

# PARLIAMENT OF KENYA

## THE SENATE

## THE HANSARD

**Tuesday, 30<sup>th</sup> June, 2015**

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

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

### PRAYERS

### COMMUNICATION FROM THE CHAIR

#### CONSULTATIVE MEETING WITH THE CS ON CASH TRANSFER PROGRAMMES FOR THE ELDERLY, PWDS AND OVCs

**The Deputy Speaker** (Sen. Kembi-Gitura): Hon. Senators, I have a communication to make with regard to the consultative meeting with the Cabinet Secretary for Labour, Social Security and Services.

As you may recall, the issue of cash transfer programmes has generated a lot of interest in this House with numerous concerns being raised on the status of its implementation. Concerns raised have in most occasions touched on the total allocation to cash transfer programmes for the financial years 2013/2014 and 2014/2015 and the percentage thereof allocated to each county; the schedule of disbursement for each county for the financial years 2013/2014 and 2014/2015; the number of persons who received cash payments in each county and each constituency; the mode of payment and whether the national Government has put in place a verification mechanism for disbursements; whether the data on disbursement is available and accessible to interested Kenyans in the offices of county commissioners and whether the national Government has conducted a census or has any report on the number of persons who are entitled to these payment in all the 47 counties.

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Hon. Senators, as you may recall, and arising from the numerous concerns, on 16<sup>th</sup> June, 2015, I directed that the Cabinet Secretary, Ministry of Labour, Social Security and Services be invited to come and address the various concerns at a meeting of the Committee on Labour and Social Welfare where all Senators would be invited. Consequently, on 19<sup>th</sup> June, 2015, my office invited the Cabinet Secretary to a consultative meeting to discuss cash transfer programmes for vulnerable groups namely; the elderly, persons with disabilities, Orphaned and Vulnerable Children (OVC).

Hon. Senators, this meeting has been confirmed for tomorrow, Wednesday, 1<sup>st</sup> July, 2015, at 10.00 a.m. in this Chamber. I would like to urge all of you to attend the consultative meeting with the Cabinet Secretary to deliberate on this very important issue.

## PETITION

### ALLEGED FLAWS IN THE BUSIA COUNTY BUDGET-MAKING PROCESS

**The Deputy Speaker** (Sen. Kembi-Gitura): Order, hon. Senators. Pursuant to Standing Order Nos. 2121(a) and 225(2)(b), I hereby, report to the Senate that a petition has been submitted through the Clerk of the Senate by one hon. Vincent Wanyama Obisa, a Member of the Busia County Assembly, concerning alleged flaws in the county budget making process for the Financial Year 2015/2016.

As you may be aware, under Article 119(1) of the Constitution, “Every person has a right to petition Parliament to consider any matter within its authority including enacting, amending or repealing any legislation.”

Hon. Senators, the salient issue raised in the said petition is that the Busia County Assembly is acting in contravention of Standing Order No.207 of its own Standing Orders by allowing the tabling in the Assembly of the Report of the Budget Estimates Committee for the Financial Year 2015/2016 which was prepared and tabled in breach of the Assembly’s Standing Orders and without taking into account the views of any of the sectoral committees of the Assembly as required by Standing Orders 207(5).

Further particulars of such breach are as follows:

(1) The select committees were not facilitated to discuss and review the estimates according to their respective mandates and submit reports to the County Budgets and Appropriations Committee within 21 days of being laid before the Assembly.

(2) The Budget and Appropriation Committee did not take into account the views of the select committee and the views of the County Executive Member responsible for Finance, pursuant to Standing Order No.207 before laying its report on the Budget Estimates in the Assembly.

(3) The Busia County Assembly Budget and Appropriation Committee proceeded to prepare a report on the budget estimates for the Financial Year 2015/2016 without

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requesting for, collecting or taking into account the views of any of the Select Committees of the County Assembly which is contrary to the law.

(4) The issue of the foregoing omissions was raised vide a Motion submitted to the Office of the Clerk of the Assembly on 8<sup>th</sup> June 2014 for onward transmission to the County Assembly Business Committee but before the Report of the Budget could reach the Floor of the House, steps were purportedly taken to send the Chairpersons of respective Sectoral Committees to air their views before the Budget and Appropriations Committee.

(5) The recommendations of the Sectoral Committees were not received within 21 days of tabling of the Budget Estimates before the Assembly as required by law.

Despite appeals to the Speaker of the County Assembly, the Deputy Speaker and the Clerk, no steps have been taken to ensure that the budget making process is conducted in accordance with the County Assembly Standing Orders and related statutes.

The issues in respect of which this petition is made are not pending before any court of law, constitutional or legal body.

Therefore, the petitioner requests the Senate to intervene and ensure that the budget making process by the Busia County Assembly is undertaken in compliance with the Assembly Standing Orders and other laws.

Finally, hon. Senators, pursuant to Standing Order No.226, I shall now allow comments, observations or clarifications in relation to the said petition for not more than 30 minutes.

**Sen. Billow:** Mr. Deputy Speaker, Sir, the matters raised by the petitioner regarding concerns that the budget making process was not followed as required in law and in the Standing Orders is a very serious issue. Therefore, I want to say that it is a matter of concern among many counties. Indeed, the executive and the county governments for some reasons are not complying with the requirements of the law in regard to the process. Budgets are crafted in a manner that leaves a lot to be desired and which is inimical to the process of law and to the Standing Orders of those institutions. This is very unfortunate because these county governments are new entities.

The reason why we have county assemblies in the Constitution is to allow people in the counties to exercise their opinion and inputs in the whole process of budget making through their elected representatives. The county assemblies are not effectively playing that role. We have a situation where the process of budget making is put into ridicule. I appreciate the fact that the people of Busia County have brought this matter to the Senate to be looked at. Now that the budgets are being finalized today in many counties, there are many counties which also have a concern in this regard---

**The Deputy Speaker** (Sen.Kembi-Gitura): Sen. Billow, you are only allowed to make brief comments. You must wind up now.

**Sen. Billow:** Mr. Deputy Speaker, Sir, okay. I want to urge the county governments to put the interests of the counties first in the process of preparing their budgets because there is a lot at stake. There is the whole process of ensuring that the

priorities for the projects are properly determined and there is compliance with the County Integrated Development Plans (CIDPs).

In view of the fact that this petition will raise those fundamental issues, I want to urge county governments and particularly the county assemblies to play their role effectively because if those budgets are not passed procedurally, the Controller of Budget will still have to return them. This House takes note of that petition. It is important that we thank those who brought the petition before this House.

**The Deputy Speaker** (Sen. Kembi-Gitura): I allowed you more time because you are the Chairman of the relevant Committee to which I am going to commit this petition in due course. There is a lot of interest shown on this petition; I will allow you a maximum of two minutes to make your interventions before we conclude.

**Sen. Okong'o**: Mr. Deputy Speaker, Sir, the issues raised in the petition from Busia County are cross-cutting. Most counties have flouted the fundamentals in the Constitution, especially that of public participation. This is because of the fact that the county executives are the exchequer for the county assemblies, thereby; the Members of County Assembly (MCA) who support those executives become an appendage. They take those MCAs to some hotel outside the county and pass very frivolous budget estimates. When giving your directions, it is important that this House and the relevant Committee take appropriate actions to arrest this kind of situation.

**Sen. Kagwe**: Mr. Deputy Speaker, Sir, while accepting and agreeing that according to the Constitution, it is the right of every citizen to petition matters regarding misuse of resources at the county government level, we must also at some point set a standard of what constitutes a petition. This morning, we had a petition from Bomet County at the Committee on Finance, Commerce and Budget meeting and the quality of the petition and what has been petitioned shows that there is a lot that needs to be done.

Whereas we agree and accept that there has to be some way in which this House can set some standards for the minimum requirement constituting a petition, otherwise, we are going to deal with hearsay and documents that do not meet basic accusations and threshold of what could amount to a chargeable document at committee level. I think it is important for this House to address this issue.

There is a notion out there that at the end of every year, money that has been allocated to the county governments must be exhausted by the county governments or it be returned to the National Treasury. It is important for this House to clarify that once money is assigned to a county by this House, it cannot be reverted to the national Government irrespective of whether the money has been spent at the end of the year or not. This highlights the importance of having capacity at the county assembly level particularly the MCAs who are not able to direct as such and oversight the expenditure towards the end of the year.

**The Deputy Speaker** (Sen. Kembi-Gitura): Your time is up, Senator.

Hon. Senators, before you proceed with that debate, let me make a short Communication.

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## COMMUNICATION FROM THE CHAIR

VISITING DELEGATION FROM THE CPA,  
UNITED KINGDOM BRANCH

**The Deputy Speaker** (Sen. Kembi-Gitura): Hon. Senators, I am pleased to acknowledge and to welcome to the Senate this afternoon a delegation from the Commonwealth Parliamentary Association (CPA), United Kingdom Branch, who are seated at the Speaker's Gallery. I request members of the delegation that when your name is called out, you stand so that you may be acknowledged in our usual Senate tradition. We have the following:-

- (1) Rt. Hon. Lord Steel of Aikwood - Member, House of Lords, UK;
- (2) Rt. Hon. Baroness Armstrong - Member, House of Lords, UK;
- (3) Hon. Pauline Latham - Member, House of Commons, UK; and,
- (4) Hon. Gavin Shuker- Member, House of Commons, UK

The delegation is accompanied by:

- (1) Ms. Hatty Cooper - Head of International Outreach at Commonwealth Parliamentary Association (CPA-UK); and,
- (2) Ms. Racheal Cox - Africa Programme Manager (CPA-UK)

The Members are in Nairobi to attend a roundtable Conference on gender quotas in Parliament which has been organized by CPA-UK and the Kenya Women Parliamentarians Association (KEWOPA), which concludes today.

Honorable Senators, I take this opportunity on behalf of the Senate and on my own behalf to wish the delegation a happy and fruitful visit not just to the Senate but to this beautiful country called Kenya.

Thank you very much.

We shall proceed---

What is it, Sen. (Dr.) Khalwale?

**Sen. (Dr.) Khalwale:** Mr. Deputy Speaker, Sir. It is indeed very nice to have the delegation before us. Allow me to request them to convey to the United Kingdom (UK) our congratulations for the recently concluded elections which freed Britain from a coalition Government which they borrowed from us.

*(Laughter)*

**The Deputy Speaker** (Sen. Kembi-Gitura): Thank you, Sen. (Dr.) Khalwale. I am sure that they have got your message and that they are going to convey it when they go back to the UK.

Is Sen. Mutula Kilonzo Jnr. around?

**Sen. Mutula Kilonzo Jnr.:** Yes, I am, Mr. Deputy Speaker, Sir.

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**The Deputy Speaker** (Sen.Kembi-Gitura): You are not in your usual place. That is why I am confused.

**Sen. Mutula Kilonzo Jnr.:** I have been displaced.

**The Deputy Speaker** (Sen. Kembi-Gitura): Please, proceed, Sen. Mutula Kilonzo Jnr.

**Sen. Mutula Kilonzo Jnr.:** Thank you, Mr. Deputy Speaker, Sir. Allow me to also welcome the delegation from the UK. Sen. (Dr.) Khalwale and I were treated very well last year when we attended the CPA Conference on Oversight by Parliamentary Public Accounts Committees. On my own behalf and that of the people of Makueni County, we send warm greetings to your House of Parliament and thank you for visiting us.

**The Deputy Speaker** (Sen. Kembi-Gitura): Please, proceed, Sen. Sijeny and you are going to be the last one.

**Sen. Sijeny:** Thank you, Mr. Deputy Speaker, Sir. I also wish to welcome our colleagues from the United Kingdom especially those from the Upper House. Welcome to the “Upper House” in Kenya.

I wish to confirm that we have shared a lot. They have a rich experience in politics especially on gender issues. We have had very fruitful deliberations, and I wish to thank you very much.

**The Deputy Speaker** (Sen. Kembi-Gitura): Thank you very much all of you.

*(Sen. (Dr.) Khalwale consulted loudly)*

Order, Sen.( Dr.) Khalwale. The consultations are too loud.

*(Resumption of debate on Petition)*

**The Deputy Speaker** (Sen. Kembi-Gitura): Hon. Senators, we shall have strictly two minutes to contribute so that each of you can have a chance before 3.15pm. This is because there is a lot of interest on this petition.

**Sen. Khaniri:** Thank you, Mr. Deputy Speaker, Sir. Mine will even be shorter than the two minutes. I just want to state that budget approval is one of the key functions of any assembly and particularly our county assemblies. It is absolutely important that when they are going through this process, they follow the laid down procedures and the laws as written in our books of laws. The issue of getting public view is paramount.

It is so saddening to hear that this is happening in the County Assembly of Busia, in the former Western Province where I come from. As we know, in this region, the poverty level is very high and development is very low. These are the people who need to see the full benefits of devolution. I thank the Member of County Assembly (MCA), Mr. Vincent Wanyama, for bringing this to our attention. I ask you to refer this petition as provided for in the Standing Order No.227 to the relevant Committee and that as they

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consider it, they must remember that they have 60 days within which to report back to this House. This is a matter that is very critical and I ask the Chairman to expedite it so that we resolve this matter before the end of the 60 days as provided for in the Standing Orders.

Thank you.

**Sen. (Prof.) Lonyangapuo:** Thank you, Mr. Deputy Speaker, Sir. I also join my colleagues in raising my voice with regard to the way in which county governments are not following the laid down procedures to the extent that when the budget is done, they are tailor-made to certain projects which are not necessary in the counties. I have in mind when it is the end of the financial year like today, you will be surprised that every county government is quick to transfer money from every department to some very strange votes so that the money can be exhausted. I wonder what happened to the idea of participation by the county assemblies in budgeting. Every budget item must be spent.

We also need to make sure that no money is returned to Nairobi. So, what is the hurry of taking money on small items like county bursaries which are controlled by one man, the Governor? We do not know how the money has been spent. We end up dishing out money and the county assembly is not aware. This practice has to stop.

**Sen. Muthama:** Thank you, Mr. Deputy Speaker, Sir. I also stand to raise my concerns with regard to what is happening in the counties. Fortunately or unfortunately, those who were elected in the counties, more so as Governors, are either former senior Government officers, Ministers or Assistant Ministers. What surprises everybody in this country is the way the Chief Executive Officers (CEOs) in the counties are behaving. The issue that was brought by Busia County is not just confined to Busia County. This is a clear illustration of what is happening in the other counties.

We have seen counties where budgets are passed by the county assemblies but the implementation is different. Some money is used to plant flowers by the road side while others spend that money to cut grass while forgetting the needs of the people. The hope of Kenyans is in the Senate. We must act decisively.

I tend to disagree with Sen. Kagwe that some of the petitions are very weak and do not deserve to be considered by this House. It is the right of every Kenyan to be heard by this House. To take a case to court and lose is not a problem. It is just one of the ways in which justice should be seen to exist. The Senate Committee must act decisively within 60 days to make sure that all the petitions which have been brought to this House have been dealt with. Since the court has given a ruling that the Senate has got the powers to summon the Governors that should be the way to go.

Thank you.

**Sen. Ong'era:** Thank you, Mr. Deputy Speaker, Sir, for giving me this opportunity. I support that petition and that more should come to this House in any manner and form because this is the only way that we are going to know what is happening in the counties and whether the money that we are allocating to the counties is being properly spent. It is a pity that the Busia County Assembly did not follow the laid

down procedures because budget making process is a very important institution. It grieves to note that in Kisii County, as I speak today, the MCAs, over 62 in number, are misusing resources by going to have retreats in Kisumu to discuss the budget.

I believe that the most important thing in any budget making process is public participation. I do not see why many counties, not only in Kisii County but others too, have to spend so much money for the MCA to interrogate and discuss the budget before they approve it. I feel that there is a lot of corruption that is going on in the counties where governors are spending money in an *ad hoc* manner to buy MCAs and have their budgets approved in the way that they like.

I support the petition and request the Committee on Finance, Commerce and Budget not to only look at Busia County but all the 47 counties. I believe many issues are done under the table including the laid down regulations not being followed.

**Sen. Sijeny:** Thank you, Mr. Speaker, Sir. I also wish to support the petition. This is a very useful and very important way. This is because it is not only a means of enabling us to monitor and evaluate how counties are working but also helps us to stop these disputes right from the word go before they escalate into violence.

We have seen the problems in Makueni County. We have received some petitions from Machakos and Busia counties and many others. If you go to the root cause, it always comes down to the budget. When we see that money is even stuck or counties are not utilizing all the money sent to them, it is because the budget lines were not clear, were passed very late or someone has misappropriated the purpose for what the budget line had been created. It is, therefore, causing issues.

Like now, the Ministry of Health even wants to take back to the national Government the devolved services within the healthcare. They have even presented a Bill at the National Assembly that wants to take back Level 5 hospitals to the national Government. This is all because of the problems within counties concerning budgets which have to be taken into account. We have to expedite and handle these issues very well so that the gains that Kenyans have achieved are not diluted.

**Sen. Mutula Kilonzo Jnr.:** Thank you, Mr. Speaker, Sir. I have looked at the petition and I entirely support the views that we should allow any person under Article 119 to file a petition. My only concern is the timelines for budgets. As at the end of today, all counties must present their budgets and pass them as required by law. I am also concerned about the prayers sought for by the petitioner here in terms of nullification of the reports of county assemblies. I am concerned that as you proceed to send this to the Committee on Finance, Commerce and Budget where I sit, I am not certain this Committee or the Senate can nullify a report of a county assembly.

I think under Standing Order No.223, as this petition is being approved, there should be a method of verifying and cross-checking that all the parameters set out under our Standing Orders have been complied with. Under Standing Order No.223, there should have been a section to say that the petitioner had sought to resolve this in the



methods provided under the Standing Orders and those methods were not complied with or followed. That provision is not in this Petition and, therefore, ---

**The Deputy Speaker** (Sen. Kembi-Gitura): Which part are you reading?

**Sen. Mutula Kilonzo Jnr.:** Mr. Speaker, Sir, I am reading Standing Order No.223(f) which states as follows:

“Indicate whether any methods have been made to have the matter addressed by a relevant body ---”

**The Deputy Speaker** (Sen. Kembi-Gitura): Yes, but if you listened to the petition, you would have heard that he has sought disputability to the Speaker of the county assembly, the Deputy Speaker and the Clerk but nothing has happened. That is the reason he has brought it before us. We cannot be having two petitions. The one I am reading is the authoritative one. I have no idea what you have.

**Sen. (Dr.) Khalwale:** Thank you, Mr. Speaker, Sir. At the end of this exercise, I hope that the Committee will come up with firm recommendations especially on two issues. One is the secrecy surrounding budgets in county governments. MCAs and members of the public have no idea of what budgets are passed by their respective assemblies. If they were allowed to participate, you would not have found items like pornography in the budget of Bungoma County, entertainment in Bomet County and Kakamega County where money is voted for carrying a chair for the Governor to sit from the headquarters to funerals. It would not have found as you found in Machakos, a provision of a confidential account where the Governor can spend as and when he wishes. We must allow the public and MCAs to interrogate budgets.

Finally, the issue of revenue collected at source within counties forms a central role in breaching the difference between the amount of money that the Senate gives to them and the amount that the government wants to spend. You cannot have a provision for revenue collection at source when MCAs and the public have no idea what county governments are collecting. Today, all county governments are under-reporting. In counties like Kakamega and Kisii where they were collecting an average of Kshs2 billion in a financial year, they are collecting even less than a quarter of that.

I support.

**Sen. (Dr.) Machage:** Thank you, Mr. Speaker, Sir. A lot has to be done to direct counties, MCAs and citizens on what needs to be done in getting a petition to be heard by the Senate. In the former Committee of Rules and Privileges of the Tenth Parliament which I served in, we came up with the Standing Orders, which included Standing Order No.223 as quoted by Sen. Mutula Kilonzo Jnr. We put the same also in the Standing Orders of county assemblies. However, it is not well known by the people. I think the Senate needs to get a whole page of print and advertise Standing Order No.223 for people to know the procedure to be followed to petition the Senate. In any case, I believe the Speaker’s office goes through these petitions and most of them will reach the Committee after having been very well interrogated. I have seen some referred or returned from Migori County. I remember one was returned because it did not meet the threshold.

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Therefore, it may not be that big an excuse not to expedite our responsibilities of looking at those petitions, however shoddy they may be. It is a cry from the people and we must give due diligence to everything they say. The problem is the law. Even if we say this budget is improper, what can we do? The law does not allow us to reject a budget or as well put by the court, for us to refuse transmission of money to the governor's exchequer. These laws need to be relooked at and amended so that this House can have some nails to use.

*(Sen. Karaba raised his hand)*

**The Deputy Speaker** (Sen. Kembi-Gitura): Why are you raising your hand?

**Sen. Karaba:** Mr. Deputy Speaker, Sir, thank you for allowing me to contribute to---

**The Deputy Speaker** (Sen. Kembi-Gitura): Order! I have not allowed you to contribute. I want to know what you do not have. Do you have the necessary tools of trade?

**Sen. Karaba:** Mr. Deputy Speaker, Sir, I was given a temporary card here because mine got lost sometimes ago. I was wondering why it is not working---

**The Deputy Speaker** (Sen. Kembi-Gitura): I have never known your card to work, Sen. Karaba.

**Sen. Karaba:** Mr. Deputy Speaker, Sir, it has never worked because I think the system is faulty.

**The Deputy Speaker** (Sen. Kembi-Gitura): You have two minutes to contribute.

**Sen. Karaba:** Thank you, Mr. Deputy Speaker, Sir. I was going to say that petitions of any kind coming to this House should be listened to. This is because we have not had time to tell our people in the counties what kind of petitions are supposed to be brought here and how they should be addressed. That could be the fault of the Senate. You know what happened to the money that we were supposed to use for this exercise. We now do not have money to convene meetings so that we can educate them on how such petitions are supposed to be drafted and transmitted to the Senate.

Mr. Deputy Speaker, Sir, if we do not accept some of these things, we will be blamed. You are aware that there are some counties that have already bought dogs for security reasons. In a certain county, they are being fed at the cost of Kshs3 million per month and this is budgeted for. We are failing in our duties because we are mandated by the Constitution to tell them some of the issues they are---

**The Deputy Speaker** (Sen. Kembi-Gitura): Your time is up, Sen. Karaba. Thank you, Senators, for that ventilation. Having listened to you and pursuant to Standing Order No.227(1), the petition stands committed to the Standing Committee on Finance, Commerce and Budget. In terms of Standing Order No.227(2), the Committee will be required in not more than 60 days from today to report to the petitioner by way of a report addressed to the petitioner and laid on the Table of the Senate. Thank you.

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Next Order!

### PAPERS LAID

REPORT OF THE AUDITOR-GENERAL ON THE FINANCIAL OPERATIONS OF LAMU COUNTY ASSEMBLY FOR THE PERIOD 1<sup>ST</sup> JULY, 2013 TO 30<sup>TH</sup> JUNE, 2014

REPORT OF THE AUDITOR-GENERAL ON THE FINANCIAL OPERATIONS OF SIAYA COUNTY EXECUTIVE FOR THE PERIOD 1<sup>ST</sup> JULY, 2013 TO 30<sup>TH</sup> JUNE, 2014

REPORT OF THE AUDITOR-GENERAL ON THE FINANCIAL OPERATIONS OF HOMA BAY COUNTY ASSEMBLY FOR THE PERIOD 1<sup>ST</sup> JULY, 2013 TO 30<sup>TH</sup> JUNE, 2014

REPORT OF THE AUDITOR-GENERAL ON THE FINANCIAL STATEMENTS OF KISII COUNTY GOVERNMENT – THE EXECUTIVE AND THE COUNTY ASSEMBLY – FOR THE 16 MONTHS PERIOD ENDED 30<sup>TH</sup> JUNE, 2014

REPORT OF THE AUDITOR-GENERAL ON THE FINANCIAL STATEMENTS OF THE COUNTY GOVERNMENT OF KISUMU FOR THE 16 MONTHS PERIOD ENDED 30<sup>TH</sup> JUNE, 2014

REPORT OF THE AUDITOR-GENERAL ON THE FINANCIAL STATEMENTS OF THE COUNTY GOVERNMENT OF SIAYA FOR THE 16 MONTHS PERIOD ENDED 30<sup>TH</sup> JUNE, 2014

A SPECIAL AUDIT REPORT FOR THE AUDITOR-GENERAL ON THE WORKS ON ROADS IN TRANS NZOIA COUNTY

**Sen. (Dr.) Khalwale:** Mr. Deputy Speaker, Sir, I beg to lay the following Paper on the Table of this Senate today Tuesday, 30<sup>th</sup> June, 2015:-

Report of the Auditor-General on the financial operations of Lamu County Assembly for the period 1<sup>st</sup> July, 2013 to 30<sup>th</sup> June, 2014.

Report of the Auditor-General on the financial operations of Siaya County Executive for the period 1<sup>st</sup> July, 2013 to 30<sup>th</sup> June, 2014.

Report of the Auditor-General on the financial operations of Homa Bay County Assembly for the period 1<sup>st</sup> July, 2013 to 30<sup>th</sup> June, 2014.

Report of the Auditor-General on the financial statements of Kisii County Government – the Executive and the County Assembly – for the 16 months period ended 30<sup>th</sup> June, 2014.

Report of the Auditor-General on the financial statements of the County Government of Kisumu for the 16 months period ended 30<sup>th</sup> June, 2014.

Report of the Auditor-General on the financial statements of the County Government of Siaya for the 16 months period ended 30<sup>th</sup> June, 2014.

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A special audit report for the Auditor-General on the works on roads in Trans Nzoia County.

**The Deputy Speaker** (Sen. Kembi-Gitura): As a matter of interest, Sen. (Dr.) Khalwale, before you lay the documents, those are five reports for five county governments.

**Sen. (Dr.) Khalwale:** Mr. Deputy Speaker, Sir, they are eight reports in the sense that they are reports on five counties, but in some of the counties, there are two different reports on the assembly and the executive.

**The Deputy Speaker** (Sen. Kembi-Gitura): Are these reports pilot or do you expect to get a report pertaining to each county?

**Sen. (Dr.) Khalwale:** Yes, Mr. Deputy Speaker, Sir. The reports started coming in from last week and so we are hopeful that the reports will continue coming in.

**The Deputy Speaker** (Sen., Kembi-Gitura): Are you going to lay them as they come?

**Sen. (Dr.) Khalwale:** Yes, Mr. Deputy Speaker, Sir. I expect that by the end of this week, I should have laid all of them. If that does not happen, then we will have to push the Auditor-General. He had earlier on committed himself that he was going to bring them all at once and so we are equally surprised that they have not all come at once.

**The Deputy Speaker** (Sen. Kembi-Gitura): What is the explanation?

**Sen. (Dr.) Khalwale:** So far, we have not been in the loop of communication with him, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. Kembi-Gitura): Before Sen. (Dr.) Khalwale lays the documents on the Table, do you want to raise any point of order? If he lays them, it might be too late for you.

**Sen. Billow:** On a point of order, Mr. Speaker, Sir. It is more or less the same question you had asked. I was also wondering why the reports are coming in, piecemeal. I was particularly concerned about my own county's report because when an audit is done, there are two stages; there is the field audit and once it is completed, then it comes to Auditor-General for him to review and sign the report. I am getting reports that their field work has been completed with some qualifications – You know what qualified audit report means; a disclaimer on opinion and something like that. The fact that it is delaying in the Auditor-General's office for weeks or months is a concern to some of us. Would you kindly ensure that these reports are expedited so that the delay does not lead to some other unsatisfactory perceptions?

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. (Dr.) Khalwale, it appears that this might generate some interest. Sen. (Dr.) Machage, are you appearing on my screen for something else or the same?

**Sen. (Dr.) Machage:** Mr. Deputy Speaker, Sir, I want to lay another Paper.

**The Deputy Speaker** (Sen. Kembi-Gitura): We will come to that.

**Sen. Musila:** Mr. Deputy Speaker, Sir, I just want to remind the Chair that in the last financial year, only about five audit reports for five counties were produced which

we never got to debate. Now he has given us another five or six. You remember that when we were debating the amendments to the Auditor-General Act, we insisted that the Auditor-General must open offices in all the counties because this does not really mean anything. I was anxiously waiting to hear him read out the Kitui County audit report and now he has skipped it. Maybe he will mention it next year. Could we ask the Committee to prevail upon the Auditor-General to ensure that all the 47 counties are audited very quickly and that we get these reports; otherwise, we will get these reports when it is too late?

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. (Dr.) Khalwale, are you not concerned as the Chairman of that Committee? I would like to hear from you whether it is the right of the Senate and the respective Senators to see the audited reports for their respective counties or whether the Auditor-General is doing us a favour by bringing reports in piecemeal? I want to understand what possible explanation there is that so many counties have not had their audited reports and brought to Senate because that is a core mandate of the Senate; to examine these audited reports and to make recommendations as necessary. At this rate, if we are going to get five per month or per year as the case may be, then we shall be neglecting our core duty, which is to protect counties and the audit report is basically what should show us whether or not there has been any malpractice in a county.

Before you talk, I can see Sen. Muthama wants to speak.

**Sen. Muthama:** Mr. Deputy Speaker, Sir, I am very concerned about what is going on. As a country, we have the Auditor-General's Office and yet 2013/2014 audited accounts are not there. We are now in the 2015/2016 Financial Year. There are no audited accounts reports yet years are piling up. What is the use of having reports three years down the line? Whom shall we interrogate them? Such a report is something to discuss here but we cannot take it anywhere.

We want the Auditor-General to know, through the Chairman, that we have concerns about those reports. We want to discuss them so that Kenyans can know that we are working. Money has been stolen and lost. The position is that documents are being doctored now and there is no question about that. What is holding the production of these reports? Does it mean that in 12 months, nothing has happened in the 47 counties?

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. Muthama, I do not want to cast any aspersions at the moment. That is why we need to see the audited reports in good time.

*(A phone rang)*

Is that somebody's phone?

**Sen. Mutula Kilonzo Jnr.:** No, it is not.

*(Laughter)*

**The Deputy Speaker** (Sen. Kembi-Gitura): I heard Sen. Mutula Kilonzo Jnr. saying “no”. That sounded like a phone ringing.

Sen. Mutula Kilonzo Jnr., you will be the last one to make an intervention.

*(Loud consultations)*

Order, Senators. Let us consult in low tones, please.

**Sen. Mutula Kilonzo Jnr.:** Mr. Deputy Speaker, Sir, this issue is very serious. The Committee on Finance, Commerce and Budget has received a report on the special audit conducted on Narok County. That should be on the list.

Concerning the dissolution of Makueni County, a Report that was presented was the audit of the County Assembly. So, there appears to be an imbalance as to what the Auditor-General is doing.

Therefore, Mr. Deputy Speaker, Sir, your direction should be that we should not get piecemeal reports. Allowing my good friend, Sen. (Dr.) Khalwale, to table five reports is like allowing the Auditor-General to do work in installments until the end of this year. That is not acceptable.

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. (Dr.) Khalwale, you have heard the sentiments from your colleagues. Could I have your response before you table the Papers?

**Sen. (Dr.) Khalwale:** Mr. Deputy Speaker, Sir, I have heard you and my colleagues. I want to confirm to you that even before you raised the issue, I shared the same concerns with you. So far, I have confronted the Auditor-General. I was completely shocked when he told me that the reports are ready. He said that he would send them directly to county assemblies and the National Assembly and that they would be copied to the Senate. A red light flashed in my mind and I told him that, “Mr. Auditor-General, please, go and look at the provisions of the Constitution. When it comes to the laying of papers, Reports do not come to the Senate by way of being copied to but as being primarily laid in the Senate together with the National Assembly.”

Mr. Deputy Speaker, Sir, I want to talk about the issue of the balance of the accounts that we did not table here. If Members were paying attention, they would have heard – from some of the documents that I have tabled – that the documents have referred to “16 months preceding 30<sup>th</sup> June, 2014”. My assumption is that it is 16 months because it includes the four months of the first year of devolution which started about March. That will be in the details.

However, Mr. Deputy Speaker, Sir, going forward, I want to confirm to the House that I will not wait until the end of the week. Having tabled these documents, I will go directly to the Office of the Auditor-General tomorrow morning. Thereafter, I will provide an on-the-spot answer tomorrow afternoon about the status of tabling of the balance of the documents.

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Thank you very much, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. Kembu-Gitura): Thank you very much, Sen. (Dr.) Khalwale.

Now, you may table the Papers.

*(Sen. (Dr.) Khalwale laid the documents on the Table)*

Thank you.

I want a comprehensive answer on that tomorrow. If the issue continues like this, we may have to make further communication regarding the same to the Auditor-General through the Clerk's Office.

**Sen. (Dr.) Khalwale:** Thank you, Mr. Deputy Speaker, Sir.

I request that as I go tomorrow, the Clerk's Office makes available this HANSARD record. I would like to carry it with me as I go to see the Auditor-General.

Mr. Deputy Speaker, Sir, equally important, our fear is that upon the completion of the field work as put by the Senator for Mandera County, the process has taken too long at the Auditor-General's Office. That concerns me because when you allow field reports to sit for that long in Nairobi without them coming here, you give room for interference on the qualified aspects of the reports. However, because of the passion I have for the fight against corruption, when I will be going through the Report that came from Nairobi, I will also be fed with original reports as they took place in the field. May the Auditor-General not ask me how I will get them. I know how I will get them.

As I speak now, I already have the ones about what happened on the ground in Migori County.

**The Deputy Speaker** (Sen. Kembu-Gitura): I direct that you get the HANSARD Report that you require before going to the meeting tomorrow.

Sen. (Dr.) Machage, do you have some papers to lay?

*(Sen. (Dr.) Machage nodded)*

REPORT OF THE COMMITTEE ON HEALTH ON COAST  
PROVINCIAL GENERAL HOSPITAL

**Sen. (Dr.) Machage:** Bw. Naibu Spika, naomba, kwa heshima na taadhima kuwasilisha Ripoti hii kwenye Meza ya Seneti:-

Hii ni Ripoti ya Kamati ya Afya kuhusu Hospitali Kuu ya Mkoa wa Pwani.

*(Sen. (Dr.) Machage laid the document on the Table)*

**The Deputy Speaker** (Sen. Kembu-Gitura): Thank you.

That brings us to the end of Papers Laid.

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Next Order!

### STATEMENTS

**The Deputy Speaker** (Sen. Kembi-Gitura): Hon. Senators, there are very many Statements listed. However, we have a Division after this. Let us see how issues will turn out.

Let us start with Members who had sought Statements. We have them on the appendix of the Order Paper.

Sen. Billow, do you have a Statement for Sen. Gwendu?

#### IMPLEMENTATION STATUS OF THE REPORT OF THE PRESIDENTIAL TASKFORCE ON PARASTATAL REFORMS

**Sen. Billow:** Mr. Deputy Speaker, Sir, I cannot see Sen. Gwendu around. Could I proceed?

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. Billow, it appears like Sen. Gwendu is not in. I request that you hold a little bit.

**Sen. Billow:** Mr. Deputy Speaker, Sir, I have seen her. I wish to respond to the Statement because it has been pending for the last three or four months. We have had the answer from March. However, every time we want to respond, she is normally not around. I will rather that if we cannot give it to the House, then we should drop the issue. I cannot be coming with the response every time.

**The Deputy Speaker** (Sen. Kembi-Gitura): What was it about?

**Sen. (Dr.) Khalwale:** On a point of order, Mr. Deputy Speaker, Sir. While you weigh the options on whether to drop the requisition for a statement or not, allow me to remind you of the bad old days when Members would sometimes raise issues and then run away from receiving an answer.

Mr. Deputy Speaker, Sir, the Statement interrogates the performance of the Jubilee Government. I have no reason to doubt the integrity of the Senator. However, the Senator being a Member of the Jubilee Government, she might have been put under pressure not to be here. Could you allow the response to come because it is the property of the House?

**The Deputy Speaker** (Sen. Kembi-Gitura): Order, Sen. Khalwale! The only thing that I would not allow is for you to deliberately want to transgress Standing Order No.90. I will not allow you to impute improper motive on your colleague. I think the main issue here is whether or not once a Statement is sought, it becomes the property of the House and whether or not we should wait for the people who sought the Statement to be here before it is issued. As far as I am concerned, at least, in the other House, when I was there, a question once sought became the property of the House.

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Be that as it may, I think it has been the trend here that Statements are only issued when the persons who sought them are in the House. But I think this is an issue that cannot just be reversed. I would request that the matter be put before the Rules and Business Committee (RBC) to reconsider that situation, so that we know whether a Statement, when the person seeking it is not in the House, is either dropped or because it is the property of the House, it is given regardless, so that it can be interrogated by those Members that have issues to interrogate the Statement on. But for today, I will not make that drastic ruling on the issue. I will refer the issue to the RBC, so that it comes out with a clear and sustainable position on what happens to Statements once sought.

**Sen. (Dr.) Machage:** On a point of order, Mr. Deputy Speaker, Sir. Whereas I appreciate your ruling on the matter, Sen. (Dr.) Khalwale has cast aspersions on a Member of this House. Would I, therefore, be in order to request that he either withdraws or gives us more light on this Jubilee issue and Statements in this House?

**The Deputy Speaker** (Sen. Kembi-Gitura): What did he say exactly?

**Sen. (Dr.) Machage:** He reminded you of the “bad old days,” I believe in the Ninth Parliament, where we were together with him, when Members would raise a question and then disappear, not to listen to the answer. He continued to say that, that might be the situation with regard to this Statement, where a Member, who is also a member of the Jubilee Government, has raised matters concerning the Jubilee Government and she might be uncomfortable as the answer is being read. It is not fair.

**The Deputy Speaker** (Sen. Kembi-Gitura): I thought he used the words to the effect that he wants to believe that this is not what has happened in this specific case. I think that is how I got him to say it; that he wants to believe that what was happening in the bad old days is not what has happened in this specific case.

**Sen. (Dr.) Machage:** Mr. Deputy Speaker, Sir, when you say, “this glass is half empty,” it is the same as saying, “this glass is half full.”

*(Laughter)*

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. Machage, if you insist on that line, I will look at the HANSARD.

Sen.(Dr.) Khalwale, you know my position on these issues. If you have taken the line that Sen. Machage says you have, I will ask you tomorrow to apologise. If you have said what I think I heard you to say, then I think that you are within the ambit of our proper rules of debate. So, we shall do that tomorrow.

Sen. Obure, do you have a point of order?

**Sen. Obure:** Mr. Deputy Speaker, Sir, I just wanted to appreciate the direction that you have given, to refer this matter to the RBC. I do hope that when the RBC considers this matter, it will uphold the position that once a Statement has been requested here by a Member, it becomes the property of the House. This is because all of us cannot

raise the same issue. Once it has been raised, we wait for an answer. I do hope that they will be able to uphold that principle.

**The Deputy Speaker** (Sen. Kembi-Gitura): I hear you, Senators. The issue that Sen. Billow has raised is very important, because we cannot keep bringing the same Statement on the Order Paper and the person who sought it does not seem interested in following it up. But at the same time, I am sure that there are Senators who are interested in interrogating that Statement. Let us see how the RBC will deal with it.

Sen. Sang, do you have the Statement that was requested by Sen. Khaniri?

BOUNDARY CONFLICT BETWEEN RESIDENTS OF  
VIHIGA AND KISUMU COUNTIES IN MASENO

**Sen. Sang:** Mr. Deputy Speaker, Sir, I do not have the answer yet. But I just want to report that we did get in touch with the Cabinet Secretary for Interior and Coordination of National Government. If you look at the Statement sought, the bigger component of it is about the boundaries and the Cabinet Secretary for Interior and Coordination of National Government did forward the same to the Independent Electoral and Boundaries Commission (IEBC). As a Committee, we discussed and resolved to invite the IEBC to come and address a number of issues on boundaries, including a number of other Statements that were sought in this House earlier.

The Ministry of Interior and Coordination of National Government made it clear that in terms of security, the Government has deployed enough security officers and they are on alert, just in case there are other issues arising out of the same. But as a Committee, we have taken the position to invite the IEBC to come and address not only this particular question, but all the other issues.

Again, you will remember that our Committee is in the process of finalizing a proposed Bill, pursuant to the Motion raised in this House by Sen. Mutula Kilonzo Jnr., towards the setting up of an independent commission to review county boundaries. That is something that we are almost done with and it should be going for First Reading. So, as a Committee, we have taken up the matter on those two fronts.

Mr. Deputy Speaker, Sir, that is the progress that I have to report on this matter.

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

**Sen. Khaniri:** Mr. Deputy Speaker, Sir, of course, I am not satisfied. I am sure you were in the House last week when this matter generated a very heated debate. I made it very clear that the Statement was in two bits. Regarding the bit of resolving the boundary dispute, I do agree with the Senator. I think the ultimate solution will be the passage of Sen. Mutula Kilonzo Jnr.'s Bill. But there is the aspect of security. This is a question that was raised on the Floor of the House and I expect a comprehensive answer. Just coming here to tell us that the Cabinet Secretary has assured him that they have deployed enough personnel is not good enough. Can that be on record in form of a proper statement signed by the Cabinet Secretary as we have always done, so that they can give us that assurance on the Floor of the House?

**Sen. Musila:** Mr. Deputy Speaker, Sir, I just got concerned when Sen. Sang talked about the IEBC and the boundaries. These are serious issues concerning boundaries of counties. I do not think that the IEBC has anything to do with these boundaries. These are not electoral boundaries but county boundaries, where the national Government ought to involve itself. As you are aware, in virtually every place including Kitui County, there are boundary disputes within counties and not electoral boundaries. So, the IEBC has nothing to do with this, and I can see Sen. Sang agreeing.

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

*(Sen. (Dr.) Khalwale stood up in his place)*

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

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. (Dr.) Khalwale, you know what you are supposed to do when you want to make a point of order.

Proceed, Sen. (Dr.) Khalwale.

**Sen. (Dr.) Khalwale:** Sorry, Mr. Deputy Speaker, Sir, I pressed the microphone because I thought you will give room for further clarifications. I pressed the microphone to seek further clarification on that answer.

**The Deputy Speaker** (Sen. Kembi-Gitura): Still, it could have been an intervention but not a chance to debate.

**Sen. (Dr.) Khalwale:** Mr. Deputy Speaker, Sir, am I allowed to continue?

**The Deputy Speaker** (Sen. Kembi-Gitura): Yes, go on but be very brief.

**Sen. (Dr.) Khalwale:** Mr. Deputy Speaker, Sir, mine is to draw the attention of the Chairperson to the provisions of Article 188 of the Constitution. It is under Article 188 that we are proceeding on this matter. The Chairperson who also happens to be a renowned legal mind in this country cannot run away from the provisions of Article 188 to hide in the ignorance of somebody else, that the Independent Electoral and Boundaries Commission (IEBC), should be consulted; that should not be allowed.

In this particular issue, IEBC has no role. The issue of boundaries is completely outside the mandate of IEBC. Under this Constitution, you only talk about IEBC when you are delineating the boundaries of wards.

Mr. Deputy Speaker, Sir, could you direct this Committee through this Chairperson to stop hiding in the bush, go on directly and bring us an answer from the Government? These are serious issues taking place between the Governors of Vihiga and Kisumu counties. It is something which we, as the leadership of the two regions, would like to see come to an end because some unscrupulous people want to play politics with our people who had been living together peacefully.

*(Applause)*

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. Sang, you appreciate that this is an extremely serious issue. Please, switch off the microphone and take your seat. This Statement was sought for the first time on 5<sup>th</sup> March, 2015 yet it has not been given. You notice that it is an issue that has generated a lot of interest in the House. In fact, first and foremost, why has it taken so long considering its magnitude?

Secondly, I am also wondering whether it is in the right Committee because it appears to have taken on the dimension of insecurity. Are you sure it should be in your Committee or in the Committee on National Security and Foreign Relations? That is one issue that I would like you to consider. If you feel that you are seized of the matter as the Committee on Legal Affairs and Human Rights, then I would like to have a definitive answer from you on when you expect to issue a Statement. It cannot keep being deferred indefinitely. I do not think it is right; it is not a satisfactory position taking into account what the House has been informed over and over again about the situation on that boundary.

**Sen. Sang:** Mr. Deputy Speaker, Sir, when this matter came up last week, I pointed out to the Speaker that as a Committee, we realised that the Statement that was sought by Sen. Khaniri ought to have gone to the Committee on National Security and Foreign Relations but as a Committee, once an issue has been directed to our Committee, we did not have the liberty to change that. I guess what informed the Speaker's initial direction that this request comes to the Committee on Legal Affairs and Human Rights, was on the boundary element of it.

We forwarded this to the Attorney-General (AG) and he "sat on it" but he finally indicated to us that this ought to have gone to the Ministry of Interior and Coordination of National Government. We took it up as a Committee to follow it up with the Ministry of Interior and Coordination of National Government. I agree with Sen. Khaniri that we can have that assurance by the Minister for Interior and Coordination of National Government in writing on the element of security.

I requested the Chairperson of the Committee on National Security and Foreign Relations and she gladly accepted to expedite the process of this House accessing that Statement.

On the bit raised by Sen. Musila and Sen. (Dr.) Khalwale, I agree and that is why I indicated that pursuant to the Motion brought to this House by Sen. Mutula Kilonzo Jnr., the Committee on Legal Affairs and Human Rights is working on a proposed Bill to set up an independent commission to review and determine county boundaries because that is provided for under the Constitution. I said that we have done that and we are fast tracking it. We hope that the final proposal will be available for publication within the next two weeks. We are already aware of that particular matter raised by Sen. Musila and Sen. (Dr.) Khalwale.

Mr. Deputy Speaker, Sir, since we are interested in looking at this matter, when the Minister for Interior and Coordination of National Government indicated to us that on boundary issues, we did not find it inappropriate to invite IEBC just to get their position

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on this particular issue. However, as a Committee, we are already working on that proposed Bill to ensure that we are able to set up an independent commission to look into county boundaries in this country.

Also, a number of other issues have been raised about the mandate of the IEBC relating to setting up of diaspora voting, setting up of polling stations and so on. As a Committee, we agreed that one of the agenda that we will request the IEBC to address would still be the issue of boundary. If the answer from them is that the county boundary is not their issue, and they have not done anything towards that, we will take it as that but we are working on the other issues as a Committee.

Let me give the commitment that, possibly, by Thursday this week, we will have the written Statement from the Ministry of Interior and Coordination of National Government on the aspect of security on the simmering tension within that particular border.

**The Deputy Speaker** (Sen. Kembi-Gitura): Thank you, Senator. By the way, that is why I am not convinced that this matter is in the right Committee because of the currency of the issue. You are talking futuristically of what you will do once the commission is formed. What Sen. Khaniri is seeking is current. He is talking about simmering hostility and tension now. Is that not so? You will not be able to do that in the Committee on Legal Affairs and Human Rights.

In fact, in your answer, you continued to talk about the Ministry of Interior and Coordination of National Government and the Committee on National Security and Foreign Relations. I am not convinced that this matter is in the right Committee. I would like you to look at it. As Sen. Khaniri said, the issue is current. It is happening now. You can only be talking about the future when a commission on boundaries is formed which will, in any event, deal with many issues on boundaries in so many counties.

I would like you to reconsider this and give us your considered opinion and a possible answer as soon as possible, probably on Tuesday next week.

**Sen. (Dr.) Khalwale:** Point of Information!

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

**Sen. (Dr.) Khalwale:** Mr. Deputy Speaker, Sir, I would like to inform the House on this matter in view of your communication.

**The Deputy Speaker** (Sen. Kembi-Gitura): How do you get the consent of the House to be informed?

**Sen. (Dr.) Khalwale:** Mr. Deputy Speaker, Sir, through the Chair.

**The Deputy Speaker** (Sen. Kembi-Gitura): Order, Sen. (Dr.) Khalwale!

*(Laughter)*

Sen. Sang, give this matter due consideration and give us an answer that will be satisfactory to the House.

**Sen. Sang:** Mr. Deputy Speaker, Sir, last week, we sought for guidance from the Chair on how the various Committees should handle a matter that is directed to them and the Committee feels it is misplaced. We are expecting a ruling or guidance from the Speaker. Be that as it may, now that we do not have that guidance, we agreed that we will liaise with my counter-part Chair in the Committee concerned with security to make sure that we get this answer.

**The Deputy Speaker** (Sen. Kembi-Gitura): Very well; that brings us to the end of that issue.

Hon. Senators, I have a brief Communication.

### COMMUNICATION FROM THE CHAIR

#### VISITING DELEGATION FROM LIMURU GIRLS HIGH SCHOOL, KIAMBU COUNTY

Hon. Senators, I am pleased to acknowledge and welcome to the Senate this afternoon, teachers and students from Limuru Girls High School, who are seated in the public gallery. I take this opportunity on behalf of the Senate and on my own behalf to wish the teachers and students a happy and fruitful visit to the Senate. I hope that they are going to have an experience of learning what we do in the Senate, in our mandate under the Constitution.

#### *(Resumptions of Statements)*

Sen. Khaniri, you will get an answer in due time, maybe by Tuesday. This is a matter of public interest.

Sen. Karaba, do you have an answer for Sen. Obure?

#### CONTINUED CLOSURE OF GARISSA TTC

**Sen. Karaba:** Yes, Mr. Deputy Speaker, Sir. I have an answer for him. You realize that the response was given sometimes back and there were some supplementary questions that the Senator wanted to know but I did not know exactly which areas he wanted me to respond to because I had given a comprehensive response.

That is my position: The additional information on Garissa Teachers' Training College which had been closed but by the time we were responding, the students had already reported. That is what Sen. Obure was trying to know. The students have already reported to the college and a lot of work had been done by the county government and the national Government. According to what I have---

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. Karaba, are you issuing a further Statement now?

**Sen. Karaba:** It was supposed to be a further Statement---

**The Deputy Speaker** (Sen. Kembi-Gitura): What are you doing now?

**Sen. Karaba:** I am trying to find out from Sen. Obure what he really wanted because I had given him this answer.

**Sen. Obure:** Mr. Deputy Speaker, Sir, I am aware that---

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. Obure, you have not sought the Floor. You just stood up and started talking. You know you have to have the leave of the Speaker.

Proceed.

**Sen. Obure:** Sorry, Mr. Deputy Speaker, Sir. I am aware that the Chairman of the Committee on Education, Sen. Karaba, was not here last week. This matter came up last week and the Vice Chair of the Committee, Sen. Halima, knew exactly what supplementary issues had been raised. Therefore, she came ready with the supplementary information required. If Sen. Halima is allowed to do so, we can make progress.

**The Deputy Speaker** (Sen. Kembi-Gitura): I cannot do that. When the Chair of the Committee is here, he is supposed to consult with the deputy and then give us a Statement. Is it okay if I defer this to tomorrow afternoon?

**Sen. Obure:** That would be quite satisfactory for me so that we can make progress.

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. Karaba, please do the necessary consultations and then give us the supplementary answers tomorrow afternoon. Sen. Halimah Mohamud had said that she is ready to give that Statement.

**Sen. Karaba:** That is okay because she is even here.

**The Deputy Speaker** (Sen. Kembi-Gitura): Okay, then tomorrow afternoon.

*(Statement deferred)*

Sen. Dullo, do you have an answer for Sen. Munyes, who is not here?

**Sen. Adan:** Mr. Deputy Speaker, Sir, I have the Statement but last week, the Speaker directed us to wait for Sen. Munyes to come back.

**The Deputy Speaker** (Sen. Kembi-Gitura): Thank you.

Sen. Karaba, do you have a Statement for Sen. Mwazo?

GOVERNMENT POLICY ON TERMS OF ENGAGEMENT  
FOR PART-TIME LECTURERS

**Sen. Karaba:** Mr. Deputy Speaker, Sir, I have a Statement on the Government policy on payment of part-time lecturers.

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Pursuant to the provisions of Senate Standing Orders No.45(2)(b), Sen. Mwazo Mwakulegwa, requested for a Statement from the Chairperson of the Standing Committee on Education, Information and Technology regarding the Government's policy on payment of part-time lecturers. The Senator requested the Chairperson to:-

- (1) state the Government's policy on part-time lecturers' payment terms;
- (2) set steps taken by the Government to ensure all part-time lecturers in all public universities are paid their dues that have accrued and are long overdue.
- (3) explain the Government's long-term solution to the problem of delayed payment to part-time lecturers.

Mr. Deputy Speaker, Sir, I beg to issue the following Statement on this subject matter.

The Universities Act of 2012 provides for the development of university education, establishment, accreditation and the governance of universities and other related institutions. Universities are independent corporate bodies which are managed by the respective university councils whereas the university management oversees the day-to-day running of these institutions of higher learning. Therefore, the Government has mandated the councils to come up with policies to be used in their respective universities. Each university, subsequently, has its own policy as a guide on engagement and payment of part-time lectures.

Policies for Nairobi and Kenyatta Universities are detailed here for comparison with others.

In Kenyatta University, the institution advertises for part-time lecturers, takes them through a vetting process and hires those who qualify. When chairmen of concerned departments make requests for part-time lecturers, names of qualified persons submitted are checked against the vetted list and letters of engagement are issued spelling out terms and conditions. The successful lecturers sign letters of appointment, binding themselves to the terms and conditions detailed herein.

Payment of part-time lecturers is made in two installments; halfway through the semester and at the end, after fulfilling all the requirements which entails marking of examination scripts and entry of marks into the university system. For those who do not make their claims halfway through the semester, they are paid in full at the end the semester.

All monies owed to part-time lecturers are paid promptly as soon as they fulfill all the requirements as stipulated in their contract letters.

So far, there are no arrears owed unless the individual has not fulfilled his or her contractual terms like marking and keying in the marks into the system. However, payment is made as promptly as requirements are met and claims presented for payment. The issue of accrued dues to part-time lecturers, therefore, does not arise.

The University of Nairobi part time lecturers are paid according to terms and conditions agreed between them and the university at the point of engagement.



(b)The lecturers are paid within four to six weeks upon receipt of their claim on the following conditions-

(1) That they have delivered all the lectures, tutorials, practicals and students' course evaluation, scripts, continuous assessment tests and final examination marks are submitted. This should be in conformity with the university regulations.

(2) That the chairman, head of department, dean, director or college principal have verified that the work was done correctly. Delays and defaults arise when part-time lecturers do not meet the part of their bargain. Verification takes long in some incidences because some lecturers make wrong claims or do not present claims at all. All part-time lecturers are paid in full; anything outstanding is paid within four weeks upon receipt of their verified authentic claims which meet the conditions stipulated above.

(3) All the outstanding payments are made in accordance with the university financial regulations and in adherence to the terms and conditions of engagement.

(4) The university is aware of delayed payments in some cases in the past. These cases occurred in some extra-mural centres but have since been cleared. So far, there are no claims in arrears for more than three months as claimed.

(c)The long time solution put in place is to ensure that part-time lectures engaged in the university clearly understand the contractual terms of engagement signed between them and the university to avoid any misunderstanding likely to occur. From the aforementioned policy requirement by the University of Nairobi and Kenyatta University, it is advisable that any aggrieved part-time lecturer directs queries and complaints to the specific university concerned, to be addressed in line with the existing laws governing engagement of part-time lectures.

(2) With regard to the steps the Government has taken to ensure all part-time lecturers are paid their dues promptly, they are detailed under (b) above.

Lastly, the Government's long-term solution to delayed payments to part-time lecturers is contained in the existing policies developed by individual universities which have adequate provisions to address the problems arising from the payment of part time lecturers.

Thank you.

**Sen. Mwakulegwa:** Mr. Deputy Speaker, Sir, I would like to thank the Chairman for the answer. I also thank the Ministry because since I asked for this Statement, the lecturers in University of Nairobi and Kenyatta Universities have been paid. My question was in regard to the public universities. I will lay on the Table a list of 46 lecturers who have not been paid since 2013, which should be given to the Chairman to follow up so that these Kenyans who have been desperately looking for their money from 2013 can be paid their dues.

Mr. Deputy Speaker, Sir, I will forward this to the Clerk.

*(Sen. Mwakulegwa laid the document on the Table)*

**The Deputy Speaker** (Sen. Kembi-Gitura): Chairman, are you going to look into the further situation?

**Sen. Karaba:** Mr. Deputy Speaker, Sir, I am yet to look at that list but as stipulated there before, every university has its own rules and laws to follow, so the universities that the Senator is citing here could be those that are not known. So I would advise the Senators to make sure the list is taken to the university council of each university because it is the council which runs the university.

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. Mwakulegwa, you want to follow up?

**Sen. Mwakulegwa:** Yes. Mr. Deputy Speaker, Sir. We do not need to ask questions for Kenyans who have worked for these institutions to be paid. That is why in the first place I asked for the policy. When someone is engaged in a policy, there are terms and regulations which are specific as to when they will be paid. We ask questions when they are not paid. I have laid on the Table a paper that indicates that from 2013, the lecturers in some of the public universities have not been paid their allowances. It is not my job to forward the list of names to the respective universities which have not paid part-time lecturers. The onus is on the Government and the institutions to make sure that they pay part-time lecturers according to the terms and agreements that they signed with the people they hired.

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

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. Musila, do you want to comment on this one?

**Sen. Musila:** Mr. Deputy Speaker, Sir, the Chairman and the Ministry have done very well because they have paid after the question has been asked but he went ahead to say that each university has its own rules. The question is; lecturers from institutions of higher learning which should set examples have not been paid since 2013. The Senator has laid on the Table a list of 46 other lecturers, who have not been paid. Would I be in order to ask the Chairman to ask the Minister to ensure that all unpaid lecturers in public universities are paid forthwith? We are not asking about private universities but public universities. Could the Chair undertake to do that?

**Sen. (Prof.) Lonyangapuo:** Mr. Deputy Speaker, Sir, adding further to what the Senator has raised, there is only one Ministry of Education in Kenya for private and public universities. The list that Sen. Mwakulegwa tabled was from one or two universities. We have over 20 public universities today. We do not know how many fall in the category that the Senator has already tabled. Could the Chairman through the Ministry, table the list of all those lecturers that are suffering and have not been paid their dues? Some of these universities include, Jaramogi Oginga Ondiga University, Chuka University and other public and private universities.

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. Karaba, you have heard the sentiments. You have been given 46 names from public universities. If they have not been paid, then your answer is incomplete in the sense that we need to understand that as

a matter of policy. I heard you say that in the end of your response, like has been pointed out by Sen. Musila, that every university has its own rules.

You have done very well regarding the University of Nairobi and Kenyatta University. I think it is imperative that you look again into that issue and let us know what policy it is that the Ministry for which you are responsible is going to deal with these issues and how it proposes to deal with them.

When are you going to do that?

**Sen. Karaba:** I will do that soonest.

**The Deputy Speaker (Sen.Kembi-Gitura):** Is soonest Tuesday next week?

**Sen. Karaba:** Mr. Deputy Speaker, Sir, it can start from tomorrow because this is a very serious matter—

**The Deputy Speaker (Sen. Kembi-Gitura):** well, I like definitive answers. Telling me that it can start from tomorrow is basically telling me nothing.

**Sen. Karaba:** Mr. Deputy Speaker, Sir, by next week Thursday, I will make sure that the answer is given.

**The Deputy Speaker (Sen. Kembi-Gitura):** I will not allow you next week Thursday; I will allow you Tuesday next week, which is a week from today.

**Sen. Karaba:** Mr. Deputy Speaker, Sir, I will find out why they have not paid part-time lecturers their dues.

DEPRECIATION OF THE KENYA SHILLING  
AGAINST OTHER MAJOR CURRENCIES

**The Deputy Speaker (Sen.Kembi-Gitura):** Sen. Billow, do you have an answer for Sen. Kagwe?

**Sen. Billow:** Yes, Mr. Deputy Speaker, Sir.

**The Deputy Speaker (Sen.Kembi-Gitura):** I notice that Sen. Kagwe is not here. That Statement is deferred to tomorrow afternoon.

*(Statement deferred)*

The next Statement was sought by Sen. Karaba who sought a Statement from the Committee on Agriculture, Livestock and Fisheries.

CONSTRUCTION OF GATITU-NYAYO TEA FACTORY

**Sen. Ndiema:** Thank you, Mr. Deputy Speaker, Sir. We have sought an answer on this one and have been assured that it will be received on Thursday. I request to be allowed to respond next week on Tuesday.

**The Deputy Speaker (Sen.Kembi-Gitura):** When was the Statement sought?

**Sen. Ndiema:** The Statement sought was about the Gatitu-Nyayo tea factory---

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**The Deputy Speaker** (Sen.Kembi-Gitura): When was the Statement sought?

**Sen. Ndiema:** I am sorry, I do not have the date here, but this is the second postponement.

**The Deputy Speaker** (Sen.Kembi-Gitura): The Statement was sought on 20<sup>th</sup> May, 2015 and you were supposed to give it on 23<sup>rd</sup> June 2015, and it was then postponed to today.

**Sen. Ndiema:** I request that I be allowed to issue the Statement on Tuesday. I have already discussed it with the Senator and he has agreed.

**The Deputy Speaker** (Sen.Kembi-Gitura): If you have discussed with Sen. Karaba, – although it is not between the two of you because it is a property of the House – Tuesday next week will be fine. Is that okay with you, Sen. Karaba?

**Sen. Karaba:** Mr. Deputy Speaker, Sir, this is a straightforward matter.

**The Deputy Speaker** (Sen.Kembi-Gitura): It may be straightforward but Sen. Ndiema says that you have agreed with him that the Statement be issued on Tuesday next week.

**Sen. Karaba:** There is no problem with Tuesday next week.

**The Deputy Speaker** (Sen.Kembi-Gitura): The final Statement was sought by Sen. Musila .

Sen. Dullo, do you have an answer for him?

#### KILLINGS IN KITUI COUNTY

**Sen. Adan:** Thank you, Mr. Deputy Speaker, Sir. We do not have an answer yet, but I would like to inform the House that I followed up on the Statement this morning and was informed that it was with the Cabinet Secretary and just waiting to be signed. I have also shared the same with Sen. Musila and he is in agreement to issue it tomorrow once it is signed.

Thank you.

**The Deputy Speaker** (Sen.Kembi-Gitura): Sen. Musila, are you in agreement? You sought the Statement on the 16<sup>th</sup> June, 2015.

**Sen. Musila:** Mr. Deputy Speaker, Sir, I confirm that I had a chat with the distinguished Senator, and she promised that she would bring the answer tomorrow in the afternoon. I therefore oblige.

**The Deputy Speaker** (Sen.Kembi-Gitura): Thank you Senator.

That brings us to the end of Statements sought.

PROCEDURE FOR APPOINTMENT OF THE GOVERNOR  
AND DEPUTY GOVERNORS OF CBK

**Sen. (Dr.) Khalwale:** On a point of order, Mr. Deputy Speaker, Sir. On Thursday last week, the Chair directed that a requisition from myself from the Chair to give guidance on the appointment of the Governor of Central Bank and his deputies---

**The Deputy Speaker** (Sen.Kembi-Gitura): To the Chair of which Committee?

**Sen. (Dr.) Khalwale:** Mr. Deputy Speaker, Sir, I had directed it to the Speaker himself.

**The Deputy Speaker** (Sen.Kembi-Gitura): I thought that you were talking about a Committee.

**Sen. (Dr.) Khalwale:** Mr. Deputy Speaker, Sir, sorry I had “swallowed” my English words.

The Speaker directed that the communication on the appointment of the Governor of Central Bank and his deputies would come today.

**The Deputy Speaker** (Sen.Kembi-Gitura): What is it, Sen. Karaba?

**Sen. Karaba:** On a point of order, Mr. Deputy Speaker, Sir. While I agree to undertake the concerns of some unpaid lecturers from various campuses---

**The Deputy Speaker** (Sen.Kembi-Gitura): Order, Sen. Karaba! We have moved on. We finished with that Statement long ago. We are now on a completely different matter.

Sen. (Dr.) Khalwale, you said that the Speaker had promised to give a Statement today on the appointment of the Central Bank Governor.

**(Dr.) Khalwale:** Yes, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen.Kembi-Gitura): I do not have that Statement. I hope that the Speaker himself will give it by Tuesday next week.

**(Dr.) Khalwale:** Mr. Deputy Speaker, Sir, I am most obliged. However, I would like it to come to your attention that as soon as we raised this matter, we were then allowed to ventilate a little bit and requested the Speaker to direct that the gazzettelement of that appointed Governor should not proceed until today. However, the following day, after the transaction in this House, that gazzettment was then rushed.

The integrity of this House is important. It is, therefore, important that this matter is responded to because the Governor and his deputy have been approved unprocedurally, against the provisions of Section 13 and 13(b) of the Central Bank of Kenya Act.

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. (Dr.) Khalwale, I have heard you, but like I said, the Speaker himself will give the ruling or further directions on Tuesday next week when he is back.

That brings us to the end of Statements.

Next order!

**BILLS***First Reading*THE COUNTY LIBRARY SERVICES BILL  
(SENATE BILL NO. 6 OF 2015)

*(Order for First Reading read – Read the First Time and ordered to be referred to the relevant Senate Committee)*

*Second Reading*THE COUNTY EARLY CHILDHOOD EDUCATION  
BILL (SENATE BILL NO. 32 OF 2014)

*(Sen. (Dr.) Zani 24.6.2015)*

*(Resumption of Debate interrupted on 25.6.2015)*

**The Deputy Speaker** (Sen.Kembi-Gitura): Hon. Senators, I know that this Bill is coming for Division but we quiet obviously do not have the threshold to go to Division. It would be futile to proceed on it. So, I stand it down for now. Let us proceed to order No. 10.

Next Order!

*(Putting of the Question on the Bill deferred)*

*Second Reading*THE PUBLIC APPOINTMENTS (COUNTY ASSEMBLY APPROVAL)  
BILL (SENATE BILL NO. 20 OF 2014)

**The Deputy Speaker** (Sen.Kembi-Gitura): Is the Chairman of the Committee on Labour and Social Welfare around? Where is Sen. Madzayo or any body from his Committee?

*(Sen. Madzayo walked into the Chamber)*

Sen. Khalwale, are you seeking the Floor?

**(Dr.) Khalwale:** Mr. Deputy Speaker, Sir, I just want to draw your attention to the fact that you should allow Sen. Madzayo to apologise since he just walked in and went straight to the microphone. I did not know that he was headed for the microphone.

*(Laughter)*

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. Madzayo, are you ready to proceed to the Second Reading of this Bill?

**Sen. Madzayo:** Yes, I am, Mr. Deputy Speaker, Sir.

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

**Sen. Madzayo:** Thank you, Mr. Deputy Speaker, Sir. I beg to move that the The Public Appointments (County Assembly Approval) Bill (Senate Bill No. 20 of 2014) be now read a Second time.

This Bill was published on 30<sup>th</sup> May, 2014. The Bill seeks to provide a framework through which county assemblies can undertake the approval of appointment of nominees to public offices within the county.

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

*[The temporary speaker (Sen. Ongoro) took the Chair]*

Madam Temporary Speaker, the Bill is expected to guide the relevant committees of county assemblies on the manner in which they are to conduct an approval, hearing and determine whether or not to approve the appointment of a nominee to a public office. It also seeks to fill a void which currently exists with regard to public appointments by county assemblies. It also intends to provide a uniform framework to apply to all county assemblies in the consideration of nominees for appointment to public offices.

While we have in place a number of statutes that provide for the appointment of public officers to office with the approval of the respective county assemblies, we do not have in place a framework that provides for a manner in which this should be undertaken. Its enactment will, therefore, ensure that a uniform standard is observed by all county assemblies. Further, it will ensure consistency and a minimum threshold of transparency, equity and fairness in appointment processes.

Madam Temporary Speaker, it also seeks to promote transparency and accountability in the consideration of nominees to public offices by county assemblies. By providing for vetting of nominees in public and the criteria to be followed and tabling of a report by a committee in a county assembly, it also seeks to ensure there is transparency in the vetting process.

In addition, Madam Temporary Speaker, it will ensure that the appointments are carried out on the basis of fair competition and merit by ensuring that a comprehensive background check is carried out with regard to a nominee to a public office. The Bill

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requires that information regarding educational credentials, experience, financial status and other socio-economic activities undertaken by the nominee and the nominee's biometric details are submitted to the committee prior to the vetting.

This will ensure that the committee makes a considerable decision regarding the nominee, taking into account the background information submitted by the nominee prior to the vetting. This will also ensure that appointments do not perpetuate discrimination on the basis of factors such as gender, marital status, health, ethnic, social origin, disability or age as set out under Article 27(4) and (5) of the Constitution.

Madam Temporary Speaker, by specifically assigning the process of vetting to the relevant committee of a county assembly, the Bill will ensure that those undertaking the vetting process have extensive in-depth and first-hand knowledge regarding the applicant *vis-à-vis* the kind of person the position requires to carry out their duties effectively.

Madam Temporary Speaker, it also seeks to promote public participation in the vetting process. It will allow the public to submit any information or evidence regarding the suitability of a candidate for appointment. It also promotes public trust, respect and amity towards the county government in so far as it allows contribution of the public regarding the decision to be undertaken. This also ensures that the committee is vested with all the information it may not have, but which it would require regarding a nominee. That way, the committee can make an informed decision regarding the appointment.

Lastly, the appointee becomes the person who is acceptable to the public within the county. This in itself would ensure cooperation amongst various stakeholders and the public as far as implementation activities by the appointee are to be undertaken.

With those remarks, I request my sister, Sen. Ong'era to second me.

**Sen. Ong'era:** Thank you, Madam Temporary Speaker, for giving me this opportunity to second Sen. Madzayo's Bill. First of all, I congratulate him for bringing this important Bill to the House. The Bill sets up a regulatory framework which county assemblies can use in nominating various appointees to various offices.

The main objective of this Bill is to provide a legislative framework through which nominees for appointment to public offices in the counties can go through. You are aware that this is a constitutional requirement. Therefore, this is a very important Bill for us to approve here in the Senate.

One of the functions of county assemblies is to approve the appointments of officers to various public offices. As it is right now, there is no law that guides MCAs in terms of how they do it. Therefore, this Bill provides guidance and clarity on the processes to be followed by MCAs and relevant committees. In this Bill, any nominee who applies for these appointments will be required to appear before a committee of MCAs for vetting.

Clear provisions have been put by Sen. Madzayo. He has provided that all committee proceedings to public appointments shall be open and transparent in vetting a candidate. The academic credentials of a candidate have been set out in this Bill in terms of professional training and also relevant experience, personal integrity and background.

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Madam Temporary Speaker, let me emphasize personal integrity. As you are aware, Chapter Six - on leadership - in the Constitution, the integrity of all public officers is very critical. This is an important aspect now that we have devolved services to counties. That is clearly required in counties. All these issues have been put in the First and Second Schedules of the Bill. Therefore, this will be a clear guideline on the procedure to be followed.

One of the issues for consideration which MCAs will be looking at as they vet nominees – I commend the distinguished Senator for Kilifi County for seeing the prudence to include them – is the procedure to be used in dealing with a nominee. These criteria which we have not had in this country are clearly set out. Amongst them is the question of suitability of the candidate, transparency, which has to be open vetting, the nominee’s credentials, ability, experience and the relevant qualities. All these will enable committees vet candidates. These criteria have been clearly set out.

Further, Madam Temporary Speaker, this Bill will provide a period of consideration and report on the suitability of these candidates so that when the MCA, in their committees, complete their vetting, a period has been set out in which they will be able to consider that report and then report to the county assembly.

Madam Temporary Speaker, should this Bill pass, it will help in discouraging nepotism. You are aware that we are faced with very serious problems in the counties on issues of nepotism. People are being employed left, right and centre in the counties. Sometimes there are even situations where we have had clans being at war with one another because they feel that one clan has got more of their people in the county than others. Once this Bill passes, issues of nepotism will not be issues to be considered because the criteria will be very clear. It will reduce incidents of bribery and other ills which create inequalities in this country. It will promote good leadership and integrity as stated out in Chapter Six of the Constitution.

With those few remarks, I beg to second.

*(Question proposed)*

**Sen. (Prof.) Lonyangapuo:** Madam Temporary Speaker, I rise to support this Bill. It has come at the right time. We are now entering the third year of devolution.

I want to thank Sen. Madzayo that he found it fit to look at the law from the perspective of Kilifi County and was able to note what is missing and is causing problems in almost all the counties. When County Public Service Boards (CPSBs) send out notices of recruitment, there are a number of malpractices which have been noted in some places, for example, corruption. I am even told of a young man who sold some cows in order to get a job as a security guard in a county. This is not indicated here, but we already know those malpractices are happening in our counties.

They are happening because there is no law on the ground to set out criteria as to how recruitment should be carried out. The people whose names have been forwarded to

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the county assemblies so that the relevant county boards can interview the nominees will now know who bought their way through because the document is now very clear here. It states that there must be proper academic credentials provided, professional training of whatever kind, experience, personal integrity and background; all these have to be tabled. There is nowhere in this document which is seeking to know what tribe, clan or a region an individual comes from.

Madam Temporary Speaker, we had forewarned that in future there would be a problem because the counties are becoming like employment bureaus where people from the same region employ themselves. If you attend a County Executive Committee (CEC) meeting – I do not know how often they hold them – they usually switch to their vernacular language and yet we are talking about ending tribalism in Kenya. We should have gone further to put a law stating that not more than a third of the CECs should come from one community.

Although we know that the people of West Pokot are Pokots, what was the reason for devolving? Are we saying that experts who can run that government can only come from that region? No wonder we have absurd behaviour in the counties. If you go to Migori or Turkana counties, the CEC members are talking the same language. These laws and regulations should guide the MCAs that sit in these committees.

Some of the MCAs have never worked anywhere before, but they are very popular in the wards. The criterion for being engaged as an MCA is just being very popular among your people. You can be very popular when you speak in your mother tongue without knowledge of English or Kiswahili language. The Constitution did not put a caveat to say that an individual must be learned to this extent. Therefore, the Senate has come in handy to prepare this document should the MCAs need it. Some of the Clerks in the county governments were former teachers who suddenly got those positions. Therefore, it is essential that we have these criteria, which include public participation, in place.

Madam Temporary Speaker, should it happen that some people will be appointed who do not qualify, it is at that point that we shall pinpoint this anomaly. This is the same way the National Assembly has been handling the vetting cases. This Bill will assist us to normalize some of those issues. I do not know what we are going to do with the excess personnel from one community. Maybe, Nairobi is a leading example of the highest number of ethnic communities and the peri-urban ones like Nakuru and the rest. However, if you go to those counties in the interior part of the country, things are chaotic.

Some of these laws should be processed so that they become a guiding principle for our people to manage and run them. When we talk about experience, it is experience in the relevant field. Today we have people in charge of finance in the counties who have no experience and yet they are supposed to be executing financial matters. That is why, at the end of the financial year, they misuse money that is remaining in the county treasury because they do not have the professional qualifications to handle finance matters. These are some of the issues that will be unearthed when an audit is done.

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I beg to support.

### COMMUNICATION FROM THE CHAIR

VISITING DELEGATION FROM GITHONGO  
BOYS HIGH SCHOOL, NYERI COUNTY

**The Temporary Speaker** (Sen. Ongoro): Hon. Senators, I wish to recognize the presence of the students and teachers of Githongo Boys High School from Nyeri County seated in the Public Gallery. They are visiting the Senate today.

As you know, hon. Senators, in the tradition of receiving and welcoming visitors to Parliament, I wish on my own behalf and on behalf of the Senate to extend a warm welcome to the students and teachers of Githongo Boys High School.

*(Applause)*

*(Resumption of Debate on Bill)*

**Sen. Sijeny:** Thank you, Madam Temporary Speaker for giving me the opportunity to contribute to this wonderful Bill. I commend and thank Sen. Madzayo, who is a retired judge, for coming up with this Bill. I am not surprised that he came up with it. Having been a practitioner as an advocate and a Judge serving at the Industrial Court for a long time, he knows some of the issues that bring disputes concerning labour,

Madam Temporary Speaker, indeed, this is an appropriate time. Parliament should borrow a leaf from this Bill. Its object is very clear. It provides a procedure for approval of public appointments by county assemblies. It is clear and does not leave anything to chance.

Madam Temporary Speaker, it will enable us, as the Senate, to perform our oversight role. It will give us easy time to monitor and evaluate, especially in the aspect of employment and reduce the friction that may come up. Recently, we saw in the media people complaining that there is bias and nepotism when it comes to employment. As a result of that, people from some communities are losing jobs while others are not being appointed. That would be a thing of the past if this Bill is enacted. There will be uniformity. That is what we want. Once this Bill is passed here, it will be sent to the counties. That will ensure that nobody comes up with their own rules and regulations and other dubious manners of employing members of the public because it is a right of every Kenyan to be employed.

Madam Temporary Speaker, the procedure is very clear. It gives everything required when it comes to vetting. Among the requirements, there should be notification and approval. There is nothing left to chance.

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Madam Temporary Speaker, the Bill will ensure good governance. It portrays the correct considerations which should be properly articulated before a relevant committee that shall perform the vetting exercise. When there is a clear-cut criterion; how do you get your nominee? What should be the academic or other advantageous qualifications required? If we had this, we would not have issues like what happened – a very ugly scene – of Dr. Juma, a lady who was shown outright gender discrimination because there were no clear-cut criteria. You cannot be qualified in academics and everything else, yet they use the word “suitability”. This Bill defines what the word “suitability” means.

Madam Temporary Speaker, the Bill gives the committee a chance to perform due diligence. The due diligence will also apply when Chapter 10 of the Constitution is observed. There is need to consult the relevant authorities or persons. The committee has powers to summon any person to appear before it. The committee has been given quasi-judicial powers. It can summon, force attendance and compel production of important documents needed so that if, for example, the person you want to employ went to work in Uganda or Tanzania and disappeared from there, having stolen and served a jail term, anyone with any document or information may be compelled to produce it, so that we have the correct people we need. We need people who can perform and take counties and the country to a different level of development.

Madam Temporary Speaker, I am particularly delighted to see that the Bill describes what a “Money Bill” is. For avoidance of doubt, nothing in this Bill may be construed as providing for dealing with and describes what Money Bills are. For a long time, the Senate has been frustrated. We have come up with Bills as required by the Constitution, but we have been told that we are dealing with a Money Bill. Therefore, we cannot bring it up, or it has to originate from the National Assembly. This Bill gives a very clear-cut criterion about what is and what is not a Money Bill.

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

**The Temporary Speaker** (Sen. Ongoro): The Senate Majority Chief Whip, Sen. Elachi.

**Sen. Elachi:** Madam Temporary Speaker, first of all, I would like to thank the Chairman of the Committee on Labour and Social Welfare, the Senator for Kilifi County, Sen. Madzayo for bringing this Bill to this House. I believe it will bring sanity in terms of public appointments and approval in county governments.

Madam Temporary Speaker, in the previous vetting, sometimes people with requisite qualifications were scared because they did not know what kind of questions they were to be asked. In the past, we did not have a checklist or criteria on how to ask some key fundamental questions when vetting a nominee to a public office. We also do not have a clear direction concerning family issues. For example, we could ask a person whether he was okay to be vetted in public or camera. It is important to protect a family as provided for in the Constitution.

We need a criterion which will make it possible for the nominee to feel comfortable before the vetting committee. He has a right to say whether he felt

discriminated when the vetting process took place. These guidelines will assist county assemblies to have the right people in various offices in the counties. That does not mean that they cannot come up with a better criterion to add on what we have given them to assist in terms of vetting.

Madam Temporary Speaker, there is one fundamental thing that we, as a Senate, need to unlock from our people so that they trust vetting process. Everyone going for vetting will always get scared wondering whether they will be asked for money by the vetting panel. We need them to trust those vetting committees.

It is important that we, as a Senate, as we embrace e-procurement and e-tendering, we make sure that county assemblies ensure proper documentation is done before vetting. The vetting committees should ensure that somebody who applies for a certain job fills in the document and sends his or her questionnaire early.

Madam Temporary Speaker, you will remember a story in the Bible – maybe, it is something that many of us do not follow and use although it has strength – when Jesus was choosing his disciples, he did it by himself. He went on and ensured that he had known more about their backgrounds. When he got them, he knew their backgrounds. He could come back and say, “this is so and so, son of so and so.” I know that sometimes people get very scared when they hear that their background will be scrutinized or when they are asked about their background. They should not be scared because they are being appointed to public offices. It is always important for their backgrounds to be known so that the vetting committee knows exactly what kind of people they want to bring on board.

**The Temporary Speaker** (Sen. Ongoro): Sen. (Prof.) Lonyangapuo, are you on a point of order or a point of information?

**Sen. (Prof.) Lonyangapuo:** I am on a point of order, Madam Temporary Speaker. Could the Senator clarify what she has said? She has said that when Jesus was looking for his disciples, there was a criterion. I do not know how the criterion is related to what this Bill is proposing.

**The Temporary Speaker** (Sen. Ongoro): In my opinion, the Senator is trying to advocate for the spirit of transparency. However, Sen. Elachi, you should proceed and explain to Sen. (Prof.) Lonyangapuo about what you meant.

**Sen. Elachi:** Madam Temporary Speaker, Clause 7 of the Bill indicates that an approval hearing shall focus on a candidate’s academic credentials, professional training and experience, personal integrity and background. I am just trying to expound on it. People should not fear their backgrounds being scrutinized because it was done even during the days of Jesus. During that time, someone would have wished to know whose son or daughter, he was dealing with.

When my son or your daughter will go for interview, they will consider our backgrounds and what we did for the country. Many Kenyans fear that their backgrounds will be known by the members of public. For example, the vetting committee of the National Assembly is fond of asking nominees whether they are married or not. Why are

you not married?” Those are background checks, but they are important. They ask such questions in the context of appreciating the dignity of that person.

Madam Temporary Speaker, as I finish---

**Sen. Obure:** On a point of order, Madam Temporary Speaker. I am wondering if it is in order for Sen. (Prof.) Lonyangapuo to raise the example of Jesus Christ, when he was appointed.

**The Temporary Speaker** (Sen. Ongoro): Hon. Senator, we have already moved on from Sen. (Prof.) Lonyangapuo’s intervention. So, you can only raise a point of order on the person who is on the Floor.

**Sen. Obure:** Madam Temporary Speaker, if you could give me some indulgence. Sen. (Prof.) Lonyangapuo is a Christian. We are all trying to follow the example of Jesus Christ in every respect. Is he in order to question that?

**The Temporary Speaker** (Sen. Ongoro): Proceed, hon. Senator.

**Sen. Elachi:** Madam Temporary Speaker, finally, I want to thank the Committee chaired by Sen. Madzayo. With this Bill, many Kenyans will feel confident as they go for vetting before county assembly committees.

Madam Temporary Speaker, I beg to support.

**Sen. (Prof.) Lonyangapuo:** On a point of order, Madam Temporary Speaker. I want to clarify this for the Members who are not Christians.

**The Temporary Speaker** (Sen. Ongoro): So, it is a point of clarification.

**Sen. (Prof.) Lonyangapuo:** Yes, Madam Temporary Speaker.

**The Temporary Speaker** (Sen. Ongoro): Okay. Proceed.

**Sen. (Prof.) Lonyangapuo:** Madam Temporary Speaker, the criteria for being a follower of Christ is stated. You must accept Christ as your personal saviour and follow him. So, that criteria cannot be compared with how we should get good county government workers.

**The Temporary Speaker** (Sen. Ongoro): We should bring that to a close because, to the extent of Christianity and the person of Christ, none of us in this House is an absolute authority.

**Sen. M. Kajwang:** Thank you, Madam Temporary Speaker, for giving me an opportunity to comment on this Bill. I would like to start by congratulating the Mover. This Committee is chaired by the Senator and retired Justice Madzayo. He is one of the very good Senators who have not bullied a new Senator like me. He has, instead, taught me the ropes. I also thank the entire Committee for bringing this Bill to the House.

Madam Temporary Speaker, one might argue that we could be late in coming up with this Bill, but as our elders say, it is better late than never. If you look around you will find that Nakuru and Kisumu counties have come up with a similar Bill. The question would be: When the Senate comes up with a Bill like this, how then do we relate with the Bills that are almost replicas? If you look at the Bills coming from Nakuru and Kisumu counties, they are almost a replica of this Bill. I believe that this Bill has got some improvements over the ones that come from counties. So, when we have this Bill

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coming from the Senate, I believe that the 45 or so counties that have not come up with similar Bills will stand guided. They will have proper guidelines and directions on appointments in our counties.

Madam Temporary Speaker, public appointments and interviews for public appointments in this country are slowly degenerating into chambers of embarrassment. Just as recently as a few days back, when the nominees for the Central Bank of Kenya (CBK) were being interviewed, instead of looking at the critical issues that are required of a holder of such positions, we went into misadventures, like trying to find out and making light of the fact that one of the applicants was not married. When we were vetting the nominee for the position of Cabinet Secretary, we saw the manner in which that went.

A few years back, when we were vetting nominees for the Judicial Service Commission (JSC), we saw the kind of antagonism that was in the room and pervaded the entire interview process. As a result, you will find that many professionals avoid applying for public positions because they fear that they will be embarrassed, their feathers plucked. By the time they come out of such a vetting process, they will have lost the dignity and professional esteem that they previously held. It is, therefore, good that we have got clear guidelines. We have come up with a set of questions that all public appointees that will be vetted by the county assemblies will have to be subjected to.

Madam Temporary Speaker, not everyone, even those who have studied human resource management, is gifted or qualified to carry out interviews. Therefore, without proper guidelines, it becomes very difficult to ensure that two or three candidates are weighed on the same kind of scale. When we have standard consistent questions, we will ensure that the scale is the same for all the applicants.

Madam Temporary Speaker, I wish that this Bill should come out strongly to enforce the provisions of Chapter Six of our Constitution. Many commentators have accused Parliament of being the lead institution that has watered down the requirement that public officers must subscribe to Chapter Six of the Constitution.

Many people have cited some of the unfortunate decisions of the previous Parliament, where we lowered the bar and got to a point where we had people who were being accused of very serious criminal offences. We said that, at end of the day, Chapter Six does not matter, but the vote of the common *mwananchi*. That is where the rain started beating us. That is why today very few of our leaders have got the moral authority to stand up and talk about Chapter Six of the Constitution. Therefore, when we get to the amendments, I hope that somewhere we shall say that a candidate who is being vetted by the county assembly must be weighed against the provisions of Chapter Six of the Constitution.

Madam Temporary Speaker, allow me to talk about a board that is present in our county governments, called the County Public Service Board. This is established under Sections 57 and 58 of the County Governments Act. The CPSB is a very little understood, yet a very powerful board within the county governments. This is because it establishes and abolishes offices. It is the board that takes care of human resource

management within our counties. Unfortunately, the CPSBs have not been given the space required to deliver on their mandate. On one hand, there is an executive that is hell-bent on ensuring that only people who sing to their tune get public appointments within the counties. On the other hand, we have got a county assembly that is obsessed with regional balance and the members want to ensure that people coming from their regions are the ones who get appointed. On the other hand, we have got the Transition Authority (TA).

If you look at the staffing in our counties, even the governors have no control over the people who work there. This is because when we moved into devolution, unfortunately, we said that this was going to hold for only three years. Thank God, the three years are almost coming to a close. The TA sent some people to the counties. The argument back then, was that the counties did not have the capacity to run their affairs on their own. These officers were referred to as Interim Transition Teams. These included the county secretaries and the deputy county secretaries. There were former local authority staff and civil servants performing devolved functions, *et cetera*.

The CPSBs never had the opportunity to discharge their mandate of managing human resources and appointing officers within these counties. After the three years lapse, I know that the TA has got a road map. Let us ensure that we allow the CPSBs to get officers who fit the profiles of the counties that they run.

Madam Temporary Speaker, at this point, I want to give an example of a Member of a CPSB who attempted, in his small way, to do some of the things that this Bill will cure. As I speak, one Kenyan called Mr. Mathew Oseko, lies at Lee Funeral Home. He was the first Chairperson of the CPSB in Homa Bay County. He was a very prominent lawyer in Nairobi, a likeable, knowledgeable and firm Kenyan. He went to court yesterday in the morning. Unfortunately, he collapsed in court. He was rushed to hospital and pronounced dead on arrival.

The late Matthew Oseko set a record in Homa Bay County. In August last year, he resigned as the chairman of the CPSB citing frustrations from the county executive, county assembly and general lack of adherence to laid down rules and regulations when it came to hiring and recruitment of public officers. May his soul rest in peace. He wrote a firm letter. When I looked at the content of the letter that he wrote to the county executive when he was announcing his resignation as the Chairman of the CPSB, the issues that he raised can be cured by this Bill.

Madam Temporary Speaker, probably, this Bill came a little bit too late, as I have always said, better late than never. I know that where the late Matthew Oseko rests, he should rest easy knowing that we have started to take measures to ensure that governors in counties do not have unilateral power and authority to hire and fire. That has been the situation.

We have seen a lot of nepotism and tribalism in our counties. There are certain counties that are fairly homogenous in ethnic composition. One might think that as a result, there is no discrimination on the basis of where an individual comes from.

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However, where there is no tribalism, nepotism or clannism comes in. In a homogenous county like Homa Bay County, you will realise that some people are now being called, *Abasuba*, the *Karachuonyo* and others *Ndhiwa, et cetera*. There is still discrimination on such minute and granular basis.

Madam Temporary Speaker, I believe that this is the first step in a long journey towards ensuring that this Senate comes up with guidelines, provisions and procedures that can help us to deal with issues of tribalism, cronyism and corruption.

Finally, I decry some of the transfers that were made to the counties by the TA. When you have a county that is starting from zero and you have got elected leaders; an elected governor and maybe an executive that has not had that role before, and you bring in a guy who has been a Government accountant for the last 30 years. Those are the architects of corruption in those counties. They understand how the Government works and its backdoors. Probably, the governor does not understand; maybe he has come from the private sector and does not understand the procedures in the Government.

We need to scrutinize these people and ensure that, at the expiry of the three years term, when they were supposed to help these counties get back to their feet, there is a proper and thorough process for vetting them. If you are not careful, some of them will rob our counties so that they can bribe the governors to keep them in those counties beyond the three years.

With those remarks, I beg to support.

**Sen. (Prof.) Anyang'-Nyong'o:** Madam Temporary Speaker, I am touched by Sen. Kajwang's contribution this evening, especially with regard to our late brother who has passed on to the next world. He did a good job in Homa Bay. I join my colleague to appreciate the work that the former chairman of the CPSB in Homa Bay did. His example should be followed by many other people of integrity who would like to make sure that their office is run in a manner that adheres to the Constitution and the principles of good governance in Article 10 of the Constitution.

Having said that, I thank the Senator for Kilifi for bringing this Bill at this time although some of the shortcomings it intends to cure could have passed us because of the absence of such a Bill. This Bill will still help to make sure that county governments are run in line with the Constitution.

The county government has its own civil service. At the moment, if you look at most counties, the composition of these civil service is incomplete, inadequate and is one of the causes of problems of under-capacity in the counties. The County Governments Act lays down clearly the structure of the civil service in the counties. It begins from the Village Council, goes to the Ward Administrator to the sub County Administrator, then to the executive in the Governor's office.

As I speak, most counties do not have village councils. If you remember well, the Assistant Chief in every sub-Location has what are called village elders. This is the kind of village or sub Location Council on which the Assistant Chief relies for governance at the local level.

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The Constitution, says quite clearly that the Provincial Administration will be restructured in the spirit of devolution. That too has not been done. Therefore, it is tragic for the county governments not to have its village councils in place because it will help in phasing out the Provincial Administration as provided for in the Constitution. If we are late in laying down the structures of devolution, and failing to respect the section of the Constitution that calls for the phasing out of the Provincial Administration, then there is something wrong that we are doing. Therefore, Sen. Madzayo has brought this Bill to make sure that appointments in the counties are done in accordance with law.

Madam Temporary Speaker, I will point out articles in the Constitution which relate to and cry for this Bill. Before I do so, part of the incompleteness in county governance is the fact that in quite a number of counties, we do not have clerks to the county assemblies. In my county in particular, we do not have a properly appointed clerk to the county assembly. That county assembly needs three or four deputy clerks to run it effectively. So, if the main clerk is not in place, and the deputy clerks are also lacking, then there is incapacity at the county assembly.

Some of the things that Members of the County Assembly (MCAs) do or fail to do, is because of inadequacy in the civil service at the county assembly level. This Bill will, not only provide a framework for making sure that the CPSBs interview those people at the point properly, but they will also be aided to be abreast of the kind of civil service they need in the counties.

Another level of civil service which is lacking in the counties where we have cities like Kisumu, is the City Management Boards. You realise that cities like Mombasa, Kisumu and Nairobi collect a lot of revenue. First and foremost, that revenue should be used to improve the standard of living in the cities because they require substantial funds to be run properly. That cannot be done without a proper CPSB that focuses on the governance in the city.

Secondly, we know that agriculture, land and water have been devolved to the counties. Most counties have not established their land boards. In many cases like in Kisumu County, the National Land Commission (NLC) has interviewed appointees to the land board, but they have not yet been put in place by the county assembly.

This Bill will definitely compel county assemblies to appoint and put in place necessary manpower to run institutions that are envisaged in the County Governments Act as well as the Constitution.

If you look at Clause 8(b) of this Bill, it says that the issues for consideration by the relevant county assembly in relation to any nomination, shall be the following:-

(a) the procedure used to arrive at the nominee including the criteria for the short-listing of the nominees;

(b) any constitutional or statutory requirements relating to the office in question.

If you look at Article 235 of our Constitution which concerns staffing of county governments, it reads as follows:-

“A county government is responsible, within a framework of uniform norms and standards prescribed by an Act of Parliament, for:-

- (a) establishing and abolishing offices in its public service;
- (b) appointing persons to hold or act in those offices, and confirming appointment; and,
- (c) exercising disciplinary control over and removing persons holding or acting in those offices”

Article 235(2) says:-

“Clause 1 shall not apply to any office or position subject to the Teachers Service Commission.”

Therefore, it means that the public service in the counties requires a law like this to implement Article 235 of the Constitution. Therefore, Sen. Madzayo has done the Senate a big favour to ensure that we have an Act of Parliament envisaged by the Constitution in place and which will make sure that the public service in the county is appointed properly.

Of course, the CPSB is there to do that. However, it is lacking one other law, that is, a law that actually regulates and ensures that the CPSB does its job constitutionally. Listening to Sen. M. Kajwang, he says that in Homa Bay County because of the resignation of the chairman and the complaints that the chairman laid out, that the county service board was not doing things properly in line with Articles 10 and Article 235 of the Constitution. Therefore, he felt frustrated and resigned.

Madam Temporary Speaker, this Bill will, perhaps, be something of the last resort to help people like the late Chairman of the CPSB in Homa Bay. Someone would be in a position to say that there is a law that guides decisions and any order from the executive from the county level would be illegal.

Madam Temporary Speaker, I know for certain that part of the constitutional requirements of appointing people to the CPSB is that the appointment should be in line with Article 73(2) of the Constitution. This Article has to do with leadership and integrity in Chapter Six. This is what Sen. M. Kajwang was referring to. Let me refer to it too. The guiding principles of leadership and integrity include:-

- (a) selection on the basis of personal integrity, competence and suitability or election in a free and fair election;
- (b) objectivity and impartiality in decision-making and ensuring that decisions are not influenced by nepotism, favouritism and other corrupt practices;
- (c) selfless service based solely on public interest demonstrated by; honesty in the execution of public duties and the declaration of any personal interest that may conflict with public duties;
- (d) accountability to the public for decisions and actions; and,
- (e) discipline and commitment in service to the people.

Madam Temporary Speaker, I enjoy the rare advantage of being in the Senate Committee of Finance, Commerce and Budget. I also enjoy the rare responsibility of

chairing the sub-committee on Petitions of that Committee. What occurs to me is that we are getting an avalanche of petitions focused on county assemblies based on the contravention of this particular article on leadership and integrity. As Sen. M. Kajwang was saying with regard to the late chairman, there is too much nepotism, favouritism and corruption in appointment to public office in the counties. This quite often is done with impunity.

The Constitution also says that when doing appointments, it is not just merit that should matter, but also regional balance, gender and such consideration. You cannot sacrifice competence and merit at the altar of regionalism. If somebody is being appointed, such a person must qualify to perform in that office. If there are three people with the same qualifications, then you find a way of evenly balancing them. Therefore, we must be conscious to the fact public service in the county is representative of the face of the county. However, that representation should not be at the sacrifice of merit and ability to perform.

Madam Temporary Speaker, the other thing that is not happening in the public service in the counties, is the requirement by law that at least 30 per cent of the public service should be from outside the county so that we do not have incestuousness in the public service of counties. For example, if Kakamega County is appointing its public service, some of those people should come from Bungoma, Kisumu, Nandi and so on. In the county, there should also be recognition that the face of Kenya is important.

Madam Temporary Speaker, finally, to underline the importance of this Bill, it is not possible for a committee or an institution to vet itself. A committee or an institution cannot vet itself, it has to be vetted by another body. In this regard, if the executive of the county knows that a law like this exists and the county assembly is making appointments that are in contravention of both Article 73 and Article 235, then the executive can raise questions about public appointments in the counties. This is the law that Sen. Madzayo has brought.

We are moving in the right direction in the sense that we are beginning to pass laws which put in practice the broad principles that the Constitution lays. I have always said that the Constitution is there to lay broad principles of governance. Parliament is there to translate these broad principles into law, so that nobody exercising of the responsibility of governance can doubt exactly what the framers of the Constitution meant.

The law interprets the intentions of framers of the Constitution and puts it in such a way that if you contravene it, you are contravening a Constitution which is a worse crime.

Madam Temporary Speaker, I beg to support.

**Sen. (Dr.) Khalwale:** Madam Temporary Speaker, I rise to support this very important Bill. Allow me to register my congratulations to the Mover of the Bill because he has captured what cuts right across all the 47 counties.

Before I dwell into this Bill, allow me to use the Floor of this House this afternoon to pass my condolences to the family of hon. (Dr.) Mukhisa Kituyi, who served this country for 20 years as a Member of Parliament (MP) and as a Minister before he was elected Secretary General at the United Nations (UN) because he has lost his first born son. I would not have said this, if it is not for the fact that these two boys of hon. (Dr.) Mukhisa Kituyi, that is, the one who has died and the other one joined us in the struggle against bad governance when they were minors in the sense that they were attacked so as to discourage the father from being part of the reform movement of this country.

Madam Temporary Speaker, I want to move on straight away by, first of all, commending on the first generation of employees in our counties who were employed in the absence of this Bill. Right across the 47 counties, you witness this pattern because of the absence of this law. People were employed through the vices of nepotism, clannism, cronyism and tribalism because this particular statute was not there. One hopes that after we have passed this law, the second generation of employees who will come after the 2017 elections will be the most deserving Kenyans in those counties.

It reminds me of my personal assistant who is a very renowned expert in soil science, he applied for a post of Secretary for Agriculture in a county government and he quickly passed the interview. He was position one. However, when he went for vetting, they asked him whether he was the former personal assistant of the Senator? Innocently, he answered “yes”. They told him that, in that case, he would not have an opportunity to be asked questions because he was unsuitable. His name is Matayo Isele. This happened in Kakamega County.

Madam Temporary Speaker, the Senator for Homa Bay County has raised a very important issue which we must encourage the Chairman, Sen. Madzayo to take it up. He has said that in Homa Bay, Nakuru and Kisumu counties, similar legislation is going on. We want to encourage him to apply the provisions of Article 191(2) of the Constitution to sort out this. Allow me to refer to that article which provides that in the case of conflict of laws, national legislation prevails over county legislation.

I want to urge the Chairman to collect all the pieces of legislation because Article 191(2) (a), states as follows:-

“National legislation prevails over county legislation if-

The national legislation applies uniformly throughout Kenya and any of the conditions specified in sub-Clause 3”

If this particular statute will apply uniformly across Kenya, the Chairman of the Committee, Sen. Madzayo should ensure that he collects all those other laws so that they inform him further, for us to make one common piece of legislation that will apply across Kenya.

There is the issue of evidence during a time of interviews. At *Okoa* Kenya, we have come to realize that if the Constitution itself is not remoulded, the issue of inclusivity in participation of all Kenyans in Kenya’s public service is a mirage.

During the Committee of the Whole, we should introduce a clause in this Bill that will require that the approving Committee is given evidence to show that the process of interviewing before the person emerged for approval attracted all manner of people to ensure that the principle of inclusivity is given to all the residents of a county. We could be given a name that has been tailor-made. We should fall back to make sure that the person went through a competitive process that allowed people from all the shades within the county to participate.

Madam Temporary Speaker, the Chairman of the Committee said that in Clause 5, subject to this Act, all Committee proceedings on public appointments shall be open and transparent. It is important that we underline this. I am surprised that some of my colleagues are suggesting that candidates have an option of either being interviewed in camera or in public. That option should not be there. The moment someone steps into the arena of wanting to be a public officer, he must be prepared to open up his life. We want to know the man or woman that we are entrusting our fate with. This is important so that people following the proceeding of the Committee know whether a candidate is lying. We should then follow it up in Clause 5 by doing two things.

First, we should provide for an opportunity to verify claims. Supposing, for example, somebody comes and lies and the members of the public know that this man or woman is lying; we should give a second opportunity after that person has lied, for any member of the public who might have contrary information, to provide to the Committee.

Second, we should delete Clause 6, which says that despite sub-section 5, a Committee may, on its own Motion, on the application of a candidate or any other concerned person determine that the whole or the part of the sitting shall be held in camera. It must never be held in camera. If you have something to hide and you do not want people to know that you are a polygamist and you are ashamed of it, then do not go for the job. If you know you are gay and you do not want people to know, then do not present yourself because your being gay will be discussed.

Madam Temporary Speaker, Clause 7 provides that an approval hearing shall focus on a candidate's credentials, professional training, experience, personal integrity and background. The Chairman of the Committee should tell us what he means by "background". We want "background" to be incisive, it should include family history. We want to de-size ourselves as members of the county assembly. Could we entrust somebody who has been unable to manage a family, that is, a wife, a daughter, a son and, probably a grandson, to manage a public office? If he has been unable to manage such a critical small unit of his own, the answer is "no." In fact, in all the cultures and particularly the Luyha, it is very difficult for you to win an election in Luhya land when you are not married. This is because people wonder why they should give someone a job when he has been unable to take care of his own family. I am glad to also know that the Kisiis, who are my in-laws, also apply the same.

Clause 10---

**The Temporary Speaker** (Sen. Ongoro): What is it, Sen. Ong'era?

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**Sen. (Dr.) Khalwale:** Madam Temporary Speaker, kindly hold my time. I still have a lot of time left.

**Sen. Ong'era:** On a point of order, Madam Temporary Speaker. Did you hear what the distinguished Senator for Kakamega County said? Is he telling us that the youth who are 20 or 25 years of age cannot seek elective positions if they are not married? Is it only married people who can seek elective positions? The Senator is out of order and you need to rule him out of order.

**The Temporary Speaker** (Sen. Ongoro): Senator for Kakamega County, that did not come to my attention. Did you make that kind of a statement?

**Sen. (Dr.) Khalwale:** Madam Temporary Speaker, the distinguished Senator is actually putting in her own argument for which I cannot fault her. I did not say what she said. What I said is that, in many communities, just like in my community, it is fairly difficult for one to win an election, unless he has a family. I did not say that one should not be allowed to serve in public office.

**The Temporary Speaker** (Sen. Ongoro): So, you were just translating what happens in many communities.

**Sen. (Dr.) Khalwale:** Exactly.

**The Temporary Speaker** (Sen. Ongoro): Please, proceed.

**Sen. (Dr.) Khalwale:** Madam Temporary Speaker, if a 20 year old can convince himself into a job, why would I stop him? After all, I started public service at the age of 22. So, I see no contradiction. I thank you for the correction.

In Clause 10, the Committee says that any person may prior to the approval of hearing, submit written statement. I would like us to now bring in another clause to provide that even after the approval exercise, somebody can bring in information if it is useful.

I want to take you straight to the First Schedule, where the Committee proposes---

**The Temporary Speaker** (Sen. Ongoro): Sen. (Dr.) Khalwale, at this point, I wish that you could have introduced all these proposed amendments procedurally. Otherwise, you realize that all the good proposed amendments will be treated just like part of your contributions. They will not alter the content of this Bill.

**Sen. (Dr.) Khalwale:** Madam Temporary Speaker, I am guided. However, I am aware that during the Committee of the Whole, I will still have an opportunity to make written amendments that can then be admitted.

**The Temporary Speaker** (Sen. Ongoro): Very well.

Please, proceed.

**Sen. (Dr.) Khalwale:** Madam Temporary Speaker, in the First Schedule, No.16, they are asking for the employment record. One can just say that "I worked for Nation Media Group as CEO, then went and worked for Mumias Sugar Company as CEO." I would like, as you list - it does not matter whether you were paid in shillings, dollars, pounds or bananas. I would like that the person be asked, as they moved, what were the

reasons as to why they left the previous employer. It is important that in this First Schedule, that be indicated.

I now move on to No.30 in the First Schedule where they ask; “Have you ever been adversely mentioned in an investigatory report of Parliament or any other commission of inquiry in the last three years?” I would like us to amend it and include “investigatory report of Parliament and county assemblies” This is because the county assemblies have now started doing investigatory reports and will be making recommendations. So, if some character in a particular county has been found not to be able, for whatever reasons, he should not sneak his way into another county.

Madam Temporary Speaker, this is the real gist of the matter. I know of many public officers in this country who if the National Assembly just bothered to go and read the Public Investments Committee (PIC) and the Public Accounts Committee (PAC) reports, would not even be allowed to say their names. In fact, the furthest that they could be allowed is to confirm that they are the same people who were named in the reports.

However, these people continue getting jobs. So, what is the need of carrying out those investigations if we do not use the reports a few years later after the reports have been made? Why does the Chairman insist on three years? Does he mean that if a guy was discovered a crook six years ago and wants a job now, he has he cleansed himself?

People do not become clean by virtue of the passage of time. It should read that “if one has been mentioned adversely,” it does not matter whether it is three or four previous years. We want to raise the bar of public service. It is the young Senator, Sen. M. Kajwang, who has told us about the misfortune of taking Chapter Six of the Constitution for granted.

Madam Temporary Speaker, it is very difficult after the Supreme Court allowed seven people to run for high offices and said that the matter was not binding for them to be denied an opportunity to run by the Independent Electoral and Boundaries Commission (IEBC). It has become so difficult to bar other jokers who now want to sneak into public offices.

I propose that we delete No.31. It asks: “Have you any objection to the making of inquiries with your present employer and referees in the process of considering your nomination?” How can you make that optional? We should just delete it. It is important that the Committee looks for information from anybody and everybody.

In the Second Schedule, is the question of weighting of performance; I support them for what they have done, but believe that you cannot ask all the other questions that have been asked in the First Schedule and then end up not giving any marks to it. If you have talked about integrity or marital status in the First Schedule, you must score them.

If you are not going to score my marital status, then why ask me? You are asking me for my marital status, so that I can get certain marks. If you think that Sen. (Dr.) Khalwale, who is a polygamist, should score less, then let me get less marks. However, because I have proven that I can practice multiparty democracy in my family, I should



score more and have a greater opportunity to get the job. We have to be realistic and practical. This straight jacket thinking does not help legislation.

*(Laughter)*

Madam Temporary Speaker, finally but not least, is on the issue of MCAs. If we expect high standards of the people we are vetting, we should also subject ourselves to an opportunity to offer high standards for us to go into offices to vet people and decide whether they are sufficiently qualified or not. Let me give you an example of a case of one of my hospital matrons who was vetted in Kisumu County. I think she had applied for a job as a Chief Nursing Officer. The MCA who vetted her was some character from her village. She wrote an article in one of the news papers wondering how a village boy, who had no qualification could decide whether or not she was qualified.

This is the time for the Senate to be brave and lead the country in introducing amendment legislation on the Elections Act, where we must demand that our MCAs, the Members of the National Assembly and Senators in the next election, should be people who are properly educated. If an old man like the distinguished Senator for Laikipia County, in spite of his age, is a scholar, has even written books which I read, although I do not always agree with everything that he has written, what is so difficult for a youth to go back to school so as to meet the minimum requirements to go to the county assembly, the National Assembly or the Senate? I will be very happy when the minimum qualification for somebody to become a Member of the National Assembly or the Senate will be somebody with a minimum of degree education and form four and post secondary school education for the MCAs.

I beg to support, with those suggested amendments in the Committee of the Whole stage.

**The Temporary Speaker** (Sen. Ongoro): Thank you, Sen. (Dr.) Khalwale.

Please, proceed, the Senator for Trans Nzoia County, Sen. Ndiema.

**Sen. Ndiema:** Thank you, Madam Temporary Speaker, for giving me this opportunity to contribute to this very important Bill. The Bill is very important in terms of how counties run and engage their staff. Perhaps, this Bill is even coming late. It should have been there when counties were being established because what we have noticed so far is that, the manner in which appointments have been done, perhaps, is not what we would have wished if this Bill was there. It is good that this Bill comes to regulate and set criteria for nomination and appointment of officers to the County Public Service (CPS).

We cannot say that the appointing authority which is the CPSB has been independent. They are supposed to be, but the way they are run is that the executive is the one setting the pace and influencing even creation of positions. County assemblies are not independent and not even well facilitated to do proper job evolution and specification.

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You will hear county executives are creating positions to suit particular candidates that they have in mind.

Many positions such as liaison officers, political and even agricultural advisers have been created. There are very many duplications. I hope that this Bill will cure and strengthen the position of CPSB. They still live in fear because they were appointed initially through the influence of the executive.

The manner in which nominations are done begins with the specification then application. However, we have seen some situations where eligible candidates who meet all the requirements at some level, perhaps, by a clerk or somebody, has eliminated somebody and has not even been shortlisted. Shortlisting is currently very confidential and people who get to know are those who have been invited. It is very important that this matter is done transparently.

When candidates apply, their names should be put in a public place where the candidates and even the public should know who else applied and who did not. When they are short listed, the candidate who feels aggrieved should be able to raise any issue and find out why he or she was not shortlisted. The issue of saying that “if you have not received our feedback, consider your application unsuccessful” should cease. Somebody should be addressed in a letter with an explanation as to why he does not meet the requirements.

Recently, we had the other Bill on good governance and how we should communicate with the public on all issues. This Bill should ensure that candidates are not eliminated at the early stage. Recruitment is a very sensitive issue. In some counties, it has caused problems of instability which spreads to communities. It is sometimes politicized and it can show in so many other issues. This Bill should seek to ensure that whatever is done is to the satisfaction of the public.

Chapter (10)(1) of the Constitution provides as follows:

“The national values and principles of governance in this Article bind all State organs, State officers, public officers and all persons whenever any of them –

- (a) applies or interprets the Constitution;
- (b) enacts, applies or interprets any law; or
- (c) makes or implements public policy decisions.”

One of the requirements in 2(b) is that that there should be human dignity. I do not know whether the recommendations in this Bill really promote dignity of the applicant. We should not look like we are harassing applicants in such a way that we even discourage others who may be qualified, but may fear because of exposure of their privacy being invaded.

Equity, social justice and inclusiveness must also be there. I do not know whether the recommendations here ensure that there is inclusiveness. When I talk of inclusiveness, I have in mind a county which has constituencies or sub counties and wards. Is there anything to ensure that there is inclusiveness in terms of regional balance? If we leave it just merit, then some areas in a county could be marginalized.

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The same goes about equality, human rights, non-discrimination and protection of the marginalized. I believe at the Committee of the Whole stage, the Committee will look at that and ensure this provision of the Constitution is also included. We cannot wish away ethnic considerations in counties which have many communities. Even if it is one community, clan considerations cannot be wished away. If they are not considered, they will boil, flare up and insecurity will crop in.

There is also the issue of who gets priority when a position occurs in a county. A situation may as well arise that all applicants, of course, being Kenyans may be all from outside the county and they score highly. Are we saying that we can even employ 100 per cent from outside the county? The limit of 30 per cent to be employed from outside the county is provided for, but has it been provided for in this Bill? This Bill should also capture that 30 per cent should be considered for employment from outside the county. We, as a country, belong to different ethnic groups, communities and so forth. Some are disabled and there are gender issues. The Bill should capture all that.

I believe it should also say that majority of the people to be recruited should come from the county. A county can wake up and decide to employ everybody from outside. I am not saying it has happened, I am being hypothetical. When we are creating a law, we should make one that will apply in future.

Madam Temporary Speaker, there is an issue in Government institutions which has been abused, and particularly in parastatals where some private institutions are engaged to list, interview and prequalify candidates. I believe that this should not be allowed to happen in the counties. That is where the devil resides so that particular candidates are chosen from the private sector and admitted into the county governments.

I support this Bill, subject to amendments that will ensure that Chapter 2 of our Constitution is fully captured and that the criterion is foolproof and there is independence of the CPSB.

**The Temporary Speaker** (Sen. Ongoro): I call upon the Mover of this Bill to reply.

**Sen. Madzayo:** Thank you, Madam Temporary Speaker, Sir. With your kind permission, allow me to pass my condolences to the Hon. (Dr.) Mukhisa Kituyi for his son's death. I would also like to pass my condolences to the family of my former colleague and friend who as a distinguished lawyer, Mathews Oseko. To his wife I say: *Pole sana*.

Madam Temporary Speaker, I sincerely want to thank all my distinguished colleagues for their very able contributions. I have had the opportunity to record quite a number of them. I want to assure the House that all their contributions shall be taken into account. More importantly, I want to encourage them to bring forth any amendments that they may have. We, as a Committee, shall take all those amendments into consideration. This will ensure that favouritism, tribalism and nepotism in the county governments in terms of appointments will come to an end.

Lastly, under our Standing Order No.54(3), allow me to request that you kindly defer the issue of voting to another day.

**The Temporary Speaker** (Sen. Ongoro): Request granted. We take the Question next week on Wednesday at 2.30 p.m.

*(Putting of the Question on the Bill deferred)*

Next Order!

*Second Reading*

THE FOOD SECURITY BILL  
(SENATE BILL NO.23 OF 2014)

**Sen. Elachi:** Madam Temporary Speaker, I beg to move:-

That the Food Security Bill (Senate Bill No.23 of 2014) be now read a Second Time.

Madam Temporary Speaker, this is a historical Bill. This Bill will ensure that, once and for all, we realize solutions to some of the challenges we have faced since Independence and also since the first Sessional Paper on food Security was done in 1965.

The Memorandum and Objectives of the Bill are very clear; to provide a framework for the realization of the right to be free from hunger and to adequate food of acceptable quality as guaranteed under Article 43(3) of the Constitution. Part I of the Bill deals with preliminary matters and sets out the Objects and Purposes of the Bill and the principles that will guide the county governments and other actors in the implementation of this Bill.

Part II of the Bill elaborates the issue of the right to food as articulated under Article 43 of the Constitution. It also confers various obligations on the national and the county governments in ensuring that freedom from hunger and the right to adequate food is realized.

Part III of the Bill provides for the establishment of the Food Security Authority; the composition of the Authority and its functions as relates to the formulation of policies, programmes and strategies for implementation by county governments and the establishment of monitoring and evaluation mechanisms to determine the suitability of interventions put in place to ensure food security.

Madam Temporary Speaker, this is also a Bill that before it was established, we went round more than 20 counties with the African Women Studies group of the University of Nairobi to carry out findings in order to understand what we mean when we talk about food security. This was also to just understand how in our country we look at the issue of hunger. How do families survive in our country? This research was also

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funded by the Treasury and we came to understand that more than three to seven million families in our country either have one meal or none at all per day.

We went to the most remote areas in the counties, for example, in Baringo and West Pokot counties. We made a report for each county. When we sat down under the trees to have discussions, the first thing the women and children asked us was whether we had carried a bottle of water to share with them. When we asked them whether they had had a meal that day, some would tell us that they would eat roots of a tree that they were going to boil. Some would tell us that they had raw mangoes that they were going to boil and have a meal while others would tell us that they would go hungry that day.

As we bring in this Bill, we also need to ask ourselves; how do we ensure that when we talk about food security those from pastoral areas will also benefit from their cows and goats? You will find that they have a lot of livestock, but because they believe that those are income generating resources, they do not touch them. They would rather sleep hungry and yet they have hundreds of goats somewhere.

Therefore, as we bring in this Bill, we, as the Senate, have an obligation to ensure that we create awareness, sensitise our people and try to change some of the lifestyles that pose challenges and hinder our people from achieving the Millennium Development Goal (MDG) No.1; to eradicate poverty and hunger. We are in the year 2015 when we should have achieved this. Therefore, this Senate comes in at a very fundamental time. The country, at this time, should have achieved the MDG No.1 which is about food and hunger.

Madam Temporary Speaker, Clause 4 of the Bill provides for the composition of the Board of the Authority which is involved in the management of the Authority. It also provides for the recruitment and appointment of the Director-General.

Clause 5 has an establishment of a secretariat to be headed by the Director-General which is responsible for providing technical and administrative services to the Board.

Madam Temporary Speaker, when we hear about such issues in a Bill, we become a bit worried. However, I plead and request the Senate that we need to understand this framework. We must come up with something to restructure what has been one of the “cow cash” programmes that we have seen running this country for many years. When people deal with relief food---

**The Temporary Speaker** (Sen. Ongoro): Sen. M. Kajwang, do you have an intervention?

**Sen. M. Kajwang’**: Yes, Madam Temporary Speaker, I have an intervention. Could the good Senator explain to us what she means by “cow cash”?

**The Temporary Speaker** (Sen. Ongoro): Sen. Elachi, what did you mean exactly? Did you mean cash cow or cow cash?

**Sen. Elachi**: Madam Temporary Speaker, I meant cash cow.

I have said that in many years, we have had different projects where when people see that something is being constituted or established, you will realise that each one of

them will start thinking of entrepreneurial tenders and all that instead of looking at the good. I am trying to tell those out there that the Senate is doing one thing; providing a framework on how to ensure that our people – both at the counties and the national Government –do not die of hunger.

We want to ensure that we do not see faces on the television where people from some counties and cry to the national Government that they need relief food when there is drought. This is a framework that will bring in county governments to sit down with the national Government and ensure that when there is a challenge of food security, both the national and county Governments are responsible to their people.

Madam Temporary Speaker, Clause 7 provides for the establishment of a food insecurity and information mapping system to serve as an early warning system. This system will assist, especially at the county level, where there will be committees which will look at disaster management plans and emergency preparedness strategies and provide a basis for identification of the appropriate corrective measures for the purpose of addressing and preventing causes of food insecurity. It also provides for the formation of food impact assessment prior to the implementation of any policies or programmes on food security.

Clause 8 provides for the powers of the President in the case of a food emergency. During this period, the powers vested in the Authority, are vested in the Cabinet Secretary.

Madam Temporary Speaker, while we unlock the realisation of this Article in the Constitution, we must also remember that there is always a challenge in terms of food security. At one point, you will find that in one region, there is surplus food. You will find that there is a challenge in another region where there is no food at that time. Counties should ensure that there is food security. Governors and county governments should liaise with each other through a mapping system. They should inform each other that they, for example, have a surplus of maize, but their people do not have beans. Another county should also call and say that they have a surplus of, for example, beans, but lack vegetables or something else. By doing that they will ensure that at any given point or time no one within their counties dies for lack of food.

This is one issue that we have always seen for the past 50 years. We rush to give emergency food after Kenyans start dying. It is usually the media that creates the awareness. Thereafter, the Kenya Red Cross Society and other institutions or Kenyans of goodwill come out to support the course. When we have a framework, somebody should be responsible and accountable. There should be somebody who we can question and ask why Kenyans have to die within their county due to lack of food.

Therefore, Madam Temporary Speaker, I thank the Committee whose Vice Chairperson has just walked out. The work it has done, in terms of enriching the Bill, is commendable. We now have a Bill that any Kenyan or the Government can look at and thank the Senate for ensuring that since we formed county governments, we will have a

framework if we pass the Bill to assist in terms of moving forward and realising Article 43(3) of the Constitution.

Madam Temporary Speaker, there are many other examples across the world. There are very good and elaborate Security Bills in India and China. When you go to those countries, you will find that there is surplus of food. All that was realised through different frameworks and over many years. For example, in India, the Bill came in 2013. Brazil is equally doing well.

In Africa, Nigeria is doing very well in terms of ensuring that there are programmes that will help people to appreciate and live in dignity because they have enough or the right to food.

As I talk about all these, we need to look at the fundamental issue of land. When we talk about food security, the issue of land features very strongly. Today we do not have enough land. We have kept on subdividing our land into smaller portions. I hope that at one point the Senate will look at the Constitution and decide on the minimum acreage of land that one can own, so that we do not end up importing 80 per cent of our food requirement.

Madam Temporary Speaker, we also need to put in place other measures to enhance food production. We know that 70 per cent of our country's food production is by small scale farmers, most of whom are women. We need to embrace technology in food production, but we also need the county governments, now that agriculture is a devolved function, to engage the services of extension officers who can support the farmers. They should embrace smart farming so that the small pieces of land can achieve surplus yields. We also have a challenge with fertilizers. We must address this challenge if we want to achieve food security. We must, therefore, come together as leaders, especially in the county governments to address the issue of food security, once and for all.

Madam Temporary Speaker, I beg to move and call upon my friend, the "king" of Pokot, Sen. (Prof.) Lonyangapuo, to second.

**The Temporary Speaker** (Sen. Ongoro): You have started anointing people in the Senate.

Proceed.

**Sen. (Prof.) Lonyangapuo:** Madam Temporary Speaker, she has given me a new title.

Madam Temporary Speaker, I beg to second this Bill. For the very first time and, in consultation with people in the agricultural sector, we have a Bill that is specifically dedicated to food security. We have always had policies that have been driving the demand and provision of food, from the 1963 Sessional Papers and so on. Even with the over 240 parastatals that we had before, there is none that has always really come out to state boldly and clearly that there is need for a law dedicated to the provision of food for every Kenyan.

Madam Temporary Speaker, Article 43 of the Constitution talks about economic and social rights. Article 43 (1) says:-

“Every person has the right-

- (a) To the highest attainable standard of health, which includes the right to health care services, including reproductive health care;
- (b) to accessible and adequate housing, and to reasonable standards of sanitation;
- (c) to be free from hunger, and to have adequate food of acceptable quality;
- (d) to clean and safe water in adequate quantities;
- (e) to social security; and
- (f) to education.”

There are places in this Republic where at certain times of the year, people have access to only one meal for almost a week. We have had the ability and opportunity to provide food for our people, by creating the right policies, but we have not done it. My colleague has introduced this Bill, so that we can actualize the provision of Article 43 of the Constitution. Every Kenyan wherever they are should have enough food.

Clause 5 of this Bill talks about the right to food. It says that the national Government and county governments shall respect, protect and fulfill the human right to food and guarantee mechanisms for its enforcement. It lists about 15 measures that need to be taken by the national Government and county governments in order for a person to enjoy the right to adequate food and freedom. Clause 5 (2) (i) and (k) says:-

“Protect individuals, groups and communities from encroachment or interference by any person to the access to food;

(k) take all reasonable measures to ensure that food resources and sources of food production are protected from destruction and are sustained for future use.”

Madam Temporary Speaker, this Bill lists what should be done. It even goes further to talk about an authority that should be formed, which will manage and take care of this. It suggests who should sit in the board, be the Chief Executive Officer and so on. Last year, the Jubilee Government reduced the number of parastatals from over 240 to around 180 now. This Bill will deal with a very stubborn problem.

In 1963, Mzee Jomo Kenyatta talked about three problems that were a mess in Kenya. He mentioned hunger, disease and illiteracy. Hunger has not been eliminated or reduced in the last 52 years. That means that this proposed parastatal or authority must be based in every county. We should not make the mistake of basing it in the national Government. Initially it was under the Minister of Internal Security and now it is under the Ministry of Devolution and Planning.

Whenever there is an emergency, it is at the will and pleasure of the relevant department to always release food or allocate money for the importation of food. By the time the importation takes place, many people and middlemen will have been involved. Therefore, an authority should be formed in every county. The authority should work with the Ministry of Devolution and Planning, so that money meant for food security is distributed equally.



Madam Temporary Speaker, when the Jubilee Government came to power, it promised to put one million acres under irrigation to enhance food production. However, the project was taken to two counties, that is, Tana River and Kilifi, where there is a population of less than 500,000. We should fight hunger by being realistic. Every county should have been given a ratio of that one million acres. We proposed a Motion in this House last year to give every county an appropriate amount of money to do irrigation.

I know that Nairobi is full of houses, but who said that it cannot lease land from Kajiado? It can lease land from Narok. They can go to West Pokot or Turkana where they can even be given land for free. If that is done, then it will be very easy to get food crops and guarantee every person food.

The national and county governments shall have to extend their mandate as set out in this Bill. They should promote childhood nutrition. Some counties, including mine, are leading in malnutrition. For example, about 46 per cent of the population in my county is suffering from malnutrition. The average percentage of those suffering from that problem in Kenya is, 26 per cent. That means those areas were forgotten or marginalised. Therefore, the Food Security Bill (Senate Bill No. 23 of 2014) is the “saviour.”

This Bill should dictate that every ward in the Republic should build a store for food. Governors and the national Government should wait for and implement the recommendations of this Bill when it finally becomes an Act. When we are talking about getting food for Kenyans, we should guarantee and eliminate some of these problems.

It does not mean that emphasis should be on maize production alone; there are many things that can be done, especially with integrated irrigation. Many other food crops can be grown. When this Bill is passed, it should assign specific roles to both the county and national governments for us to provide food security to our people. Hunger and lack of food should be things of the past. We must strive to get right food for our people.

Madam Temporary Speaker, good health and food are related. Going to school hungry, as we saw a video of schools in Baringo County, make children fail in their exams. All these factors are related. Sickness attacks people who are hungry all the time. The ultimate solution of eradicating all these problems is eliminating hunger. I urge my colleagues to look at this Bill thoroughly and become proponents of it. When the Bill is finally passed, governors should get it and the MCAs should implement it.

With those remarks, I beg to second.

*(Question proposed)*

**Sen. Sijeny:** Madam Temporary Speaker, thank you for giving me a chance to contribute to this wonderful Bill. I am not surprised that it has been brought by a woman and mother. Mothers are very sensitive to the good health and well-being of, not only their children, but the entire nation. They are the mothers of the nation, if not the world.

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Having said that, this Bill is very important; we have grown up seeing Kenya being ridiculed and the world coming to give aid to Kenya. The Red Cross Society has been overworked especially around Turkana and other Arid and Semi-Arid Lands (ASALs).

We have seen our brothers and sisters in the eastern region, some are forced to eat dogs or wild fruits and roots to survive yet we have areas within our country which are very rich and fertile and can grow a lot of food.

Madam Temporary Speaker, with this Bill, if everything is regulated accordingly, it will ensure that the basket of the country will provide food to other areas and all the malnutrition will be a thing of the past. We have passed various resolutions as the Senate; we have passed Motions and also dealt with the issue of the need of irrigating most areas within the country. This Bill will ensure that all those are harmonised and the country will no longer be a laughingstock. We are well educated, we have equipment and we also have good friends who can provide all the things we need. Therefore, we do not need to suffer.

We have worked hard for many years. I remember when I was a young girl in school, we used to participate in the freedom from hunger walk. It cannot be the same thing many years later. This must come to an end. We, as leaders, must come up with policies and implement them. We should come up with the laws that will ensure that future generations do not go through what we went through.

Madam Temporary Speaker, I have looked at the Bill and it does not violate the Constitution at all. It enables the implementation of the Constitution where every Kenyan has a right to food. I am very happy because this Bill complements the Bill that I have been struggling with in this Senate for the last two years, having tabled it in September, 2013, that is, the Reproductive Healthcare Bill.

In the Bill, I have talked about the right to knowledge and information. Once these Kenyans are informed and taught and especially the adolescents, they are taught the right nutritional knowledge so that they can stop eating junk food and remain healthy and strong to enable them participate in the development of the country.

I am aware that countries like the United States of America (USA) are on a serious campaign on the issue of nutrition. This is to enable them deal with the problem of obesity amongst others. We know that a healthy nation is a wealthy nation. When we feed well and are able to eat good fruits, some even grow in forests, we will not have problems at all. The other day, we were in Turkey and everybody does exercises. They eat well and do a lot of exercises.

We have seen that the Bill talks about the Cabinet Secretary making regulations. I am glad being the Vice Chair of the Committee on Delegated Legislation, we shall look into them thoroughly, give proper public participation and ensure that the Bill is implemented to the letter.

With those few remarks, I beg to support.

**Sen. Ong'era:** Madam Temporary Speaker, thank you for giving me this opportunity to support this Bill. First of all, I would like to congratulate Sen. Elachi for bringing a Bill on Food Security. As you are aware, this Bill provides for effect to Article 53, Article 21 and Article 43. Apart from providing for acceptable food, it also provides for adequate food and a nutritious diet.

As the Secunder of this Bill stated, we have never had a Bill in this country that talks about adequate and nutritious food. Therefore, this is a Bill that we want to support. However, I would not want to support it, if it will bring devolution down. Therefore, at the right time, we will be proposing the necessary amendments so that the principle of devolving agriculture to the counties and the issue of food security remains with the counties.

Madam Temporary Speaker, I would like to look at the composition of the board that has been proposed. While it is a good idea to have a board, we should not try to centralize and bring back agriculture to the national government through the backdoor by centralizing certain provisions and have them at the national level. I would want to see a situation where more of the county officials are involved in the composition of the board so that we can have involvement of the counties.

**The Temporary Speaker** (Sen. Ongoro): Order, hon. Senators! When the Bill next appears on the Order Paper, Sen. Ong'era will have 13 minutes to conclude her contribution.

### ADJOURNMENT

**The Temporary Speaker** (Sen. Ongoro): Hon. Senators, it is now time for interruption of the business of the Senate. The Senate, therefore, stands adjourned until tomorrow, Wednesday 1<sup>st</sup> July, 2015 at 2.30 p.m.

The Senate adjourned at 6.30 p.m.