

# PARLIAMENT OF KENYA

## THE SENATE

## THE HANSARD

Wednesday, 19<sup>th</sup> June, 2013

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

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

### PRAYERS

### QUORUM CALL AT COMMENCEMENT OF SITTING

**The Speaker** (Hon. Ethuro): Order, Hon. Senators! Could we confirm if we have a quorum?

**The Clerk of the Senate** (Mr. Nyegenye): Mr. Speaker, Sir, we have a quorum.

**The Speaker** (Hon. Ethuro): Okay. Let us proceed.

### MOTION

#### APPROVAL OF SENATORS TO MEMBERSHIP OF SENATE COMMITTEES

**The Speaker** (Hon. Ethuro): Senate Majority Leader?

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): Mr. Speaker, Sir, I beg to move the following Motion:-

THAT, pursuant to Standing Order Nos. 175, 177 & 178, the Senate approves the following Senators nominated by the Rules and Business Committee to be Members of the respective committees as indicated below:

#### STANDING COMMITTEE ON ENERGY, ROADS AND TRANSPORT

Sen. David Musila to replace Sen. Johnson Muthama

#### SESSIONAL COMMITTEE ON DELEGATED LEGISLATION

Sen. (Dr.) Boni Khalwale to replace Sen. David Musila

#### SESSIONAL COMMITTEE ON IMPLEMENTATION



Sen. Johnson Muthama to replace Sen. Boy Juma Boy

Mr. Speaker, Sir, this Motion aims to make certain changes within the composition of the Committees of this House, as approved previously. Hon. Senators will see that these replacements and reorganization are mainly from the Minority side of the membership although, of course, Committee memberships are memberships of this House as a whole. The affected Senators are Senators mainly from the Minority side and because of considering that political parties in this House, in their internal way, would want to see to it that the composition of various Committees reflects certain things. I think it is not out of order; it is not extra-ordinary for this request to be made.

Mr. Speaker, Sir, hon. Senators will also recall that, recently, the Minority side lost a Senator – our colleague, who is no longer with us – and I think part of that reorganization is to assist the Minority side to be adequately represented by the right people in the right Committees. So, I think this request is simply a political coalition affair, which the Majority side have no objection about. But, of course, it is the reserve of the Senate as a whole to discuss, debate, consider this request and, possibly, approve the request for this reorganization. So, I really hope---

**Sen. (Dr.) Machage:** On a point of order, Mr. Speaker, Sir.

**The Speaker** (Hon. Ethuro): What is it, Sen. (Dr.) Machage?

**Sen. (Dr.) Machage:** Mr. Speaker, Sir, the Senate Majority Leader does not seem to know the reason why these changes are being made. Would I be in order to demand that he actually tells us why these changes are being made?

**The Speaker** (Hon. Ethuro): Senate Majority Leader?

**The Senate Majority Leader** (Sen. (Prof.) Kindiki: Mr. Speaker, Sir, I had not finished making my remarks, but I had said that many of these requests came from the Minority side. There are certain internal things that have taken place there, including the loss of one of the Senators and, therefore, there could be changes which do not replace that Senator here because, this matter came to the Rules and Business Committee of this House and the explanation given was that, for example, there are certain temporary replacements which were done and which, of course, do not require the full House to debate and approve, with the permission of the Speaker. If that has taken place, as I am aware, then it means that internal balancing in the Committees has to be relooked at afresh if certain people have been told, for example, to take up provisionally the positions that were held in Committees by the late Sen. Mutula Kilonzo, *et cetera*. So, I think there is a valid argument here and that was explained in the Rules and Business Committee to its satisfaction. Therefore, as I have said, it is upon this House to query further. But as the Senate Majority Leader, my business here is to represent this request as approved by the Rules and Business Committee; as an agent of the Rules and Business Committee and not as an agent of the political parties from which the membership are drawn.

Mr. Speaker, Sir, with those few remarks, I beg to move this Motion and request Sen. Dan Mwazo to second it.

**Sen. Mwakulegwa:** I second.

*(Question proposed)*



**The Speaker** (Hon. Ethuro): Sen. Sang.

**Sen. Sang:** Thank you, Mr. Speaker, Sir. I arise to support the Motion; one, to congratulate Sen. (Dr.) Khalwale, a Member of this House that we de-whipped from our team. We want to congratulate him from the Majority side for having found space in one of the Committees, but also to sympathize with Sen. Boy Juma Boy, who seemingly has been de-whipped, and we have not been given reasons why he is being replaced in the Committee on Implementation. But, apparently, the Minority side seems to be learning quite fast from ourselves and they are already executing de-whipping as we had done before.

So, Mr. Speaker, Sir, I arise to support the Motion and congratulate the Senators who are getting into some of these other new Committees. But I think, more importantly, if you look at the Committee on Delegated Legislation and the Committee on Implementation, there is a lot of work to be done in this House. We have moved a number of Motions, we have passed a lot of Motions, but we need to see the Committee on Implementation following up some of the decisions and resolutions that this House is making and ensuring that we are able to follow them to their logical conclusion and that Kenyans are able to benefit from the decisions that this House is making.

**The Speaker** (Hon. Ethuro): Sen. Muthama.

**Sen. Muthama:** Thank you, Mr. Speaker, Sir. I thought it was important for me to stand just to clarify one of the issues that was raised by Sen. Sang.

Mr. Speaker, Sir, this list originated from the Minority Whip and it was considered very carefully. Sen. Boy Juma Boy has been given a position in the Committee of Education in an acting capacity, a position that was occupied by the late Sen. Mutula Kilonzo. So, fairly and with great consideration, this list was considered and worked on. Every Committee member has been taken care of.

Thank you very much, Mr. Speaker, Sir.

I have one more clarification, Mr. Speaker, Sir. The nomination of Sen. Boy Juma Boy in an acting capacity to the Committee on Education did not require to be approved by this House.

**The Speaker** (Hon. Ethuro): Order, Senators! Seeing that there are no more contributions, I, therefore, wish to put the question. Of course, this is not a matter affecting counties; so every Senator has a vote.

*(Question put and agreed to)*

Order, Senators! Before I proceed to the next Order, I have two Communications from the Chair.

### COMMUNICATIONS FROM THE CHAIR

#### INVITATION OF HON. SENATORS TO THE NATIONAL PRAYER BREAKFAST MEETING

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**The Speaker** (Hon. Ethuro): The first Communication is just a reminder that tomorrow morning, we will have the National Prayer Breakfast Meeting for Parliament and the entire leadership of the country. As our usual tradition, this is an activity we conduct once a year and we had communicated earlier. It is just a reminder. We begin at 7.00 a.m. at Safari Park Hotel and we expect it to be done by lunch time. In that regard, all the Committees that were slated to hold meetings tomorrow morning will be suspended; you will proceed with the rest, but for tomorrow morning, there will be no Committee meetings. So, we are all invited and as the Senate, I will be leading you and I expect maximum support from the Senate as usual.

Thank you.

#### VISITING DELEGATION FROM LAIKIPIA COUNTY ASSEMBLY

Hon. Senators, I wish to acknowledge the presence of some visitors who are visiting us today. Allow me, therefore, to introduce to you a delegation of the County Assembly of Laikipia, who are seated at the Gallery to my right. The delegation is led by the Laikipia County Assembly Speaker, hon. Patrick Mariru. As I introduce the visitors, I request that if an hon. Member of the Laikipia County Assembly is called, he or she should stand up and be acknowledged in the normal tradition of Parliament. Arising from the inadequacy of space in our temporary Gallery – and we apologize – the delegation had to divide itself into three groups and, so, this is the first group, and I will introduce them as follows. Hon. Patrick Mariru, Speaker of the Assembly; hon. Peter Kimondo, Deputy Speaker; hon. Ephraim Mwangi, Leader of the Majority; I hope he is learning from the Senate Majority Leader, Sen. (Prof.) Kindiki. The others are hon. Paul Leponoiywo, Leader of Minority; hon. Chelubo Kaparo, Whip of the Majority; hon. Jacob Endom, Whip of the Minority; hon. Dan Ndegwa, hon. Wilson Waithaka, hon. Francis Mukirya, hon. Joseph Kabashi and, finally, hon. John Suge.

*(Applause)*

You are welcome to the Senate of Kenya.

Thank you

**The Speaker** (Hon. Ethuro): Next Order.

#### MOTIONS

##### ENACTMENT OF LAW TO REQUIRE PAYMENT OF ROYALTIES BY INVESTORS TO COUNTIES

**The Speaker** (Hon. Ethuro): Order, hon. Senators! On Order No.9, the Majority and Minority sides have petitioned the Chair that the Motions by Sen. (Dr.) Zani and Sen. (Dr.) Machage are awaiting voting. The proposal which is agreeable to the Chair is that we proceed with Order No.11 by Sen. Musila. All the other Motions, including Sen. Musila's, if it is concluded, we can take a vote on them next week on Wednesday afternoon. It is important for hon. Senators to realise that the Chair has put them on

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notice. You have one week to mobilize so that on Wednesday afternoon we list all these Motions for voting. If this is agreeable with the House, we will now proceed with Sen. Musila's Motion.

**Hon. Senators:** Agreed! Yes!

**The Speaker** (Hon. Ethuro) In that case, proceed, Sen. Musila.

PROVISION OF MOBILE TELEPHONE SERVICES IN  
MARGINALIZED AREAS

**Sen. Musila:** Mr. Speaker, Sir, I beg to move the following Motion that is directed to the Department of Information, Communication and Technology:-

THAT, aware that mobile telephone communication plays a major role in the social and economic development of any nation; acknowledging the positive role mobile telephone providers have played in providing communication and other related benefits to our country; noting with concern, however, that despite these efforts, mobile telephone penetration in Kenya still remains at less than 50 per cent which is a major constraint to development particularly in the rural areas; the Senate urges the National Government to provide a policy framework of partnership with private telephone network providers, to provide mobile telephone services to hitherto neglected parts of the country, and further urges all County Governments to provide budgets to supplement mobile telephone providers to develop mobile telephone networks in areas deemed to be not economically viable with a view to ensuring that 100 per cent mobile telephone penetration is attained in Kenya by the year 2017.

Mr. Speaker, Sir, first, I wish to state that in this Motion I have acknowledged the positive role that has been played by the presence of mobile telephone communication in the Republic. I want to remind my colleagues that about 15 years ago, a mobile phone was a luxury. There were days when only a selected few, mainly politically-correct individuals, were allowed to access mobile phone services. When they did so, they paid very heavily. But as we progressed, thanks to liberal government policies and the entry of more mobile telephone services providers, competition brought in a lot of facilities and fixed stations were brought to many places. I also want to acknowledge that Kenya has advanced in mobile telephone communication. It is one of the leaders in this area particularly when it comes to money transfer. These are some of the benefits that mobile telephone services have provided to this country.

Mr. Speaker, Sir, having said that, I have gone round some counties and noted that in a lot of them, it is very difficult to communicate. It is not unusual to find people boarding a matatu to go and make a telephone call. This may seem to be a fairy tale particularly to those people who live in cities. But I have witnessed this in my county of Kitui and through a documentary in one of the television stations where I saw people climb hills to go and make telephone calls. I have even been told that people climb trees to make telephone calls. Yesterday, I talked to one hon. Senator who told me that he



sometimes climbs on top of his Land Rover to make a call. So, this is not something that is not happening.

We have to understand that mobile telephone technology is very important. The revolution that we got in terms of development in this country is as a result of the gadget called the mobile phone. People are able to communicate and talk to their families all over the country. Instead of people coming all the way from the rural areas to come and see their families, they are able to communicate on telephone in any place in the house, including the bedroom. People are also able to receive money from their loved ones who work in cities through mobile phone services. A lot of time is saved and people are able to pay off their debts using this technology. All these benefits are not hidden to us, they are there.

Mr. Speaker, Sir, it is sad that despite mobile telephone companies making huge profits, most of these profits are repatriated to shareholders, most of whom are foreigners. There is no policy to reinvest the money that is earned in this country to develop more telephone equipment and facilities. For example, only last month, Safaricom announced a record profit of Kshs25 billion. How much of that money was re-invested to create more bases for communication? We need to have a policy framework. That is why I am urging the National Government - I know there was a Communications Act of 2008 which did not go far enough to have a policy framework whereby companies are forced, if you will, to invest a fraction of the money they make in this country to create more networks particularly in rural areas. If we say they have to go where they think they will make a profit, a lot of areas will never get communication networks. I am appealing to my colleagues to see the point that I am making. We want companies to be made to re-invest money in the rural areas, even if there is little or no profit.

Mr. Speaker, Sir, I have circulated a document for the benefit of my colleagues. This document gives some statistics---

**Hon. Senators:** We do not have the document.

**Sen. Musila:** Sorry, Mr. Speaker, Sir. I think some hon. Senators did not get the copy. However, I have some available here.

I tried to enlist the support of the Communications Commission of Kenya (CCK), which is the authority on communication. I was shocked that the CCK does not have statistics of telephone services in various areas up to date. The list they gave me was that of 2009. I urge my colleagues to look at these statistics knowing that they are based on the 2009 census report.

Looking at this report casually, one finds that in Nairobi, for example, with 3.1 million residents, only 2.2 million have mobile telephones. That is about 70 per cent of the population in Nairobi. If you check the rest of the list, you will also find that Nairobi, Kiambu, Nakuru, Machakos, Migori and Mombasa counties have what we could call above 50 per cent mobile telephone ownership by residents. However, Samburu, Turkana, Mandera, Wajir, Tana River, West Pokot and Meru counties – I doubt the statistics for Meru County. I even argued with the CCK officials because with Trans Nzoia and Meru counties, there is a problem although they insisted those are their figures but forget about those two counties. Let us concentrate on Samburu, Turkana, Mandera, Wajir, Tana River and West Pokot counties. I do not know why they did not include Kitui



County in that list. These areas have less telephone penetration of roughly 3 per cent compared to Nairobi County with 70 per cent.

We need to have a policy and carry the whole nation along as far as communication is concerned. Communication is very vital. I am persuaded to urge the National Government, through the Senate, to have a policy framework to make companies that make profits on telephone communication to re-invest money, directing it to the remote rural areas that are not economically viable. We need to carry these areas aboard. In due course, the National Government will also make money available to county governments, so that these governments are able to negotiate with the mobile telephone providers, so that they put a policy in place to go to those areas which have no network and ensure that a network is provided. This is the only way that we are going to get every person in this country have access to communication.

Mr. Speaker, Sir, I want to give an example of India. These policies were put in place in India. That is why we have very rapid economic and industrial development in India. Everyone in India has access to a mobile phone and can communicate. With other mobile phone facilities such as money transfer, the best thing we can do is ensure that everybody has access to telephone services. I bet you, if we did this, this country will develop very fast and the quality of life of our citizens will also improve.

Mr. Speaker, Sir, I urge my colleagues to support this Motion and invite them, where they find it is necessary, to make the necessary amendments so that we can---

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

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

**Sen. Ndiema:** Mr. Speaker, Sir, having looked at the figures, I wish to inform the Mover that the figure indicated for Trans Nzoia County is grossly off the target. We are not satisfied with the situation. The figure is too low to be true.

**The Speaker** (Hon. Ethuro): Order, Sen. Ndiema! The Mover made the same observation, that he does not trust the figures given for Trans Nzoia and Meru counties.

**Hon. Senators:** Even the other figures are wrong!

**Sen. Ndiema:** But, Mr. Speaker, Sir---

**The Speaker** (Hon. Ethuro): Order, hon. Senators! Order, Sen. Ndiema! You cannot engage the Chair in a debate. I was to respond to your point of order, but I have dismissed it.

Proceed, Sen. Musila.

**Sen. Musila:** Mr. Speaker, Sir, I thank you. I want to also tell Sen. Ndiema, who was my very able District Commissioner (DC), when I was a Provincial Commissioner (PC), to also be listening very carefully. I said from the outset that these figures were not necessarily correct. Therefore, let us treat them as a guide. But the most important thing is that I had invited my fellow hon. Senators to improve this Motion as far as they can because the overall idea is to improve telephone communication for the betterment of our people, so that everybody can communicate. We need to ensure that people do not have to ride matatus, climb trees, hills or even Land Rovers to make telephone calls. We need to improve the lives of our people.

Mr. Speaker, Sir, I beg to move.

**The Speaker** (Hon. Ethuro): Who is seconding?



**Sen. Musila:** The Senate Minority Leader will second the Motion.

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

**The Speaker** (Hon. Ethuro): What is it, Sen. (Dr.) Khalwale?

**Sen. (Dr.) Khalwale:** Mr. Speaker, Sir, now that the Mover has moved the Motion, I am rising on a point of order to seek for further clarification. When I look at this Motion, we are urging county governments to craft budgets for purposes of supplementing private telephony. I need further direction from the Chair because it is the Chair who allowed the Motion to be on the Order Paper. We know that private companies are currently the ones operating mobile telephony. So, are you telling me that the Senate of the Republic of Kenya wants public funds to go and supplement private ventures without it being made clear to the Senate whether in so supplementing, we would be buying equities? If we are not buying equities---

*(Loud consultations)*

I am just seeking directions because it is important.

**The Speaker** (Hon. Ethuro): Order, hon. Senators! Sen. (Dr.) Khalwale will be heard.

Proceed, Sen. (Dr.) Khalwale.

**Sen. (Dr.) Khalwale:** Mr. Speaker, Sir, I would like you to give this direction in view of the fact that basically what we will be asking for is that we purport to direct public funds to go and supplement private ventures. This has never been heard of. If anything, for this Motion to be permissible, then the furthest it can go is to stop while asking the national government to create a framework. It is not as simple as that. Therefore, in view, we would be debating a Motion which is almost unconstitutional because the Constitution does not permit public funds to be used to fund private ventures.

I beg for your direction.

**Sen. Muthama:** On a point of order, Mr. Speaker, Sir. As much as Sen. (Dr.) Khalwale has experience in the House, Sen. Musila made it very clear that he invites Senators to make amendments on this Motion. That will come during the debate. So, Senators can bring in amendments before it is passed. Therefore, to start saying that it should be debated or not to be allowed to go on, is not in order. Is he in order when he is very much aware that amendments can be brought in during the debate of this Motion?

**Sen. Sang:** On a point of order, Mr. Speaker, Sir. Is the Senator for Kakamega in order to mislead this House that the principle of public/private partnership does not work in our counties? Is he in order?

**Sen. (Dr.) Khalwale:** Mr. Speaker, Sir, can I proceed?

**The Speaker** (Hon. Ethuro): Order, Senators! Of course, you cannot. How do you proceed when three Senators have made interventions which require the attention of the Chair? Let me dispose of the matter, then you will definitely proceed.

I am glad Sen. Sang has actually come to the aid of the Chair. The question Sen. (Dr.) Khalwale was asking is a fundamental one that when the Chair approves Motions to come before the House, constitutional requirements must be met. I was wondering whether this particular one, especially the aspect where county governments have to



provide budgets to facilitate this process is necessary. Sen. (Dr.) Khalwale is a great debater and he knows it. This Motion is not describing specifics. So, for now those arrangements can work. On one hand, it talks about a policy framework which can take that into account and the second one is just for county governments to create an enabling environment by facilitating. How they facilitate and the terms and conditions of that facilitation will be entered into the contract by the parties through what Sen. Sang has proposed, that is, the public/private partnership which is a policy adopted by this country. So, that is how it is. I do not think that is sufficient ground for you to amend the Motion. The Motion, in the opinion of the Chair, can proceed on its own merit as it is. If Senators want to vary it in order to add many other better aspects, so be it, but in the normal way.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Speaker, Sir, thank you for according me the privilege to second Sen. Musila's Motion.

I will start where Sen. (Dr.) Khalwale ended. To rest his anxiety, the Motion does not obligate every county to put a budget line towards this venture. It only urges them to do so. Secondly, it does not even say that we should take a certain percentage of the budget to put to the telephony. Thirdly, county governments can actually make a contribution by just providing sites for erecting masts that will make it easier for the telephone companies to put up facilities to assist wananchi. I think the importance of this Motion need not to be overstated. It is very critical. If you look at the history of mobile telephony in this country, in 1991 when yours truly bought his first mobile phone, it cost me Kshs450,000 and it had only a range of Nairobi, Limuru, Nairobi, Nairobi to the airport, Nairobi to Kikuyu and Nairobi to Githurai. Right now, the country has made major strides in mobile telephony.

One point that Sen. Musila did not mention is the critical role I have learnt of late, in the use of mobile telephony is the war against crime. I noted recently when there was a security challenge in my own county, it is the availability of mobile phone that helped the population to track down criminals. When they attack one village and they run in a particular direction, people call each other and inform them of the direction they are going. So, the people were able to stop the menace. That is a very positive indicator. More importantly, communication is key to many things. Recently, I went to talk to women traders in my constituency and one lady told me how her mobile phone helped her. She said that in the morning people come to buy beans. So, she uses her phone to ask the price of a bag of beans in Nakuru, Eldoret and Nairobi. It costs her about Kshs3 and on the basis of that phone call she is able to gauge the price of her commodity on a day to day basis. Even stock traders are doing the same thing.

Mr. Speaker, Sir, look at the money transfers, banks can no longer laugh all the way to their profits because of M-Pesa. M-Pesa is transacting more money on a daily basis than small banks. It is an innovation that even the United Nations General Assembly acknowledged Kenya and gave Safaricom an award. Today, the complaining Senator of Kakamega sitting where he is can send Kshs200 to his bull-fighting agents in Ikolomani and they can have money to do whatever they want. Those are the benefits of mobile telephones.

Remember those old days of "over over". When I used to be a young lawyer practicing law up to Mandera, Marsabit, Modogashe, Habaswein and other areas, when



you arrive in Mandera and you want to speak to your office in Nairobi, they book for a call at 8.00 a.m. and by 3.00 p.m. it has not gone through, you will still be waiting and maybe it was a quick communication. I am sure I am preaching to the converted because the same has happened to your area and many other areas. “Over over” Over Over” but it never goes through. Today, you just pick your phone and you are able to communicate. As a Senate, which is the defender of the interest of the counties, we should be in the forefront of championing the interests of people in our counties to access these goodies of modernity to make it easy for Senators not to necessarily go to the counties to be able to communicate with their constituents. All you need is have an open line and your constituents can communicate with you. They can tell you what they want and do what they want with you.

This is very critical but looking at the figures that the Senator for Kitui has brought here, it also shows that this country is not developing at the same pace. Look at the Nairobi and Mombasa connections, then look at the connections of far flung rural areas. That is why it is important that this should not be left to the vagaries or the command economy of private enterprises. That is why we have subsidies all over the world. The Yu telephone service is substantially owned by the Government. Even if we do not want to go the Safaricom way or the Celtel way, Yu alone has infrastructure in this country that can reach every village. There was a time, and I think it still is, where every single district at some point in the district headquarters has post offices. Those are infrastructures---

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

**The Speaker** (Hon. Ethuro): What is it, Senator for Vihiga?

**Sen. Khaniri:** On a point of order, Mr. Speaker, Sir. You heard the Senator for Bungoma, my good brother, Sen. Wetangula, saying that Yu is owned by the Government. I just want to make that correction and even if he says it is Orange, the majority shareholding in Orange Company is not the Government. The Government has very minimal shareholding.

**The Speaker** (Hon. Ethuro): Senator for Vihiga, you should have asserted your authority as the former Assistant Minister for Information and Communication.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Speaker, Sir, in fact, I was going to make that correction myself because I know that it is Orange that has Government connection. That is the former Telkom (K). Even if the Orange group have substantial shares in Telkom (K), the infrastructure of post offices are still all over. If you go to Lodwar, you will find a post office building. When you go to Mandera, Bungoma or Siaya, you will find them there. These can be a bedrock and foundation of part of this infrastructure. In fact, this Senate should start thinking of a legislation that takes some of these critical assets that are wasting away and puts them in the hands of county governments.

Mr. Speaker, Sir, the defunct Kenya Farmers Association (KFA) and all those very important assets that were spread all over the country have been left to go to waste. The National Produce and Cereals Board (NCPB) is no longer functioning. Where you have the NCPB silos, you can pass them on to the county governments and they can use them. So, I want to urge that we should not unduly worry about the phrase “provide



budgets to supplement mobile telephones”, because it is simply an encouragement. It is not an obligation, it is not mandatory and it does not even say what quantum of budget you should put on this.

With those few remarks, I beg to second this all important Motion and I think it is bound to make a big change in the counties.

*(Question proposed)*

**Sen. Khaniri:** Mr. Speaker, Sir, I thank you for giving me the opportunity to make my remarks on this Motion. As much as I want to appreciate the fact the Sen. Musila is concerned about the penetration level of mobile telephony, I rise to oppose this Motion and oppose very vehemently. I know that the Senator for Kitui means well and I know that he is concerned. I fully appreciate and understand the importance that mobile phones have brought into our country and our economy, but I am opposed to the approach. The Seconder of this Motion, Sen. Wetangula, brought out the merits and demerits of mobile telephony and I do not think that is the argument in this particular Motion. Maybe unknown to both of them, we in the Tenth Parliament passed the Kenya Communication Amendment Act of 2008 which I personally moved on behalf of the Government. I would want to inform the House and the country that among the many provisions in this particular Act, we made a provision for a Universal Service Fund.

Mr. Speaker, Sir, what Sen. Musila is proposing is what the Universal Service Fund is supposed to do to fill the gaps. The Universal Service Fund is whereby all the mobile operators, all the internet operators, all the broadcasters; F.M Stations and anybody licensed by the Communications Commission of Kenya (CCK) are supposed to be levied some amount every month to help in filling the gaps and helping the disadvantaged areas or areas that are not well covered by mobile telephony. It is here in the Act and I can refer the Senator to this Act.

The reason we came up with the Universal Service Fund is, we knew that we could not leave areas that were not profitable for private companies at the mercy of these private companies to develop infrastructure. Therefore, we came up with this Fund so that areas such as the former North Eastern Province which is a very vast area with a very sparse population can also enjoy the fruits of the mobile telephony technology.

**Sen. Musila:** On a point of order, Mr. Speaker, Sir. While appreciating the information that Sen. Khaniri is giving us, the year 2008 is a long time. Is he in order to mislead this Senate that a Fund exists yet no amount of money has ever been given so that there is no need for this Motion because there is a law in place?

**Sen. Khaniri:** Mr. Speaker, Sir, I was coming to that. I know it took a while for the Fund to be up and operational and before I walked into the Chamber today, I had a chat with the Permanent Secretary, Dr. Ndemo, and he informed me that the Board was eventually appointed and I think the Fund is operational from the last financial year. It took like four years for the Fund to be up and about because of too many Government bureaucracies and logistics.

The point I am trying to make is that there exists a law to push this telephony companies or the service providers to set aside some funds to ensure that the



disadvantaged areas are also taken care of. Therefore, what we should be pushing for is probably---

**The Speaker** (Hon. Ethuro): Sen. Khaniri, I thought if you look at the Motion in terms of a policy framework and that already the Fund existed to provide for the funding, so then the Motion is actually carrying forward what you had already established.

**Sen. Khaniri:** Mr. Speaker, Sir, it is a matter that has been legislated on and it is now an Act. Why should we come up with a Motion? Most fundamentally, the reason I oppose this Motion vehemently is the last bit of the Motion that suggests that we urge all county governments to provide budgets to supplement. Development of communication infrastructure is a very expensive affair. I was talking to the Permanent Secretary as I said, and he informed me that for the entire country to be covered by mobile telephony, we need about 12, 000 masts to cover all the uncovered areas. To put up one mast it costs about Kshs20 million. So for the 12, 000 masts, we are talking of Kshs2.4 billion. To me, anything that would put a burden to the already underfunded county governments, I will oppose.

Mr. Speaker, Sir---

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

**Sen. Khaniri:** Okay.

**Sen. Sang:** Mr. Speaker, Sir, I wish to inform the distinguished Senator for Vihiga, who is my neighbor, that according to the Fourth Schedule of the new Constitution, ICT is a function of the national Government and, therefore, if we proceed on urging the county governments to provide budgets for it, it is actually unconstitutional.

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

**Sen. Khaniri:** Mr. Speaker, Sir, let me digest the good information that I have been given. First, I will allow the Senator for Machakos to inform me later. I want to say that I agree with him fully and I want to thank him for that information.

Maybe another area that we should look at very seriously is also coming up with legislation to push the service providers to share infrastructure. As it is now, companies with more infrastructure like Safaricom, are using the infrastructure as a competitive edge. Therefore, if there was a law to push for these companies to share infrastructure, I am sure many areas would be covered by many networks. It is also going to help in our environment because we also do not want to see masts or base stations mushrooming everywhere in the city or in our villages.

Mr. Speaker, Sir, lastly, I want to state that another reason why some areas are not covered, it is not just because of lack of the network or the base stations, it is because of lack of electricity. I think we should also be urging Kenya Power Company, in places where it is not viable to take the main grid line, to develop solar energy so that the mobile companies can use these solar energy to put up their base stations so that the people of those---

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

**Sen. Ong'era:** On a point of order, Mr. Speaker, Sir.

**Sen. Khaniri:** Mr. Speaker, Sir, let me take that information from---



**The Speaker** (Hon. Ethuro): Order, Senators! Sen. Khaniri, just because you are on the Floor, it does not make you assume all the powers of the Speaker. I will allow Sen. Ong'era to raise her point of order.

**Sen. Ong'era:** On a point of order, Mr. Speaker, Sir. I am extremely confused. Is the hon. Senator for Vihiga supporting the Motion or opposing it?

**The Speaker** (Hon. Ethuro): Order! Sen. Khaniri, you do not need to respond. If she had been listening to your words, you even said you oppose vehemently.

**Sen. Murungi:** On a point of order, Mr. Speaker, Sir. Is the hon. Senator in order to say that part of the reason why mobile telephony has not got to all parts of this country is because we have not extended solar electric power when he is very well aware that we have invested so much money and we have reached all these constituencies either with grid or off grid electricity and where we have not, already there are plans to do so in those constituencies?

**Sen. Khaniri:** Mr. Speaker, Sir, to respond to the point of order by Sen. Ong'era--

**The Speaker** (Hon. Ethuro): Order, Sen. Khaniri! I said you do not respond to that one.

**Sen. Khaniri:** Thank you. We appreciate the good work the Senator did when he was in the Ministry of Energy and there were so many areas that were covered but I think he knows that not the entire country is covered. Therefore, I oppose this Motion.

## COMMUNICATION FROM THE CHAIR

### VISITING DELEGATION FROM LAIKIPIA COUNTY ASSEMBLY

**The Speaker** (Hon. Ethuro): Hon. Senators, before I call the next contributor, I want to introduce the second team of the delegation from Laikipia County Assembly and I hope you recognize that the Senator for Laikipia is also in the House. As I said earlier, when I call each Member, I request you to stand and be acknowledged by the hon. Senators.

The hon. Beth Waithera

The hon. Peter Thome

The hon. Paul Leshuel

The hon. Michael Kinyua

The hon. Mary Ngima Wanjau

The delegation is also accompanied by the following staff;

Mr. Jasper Muturi, Clerk of the County Assembly; Ms. Anne Wanjiru, Hansard Editor; and, Ms. Agnes Muthomi Ndwiga, Clerk Assistant.

**The Senate Majority Leader** (Sen. (Prof.) Kindiki: Thank you, Mr. Speaker, Sir. I rise to support this Motion. I want to take this opportunity to thank Sen. David Musila who is my neighbour. Kitui County and Tharaka-Nithi counties are neighbours. Some of the things, if not all of them, that he has spoken about are situations that I am familiar with. These are the difficulties that some of the areas in this country are facing in terms of accessing mobile telephone network.



This is a very important Motion to this Senate, despite the strenuous effort by my brother, the Senator for Vihiga, to project that with regard to the Act of 2008, this Senate should not be concerned about the equalization of our country in terms of mobile telephony network. If there is a role that this Senate must keep on reminding itself about, it is the role of ensuring that the country is equal. That is why it is “the Senate”. That is why some of these people who are arguing about what Senate is doing and its role have missed the point by a wide margin. Our business is not to compete with other organs of governance or other legislative organs in all the agenda. Our business is simple. It is to make sure that progressively our country can access similar levels of development. To me, that is what will basically make this country stable.

The other worry I hear coming from some of the contributors who have stood here, especially my brother, the bull fighter who has been reminded that he can use mobile telephony to organize his bull fights, is that the country is moving towards partnership between the Government and the private sector. There is nothing secret and mysterious about that. There is already in motion a draft Bill at the National Assembly which should be passed to guide the parameters of engagement between the private sector and the public sector even in the provision of core services that traditionally belonged to the public sector under arrangements such as Build Operate and Transfer (BOT), among others. So, even if we committed the public funds in a private project, there are ways in which this would not cause the public sector to deviate from its core business. The world is moving towards that direction. Perhaps, this is the solution to our transport problems, especially road transport.

In many countries, the private sector constructs roads and puts up toll stations for ten years to recoup their investment and then hands over the road to the Government. We cannot do things the same way we have been doing them over the years. In fact, I keep on telling my friends, economists, that they should give us solutions to our problems because the thought that this country, in the 21<sup>st</sup> Century continues to use the Economics of Adam Smith will not work. For the few months I have been here I have heard a lot of Adam Smith Economics. You cannot help this country with the Economics of Adam Smith. Adam Smith, first of all, is dead. Secondly, even if he was alive, he was writing for an Imperial Europe. At that time, Europe was not searching for—

**The Speaker** (Hon. Ethuro): Order, Sen. (Prof.) Kindiki. I think you are better placed dealing with issues that concern you and your counterparts as the Senate Majority Leader. In that field, we moved away from Adam Smith a long time ago.

**The Senate Majority Leader** (Sen. (Prof. Kindiki): Mr. Speaker, Sir, nevertheless, the point I was making is that we need new ideas that can make us solve our problems faster. Other than that, I would like to thank my brother, the Senate Minority Leader for bringing out some of the benefits of mobile telephone networks in some of our remote parts of this country, the economic benefits and the security benefits which are important for fighting crime. Some of these areas are difficult to police and, perhaps, the solution to insecurity problem lies in this Motion being implemented. There are even social benefits where constituents who are here can be in touch with their constituents without necessarily taking a flight, which is very expensive, at the end of every week.



For me, this is an extremely important Motion. I am not persuaded that there are any inherent dangers of the public-private partnership. The only thing that I want to mention which was alluded to by my learned Senior Moses Wetangula – I am junior in this House – is the critical issue he mentioned about the transfer of assets. There are very many assets which are lying out there idle. There are huge infrastructures of certain corporations that are no longer viable or vibrant.

I think within the law and within the transfer of powers and functions under the Intergovernmental Relations Law, there are ways in which some of these assets can be transferred to county governments as a way of empowering them to discharge their functions and powers.

I very vehemently, in using the words of Sen. Khaniri, support this Motion.

**Sen. Dr. Khalwale:** Thank you, Mr. Speaker, Sir. Indeed, I would like to thank the distinguished Senator from Kitui for this very innovative Motion. The sensitivity of the point of order that I raised at the beginning compels me to oppose this Motion until my mind is crystal clear on the thought of public funds.

The bottom line of the last limb of the Motion is that we will be committing not a county government's funds, but all county government's budgets to ensure that we help private companies. Safaricom is, indeed, one of the most lucrative, profitable and successful blue chip companies in East and Central Africa. Every year, they declare profits in terms of billions. How can you not take this opportunity or use it and apply the provisions of the Act which have been ably referred to by the distinguished Senator for Vihiga? Why can we not use this opportunity to make sure that the original spirit of that law is applied?

The issue of the levy exists in the sugar industry where we have the Sugar Development Levy. When this was put up many years ago, the Government was conscious of the fact that we needed to urge millers to participate in the development of cane so that more acreage would be under cane for the companies to continue growing.

It is my humble submission on this very important matter that we urge the Communication Commission of Kenya (CCK) to make sure that the super profits made by the blue chip companies that participate in mobile telephony are ploughed back into the system for the purpose of expansion.

I want to bring to the attention of Senators the history of Telkom in this country. When Telkom Kenya was privatized, hon. Wetangula will remind me. Was it in 2009? When Telkom Kenya was privatized in 2009, the privatization was accompanied by a lot of excitement and optimism. In fact, because of that optimism, we laid off poor employees of Telkom in their thousands. The excitement was that the French Telkom was coming on board and we would start making super profits. Believe it or not, today, as we speak, French Telkom which led to the laying off of employees of Telkom enmass is today approaching the Government to sink in further funds in its own troubled venture. Do we want a company with such an experience? Do we want to ask the taxpayers to sink in more funds?

The distinguished Senator, the Senate Leader of Majority has referred to some economics. Let me now draw your attention to something which I think you know. What is the international experience about asking the public sector to sink in a lot of funds in



private ventures? The best experience was just before the US went to a General Election. President Obama moved hundreds of millions of dollars into private enterprises. This became a major issue almost to the point of the President being visited with a scandal.

**Hon. Senators:** But he was re-elected!

**Sen. (Dr. ) Khalwale:** President Obama was elected for different reasons. With all due respect, Sen. David Musila, I know you know these things. He was not elected because of his management of public funds. This experience in the US, where the President almost was threatened with impeachment because he was being seen to be playing with public funds is an experience that we could draw from and say, maybe for the time being, we could limit this to the Government creating the framework the way the distinguished Senator has put it in the first part of his Motion, the business of committing funds to hold on. How do you think the headlines would be, distinguished Senator? That this Senate is now asking that public funds be given to Safaricom which makes billions of shillings by way of profits so that as we give it this supplement, we affect essential issues.

I want the Senate to be alive to the fact that the Secretary for Finance in charge of the National Treasury is feared to be about to levy VAT even on foodstuffs. So, if we are that constrained to the extent that we want to levy VAT on foodstuffs, then we do not have money. If we do not have money, we cannot give the little money we have to Safaricom.

Hon. Wetangula, I know that you are a good lawyer, but I do not think you are a good businessman. So, I want you to be completely relaxed.

**The Senate Minority Leader** (Sen. Wetangula): On a point of order, Mr. Speaker, Sir. Is it in order for hon. Dr. Boni Khalwale whose only business beyond being a Senator that we know of is bull fighting, to stand here and say what he has said about me?

**Sen. (Dr.) Khalwale:** Thank you, Mr. Speaker, Sir. Indeed, hon. Wetangula is my elder brother and knows me better than that. He knows that besides bull fighting, I also sell at a very high cost my intellectual property; namely, my surgical skills and capacity to make prescriptions. I sell them and---

**The Speaker** (Hon. Ethuro): Order, Senator Dr. Khalwale! Both of you cannot use the Floor of the House to market your wares. Stick to the provisions of the Motion.

*(Laughter)*

**Sen (Dr.) Khalwale:** Mr. Speaker, Sir, it is for those very many reasons that however innovative this Motion is that we should hold our horses and not be seen to be asking an economist to discharge VAT on bread, *githeri*, *Ugali* or *bushuma*, to be asked to take money to blue chip companies that declare profits in tens of billions.

Mr. Speaker, Sir, I beg to oppose.

**The Speaker** (Hon. Ethuro): Sen. (Prof.) Anyang'-Nyong'o!

**Sen. (Prof.) Anyang'-Nyong'o:** Mr. Speaker, Sir, I appreciate all the points that have been raised regarding this Motion, both for and against. This is because I can understand the point of view from which they are coming, but I do appreciate the spirit of



the Motion. I think that the spirit of the Motion is that the Government should provide a policy framework of partnership with private telephone network providers, so as to make telephony – especially mobile telephony – more accessible to the people. I think that this is the spirit of the Motion.

Mr. Speaker, Sir, I do agree that the Motion went a little bit too far to ask county governments to provide budgets for this mobile telephony. As one of the Senators has pointed out, Information Communication Technology (ICT) is in the province of the national Government. But apart from that, telephony is part of infrastructure. In our context of underdevelopment, this infrastructure must go at a national level to benefit from the economies of scale. Yes, you may ask a telephone company to set up a mobile network in one county. However, the result of that is that it is likely to be very expensive to be a subscriber because the market in the county may be too small for the company to make reasonable profit. So, he may set up mobile telephony, but must look very carefully at the economies of scale in doing a thing like that at the county level. So, it makes more sense to envisage mobile telephony and, indeed, setting up an infrastructure for telephony at a national or even regional level. One should read the history of the Bell Company in the United States (US) and why it went beyond each State to the federal level. But that is another thing. That is one point that I want to make.

Mr. Speaker, Sir, the second point that I want to make is that it is in the interest of the national Government to invest in the infrastructure or what has been called in this House today, the basic backbone for providing mobile telephony. Why is it the interest of the national Government? It is because our own Constitution says that every Kenyan has a right to information. Kenyans are not going to have a right to information if there is no infrastructure to provide this information, and the Government cannot sit by and expect just the private sector to provide this infrastructure. The private sector can provide the services, but the basic backbone and infrastructure should be provided by the Government. Indeed, that is why the cable network that is being laid out in the country was done by the Government, all the way from wherever it came from, that is West Africa or around the Cape of Good Hope to this place. That is a public investment.

Mr. Speaker, Sir, the next thing that the Government should do is that when the private telephone companies make use of this basic infrastructure, then they should pay the Government on a pro rata basis depending on how much profit they make. At the moment, the huge profits that these mobile telephone companies make, like Sen. (Dr.) Khalwale said, I have a feeling that we, as consumers, are not getting back what we have invested. This is because actually when we pay for consuming mobile telephony, we are also investing because without us they would not be there. Therefore, when they make this profit, surely, it should be used to build infrastructure. I think that is why that fund Sen. Khaniri was talking about was established. But my feeling is that, that fund has not been effectively implemented, hence the need for the policy that Sen. Musila is talking about. Law can exist, but if there is no proper policy framework to make sure that the law is implemented in the interest of the nation, the law will only exist in books. For example, we have these books here with so many laws here, but I have said very many times that if you look at all the laws in these books, you may find that some of them have never even been implemented in the last donkey years. This is because the policy or interest to



implement them is not there. So, I think that Sen. Musila is right. The law may be there, but we need a very vigorous policy framework to ensure that it is implemented. I think that the policy framework exists in seeking partnership with the private sector, not so much because the Government and private sector must go into a business together or both invest in production. But the Government can do something like providing infrastructure and agree with the private companies on exactly what their contribution is to that, or what they pay when they use that infrastructure.

Mr. Speaker, Sir, at the moment, I think that the telephone companies are actually taking the Government for a ride. The infrastructure that had been provided by the Government, like this cable and so on, I do not think that we are getting as much from it as we should, as a Government. That should be looked into. Now, once the Government then gets that money, the issues that Sen. Khalwale is raising are very pertinent, in terms of how the money that the Government gets is used. Before we know how this money is used, you cannot ask taxpayers to pay more money to the Government. So, I think that this Motion is raising very pertinent issues. But we must address these pertinent issues in the spirit in which the Motion is meant.

Mr. Speaker, Sir, the Motion is meant that, one, the Government should not stand by while private mobile telephone companies are making huge profits. The Government having provided the infrastructure, which it is best placed to do, should then make sure that these mobile telephone companies use this infrastructure, but pay for it in a pro rata basis; on the basis of the profit that they make. That is a good partnership between the Government and the private sector.

Mr. Speaker, Sir, it is important that we extend telephone or information access to the whole nation. This is because that will help the economy. We shall take banking to the rural areas. It will also help in investment, because people in the rural areas will have information on where to invest or buy shares and so on. It will also help in emergency. In the area of health, for example, I have always said – and I brought up this policy when I was the Minister for Medical Services – that we should have national ambulatory and emergency services; where you do not need to have an ambulance sitting in front of every health facility. But you have a number that you can call when you need an ambulance and it will be sent where you are. It does not matter whether that ambulance is from the Government or private sector, but it will be available in the national grid to serve the people, provided that you have access to it through telephony.

Mr. Speaker, Sir, secondly, in doing so, we will have a national fund that pays for these national ambulatory and emergency services. That national fund can be nothing else other than a universal health insurance scheme, which will integrate everything. So, on the basis of having access to information which this Motion is aiming at, a lot of other things will happen in the nation.

Mr. Speaker, Sir, the other thing is market access. We have seen movies and documentaries when we are flying in the planes, on how rural women in African countries with access to mobile telephony can know what the price of vegetables is. A woman in Kisumu will know what the price of vegetables are in Nakuru and decide to put her vegetables in a *matatu*, to be sold in Nakuru, for example, and get good money. That money will be sent to her through M-pesa. So, access to mobile telephony will



actually really improve access to markets. That is something that I think this Motion has a spirit of serving, and we should not throw the baby away with the bath water. I think that there is a good spirit in this Motion that we should preserve.

Mr. Speaker, Sir, if I were the Mover of the Motion, I would urge somebody to move an amendment which removes the last part, as Sen. Khaniri and Sen. Khalwale proposed. I think that the last part urging county governments to provide budgets is a double-kill. County governments need not do this. Once the national Government fulfils its responsibility, one, of ensuring that Kenyans have a right to information and, two, that this right is served by the Government creating the necessary infrastructure. We do not need to tax county governments; putting the scarce money that they have to this company. In any case, any mobile telephony that wants to invest in a county can do so. If you know that Kisumu County, for example, has potential telephone users who are not served by existing telephone companies, you can come to Kisumu and make a proposal to the Governor that you want to set up a mobile telephone company and that you can do it. In order to penetrate, you cannot charge higher than what is available. As a business person, you will get your business and do it. But I think that my colleague, Sen. Musila, went a little bit too far to ask for county governments to put a budget for this. It is enough for the national Government to have partnerships with private companies. Leave the county governments out because the market forces will take care of that.

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

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

Madam Temporary Speaker, my final contribution is the following. One, the policy framework that is to be developed – and that stems from the Act that we passed in Parliament in 2008 – goes much further. This debate of opening up communication to the people goes back to the 1990s when we started discussing the Kenya Communications Act. If you go to the HANSARD – I think that Sen. G.G. Kariuki will remember – it is at that point in time that people were really concerned with reducing the price of access to telephones in this country. We did not have mobile telephony then, but the moment policies were there that allowed the private sector to invest, prices started coming down. So, what this Motion should aim at is: What should we do even now to make sure that prices come down substantially enough, so that the poorest fellow in the rural areas can have access to mobile telephony? That should be the major question in this Motion.

Madam Temporary Speaker, I beg to support.

**Sen. (Prof.) Lonyangapuo:** Madam Temporary Speaker, I join my colleagues in thanking Sen. David Musila for bringing this Motion at this time. As I support it, I want to move an amendment.

Madam Temporary Speaker, the amendment is to delete the words after the word “country,” all the way to the word “viable” and retain the rest, so that it now reads---

**Hon. Senators:** Move the amendment!

**Sen. (Prof.) Lonyangapuo:** Madam Temporary Speaker, I beg move:-



THAT, the Motion be amended by deleting the words “and further urges all county governments to provide budgets to supplement mobile telephone providers to develop mobile telephone networks in areas deemed not economically viable.

Madam Temporary Speaker, the Motion now will read as follows:

THAT, aware that mobile telephone communication plays a major role in the social and economic development of any nation; acknowledging the positive role mobile telephone providers have played in providing communication and other related benefits to our country; noting with concern, however, despite these efforts, mobile telephone penetration in Kenya still remains at less than 50 per cent which is a major constrained development particularly in the rural areas. The Senate urges the national government to provide a policy framework for partnership with the private telephone network providers to provide mobile telephone services to hitherto neglected parts of the country with a view to ensuring that 100 per cent mobile telephone penetration is attained in Kenya by 2017.

Madam Temporary Speaker, with that amendment, I want to say that I come from West Pokot County where about 65 per cent is not covered by any communication network. The 35 per cent that is covered is of a peculiar nature because another half of that 35 per cent is international network communication where the MTN of Uganda is available. The local people are suffering because of the rates that are charged when one is calling. West Pokot is a bit peculiarly placed because of the huge hills that surround us. We have been having historical problems between the Pokot, the Turkana people and the Karamojong of Uganda. Therefore, the security of West Pokot is so expensive because by the time the locals report to the police about what has happened, it takes days because one has to walk to the police station. There is no communication. That is why this Motion is coming at a time when I was also planning to bring the same.

We want to ask the Government to avail to her citizens an opportunity to communicate. Even if you want to report a crime as simple as when a goat has been stolen, and you know a goat is life elsewhere - you cannot survive without it - you cannot do it because of lack of communication. We have also lost lives as a result of lack of communication. Many other related activities have gone down, for example, if someone wants to communicate with us leaders, he or she has to climb the tallest tree. At one time, it was reported in the media that someone fell down and died from a tree while trying to communicate.

So, this Motion is coming at a time when we want our country to be covered. This is not for free because when this thing has been installed, the residents can access, use and pay. Some of my colleagues were saying that it would be expensive to the Exchequer; which one is more expensive? Spending a lot of money every year to go and protect these people when something happens, for example, when Ethiopians invade or installing this equipment? Lives are lost in the process and it takes a long time for them to be reported. I am saying this is not a lot compared to what we are going to put in place. In Nairobi if there was no communication, many petty crimes would not be reported.



Therefore, telephone communication plays a very crucial role. How the Government is going to negotiate with the private sector depends on the direction given by the Government. Normally if the Government has decided that they want to stem insecurity in a certain area and this is one of the items that is going to be utilized and the private sector has to come in because they will enjoy the benefits of this installation, I do not see if there is a problem.

Madam Temporary Speaker, personally, I do not think there is a problem here. I am supporting this Motion and say further that we want to know why we allow an international company to interfere with our communication. Our people are suffering all the way from Kitale to Lokichoggio. They spent a lot of money whenever they call. What is the measure required so that MTN or any other international connectivity within our borders do not interfere with the economy of our people when they are calling. The moment you call, it jumps to international rate. The local people who do not have enough funds will end up suffering.

With this, I beg to move and ask my colleague, Sen. Sang, to second this amendment.

I beg to move.

**Sen. Sang:** Madam Temporary Speaker, I stand to support the amendment. All the Senators who have contributed before me have raised concerns with regard to the component of county governments. I want to agree with them as we had raised before that the provision of ICT services in this country is a responsibility of the national government. Understanding the serious challenges that the county governments continue to face or are likely to face right now with regard inadequate resources, this House would not be in order and it would be a great disservice to the counties if you ask them to shoulder an extra responsibility with regard to provision of ICT services and to partner with private service providers. Therefore, with this amendment, we are able to achieve what we want to do for this nation, that is, to ensure that members of the public across the country are able to access mobile services.

Mobile services in this country come with internet facilities. We are talking about e-government facilities in this country. It is unfortunate that major parts of this country still cannot access internet services. Right now, mobile service providers are the greatest internet providers in this country. Therefore, as we continue to enhance mobile connectivity in this country, we are able to support the citizens of this country to access internet facilities.

The other component which was mentioned by the Mover of this Motion, is that we have M-pesa services provided by some of the mobile service providers. This is one of the services that is useful and critical in the lives of ordinary Kenyans in the villages. Very few Kenyans in the villages are able to operate bank accounts, but with the mobile money transfer services that exist in this country, many of our residents in our counties are able to access and to interact with services like M-pesa and various others provided by other service providers.

It is important that we are able to provide an enabling environment where we are able to discuss and agree that the Government needs to carry out urgent steps to ensure that *wananchi* and members of the public are able to get these services. We all agree that



mobile service provision in this country is unequal. It is very difficult in this country as I speak right now that when you go to a place like Nairobi County, there is network, but when you go to counties in the northern part of this country, it is not there. We were in Turkana last week and we could not communicate with other parts of this country. You might remember some of the phrases by members of the public in Turkana who consider themselves as if they are not part of this country. It is very important to, at the very least, provide mobile facilities to all Kenyans in this country so we are able to communicate and reach out to them as part of ways of ensuring that there is economic empowerment in this country.

I, therefore, support the amendment, especially in ensuring that we are able to exclude any financial responsibility or burden to the county government and be able to put this financial responsibility on the national Government in order to ensure that it discharges its own constitutional mandate of providing ICT services in this country.

With those few remarks, I beg to support the amendment.

*(Question of the amendment proposed)*

**The Temporary Speaker** (Sen. Ongoro): If there is nobody interested in contributing to that amendment, I will propose the Question. This is a Motion that affects counties.

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

*(Question of the Motion as amended proposed)*

We shall then proceed with further contributions with the Motion as amended.

**Sen. Mwakulegwa:** Madam Temporary Speaker, thank you for giving me this opportunity to contribute to this important Motion. We have heard from different speakers that before 2008, there was a law enacted by the Tenth Parliament. In that Bill, we have been told that the telephone mobile providers were to share infrastructure. We have also been told here that there is abundant infrastructure in place, especially that which was owned by Telkom Kenya all over the country.

I support by saying we reactivate what was passed in 2008. The Communication Commission of Kenya (CCK) should force the service providers to share the infrastructure which is abundantly available. What is happening today is that Safaricom has refused to share because of competitive advantage. They have the infrastructure and, therefore, sharing with the other players will allow the competition to catch up with them. And because the Act is already there, we would request the CCK to enforce it so that all service providers share a common infrastructure and, maybe, be build more according to their usage. If Safaricom uses more, then they should pay more. Then YU and the other service providers will now get an opportunity to penetrate and provide communication throughout the country.

Secondly, I would suggest that because the CCK charges the service providers a fee. That fee should be used to create more penetration in the country. We need to revisit



it and maybe this Motion could be referred to the Committee on Energy, Roads and Transportation for them to look at how best they can interrogate it while investigating CCK and the Ministry as to what happened to the 2008 Act. They may find how much has been implemented and how much has not been implemented. They can report back to the House so that we decide how to implement their recommendations.

Madam Temporary Speaker, one of the barriers to creating more penetration of networks is the cost involved in putting up infrastructure. As one of the Senators said, it requires Kshs25 billion to create a booster or a mast. Therefore, we are asking for investigations to be carried out by the Committee because the previously Telkom owned masts or boosters are there, but it could be that they were using a different frequency. Today the FM frequency is cheaper than the former AM frequency. If this is investigated, the Committee could come back to us with specific recommendations because the Telkom boosters are already there, but they are not being utilized. Maybe they are outdated and need modernization. Therefore, the Committee would be able to bring to the House specific recommendations that could either enrich and enhance this Motion or reactivate what was passed by the Tenth Parliament, so that we can get a way forward to getting a 100 per cent telephone penetration by the year 2017.

I support the amended Motion.

**Sen. Ong'era:** Thank you, Madam Temporary Speaker. I rise up to support this Motion. First, I would like to commend the Senator for Kitui County for bringing up this Motion. I am a Christian and the Bible says: "My people perish because of lack of knowledge and information". Without mobile phones in this country in the last 10 years, Kenya would not have had the kind of quantum leaps it has had in the sector of information and communication. For the first time, the grassroots Kenyans are able to reach one another and be able to communicate with one another in terms of resource sharing. For example, they are able to use the telephone as a banking instrument, to communicate with their children who are abroad. They are able to use the telephone to transact business. I heard Sen. (Dr.) Khalwale, the bull fighter say that he can actually use the telephone to do business transactions in the House. I do not know whether this is allowed.

This is a very important Motion, but we need to study how it is going to be implemented. I want to propose and support what Sen. Mwakulegwa was saying that, perhaps, this Motion needs to be referred to the relevant Committee to look at how it can be properly structured and presented. Maybe in terms of legislation, do we amend the existing legislation so that we can see how these facilities can be shared?

Madam Temporary Speaker, as you are aware, it is very difficult to reach many of our people in the rural areas, especially during campaign times. It is even sometimes hard for Members of Parliament to reach their campaign agents because communication continues to be a major burden. If this Motion could be structured in such a manner so that facilities could be shared--- For example, I am aware that Safaricom is not ready to share some masts with the Telkom. These are grey areas in this Motion, that perhaps, if they are well thought and structured, then we can have a proper policy in which we can be well guided.

With those few remarks, I beg to support.



**The Temporary Speaker** (Sen. Ongoro): I will then call upon the Mover to respond.

**Sen. Musila:** Madam Temporary Speaker, I want to thank you for this opportunity. I also want to thank fellow Senators for the positive contributions that they have made to this Motion. I also want to thank Sen. (Prof.) Lonyangapuo for the amendments he has introduced because you recall when I was contributing to this Motion I invited fellow Senators to improve on it as much as they wanted. I welcome this amendment because it now moves the burden from the county government to the national Government and effectively now makes it not a County Motion. That makes it even easier for the Senate to move on with it and vote on it.

Madam Temporary Speaker, during the debate, very important points were made by the Senators. Of importance is, perhaps, security. The issue of security as an advantage for mobile telephone communication has been mentioned and it goes without saying that those areas, unfortunately that do not have mobile telephone communication are the ones which are hardest hit with insecurity. Therefore, in proposing that we make every part of this country able to communicate with mobile telephones, it is not a luxury as I said. It is going to give economic development and security to our nation. I think and I have no doubt in my mind that if the Government implements this Motion, this country will never be the same again.

The Senator for Vihiga talked about the Communication Act which was done in 2008. I think it is very sad that an Act of Parliament, passed five years ago, to lay the framework for mobile telephone communication has not as of today been implemented. Hence, the more reason this Senate should pass this Motion so that those who are sleeping on the job can wake up. I want to challenge the Committee on Implementation of this Senate to take up this matter immediately this Motion is passed and ensure that the CCK ensures that all mobile telephone providers contribute to the national fund that was created by the Act.

If there is any need to increase the framework, they should do so, so that in the next three to four years, this country can communicate effectively throughout. It is not right as the Senator for Pokot has said, that people have to climb trees and even sometimes fall and die just trying to make telephone calls. It is not in order that my people in Kitui have to travel by *matatu* in order to reach a place where they can make a call. So, I think this is a very important Motion.

Once again, I want to take this opportunity to thank fellow Senators who have contributed and urge that when this Motion is passed, the Implementation Committee will take it up immediately and ensure that the necessary framework is put in place by the national Government, so that we can improve the living standards of our people.

I beg to move.

*(Question of the Motion as amended put and agreed to)*

*Resolved accordingly:-*



THAT, aware that mobile telephone communication plays a major role in the social and economic development of any nation; acknowledging the positive role mobile telephone providers have played in providing communication and other related benefits to our country; noting with concern, however, that despite these efforts, mobile telephone penetration in Kenya still remains at less than 50%, which is a major constraint to development particularly in the rural areas; the Senate urges the National Government to provide a policy framework of partnership with private telephone network providers, to provide mobile telephone services to hitherto neglected parts of the country with a view to ensuring that 100 per cent mobile telephone penetration is attained in Kenya by the year 2017.

### ADJOURNMENT

**The Temporary Speaker** (Sen. Ongoro): Hon. Senators, there being no other business today, the Senate stands adjourned to tomorrow, Thursday 20<sup>th</sup> June, 2013, at 2.30 p.m.

The Senate rose at 4.40 p.m.