I would also like to thank the Mover of the Motion. I will continue to contribute.

The Deputy Speaker (Sen. Kembi-Gitura): Listen, Sen. Bule! What you are supposed to do is to second that Motion. If you wish to talk on the Motion as you are seconding it, you can do so. But your duty right now is to second the amendment to the Motion. You can talk on it if you wish or just say that you second and sit down. I will then propose the question of the amendment and debate will continue, which you cannot then contribute, because your seconding is the point at which you should contribute.

Sen. Bule: Thank you, Mr. Deputy Speaker, Sir. I beg to second the Motion.

Sen. (Dr.) Khalwale: On a point of order, Mr. Deputy Speaker, Sir. Looking at the clock, voting on the Motion is supposed to take place at 5.50 p.m. and the Mover is supposed to respond at 5.40 p.m. It is now 5.40 p.m. Could you guide the House on how you want to navigate that particular position in the Standing Orders? This is a timed Motion and it has got a maximum of three hours.

The Deputy Speaker (Sen. Kembi-Gitura): I hear you, Sen. Khalwale, but there is a Motion of amendment now that has to be dealt with. I think you are right that it

should be within the time of the debate, but it has been brought to my attention now. I did not know when the debate started. We now have a Motion that has been moved and seconded and so, I am going to propose the Question.

(Question of the amendment proposed)

Sen. Mugo: Mr. Deputy Speaker, Sir, thank you for the opportunity to speak on this amendment. Indeed, it was my wish to do that. But, unfortunately, when I was speaking, there were very many interruptions and the time ran out. I thank Sen. Elachi for moving the amendment.

Mr. Deputy Speaker, Sir, as the Senate, we either believe in the rule of law or we do not. We either have to tell Kenyans that sometimes we can go the jungle way and sometimes, we can follow the law and as lawmakers, we should set the right example. You cannot say that because you are unhappy with an administration, you can now make a coup. We know the way to remove a bad government; it is through the constitutional way, which is through the vote. I want to urge my colleagues here that we will be setting a very bad precedence if we should leave, in a Motion, anything to do with the coup of 1982, where also many people lost their lives, and those victims are the ones we should be talking for.

I will end there, although there are many things to say---

Sen. (Dr.) Khalwale: On a point of order, Mr. Deputy Speaker, Sir. Is the honorable Senator in order to mislead the House that this is jungle law, when the matter of the 1982 coup appearing before the High Court in Nairobi in 2003 against Dominic Amolo, the Judge said as follows:-

“By detaining this former officer, Sections 20, 73 and 74 of the Constitution were breached”

None of these lawyers – and I would like you to understand them –are going there to contest whether it was wrong for them to participate in the coup or not; they are going there for their rights under Sections 70,73 and 74 of the Constitution, and the High Court has ruled and awarded this man Kshs2.5 million. Are you in order to mislead the House that it is jungle law?

Sen. Muthama: On a point of order, Mr. Deputy Speaker, Sir. I am surprised with the sentiments from Sen. (Dr.) Khalwale. This House of the Senate is not here to clean and clear people from the accusations or the offences that they could have committed outside there.

Mr. Deputy Speaker, Sir, if Sen. Muthama is accused of trying to overthrow the Government of the Republic of Kenya, it is not the business of this House to try to clear that person, but the court of law. If I go to a court of law and I am cleared by being told: “Walk out; you are free,” then I can be incorporated in this. So, the amendment is quite in order because the House can contribute to this amendment, but the House cannot be here to clear offences of the accused persons and those who tried to overthrow the Government. So, the person mentioned here, if he is clean and he has been cleared by the court, he can walk free and go and seek for compensation.

That is my point of order, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Beth Mugo.

(Silence)

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

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

The Temporary Deputy Speaker (Sen. Murkomen): Order! Order, everybody! Order, Senate Minority Leader! Order, hon. Senators! You know we really are constrained of time; we must vote for the main Motion in another five minutes or thereabouts. Actually, you know we are running out of time; we have only three minutes. Do you want to speak on that?

The Senate Minority Leader (Sen. Wetangula): I will just take one or two minutes, Mr. Deputy Speaker, Sir.

The Temporary Deputy Speaker (Sen. Murkomen): No, I want you to speak on what we should do, because in the main Motion, we should be done in another three minutes.

The Senate Minority Leader (Sen. Wetangula): Mr. Deputy Speaker, Sir, I do not know; I have not looked at Standing Order No.1 to see if it can help you expand a little time.

The Temporary Deputy Speaker (Sen. Murkomen): Sen. (Dr.) Khalwale?

Sen. (Dr.) Khalwale: Mr. Deputy Speaker, Sir, this is a timed Motion---

The Temporary Deputy Speaker (Sen. Murkomen): Yes.

Sen. (Dr.) Khalwale: A timed Motion means that the main Motion and any other amendments should take place within three hours. That is when I stood up and brought to the attention of the Chair; I was requesting that we were now breaching the Standing Orders, which require that the Mover be called upon to respond. So, what we are doing now is that I am dying to respond; what we are doing now is against the Standing Orders. I beg that I be called upon to respond.

The Temporary Deputy Speaker (Sen. Murkomen): Now, before we call the main Mover of the Motion, I would like us to share the two minutes remaining in this manner.

(Sen. Mugo spoke off record)

Order, Sen. Beth Mugo!

I want to put the question on the amendment, then we vote on the amendment and then I shall invite the Mover to reply in 30 seconds. We shall then vote on the main Motion.

Sen. (Dr.) Khalwale: On a point of order, Mr. Deputy Speaker, Sir.

The Temporary Deputy Speaker (Sen. Murkomen): Sen. (Dr.) Khalwale, the more you raise points of order, the more you are breaching the Standing Orders!

Sen. (Dr.) Khalwale: On a point of order, Mr. Deputy Speaker, Sir.

The Temporary Deputy Speaker (Sen. Murkomen): Yes?

Sen. (Dr.) Khalwale: Mr. Deputy Speaker, Sir, it is important that we realize that it is not the material Motion that matters; what matters is the precedent we are about to set.

The Temporary Deputy Speaker (Sen. Murkomen): Order, Sen. (Dr.) Khalwale!

Sen. (Dr.) Khalwale: So, I want to request, Mr. Deputy Speaker, Sir, that in that connection, you use Standing Order No.1 to open up a little space, if you can, in view of the fact that it is the decision of---

The Senate Minority Leader (Sen. Wetangula): On a point of order, Mr. Deputy Speaker, Sir. An amendment has been moved, seconded and spoken to in support. We have contrary views---

The Temporary Deputy Speaker (Sen. Murkomen): Speak first on the question of time; that is more important now.

The Senate Minority Leader (Sen. Wetangula): Mr. Deputy Speaker, Sir, on the question of time, the only saviour is Standing Order No.1; there is no other Standing Order. If you can use your discretion---

Mr. Temporary Speaker, Sir, there is precedent to this. In the last Parliament, we used to have heated debates where the Speaker could exercise his discretion and say "I will give the House an extra 15 minutes to finish this matter."

The Temporary Deputy Speaker (Sen. Murkomen): In that regard, hon. Senators, pursuant to the powers given to the Chair, the Speaker particularly, or any persons who sit on this seat of the Speaker under Standing Order No.1, I therefore extend debate on this Motion for another 30 minutes.

(Applause)

Now, we can proceed.

For avoidance of doubt, we are now speaking to the amendment, Senate Minority Leader. I want to request the House to use the extended 30 minutes in a quality manner.

Sen. G.G. Kariuki: On a point of order, Mr. Temporary Speaker, Sir. Since you can use your discretion, which means that if there is no opposition from any Senator in the House, you can still extend your discretion to one hour because there is no objection.

The Temporary Deputy Speaker (Sen. Murkomen): Thank you, Sen. G.G. Kariuki. I stand guided and I, therefore, revise my ruling by saying that this Motion is extended until the rise of the House at 6.30 p.m. So, let us utilize whatever the remaining minutes are – which are about 40 minutes; which means we have another extra 10 minutes.

Thank you.

The Senate Minority Leader (Sen. Wetangula): Thank you, Mr. Deputy Speaker, Sir, for giving me the opportunity to speak to the amendment. I want to address my colleagues, Sen. Elachi and Sen. Mugo, through the Chair.

Mr. Temporary Speaker, Sir, I am addressing the House and my colleagues too and I think they have missed the point. This Motion does not say "compensate the coup

plotters of 1982;" it says "those suspected of complicity in the coup." The fundamentals of justice are that everybody is presumed innocent until proved guilty. If you may recall our history – and I want the Senate Minority Whip, my very good friend – to listen to me very carefully. After the 1982 attempted coup, the Government disbanded the then Air Force regardless of whether all the Air Force members participated in that coup or not, and they lost their jobs! Their families lost everything! There are those who were taken to court and they were convicted; there are those who were simply told "you are disbanded, go home!" There was nothing to establish that they knew, whether they participated or even sympathized with the coup. These are the people we are talking about and everybody in this House must know somebody who suffered that injustice, and they are many! I know many people!

Mr. Temporary Speaker, Sir, I want to urge my colleagues that Sen. (Dr.) Khalwale's intentions cannot have been that those who were convicted of participating in the coup be compensated; it is simply those suspected. Even in the last two lines--- The last two lines talk about those unfairly dismissed from employment after the coup and not those who were justifiably removed from work. I want to encourage them that Kenyans are watching and for the record, I know Captain Kipsang, Captain Wafubwa, Captain Mutoro and Captain Masinde who were dismissed at that time and they went to court. The High Court found that they were actually unfairly dismissed and compensated them. We are talking of the rank and file of those in military terms commonly called "other ranks", other than generals, brigadiers, captains, lieutenants and so on.

We are talking about people down there, "watu wa mkono" in the army. For example, a cook in the army who happened to be in the air force and was dismissed and told to go home simply because there had been an attempted coup. Why should we exclude them from compensation and the Motion quantifies and qualifies who should be in this net? It is not a broad statement that all those who were in the army in 1982 should be compensated. I would not support that either because I will support the rule of law like Sen. Elachi has eloquently said. So, we are looking for justice for those who suffered unfairness.

I want to encourage my sisters across the Floor that we agree with you that this is a country that believes in constitutionalism and the rule of law and that is why it is unfair to unfairly dismiss people simply because they were in a crowd when something happened.

I beg to oppose.

Sen. Leshore: On a point of order, Mr. Temporary Speaker, Sir. Is Sen. Wetangula sincere in calling upon sisters on the other side while I can see men here?

The Senate Majority Leader (Sen. Wetangula): Mr. Temporary Speaker, Sir--

The Temporary Speaker (Sen. Murkomen): You do not need to respond to that because, I think he was speaking to Sen. Elachi and Sen. Mugo.

Sen. (Dr.) Khalwale: On a point of order, Mr. Temporary Speaker, Sir. I beg with all due respect to oppose the Motion by Sen. Elachi. In 1982 and by the way, we were there, we woke up at 2.00 a.m. in the morning and participated in the coup, took over the Government, announced to the Republic and in the final hours, we were then toppled. That is how complicated this thing is.

With all due respect, I am not joking---

Sen. Sang: On a point of order, Mr. Temporary Speaker, Sir. The Senator has just made very serious confessions. Can he confirm that that is what he actually means that he participated and did all he is saying?

Sen. (Dr.) Khalwale: Mr. Temporary Speaker, Sir, so that I do not waste my time, I will respond to that at the end.

The Temporary Speaker (Sen. Murkomen): No. No. It is a point of order, Sen. (Dr.) Khalwale.

Sen. (Dr.) Khalwale: Mr. Temporary Speaker, Sir, because of your age, Sen. Sang, you do not know the events of the history of this country. The people who plotted the coup were investigated. The prime movers were Hezekiah Ochuka and Pascal somebody and they were hanged. The young men and women from the air force were tried and handed between 25 and 30 years. Those of us from the university were discontinued. We were returned to the university because we were not found to have been---

The Temporary Speaker (Sen. Murkomen): Order, Senator. The question Sen. Sang has asked for purpose of the record of this country; can you confirm that you took over the Government for five hours and that you were part of those who carried out the coup?

Sen. (Dr.) Khalwale: Exactly, Mr. Temporary Speaker, Sir. When I say "we", I mean all Kenyans who had fought for change in Government through the other means.

I was one of those Kenyans, in fact, millions of Kenyans.

The Temporary Speaker (Sen. Murkomen): Sen. (Dr.) Khalwale, it is a straight question; did you or did you not participate in the coup?

Sen. (Dr.) Khalwale: The Kenyans---

The Temporary Speaker (Sen. Murkomen): Just say yes or no.

Sen. (Dr.) Khalwale: Mr. Temporary Speaker, Sir, if I may say the same thing in a more useful manner that as students of the University of Nairobi and many other Kenyans who had fought for good governance in this country, people supported the coup and when we supported the coup and it succeeded for a few hours, people felt that they had Kenya in their hands but that was reversed.

Mr. Temporary Speaker, Sir, I am talking about the people of Kenya and I am not a Ugandan.

(Several Senators stood up in their places)

The Temporary Speaker (Sen. Murkomen): Sen. (Dr.) Khalwale, I do not want to give Sen. Mugo and others a chance so that we can save time. If you did not participate in the coup, then you should withdraw your initial statement but if you did, please, say so because that is what Sen. Sang was asking you to substantiate.

Sen. (Dr.) Khalwale: Mr. Temporary Speaker, Sir, in fact, our lawyer was none other than Moses Masika Wetangula. The due process took place and the punishment was meted out. People were discontinued from the university and only came back through

other means. Those who were found culpable were jailed 25 to 30 years, I am not joking, and others were hanged. So, I wanted to submit by saying---

The Temporary Speaker (Sen. Murkomen): You have not answered the question. You have not substantiated it and we are out of record so it is important. Sen. Sang was asking you, for purposes of clarity; did the Senator of Kakamega, Sen. (Dr.) Khalwale, participate in 1982 coup? The question is so simple. It needs only yes or no.

Sen. (Dr.) Khalwale: The answer is; because of that support, students were unfairly discontinued but eventually returned. Some members of the Air Force---

The Temporary Speaker (Sen. Murkomen): So, that we proceed, I take it that you were among the students that participated in the coup in 1982?

Sen. (Dr.) Khalwale: Mr. Temporary Speaker, Sir, I will support it.

I want to make a plea to my sisters that the people who were found culpable, punishment was meted to them and we are saying there are others who unfairly lost their jobs. They did not have the wherewithal to pursue justice through the normal process. So, could it be that if this House permitted them, these humble Kenyans earning Kshs600 as a private in the air force, if they could be compensated?

I beg the House to find that if there was no merit in what I am saying, then the decision that was made in the High Court in Nairobi that found that officer Dominic Amolo was detained from 27th September to 5th November a period of around 50 days was compensated because it was established that after being detained for less than two months, this man did not participate in plotting the coup. So, the court ruled that the authorities went against the old Constitution, Article 70. By confining and treating this man inhumanly in Kamiti Maximum Prison for a further nine days, Article 73 of the old Constitution was breached.

The High Court has already established that the treatment that this Motion is trying to cure was unconstitutional and against the rights and freedoms of Kenyans. We want to use this Motion to allow the people who were punished to go on with their punishment. My own college-mate, Titus Akungu, was punished for ten years and he died while in prison. We are not saying that they should be compensated. However, we are talking about these officers.

Hon. Members, I beg that we do not change the Motion materially by accepting the coup at the top of the Motion and then remove it at the conclusion of the Motion.

I oppose.

The Temporary Speaker (Sen. Murkomen): For the purpose of using the extended time in a quality manner, could we confine ourselves to three minutes?

Sen. Muthama: Mr. Temporary Speaker, Sir, I do not intend to challenge what my colleague has said. However, he will recall that I was one of his very first clients. I got to know him when he left the university while representing the leaders of the coup attempt. I gave him good business. Therefore, he should respect me for that while I respect him as my senior leader.

The Senate Minority Leader (Sen. Wetangula): I concur.

Sen. Muthama: Mr. Temporary Speaker, Sir, let us differentiate between these two groups of people. We have Kenyans who have suffered to liberate this country. Look at the Mau Mau; these people were still young. They were castrated and have faced all

manner of mistreatment. They were killed and many of them died there. Muindi Mbingu died in that and Dedan Kimathi too.

The sitting Government, the previous one and the first one have not thought about compensating the Mau Mau. We also have another set of Kenyans, the likes of Kenneth Matiba, the late Rubia and the late Martin Shikuku, who died as a poor person. These are people who agitated for the true cause of liberating this country. The murderous and killers wanted to take the Government by force. The whole Air Force was disbanded by retired President Moi. Those who were in the Air Force were running with guns everywhere. You could not differentiate who was working with the Air Force, their positions and capacities. Discipline must be instilled once and for all in this country. Anybody who attempted to take over the Government by force – if we show slight recognition of such criminals – tomorrow, they will do it again. They will think that by taking the Government by force, they will not be losing anything and that they can be set free and even compensated. They will then go out with weapons that we have purchased to protect Kenyans to kill our people.

Very many people died in this country; young and old. To talk about them, I want to ask my brother, hon. Khalwale, that if someone has been accused of trying to overthrow a government that has been elected, whether rightfully or wrong, we are guided by the Constitution. I want to recognize the Constitution which says that if President Uhuru Kenyatta does not perform, there is what we can exercise and show him the process of going home. However, how can we encourage our young people in the army to start running in the towns and we say that we will compensate?

I support this amendment in totality.

Sen. Karaba: Thank you, Mr. Temporary Speaker, Sir. While I support the amendment in totality, I would like to draw the parallelism of this situation to America. When America became independent on Tuesday, 4th July, 1776, everybody was very happy to see it happen. Several years later, there was an attempt to divide America into two; the Southern confederacy and the Northern confederacy. That was the beginning of the civil war that took place after that. What followed after that is what created the human rights and that is what we see in Montgomery and Alabama.

This Motion is seeking to make sure that those who fought for the decent upbringing of a country like America and Kenya should be respected. Those are the names we have already cited here; the likes of Martin Shikuku, Rubia, Matiba and many others who died in the process of making Kenya what it is today. What we are seeing today is as a result of many people who suffered and contributed. They did many good things and yet they were taken to be doing bad things. We are not talking about revolutionists and those who wanted to overturn what had been made good by the first group. This Motion, therefore, shifts the goal post from what was originally good to what is said to be dubious.

We have people who have claimed and written books saying that they participated in the 1982 coup. These are the ones that the Government should deal with very carefully. I thought that my friend, Dr. Khalwale, would say that those people should be apprehended. If there is information that can be used today to review their cases, then they should be followed.

I support the amendment.

Sen. Lesuuda: Mr. Temporary Speaker, Sir, it is unfortunate that I am catching the Speaker's eye now. What we heard earlier is nothing close to what we are hearing now. I know that what we are hearing now is what many had in their minds only that they did not know how to bring it up. That is why I rose on a point of order to interrupt Sen. Khalwale, when he was moving the Motion. The fact that we are young does not mean that we have not followed the history of this country and that we have not been interested in the heritage of this country. Personally, I have been.

With regard to this Motion, we have followed those who fought for this country during colonial times. We have also followed the history of those fought for the freedoms that we are enjoying today with regard to the new Constitution. This is not just about politicians. We also have journalists who were beaten up after they had recorded information for us to see the clips and read. We watched Rev. Njoya being beaten. We have also read about the coup; we have seen the clips regarding it; we have seen the victims suffer and that remains a controversial issue to-date. There are those who have written books about it, for instance, our former Prime Minister. He has written history about the coup and several other people. We were running away from discussing this point from the word go and that is why we talked about the colonialists and Kenneth Matiba whom we respect. After the amendment has been brought, that is when we are discussing these issues.

I beg to support the amendment that we deal with the heroes of this country who fought for our liberation. I wish I had spoken earlier about these heroes. We have to commend the heroes and their families who have continued to document what they have been going through. It is unfortunate that the only thing they have is the anniversaries. Every year, the J.M Kariuki family has an anniversary celebration to remember. They have been launching books and we need to give them a break. I think that is the spirit that the Motion of Sen. Khalwale had. That is what we need to uphold in this House. We need to deal with Matiba before his sunset days. I want to support the spirit of this Motion.

*(Question that the words to be left out be
left out, put and agreed to)*

(Question of the Motion as amended proposed)

The Senate Minority Leader (Sen. Wetangula): On a point of order, Mr. Temporary Speaker, Sir. Did you notice that the distinguished Sen. Lesuuda used the microphone to shout "Aye" so that she can exaggerate her voice to make the House think that they have won?

The Temporary Speaker (Sen. Murkomen): I not only noticed that Sen. Lesuuda had used the microphone, but I also noticed that the "Ayes" were many. So, I noticed both. Since there is no one who wants to speak to the main Motion---

Sen. Hargura: Thank you, Mr. Temporary Speaker, Sir, for giving me the opportunity to contribute to the Motion as amended. When Kenyans were fighting for Independence, they went through the same suffering, but for a just cause and that is why

we celebrate them. After Independence, Kenyans unfortunately had to still fight to make sure that they attain what they had fought for during the colonial times. I support this Motion so that those Kenyans who were subjected to those inhuman acts by fellow Kenyans can be compensated.

I would like to state that it should not be forgotten that much as individuals suffered, regions in this country suffered collectively, especially those regions in the northern part of this country. They suffered under an independent Kenya. Some Kenyans felt that Kenyans from some parts of this country especially the former Northern Frontier District were not entitled to their own views. We suffered injustice along socio-economic lines. Some areas were marginalized because of our views. There was no infrastructure development in terms of roads, health and education just because people in that part of the country had divergent views. We would like this to be taken into account so that when other Kenyans are being compensated because of what they went through as individuals fighting for their rights, they are also considered.

Sen. Bule: Thank you, Mr. Temporary Speaker, Sir. I rise to support the Motion. Every Kenyan has fought for this country in one way or another. In Kenya, there are various categories of people who fought for Independence. There are also others who have contributed to the development of this country. There are many freedom fighters who have not yet been recognized. Many Kenyans suffered in the hands of the colonial Government and the post colonial Government. As I speak, in Tana River, there are various Government agencies, for example, KWS who are killing my people and no action is being taken. The jungle law is still being applied in Kenya to date.

Mr. Temporary Speaker, Sir, 20 people have died in Tana River since I became Senator. There is need for the Government to look into this situation. Every Kenyan should get equal consideration. It was not only Kenneth Matiba and the late Martin Shikuku. Many other Kenyans are still suffering in the hands of Government agencies. We should actually change the way this Government operates so that it may benefit all Kenyans. At the moment it appears that some Kenyans are not visible.

The Temporary Speaker (Sen. Murkomen): Hon. Senators, it is time for the Mover to reply.

Sen. (Dr.) Khalwale: Thank you, Mr. Temporary Speaker, Sir. I want to start by thanking all those who have contributed including those who introduced the amendment. I think the spirit was to enrich the whole process. In view of the contribution by Sen. Lesuuda, let me point it out to her that probably at the beginning, the attention span of the House was not really to what I was saying. I meant that there were top sufferers, but they were not limited to those ones alone. Indeed, we had political prisoners, political detainees, radical religious leaders, for example, Bishop Alexander Muge who died under similar circumstances in the struggle, civil rights champions and activists and journalists. Indeed, Sen. Lesuuda, because of her professional background might wish to be told that Wallace Gichere was actually a journalist, a mountain climber and a friend of Matiba. He is the one I spent a lot of time speaking to.

Sen. Elachi: On a point of order, Mr. Temporary Speaker, Sir. While I appreciate the Mover replying, I wish to seek your guidance. When you look at the amended Motion it is in conflict with the last paragraph where we are saying, “the Senate calls on the

national Government to comprehensively deal with the compensation of former detainees and those unfairly dismissed from employment after the August 1982 coup". I seek your guidance in terms of the edit of the whole Motion.

The Senate Minority Leader (Sen. Wetangula): On a point of order, Mr. Temporary Speaker, Sir. We are trying to undermine the procedure of this House. When a Member stands up and moves a Motion for amendment, drafts, signs and gives to the Chair, the Chair approves, she moves, it is seconded, debated, voted and the outcome is known, we accept the vote. She cannot be wiser after the event. The Motion we have before the House is the Motion left after the amendment. Even the Chair cannot edit a Motion. There is no Standing Order that allows the Chair to edit a Motion. I am finding this very strange and I think that we are progressively assaulting the rules of this House, perhaps, unknowingly.

(Several hon. Senators stood up in their places)

The Temporary Speaker (Sen. Murkomen): Mind that we cannot extend further. The Mover needs to reply.

Yes, Sen. G.G. Kariuki!

Sen. G.G. Kariuki: On a point of order, Mr. Deputy Speaker, Sir. I would like to disagree with hon. Wetangula. This is because if this Senate is going to pass a Motion which is not clear even in its drafting, I think that we will be making a mistake just because we are following the order. The order itself---

The Temporary Speaker (Sen. Murkomen): Thank you, Sen. G.G. I just want to say that Sen. Elachi was seeking a clarification as to whether her amendment up there has consequential effects to the last sentence down there. I am afraid to rule that what Sen. Wetangula said is true. I have no power to amend, because an amendment was not brought before the Chair. Therefore, the Motion is subsisting as it is. The Mover is, therefore, replying to the Motion actually as amended, which does not include the last sentence.

Sen. Sang!

Sen. Sang: On a point of order, Mr. Temporary Deputy Speaker, Sir. You suggested that you are afraid to rule that what Sen. Wetangula was saying is true. Are you taking sides in this thing? Why are you afraid of when you just need to rule?

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

Sen. Beth Mugo, the last one.

Sen. Mugo: On a point of order, Mr. Temporary Deputy Speaker, Sir. What Sen. Elachi was doing is actually tidying up this Motion, because it is hanging in the air and does not make sense because that bit on top has been removed. I hope now that when the final Motion is done, it will be tidied up to make sense, like people who have been to school.

The Temporary Speaker (Sen. Murkomen): Sen. Beth Mugo, we have also been to school. I just wanted to say that, one; I am not taking sides. I was just saying that "I am afraid" because my answer is negative in terms of the person who was raising the Motion. Secondly and most importantly, even in English I think that the last sentence still makes

sense even in the absence of the former. If you say “unfairly dismissed from employment after August 1982 coup” it does not mean that it had to be up there. This is because even if you see down there, the phrase “1970s and 1980s” is not repeated.

Sen. Khalwale!

Sen. (Dr.) Khalwale: Mr. Temporary Speaker, Sir, I want to take this opportunity to appeal to our youth both in our learning institutions and the ones who have already entered employment, but still in that bracket. When you look at the profiles of all these heroes that many people have spoken about, at no time do you see any of them coming out to struggle in the second liberation in the name of their tribes. Indeed, those who lost their lives did not do it in the name of their tribes, but for all of us. Those who lost their limbs and were detained did it for all of us. So, I want to appeal to our youth that this is the time for them to cut the chains and the short leashes that shackle them today in the name of tribalism. That does not in any way help us in building a cohesive Kenya.

Mr. Temporary Speaker, Sir, I want to remind Members that this matter, if dissected in respect of the late Dr. Robert Ouko, is still haunting this Parliament today. The honorable Eric Gor Sungu was the Chairman of a Committee that was looking into this matter, and because of the transactions of that Committee, Gor Sungu has been fined Kshs9 million because he was discharging his duties as the Chair of a Committee. So, it is important for you to see that the unfairness has started now expanding from the primary culprits to people like Gor Sungu.

Allow me, Mr. Temporary Chairperson, Sir, to appeal to the Parliamentary Service Commission (PARLSCOM) that this Kshs9 million bill of the former Member of Parliament, Gor Sungu, which he incurred when he was doing transactions in the name of Parliament when he was chairing the Committee – that PARLSCOM should take up that bill. He has no other reason other than to hustle around in order to earn a living.

Mr. Temporary Chairperson, Sir, I want to end this by reminding our youth about-

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Finally, Mr. Temporary Chairperson, Sir, as I end this, I would like to celebrate Matiba; Matiba had one slogan, he said “*Kuga na gwika.*” This is the time, in our vote, to remember the meaning of “*Kuga na gwika.*” But do it as you mean it and as you say it. So, today, let us do it as we mean it and as we say it. That is in my mother tongue.

The Temporary Chairperson (Sen. Murkomen): Is it similar to “*Kusema na kutenda?*”

(Laughter)

Okay. Hon. Senators, I now want to put the Question. I would like to remind the House that this is not a Motion concerning counties and, therefore, everybody has a vote; the vote shall be decided on a simple majority.

(Question put and House divided)

Hon. Senators, I cannot really find out exactly whether the Ayes or the Nays have it. We just have to go for division even if it is not requested. But the problem is that we do not have the numbers nor the time. So, unless there is extension of time---

Can we repeat the vote?

Hon. Senators: Yes!

(Question put and negatived)

(Applause)

ADJOURNMENT

The Temporary Chairperson (Sen. Murkomen): Order, hon. Senators! It is now time to adjourn the Senate. Remember that with the amendment of our Standing Orders, specifically the amendment to Standing Order No.30, the House stands adjourned until tomorrow at 2.30 p.m.

The House rose at 6.30 p.m.