

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Tuesday, 21st July, 2015

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

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

PRAYERS

STATEMENTS

The Speaker (Hon. Ethuro): Hon. Senators, let us move to statements. Yes, Prof. John Lonyangapuo?

ARREST OF YOUTH OVER ALLEGED MISMANAGEMENT OF FUNDS IN WEST POKOT COUNTY

Sen. (Prof.) Lonyangapuo: Mr. Speaker, Sir, I stand to request for a statement on a county issue under the provisions of Standing Order No.45(2)(a).

This matter appertains to the arrest of several youth in West Pokot County after raising integrity issues over management of funds allocated to the county. The four youths arrested so far are;

- (1) Bruno Lomweno
- (2) Allan Pkite Rengete
- (3) Elijah Lokori Kaseuseu; and,
- (4) Malik Kassachoon.

These youth raised concern over the inflated cost of construction of nurses' houses at some dispensaries across the county. However, instead of the matter being investigated by the county authorities, the youth are being harassed by the police and Criminal Investigations Department (CID) officers at the behest of those accused of impropriety.

I take this opportunity to appeal to the Ethics and Anti-Corruption Commission (EACC) to intervene in the matter and to request the Director of CID to inquire into the circumstances under which the above youth were arrested. He should investigate the

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operations of the staff of West Pokot County and take measures to stop the harassment and victimization of innocent people who should otherwise be rewarded for blowing the whistle for misappropriation of public resources. The above incident is creating unnecessary tension in the area.

Since this is a county matter, I would like to say that the County Executive of West Pokot has gone beyond what it is supposed to do. They have been harassing people who raise integrity matters regarding projects which have been carried out. Some of the projects are of low standard and when questioned, they buy the CID officers to harass people. People's mobile phones have been confiscated by some civilians who have been sent by the County Executive officers. We wonder what law is being used in West Pokot and yet security is not a devolved function. The county executive and other people in the county assembly have allocated themselves power to arrest people anyhow. This is silencing people instead of allowing citizens to check their county governments to know whether something is going wrong.

This malpractice may not only be taking place in West Pokot but also in other counties.

The Speaker (Hon. Ethuro): Order, hon. Senator. Stop speculating. You have made your statement.

Senator (Prof.) Lonyangapuo, you may want to conclude because you said you were making a statement under Standing Order No.45(2)(a).

Sen. (Prof.) Lonyangapuo: Mr. Speaker, Sir, I was saying that county assemblies should also be checking their executives. It is not only the Senate that should do oversight. Even the civilians in the county have power and ability to check whether things are going right. It is on this strength that I am raising this issue so that Government arms that are supposed to do investigations and deal with security matters do their work. They should not delegate their work to county officials who have messed up to the extent I have mentioned.

Lastly, county assembly members in some counties like mine have neglected their duty. Instead of doing oversight and checking on the county executives, they now work for the county executive. It is for that reason that these young people have taken to the social media to point out these things. The county government officials who have been mentioned should take it upon themselves to investigate what things have gone wrong rather than try to block and silence criticism in the county.

HAZARDS POSED BY NAIROBI DAM

Sen. Khaniri: Thank you, Mr. Speaker, Sir. You may recall that last week, I explained to the House my predicament in trying to obtain this statement from the Nairobi County Government. I told the House that I had invoked Article 125 of the Constitution. I am glad to report that the Nairobi County Government has now responded.

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I received, on Friday, a lot of material on the question sought by Sen. Ong'era. My clerks are working to extract the answers to the specific questions that the Senator sought from the raw data that I have. I believe, given up to tomorrow, I should respond to the specific questions raised by Sen. Ong'era rather than read all these raw data to the House. I have consulted the Senator and she is in agreement that if there will be time tomorrow or Thursday, then I can issue the statement. Thank you.

The Speaker (Hon. Ethuro): It is so ordered. Let us move to statement 2(b) which should be responded to by Sen. Karaba.

Sen. Karaba: Mr. Speaker, Sir, I had a statement to issue to the Senate but the person who requested for it is not here.

Could I go ahead?

The Speaker (Hon. Ethuro): Order, Sen. Karaba. Please, resume your seat. Hon. Senators, we had agreed that we need to manage our time better. Therefore, if there are consultations that we have already agreed upon, let the Chair be privy to them. We do not have to revisit that matter in the plenary.

Let us move to statement 2(c) on Status of Cash Transfer Programme. Where is the Chairperson for Labour and Social Welfare Committee? Where is the Vice Chairperson? Is there any Member available? We will revisit it at the end of statement hour. This will also apply to "2d" on Killings in Kitui County. Unless a Member has a response, we will revisit it later. This will also apply to "e" on Criteria for Appointment/Regional Distribution of Appointment to Parastatals and "f" and "g" on Utilization of CDF in Tana River County During the 2012/2013 Financial Year and Health Status of Children Mishandled by Medical Staff in Busia County respectively. With regard to statement "f", the Senator is not here. We will move it to tomorrow whether he is present or not.

Yes, Sen. Mohamud Halima Abdille.

Sen. Mohamud: Thank you, Mr. Speaker, Sir. I am a Member of the Labour and Social Welfare Committee. I am informed by the Secretariat of the Committee that we are yet to receive the statement. I undertake, on behalf of the Committee, that we report progress on Thursday this week.

Sen. Musila: Mr. Speaker, Sir, I believe the Member is not properly informed. We were not expecting a response to a statement. We were expecting the Cabinet Secretary to come. This was a matter of the date of when the Cabinet Secretary would come to complete the work that she did not complete when we met in this Chamber---

The Speaker (Hon. Ethuro): Correct, I remember. Sen. Halima, you need to look for your Chairperson, wherever he is so that you give us a proper undertaking before the end of statement time.

KILLING OF POLICE OFFICERS IN LOKICHOGIO

Sen. Munyes: Mr. Speaker, Sir, I wish to seek a Statement from the Chairperson of the Standing Committee on National Security and Foreign Relations. The Statement is in relation to the killing of police officers in Lokichogio. In the Statement, I would like the Chairperson to address the following pertinent issues:-

(a) confirm if the Government is aware of the killings that took place on 18th July, 2015, where an Officer Commanding Police Station (OCS) Lokichogio and National Police Reservists were killed by Toposa cattle rustlers from the Eastern Equatorial State of South Sudan;

(b) explain the action the Government will take to arrest the raiders; and,

(c) state what further steps the Government will undertake to guarantee the security of the residents living along our border with South Sudan.

Thank you very much.

The Speaker (Hon. Ethuro): Is the Chairperson of the Committee on National Security and Foreign Relations here? Is any Member of the Committee present to respond to that Statement?

In whatever the case, we expect the response in two weeks time. The Senate Majority Leader will deliver the message on the directive of the Chair.

*(The Senate Majority Leader
(Sen. (Prof.) Kindiki) stood in his place)*

Order, the Senate Majority Leader. It is not up to you to respond; I have given a directive.

Please proceed, Sen. Musila

KILLINGS IN KITUI COUNTY

Sen. Musila: Thank you, Mr. Speaker, Sir. I stand in connection with Statement No.(d) on the Order Paper on the issue of killings between Kitui and Tana River borders particularly the killings that are happening to my people in Kitui County. The issue has gone on for a long time and every time the Chairperson of the Committee reports that they will come with a Statement. The last time they responded, the Statement was inadequate and you ordered that a further Statement be given immediately.

This is a matter of life and death. We are sitting here waiting for the Chairperson of the Committee on National Security and Foreign Relations to come whenever he or she wants yet we are getting nowhere. I seek your guidance on this matter because it has gone unconcluded as my people continue to die at the hands of the herders from another county. The Government is not taking any action. We were to receive a comprehensive response from the Chairperson or his Vice-Chairperson of the Committee, yet nothing is forthcoming. I do not see any of them here. Kindly guide us on this matter.

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Thank you.

The Speaker (Hon. Ethuro): I sympathize with you, Sen. Musila. However, without the benefit of what the Committee has done, it is a bit difficult for me to give direction.

Sen. Ongoro, do you have something to contribute on this matter?

Sen. Ongoro: Thank you, Mr. Speaker, Sir. I want to undertake on behalf of the Committee that in view of the fact that it is a matter that it is already being handled by the Committee, we will give a comprehensive answer on Thursday this week.

The Speaker (Hon. Ethuro): So ordered. Please give the response with finality because the Member is obviously frustrated.

Please proceed, Sen. (Prof.) Lesan.

SEIZURE OF KENYAN IVORY IN THAILAND

Sen. (Prof.) Lesan: Thank you, Mr. Speaker, Sir. Sometime back, I raised an issue to the Chairperson of the Committee on Agriculture, Livestock and Fisheries regarding the tea sector. The response was good because we had a conference on tea but up to date, I have not received an answer from the Cabinet Secretary or a report from the Committee.

I seek your indulgence to ask the Chairperson of the Committee on Agriculture, Livestock and Fisheries to give us a way forward on what transpired in the Conference that we had to do with tea sector at Safari Park Hotel.

Thank you, Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): Chairperson of the Committee on Agriculture, Livestock and Fisheries, please respond to that question.

Sen. Murungi: Mr. Speaker, Sir, I thank Sen. (Prof.) Lesan for this request. We participated in a stakeholders' conference where the issues that the Senator had raised before the House were addressed by the Cabinet Secretary in the same conference. It was resolved at the conference that the Cabinet Secretary would set up a task force to implement the various recommendations that were made by all the stakeholders at the conference. I know that preparation was underway to appoint the task force but unfortunately, before the task force was gazetted, the Cabinet Secretary had to step aside. We are waiting for the developments at the Ministry for us to follow up, as soon as the Cabinet Secretary is reappointed.

Sen. (Prof.) Lesan: Thank you, Mr. Speaker, Sir. I am grateful for the action that the Chairperson of the Committee on Agriculture, Livestock and Fisheries has taken and appreciate the answer that he has given this afternoon. However, there is an acting Cabinet Secretary and Principal Secretary in office. I believe that despite the fact that the substantive Cabinet Secretary for the Ministry of Agriculture, Livestock and Fisheries, is out of office, the acting Cabinet Secretary can still carry out the functions of the office so that some work goes on. Farmers are waiting and this should be done speedily so that we

give an appropriate answer to them and perhaps even find a way of resolving issues like reduction of levies that they are being charged.

Mr. Speaker, Sir, I therefore wish to say that the task force that is to be set up, be done by the acting Cabinet Secretary for Ministry of Agriculture, Livestock and Fisheries.

The Speaker (Hon. Ethuro): Chairperson of the Committee on Agriculture, Livestock and Fisheries, I suppose that when somebody steps aside from a public office, he or she does not carry the office with him or her.

Sen. Murungi: Mr. Speaker, Sir, the Cabinet Secretary who stepped aside was very familiar with the issues that the task force was to deal with, because he was part of the discussion from the beginning. He himself had taken very personal interest in that matter and we thought it wise – especially because he was cleared by the EACC – to wait for him because his reappointment could be any time before we rush with this matter. I, therefore, plead with my colleague to give Mr. Kosgei, the Cabinet Secretary, a little more time to see if he will come back to continue with this project.

The Speaker (Hon. Ethuro): Sen. (Prof.) Lesan, I think the Chairperson has made his case. It is worth giving him the benefit of the doubt.

Sen. Okong'o, what is it?

Sen. Okong'o: Mr. Speaker, Sir, I have just received a card from the Ambassador of the United States of America (USA) inviting me to listen to President Obama's speech. I am surprised that we are receiving this invitation which I think is supposed to come from the Ministry of Foreign Affairs and International Trade or yourself. I do not know what is happening.

The Speaker (Hon. Ethuro): Order, Sen. Okong'o. I do not think you have communicated to the Chair what you intended to. I will not even allow you to proceed. I have said time and again that you do not ambush the Chair. I thought it was a matter related to the business before the House. Approach the Chair and then we will see how to assist you, especially when you make remarks like those. You have confused yourself; you do not know. May be if you approach the Chair, he may make you know.

TERMS OF OPERATION/ENGAGEMENT FOR COUNTY SECURITY AND ENFORCEMENT OFFICIALS

Sen Khaniri: Mr. Speaker, Sir, pursuant to the provisions of Standing Order No.45(2)(b), I seek a Statement from the Chairperson of the Committee on Devolved Government regarding capacity building for county officials who perform specific security and enforcement functions.

In the Statement, the Chairperson should highlight the following concerns, among others.

(1) What are the defined operations and terms and conditions of service for county security and enforcement officers?

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(2) What measures have the county and national Government taken to ensure that there is a uniform training platform for the county security and enforcement officers?

(3) Apart from the mechanisms provided for by the Commission on Administrative Justice (CAJ); the *ombudsman*, what other mechanisms have been put in place to address public complaints against the said officers?

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, allow me to raise an important issue on this very important matter. It looks like there is some unwritten agreement among governors that they form this particular force. Could the Chairperson also tell us under what law they are forming this police force, when we know that it is only Parliament that has the power to form a police service away from the one in the Constitution?

Sen. (Prof.) Lesan: Thank you, Mr. Speaker, Sir. Allow me to also ride on the Statement which has been sought. I would like to know whether these security apparatus that are being formed by governors in counties will be armed. If so, what is the chain of command for these security apparatus?

Sen. Murkomen: Mr. Speaker, Sir, allow me to congratulate Sen. Khaniri before I say how many days I will require to bring a response. That is a question that is disturbing many Kenyans because there is a gang which we are told are security people every time we go for a public function in the county. Apparently, they report to the governor and sometimes they supervise booing of other leaders except the ones they have allegiance to. This is a very serious issue and if possible, may be, my Committee – now that the Statement is directed to us – should have an actual feel of the same by not only getting an answer from the Council of Governors but also visiting a few counties to get direct answers on the legality of this issue.

If Sen. Khaniri can permit, he and any other Senator who is interested can join us when we make those visits because we will do it urgently. Therefore, I beg his permission that you give us one month since the recess might come in the next one week. After that, we can then come up with a more comprehensive response that this House can use to give direction to the country.

The Senate Minority Leader (Sen. Wetangula): Mr. Speaker, Sir, I thank Sen. Khaniri for raising the issue. I would also want the Chairperson of the Committee to clearly – in fact, before bringing the actual Statement – give an interim Statement and directions that apart from the police force which is recognised in the Constitution, this Senate passed a Motion only to allow the Nairobi County Government to have a metropolitan police force. No other county has any authority in law or fact to entertain recruitment, training and management of a militia which is being paid for by public funds.

What goes on out there is embarrassing and shocking. You will see this militia carrying chairs for governors to sit on at funerals; transporting chairs for 10 to 20 kilometres for the governor to sit on at a funeral and all manner of strange things. This is an abuse of public resources.

The Speaker (Hon. Ethuro): Are you implying, by any chance, that governors should not be sitting at funerals?

(Laughter)

The Senate Minority Leader (Sen. Wetangula): Mr. Speaker, Sir, when the distinguished Senator for Bungoma goes to a funeral, he either stands if there is no seat or sits on the ground or any seat available and given to him by anybody at the funeral. You do not engage in the extravagance and obscenity of transporting a chair on a pick-up for 20 kilometres to go and sit on it.

Finally, I would expect the Chair to also direct the Committee on Finance, Commerce and Budget to inquire into how much has been budgeted for in each county for the management and payment of this militia, illegal as it is.

The Speaker (Hon. Ethuro): Hon. Ndiema, you seem to be having a burning question.

Sen. Ndiema: Mr. Speaker, Sir, I would also like to seek further clarification on that Statement. Even before we go to the counties, we should get a response as to how many persons have been recruited in each county to perform that function and whether the County Public Service Boards have been involved in the recruitment.

Sen. Mutula Kilonzo Jnr.: Mr. Speaker, Sir, you are on record telling the Senate Minority Leader that nobody is supposed to substantiate the obvious. In this case we should state it clearly; we are inquiring into an illegality, we should also pronounce ourselves that whatever is happening in the counties is illegal and the Chairman ought to say so as he is investigating so that from the deliberations here, we will ask Sen. Murkomen to go and investigate an illegality because the only way you can form this police force or any other force is under Article 247. Since the Senate or the National Assembly has not passed any law for the creation of other police services, we must state it clearly that the Chairman is going to investigate an illegality.

Sen. Ong'era: Mr. Speaker, Sir, further to that question raised by the distinguished Senator for Vihiga, I seek further clarification. Could the Chairman in that Statement ask the governors to give a tabulation of the so-called security who I believe are militia? Which clans or wards do they come from?

Sen. Murkomen: Mr. Speaker, Sir, the reason why we have these questions and why I congratulated Sen. Khaniri for bringing it is because from the face of it, it looks like an illegality. However, that is why it has been committed to the Committee to find out whether it is an illegality and secondly as to whether that illegality is there at the moment. My responsibility is to request the House, that considering the comprehensive nature of this Statement and considering that this is not the kind of Statement you simply take to the Cabinet Secretary in charge of devolution; it is a Statement that is very involving. Perhaps, the Committee will have to write to all the county governments to respond individually and perhaps a few hearings in a few counties. We might have---

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*(Sen. (Prof.) Kindiki and two other
Senators Consulted loudly)*

The Senate Minority Leader (Sen. Wetangula): On a point of order, Mr. Speaker, Sir. Do you notice when we are receiving a very important response to a very critical issue, the Senate Majority Leader is laughing away the afternoon with two distinguished Senators and disrupting the proceedings of the House?

(Laughter)

Sen. Murkomen: Mr. Speaker, Sir, I want to thank the Senate Minority Leader for raising that point of order so that all of us can listen to this. At the same time, I am happy that the Senate Majority Leader was laughing and not crying.

The Speaker (Hon. Ethuro): I also thought so. When the Senate Majority Leader laughs, you have only extended the laughter to the House.

Sen. Murkomen: Mr. Speaker, Sir, the reason why I am asking for the indulgence of hon. Senators is because we need a comprehensive and conclusive answer on this Statement - and I have invited Sen. Khaniri and all the other Senators - that we might need as a Committee to write to all the counties to respond, but also visit a few counties as the Committee will decide so that then we can use that answer and maybe invite the Council of Governors.

This is really critical because there were certain counties that had county councils whose *askaris* had specific responsibilities to enforce specific legislations of that county council. So, what does the law say about transition on the same issue and how do you then extend that to what I saw in one of the counties that I do not want to mention so as not to prejudice the process, where in a village never before had they seen county council *askaris*, but you find the governors security team? Who hires them and who pays them?

I hear now governors have in their offices something called “confidential accounts” that Sen. (Dr.) Khalwale’s committee is pursuing. At the moment, for the benefit of all us, we should avoid an interim answer. You should give us one month and hopefully if the House goes on recess next week, it will mean that by the time we come back, we will have a very comprehensive answer on such an important issue.

Sen. Khaniri: Mr. Speaker, Sir, while agreeing with the Chairman of the Committee on Devolution that we need a comprehensive answer and we want to give him the one month that he has requested for, I want to bring it to the attention of this House and the nation at large the provisions of our Constitution. Sen. Mutula Kilonzo Jr. alluded to it, but I want to read the provisions of the Constitution so that it is very clear and explicit that—

The Speaker (Hon. Ethuro): Order! I will not allow you to read them; just mention them and then people can read them for themselves.

Sen. Khaniri: Mr. Speaker, Sir, this is just for emphasis. Article 247 is just two lines.

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The Speaker (Hon. Ethuro): Proceed, Sen. Khaniri.

Sen. Khaniri: Thank you, Mr. Speaker, Sir. Article 247 of the Constitution provides:-

“Parliament may enact legislation establishing other police services under the supervision of the National Police Service and the command of the Inspector-General of this Service”.

It is only this House and maybe the National Assembly that has powers to establish a police force. So, the governors must be advised that if they need police forces in the counties, then ultimately they have to come to this House.

Sen. (Dr.) Khalwale: On a point of order, Mr. Speaker, Sir. This is a practical issue that is addressing the disruption of normal business by small business traders. Giving the example of Kakamega County, there are running battles every day between this militia and members of the public. Could the Chair direct that since the Senate serves to protect the interests of counties, until after this report is brought by Sen. Murkomen, there should be no further harassment of wananchi by these militia until it is clear that there is need for them to be there? Otherwise, people in Kakamega are going to kill these militia people.

Yesterday, Perepetua wa Khatiala who sells oranges outside the Yako Market, her fruits were thrown all over the place and the *boda boda* boys had to attack these fellows. So, it is not a joke. Issue an order and direct, I beg you!

Sen. Ong’era: On a point of order, Mr. Speaker, Sir. Did you hear the distinguished Senator for Kakamega mumbling some words that are not English or Swahili? Is he in order to mumble words whose meaning we do not understand?

The Speaker (Hon. Ethuro): Sen. Ong’era, your own name is not an English word. Sen. (Dr.) Khalwale made references to some villages and other names. It was a name.

Sen. Billow: On a point of order, Mr. Speaker, Sir. Is the Senator for Kakamega County – who has announced publicly that he also wants the type of seats where people sit and they are carried around – in order to say that there are militias? In fact, those are public servants employed as law enforcement officers similar to the Inspectorate Department of Nairobi County just like any other. Is he in order to refer to them as militia? That is a dangerous term to use. He should withdraw.

The Speaker (Hon. Ethuro): Order, Sen. Billow! The word “militia” had been used before Sen. (Dr.) Khalwale used it. Where were you all this time? That is his thinking. These are issues being brought before the Committee. The Chairman of the Committee has put it that he will determine legality or otherwise. One Member said that the group might be illegal. The Committee will also determine whether it is a militia group or part of the inspectorate officers you are talking about.

(Loud consultations)

Order, Senators! Let us bring this matter to a close now.

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That brings us to the end of Statements.
Sen. Mohamud, we had sent you somewhere.

STATUS OF CASH TRANSFER PROGRAMME

Sen. Mohamud: Mr. Speaker, Sir, the Chairman is in the House. We briefed each other regarding the Status of Cash Transfer Programme and he is in the right position to talk about it.

The Speaker (Hon. Ethuro): You have delivered him.

Sen. Madzayo: Mr. Speaker, Sir, with regards to the Statement concerning the status of the Cash Transfer Programme, the Cabinet Secretary (CS) for the Ministry of Labour, Social Security and Services will come to this House on Wednesday, 20th August at exactly 2.30 p.m. I am seeking your indulgence over Sen. Musila's request.

Sen. Musila: Mr. Speaker, Sir, 20th August is a month away from today. I do not think we are in a position, at the moment, to determine on the date. Could the Chairman tell us whether he means 20th of August, September or July?

Sen. Madzayo: Mr. Speaker, Sir, I meant 20th July, 2015. So, it is only next week.

The Speaker (Hon. Ethuro): Order, Mr. Chairman! Today is 21st July.

Sen. Madzayo: Mr. Speaker, Sir, I am sorry. Maybe, I woke up on the wrong side of the bed. I meant 25th July, 2015. That will be Wednesday, next week.

The Speaker (Hon. Ethuro): Order! Sen. Madzayo, 25th July will be Saturday this week.

(Laughter)

I will give you a chance to recollect your thoughts. Then, you can come back after two minutes. Please, verify your dates.

CRITERIA FOR APPOINTMENT/REGIONAL DISTRIBUTION OF APPOINTMENT TO PARASTATALS

Sen. (Eng.) Muriuki: Mr. Speaker, Sir, I was trying to catch your eye with respect to Statement (e) on the Order Paper before the Senator who is the Vice Chairperson of the Committee walked out.

Mr. Speaker, Sir, I requested for the Statement sometime in April, but it is still pending.

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

Sen. (Eng.) Muriuki: Mr. Speaker, Sir, I rise to inquire about Statement (e) on the Order Paper. I requested for it sometime in April, but it is still pending. Could the Chair give some direction on it because I have waited for it for too long? I saw the Chairman walk out but I do not know how long he will take.

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The Speaker (Hon. Ethuro): The Vice Chairperson of that Committee is not the Chairman. Is it Sen. Lesuuda or which one are you talking about?

(Sen. Hargura entered the Chamber)

An hon. Senator: He has just walked in.

The Speaker (Hon. Ethuro): Mr. Chairman.

Sen. Hargura: Mr. Speaker, Sir, I am tracing the answer to the Statement. It is with the Clerk to the Committee. That is why I walked out to see if I could get. I do not have it here with me.

The Speaker (Hon. Ethuro): What is it, Mr. Chairman?

Sen. Hargura: Mr. Speaker, Sir, the reply to the Statement is with the Clerk to the Committee. That is why I walked out to see whether I could get it from him. I do not have the reply.

The Speaker (Hon. Ethuro): Is the reply ready?

Sen. Hargura: Yes, but it is with the Clerk to the Committee. It has not yet reached me.

The Speaker (Hon. Ethuro): Shall we do that tomorrow afternoon?

Sen. Hargura: Yes, Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): So ordered.
Senator Justice Madzayo.

STATUS OF CASH TRANSFER PROGRAMME

Sen. Madzayo: Mr. Speaker, Sir, I am very sorry about the confusion I had concerning dates. I want to explain to the House that 29th would be on Wednesday next week. That is when the CS will be in the House. However, after consulting Sen. Musila who sought for the Statement, I got it from him that he will not be in the House on 29th July, 2015. Therefore, it is up to him to explain about that.

All I am saying is that we could do that after the recess.

Sen. Musila: Mr. Speaker, Sir, I confirm that I had a discussion with the Chairman. Since we are scheduled to be on recess from 30th July, 2015, I thought it would be reasonable for us to give the CS more time so that we deal with the matter after the recess.

The Speaker (Hon. Ethuro): So ordered.

That brings us to end of Statement Time. We had done very well on that until the Statement requested by Sen. Khaniri came.

COMMUNICATION FROM THE CHAIR**APPOINTMENT OF THE CHAIRPERSON, GOVERNOR AND
DEPUTY GOVERNOR OF THE CENTRAL BANK OF KENYA**

The Speaker (Hon. Ethuro): Hon. Senators, I have a communication to make regarding the appointment of the Chairperson, Governor and Deputy Governor of the Central Bank of Kenya (CBK).

Hon. Senators, on Thursday, 25th June, 2015, the Senator for Kakamega County, (Dr.) Khalwale, while on a point of order, sought the Chair's directions on the vetting process of the nominees for appointment as the Governor and Deputy Governor of the CBK. He drew the attention of the Chair to the provisions of Sections 13 and 13(b) of the CBK Act, Cap 491 which require the approval of Parliament before the nominees are appointed to office. I wish to apologise for the delay in the response.

Specifically, Sen. (Dr.) Khalwale stated that the National Assembly had undertaken and concluded the vetting process and approved the nominees and the Senate was not involved in the vetting and approval of the nominees as required by the CBK Act. He reminded the House that in a similar provision of another statute, a precedent had been set where the Inspector General of Police was vetted by a joint vetting committee of both Houses.

The Senator sought guidance from the Chair on what intervention the Senate would undertake to ensure the appointment of the Governor and Deputy Governor of the Central Bank of Kenya was done through due process. The matter was also canvassed by the Senate Minority Leader who further sought to know the implications of an appointment without vetting by the Senate as required by the law.

Hon. Senators, Article 231 of the Constitution establishes the Central Bank of Kenya and mandates Parliament to enact legislation to provide for the composition, powers, functions and operations of the Central Bank of Kenya. The legislation contemplated by this Article is the Central Bank of Kenya Act, CAP 491 of the Laws of Kenya. Section 11 of the Central Bank of Kenya Act provides for the composition of the Board of Directors of the Bank as follows-

- (a) the Chairperson,
- (b) the Governor,
- (c) the Permanent Secretary to the Treasury or his representative who shall be a non-voting member; and,
- (d) five other non-executive directors (who shall be appointed by the President with the approval of Parliament).

Further, Sections 13 and 13B of the same Act establish the offices of the Governor and two Deputy Governors who shall be appointed by the President with the approval of Parliament. For the benefit of Senators, Article 93(1) of the Constitution provides as follows-

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“There is established a Parliament of Kenya, which shall consist of the National Assembly and the Senate.”

Hon. Senators, the chronology of events in this matter appears to be as follows-

(a) On Wednesday, 3rd June 2015, the Speaker of the National Assembly communicated a Message from H.E the President regarding nominees to the positions of the Chairperson, Governor and Deputy Governor of the Central Bank of Kenya;

(b) In the said communication, the National Assembly was informed that-

(i) pursuant to section 11 of the Central Bank of Kenya Act, His Excellency the President, had nominated Mr. Jairus Mohammed Nyaoga to the position of Chairperson of the Board of Directors of the Central Bank of Kenya;

(ii) pursuant to sections 13 and 13B of the same Act, His Excellency the President had nominated Dr. Patrick Ngugi Njoroge and Mrs. Sheila M’Mbiwiwe to the positions of Governor and Deputy Governor of the Central Bank of Kenya, respectively; and,

(iii) His Excellency the President was seeking the approval of the National Assembly on the said nominations.

(a) The nomination by His Excellency the President was not sent to the Senate.

(b) The approval of the Senate was not sought.

(c) The National Assembly commenced the vetting process through its Departmental Committee on Finance, Planning and Trade, which tabled its report endorsing the three nominees on 17th June, 2015.

(d) The National Assembly, on Thursday 18th June, 2015 debated the Report on the approval of the nominees and passed it without amendments.

Hon. Senators, from the foregoing chronology, it should be noted that-

(a) The Central Bank of Kenya Act requires the approval by Parliament, that is, both the National Assembly and the Senate, before the Governor and the Deputy Governor are appointed to office; and,

(b) The Senate has not been involved in the vetting and approval processes for the nominees for the positions of Governor and Deputy Governor; as required by the Act.

Hon. Senators, when this matter came to the attention of the Speaker of the Senate on 23rd June, 2015, the Speaker of the Senate wrote a letter to the Speaker of the National Assembly and copied it to the Attorney-General, the Cabinet Secretary for National Treasury, the Chairperson of the Commission for the Implementation of the Constitution (CIC) and the Chairperson of the Commission on Administrative Justice.

In the letter, the Speaker of the Senate drew their attention to the relevant provisions of the law and informed them that any purported approval or appointment made otherwise than in accordance with the provisions of the Central Bank of Kenya Act would not be proper and would amount to a nullity in law for all purposes. However, as of today, no response or acknowledgement of this letter has been received.

Hon. Senators, I, therefore, wish to conclude by responding to Sen. (Dr.) Khalwale’s enquiry by reiterating only that the Constitution as read with the Central Bank of Kenya Act at Sections 13 and 13B, require that both the National Assembly and the Senate vet

and approve the nominee for the position of Governor and the position of Deputy Governor of the Central of Kenya.

The Senate has not been informed of any nominees for the positions and has accordingly neither vetted nor approved any person for appointment to these positions. I thank you.

(Applause)

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, I would like to thank you for that excellent Communication. May I point out that the appointment of Dr. Patrick Njoroge, whose qualifications we have only heard about and Mrs. Sheila M'Mbijiwe is contrary to the law. If you read Article 145(1) of the Constitution, it provides that:-

“A Member of the National Assembly, supported by at least a third of all Members, may move a Motion for the impeachment of the President-

(a) on the ground of gross violation of a provision of this Constitution or any other law.”

Mr. Speaker, Sir, the President has breached the Constitution and the Central Bank of Kenya (CBK) Act.

“(c) for gross misconduct.”

I would like to remind you that when this matter was brought to your attention, the approval and, therefore, the need to appoint these two Kenyans had not been gazetted. But after this matter was brought to your attention and you communicated to all those offices, the Office of the President went ahead to appoint, gazette and arrange for handing over between the outgoing and incoming Governor of CBK. In so doing, the President engaged himself in gross misconduct.

Mr. Speaker, Sir, the second avenue that I am seeing in my mind is for a member of the public to move to the High Court and persuade the courts to find that the appointment of these two officers was unlawful and, therefore, should be declared null and void.

In view of these two limbs that I have referred to, I would like you to advise me, as the Speaker of the Senate of Kenya, on what I should do to protect the Constitution of Kenya and constitutionalism and kill the culture of impunity by the President of the Republic of Kenya. Please, advise me.

The Speaker (Hon. Ethuro): Sen. Khalwale, you sought a Statement from the Chair and I have communicated to you the facts as they are according to the Constitution and law. I cannot advise you any further than that. The fact that you are a Senator, you ought to know what options are available to you. I have discharged by obligations to you and the nation.

Sen. Ong'era: Mr. Speaker, Sir, I thank you for that “Solomonic” ruling. It is a shame that the Jubilee Government continues to perpetuate acts of impunity without regard to this distinguished House. It is no wonder that we have a myriad of problems in

this country. This is because of entrenchment of impunity that has now become the art of state for the Jubilee Government.

We now demand that the Governor and his deputy, who are illegally in office, do the most honourable thing; to step aside because he is illegally in office. He does not even take his salary. Otherwise, Kenyans are watching and they will remove him from office.

If this Senate cannot rise to the occasion and reclaim its status as the “Upper House,” we will have no Senate in 2017 and beyond. It is upon this House to rise to the occasion and take its rightful place. We support the actions that the distinguished Senator for Kakamega is requesting. He should bring a Motion of impeachment of the President so that it can be felt that the Senate is the “Upper House” and do what is supposed to do.

Mr. Speaker, Sir, once again, I thank you for that ruling.

The Speaker (Hon. Ethuro): Order, Sen. Ong’era! The Senator for Kakamega read to you Article 145(1). I am afraid that your suggestion to him will not work. It did not refer to the Senate. It referred elsewhere.

Proceed, Sen. Orengo.

Sen. Orengo: Mr. Speaker, Sir, I thank you for your ruling and for not failing at every instance to express the position of your Chair and the Senate. What you have said is good enough for purposes of record. It could have been worse if events like these occurred and there was no record to show that there was concern by the Senate. It came through the question raised by the Senator for Kakamega, more importantly, by the Chair.

One of the foundational principles of this Constitution is the rule of law. In fact, Article 2(2) states:-

“No person may claim or exercise State authority except as authorised under this Constitution.”

I am getting worried. When things started going wrong after 1963, it was through what, probably, then were little violations of this or that law. However, taken in aggregate, they developed into a situation where people had no faith in the law and the constitutional governance of the land.

Your ruling in itself may not go very far because you have even gone to the courts. However, I would ask the Senator for Kakamega to bring a Motion before this House so that we can discuss this matter substantially, express ourselves on it and urge everybody as a Senator, irrespective of whether he or she is from the CORD or Jubilee coalition. There are those in CORD who sometimes transgress the law and the Constitution. If we can express ourselves as a House and join you in the ruling that you have given, as a matter of record, we would be good enough.

More importantly, the beginning of bad governance starts with the Executive. That is why in the chapter dealing with the Executive, the President is required to obey, defend and protect the Constitution. That is a matter which is clearly geared towards making sure that governance flows from the Constitution.

Sen. Ongoro: Mr. Speaker, Sir, I would like to add my voice to the pronouncement you have just made. I thank you for bringing to this House an answer that is in

accordance with our expectations. This House has no issue with any person appointed to any position. The matter that is being raised by Members of this House is procedural; these are matters and provisions that are already enshrined in our Constitution. If we are to go by your ruling, and as you have given to this House and in reference to the supremacy of the Constitution which states that nobody, state organ or institution is above the law---. This is stipulated in Article 2 of the Constitution.

Considering your ruling, in view of the provisions of the Constitution, it is in order. Parliament has made reference to precedence that has been set before in other rulings. In view of those facts, it is in order that the supremacy of the law and the sovereignty of the people of Kenya, then now take precedence and the right thing which is calling on the President having gone against the supreme law of this nation to do the right thing as citizen number one of this country, step aside before this House moves a Motion of impeachment.

(Applause)

Sen. Sang: Mr. Speaker, Sir, I join my colleagues in thanking you for that ruling. On several occasions in this House, when you have made such an important ruling, it is published for public consumption in our dailies. I request that we have that Communication put on the newspapers so that everybody knows the position of this House on this issue.

(Applause)

Sen. M. Kajwang: Mr. Speaker, Sir, I thank you for the Communication which I would describe as “Solomonic” in its essence. You have stood firmly for the protection and in defence of this Constitution.

Since the illegal appointment of the Governor of the Central Bank of Kenya (CBK) - that is what it is going by your Communication - certain very important decisions have been made. In the month of July, the Monetary Policy Committee of the CBK that is chaired by the Governor raised the CBK rate from 10 per cent to 15 per cent and the Kenya banks benchmark rate from 8.5 per cent to 9.87 per cent. It would be important that this House, therefore, declares that these decisions chaired by an illegal Governor, are, therefore, illegal, null and void.

(Applause)

I would request your indulgence and guidance that the principal advisor to the President who is the Attorney General and the Chief of Staff who is Mr. Kinyua be invited to a Committee of the Whole House to explain to this House why such a clear provision in the law was disregarded to ensure that some people were appointed in office illegally.

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Sen. Eng. Muriuki: Mr. Speaker, Sir, first, I thank you for that Communication. I ask the Members of the Senate from the CORD side to appreciate that this is not a Jubilee issue. The law has been infringed; whether you are in Jubilee or CORD, we want procedures to be followed.

(Applause)

The Senate is not a police force to act and remove particular gentlemen or ladies from office; we should do the least that can be done. I hope the media will pick it up. Perhaps, for whatever it is worth, the Speaker does a reminder.

The Senate Minority Leader (Sen. Wetangula): Mr. Speaker, Sir, when this matter came to the Floor, I was one of those who rose after Sen. (Dr.) Khalwale. I congratulate you. You have demonstrated that you do not fear to speak and you do not speak in fear. That is the Speaker we want and that is the Speaker we have; the Speaker who has the ability and courage to defend and uphold the Constitution.

Over and above that, your ruling should not be in vain. This House has been sidestepped, ignored and by-passed. I have no doubt that the President is not a foolish person because I have worked with him in many capacities. It is his advisors that are sending him astray every day. The President is not a lawyer; he does not spend his time ploughing through the law and the Constitution. He has people around him who must constantly tell him that the dotted line in which he is signing is according to the law and the Constitution or not. The day the advisors behave like the proverbial foolish wise men who told the king that he was wearing a fantastic suit when he was naked are the wrong people. There is the Attorney-General; there is an excited young man called Abdikadir; there is a man called Njee Muturi who knows very little law and a few others. If the President wants to protect his legacy, even as a one term President, he must do the right thing.

Mr. Speaker, Sir, having made that ruling, this Senate should take the next step because jurisdiction is not given on a plate, it is fought for, protected and guaranteed by us under the law. Our next stop is that even if the new Governor will get his job, the process must be legal and constitutional. Looking at his credentials, he is qualified. My only quarrel is that the President and his Deputy constantly continue to appoint people from the same community. This is wrong but the man is qualified. I urge that we take the next step and go to court to challenge the constitutionality and legality of that appointment so that in future, every time the President wants to assent to any law or make any appointment, he will be constrained to ask whether it is in conformity with the law and the Constitution. I have no doubt that sooner or later, he will ignore Attorney-General Githu Muigai, Njee and Abdikadir and look for better lawyers like Sen. Sang to ask them for an opinion.

Mr. Speaker, Sir, I congratulate you.

Sen. Mutula Kilonzo Jr.: Mr. Speaker, Sir, thank you for reaffirming the position of the law. The Senators have lauded you for being Solomonic. In the case of

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Solomon, there was a knife, one baby and two women fighting for the baby. In this particular case, nobody is fighting as to what you have said about the law.

Mr. Speaker, Sir, I want to congratulate you and you will go into history books for having stood for the law and conformed to your oath. I am happy that you have confirmed the position of the law in terms of Article 2. I have sought some issues to be clarified. There appears to be no law enacted after the Constitution under Article 231. The Central Bank of Kenya as it is today is constituted under this Constitution. We are staring at a lot of illegalities including the Central Bank of Kenya itself because there is no Act of Parliament which establishes it; there is no law that provides for its work; there is no law that provides for its policies and even the Governor himself.

Therefore, as you give direction, my own view is that the Central Bank of Kenya as constituted today under this Constitution is illegal because there is no transitional provision on the Central Bank of Kenya Act under Article 231.

Sen. Murungi: Mr. Speaker, Sir, there is nobody who is disagreeing with your ruling. It is characteristic of you to give rulings which uphold the Constitution and the dignity of this House. It is quite clear not only from what has happened regarding the appointment of the Governor but even when the Inspector-General of Police was being appointed, there was a struggle for the Senate to be recognized as a House of Parliament and to participate in the vetting of the Inspector-General of Police. The lesson was quickly forgotten. It appears that there are some forces who are constantly denying that the Senate is part of Parliament. It appears as if there are forces in the Government who do not recognize this House as a House of Parliament. These are the mistakes that are leading to what you are seeing today.

Mr. Speaker, Sir, we are also to blame because the Governor we are talking about is a good man and a good Catholic. He is not an ostentatious person. I understand that he is introducing very good policies at the Central Bank of Kenya; he does not travel with the battery of the militia that other governors are walking around with. We do not have a quarrel with the personality of the person who is sitting as the Governor of the Central Bank of Kenya today. It is the process which ignores the Senate that we have a quarrel with. The question we should ask ourselves is what we can do about that process because it was fraudulent, unconstitutional and illegal so that we can correct the procedural mistakes which were made in the appointment of the Governor.

We should be exploring opportunities for us to vet the Governor again as a Senate to find out whether what the National Assembly found is what we will find regarding him. The substantive point is what Sen. Mutula Kilonzo Jnr. pointed out; that there should be an Act of Parliament to provide for the composition, powers, functions and operation of the Central Bank of Kenya. This is not a money Bill. I would recommend that the Senate introduces an Act of Parliament which sets out the functions and powers as per Article 231 (5) of the Constitution for substantive debate in this House, so that we do not cry all the time and take some proactive action as a House of Parliament which represents the sovereignty of the people of Kenya.

Mr. Speaker, Sir, I fully support the ruling. I propose that we proceed along the lines that have been proposed by Sen. Mutula Kilonzo Jnr.

Sen. Madzayo: Asante sana, Bw. Spika. Nachukua nafasi hii kukupongeza kwa uongozi na uwazi katika uamuzi wako ambao sisi tunaweza kusema pengine ulitekelezwa wakati wa Mfalme Solomon. Tunausifu uongozi huo kama Maseneta.

Kulingana na Katiba yetu ya Kenya, Kipengele cha Kwanza, uongozi wa nchi hii ni jukumu la Bunge. Jukumu hilo linatekelezwa na viongozi waliochaguliwa. Sio mara ya kwanza au ya pili kwetu Maseneta kuona kwamba Rais amechukua mwelekeo usiolingana na Katiba. Tukizingatia zaidi ile Miswada ambayo imetoka katika Bunge la Kitaifa ikipuuza Bunge la Seneti. Hili ni jambo hatari na jukumu hili liko katika mikono yake Rais wa Nchi hii. Yeye kama Rais ana uwezo wa kukataa kutia sahihi na kukuuliza hisia zako kulingana na Mswada unaopelekwa kwake kutiwa sahihi, haswa ikiwa tumejadiliana hapa Seneti na uamuzi wetu ni wa aina gani.

Bw. Spika, ikiwa Rais atapuuza msimamo au mkondo kama huo ambao unalingana na Katiba, hii ina maana kwamba Rais wa nchi hii anavunja sheria ndani ya Katiba. Ikiwa kitendo kama hiki kitaendelea, sisi kama Seneti tuna mamlaka, kulingana na Kipengele cha Katiba Nambari 96 kinachosema kwamba Bunge la Seneti lina uwezo wa kumuachisha kazi Rais. Maoni yangu ni kama yale ya ndugu yangu, Seneta wa Kakamega ambaye amesema, kwamba kulikuwa na upuuzi na Bunge la Seneti halikuhusishwa katika uamuzi kuhusu uteuzi wa Gavana wa Benki Kuu ya Kenya. Hata kama ni mzuri wa aina gani, kwa maoni yangu, ikiwa uteuzi huo ulifanywa bila kuambatana na sheria, ni bora waambiwe wakae kando ili Bunge la Seneti lijadiliane na kukubaliana ili sisi nasi tupeleke maoni yetu kwa Rais. La sivyo, ni vizuri Seneta wa Kakamega atengeneze Hoja itakayokuja hapa Seneti, tujadiliane na kuweke historia katika Bunge hili.

Asante sana, Bw. Spika.

The Speaker (Hon. Ethuro): Sen. Okongo will speak first then Sen. Kagwe and then Sen. (Prof.) Lonyangapuo, in that order.

Sen. Okongo: Thank you, Mr. Speaker, Sir, for your informed ruling on the question by Sen. (Dr.) Khalwale. What we are tackling here is mind boggling. If there are no laws governing the Central Bank of Kenya (CBK) as I speak today, then the information that we are getting is that for all the transactions that have been done for the last three years are a nullity.

I appeal to the CBK management; the Governor, the Chairman, who is an eminent lawyer and the legal team to “have all systems go” - because that is the main body governing financial transactions in this country. They must urgently go and consult the Constitution and advice. A few months ago, the Attorney General of Kenya told Kenyans that he is a “mortician” and by saying that word, he has abdicated his role of advising the Government of Kenya. These are issues that need to be addressed. The beauty of it all is that this House has the tyranny of brains against the tyranny of numbers that we have seen in other places. Kenyans are watching and when history is written, this House, under your leadership, will be on the right part of history.

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Sen. Kagwe: Thank you, Mr. Speaker, Sir. I applaud your ruling today and say that a person of integrity such as you would have no choice but make the kind of ruling that you did, because it is the correct one.

Having said that, I think that it is important for us to not just look at this particular case, but go back into the history of the relationship between the two Houses and look at the laws that have been made in similar version. This is because, if we are going to correct this situation, it is important for us to do an audit of what else has been passed without the authority of this House; that should have been passed with the authority of this House. I totally agree with Sen. Orengo that it is not a matter for the Opposition or Government. It is a matter of law, procedure and principles. I think that it would be wrong for us to sit here today and say that what was done was correct while it was wrong.

Mr. Speaker, Sir, further, I think that there is no point of using a bazooka in a situation that a bullet is required. This is not an issue to call for the impeachment of a President, notwithstanding the fact that, that is actually a matter for the “Lower House”. My view is that a name was proposed by the President of the Republic of Kenya and a House that is part of Parliament proceeded to embarrass not just the nominee who was sitting pretty in a nice job without all the politics. The leadership of the “Lower House” proceeded to embarrass the nominee, the President and this House as well.

Mr. Speaker, Sir, the enemy within is worse than the enemy without. The problem that we have, as a Senate, is one within Parliament and not outside it. This is because the name of the nominee was given to Parliament by the President. In fact, he went out of his way to advertise the name, in a manner that was not even necessary.

After having done that, the name was sent to Parliament. You would imagine an individual of utmost good faith, thinking properly and according to the law, would then avoid embarrassing the President in any way by ensuring that the name is sent to both Houses. If there is a person who has embarrassed the President – it is nice to be candid and call a spade a spade and not a big spoon – it is actually the “Lower House”.

The Speaker, Sir, of the “Lower House” – he is a good friend of mine – should surely have put consideration and put the interests of the President before any complexes that one carries with himself and pass the name to the Senate in a manner that does not create the kind of problem that we now have.

Going forward, my view is that according to the law, Parliament is supposed to communicate to the President that they have vetted and approved the Central Bank of Kenya (CBK) Governor. Clearly, Parliament has not vetted and approved the Governor in a manner that is very clear within the Constitution. Therefore, I think it behooves this House to communicate with the President and let him know that part of the procedure for approval of the Governor was not followed and, therefore, the name must be brought back for us to go through the procedure. Otherwise, it is not according to the law.

Mr. Speaker, Sir, in supporting what you have ruled, we do so with pain. The people who were making those rulings and passing the names back to the Government are Jubilee themselves, just like I am Jubilee. It is Jubilee and not the Opposition which is embarrassing Jubilee. It is those within who can do this that we should punish.

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Thank you.

Sen. (Prof.) Lonyangapuo: Mr. Speaker, Sir, I join my colleagues in thanking you for the wise Statement that you have given regarding what was sought by Sen. (Dr.) Khalwale which has surprised this House and Kenyans. The Constitution talks about its supremacy in Article 2 (1)(2)(3). Article 2(1) says:-

“This Constitution is the supreme law of the Republic and binds all persons and state organs at both levels of Government.”

It means that we are supposed to walk and live by this Constitution. Somehow, some of us in Parliament particularly the “Lower House” are operating as if they do not have this Constitution. It, therefore, means that they wrongly interpret Article 93 of the Constitution which talks about Parliament. They read it as National Assembly, which is wrong.

Article 2(2) says:-

“No person may claim or exercise State authority except as authorised under this Constitution.”

Mr. Speaker, Sir, this Constitution has authorised existence of two Houses of Parliament. Some are reading one House and that is why they ignore what was required in the particular case of the employment of the Governor of CBK.

Article 2(3) says:-

“The validity or legality of this Constitution is not subject to challenge by or before any court or other State organ.”

The action of our colleagues in the “Lower House” to quickly rush some of the Bills for assent without regard to the law is tantamount to challenging the legality of this Constitution. What has just happened is a reminder of what has been happening for the last two years.

Mr. Speaker, Sir, you will recall that since inception, this House has generated 20 Bills, out of which only four have been taken for assent. Of the four, three are the normal revenue allocation Bills which by law nobody should block, except one that was generated by Sen. Sang, the rest, 16, were stopped. It means, out of that, nearly 20 per cent of the Bills that we have done have gone through the “Lower House”, taken for assent and mandatory three of them are normally the usual ones which must pass.

Lastly, this House has received 16 Bills from the “Lower House”, out of which the Senate has passed 12 which is an equivalent of 75 per cent passed. The rest are under different stages. That means that we are the House that follows the law unlike what we hear in the media to the contrary that the “Lower House” leaders sometimes blame the Senate for not passing Bills. Look at the 20 per cent that they have entertained in our case while 80 per cent is not done. I am told they are claiming that these are money Bills. What does not involve money in this world? We have now done what we have. This is not to do with which side of the House but with what the law says, which is, this Constitution is supreme and there is no question about it.

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Whoever is purporting to be an adviser to the senior persons in this land must be checked. We must begin to look at whether the Speaker of the “Lower House” has any good intentions that this Constitution should be followed and what the remedy for such a person is.

I support you.

The Speaker (Hon. Ethuro): That is the end of that particular one.
Next order!

BILL

Second Reading

THE UNIVERSITIES (AMENDMENT) BILL

(SENATE BILL NO. 31 OF 2014)

(By Sen. Mohamud on 15.7.2015)

(Resumption of debate interrupted on 15.7. 2015)

The Speaker (Hon. Ethuro): This is resumption of debate. Sen. Obure had a balance of 11 minutes. You may proceed if you so wish.

Sen. Obure: Thank you, Mr. Speaker, Sir. As I was saying before I was interrupted at the close of business last Wednesday, the Universities (Amendment) Bill (Senate Bill No. 31 of 2014) initiated by Sen. Abdille actually wants to establish strong links between university institutions and counties. Of course, it is the desire of everybody to see a university established in each county. If we succeed in doing that, we expect universities in the counties to promote learning and enhance knowledge, research and innovation. Such institutions could even be vehicles or catalysts for introducing appropriate technologies in certain sectors of the county economies.

For example, in the area of agriculture, universities could introduce appropriate technology for value addition for agricultural produce available within the county. I believe that with proper mechanisms in place for collaboration, universities could be instrumental in helping counties ---

The Speaker (Hon. Ethuro): Order, Senators! I do not wish to interrupt Sen. Obure but I see most of you still maintain your previous requests. Please undo them if you do not intend to contribute to this.

The Chair is a very fair man. I had already announced that the last three contributors appearing on my screen would be given the opportunities in that order. That is exactly what I did and anybody who came after the screen had been cleared, it was too bad.

Sen. Obure: Mr. Speaker, Sir, we know you as very fair and objective. I was just saying that with proper mechanisms in place for collaboration, university institutions

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could be instrumental in helping county governments to deliver on their mandates and especially in facilitating improvement of service delivery.

This Bill, therefore, is trying to find an entry point through which universities could strategically be positioned so that they could help county governments to alleviate poverty and in so doing raise the quality of life of citizens in our own counties. I will give one example. Recently, Kisii University has entered into a memorandum of understanding with the County Government of Kisii to put up a medical school using Kisii Hospital Level Five for teaching purposes. Under this MoU, the County Government is required to build a modern pathology laboratory, modernize and expand the mortuary, acquire modern diagnostic machines including CT Scan, dialysis machines and other digital diagnostic machines.

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

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

These machines have been acquired; the infrastructure is underway right now in terms of fulfilling that MoU. Both the County Government and the Kisii University have developed a curriculum appropriate for the environment in the county. We expect that this arrangement will attract top medical personnel; medical professionals, consultants and other specialists to Kisii so that they could offer teaching, they can offer higher quality treatment and carry out research with particular reference to diseases prevalent in those counties.

Mr. Deputy Speaker, Sir, the benefits of such an arrangement would be obvious, that the patients will not have to travel to Kenyatta National Hospital or the Moi Teaching and Referral Hospital in Eldoret for medical attention. Through that arrangement, we would be helping to decongest these two institutions which receive very large numbers of patients.

The universities position in the counties could also develop capacity building programmes to help in training or improving the human capacity available within the counties. They could enter into joint ventures such as the one they have entered between the County Government of Kisii and the Kisii University for a joint venture to build a recycling plant for disposal of waste materials. These are some of the areas in which county governments could collaborate with universities located in their own counties. I believe that this Bill is seeking to enhance this kind of collaboration through a structured manner.

For that reason, I want to support this Bill and I believe it will go some way in providing benefits to local communities through collaboration with county governments.

Sen. (Prof.) Lonyangapuo: Mr. Deputy Speaker, Sir I rise to support this amendment Bill and to thank Sen. Halima Abdille for bringing it. When this Senate was constituted two years ago, one of the Motions that were brought to the House, discussed and passed was the one compelling the National Government to liaise with the county

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governments in identification of land in the counties so that a public university could be established in each county. That Motion was debated and passed unanimously by all the Senators in this House. We agreed that the national Government should start with those counties that do not have any university.

Few other colleges and campuses that had been opened have been upgraded to fully fledged universities, for example, Karatina University, Kabianga University and the Maasai Mara University which is one of the universities which is providing passage to the viewing of the migration of the wilder beast. As a result, the impact of these universities has been felt greatly.

This Bill will enable the Commission for University Education to fast track and come up with a programme as to when each county will be funded and given a university. We know universities are known to promote learning. That is where knowledge, research and innovation are practiced. Now that we have gone into counties, it is proper to have the centres of excellence; the highest apex of education in every county so that research related to the products from that county and the well being of the people in that county can always be addressed at those universities.

Mr. Deputy Speaker, Sir, if you remember what Sen. Obure has said about Kisii University, when it was started, nobody knew it would have an impact, but today over ten years since Egerton University opened it, we have seen research being carried out on bananas which is one of the food crops on the land. The results are immense. There has also been research on tea and coffee in the same university. There has been explosion of prices of land and goods because top universities associated with change and top products have pitched tent in town.

Mr. Deputy Speaker, Sir, Moi University, Eldoret, which is found in Uasin Gishu County and the University of Eldoret which used to be a college for Applied and Natural Sciences have had a big impact in the county to the extent that people with money from neighbouring counties are migrating very close to where these universities are to buy land and do business in the universities. Although, I know that we have a problem in Moi University and the University of Eldoret because of the strikes they had recently, that is something temporary. It comes and goes. However, we must point it out clearly that some of the strikes in universities or institutions are as a result of management issues. We must always assess managers of every university thoroughly and select people according to their ability. If a person has been defeated, rather than close a university, fire or chase away other people who are junior, the person at the top should be removed from office so that the university is not closed.

Mr. Deputy Speaker, Sir, we are waiting for our share of a public university in West Pokot County. This is because of the immense natural resources that we have. West Pokot is a wealthy county. We have a lot of limestone. A university should be established there to offer courses that literally train locals on issues that focus on the availability of raw materials so that when investors come, they will find people who have already been trained to do that. West Pokot County has immense limestone which could facilitate over ten cement industries. The indicator that will stimulate that is a university.

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Mr. Deputy Speaker, Sir, recently, a lot of oil was discovered in my neighbouring County of Turkana. However, employees may be coming from far away from the county and sometimes from outside the country because we do not have people trained in that field. If we have to stimulate the economy of our counties and Kenya in general, we have to see how universities can be established in counties at whatever cost.

Mr. Deputy Speaker, Sir, if you remember, Karatina was just a small place before a branch of Moi University was established there. However, as soon as the branch was established, courses are now being offered on tourism as well as wildlife management because in Mt. Kenya region, there is a lot of wildlife. Today, the economy of the region has simply improved because of the universities around there. There is Chuka University, Meru University and Dedan Kimathi University. These universities offer courses that relate to issues that affect the people around them. Further, during holidays whenever students are not in session, the facilities are used by relevant departments and schools to train the local community on farming and other things. Therefore, this is one factor that will fast-track Kenya to the Vision 2030 that we are talking about.

Mr. Deputy Speaker, Sir, Fourth Schedule of the Constitution is about devolved functions. Most of the functions that would stimulate growth in our country and lift up the Gross Domestic Product (GDP) were devolved. Agriculture which includes crop and animal husbandry is one of them. It is only its policy which is still under the national Government. That, therefore, means that the GDP which is heavily driven by agriculture will be much higher if there is a centre of excellence in each county where niche courses are offered. That will lead to production of relevant products by the counties.

Mr. Deputy Speaker, Sir, there are many people who have been employed by county governments. Some of them are running very key departments but they have not been trained on the same. For example, the County Executive Committee (CEC) members in charge of livestock or agriculture. If there was a university nearby, it could have been easier for the CECs to tailor-make courses for them in collaboration with the university the way the University of Eldoret and Egerton University do to the surrounding people. Nakuru County has benefited a lot from the presence of Kabarak and Egerton universities. Every now and then, you will find employees being taken there for training and benchmarking to see some of the research crops being undertaken.

Mr. Deputy Speaker, Sir, I would like a university to be established in West Pokot County. Livestock and animal husbandry should be part of the syllabus because this is the mainstay; the driver of the economy of my county. West Pokot County contributes greatly to the economy of Kenya. For your information, most of the meat supplied to western Kenya; that is Kakamega, Bungoma, Trans Nzoia and even here in Nairobi comes from West Pokot County. Every Friday, we normally transport livestock to this place. However, we want livestock to be top niche grade product. We require a university that teaches skills and techniques on how to increase animal production like in Botswana. If we were using modern techniques, then, we could export some of the livestock products that we produce in our counties.

Therefore, Mr. Deputy Speaker, Sir, this Bill proposes more than compelling the Commission on Higher Education (CHE) to enter into agreement with county governments in fast-tracking this.

My Governor of West Pokot County and I wrote to Prof. Some, the Chief Executive Secretary (CEO) of the CHE, last year to inform him that we had provided 500 acres of land to establish a university. However, we are still waiting up for his response. What we are saying is that although county governments are moving very fast, we also want the national Government, through the relevant Ministry, to pay great attention and see where need is. Sometimes, we may pass a law to establish a university in a county where there is already one. That happens and you may wonder what we are looking for.

Mr. Deputy Speaker, Sir, if this Bill is passed, it will make things move forward unlike Motions that we passed but we are still waiting for the Committee on Devolved Government to follow up on them for implementation.

Lastly, Mr. Deputy Speaker, Sir, you can already see some of the students of the University of Nairobi (UoN) working closely with Nairobi City County Government. Some of you might have seen many young men doing repairs on the roads using the latest techniques. Most of them, for your information, come from the UoN and Jomo Kenyatta University of Agriculture and Technology (JKUAT). That means that we have the talent around if only we could unlock it. Supposing the same was happening in Narok and Machakos which neighbour Nairobi, where would we be? Most of us stay in the neighbouring counties and operate from there. We should adopt the idea of constructing roads cheaply as opposed to relying on international contractors who are expensive.

Therefore, Mr. Deputy Speaker, Sir, I support this Bill. As we discuss it, I hope that we will pass it. I hope that the “Lower House” will not be an impediment to some of the key Bills that are first passed by this House before being taken to the National Assembly. We should ignite and excite the growth of this country. None of them should say that this is a money Bill. There is nothing involving money here. The Bill concerns money that we normally give to counties.

Most of the issues that we pass in this House touch on how resources can be utilized. However, it is the National Assembly which the Constitution has given the responsibility to pass the budget. A university requires funds and we, as the Senators and guardians of devolution, know that such a Bill---

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

Sen. (Prof.) Lonyangapuo: Mr. Deputy Speaker, Sir, I beg to support.

Sen. Ongoro: Thank you, Mr. Deputy Speaker, Sir. I also stand to support this Bill. If you look at the amendments that are proposed in this Bill, you will realize that the Bill is advocating for the creation of an enhanced coordination and liaison between the CUE and the county governments. In view of the fact that most counties are now advocating for the creation of universities and bearing in mind that we have already passed a Bill here, it is only proper that we should support this amendment to create some order and sanity in the manner in which these institutions will be managed in this country.

Mr. Deputy Speaker, Sir, if you look at Part 2 of the Fourth Schedule of the Constitution, you will realize that functions that relate to agriculture, health services, county transport, trade, issues of development, planning, public works and even early childhood education have mostly been devolved. In view of that fact, it is only proper then that the amendments that are proposed in this Bill in the creation of universities in the counties will help to tailor-make certain programmes for them. For example, if we look at certain counties that are basically tourist destinations like Mombasa, Kwale, Kilifi and those that are cosmopolitan, like Nairobi, they have specific needs even in terms of education cannot be universal. Therefore, the CUE must be engaged at all times with the national Government and county governments to ensure quality education and address issues of accreditation and other related issues that we have dealt with in this Senate from time to time.

Mr. Deputy Speaker, Sir, this will also help to bring education closer to the people in the spirit of devolution. We know that even historically areas that hosted institutions of higher learning attracted more people to education, and by extension, most of the people from that region upgraded their levels of education. Under a controlled system, taking an institution of higher learning to a county will, by extension, be attractive to the people of that county and encourage most people, if not to upgrade, but also get into the education system.

Mr. Deputy Speaker, Sir, I want to give a dissenting view with regard to what is happening right now. Many polytechnics, middle level colleges and other tertiary institutions are being upgraded to universities. In my opinion, this is not the way to go because these middle level colleges and tertiary institutions absorb many young people who do not make it to the universities. Traditionally, there are also platforms on which we have given a lot of courses that impart a lot of skills, especially to the youth, who then do not necessarily have to be employed, but proceed to be self-employed.

So, institutions that are already in operation, for example, polytechnics - offering agricultural or skill-based courses, should be upgraded to continue doing so. They should be facilitated and given enough budgetary allocation and not wound up and upgraded into universities. Universities should thrive alongside all these kinds of institutions, so that we give the nation and counties an all-round system of education. We should not force everybody to go up to university. However, we should appreciate that there are those individuals who can gain very credible skills at the tertiary level and proceed to give a lot of human resource in necessary areas.

Mr. Deputy Speaker, Sir, in this regard, having made reference to Part 2 of the Fourth Schedule and, in view of the fact that these institutions will be a platform of encouragement to allow the county governments to create specific centres of excellence in their respective counties, they will be the primary beneficiaries of the research findings from these institutions. They will also be the primary beneficiaries of employment and wealth creation from these institutions. Definitely, these institutions will be big consumers of products from that county. Therefore, the poverty circles in certain communities and counties will also be broken through this initiative.

Mr. Deputy Speaker, Sir, I do not wish to belabour points that have been raised by my colleagues. But I would want to still emphasize that the CUE and the county governments must at all times find a platform of liaison on the one hand and the CUE engaging the national Government on the other level, so that anything that transcends both the national and county levels finds a platform of implementation through the CUE.

Therefore, it is only proper that through this Bill, this CUE, not only engages these two levels of Government, but also reports to Parliament from time to time, as is provided in the Constitution. This reporting to Parliament is very critical. As an institution, Parliament is obligated from time to time to ensure that the process of education in this nation is not lopsided and leaving out persons with disability and other people who have been marginalized over periods of time. From time to time, we have to ensure that these same institutions are not taking advantage of citizens so that, again, even at the county level, it is only children who come from well off families who are able to access bursaries. That equality should at all times be protected.

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

Sen. Elachi: Mr. Deputy Speaker, Sir, I rise to support this amendment Bill. Currently, there are 22 public universities in this country. According to this Bill, the county governments will facilitate universities to acquire land to put up infrastructure. When building a university, there are many amenities that are required to ensure that students learn in a conducive environment. Apart from infrastructure, we must provide them with security. Lack of these facilities will lead to a crisis like the one we are facing now in Garissa County after the terror attack on Garissa University. Many of the students came from other counties while few students came from Garissa County. The institution is well structured with all the facilities, but with no students because of lack of security.

As we debate this amendment, we must condemn violence in our universities. For example, Moi University has been a peaceful public university. However, in recent times, it has become embroiled in ethnic challenges and conflicts. If the county governments could effectively deal with these issues, strikes and other challenges may be sorted out amicably.

While we appreciate that the county governments must be brought on board in management of universities, they should not go overboard and assume responsibility of running universities. That is where we should be very clear as we amend the law to safeguard the institutions of high learning so that we also do not find ourselves in a conflict. When the amendment is brought, it will be very clear that there will be a liaison which will assist in the infrastructure development of those institutions. It does not devolve education.

Again, we should not be in a situation where we find ourselves having challenges of lecturers in those universities. We must be very careful. We have a very good example of Moi University where the Vice Chancellor is being rejected because of ethnic inclinations. As we debate this Bill, we must protect these institutions.

I thank Halima and her team for visiting Moi University. She understands the challenges---

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Elachi, you said you want to thank who?

Sen. Elachi: Mr. Deputy Speaker, Sir, Halima, Senator.

The Deputy Speaker (Sen. Kembi-Gitura): She is Sen. Halima.

Sen. Elachi: Mr. Deputy Speaker, Sir, I am sorry. I thank Sen. Halima for the work she did. She understands challenges facing Moi University. As you bring these amendments, I believe that it is one of those recommendations---

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

Sen. (Prof.) Lonyangapuo: Mr. Deputy Speaker, Sir, it is a point of information.

The Deputy Speaker (Sen. Kembi-Gitura): Who do you want to inform?

Sen. (Prof.) Lonyangapuo: Mr. Deputy Speaker, Sir, I would like to inform, Sen. Elachi.

Sen. Elachi: Mr. Deputy Speaker, Sir, he was a professor at Moi University; let him inform me.

Sen. (Prof.) Lonyangapuo: Mr. Deputy Speaker, Sir, I would like to inform my colleague that the problems that Moi University had last week are normal. Small strikes are normal. Do not overemphasize this. These problems are part and parcel of life and have been sorted out.

The Deputy Speaker (Sen. Kembi-Gitura): Is the information that you have been given helpful?

Sen. Elachi: Mr. Deputy Speaker, Sir, it is not. What I am talking about is not what happened the other day. I am referring to the serious crisis the Senator and her colleagues of the Committee on Education faced when they went there to try to reconcile them.

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

Sen. Ongoro: Mr. Deputy Speaker, Sir, is the hon. Sen. (Prof.) Lonyangapuo in order to mislead this House and Kenyans---

The Deputy Speaker (Sen. Kembi-Gitura): It is too late now. We have moved on. Sen. (Prof.) Lonyangapuo sat down long ago.

Proceed, Sen. Elachi.

Sen. Elachi: Mr. Deputy Speaker, Sir, the most important thing is that we will have a legal framework in which the universities will liaise with the counties, and more importantly, to understand their roles in the counties.

I would like to give an example of Garissa County.

The Deputy Speaker (Sen. Kembi-Gitura): What is it, Sen. (Prof.) Lonyangapuo? Do you want to give more information?

Sen. (Prof.) Lonyangapuo: Yes, Mr. Deputy Speaker, Sir. I would like to inform my colleague further.

The Deputy Speaker (Sen. Kembi-Gitura): You cannot inform somebody by force. You should seek her consent to be informed.

Sen. Elachi, are you inclined to be informed again by Sen. (Prof.) Lonyangapuo after he gave you what you said was not useful.

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

Sen. (Prof.) Lonyangapuo: Mr. Deputy Speaker, Sir, I would like to inform her that what she is referring to is University of Eldoret which is different from Moi University. She is referring to the problems which have been on-going in the University of Eldoret and not Moi University.

Sen. Elachi: Mr. Deputy Speaker, Sir, that should be the last information of misleading Kenyans from the professor. Moi University is in Eldoret. I am not talking about any university in Eldoret; I am talking about Moi University. Again, I want to thank Sen. Halima and her Committee for visiting Moi University.

Kwani Eldoret ni gani na Moi ni gani?

(Loud consultations)

(Sen. Karaba raised up his hand)

The Deputy Speaker (Sen. Kembi-Gitura): Order! What is the point of order, Sen. Karaba? I must remind you, like I have done many times, that you must always carry your card when you crisscross the House. When you are making a point of order, you are supposed to make an intervention; not raise your hand.

Sen. Karaba: Mr. Deputy Speaker, Sir, I was visiting Sen. Halima when I heard the misleading---

The Deputy Speaker (Sen. Kembi-Gitura): You are visiting who?

Sen. Karaba: Mr. Deputy Speaker, Sen. Halima. I was consulting her over that Bill only to hear some misleading information. My card is on the other side.

The Deputy Speaker (Sen. Kembi-Gitura): Proceed, Sen. Karaba.

Sen. Karaba: Mr. Deputy Speaker, Sir, we have two universities.

The Deputy Speaker (Sen. Kembi-Gitura): Are you giving information or a point of order.

Sen. Karaba: Mr. Deputy Speaker, I am on a point of order; whether it is proper for somebody to mislead this House that University of Eldoret is the same as Moi University. They are not. We have University of Eldoret campus and Moi University, Eldoret. It is important to note that.

I am speaking as the Chairperson of the Committee on Education in this matter.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Billow, what is your point of order. Sen. Karaba, was he using your card?

Sen. Elachi, you have been corrected twice.

Sen. Elachi: Mr. Deputy Speaker, Sir, I have understood.

The Deputy Speaker (Sen. Kembi-Gitura): It is not a question of understanding. You either correct the position or assert that the information that he has given you is wrong. There are only those two options.

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Sen. Elachi: Mr. Deputy Speaker, it is correct, but we know very well that the mother of all those universities was Moi University. Others are constituent universities of Moi University. I know that each has a Vice Chancellor, but the country knows that the mother of all those constituent universities was Moi University.

The Deputy Speaker (Sen. Kembi-Gitura): Order, Sen. Elachi! You are getting into a very dangerous ground now. It is like saying that the University of Nairobi was the mother of all universities. Every university with a charter is a university in its own right. Therefore, you must give it its actual distinction. It is not an idle or simple thing that is being discussed. You need to make the correct the statement.

So, make the correction if they are right.

Sen. Elachi: Mr. Deputy Speaker, Sir, they are right. I have made that correction.

We need to be very careful because while we build up these institutions, we must also look at the different challenges that every county has. There are counties which do not have a university because of lack of students, for example, Garissa University. After what we saw in Garrisa, many parents might fear to send their children very far away. We have to ensure that while we deal with the issue of land, we always protect our institutions of higher learning.

Mr. Deputy Speaker, Sir, with those few remarks, I support.

Sen. Hassan: Mr. Deputy Speaker, Sir, thank you for this opportunity. I rise to support the amendments by Sen. Mohamud. Education is a guaranteed right. Part of guaranteeing that right to education is to ensure accessibility and affordability of quality education to all Kenyans. Part of marginalization in this country was largely a consequence of the alienation when it came to matters of education. Therefore, the Constitution came to redress part of the transgressions of their past policies and framework to ensure that every Kenyan is given equal access to affordable quality education.

There is no better way to guarantee a complete development of any young person than to ensure that you are able to offer that person a chance of, not only free primary education or secondary education, but equally for university education.

Lately, we live in a world that an undergraduate degree is becoming common. Sooner or later, Masters degree will be a requirement of employment. I have a number of classmates who had the benefit to proceed with their education uninterrupted who are now defending their PhDs or are PhD holders. The most critical component in the transformation that we are looking for in our counties, when counties have institutions of higher learning is that they will be part of the agents of transformation.

I visited a lot of countries in my professional life at the KNCHR and even right now as a Senator and, particularly countries in the west have interested me in terms of collaborative actions that universities or faculties of universities or departments have. You will find that there is a school of Government or a certain university that partner with a county or the government to research and improve on part of the cutting edge of flagship projects or governance model and values.

Mr. Deputy Speaker, Sir, this Bill comes to enhance access to that opportunity. Let me also caution that universities have minimum criteria for admission. The fact that there is a university in your county does not mean that they waiver in the minimum criteria for the enrolment of students. The Kenya Universities and Colleges Placement Service (KUCCPS) has set a certain minimum criteria for admission into universities and colleges in Kenya. It requires you to have a C plus to be admitted into a university. There is no way we can bend that kind of criteria to allow people in that county to join the university.

We must improve education from its foundation so that we are given quality education that propels us to the next level of learning. It is not possible for us to set up a university in any part of Kenya and say that just because we want to educate our children, we lower the standards. The consequence will be that we will have half-baked graduates.

I also encourage the marginalized areas to focus their investment on education from a very formative stage, from ECDE, primary and secondary education because without the minimum criteria, Sen.(Prof.)Lonyangapuo who was my professor in Moi University, will attest that we cannot lower standards because we want to ensure that people have accessibility. We must uplift the standards of education to ensure that people meet the minimum benchmark to be admitted into universities. I want to caution that the mere presence of university campuses and faculties or fully fledged universities in counties will not be a licence to students in those counties to gain admission on account that the university is in that county. They must meet the minimum criteria.

Therefore, the setting up of the university should not compromise quality of education, it must enhance accessibility. It is sometimes easier to work within the precincts of your county because it ensures there is no enormous cost on travel, you can operate from your home, therefore, it minimizes the cost on accommodation and your parents continue to tutor and mentor you. It is a question of how many governors or county governments have given emphasis to education or educational institutions, particularly those areas which have universities like Kisii, Kisumu, Mombasa, Kakamega and Nairobi counties.

How many are in partnership with universities to ensure they tap to the rich resources of those universities? We cannot assume that the nation can run simply on guess work. Those universities must be engines for development of those areas. It is high time that academicians started engaging in a meaningful manner. I see them teaching students, but our schools and universities hardly collaborate or partner with Government institutions to ensure that they apply their research in a meaningful way.

Mr. Deputy Speaker, Sir, I am in support of this Bill. However, I am in support of the fact that we shall make the necessary investment to ensure that every student is given an opportunity from the very point of birth to have a meaningful access to education and that right is guaranteed. If you look at the civil rights movement in the United States, there was a notion that equality can be build through education. Today, some of us are equal in society largely because we were able to have the benefit of education. If it was simply a question of parentage, eliticism or resources, it is possible that many of us

would not have enjoyed the access that we have today to the kinds of opportunity and capacity to challenge or be competitive at a national and other levels that are available.

We must, therefore, promote equality in our counties by ensuring that we educate those areas that we have left behind. Kenya has a fairly high illiteracy and semi illiteracy rate. Semi-illiterate is something we need to deal with. This will spur the kind of educational development that is necessary to ensure that our country deal with the goal of education. When we got independence, we said we want to deal with poverty, disease and ignorance. We have hardly dealt with any of those issues in a substantive way. Devolution was supposed to do that.

That is why I always articulate the notion of social justice. Social justice cuts across. It means you repair what you might have erred historically by giving those who have less opportunity more opportunity. We need to make those who are worse off better off before those who are better off become well off so that this country can prepare itself for take-off. We cannot build our units if our economies have disparities, we must make our units of devolution competitive. When we have the intelligentsia, we will build those economies and collect more revenue and become competitive units. There are units that are already economic hubs like Mombasa, Nairobi, Kisumu and Nyeri and they collect revenue.

If you look at other counties, it means that we need to invest a lot more so that these units can become competitive economically, and what better way is there other than to use the concepts of university. Oxford became a village and, later on, a city on the basis of a University. I, therefore, hope that when we bring a university, we will bring the *inteligencia*; the lecturers who will be sought to come to that area to teach the students. That also means that you will build better schools, invest in infrastructure, hospitals and grow the economy because then people will be able to generate the ideas, expertise and knowledge that will spur the economic growth of the counties.

Mr. Deputy Speaker, Sir, I believe that was the vision of Sen. Halima and that is why I told her that this Bill of hers is extremely visionary. In this day and age, without university education, the odds are against you. When I was at the KNCHR, even the person who prepared tea was a graduate of Utalii College, while the person at the reception, had a degree in secretarial services. That is why we need to ensure that the young people are educated. We also need to expand our economies in the counties to absorb them. Counties are becoming extremely big employers, but how sustainable is this in the long term? I, therefore, believe that these persons must not only be looking for opportunities to work in the counties, but to innovate for those counties. They must build institutions that are attractive.

I sometimes believe that devolution took off on a wrong footing. This is because county governments have built their structures simply on account of the local government authorities. They are operating like over-celebrated local authorities through their structures of raising revenue and their vision is condensed. The governors are like overrated mayors. That is why we need the young people to come and give us models of development, to address some of the more intricate challenges. For instance, a university

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in Turkana can be one that offers courses in petroleum engineering. They would even have the practical purpose to access and improve on that industry. They will then transfer the expertise and resources to spur growth in Turkana. That will then end the economic exodus migration to Nairobi, Mombasa and other urban areas. It will mean that we have brain retention.

Mr. Deputy Speaker, Sir, counties are unable to retain most of their high calibre staff because there are no social facilities to support any of the devolution units; the kind of intelligence and capacities that we churn out. It is, therefore, not a coincidence that many Kenyans migrate to areas where there are opportunities. That is why I say that, sometimes, when development comes your way; it can be a blessing and a curse because as development is going to go to other parts of the country, the demographics will change. People will migrate to those areas and they will, therefore, need those facilities. Counties need to prepare because identities are evolving.

I am, therefore, in total concurrence and I want us to ensure that even the Senate – as Sen. Halima emphasized in her Bill – is able to receive reports that will assist us look at the progress of our education. We must also now graduate the mission of our education. We were simply producing professionals; people who manage what others have innovated. We must no longer just do patch work, but be innovators like Mr. Bill Gates and others. We brag of the *M-Pesa* innovation, but I want the next big innovation and scientists to be from Kenyan universities. We would like to have a ‘Bill Mutua’, ‘Bill Kamau’ or ‘Bill Omar’. We want somebody who will spur innovation and creativity in this world.

Mr. Deputy Speaker, Sir, these universities will provide those forums and opportunities. However, we must also invest substantially in research. We think that great ideas are born out of osmosis or some accidental development. Greatest countries in the world equally invest substantially in research. Therefore, these institutions must be capacitated with sufficient resources, so that they can explore research and develop creative solutions to some of their contextual challenges in the various counties.

Sen. Halima has been really visionary. I know that she comes from Wajir County and I feel the pain of Wajir like the rest of Kenya. You have done something great as a Senator from that County to have brought a Bill. This is because I know that Wajir County has some of the oldest schools in this country like Wajir High School, which has been in existence since colonial times yet we do not have a university in Wajir County. This is an act of systemic and deliberate marginalization and that is why devolution came to remedy this.

The Senate is here as a House of equity. We want to see all counties enjoy equity. That is why if you were elected to the Senate with over 800,000 votes or 20,000 votes, your vote in this House is one because this is House of equity. That means that everybody has an equal say. I am, therefore, happy that we are here and thus able to appreciate how to devolve education, Level 5 Hospitals and ensure that we invest substantially in this. I believe that the work of devolution is making considerable progress.

I beg to support.

Sen. Wangari: Thank you, Mr. Deputy Speaker, Sir. I thank the Mover of this Bill, Sen. Halima. I am beneficiary of education myself. Some of us would not have made it to this House were it not for the chance to go to school. Sen. Halima, having conquered all the odds from Wajir County to get a university education, I know that she has the interest of the students at heart.

I would like to, first of all, note that the role of the CUE has been clearly stipulated in terms of being a regulatory body in the accreditation of universities in this country. We have come a long way as a country in that we have established so many universities. In places where do not have universities, we have resident campuses in many towns in this country. One can go to Maralal, Garissa or Wajir counties today and find satellite campus of Mt. Kenya University and others. People there used to travel to Nairobi to get university education.

So, we have made great strides in this sector, but we must also not lose focus in terms of admission to universities. It has come to my attention that just the other day, there was a debate going on in social media about a letter that was written by the Chairman of Students Organisation of Nairobi University (SONU). People are really complaining about even the poor grammar that has been used to address the President.

Mr. Deputy Speaker, Sir, we must not lose focus on the quality and what we are supposed to do in the universities. We should have minimum requirements and adhere to them. This is because we have seen what universities can do. An area like Njoro in Nakuru County has really benefitted by having a university there. This is because we have serious research going on there. Universities are able to do research on the soil and tell how acidic it is and whether fertilizer is needed and the right breed of animals to be reared in a certain area. Therefore, the advantages of having a university in any of the counties should go a long way.

In terms of regulation, it is good to incorporate the counties without losing focus on the role of the national Government as stipulated in the Fourth Schedule in terms of standardization or keeping very homogenous standards in terms of admission to universities. We must not decentralize and lose focus in terms of admission to universities. That said, the minimum entry requirements should not be compromised. In 2013, in the run up to the General Elections, many people were turned down because they were told that the degrees they hold are not from accredited universities.

I have checked the CUE and found that it has tried to keep up with ICT in terms of posting on their website on the universities which are accredited in the country. However, I would want to urge that as we debate this Bill, the CUE should be more proactive to ensure that this information is available any time and not just for local universities, but even foreign ones.

That way, just at the click of a button, somebody will know that the university he or she is joining in India, United Kingdom (UK) or USA is accredited or acceptable to CUE. We will then avoid a scenario of unlawful degrees as it happened with the Presbyterian University just the other day. Some students went through a four year engineering course, but then they were told that it was not recognised. That means that

you have wasted your money and time. It should be clear from CUE so that we do not have these rogue universities or campuses.

Mr. Deputy Speaker, Sir, two weeks ago, there was a communication from the Ministry of Education threatening to close down some campuses in town. You may find that they are not even suitable enough to be called campuses. We must have a standardization of these campuses and if we want to spread these universities to counties, there must be a minimum that they should adhere to. The CUE should put this criteria and requirements in the public and even post it on their website and communicate to everyone who seeks to know.

That way, we will not have children coming out of high school and because of desperation for information and knowledge, they enroll in a college and two years down the line, they are told the course is not even allowed and the institution should be closed. We are sending this sector into confusion. When we hear such comments from the Ministry of Education, we wonder what is happening because the role of regulation which is the sole responsibility of CUE is not being handled very well.

We must also not lose focus on technical training. Mr. Albert Einstein once said that if you want to judge fish by how high they can climb a tree, then you will think it is very stupid and yet they are not supposed to climb a tree. I say this because the establishment of universities everywhere is not a bad idea. However, we must also realise that not all of us are meant to be engineers or lawyers. There are those people who are good in technical work that was being taught in technical schools like the Kenya Polytechnic and we must not lose focus of that.

Mr. Deputy Speaker, Sir, I like the idea of this Bill that every county can boast of at least one university. We have had concentration of universities in some counties that deny other counties the advantage of hosting one. Having explained the advantage that I have seen with universities being in different counties, I think every county should have the test of hosting one. However, that university should not just be put up to fulfill this mandate, but according to the regulations and minimum requirements that should be set by CUE.

I second this Bill and also congratulate Sen. Mohamud. I hope that it will streamline university education and that this standardization will bring all counties on board. This is because even though standardization is a national Government function, these universities will be situated in counties and it is important that we bring counties on board. That way, we will ensure that there is no confusion and that children are not sent to schools that are not accredited.

Sen. Muthama: On a point of order, Mr. Deputy Speaker, Sir. While contributing, Sen. Wangari said in her Statement that she wants to “second” the Bill. She is not seconding, but supporting for the record purposes.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Wangari, you actually said, you want to second. Could you make the correction for the HANSARD purposes?

Sen. Wangari: Mr. Speaker, Sir, I do not remember saying “second”. For the record, I am not seconding, but supporting this Bill that has been moved by Sen. Halima. I hope that this House will see it fit to be passed into law.

Sen. (Dr.) Khalwale: Thank you, Mr. Deputy Speaker, Sir. It is very exciting to see what two years can do to a young Senator. When I first met my young daughter, Sen. Mohamud, the best we could exchange during debate were her stories of how girls coming from her place ---

The Deputy Speaker (Sen. Kembi-Gitura): Order, Sen. (Dr.) Khalwale! Nobody is older than the other in this Senate. Let us start from that point. You either put it differently, but you cannot talk about what two years can do to a Senator. All of us have been here for two years.

Sen. (Dr.) Khalwale: Thank you, Mr. Deputy Speaker, Sir. I did not mean age of being in this House, but chronological age. At that time, it was very exciting when I would talk with her and she could tell me how a girl coming from Wajir was coming to Nairobi looking for a live zebra. She had seen zebra crossings in little books which they had read back home and she thought she would actually see zebras as she crossed the road. You can now see that she has graduated into an excellent legislator. We must congratulate her deep down from our hearts.

If one wants to understand the depth of thought in this Amendment Bill, they should recall what happens in the USA presidential debate. One of the cardinal points that was usually put to the candidates was the understanding and planning for the country on matters of research and technology. Depending on how a candidate responds to this, he starts capturing the imagination of the country that he has what it takes to move USA beyond the cutting age of technology.

Mr. Deputy Speaker, Sir, universities are the seats of research, innovation and technology. Therefore, I laud the Member because today we are creating a legal structure that can then create the interface between county governments and CUE. This has been so loudly absent to the extent that even where it was obvious that county governments should work in support with either a university college or an existing university, decisions made had no legal basis.

The second arm to what she is trying to do is to deliberately create a responsibility for CUE by ensuring that they report to Parliament for the purposes of oversight. I further congratulate the Member by reminding her that if she recalls in 2013, I moved a Motion that was intended to establish a university in every county. To show her that she is moving to the right direction, allow me to remind her that by virtue of that Motion, I received a national award for that wave of thought. I believe this year she will be the recipient of the national award for exemplary legislation. I, therefore, take my Motion as a precursor to this great idea. I believe we will move this matter even further.

Mr. Deputy Speaker, Sir, it is befitting at this time for me to share with this House the story of success of the university city of Kakamega. Around 13 years ago, Kakamega was a little provincial headquarters, a forgotten market that had no economic basis. As soon as the university landed there, it has spurred the economic potential of Kakamega

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Town and now it is making so many opportunities for employment of our people and businesses.

Mr. Deputy Speaker, Sir, on the issue of research, I want to address Prof. Otieno of Masinde Muliro University in Kakamega; that he must now narrow his mind to our county because other counties are also doing their bit. We would like to see him doing more research on sugarcane farming. Sometimes we do not have the right seed because the seed we have might not have been properly researched to be the best producing and growing in the shortest time. We want him to do research into the sugar industry itself; especially, we would like him to research into diversification of production at the factory.

One reason Mumias, Miwani, Muhoroni and SONY sugar companies have not done very well, is that they continue relying on sugar as the main product from the factory. The international practice is for sugar to be a by-product. There must be co-generation, in this case, production of ethanol.

I was amazed when I was in Panama and Cuba recently and I found out that most of the vehicles there are powered by alcohol. When you go to fueling station, you choose between normal petrol that we use here or alcohol. We need innovation. We should do furniture, fertilizer and power production from sugar cane. However, all these can only be achieved, if research is done at the university.

Mr. Deputy Speaker, Sir, still on the issue of research, I want to urge Prof. Otieno at Masinde Muliro University to emphasize the issue of alternative medicine. We have now established a medical school at the university and we would like the research there to dig into the rich traditional herbs that have over millennia been used to contain malaria, to treat tetanus, to treat flu and many other things. Some of us who came from poor families did not have access to modern medicine all the time. We were treated with these herbs. Since those tablets are now readily available, people have forgotten that kind of research. These herbs are already there in Kakamega Forest. I believe even in other parts of the country where you have forests, the same herbs are there.

We would like to see research on beef farming. Those of us who rear fighting bulls have herbs that we pick from Kakamega Forest which we feed our bulls on and within 24 months, the bull becomes very huge. If this research can be done, then beef farming at zero grazing level can be done on small scale farming. We want research to be done on these herbs because we have psychotropic substances which we pick from Kakamega Forest.

When we were young boys, when would go to Rivers Yala, Isiukhu, or Nzoia to do fishing. We did not go there with any hook or net, we simply picked herbs which had psychotropic substances, crushed the herbs, poured the herbs upstream and the fish would come when they were drunk; we would just pick them and go home. These are some areas of research. There are some psychotropic substances which we feed to our bulls for psyching them up. When you want the bulls to have a real game, you give them these herbs and they give you a very beautiful game.

Finally but not least, on the issue of research, all Kenyans have heard of the fatal accidents that you hear in Five Star hotels where the rich who are on sexual adventure of

pleasure take performance enhancing drugs in the name of aphrodisiacs and they kill themselves. Researchers can go to Kakamega Forest. We have special herbs there, for example, *Mukombelo*. If you give this herb to senior citizen, Sen. G.G. Kariuki, you can be sure that the results will be amazing. The guy's life will be perfectly safe. This is where we want our universities to go. If you produce this harmless aphrodisiac you can imagine the amount of money that we would make when we sell on the international market.

Mr. Deputy Speaker, Sir, because I mentioned the issue of the process of establishing a medical school in Kakamega, allow me to congratulate Prof. Chunge who has accepted to be the father of the new medical school. I want to thank Prof. Stanley Ominde Khainga, Prof. Ayaya and Prof. Otieno for helping us start this medical school.

The Ministry of Lands, Housing and Urban Development and the Ministry of Education, Science and Technology must stop frustrating Prof. Otieno and Prof. Chunge because we have made a resolution as leaders, that the Approved Primary School which serves no purpose to be in the city centre and next to the university, be handed over to the university for creation of this medical school and the little hitches that are there should be resolved.

Mr. Deputy Speaker, Sir, I have seen the Senator for Kiambu enter the Chamber and since we do not have a single Cabinet Secretary from that part of the world and nobody to talk to since the Jubilee Government is only talked to through relatives, friends and stuff like that, and him being the Senator of the President, may he convey our greetings to the President and tell him to order his Cabinet Secretaries to remove these little roadblocks since we want our university to grow.

I want to thank Governor Wycliffe Ambetsa Oparanya because he has in his budget allowed the building of a---

Sen. Wamatangi: On a point of order, Mr. Deputy Speaker, Sir. Is it in order for Sen. (Dr.) Khalwale to, first, presume that I am a messenger of the President of Kenya? Secondly, is the Senator aware that there is an established mode of communication in this country and if he has a message to His Excellency the President, I am sure he can do so? Recently the President was in Kakamega County to bail out Mumias Sugar Factory and I saw the Senator receiving the cheque and smiling. He should have conveyed that message to the President in person.

Sen. (Dr.) Khalwale: Mr. Deputy Speaker, Sir, I hope you are holding my time.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. (Dr.) Khalwale, you only have two minutes. I will hold your time.

Sen. (Dr.) Khalwale: Mr. Deputy Speaker, Sir, I am sorry if I sounded sarcastic in any way, but that is what I meant. However, now that the good Senator has invited me on camera---

The Deputy Speaker (Sen. Kembi-Gitura): Order, Sen. (Dr.) Khalwale! You are completely out of order. Sen. Wamatangi has told you that you cannot possibly use him as a messenger. Since he is your colleague Senator, I rule that you are completely out of order. Could you proceed with the two minutes that I have allowed you?

Sen. (Dr.) Khalwale: Thank you, Mr. Deputy Speaker, Sir, I will pursue that further, but I have accepted the invitation.

Mr. Deputy Speaker, Sir, I wanted to thank the Governor for having supported the university in putting up hostels. I urge him that in his budget, he should spend – now that the structure is being established – more money at the university.

Finally, I urge Kakamega County Government to quickly establish a university at Lugari by converting Lugari Boys High School into a constituent college. We will know what to do to the rest of the boys there. Another university should be established at Mumias by converting Booker Academy into a constituent college. Finally, another university should be established at Ikolomani by converting Eregi Teachers Training College into a constituent college. That will make it easy for children of the poor who cannot travel all the way from Likuyani to Kakamega and all the way from Yala to Kakamega because the distances are vast. Therefore, we need to spread universities that will be branches of Masinde Muliro University of Science and Technology (MMUST) so that our children have access to quality education.

Mr. Deputy Speaker, Sir, with all these words, I thank you and beg to support.

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

Sen. Karaba appears not to be ready.

Yes, Sen. Mutula Kilonzo Jnr.

Sen. Karaba: Mr. Deputy Speaker, Sir,---

Sen. Mutula Kilonzo Jnr.: Mr. Deputy Speaker, Sir, first, I thank Sen. Mohamud for bringing this Bill. During the passing of the Universities Act in 2012, the Senate was not in place. At the signing of the Universities Act, counties were not in place. Therefore, the proposal to synchronise the functions of the CUE with the counties and the Senate which were not in existence as they are today is laudable.

Mr. Deputy Speaker, Sir, as I was perusing the Universities Act and I realised that the person who was responsible for this particular Act was the last Minister for Education before the last election. That was the late Sen. Mutula Kilonzo. Therefore, there is wisdom in having Clause 26 which Sen. Mohamud seeks to amend in the proposed Bill and I will highlight it. There is a good reason Sen. Mohamud proposed this. Some Senators might have been under the impression that universities that we want to set up under the law will be in every county.

I want to read the Clause so that we can understand where Sen. Mohamud is coming from. It states that:-

“The commission shall ensure the establishment of public universities in each of the counties giving priority to counties that do not have universities immediately after following the coming into force of this Act.”

Therefore, counties like Wajir where Sen. Mohamud hails from have been given priority under Clause 26 in terms of setting up universities.

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

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

Madam Temporary Speaker, I would have been happy to know the method of checking how this would be done so that we determine, out of the 22 public universities that Sen. Elachi mentioned about, which of the 47 counties do not have universities so that we have a starting point.

The proposal to have the Senate under Clause 26(4) vetting is important. The liaison proposed by Sen. Mohamud is equally important. We were discussing with Sen. Ong'era here and wondering how to set up 47 universities. If you do that, what criteria do you use? Do you set up universities randomly in all the 47 counties and distinguish those that will offer education, law or agriculture? What criteria will we use? Shall we just have 47 tribal universities for Kisiis, Kambas, Luhyas, Maasais and so on? It is important to look into that. Therefore, the liaison that is proposed in counties is important.

We were thinking about that aloud here. The idea should be that we should have Maasais going to Makueni to study ICT in a university at Konza Techno City. We should then have a university in Kisii for something else, for example, agribusiness and a different faculty in Mombasa. Another university in Nandi should offer a different faculty so that we do not convert the 47 universities into 47 conclaves of tribalism. That is not the idea behind the proposal to have universities in all counties.

Madam Temporary Speaker, we should be inquiring because it was contemplated that the commission under Clause 26 is the one supposed to come up with the budget for setting up universities. I am very glad that Sen. Mohamud came up with this Bill. In the next budget, we want to see whether or not the CUE under this Bill will come up with a budget for setting up of universities. Maybe, we should ask for a report now. The Committee on Education should make a note about Clause 26 of this legislation and find out what the CUE has done concerning the setting up of universities in counties where there have been no universities since 2013. The Committee should also know the money that has been allocated from 2013 up to 2015 regarding the setting up the universities. If the budget is not there and has not been put up, the Committee should know the reason so that it informs the Senate on the methodology being used.

The Committee ought to inquire on how universities will be set up and the criteria that will be used. This is important so that by the time we will be passing this Bill – where it is proposed that there will be a liaison with county governments – we will have an established criterion of how universities in areas that the law has recognised to be marginalised since Independence are then considered. The Committee should know which universities out of the marginalised ones will be given priority in the same way we did regarding Article 204 which is about an Equalisation Fund so that we activate some of the issues that Sen. Mohamud has proposed in this Bill.

Madam Temporary Speaker, regarding the amendment to Clause 26(4) – in my own view in terms of the reports to the Senate and the National Assembly – should have been a little rewarded. I say so, because although the functions of education, strictly speaking, are under Schedule Four for the national Government, Clause 26 is where the

Senate comes in. Therefore, the kind of reporting that we require under provisions proposed by Sen. Mohamud should be very specific.

We should be dealing with setting up of universities and budgets of setting up of universities in counties that do not have universities. The National Assembly should be involved in either policy or funding of the universities so that we have a detailed budget in the next financial year since the appropriation of monies according to the Constitution still lies squarely with the National Assembly. Maybe, that is where this issue should reside entirely.

Madam Temporary Speaker, there is reason to think that the composition of this CUE should be relooked at. This is because the CUE will give reports to the Senate. Since the Council of Governors (CoG) was not in existence at the time of passing of this law, it is time that Sen. Mohamud thought of representation of counties in the CUE so that it is truly representative of both the national and county Governments.

This is because there are several other organizations that are contemplated in this legislation, but there is no mention whatsoever of any entity that is related to county governments. So, I would suggest that you can have that amendment, so that then it is complete and we have a representative. We do not want to sit here in the Senate and just wait for reports. We should sent representations before they send reports to us of what we would require, as the Senate, in our role of protecting the interests of counties. The issue of the curriculum that will be taught has also come up. Regarding how we are going to deal with it, that representation is important, as suggested by the Senators who spoke before me.

Madam Temporary Speaker, we cannot re-emphasize the idea of having universities in all counties. There is fear amongst many people that there are many graduates who have degrees and maybe will not have positions to take in the dispensation. That does not worry me at all, because we want to create a society of young people who can be employed, not only in Kenya, but in the rest of world. It is important that we encourage our young graduates. One of the things that they should do is what Sen. (Dr.) Khalwale has done; to encourage private enterprise. The Summit that is coming up this weekend is one of those things that we want the young people to go and look at; entrepreneurship. We must tell our university graduates that it is not enough to wait to be employed.

The idea in the future of this Republic is to do what Harvard does; to encourage people to be entrepreneurs. That is why the inventor of *Facebook* is a great entrepreneur. He never actually graduated from university, but is a billionaire. Therefore, the people who are encouraging the idea of having so many graduates who have no jobs should from now perish those thoughts. But we, as Senators, have an opportunity in what we are doing to encourage entrepreneurship. Mr. Chairman, I am charging you with that responsibility, if I am allowed to do so. We can have this sort of entrepreneurship in counties and encourage the people who will benefit from Clause 26 of this Bill, where priority is given to the counties where universities have not been set up.

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It will encourage them to take over more of the entrepreneurship in their curriculum, so that we can have the Mark Zuckerbergs of this country or my friend, Sam Gichuru, who has set up the Nailab. If this gentleman was in America, he would be a billionaire. He has set up an organization where young entrepreneurs can sit in a room and think about entrepreneurship. He is just another young man in Kenya. This is what we should be encouraging. Mr. Chairman, take up the challenge or history will judge him harshly.

Madam Temporary Speaker, I beg to support.

Sen. Karaba: Thank you very much, Madam Temporary Speaker, for allowing me to also contribute in support of this Bill, which has been moved by none other than my Vice-Chair, Sen. Halima, who is very competent in these affairs. She came up with this Amendment Bill when we realized that there was need to have universities spread out in the country. We felt that this necessity was going to lead to the establishment of, at least, one university in every county, so that we can make university education accessible to the majority of the intelligent boys and girls in our country.

Madam Temporary Speaker, it is important to note that universities all over the country and world are elite centres or centres of intellectuals, where students meet, study and do research. They come up with very many things which are inconsistent with the systems in the world. It is in the universities where several researches are done, which can even lead to desertification or cloud seeding, particularly if the university is in a dry area. They also do research related to medicine, vehicles, highways and so on. So, this is the last level of any academic structure in a country. By having some counties without the universities it, therefore, means that we are trying to marginalize or prevent them from advancement. To me, this is a crime in society.

We should, therefore, encourage the establishment of the standard universities *per se*. The class system starts when most of us go to the universities. We talk about haves and have not. It is the universities who set that structure. Those who go to the university and study various courses will end up being employees of companies and hence achieve self enhancement and advancement. It is, therefore, important that we stress particularly university education in our country. During my time at the university, the University of Nairobi was the only one in the 1970s. Since then we have had mushrooming of quite a number of universities. We now have more than 70 universities in the country. We would not only like to have more than 70 universities, but also well distributed universities in the country. We should have universities in Garissa, Wajir, Mandera and even Turkana.

What is important to note is that the infrastructure should be established in those areas to attract investors. When that happens, people can move to those universities as students. As they do so, they will also be seen as labour force in the neighbourhood of that university. What we are trying to discuss in this Bill, therefore, is an initiative where every other region in this country will claim to have a university which will be training its cadre of human beings, which is intelligent and can be used by the society to develop the ideas in that locality.

Madam Temporary Speaker, I have visited quite a number of countries in this world. If you visit Canada, you will find Edmonton, Alberta and Calgary universities to the West of Canada. They specialize more on their natural resource, which is, oil. You will be surprised to note that most of the graduates coming from those universities are trained to deal with the oil industry; that is, oil mining and refining. The labour itself in Canada, when it comes to oil drilling and other associated works, comes from universities which are located in areas where we have such resource. We can do the same there in Kenya. We have universities located in some areas which have minerals in abundance. Now that we recently discovered oil in Turkana, we need to have an industry and university in that region, so that students can study mining and other oil industry related studies. This will be very useful when it comes to full scale production of oil.

Short of that, we will be held hostage like what has happened to many other countries in the Arab world. Many people in those counties do not even know how oil is drilled. As a result of that, the west will always exploit the Organization of Petroleum Exporting Countries (OPEC) market.

Madam Temporary Speaker, it is important to note that we need these universities. We should have them all over the country instead of concentrating them in Nairobi. Nairobi has more than 20 universities. We should make sure that they are distributed all over the country. For instance, we can have some in the coast region dealing with marine technology or anything associate with marine sciences. In addition, we can have some in the highlands dealing with agricultural production, research and so on. Those in the lake region can concentrate in lacustrine fishing or industries. That is the spirit of the Bill.

Madam Temporary Speaker, on infrastructure, we have had quite a number of students suffering in this country. They go to universities to study, but due to inadequate infrastructure, their time is wasted. Some boards do not recognise students coming from such universities because of poor accreditation process. We are asking the Ministry or the university council to make sure that before a university is started, proper and enough infrastructures are put in place. Those universities sometimes offer courses that are not recognised by various boards. The courses taught there should be commensurate to the requirements of the demand in the country. When that happens, we will regulate courses. Such regulation can be done by the CUE. They should be given more powers to scrutinize and close universities which exist just by the name.

Madam Temporary Speaker, we are also getting a bit concerned when university students cannot speak or write in proper English. We are asking whether that is what is happening in the universities. We should come up with a minimum set grade as to who qualifies to join a university. It is not every other person who sits for the Kenya Certificate of Secondary Education (KCSE) who qualifies to join university. We should have a minimum entry grade. In Kenya, for example, we have set C+ as the minimum grade. However, these days many students join Module II. It appears like commercial learning goes on in the university. This is to the detriment of majority of the students

because standards are compromised and they will never be good professionals. Some employers do not employ graduates from certain universities.

Therefore, we are asking the Government to make sure that besides using C+ as the minimum entry grade to the university, we need to take care of those other students who do not attain this grade and above. What happens? In this case, we should also come up with another system where we establish polytechnics which are properly equipped. Those students whose skills have been identified very early when still in high school should be considered.

We should embark on enriching and establishing polytechnics to take care of their needs so that the middle level colleges can also be used. What we have now, is that universities are taking over the middle level colleges without putting up alternative colleges. In the end, we will have universities only without the middle level colleges. This is very serious for a developing country.

I support this Bill to the hilt. I encourage Sen. Halima to continue with it. When passed, it will be implemented by many counties, especially those who had no opportunity to take their students to the universities which were established in those early days. I am sure people will be happy. The moment one gets a degree, nobody will care to know the university in which it was acquired. What is important is the properly accredited course. If those courses are properly done, then we will produce students with good academic behaviour. That is what we are all going for.

Mushrooming universities should be a thing of the past. The CUE should see to it that universities are established in safe grounds. We should have universities in well set up institutions. Students should be accommodated either in the institution or in the neighbourhood where good hostels are well inspected by the CUE. However, we should not leave this entirely to the university council. There are a times when they go for all the money that they want to get. Let us not sacrifice the academic performance or prowess for money. In this case, we should discourage or limit the Module II students joining various universities here in Kenya to regular admissions.

Madam Temporary Speaker, it is also important to have a centralized admission body, the way it is now. From there, students can be distributed all over to those universities which are already known to offer proper courses before we continue to admit students who, in the end after four or five years, will not be recognised by already established professional bodies.

I hope that the Government will come up with proper budgetary allocations to these universities so that they get enough money. This is where education money should go to; not to other unnecessary seminars, meetings and so on. We should ask the Government to allocate more money to research.

The Temporary Speaker (Sen. Ongoro): You have 50 seconds.

Sen. Karaba: Madam Temporary Speaker, I beg to support.

Sen. Ndiema: Madam Temporary Speaker, I rise to support this Bill and congratulate Sen. Halima for bringing up this amendment which promotes the youth of this country who she represents.

We passed a Motion in this House to the effect that each county should have a university for the purpose of equity and to ensure that university education is available to all youth throughout our counties. This is very important, not only for equity, but to ensure that the provisions of the Constitution are complied with. Education is a right that every citizen should access. However, as we are all aware, it has been difficult for students coming from far-flung counties and particularly those which were marginalized to access education. Therefore, this Bill has come at the right time and is in consonance with the spirit of devolution.

Madam Temporary Speaker, university education is no longer a luxury as it used to be thought. It is now ---

The Temporary Speaker (Sen. Ongoro): Sen. Karaba, what is your intervention or it is a mistake? You have logged in for an intervention.

Sen. Karaba: Madam Temporary Speaker, it is a mistake.

The Temporary Speaker (Sen. Ongoro): Okay, proceed Sen. Ndiema.

Sen. Ndiema: Madam Temporary Speaker, education is no longer a luxury because for most employment opportunities right now, the minimum qualification is a degree. It is no longer a Form Four certificate as it used to be. Even to be a teller in the bank, that is issuing money and counting money, you must have a degree. I do not agree with it because I do not understand why someone who is issuing money should have a degree.

Establishment of a university in a particular location does, not only confer education opportunities to the citizens in that area, but from the experience we have seen, where it has been established, it has other spillover effects. It has the effect of creating employment at all levels for the residents of that area and also from outside. It has the effect of spurring economic growth in terms of markets for goods and services. In addition, it is also a way of providing training for public servants as they enter the job and even those who are already employed.

Madam Temporary Speaker, today, there is a lot of resistance by public servants to be deployed to the areas where there are no universities. This is because most of them want to advance their education because advancements in their schemes of service is a requirement. They must have a higher qualification than the one they entered with. Most civil servants who are posted to those areas are disadvantaged because they cannot progress in the job because of lack of educational facilities to upgrade their skills and knowledge.

I like this Bill because it seeks to involve counties in higher education decisions. While higher education under the Fourth Schedule is still a function of the national Government, the Constitution also provides for collaboration in certain areas. There are certain facilities or functions within sub-functions that can best be performed by the county government. I have in mind the issue of land; most land that is available in our counties is owned by the county governments and not the national Government. Therefore, involving the county governments will make it easier for them to get land to

establish universities. For instance, in the case of Kitale Town in Trans Nzoia Town, which is an old municipality, we have never had a fully fledged university.

This is an item that has been in our agenda. I have been personally pursuing it with the CUE. I have seen Prof. Some, and from the look of it is that it is possible. We would want them to move faster. I believe this Bill which requires that there is a progress report; will ensure that the CUE moves faster. In our case, the issue is not land. We have land for development and the Agricultural Development Corporation (ADC) farms, some of which are quite idle. We think that they should establish a university to cater for agricultural training in ADC. It is in line with their mandate which is agricultural development because training of human resource in agriculture and research in agriculture is a function for ADC. A university will complement that purpose.

Madam Temporary Speaker, a university in a county has so many benefits. Apart from training the youth, universities, if well utilized, can be centres for research in the various challenges that face the particular counties. Various counties have different ecological zones and different challenges. Therefore, locating universities that address those challenges in research will be beneficial, not only to the universities themselves, but also to the local people and the county governments. For instance, we have had many agricultural challenges in Trans Nzoia County. For example, animal diseases come and we do not detect them early enough. We do not have a laboratory in Kitale to address this issue. If there are samples to be taken, they have to be brought all the way to Nairobi for testing. Sometimes the results are delayed and samples get spoilt along the way.

Establishing a university also helps in testing soils. For a long time, we have been using fertilizer that is making our soils unproductive because it is acidic. The more you apply it, the more the soils become acidic. This has happened because there has not been any institution that is doing research and advising farmers on the best practices in managing their soils for better productivity.

Madam Temporary Speaker, as I have said earlier, university education is no longer a luxury. The CUE that is established should look at a university as a national university. Since we are establishing universities in every county, they should address the national functions. I want the CUE to ensure that there is less duplication in courses such that we have a centre of excellence in every county for national purposes. Previously, Egerton University was a centre of excellence for agriculture. Kitale may as well be the second one. Counties like Turkana can specialize in oil, so that we have centres of excellence.

Madam Temporary Speaker (Sen. Ongoro): Sen. Ndiema, you have three minutes.

Sen. Ndiema: Madam Temporary Speaker, we should also have collaboration between our universities and other world class universities elsewhere. The CUE is not doing much in this area. We want degrees from our universities to be recognized not only here, but elsewhere, so that our youth can be trained elsewhere. We have had so many engagements with contractors in this country like the railway, oil drilling and so forth. What technology are they transferring to our people? I would imagine that as we sign

any loan or contract with foreign contractors, there should be a provision in all the contracts that they will engage universities, so that they gain in knowledge and experience.

Madam Temporary Speaker, the national Government should put more resources in this area. The CDF now has fewer functions because water and health functions are devolved. The additional funds available in the CDF should be channeled to fund university education.

On the issue of middle level colleges; as much as we require universities, middle level colleges should also be considered and established in all counties. This is because, for every engineer that we produce, we need technicians. For every doctor that we produce, we need nurses and clinical officers. The CUE should look at the areas that we lack in resources.

Over the weekends, we bury very many people who die of cancer. Some of them are treated at the Kenyatta National Hospital, but cannot survive because of lack of adequate doctors. We have so much talent in this country and should, therefore, train more Oncologists and experts in the treatment of cancer from our youths. I do not know why we cannot establish universities in this country that train people specifically in the areas where we lack expertise.

Madam Temporary Speaker, I beg to support this Bill that will ensure that we have high quality universities in all our counties.

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

Sen. Ndiema: Thank you, Madam Temporary Speaker.

The Temporary Speaker (Sen.Ongoro): Please proceed, Sen. Ong'era.

Sen. Ong'era: Thank you, Madam Temporary Speaker, for giving me this opportunity to make contribution to this Bill. From the outset, like my fellow Senators, I would like to thank Sen. Halima for bringing this timely and important Bill that tries to devolve higher learning education to the counties.

We are aware that under the Fourth Schedule, education is one of the areas that were not to the county governments. Therefore, there has been a disconnection in how to improve education facilities in the counties. As we know now, the world has advanced and we are in the new age. Because of the improvement in technology, science, economics and advancement in socioeconomic issues, university education has become a very important tool in our lives. It is no longer a tool that is for the benefit of the rich or the middle class.

University education is very important in the roles of many office bearers, including political offices. I believe that even the Members of the County Assemblies (MCAs) and the Members of Parliament should now have university degrees. They are able to use it in interrogating issues that come up on the floor of the House. Therefore, having universities in all the counties will be a big benefit for this nation.

However, I hope that as we support this Bill, we are not going to introduce an aspect of tribalism in the universities. As Sen. Mutula Kilonzo Jnr. said earlier, as we establish university in every county, we must safeguard against ethnic based universities.

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We do not want to have a Kisii University, Luo University, Kikuyu University, Maasai University and many others. While these are good tools, I suggest that at a time like this when Kenya is out to slay the monster of tribalism, we should try to have specific defined disciplines being taught in each of these universities. For instance, Makeni University can have an ICT University dealing specifically with that discipline or have Kisii University to deal with a specific business of agribusiness. This way, we will ensure that all our children in all parts of the Republic can enjoy the privileges of these universities, so that we do reduce them into ethnic universities.

As I support this Bill, I would like the Mover to consider looking at Section 26(4) of the Principal Act. I would like her to consider amending this particular Section so that it is in conformity with the normal way of writing Acts. I believe that this CUE, not being an independent commission like the Commission on the Implementation of the Constitution (CIC), cannot report directly to Parliament. There are institutions where it should report to, I guess the Ministry of Education, Science and Technology and, therefore, these reports will come to Parliament as the Auditor-General's report.

Madam Temporary Speaker, let me talk about the benefits for those who are working in counties. If we had these universities which are nearby, many working class people who have now moved to towns in counties will have an opportunity to attend tertiary education classes. They will not have to travel very far to study.

I would like a situation where, perhaps, these universities can have special disciplines and courses which are tailored for the local circumstance. How good it would be for Wajir or Mandera counties, for example, where the water table is very low, if they had universities coming up with innovative technologies in agriculture where we can put that area under irrigation and have them produce their own food. Therefore, it is very welcome that if there is research and technology being taught in these universities, we will not have a student coming all the way from Kisii County to go to Kenyatta University (KU) to incubate their ideas.

It is a timely idea and we should ensure that we have at least a minimum of 47 public universities. Our children can then excel in these areas, particularly those from poor backgrounds who cannot afford university education. In the past, universities have been a preserve of rich communities or children from rich backgrounds. By having these public universities, children from poor backgrounds will have easy access to university education within counties. I believe that this CUE will set up a criterion for which such students can get loans like we did during our time.

Finally, let me talk about the issue of politicizing universities. As we propose that this Bill is enacted into law, we hope that the county and national governments will not politicize these universities or use them as a tool to reward only those who supported them in their various disciplines. I have seen a trend where there are discussions, relations or memorandums of understating that are being developed in some universities which are being established in counties. You will find that students who have enrolled there are only from one ward and not around the whole county. That is why I am maintaining that

these universities should have a national outlook and not have students from that county or ward which favours one community.

With those few remarks, I, once again, congratulate Sen. Mohamud.

I support.

The Temporary Speaker (Sen. Ongoro): Order, Senators! This Bill has generated a lot of interest. I presume that it will be in the Order Paper tomorrow for those who have not gotten an opportunity to contribute.

COMMUNICATION FROM THE CHAIR

CONSULTATIVE MEETING WITH THE CSS, EDUCATION/INTERIOR ON THE CONTINUED CLOSURE OF GARISSA TTC

The Temporary Speaker (Sen. Ongoro): I have the following communication to make:-

As you may recall, the issue of the closure of Garissa TTC has generated a lot of interest in this House, with numerous concerns being raised on the education crisis in Garissa, Wajir and Mandera counties.

Hon. Senators, you may also recall that arising from the numerous concerns, on 1st July, 2015, I directed that the Cabinet Secretaries (CSs) in the Ministries of Education, Science and Technology and Interior and Coordination of National Government be invited to come and address the various concerns at the meeting of the standing Committee of Education, where all Senators were invited.

Consequently and upon invitation, the two Cabinet Secretaries (CSs) have confirmed that they will attend a consultative meeting organized by the standing Committee on Education to discuss the closure of Garissa TTC and the education and security crisis in the north eastern region.

This meeting has been confirmed for tomorrow, Wednesday, 22nd July, 2015 at 10 a.m. in this Chamber. I would like to urge all of you to plan to attend the consultative meeting to deliberate on this very important matter.

ADJOURNMENT

The Temporary Speaker (Sen. Ongoro): Hon. Senators, it is now 6:30 p.m. and we must interrupt the business and proceedings of the House. The House is hereby adjourned until tomorrow, 22nd July, 2015 at 2:30 p.m.

The Senate rose at 6:30 p.m.