

PARLIAMENT OF KENYA**THE SENATE****THE HANSARD****Wednesday, 15th July, 2015**

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

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

PRAYERS**PAPERS LAID**

The Speaker (Hon. Ethuro): Yes, Sen. (Dr.) Khalwale.

REPORTS OF THE AUDITOR-GENERAL ON THE FINANCIAL
OPERATIONS OF VARIOUS COUNTY GOVERNMENTS

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, I beg to lay the following Paper on the Table of the Senate today, Wednesday, 15th July, 2015.

Report of the Auditor-General on the financial statements of the County Government of Migori for the 16 months period that ended on 30th June, 2014.

Report of the Auditor-General on the financial statements of the County Government of Homa Bay for the 16 months period that ended on 30th June, 2014.

Report of the Auditor-General on the financial operations of Nyamira County Executive and Nyamira County Assembly for the period 1st July, 2013 to 30th July.

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

RECURRENT/DEVELOPMENT EXPENDITURE
ESTIMATES OF THE PSC

Sen. Musila: Mr. Speaker, Sir, I beg to lay the following Paper on the Table of the Senate today, Wednesday, 15th July, 2015.

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Estimates of the Recurrent and Development Expenditure of the Parliamentary Service Commission for the year ending 30th June, 2016 and projections for 2016/2017 and 2018.

(Sen. Musila laid the document on the Table)

STATEMENTS

The Speaker (Hon. Ethuro): Where is the Chairperson of the Committee on Finance, Commerce and Budget?

UPSCALING OF MINIMUM SHARE CAPITAL OF COMMERCIAL BANKS

Sen. Billow: Mr. Speaker, Sir, I rise to give a statement on the increase in the minimum share capital of commercial banks which was sought by the Senator for Bungoma. The Senator had sought to know a number of issues regarding the increase in the minimum share capital, what policy informed the announcement by the CS to upscale the minimum capital of the banks to Kshs5 billion. He also wanted to know whether the policy statement was subjected to public sector participation. He also wanted to know when the policy is expected to be effective and a number of questions that I will respond to as we move along.

Mr. Speaker, Sir, the Statement from the Cabinet Secretary is long, so I will not go to the preamble and the introduction which explains the overview in the banking sector development. I want to draw the attention of the Senator to the East Africa Monetary Union Protocol which was signed in November, 2013 which, among other things, seeks to integrate the member states' financial systems and adopt common principles and rules for regulation and supervision of financial institutions.

I want to go specifically to the questions sought in the Statement. The Senator wanted an explanation on what informed the policy announcement by the Cabinet Secretary for National Treasury to upscale the minimum capital for banks to Kshs5 billion. As you know the current capital requirement for banks in Kenya is Kshs1 billion. The policy statement in the Budget is to raise that to Kshs5 billion. Pursuant to Vision 2030, the financial services sector has been identified as critical to achieving the targeted 10 per cent annual economic growth which requires that this sector stimulates a significant increase in investments and savings by mobilizing both domestic and international resources. The Government's strategy is to move Kenya to new development frontier. To achieve this, the banking sector is expected to play a catalytic role through the mobilization of substantial resources which are expected to achieve this vision. Therefore, the Kenyan banking institutions are expected to be well capitalized to rise up to this challenge.

The second reason that informed the policy is that the Government also aspires to transform Kenya into an international financial centre which is able to attract

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international investments and participate in the financial services arena. Therefore, Kenya needs to have a strong and well capitalized banking sector which will be able to stand any shocks or financial crisis. Therefore, it is necessary to capitalize the banking sector.

The third point is that the monetary affairs committees of the regional Central Bank Governors passed a resolution requiring all regional state Central Banks to also increase their core capital to 10 per cent of the monetary liabilities. In fact, this is in line with the Central Bank of Kenya (CBK) requirement to increase its paid up capital from Kshs5 billion to Kshs20 billion as provided for in the CBK Bill, 2015 which under Clause 26 states clearly that the authorized capital shall be fully subscribed and paid up. Those are the reasons that informed the policy announcement by Treasury.

Mr. Speaker, Sir, the second question was whether the policy statement was subjected to public and sector participation. According to the Cabinet Secretary, this was supposed to have been undertaken when the Budget hearings were being done. The Budget Statement is a culmination of the Budget-making process which includes public participation but I am not convinced that there is an actual involvement of the banking sector in that participation. The Government believes that through the Budget process, they have subjected it to public participation.

The third question is when the policy is expected to be effective, that is, when do we expect to raise the minimum share capital of the banks to Kshs5 billion. This is by December, 2018; Kshs2 billion by 31st December, 2016; Kshs3.5 billion by 31st December, 2017 and Kshs5 billion to be attained by 31st December, 2018.

The fourth question was whether the Cabinet Secretary, National Treasury is aware that this policy announcement serves to bolster and perfect the dominance of foreign and established local banks. This will effectively kill competition and emergence of new local players in the banking sector.

Mr. Speaker, Sir, as of March 2015, the Kenyan banks were capitalized as follows: There was only one bank which had a capital below Kshs1 billion; about 15 banks had a capital of above Kshs1 billion but below Kshs2 billion; seven banks had core capital between Kshs2 billion and Kshs5 billion; 21 banks have core capital of above Kshs5 billion. Out of the 44 banks, nearly a half of them have core capital above Kshs5 billion.

Therefore, it is clear from this argument that dominance is not likely to arise because for a cartel to exist, you need to have about five or six banks. This is a situation where already over 21 banks have a capital above that. Furthermore, Section 24 of the Competition Act, 2010 prohibits any conduct which amounts to abuse of dominant position. What the law prohibits in the Competition Act is the abuse of that dominant position; otherwise dominance in a market is not an illegality in itself.

Mr. Speaker, Sir, the Act also provides for merger regulations. The intention of all this is to encourage banks to merge so that they can be stronger. Therefore, merging is not anti-competitive in nature.

The other issue is whether the Cabinet Secretary is aware that smaller and emerging financial institutions and banks established to serve niche markets and special interests compared to the major established banks, some of which are out of reach for

local entrepreneurs especially women and youth - If these banks become large and are merged, would the special interests and small markets suffer?

The capitalization requirement does not affect micro-finance institutions and SACCOs which are the dominant players in providing credit to Small Micro-finance Enterprises (SMEs). Furthermore, there is no evidence to suggest that specific commercial banks serve specific niche markets for SMEs and special interest groups; rather, their portfolios are wide to cover various interest groups.

Mr. Speaker, Sir, the other issue is whether the Cabinet Secretary to the National Treasury is aware that this policy announcement violates the provisions of law against monopolies. I have already addressed this but it does not create any monopoly and does not create any dominant player. The Competition Act does not prohibit dominance or monopolies but prohibits the abuse of those powers.

The last question is whether for any reason the Cabinet Secretary can vacate this policy to allow the banking sector to develop with the dynamism of a free market economy that Kenya embraces. The Government does not intend to vacate this policy because of the catalytic role the financial sector is poised to play in making Kenya a regional financial hub as well as achieve the other broader objectives of Vision 2030.

Thank you.

The Senate Minority Leader (Sen. Wetangula): Mr. Speaker, Sir, if you watched the Chairman, who is normally a very confident person, his body language betrayed him. He did not even believe in what he was reading. How can the Cabinet Secretary and you, as our Speaker, sitting there unilaterally, because he says there was no public sector participation to raise the capital of banks from Kshs1 billion to Kshs5 billion. Banking is not about size, it is about services. Sen. Khaniri, Sen. Ndiema and Sen. (Dr.) Khalwale can tell the House that courtesy of devolution, five western counties have come together and are putting Kshs250 million together to start a bank to cater for their special county needs. This can be done in Mt. Kenya region, in the Arid and Semi-Arid Lands (ASAL) region and so on.

Mr. Speaker, Sir, we are being treated to a Cabinet Secretary sitting on his own and dancing to the tune of mega banks that are controlled by foreigners to choke and kill the emergence of local banks. It might not be lost on us that when the new Governor of Central Bank of Kenya was being interviewed, he specifically said that this policy is misguided, ill-informed and he does not believe in it. In view of that, and the lackluster and pedestrian manner in which the Chairman has presented the answer, I urge the Chair, as many Members participate, that the Committee which has done a wonderful job so far under his chairmanship should summon the Cabinet Secretary and the Governor of Central Bank of Kenya. The world over, monetary policy is not a preserve of the Cabinet Secretary for National Treasury.

The Speaker (Hon. Ethuro): Order, it is Statement time.

The Senate Minority Leader (Sen. Wetangula): Mr. Speaker, Sir, it is the Central Bank that determines, sets, guides and breeds monetary policy of any country. If the Governor says he is not for this, where is the Cabinet Secretary getting authority to do the misguided pronouncement?

Sen. Khaniri: Mr. Speaker, Sir, in trying to justify why there was the increase of the share capital from Kshs1 billion to Ksh5 billion, the Chairman says that the Cabinet Secretary informed him that the banking sector should play a catalytic role to achieve Vision 2030. That is what informed their increase from Kshs1 billion to Kshs5 billion. How can they play a catalytic role when the local entrepreneurs are being locked out?

I can assure you that, locally, no one can amass or raise the Kshs5 billion that they have put. Will this figure apply only to foreign investors so that local people are exempted? The figure for the local people should remain at Kshs1 billion. In answering whether there was public participation, the Cabinet Secretary is telling us that he expected that when people participated in the Budget-making process, it was to also cover this particular issue. We expected a proper structured public participation for such a policy to be implemented. Could they consider shelving this particular policy until the public is properly consulted as required by the Constitution?

Sen. Ndiema: Mr. Speaker, Sir, I understand that it has been the policy of the Government that Small and Medium Scale Enterprises (SMEs) are the key to developing this country and they should be encouraged. I want a clarification as to why the Government has decided that it is only foreign institutions that are supposed to be involved in the banking sector and not SMEs.

Sen. Kagwe: Mr. Speaker, Sir, while we appreciate the need for developing strong banks in order to become a regional banking sector, in this country the unbanked are more than the banked. In other words, people with bank accounts are a lot less than those who operate without. Therefore, there is need for small banks. Consequently, I ask the Chairman, in reviewing this policy, to develop what we will call “county banks” that will have much less capital requirement or that will keep the same capital requirements as we have today and provide those services at the county level.

Sen. (Dr.) Machage: Mr. Speaker, Sir, the mischief of business monopoly in this country is a well known factor. Could the Chair table the list of all the banks he mentioned with their capital ability? Especially so, I am more interested in the banks which are more than or equal to Kshs5 billion capital ability.

Sen. Obure: Mr. Speaker, Sir, this is clearly a very significant policy change but it has also become clear that it was not specifically subjected to public participation and public scrutiny as required. Is the Chairman satisfied that it met the constitutional threshold before it is operationalized? The second question is, what happens now that we are convinced that it did not go through this process and how do we move forward?

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, it is not in doubt as who are the private Kenyans who own banks. If you go to Wall Street, they are still opening new companies; a bank is just like any other enterprise. The Chairman has been misled to tell us that the reason for this is to rise to the need for harmonization of the financial system in the East African Community (EAC). Yes, we are all committed to a common market in the EAC. Are you telling me that Kenya being the giant in the EAC, the people of Burundi and Rwanda will find much more ease in raising Kshs5 billion compared to the people of Kenya? Could you please table in this House the same regulations as it appears in the five

partner states of East Africa because we have worked there and we know that Kenya is way ahead in terms of financial might compared to the other partner states.

Sen. Mutula Kilonzo Jnr.: Mr. Speaker, Sir, the last time this question was asked, I had sought my own separate question on the list of banks that fall under the category of under Kshs 5 billion. This is because we wanted to determine whether or not there was something ulterior about the proposal to increase the share capital; that has not been tabled.

Secondly, the Chairperson has quoted the Central Bank of Kenya (CBK) Act, 2015, which to the best of my knowledge is still a Bill and not an Act of Parliament. Therefore, we would like to get those clarifications. However, more importantly, is whether or not according to the law the Cabinet that is required that all their decisions are in writing, has made a decision on this and why they have not consulted Parliament on this issue, that has far reaching consequences on our economy.

Sen. Muthama: Thank you, Mr. Speaker, Sir. Kenya is one of the developing countries and Kenyans are still struggling to come to the level of doing business in competition with the rest of the world. You need ten Kenyans to each come up with \$5 million to raise \$50 million to start a bank. Whoever came up with that suggestion wanted to eliminate the local banks that are owned by Kenyans.

One of the best banks in this country today, the Equity Bank, is owned and managed by Kenyans. History is very clear that Mr. James Mwangi started that bank with Kshs50,000 and today, it is one of the best banks. It is wrong to have the big corporate banks come in the market and eliminate Kenyans. I want the Chairperson to consider that and ensure that decision is reversed, as much as we want to be in business and put Kenya where it should be.

Thank you, Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): The Chairperson may now respond.

Sen. Billow: Thank you, Mr. Speaker, Sir. When the Government raised the minimum capital of the banks from Kshs250 million to Kshs1 billion, it was an increase by four times. Literally, all the banks complied within the timeframe and the objectives at the time was also the same; to encourage banks to merge, so that we have few stronger banks and that helped.

In early 1900s up to 1996, almost 30 to 40 banks collapsed because of a lot of management problems in the banking sector. Today, the banking sector is very strong and resilient because of a stronger capital, among other things, that they have. Therefore, the intention at the end of the day is to also look at the global aspect of the economy. When we rebased our economy last year to Kshs4.8 trillion, the *per capita* is now \$1.1246. This country is now rated as a lower middle income economy. So, we really need banks that can attract funding for this economy from international markets and have very strong core capital. I think that is the general reason.

The second answer that I gave and which I think is important, is the regional aspect. Because of the East Africa Monetary Union, there has been attempt to try and create a regional financial structure that would be similar in all the countries. I disagree with some of the Senators, because some of my friends and I tried to open a bank in a

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small country like South Sudan. The minimum share capital required to open a bank in that country, that became independent just the other day is \$10 million. So, there is no way that we can again look at a bank for a county and a national bank.

Mr. Speaker, Sir, when you look at the international standards that govern the banking sector, which are used by the CBK, for example committee on banking, they are standard. You cannot have one set of standards for a county bank and another set for national banks. Therefore, for those who are planning to open banks in the counties; whether county government or individuals, they must appreciate the supervisory structure in the banking sector by CBK. The standards are the same and the Standing Orders are also the same; they must appreciate that they have to plan their investments.

With regard to the question by the Senator for Bungoma County, I agree that it will be necessary as Committee on Finance, Commerce and Budget to invite the CBK Governor. Since he is to appear before the Committee next Thursday to discuss the issue of forex currencies, we could take that opportunity to also discuss any issues on this matter that Members may not be satisfied with at the time.

However, I want to advise Sen. Khaniri that for a small economy like Kenya, 44 banks is a large number for CBK to supervise and manage. Normally, economies of this size have very few banks and that applies to all the other economies in the region and so it helps to merge. It has been a policy of the Government for many years to raise the share capital to Kshs1 billion.

Mr. Speaker, Sir, regarding the question by Sen. Ndiema on Small and Medium-sized Enterprises (SMEs); I have said very clearly that the SMEs in this country are largely catered for in terms of access to credit by Microfinance Institutions (MFIs) and SACCOs. However, these banks themselves, even the big banks, do not have a niche market. They are not restricted to large customers and so forth. They also provide credit and the Standing Orders, SMEs are not in any way disenfranchised. In fact, the more the capitalized the banks are, the more chances are that these institutions will get more money.

To answer Sen. Kagwe's question, the "unbanked" population in this country obviously far exceeds those who are "banked". However, banking these days is not just about going to a banking floor. All the big banks today including the international banks, which are a small minority, have agency banking. They have agents even in the small remotest places. So, if one needs to deposit or do basic banking services, one can do so though the banking agents virtually in all parts of this country. With dynamism in the banking sector, people nowadays can use mobile banking. You can do most of the banking work without having to go to a banking hall.

Mr. Speaker, Sir, the Senator for Migori asked for the list of the number of banks which already have capital of over Kshs5 billion. They are 21 banks and this is public information. I urge the Senator to go to the website of CBK to get the information on these banks.

Sen. Obure asked about public participation in the banking sector. When we meet the CBK Governor, we will find out from him whether the Kenya Bankers Association and the banking sector have been properly brought on board with regards to this matter.

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I think I responded to his query. Sen. Mutula Kilonzo Jnr. also raised a query about the CBK Bill, 2015 to raise the share capital of the Central Bank of Kenya (CBK) from Kshs5 billion to Kshs20 billion. This is to bring it line with the policies that have been adopted by central banks across the East African region in preparation for the East African Monetary Union. However, it is an anticipation of the Bill which is already before Parliament and, hopefully, it will pass. The earliest increase on the share capital will be in December 2016, by which time, the Bill will have passed.

Lastly, I think I have responded to Sen. Muthama's question. When Equity and Family banks started – some of the fastest growing banks in this country – they started as micro finance institutions. In fact, we have dozens of those that are catering for most of the small and medium enterprises (SMEs). By increasing the minimum capital to Kshs5 billion, we are not saying there are no other banks; there are many other banks and they are all regulated by CBK. They actually operate more or less like banks. Foreign banks are very few. Out of these 44, there are less than 10 foreign banks. The majority are actually Kenyan banks including the largest ones – KCB and Equity.

Sen. Wamatangi: Thank you, Mr. Speaker, Sir. Anybody who has studied business trends will tell you that one of the strategies used by business people and investors once they have built enough capital to insulate themselves from competition is to raise thresholds to lock out the competition.

The move by CBK to revise the capitalization is a serious matter that needs to be looked at because so many times in this country, we have tried to urge banks to lower interest rates, for example. If this is left unchecked and then banks form a cartel, then, in future, it will be very difficult to regulate this industry. If, for example, we will consider international banks which have been in business for hundreds of years, how on earth would one expect Standard Chartered and Barclays banks to compete with other local upcoming banks?

A market place without competition is a bad market place; bad for the economy and the county. If we do not have small and middle level banks and only the big players are allowed to form their cartels, then we will have a big problem especially with *wananchi*. The lower cadre of people will not have a say in this field.

Thank you.

The Senate Minority Leader (Sen. Wetangula): On a point of order, Mr. Speaker, Sir. In view of the fact that the Chairman says the CBK Governor will appear before the Committee, will I be in order to request that you direct that the statement be further interrogated at the Committee when the Governor appears? A much more comprehensive response can then be brought to the House.

The Speaker (Hon. Ethuro): I think the Chair is not averse to that. It is so directed.

Sen. Ndiema: On a point of order, Mr. Speaker Sir. In view of the issues that have been conversed here, would I be in order to request the hon. Senator from Bungoma to bring a Motion here so that we decide and pass it to quash that decision?

The Speaker (Hon. Ethuro): Order, Sen. Ndiema! You are completely out of order.

Sen. Musila: On a point of order, Mr. Speaker, Sir. I stand to request for two Statements which I have been following on behalf of this House.

STATUS OF CASH TRANSFER PROGRAMME

One relates to cash transfers. As you are aware, the Cabinet Secretary (CS) was here but she could not give us a satisfactory response and she promised to come back. It is now two weeks since then and we have not heard from her. This matter of cash transfers is serious. Today in Wajir, I saw elderly people struggling to get their money and they complained that they get it from Kenya Commercial Bank (KCB) instead of Postbank. We raised these issues here with the Cabinet Secretary (CS).

May I ask the Chair to direct that this matter be followed up quickly? Let the Cabinet Secretary (CS) come here to clarify and rest this issue. It is of so much concern to the citizens of this country, particularly the elderly, disabled and orphans.

KILLINGS IN KITUI COUNTY

Mr. Speaker, Sir, the second matter concerns security. I raised an issue with regard to insecurity in Kitui County where herders are killing our people. If you recall, the Chairperson of the Committee who is sitting right opposite me undertook to go to the Cabinet Secretary (CS), accompanied by his Vice Chairperson – I do not know who was accompanying who. Up to now, my people are still suffering and the Cabinet Secretary (CS) is yet to give a Statement. Could you ask the Chairperson when he will bring this Statement?

Sen. Madzayo: Mr. Speaker, Sir, yesterday I had a discussion with the distinguished Senator for Kitui, Mzee David Musila. I am surprised that he is asking the same question that I had clarified. I told him that on or before the end of this month, we shall be in a position to ask the Cabinet Secretary (CS) to come to this House and answer the remaining questions. I am sure he is aware about that discussion that we had yesterday.

Sen. Khaniri: On a point of order, Mr. Speaker, Sir. Is it in order for the Chairperson to refer us to a private meeting and discussion that he had with Sen. Musila, when this matter concerns and is a property of this House? It is just proper that he puts it on record that that will happen. We need your guidance.

The Speaker (Hon. Ethuro): The Chairperson is perfectly in order to make public an encounter with the one who sought the Statement. What, of course he cannot deny the House is that the House is equally--- In fact, by the reason of talking to the Senator himself, when you come to the Plenary you are now talking to all the Senators. So, the Chair should not be surprised about that. In any case, the matter is really about timelines and the need to respond to a matter in a timely manner. I think that is the major issue which you should be addressing. When the Chairperson talks of “on or before” end of the month, then today is on and also before.

The second one. Sen. Haji?

Sen. Haji: Mr. Speaker, Sir, it is correct that Sen. Musila asked for a Statement regarding the presence of herders who were causing some serious problems there as well the recruitment of police reservists. The gracious Vice Chairperson and myself went to the Cabinet Secretary's office, and he received us very well. He agreed that since they are doing harmonization of the Kenya Police Reserve, as soon as they finish, he will consider employing reservists for Sen. Musila.

With regard to the confirmation that the herders have been removed, we will pursue it. On the question of homeguards, in our presence, he directed that a Statement should be written to state that he is considering that issue. Up to now, the Statement has not been signed and so next week on Tuesday, we will endeavour to make the Statement.

The Speaker (Hon. Ethuro): Next week we should be able to get the responses. Sen. Haji, since you are pleased with the deliberations and you were accompanied by your Vice Chairperson contrary to the earlier assertion, you can make an attempt on Tuesday. The same applies to Sen. Madzayo. The latest should be Tuesday. However, if you can get it tomorrow, the better.

Sen. Mutula Kilonzo Jnr.: Mr. Speaker, Sir, in fact, although the Statement sought by Sen. Musila was specific on the persons who are aged, when the Cabinet Secretary, Rachel Omamo was here and the Principal Secretary, we agreed on a much wider range including what we call OVCs - (Orphaned and Vulnerable Children) - including a criteria which Senators are not aware of, where a county like Baringo ends up having more people than a county like Kitui. In this case, we had been informed---

The Speaker (Hon. Ethuro): Order, Sen. Mutula Kilonzo Jnr. More in what respect?

Sen. Mutula Kilonzo Jnr.: Mr. Speaker, Sir, in respect of percentage. In terms of the percentage, it appears that the number of persons who receive these awards in Baringo which is a smaller county than Kitui are much more. That is the criteria we wanted. There was even another issue; that these decisions were made in the National Assembly and we wanted those records. In my case, we raised the issue of those OVCs particularly in my county at a place called Emali where we have more street children than Nairobi.

The Speaker (Hon. Ethuro): Is there any Member of the Committee here? Senate Majority Leader, can you make an undertaking to supply the Chair with the HANSARD?

The Senate Majority Leader (Sen. (Prof.) Kindiki): Yes, Mr. Speaker, Sir. I will do so.

The Speaker (Hon. Ethuro): Sen. Billow!

MASSACRE OF KENYANS ON A BUS AND AT
A QUARRY IN MANDERA AND IN KAPEDO

Sen. Billow: Mr. Speaker, Sir, sometime in December last year, I brought a Motion to this House with regard to the circumstances surrounding the massacre of Kenyans on a bus in Mandera and subsequent massacre again at a quarry in Mandera. In January, the Committee on National Security and Foreign Relations alongside the

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Committee on Legal Affairs and Human Rights that was formed to investigate that matter including the Kapedo murders are yet to report. I just wanted your guidance on that matter because it has taken a bit of your time.

The Speaker (Hon. Ethuro): Sen. Haji, what is your reaction?

Sen. Haji: Mr. Speaker, Sir, I want to assure Sen. Billow and the House that the report of the investigation will be presented to the House on Thursday next week.

The Speaker (Hon. Ethuro): It is so ordered.

COMMUNICATION FROM THE CHAIR

INVITATION TO A CONFERENCE TO BUILD CONSENSUS ON ON A SUITABLE PENSION SCHEME FOR COUNTY EMPLOYEES

I would like to make an announcement relating to a conference that has been organized by the Standing Committee on Labour and Social Welfare to deliberate on the County Retirement Scheme Bill, (Senate Bill No.25 of 2014).

As you may recall, the County Retirement Scheme Bill, (Senate Bill No.25 of 2014) was Read the First Time in this House on Wednesday 6th August, 2014 and it was committed to the Standing Committee on Labour and Social Welfare for consideration pursuant to Standing Order No.130 of the Senate Standing Orders.

The Committee identified and invited the following stakeholders to make written or oral submissions on the Bill:-

The Senate Standing Committee on Finance, Commerce and Budget.
The National Treasury Pensions Department.

- (1) The Retirement Benefits Authority (RBA).
- (2) The Local Authorities Provident Trust (LAPTRUST).
- (3) The Local Authorities Provident Fund (LAPFUND).
- (4) The Transitional Authority (TA).
- (5) The Salaries and Remuneration Commission (SRC).
- (6) The Council of Governors (CoG).
- (7) The Commission for the Implementation of the Constitution (CIC).
- (8) The County Public Service Boards Forum.
- (9) The Kenya Government Workers Union (KCGWU).

Hon. Senators, at the stakeholders' consultative meetings, it was noted that:-

(i) County Government employees were concerned that the Senate had delayed in merging the two schemes; LAPTRUST and LAPFUND, leading to concern over the security of the employees' savings.

(ii) Some county governments had not been remitting the employees' monthly contributions to the schemes as there was no clear direction on where to remit the monies.

(iii) There will be a large number of county staffers retiring in the year 2016 and unless this matter is resolved, these staffers might end up losing part of their pension.

(iv) The County Pension Scheme for county staffers had become highly politicized and there is need for objectivity and broad consensus in its consideration.

Arising from the above, the Standing Committee on Labour and Social Welfare has organized to hold a one day conference to build consensus on a suitable pension scheme for all employees of counties. The conference will be held at the Boma Hotel, Nairobi on Friday 17th July, 2015 from 9 a.m.

Hon. Senators, we owe it to all the employees of counties to enact a law that will establish a suitable framework to safeguard their savings and assure them of a dignified retirement. This is, therefore, to request you to find time to attend this important conference.

Additional information as usual, may be obtained from the office of the Clerk. I thank you.

Under the circumstances, Order No.8 will be deferred to next week.

BILLS

Second Reading

THE COUNTY RETIREMENT SCHEME BILL (SENATE BILL NO.25 OF 2014)

(By Sen. (Prof) Kindiki on 8.7.2015)

(Resumption of Debate interrupted on 8.7.2015)

(Bill deferred)

Next Order!

Second Reading

THE COUNTY HALL OF FAME BILL (SENATE BILL NO.33 OF 2014)

(Sen. Sang on 14.7.2014)

(Resumption of Debate interrupted on 14.7.2014)

The Speaker (Hon. Ethuro): Order, Senators. You should remember that Wednesday afternoon is a day for voting and we have three items ready. I encourage that you come back and vote on them.

Order, Members. Could the Division Bell be rung for three minutes?

(The Division Bell was rung)

Order, Members. Could the bars be drawn and the door closed?

(The bars were drawn and the door closed)

You should be ready to vote.

Order, Members. I, therefore, wish to put the question.

DIVISION

ELECTRONIC VOTING

*(Question, that the County Hall of Fame Bill
(Senate Bill No.33 of 2014) be now read a Second Time put
and the Senate proceeded to vote by County Delegations)*

AYES: Sen. Billow, Mandera County; Sen. Chelule, Nakuru County; Sen. Haji, Garissa County; Sen. Hassan, Mombasa County; Sen. M. Kajwang M., Homa Bay County; Sen. Karaba, Kirinyaga County; Sen.(Dr.) Khalwale, Kakamega County; Sen. Khaniri, Vihiga County; Sen. Mutula Kilonzo Jnr., Makueni County; Sen. Leshore, Samburu County; Sen. (Dr.) Machage, Migori County; Sen. Madzayo, Kilifi County; Sen. Melly, Uasin Gishu County; Sen. Mohamud, Wajir County; Sen. Mugo, Nairobi County; Sen. (Eng) Muriuki, Nyandarua County; Sen. Musila, Kitui County; Sen. Muthama, Machakos County; Sen. Ndiema, Trans Nzoia County; Sen. Ntutu, Narok County; Sen. Obure, Kisii County; Sen. Okong’o, Nyamira County; Sen. Orenge, Siaya County; Sen. Sang, Nandi County and Sen. Wamatangi, Kiambu County.

NOES: Nil

The Speaker (Hon. Ethuro): Hon. Senators, the results of the vote are as follows:

AYES: 25

NOES: Nil

ABSTENTIONS: Nil

The “Ayes” have it.

(Question carried by 25 votes to nil)

*(The Bill was read a Second Time and committed to a
Committee of the Whole tomorrow)*

(The Bar was undrawn and the door opened)

COMMITTEE OF THEWHOLE

(Order for Committee read)

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

IN THE COMMITTEE

[The Temporary Chairperson (Sen. (Dr) Machage) took the Chair]

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

The Temporary Chairperson (Sen. (Dr.) Machage): Hon. Senators, we are in the Committee of the Whole to consider Order No.10.
What is it, Mover?

PROGRESS REPORTED

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

Sen. Madzayo: Mr. Temporary Chairperson, Sir, pursuant to Standing Order 139, I beg to move that the Committee of the Whole reports progress on its consideration of the Public Appointments (County Assembly Approval) Bill (Senate Bill No.20 of 2014) and seeks leave to sit again tomorrow.

(Question proposed)

(Question put and agreed to)

(The House resumed)

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

REPORT

THE PUBLIC APPOINTMENTS (COUNTY ASSEMBLY APPROVAL)

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BILL (SENATE BILL NO.20 OF 2014)

Sen. Sang: Mr. Temporary Speaker, Sir, I beg to report that the Committee of the Whole has considered The Public Appointments (County Assembly Approval) Bill (Senate Bill No.20 of 2014) and seeks leave to sit again tomorrow.

Sen. Madzayo: Mr. Temporary Speaker, Sir, I beg to move that the House do agree with the Committee on the said report.

Sen. Haji seconded.

(Question proposed)

(Question put and agreed to)

The Temporary Speaker (Sen. (Dr.) Machage): Next order!

COMMITTEE OF THE WHOLE

(Order for Committee read)

[The Temporary Speaker (Sen. (Dr.) Machage) left the Chair]

IN THE COMMITTEE

[The Temporary Chairperson (Sen. (Dr.) Machage) took the Chair]

PROGRESS REPORTED

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

The Temporary Chairperson (Sen. (Dr.) Machage): Order, Members! We are on Order No.11; Committee Of the Whole to consider the progress on The County Early Childhood Education Bill (Senate Bill No.32 of 2014).

Where is the Chairperson? Please, approach the Chair.

Very well, proceed, Mover.

Sen. Mohamud: Mr. Temporary Chairperson, Sir, I beg to move that the Committee do report to the Senate its consideration of the County Early Childhood Education Bill (Senate Bill No.32 of 2014) and seek leave to sit again tomorrow.

(Question proposed)

(Question put and agreed to)

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(The House resumed)

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

The Temporary Speaker (Sen. Ongoro): I call upon the Chairperson to move.

REPORT

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

Sen. (Dr.) Machage: Madam Temporary Speaker, I beg to report progress that the Committee of the Whole has considered the County Early Childhood Education Bill (Senate Bill No.32 of 2014) and seek leave to sit again tomorrow.

The Temporary Speaker (Sen. Ongoro): Where is the Mover?

Sen. Mohamud: Madam Temporary Speaker, I beg to move that the House do agree with the Committee in the said report.

The Temporary Speaker (Sen. Ongoro): Who is seconding?

Sen. Mohamud: Madam Temporary Speaker, I would like to request Sen. Obure to second.

Sen. Obure seconded.

(Question proposed)

(Question put and agreed to)

Next order.

COMMITTEE OF THE WHOLE

(Order for Committee read)

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

IN THE COMMITTEE

[The Temporary Chairperson (Sen. (Dr.) Machage) took the Chair]

THE TOBACCO CONTROL REGULATIONS, 2014

The Temporary Chairperson (Sen. (Dr.) Machage): Order, Members! We are on Order No.12; Committee of the Whole to consider The Tobacco Control Regulations, 2014.

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(Regulations 1,2,3,4,5,6,7,8,9,10,11,12,13,14,15,16,17,18,19 and 20 proposed)

Sen. Obure: Mr. Temporary Chairman, Sir, the last time we were considering these regulations, it became clear that there were some areas which needed consultations between the Ministry and the Committee. There are also areas where industry players had complained that their views had not been taken on board. I just wanted to understand and obtain some clarification whether this has been done.

The Temporary Chairperson (Sen. (Dr.) Machage): Unfortunately, when this lands on the Floor of the House like it has this afternoon, that answer can only be given to you by the Chairperson and if he so feels he is convinced by your remarks, he may desire to take the alternate route of pushing forward the Bill. I have told him to rise on Standing Order No.139 which provides on what he is supposed to do in such a situation. Therefore, that decision will be taken by the Chair. Do you want to continue or do you want to go by the suggestions as put forward by Sen. Obure?

Sen. Sang: Mr. Temporary Chairman, Sir, I want to respond to the issue raised by Sen. Obure. As a matter of fact, when these regulations appeared on the Order Paper, there were a few concerns. First, people had not looked at the regulations and the report by the Committee. We said that we had tabled the reports and regulations in the Senate. Therefore, any Senator who needed to look at the regulations would get them from the Clerk's Office.

The second issue related to the consultations between the Senate, the Ministry and the Tobacco Control Board. I want to share this with the Senate: We invited the Ministry of Health, the Principal Secretary together with the Cabinet Secretary and had a meeting with them informally because they indicated to us that they had worked on the regulations and the preferred option to them is that the Senate considers the regulations, returns a verdict on them and then they would proceed to act according to the resolutions of the House. We also invited the Tobacco Control Board chairman and he also gave the same position. Both parties had decided that they will work with the resolution of the Senate.

The other industry players were also invited and they made their presentations. In the decisions that we are proposing in these regulations, the industry's contribution is there, the Ministry's position is clear to us and to that extent we are ready to proceed with discussions on these regulations.

The Temporary Chairperson (Sen. (Dr.) Machage): After hearing that response, Sen. Obure, you have only one decision to make and that is at the voting time; either to support or not.

Sen. Mutula Kilonzo Jnr.: On a point of order, Mr. Temporary Chairman, Sir. I did not want to speak after your ruling. I was whispering loudly that I think Sen. Obure had a point on some of the regulations. We have received many other proposals on other regulations in addition to the ones that are before the Senate for amendment and with reasons thereof.

I am not sure whether it would be fair to exercise our vote to reject without necessarily putting forward the recommendations we have received from persons who think that we might make a mistake in what we are doing.

The Temporary Chairperson (Sen. (Dr.) Machage): Sen. Sang, that is exactly 50 per cent of the Opposition Bench advising you on the same. Do you still desire to go your way or are you taking the advice of the House?

Sen. Sang: Mr. Temporary Chairman, Sir, we just need some clarification on the concerns being raised. I thought the issue raised by Sen. Obure was that he wanted me to confirm whether we consulted with the Ministry and the industry players. That is what I understood but I did not get any request from him in terms of whether to stop or proceed.

Regarding the issue of Sen. Mutula Kilonzo Jnr., the process of considering regulations is captured under the Standing Orders. If you look at Standing Order Nos.114 and 115, it gives the Committee on Delegated Legislation mandate to consider the regulations.

The Temporary Chairperson (Sen. (Dr.) Machage): Order! I think you are lost. You have not refused to do anything neither were you out of order. So, Standing Order No.114 does not arise. Maybe, if you relax a bit and he gets to hear a few more points of order, you may be guided.

Sen. Musila: On a point of order, Mr. Temporary Chairman, Sir. In the past, this House established a tradition where we take consensus and vote for Bills without much strain. It looks like there is a feeling especially from this side that certain regulations are not acceptable. Therefore, I would like to plead with the Chair that we do more consultation so that we do not break our tradition of working together in a bi-partisan manner.

I plead with the Chair that we stand down this matter and we do more consultations and bring it back after a week, particularly, the issues being raised by the industry in as far as the regulations are concerned. We could discuss and come to terms instead of voting and breaking our very good tradition.

The Temporary Chairperson (Sen. (Dr.) Machage): I request the Mover to approach the Chair.

(Sen. Sang approached the Chair)

The Temporary Chairperson (Sen. (Dr.) Machage): Very well. Members, I have considered your requests. I have also listened to the Chair of the Committee who has expressed his feelings that Members have not presented their feelings and contribution to the Committee on the changes they want. Considering that consensus is important as put forward by Sen. Musila - this is a House of mature legislators - I request the Mover to report to the Speaker. At the same time, I advise Members that they have one more chance to present their contributions to the Committee. Otherwise, when it will be put on the Order Paper again, this Chair will not entertain any other suggestion.

PROGRESS REPORTED

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THE TOBACCO CONTROL REGULATIONS, 2014

Sen. Sang: Mr. Temporary Chairman, Sir, I think that captures the mood. We are comfortable with that as a Committee. Therefore, we accept it.

Mr. Temporary Chairman, Sir, the Committee of the Whole is considering The Tobacco Control Regulations, 2014 and has instructed me to report progress and seek leave to sit again tomorrow.

The Temporary Chairperson (Sen. (Dr.) Machage): It may be tomorrow or any other day that I may so desire.

(Question proposed)

(Question put and agreed to)

(The House resumed)

(The Temporary Speaker (Sen. Ongoro) in the Chair)

REPORT

THE TOBACCO CONTROL REGULATIONS, 2014

Sen. (Dr.) Machage: Madam Temporary Speaker, I beg to report progress that a Committee of the Whole is considering The Tobacco Control Regulations, 2014 and has instructed me to report progress and seek leave to sit again another day.

Sen. Sang: Madam Temporary Speaker, I beg to move that the House do agree with the Committee on the said report.

Sen. Mutula Kilonzo Jnr. seconded.

(Question Proposed)

(Question put and agreed to)

BILL*Second Reading*THE COUNTY ASSEMBLY SERVICES BILL,
(SENATE BILL NO. 27 OF 2014)

Sen. Sang: Madam Temporary Speaker, I beg to move that the County Assembly Services Bill (Senate Bill No. 27 of 2014) be now read a Second Time.

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The management of county assemblies is key in the discharge of the functions of the county assemblies as set out in the Constitution. We all know that the county assemblies play a critical role in the oversight function in the counties. For county assemblies to carry out the oversight responsibility, one of the critical components is that they must be autonomous. At the National Parliament, we have the Parliamentary Service Commission (PSC). The County Governments Act establishes the County Assemblies Service Boards (CASBs). Those boards are not anchored in law and their autonomy is not guaranteed. Therefore, this Bill seeks to establish and guarantee the autonomy of County Assemblies service Boards as established under the County Governments Act. This is intended to enhance the independence and the autonomy of the county assemblies from the county executive, hence improving the oversight role of the county assemblies over the county executives.

One of the key challenges that the county governments are facing right now is accountability. You cannot expect a county assembly that is not autonomous and which depends on the county executive for resources and support services to carry out their oversight responsibility. Therefore, this Bill seeks to enhance the independence and the autonomy of the county assemblies.

Mr. Speaker, Sir, this Bill seeks the independence and the autonomy of the county assemblies, to ensure that they are able to play their oversight role without interference. The Bill proposes to establish the county assembly services and prescribes the values to be adhered to by the members of the service. It further provides for the code of conduct to be formulated by each of the boards. As I speak right now, the County Assemblies Service Boards that are in operation in the 47 county assemblies are not anchored in any law, they do have any values to adhere to and do not provide a code of conduct. This Bill seeks to establish and ensure that the County Assemblies Service Boards have the prescribed values and code of conduct to ensure that the County Assemblies' Service Boards are run professionally.

The Bill further seeks to establish a county assembly fund for each county assembly service, which is to consist of such monies as the county assemblies may in future appropriate from the revenue fund, established for each county under Article 207 of the Constitution.

Once we have passed the County Allocation of Revenue Bill, like we did and also passed and approved the budget ceilings and allocated resources for each of the county executives and assemblies, the monies shall be paid into a county assembly fund. What is happening right now in the counties is that even after the county assemblies have passed a budget and allocated a specific amount of resources to the county assemblies as provided for by the law, those resources are kept in the county executive account. Every other time that a county assembly needs to withdraw resources, they have to beg the county executive to withdraw the monies for them. That hampers the autonomy and independence of the county assemblies.

Madam Temporary Speaker, this Bill seeks to establish a county assembly fund where all these resources will be deposited, so that the county assemblies can run autonomously, when they need to run their errands, pay their bills, engage experts and

employ staff. They will be able to do that autonomously without the need to go back to the county executives.

The Bill also sets out the administrative framework, including the procedure for appointment of members to the board, removal of members to the same board and the powers and functions of the board. It is also crucial that the Bill gives the powers of the board. The Bill seeks to ensure that the composition of the board is well articulated. I will share that shortly.

The composition of the board is crucial in ensuring that we have a predictable formula. As I speak right now, if you go to certain counties, the composition of the board varies from one county to the other because that is not clearly provided for under legislation. I think this is what the Bill seeks to accomplish. It also provides for the appointment of the clerk and other officers of the county assembly and the manner in which those officers can be removed from office. This is crucial because the secretariat that runs the county assembly is the office of the clerk and the officers under him. Therefore, it is important to provide for the manner in which these officers are appointed and removed from office.

Madam Temporary Speaker, for accountability purposes, the Bill requires the board to submit annual reports for consideration by the respective county assemblies. This is exactly the same thing that is happening within Parliament. The Parliamentary Service Commission (PSC), submits their report to the relevant committee in the National Assembly. We have to ensure that the county assembly service is accountable, and for them to be accountable, we have to ensure that their annual reports are submitted to the respective county assembly committees for them to consider and table within the assembly.

This is a unique Bill that seeks to provide the necessary legal framework for already existing county service boards. Therefore, this seeks to ensure that our county assemblies are autonomous and run professionally in a manner that ensures they are able to play their oversight role within the counties.

With those highlights, I now invite Sen. Mutula Kilonzo Jnr., who will take us through the Bill as he seconds.

Madam Temporary Speaker, I beg to move.

The Temporary Speaker (Sen. Ongoro): Before Sen. Mutula Kilonzo Jnr. seconds, I can see an intervention by Sen. Musila.

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

The Temporary Speaker (Sen. Ongoro): Please, proceed, Sen. Mutula Kilonzo Jnr.

Sen. Mutula Kilonzo Jnr.: Thank you, Madam Temporary Speaker. I must say from the outset, as I second this Bill that I am a little disappointed that we have taken this long in bringing this Bill to fruition. It was first published in June 2014.

Most of our county assemblies are facing problems as a result of not having clear guidelines on how their funding should be done.

Yesterday, the County Assemblies Forum (CAF) through their Chairman, Dr. Noor, issued a press statement which was responded to by the Chairman of the Council of

Governors. The query raised has come to the Committee on Finance, Commerce and Budget and we have issued directions through the Senate to Treasury; that there is no basis whatsoever in law, imagined or otherwise, why county governments should stifle the work of county assemblies in terms of exercising their mandate. What is happening today is that we all assumed, just like many articles in the Constitution, that the county governments would exercise their mandates without necessarily being a bully or a big brother who does not consider their small brother or sister in the counties.

Madam Temporary Speaker, so that the country can follow why this Bill is important, the problems are as follows. When the county executive issues a requisition to the Controller of Budget, the county assembly is similarly required to have their requisition in the same one by the county executives because the law in the Constitution and the law in the County Governments Act only recognizes one treasury, which we do not want to interfere with.

However, when the requisition is then approved by the Controller of Budget, the executive withdraws the money, keeps it in the account of the county government and then plays around with it and decides when it will be issued to the county assembly or in some cases, which we are aware of, then refuses to issue it and issues conditions to the county assemblies, as to when this amount will be issued. This is the Bill that will solve that problem.

Madam Temporary Speaker, to allay the fears of anybody who thinks that we have not complied with the Constitution, and I am talking about the Committee on Legal Affairs and Human Rights, Article 207(4) reads:

“An Act of Parliament may-

- (a) make further provisions for withdrawal of funds from the county revenue fund; and;
- (b) provide for the establishment of other funds by counties and the management of those funds.”

I want to tell the public and my fellow Senators that there is a County Revenue Fund which is managed at the county level and at the CBK.

Let me say without fear of contradiction that this Bill is anchored on all fours by Article 207(4)(b) of the Constitution of the Republic of Kenya. The sole intention, as said by my Chairperson, Sen Sang, is to provide a framework where once the money that is supposed to go to any county assembly has been approved by the Controller of Budget, it will be secured in a County Assembly Revenue Fund (CARF) that has been established under Section 34 of this Bill. The law provides in this Bill how that Fund will be managed, who will manage it, how it will be run and how appointments will be done so that we can then be on all fours with the intention of Article 185 which most county assemblies have forgotten.

For the avoidance of doubt, let me say and repeat that the work of county assemblies in this Republic is oversight. The legislative authority of a county is vested in and exercised by its county assembly. A county assembly under Article 185(2) may make laws that are necessary or incidental to the effective performance of the functions and exercise of powers of the county government under the Fourth Schedule. In part 3 which

is also important, the county assembly while respecting the principle of separation of powers may exercise oversight over the County Executive Committee (CEC) and any other county executive organ. This article of the Constitution has been abused so blatantly. We must speak to it, underline, put it in bold on posters and remind county executives and county governments that the work of the county assembly is to exercise oversight.

Madam Temporary Speaker, let me refer to Article 226(2) to fortify my argument about oversight so that we are understood why we need to do this by anybody who is listening or watching. Without belabouring the point and without looking at the current constitution of our assemblies, we must repeat what the Constitution says about what the drafters intended. Under Article 226(2), the accounting officer of the national public entity is accountable to the National Assembly for its financial management while the accounting officer of a county public entity is accountable to the county assembly.

From the reports that we have received this financial year that have been tabled by Sen. (Dr.) Khalwale, if we were allowed to shed tears we would do so for our counties. The reason being, our money has been misused. All the work that we have put in as the Senate to ensure that counties are working, somebody has changed county funds to private funds. They have created all sorts of things and the practice of corruption and *wizi mashinani* has continued because our county assemblies have not been empowered.

Having educated MCAs is not the only empowerment that you can give to an assembly. That is not the solution. The solution just like the resolution to this Senate is to ensure that we are in control of the funds that we will deal with. That is the way to make the Senate a Senate so that then somebody who is sitting somewhere far away from where we are does not assume that they can decide for us. If somebody wants to interfere with the Senate, they will interfere with our funds and they have done so.

While the Senate is passing this Bill, they must understand that if we want to impede the work that I have mentioned in the Constitution on accounting and oversight is to ensure that assemblies do not have independence the way the funds that are supposed to go into their own kitties are managed. If anybody had any concern, we tell them today the gospel according to the Senator for Makueni, that we have changed the law and that there is a ceiling on the Budget and that we are the ones to approve those budgets. Therefore, the sort of play that we saw in 2013/2014 where everybody was playing with county funds the way they felt like, I want to tell them that the only thing that is remaining now is for them to be sent to jail. The law is now in place. There will be no room to play around with county funds.

Madam Temporary Speaker, we have now gone a step further to ensure that we anchor whatever it is that will strengthen our assemblies. We are looking at having assemblies in the next 20 years that are equivalent to the assemblies and county governments that we see in other republics where there is federation or devolution as in our case. We want this Senate to be a House of review. We do not want to deal with petty things about who stole money to buy a printer and who did not buy a printer or a toner. That should not be the work of Senators. We should be a House of review. The only way that that will happen is to ensure that assemblies do their work as expected.

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As we contemplate strengthening assemblies in many other ways including what I hear as proposals to enhance education of MCAs so that they can understand just like the County Assembly of Nairobi, Nakuru and Kisumu, their work is not to throw around the Speaker, spoons and chairs on the floor, but work to make laws, budgets, analyze and criticize fiscal papers and make plans. The only way we can do it is through this method.

Madam Temporary Speaker, if there is a Bill that is urgent, it is this one because it is the way. If I was to say it like it was said in the Bible, this is the way, the truth and the life of our county governments. This is so that in another year to come or in another Senate, they will not change and make this Senate like this one where we have been turned to morticians and undertakers where our work is just to read bad reports about who is pilfering funds, buying houses, has sent whatever it is that they have been doing and all the bad manners and habits that are going on in counties.

I will end there and tell Senators all is not lost. Money has been taken away from us but as they say in English, behind every cloud there is a silver lining. One of the silver linings is this Bill and that silver lining is to say the old is gone. Behold, the new has come. The new that has come is the County Assembly Services Bill which intends and will ensure that we have county assemblies that we are truly proud of. Not to say that we are not proud of our assemblies but to the assemblies that we have now are a pale shadow of what the drafters of this Constitution intended.

With those few remarks, I support.

(Question proposed)

Sen. Musila: Thank you, Madam Temporary Speaker. I stand to support this important Bill. Sen. Mutula Kilonzo Jnr. decried the delay that has been caused over the past one year in bringing this Bill to the Floor of the Senate since it was published. I also feel so because it is very important and we all know that without an independent and autonomous assembly and, therefore, the County Assemblies Board, county assemblies cannot purport to function efficiently. You are aware that the National Assembly and even the Senate in the past used to depend on the Executive to be supplied with funds, employees and everything that they needed.

Madam Temporary Speaker, as you are aware, lack of autonomy of Parliament did not augur well because it was an appendage of the Executive. In the same token, as I speak, the county assemblies are now appendices of the executive in the county governments. Recently, we had some governors and even the Council of Governors (COG) addressing itself to this issue and purporting to believe that county assemblies do not require money, independence and autonomy because they should be working under the executive in the county government.

This is wrong. That is why it is very important that we must create a formal County Service Board because as of now, it is just a lose arrangement. The service boards are there to perform duties, but under the executive. It is, therefore, so important that we pass this Bill to establish a County Assembly Service Board so that the county assemblies can become independent to serve the county governments by way of oversight.

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Madam Temporary Speaker, in the last financial year, county assemblies were stuck. They could not operate because the funds that they were given by the county executive were not sufficient. That is why we also support the formation of a County Assembly Revenue Fund. We want them to have a fund that they can control. That way, they can exercise their oversight role.

Today, I heard on the radio the Chairman of the County Speakers Forum, hon. (Dr.) Nuh of the county assemblies lamenting that whenever MCAs want to go to inspect a project, they must get funds from the executive. When they ask for funds, the executive is not ready to give them funds. So, they end up not inspecting those projects. The oversight role of county assemblies is limited by the fact that there are no funds for the assemblies.

This Bill is timely and by passing it, we will be giving the county assemblies the needed autonomy to be able to work. This is the right thing to do and I want to commend the Chairman of the Committee on Legal Affairs and Human Rights and its Members for coming up with this Bill. It will go a long way in ensuring that county assembly performs as it is envisaged in the Constitution.

With these remarks, I want to support.

Sen. Obure: Madam Temporary Speaker, I stand to support this Bill. The object of this Bill is essentially to establish a legal framework for county assembly services boards. This is a framework which will enable them to operate in a formal, structured manner.

The current county assemblies' service boards are not anchored in any law. They have no code of conduct, are not professional at all in the manner they have been appointed and are not being guided by any principles, values or regulations. There are no set guidelines. Therefore, the boards are informal, pedestrian and operate the *jua kali* way. This is absolutely not good enough and I agree with Sen. Mutula Junior that this long overdue. It should have been one of the first Bills we passed in this Senate because we wanted to assist our counties operate in a structured manner.

Madam Temporary Speaker, I will very briefly narrate the story of my own county; that is Kisii County. Right now, we are in a crisis of sorts because about 10 months ago, the County Assembly Service Board (CASB) attempted to recruit staff for the County Assembly of Kisii. The CASB was not guided by any regulation or law. There were no standard procedures to be followed in the recruitment of staff in all counties. Therefore, in Kisii County, everybody tried to employ their own relatives and friends. They had gone out to employ 71 members of staff, but they ended up employing more than 400 members of staff. Each of them was issued with a letter of employment.

You can imagine what that means when the County Assembly of Kisii which is not supposed to have more than 118 members of staff in their establishment now has in excess of 400 members of staff. Some of them have been given grades which are far beyond requirement. They have the letters. However, the county assembly does not have the capacity to employ them. All these chaos could have been avoided if we had this law in place. It would have provided for a formal system through which such employees would be employed. Unfortunately it did not exist. Therefore, we are in chaos.

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I am sure there are many other counties that are facing a similar situation. The consequence of all this is that we have legal challenges. We have staff who have never been paid since they were employed. We also have disgruntled persons because they left their previous jobs to come to Kisii County hoping to get employment, but now they are not employed because they are not earning anything. This is absolutely chaotic. This is the reason I support this Bill because it will bring order in the county assemblies.

Madam Temporary Speaker, there is also the bigger need. County Assemblies have a major function to perform; that is to oversight the county executives. In doing so, they will need some independence because they cannot oversight if they rely on the same organization which they are oversighting. Therefore, they need a distance between the executive and them. We are aware that the governors want to control the county assemblies because they do not want anything adverse said about them when this oversight is being done by the assemblies.

This Bill will go a long way in providing the independence that the Members of the County Assemblies will require.

Madam Temporary Speaker, this Bill will help in setting out qualifications for holders of various positions within the county assembly structure. It will provide for the appointment of a clerk and other staff and the manner in which they can be removed from office. That is very important. There is need for the service board to provide some kind of a report to the assembly detailing the activities during the course of the year. This is very important for orderly conduct of the business of the assembly. This is an important Bill. It needs the support of everybody in this Senate. I believe that is what we precisely need to strengthen the operations of our county assemblies.

Madam Temporary Speaker, I recall when I joined Parliament for the first time in the 1980s, it was a Department of the Executive. All the clerks were actually part of the structure in the Office of the President. However, from the time the Parliamentary Service Commission (PSC) was established backed by a proper law, we have seen significant changes. In this Parliament, we can now talk the way we talk, with full confidence that we are serving this nation from a position of strength. We know that we cannot be summoned by somebody from the Office of the President and asked about what we said in Parliament. That independence is very important. This is precisely the kind of independence and autonomy we want our county assemblies to have.

Madam Temporary Speaker, this is an important Bill which deserves the support of everybody here. Therefore, I beg to support it.

Sen. Mohamud: Thank you, Madam Temporary Speaker, for giving me this chance. From the outset, I would like to support the Bill. I also thank by brother, Sen. Sang, for bringing this very important Bill.

Madam Temporary Speaker, the principal objective of the Bill is to establish a legal framework that will see county assemblies being autonomous; in other words, to be independent. I am sure that if that is realised, problems that we normally have in our county governments will be solved. As it is now, county assemblies have become rubberstamps of the county executives. That is caused by lack of independence. We know that county assemblies normally depend on the county governors' offices concerning

their financial issues. That normally sabotages their day to day running of the county assembly. The independence of county assemblies will enhance their oversight role which we normally advocate for.

The Bill also contains the provisions and expressions, the objectives of the principal Act. It also provides for the establishment of the county assembly revenue fund for each county. That will help them to provide for their daily activities.

The Bill also contains provisions of a general nature, including how they submit their reports to the National Assembly so that some of the procedures can be checked.

Madam Temporary Speaker, when you look at the current situation in our counties, you will see that very many staff have been recruited without formal procedures being followed. To some extent, some counties almost recruited twice the number they required. The situation was worse in some counties that eventually resolved to divide the salary by half so that, at least, they could cater for the extra individuals that they recruited.

With those few remarks, Madam Temporary Speaker, I beg to support this Bill and congratulate the Senator for bringing it.

Sen. Wamatangi: Madam Temporary Speaker, I also rise to support the Bill and congratulate the Chairperson of the Committee on Legal Affairs and Human Rights for coming up with this very necessary and important Bill to free county assemblies across the country to do the work that they were intended to do in the first place according to the Constitution.

Madam Temporary Speaker, even in the concept of the Constitution itself, it is understood that county assemblies were intended and envisaged to be responsible bodies capable of handling their own finances. The power of discussing, appropriating and passing of the county finance Bills as necessary is vested on county assemblies.

So, county assemblies should be entrusted to discuss, appropriate and allocate all the billions of shillings sent to counties as proposed by the Executive. If it is envisaged that they have the capability to pass finance Bills to serve the interest of counties, then, it is foolhardy that one would presume that the same county assemblies are not responsible enough to oversight and be responsible for their own expenses.

Madam Temporary Speaker, there is a saying that he who pays the piper calls the tune. This is one of the biggest problems in having status quo maintained. This is a Bill that will bring freedom to county assemblies. Many county executives, especially governors, have used this as a bait to ensure that they have their way. They get unpopular proposals and laws passed at the county level because they dangle the carrot of the same money that we have given to county assemblies.

Sometimes even when funds are available in county accounts, some governors have used the trick of withholding salaries of MCAs when they know that there is a Bill or a proposal to be brought to the county assembly which they could be imagining or envisaging a rebellion, non-compliance or a rejection of their Bill. So, they hold salaries and allocations to the county assembly until their Bill is presented. They tell MCAs that once the Bill is passed, they might get money.

This has been the main reason there has been unpopular legislation sometimes being passed in counties. This has also been a major source of compromise in what exercise very educated MCAs nowadays do. Nowadays, county assemblies are completely different from the county councils, municipal councils and the councilors we had before. We have people who have degrees and have served in various capacities in this nation. Therefore, they have capability to pass sound, good and useful legislations at the county assembly level. This has been heavily compromised.

Madam Temporary Speaker, recently, there was introduction of ceilings to the expenditure of county assemblies. So, this Bill will go a long way to enhance and make this even more effective. Once a county assembly has got a ceiling of how much it can utilize, then there is no more need to have these funds either being controlled, regulated or dispensed from the executive account.

One of the important things that we, as legislators, must realize is that unless counties are empowered by being given sound laws upon which to roll out projects and programmes, they might not go far. We must be mindful of the fact that these are the first county governments that we have. Since 2013, this is the first time that devolution has started to take root. For devolution to grow and survive, the counties need very sound legislative power. This power is vested in the county assemblies. Therefore, the Senate needs to do everything possible to enable, empower and strengthen county assemblies.

Madam Temporary Speaker, lastly, it is also important, in the same breadth, that we, as Senators, are doing whatever we can to ensure that we give the MCAs the power, finances, mandate and leeway to do their work. However, that does not mean that they will not be called upon to take responsibility. In the current life of the county assemblies, we have seen unpopular spending of monies which have been allocated to the counties. For example, we have had several complaints about funds allocated for development and other uses within the county assemblies being used to pay allowances, travel abroad and other unpopular ways of spending money.

So, as the custodians and people mandated by the Constitution to secure devolution, we must stand firm by ensuring that county assemblies act within the confines of law. It is important for them to exercise this new found freedom that they have of getting their own money directly, calling their own shots and directing their own expenditure. This must also be balanced by ensuring that they exercise that by enacting sound laws and spending that money wisely and in a way that will help the counties grow.

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

Sen. Okong'o: Thank you, Madam Temporary Speaker. From the outset, I wish to support this very important Bill. As you are aware, the essence of devolution was to have arms which are interdependent of each other. However, there was an oversight in this regard. The role of county assemblies is to oversight the county executive. However, in terms of financial entanglements, the counties assemblies have become an appendage of the county executive. This has caused a lot of harm to the citizens of Kenya. In most cases, MCAs are not patriotic enough to the nation. They are induced to look the other side when they are supposed to look after the interests of their counties.

Madam Temporary Speaker, in Nyamira County, for example, where I come from, all the MCAs are an appendage of the Governor. In the last two years, they have never stood firm in terms of following the due process. When I play my role of oversight to defend the interests of Nyamira County, people think that I am the enemy of the governor. Most of the MCAs receive their finances from the executive. That is why I feel that this Bill is very important, not only to the counties, but the whole nation.

Madam Temporary Speaker, as my colleagues have alluded here, many Bills whose importance is in doubt, have been hurriedly passed in the counties, without due regard to the processes required. For instance, two months ago, the operations of Nyamira County came to a halt because they did not have the funds. The Governor of Nyamira County, therefore, wanted a supplementary budget. They had to look elsewhere for money. The governor told the MCAs that there was need for supplementary estimates to undertake his work. The chairman of the committee on budget in the county assembly stood his ground and said that there was no way money could be removed from the development vote to recurrent vote.

I applauded that move. However, four days later, the same request was brought back to the assembly and passed in a record five minutes. A total of Kshs100 million meant to develop Nyamira was moved to recurrent expenditure through a supplementary budget. This happened because we have a lacuna in our legal system. That is why I strongly support this Bill.

Madam Temporary Speaker, I have to address the MCAs of the County Assembly of Nyamira if they are watching these proceedings. I want them to now understand that whatever they are doing should be in the interest of the people of Nyamira and not individuals. My role and that of this Senate is to defend the governor to do his work rightfully. We have also to defend the MCAs by giving them a direct budget, so that they can receive their monies directly from the national Treasury. This will cure the malady of confusion and influences from the governors.

Madam Temporary Speaker, the time has come that the few lacunas that we have in our legal system are dealt with so fast by the Senate. It is our responsibility to do so in the spirit of devolution. I am an independent person and will never be influenced by any individual as long as I stick to the process of the law. Therefore, this Bill needs to empower the county assemblies so that they are independent of the executive. We want them to perform their oversight role effectively. As we work from Nairobi, we expect the MCAs to also deal with difficult issues in a harmonious way. However, that cannot happen now because they can be starved of their finances.

Madam Temporary Speaker, there is also distortion of information regarding the monies – the Kshs2.5 billion – given to the county assemblies. Even though the matter is in court, there was a distortion of the information that these monies were wrongly allocated. The Commission on Revenue Allocation (CRA) has misled Kenyans that we allocated that money to MCAs without regard to the provisions of law. This Senate played its role in passing that budget. Our work is to look at the lacuna regarding the monies allocated to the counties and rectify the situation accordingly. This is not the work of the CRA. If Mr. Cheserem, the Chairman of the CRA, is interested and feels that

his work is affected, he should vie for the Senate seat in the 2017 general elections. He should come here and argue his case. Once he has done his role and brought the matters here for us to delve in, it does not have any other way.

Madam Temporary Speaker, as I wind up, I applaud the President on this one. Even if the matter is in court, he appended his signature on the allocation we gave to create an independent system for county assemblies.

With those few remarks, I beg to support.

The Temporary Speaker (Sen. Ongoro): Before I call upon the Mover to reply, I want to make an observation.

Hon. Senators have always raised issues with the manner in which county governments conduct their affairs, especially when it comes to priority areas and service provision. However, it is interesting that when a Bill that addresses these issues is on the Floor of the House, apart from the Mover, it was only the Senator for Makueni County, Sen. Mutula Kilonzo Jnr.; Senator for Kitui County, Sen. Musila; Senator for Kisii County, Sen. Obure; Senator for Kiambu County, Sen. Wamatangi; Senator for Nyamira County, Sen. Okong'o and Sen. Mohamud who found it worth their time to give their input to this Bill.

Hon. Senators should take their work seriously. Nonetheless, I call upon the Mover to reply.

(Applause)

Sen. Sang: Madam Temporary Speaker, I share your sentiments that this is one of the very crucial Bills which seek to give us the opportunity to protect the interests of counties. We can do so if we ensure that we have strong systems, structures and accountability institutions at the county level.

I thank Members who have contributed to this Bill. This Bill provides the legal framework and gives us principles and values. In Clause 5(2) of the Bill, apart from the fact that the County Assembly Service Bill is expected to adhere to Article 10 of the Constitution on national values and principles; it further provides that the County Assembly Service Board (CASB) shall adhere to the following values:

They shall foster peace; provide a workplace that recognises diverse backgrounds of the employees of the service and promote national integration which is lacking in most of the counties. For example, Sen. Obure talked about many counties employing individuals from one ethnic community despite the fact that counties have individuals from different backgrounds. It is important for the CASB to realise that it is now a requirement under this framework that they shall be able to provide a workplace that promotes national values, integration and ensure that employees of the CASB reflect the face of Kenya.

Madam Temporary Speaker, the other value is to provide an inspiration for public confidence and respect in the county assembly. On several occasions, we have seen MCAs fighting in the county assemblies while conducting their business. The

responsibility given to the CASB under this Bill would be to ensure that there is decorum and public confidence in the county assemblies.

Two weeks ago, the whole nation was shocked when one MCA before he addressed a press conference, he undressed himself. These are the kind of things that we do not expect to see of serious legislators in this country. This Bill will ensure that the CASB will take necessary measures to ensure that proper discipline and decorum is achieved within the counties.

The other value and principle is that the CASB under this Bill will foster a better understanding between the county executive and the county assembly in the context of their autonomy and complementarity. It is important to note that we are not saying that we have two governments in the counties. We have one government with two arms; the county executive and the county assemblies. Whereas the county assemblies have to play their oversight role, we expect that they will work in a harmonious manner with the county executive. We do not want to see many conflicts between the county executive and the county assemblies. We need to see proper working systems and ensure that we have harmony in the county and, at the same time, not compromise their responsibility of oversight.

Madam Temporary Speaker, under the code of conduct, some of the issues that we expect from the CASB is to promote gender equality and respect for the rights and freedoms of others. Since most of the county assemblies in this country are made up of elected male representatives, there is a tendency of employing men as members of staff. However, it is important to ensure that there is gender equality in the counties. That is one of the issues that the CASB must address.

They must also maintain appropriate confidentiality about the dealings that the employees have with the county assemblies and its committees. We have seen sensitive information being leaked to members of the public and the media in the county assemblies. Whereas the right to information is provided for under the Constitution, some of the information must remain confidential. It is not fair to expose personal information of staff and MCAs to members of the public when it is not necessary.

Madam Temporary Speaker, it is also important to disclose and take reasonable steps to avoid any conflict of interest, real or apparent in connection with the service. In the course of employment and giving out tenders for the renovation of the county assemblies and services within the county assemblies, it is important not to cause conflict in counties. We have seen situations where MCAs award contracts to companies associated with them and members of their families. It is important for them to note that conflict of interest, whether real or apparent, must be looked into so that we inspire confidence among members of the public.

The other important information is that members of the CASB must not provide false or misleading information in response to the request for information that is meant for official purposes. Sometime in my county when members of the civil society groups wrote to the county assembly requesting for a copy of the budget, the MCAs and the responsible officers gave out the wrong version of the budget. This is the kind of misleading information that this Bill seeks to address. If members of the public are asking

for information, the county assemblies must ensure that they do not intentionally mislead or give false information. That is crucial.

Madam Temporary Speaker, one of the key functions of the CASB is to direct and supervise the administration services and exercise budgetary control over the service. In several occasions, we find misuse of public resources, especially vehicles by the county assemblies. We have seen situations where county assembly vehicles are parked outside bars and restaurants past mid-night. These are the kind of things that the Bill seeks to address; that is, prudent use of public resources. The board shall be responsible for ensuring that the necessary budgetary controls are adhered to.

We have seen several county assemblies spending resources meant for staff capacity building. We find MCAs using the resources under those votes for foreign trips. We need to ensure that the county assembly resources meant for capacity building and training for members of staff are properly utilized. It is also important for them to promote the ideals of parliamentary democracy as set out under Article 127(6)(d) of the Constitution. Our counties must learn that they are institutions of democracy. Parliamentary democracy is one of the constitutional ideals that they should pursue.

Madam Temporary Speaker, we hope that with the passage of this Bill, we will see more efficient, progressive and professional county assemblies' services boards. The challenges that the county assemblies have faced in the past will be addressed effectively once they are anchored in law.

With those concluding remarks, I beg to reply.

Madam Temporary Speaker, looking at the numbers in the House and considering the threshold needed to pass this Bill, I now request, under Standing Order No.54(3), that you defer the putting of the Question to a day that you will direct or to a day when we will have the requisite numbers.

The Temporary Speaker (Sen. Ongoro): Request granted. We will put the Question next Wednesday at 2.30 p.m.

(Putting of the Question on the Bill was deferred)

Second Reading

THE UNIVERSITIES (AMENDMENT) BILL (SENATE BILL NO.31 OF 2014)

Sen. Mohamud: Madam Temporary Speaker, I beg to move the Universities (Amendment) Bill (Senate Bill No.31 of 2014).

Madam Temporary Speaker, we know that education plays an important role in promoting economic and social development in a specific country or region. Education is also seen as the primary means of social mobility, national cohesion and socio-economic development. Kenya has made great stride in education and training since we got our Independence. This has been demonstrated by the growth of the number of institutions, increased number of enrolments, increased transition rate, increased teacher numbers---

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The Temporary Speaker (Sen. Ongoro): Sen. Halima, there was a procedural oversight on your side. You need to make the opening statement that The Universities (Amendment) Bill (Senate Bill No.31 of 2014) be read a Second Time, then you proceed.

Sen. Mohamud: I am sorry, Madam Temporary Speaker.

I beg to move that the Universities (Amendment) Bill (Senate Bill No.31 of 2014) be now read a Second Time.

We know that education plays an important role in developing our socio-economic aspect in a country and we know that it is the primary means of social mobility and national cohesion. Since Independence, Kenya has put education in the forefront as evidenced by the number of enrolments in our institutions and the increased number of teachers in our institutions. There is also an increased enhancement of equity and gender considerations.

Madam Temporary Speaker, education spearheads innovation and promotes good governance. Kenya is one of the countries that have made education a priority. This is evidenced by the effort of the state to make education affordable. This is also enshrined in our Constitution; that is, free and compulsory basic education. Increased access to primary education will have an impact on the enrolment of the number of students proceeding to secondary schools and universities.

In Kenya, university education had a humble beginning. The University of Nairobi was the first university in Nairobi. It had only one campus in Nairobi. As demand increased, Moi and Kenyatta universities were established as constituent colleges of the University of Nairobi. Over the last four decades, the social demand with respect to education in Kenya has clearly intensified leading to establishment of many universities both public and private. This has necessitated the initiation of several educational programmes in the universities. For example, there is a self-sponsored and the open learning programmes introduced for students.

Madam Temporary Speaker, we have cases where public universities are supported and funded by the government. For example, in India, education is provided by the public sector and the private sector with controls and funding coming from the three levels of government. These are central government, state government and the local government.

The decentralization of university education is in line with the spirit of devolution. If we establish universities in each county, we are dissemination information in various counties thus improving innovation and research. We know that different counties have different livelihoods. We expect a university in north eastern region to dwell more on the issue of livestock and other related research compared to a university in the coast region.

It is anticipated that as more students are able to access primary education, the demand for university education will increase tremendously. We all agree that today's pass to economically vibrant and comfortable success is brought about by higher education. However, we are witnessing a scenario where our society has more people with low income and middle income. This makes university education unattainable by many.

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This amendment Bill seeks to amend the University Act so as to provide for liaison and coordination between the commission for university education and the county government on the matter of provision of university education at the county level. The Bill further proposes to amend Section 26 of the principal Act so as to enable the commission to report to the National Assembly and the Senate on the progress made on the establishment of universities in various parts of the country. The establishment of universities in each county will provide research and innovation that will address the development needs of the national government as well as those of the county governments.

Madam Temporary Speaker, if we look at the distribution of universities in our counties, we have almost 21 counties in our country with no public university. The greatest region is the former Rift Valley which has eight counties with no single public university. The government has placed the responsibility of establishing public universities on the Commission for Universities Education (CUE). We want to amend Section 3 of the principal Act which indicates the objectives of the university. The objectives of university education are from number (a) to (k), but I intend to amend part (d), which states that:-

“Support and contribution to the realization of national economic and social development”

I would like to insert the word ‘county after’ the word ‘national’ so that it reads “support and contribution to the realization of national and county economic and social development”.

The other part that the Bill is proposing to amend is Section 5 regarding the functions of the commission. One of the functions of the commission is to promote the objectives of the university and advise the Cabinet Secretary on policy relating to university education. I want to amend Section 5(b) so that we insert the word ‘including the provision of university education in each of the counties’.

The other part which we want to amend is Section 26 of the principal Act with regard to universities in each county. The Act state that:-

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

I am intending to re-number the existing provision of the sub-section as (1). Then, I insert the following words after Section 26(1).

Section (2) should read that “the commission in performing its function should liaise with the county government”.

(3) As soon it is practicable at the end of each financial year, the commission shall submit a report to Parliament on the status of the establishment of universities in each county.

(4) The Senate and the National Assembly may require the commission to submit a report on the establishment of public universities in the counties any time.

These are the four Clauses that I want to add immediately after Section 26.

Madam Temporary Speaker, having universities in each county is in line with the spirit of devolution. There are counties that have no single public or private university. As a result of free primary education, I believe more students will be seeking higher education. I believe that it is fair that learning facilities are provided to various students at their level so that they get access to the required facilities for easy learning.

With those few remarks, I beg to move and request Sen. Musila to second.

Sen. Musila: Madam Temporary Speaker, let me start by applauding Sen. Mohamud for coming up with the idea of making these amendments and the very effective presentation that she has just made. We should all applaud her efforts.

I stand to second this important Bill. I am aware that people wonder why there are so many amendments of the law in the Senate giving impetus to the county governments. People should understand that it is our role and work to ensure that counties function. I have been an advocate of equitable distribution of resources and opportunities throughout the country. As the Mover has said, we know for certain that many counties in this Republic have no public universities. Therefore, the levels of education in those counties tend to be hampered by lack of these institutions.

I am not by any chance trying to suggest that certain counties or areas are favoured. This is a matter of history because university education started in Nairobi and its environs. It is only recently that the coast region got the Pwani University. This is a matter of history and no criticism or offense is intended. This is the time to correct things. This is why I applaud the amendments to require the CUE to consult with counties as they develop public and private universities.

Let me also commend some public and private universities which have spread out to counties. They have campuses in counties. For example, Kenyatta University has many campuses all over the country. A private university like Mount Kenya University has spread its wings. The other day we were in Rwanda and we found out it is already there.

Universities are already ahead of the CUE because they have already taken the cue of moving education to counties. My own University of South Eastern Kenya University which in short is referred to as SEKU has set a very good example. The other day, there was a signing ceremony between the university and the county governments to train nurses for the county government. I am sure in other areas of the Republic we have some kind of cooperation between universities and county governments. This has already started.

Therefore, the proposal to amend the law to get the CUE to initiate some of these activities is very much welcome. For example, the proposed amendment of Clause 5 which proposes that we insert the words 'county governments' instead of 'national Government' - That will ensure that in every consultation with the national Government we also consult the county governments. This will also take stock of the needs of the counties. What kind of needs do they have? Do they have livestock graduates or do the people in the Arid and Semi-arid areas need technical people to study in the university? What are the needs of the counties? Do the counties need people to study fishing? Courses should be offered depending on the environment and cultural practices of certain counties.

Madam Temporary Speaker, in Clause 5(b), consultation should take place to ensure that each of the counties is included. This is a good thing because it is inclusivity on the part of the county governments. On liaising with county governments, I have just mentioned that we should liaise with county governments when setting up the kind of courses that are to be offered. For example, I have just said SEKU entered into agreement with the county to train nurses for the county health facilities.

Other universities are using county health centres - since the health function has been devolved - to provide teaching facilities through the facilities governed or administered by counties. Therefore, liaison is very important to promote accountability and ensure that the CUE is accountable to the institutions of this country. This means that Parliament; that is both the National Assembly and the Senate must also receive these reports. The university education body must know that somebody is watching over them.

Madam Temporary Speaker, the amendments proposed by the Mover are so important and relevant because they are even in keeping with a recent Motion. You recall that the Senate passed a Motion requiring that every county gets a university. We have heard that over 22 counties have no universities. It is upon the CUE to ensure that they implement the wishes of the Senate by ensuring that they establish them. That it is only fair that we have campuses of fully-fledged universities in all counties. This is why we all decry the closing down of the only university in the north eastern region; the Garissa University College because that sends a bad signal to those who want to destroy education in that region. It will also deprive our students whether local or nationally, because you realize most of the students did not originate from Garissa. Therefore, we must ensure that there is a university in every county. We could even ensure that there are campuses even before these universities are established.

This way, we will appear to be giving equitable distribution of educational opportunities to all Kenyans. The only body that can do this is the CUE. For them to do so, they must liaise, cooperate and collaborate with county governments in ensuring that this is done.

Madam Temporary Speaker, I beg to second this Bill.

(Question proposed)

Sen. (Eng.) Muriuki: Thank you, Madam Temporary Speaker, for giving me the opportunity to contribute to this amendment Bill. I would like to compliment Sen. Halima for coming up with this important piece of legislation, which is a follow up to the Motion passed by this House sometimes back. The net effect is that, at the end of the day, we are going to end up with a public university in each of the counties. Whereas it is very important to have a university in every county, allow me to comment a little bit on the current CUE. This is because I think that there are things which require to be corrected there even as we devolve to the various counties.

We have had occasion in this House to deal with matters of accreditation of either universities or the courses taught in various universities. A case in point is when yours truly raised the issue of degrees being awarded at the Technical University of Mombasa

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to students taking engineering courses who had done five years of study yet, at the end of it, they were told that the university is not accredited to carry out or teach engineering courses. The parents of those students did not know what to do. Their children had studied for five years and they had paid fees. It was five years down the drain.

Madam Temporary Speaker, there did not seem to be a clear policy within the Government on what to do with accreditation of courses. Some years back, the Government did very well during the reign of President Kibaki to charter very many universities. However, it would appear that the CUE did not do its job properly, because they did not follow up. There is no way you can allow a public university to go on and admit students, charge them fees and let them go on teaching, without any reference to the validity of what is being taught. As I speak, I do not even know what the fate of those students is. This university was originally a campus of Jomo Kenyatta University of Agriculture and Technology (JKUAT). However, after they became chartered, they were left on their own and the students ended up suffering. I would like to know the origin or genesis of very many campuses all over the place.

You find that one university has campuses in very many places and sometimes with a few students. Whichever way you look at it, with our less endowed resources vis-à-vis the developed countries in terms of university lecturers, resources, research and library, it would not be prudent to establish so many universities. In my view, we would only be lowering the standards of our education. I think this is something which needs to be revisited nationally.

For purposes of comparison and benchmarking, a country like Britain, which is literally our mother country, does not have satellite campuses anywhere. The University of Cambridge is just that. If you find that they have a campus, it is a special campus mostly within the same city, mostly to offer a new course. For example, if they never used to offer medicine courses, they could have a campus, especially for that. However, you will not find that they have campuses in Liverpool, Southampton and many other places. However, there are countries like India who are specialists in that. Recently, I was dealing with a student from there, and it turned out that the particular university that he attends has 289 satellite campuses. This is an issue that should be revisited by CUE.

Madam Temporary Speaker, we send our children to learn overseas in good faith. The Government is aware of the various countries they go to and they are even given visas to go to such countries. However, when they come back, especially after completing the professional courses, which I am a little bit familiar with, architecture, engineering or law, the professional societies do not recognize those degrees. This is because they are not sure what kind of education the students attained from where they studied. The CUE, as and when they become aware, should liaise through the Ministry of Foreign Affairs and International Trade on whatever they do so that we do not send our children abroad and when they come back after so many years, you find that there is a question as to the qualifications that they have.

Madam Temporary Speaker, coming back to the Motion, we are at a stage similar to where secondary schools were at Independence. During the colonial days, there were only a few secondary schools here and there. In fact, those few schools are the ones

which we, later on, started calling national schools. However, before Independence, they were the only secondary schools. Areas which were well endowed started doing harambees to build secondary schools all over the place. The Government – let me give credit where it is due – did a good job of sending teachers wherever schools were established. In due course, the Government took over the secondary schools which were started through harambees or whichever way as long as they were public schools.

The disaster was that areas where economies were not well endowed, people were unable to come together and raise funds to build secondary schools. Even today, they still have a very raw deal. We then started pieces of devolution like Constituency Development Fund (CDF) where public money could be used to start new secondary schools and now we have good devolution where good money is going to counties. However, if you look at it, the less endowed counties still suffer.

Madam Temporary Speaker, the essence of this Motion is to require the Government to facilitate and see to it that each county has a university and not just any university. The CUE should liaise with county governments to ensure that what happens there is in keeping with universities anywhere else. At the moment, if we are not careful, we shall end up in a situation where we have 28 or more universities, we will start rating degrees according to which university it was obtained from. This means that we have already allowed such a serious disparity that employers are already looking at which university is which. If we follow what is proposed by Sen. Halima, whereas it is not easy or possible for all of them to be completely equal, at least we shall have separation of standards so that we have a certain minimum that everyone is maintaining.

As I said, counties which are well endowed already have many universities. Others do not know what to do until the Government comes in. The universities are also giving us a raw deal as a nation. At Independence, we did not have even one university in Kenya. We only had one that was called the University of East Africa with campuses in Nairobi, Makerere in Uganda and Dar es Salaam in Tanzania. There was no university anywhere in Kenya. When it started, obviously things started rolling and, it was after 20 years that Moi University came along.

Madam Temporary Speaker, before Independence, those universities were specialised. If you wanted to do medicine, you went to Makerere. For engineering, you went to the University of Nairobi University (UoN) and for law, you went to Dar-es-Salaam. For many years we knew that for biological sciences and agriculture, you went to Egerton University. However, if you go to Egerton University today, they are doing everything like everybody else. When Moi University started, it also had a number of technical courses that they were doing, but now they want to do everything.

I think the CUE in liaison with Parliament should look at whether it is wise to start a university in every corner, none of which specializes in anything. It is about time we introduced a system of specialization. If we are to have a medical college everywhere and we require the same doctors who will be lecturers to also man our Level 5 and 4 hospitals in the counties, we simply do not have enough. It is time we started thinking of how we can have specialized universities. That can only be directed through a national policy.

Last but not least, is the fact that once every county has a university, we also want to have a policy so that counties are also urged to see the need to research in line with the resources in their counties. Our counties are endowed with different types of resources. A county could be endowed with livestock, but it is not doing any research on livestock and depends on another county which does not have livestock and they are the ones who are doing the livestock research. We would encourage counties that as and when we get universities, they should also focus on what they produce so that the research is targeted on helping the people of that county primarily before they go out to the rest of the country.

With those few remarks, I beg to support.

Sen. Omondi: Thank you, Madam Temporary Speaker, for giving me this opportunity to make my contribution to this important Motion. I support this Bill because I know it will reduce the burden of parents and make counties develop faster. As I contribute, I do so with very low spirits simply because my county, Kakamega, does not have a public university. I support the sponsor of the Bill because it will make my county of origin benefit from equal distribution of these institutions.

I also support because the distance that students have to travel to join universities is giving parents a big burden in terms of paying for accommodation. You will find that tuition fee is lower compared to the money paid for accommodation in another county. If we have equal distribution of these universities within the counties, it will allow most students to be day scholars in universities in their counties. It will also help students to learn more of their culture. Parents will also be able to monitor the behaviour of their children as they will be meeting often.

Madam Temporary Speaker, having a university within a county will also discourage students from loitering around towns when they are not in class. Instead, students will be encouraged to be at home and engage in constructive activities that can change their behaviour, build their morale and even reduce the workload of parents at home. If these universities are distributed within, so that each county has a private and a public university, it will enable students to fit where their capacity allows them to be. Parents or the caregivers of students with disabilities and who are facing challenges will be enabled to monitor them. These students require a lot support from parents.

Madam Temporary Speaker, I was a boarder in secondary school and in college. It was very difficult for me to do the day to day chores like washing clothing. If these universities are within the counties, parents will be able to check on the students within those universities and give them support once in a week at least to make their lives smooth and friendly. This will afford them a learning environment that is conducive.

This Bill is also going to address the issue of moving services close to the people. It will allow lecturers to give services where it is conducive to them. If, for example, Kakamega County did not have a public university, it becomes a challenge to lecturers who are willing to support students from that county to access these facilities. At the moment, the universities that are there are very few and most of them are private.

With those few contributions, I want to end by saying: "Education, education, education". Education can be useful and meaningful if given the support that it requires.

If we can devolve other services and ignore education at the grassroots, the development of these counties and the country as a whole will be questionable. This is because other counties will grow while others will not grow. In terms of finances, counties without universities will be taking their financial resources to the counties that have universities at the expense of making their counties collapse. Those who have businesses like residential hostels that may be used to boost the county will benefit. For those which do not have these facilities, there will be no such activities to accelerate the circulation of money; this will not happen if resources are not distributed equally.

When we talk about equal distribution of resources from the national Government, then those without universities will not benefit from the resources that may be given to counties to give a facelift to the existing universities.

With those remarks, I support.

Sen. Wamatangi: Thank you, Madam Temporary Speaker. I also rise to support this Bill and congratulate the Mover of the Bill which is timely and important for the future of this country and our young people.

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

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

Mr. Temporary Speaker, Sir, the late Nelson Mandela said that the best weapon you can give a person to tackle and fight the future is education. In the spirit of devolution which is to bring services closer to the people, compared to the situation that is prevailing right now where universities are concentrated in certain areas of this country, it defeats this spirit.

Mr. Temporary Speaker, Sir, this sometimes happens at a very great cost. The ensuing scenario has been that this has propagated serious migration of certain groups and cohorts of people, especially the young people in search of education. When these young people move in search of education in particular areas, it is also at a great cost. This can be mitigated or reduced if this Bill becomes a reality. One of the goals of the MDGs is to fight ignorance. If we have to fight ignorance in every corner of this country, then we have to make education available and accessible to every person irrespective of where they reside in this country.

In the last ten years, there has been a trend in this country where enrolment in universities has increased more than tenfold from the senior citizens of this country to those that never had an opportunity to join universities earlier, who have now enrolled in part time parallel programmes and other programmes within universities. This is a demonstration of the hunger or the need for university education amongst the population.

Worldwide, development is now driven by innovation and technology. As a country that intends to develop we have to give the best available opportunities to ensure that education is available to all of us. The ratio of the youth who pass their examinations at O-levels after sitting for their high school examinations compared to the uptake of our universities – both private and public – is shocking. The number of our young people

who are left without an opportunity albeit having passed their examinations for failure to get an opportunity to join a university is large.

(Sen. (Eng.) Muriuki spoke off-record)

Mr. Temporary Speaker, Sir, the Senator for Nyandarua is doubting your gender.

(Laughter)

The Temporary Speaker (Sen. Murkomen): Order, Sen. Wamatangi! He is not doubting my gender, but he only thought that the previous Speaker was still on the Chair. My gender is not in doubt.

Sen. Omondi: On a point of order, Mr. Temporary Speaker, Sir. Is the Senator for Kiambu County, Sen. Wamatangi, in order to refer to you as Madam Temporary Speaker? Is he in order to doubt your gender?

The Temporary Speaker (Sen. Murkomen): Sen. Omondi, he is totally out of order and he is so advised.

Sen. Wamatangi: Mr. Temporary Speaker, Sir, I apologise for that. I did not, at any one time suggest, imply or even think that your gender is in question. It is the Senator for Nyandarua County who insisted that I had referred to you as Mr. Temporary Speaker, Sir. He thought that it could have been Madam Temporary Speaker. I was only trying to correct him.

The Temporary Speaker (Sen. Murkomen): Proceed.

Sen. Wamatangi: Mr. Temporary Speaker, Sir, I was addressing the issue of the ratio of our young people who happen to pass their O-Level examinations, but unfortunately, never get the opportunity to see the inside of a university in spite of the great effort they made and a lot of money that was invested in their earlier education. If this is made a reality, then the mitigation of this anomaly will be made a reality.

Needless to say, one of the most important issues that this Bill should address is to encourage expansion and movement of education to counties. We also need to emphasize that the quality of education in all the 47 counties must be maintained at its tiptop. In the absence of this – as it has been lamented many times in several fora – we will end up having half-baked graduates. If this is not taken care of, then, it will make the intent of giving this education a folly. So, we have to emphasize – as it is proposed that universities are opened in the counties – and maintain the standards as dictated by the proposed commission.

Opening of universities and other institutions of learning is a way of integrating communities. Sometime back, we were in a function with one of my colleague Senators. He drew an example to us and said that he went to school in his rural areas. Having completed his primary education in his rural area, he also joined high school in his rural area just like most of us. After that, he got an opportunity to join university here in Nairobi. Thereafter, he went to a college outside this country. The difference between

when he went to school in his local areas and outside the county was great. He made friends that he could depend on.

That clearly explains the reason why today – for those of us who have families here in Nairobi or in semi-urban counties – do not see the need to practice tribalism. This is because after they integrate with all communities and all people from all walks of life, then, society and community becomes more integrated. If we have universities opened in all corners of this country we will ensure that our communities are united and more integrated. We could use that as a way of fighting tribalism.

Mr. Temporary Speaker, Sir, one more thing that also requires to be said out loudly is that as we open the universities, we should ensure security of students. It is not long ago when the massacre of students of Garissa University College occurred. This is something important to do. However, we must remember that choices, as they say, have consequences. As we devolve universities, we should ensure that we carry on the burden of ensuring that our children who would join universities in every corner of this country are secure.

Mr. Temporary Speaker, Sir, education is a right to everybody. The new Constitution emphasises the rights of every individual Kenyan. We have to ensure that the Constitution is actualised. Taking education to every corner of this country is ensuring that the rights of every Kenyan are realised.

Mr. Temporary Speaker, Sir, I support this Bill because I want education in this country to be devolved. Education opportunities should be given to all people who are able and willing to join universities. People should join universities at a place of their will and ease. This is a way of equalising society. It is a way of ensuring that in every corner of this country, we narrow the gap between those who have and those who do not have. We should equalise all of them.

Finally, Mr. Temporary Speaker, Sir, this will also help to demystify university education to most of us. Some of the challenges that we have been having, for example, with legislators in county assemblies to ensure that sound laws are passed in county assemblies is lack of education or capacity. If universities are created in every county, then it will serve as a beginning of tackling this problem.

With those few remarks, I beg to support.

Sen. Okong'o: Thank you, Mr. Temporary Speaker, Sir, for giving me this opportunity to also support the Universities (Amendment) Bill (Senate Bill No.31 of 2014) which was brought here by my sister, Sen. Mohamud who is also a beneficiary of university education.

Mr. Temporary Speaker, Sir, the essence of this Bill is to help the CUE be compliant with the requirements of the Constitution and the resolutions that have been passed by this Senate. Since our role is to defend devolution, there will be many amendments to Acts which will be brought here, so that we realign them. This amendment will assist the CUE to comply and to create an atmosphere where we will have unity and diversity.

By each county having a university it does not necessarily mean that it will only have the locals from those counties. We are going to interrogate the CUE as per the

requirements which have been cited in this Act. The CUE will find out whether they have complied with the requirements for a fully-fledged university. Our role also will be to check how the national unity of our country has been catered for.

Mr. Temporary Speaker, Sir, you have heard my good friend, Sen. Wamatangi, mention that people who go to local schools have difficulties in integrating. The CUE will be required to be reporting to Parliament; that is to both the National Assembly and the Senate. Some of us believe in nationalism and unity. We are also assisting the CUE to fast-track the establishment of universities in counties, so that we can also help grow economic wealth in those devolved units. There will be creation of jobs in those universities. Local and foreign investors will also have greater impetus in harnessing the national wealth.

Mr. Temporary Speaker, Sir, I also want to allude to what the father of the CDF, Sen. (Eng.) Karue, mentioned. This clamour for universities must not be mistaken for clamour for haphazard faculties mushrooming all over. There has been clamour by some universities to have the faculties of Medicine and Engineering, yet it is very difficult to get lecturers to teach in those faculties. I sit in the Senate Committee on Education where the Senator for Nyandarua brought an issue about Mombasa Technical University, which was given the Faculty of Engineering, but the Engineering Society of Kenya had issues with that, after students had enrolled, paid a lot of money and studied halfway. We had difficulties in interrogating such a kind of scenario.

It is important, therefore, for the CUE to understand that, for instance, Turkana should have a university that offers courses in oil production. A university in Mombasa could offer courses in marine science. Students from Nyamira, Kisii and Elgeyo-Marakwet counties can be admitted in that university to integrate with students from other parts of the country.

Mr. Temporary Speaker, Sir, during President Kibaki's regime, we talked about the Vision 2030. The Senate can fast-track some of these amendments to the relevant Acts, so that we, as a country, achieve this vision. The previous speakers have talked about mushrooming colleges. The other day, I heard of Obama University here in Nairobi. I was told it was closed because of lack of necessary facilities. I do not know where the CUE was when it was being established. Our role as the Senate is to assist the relevant organizations move in the right direction, while following the relevant laws.

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

Sen. Obure: Thank you very much, Mr. Temporary Speaker, Sir, for recognizing and giving me this opportunity.

I want to start by thanking Sen. Halima, especially for the eloquent manner in which she moved and provided the basis for debate on this Bill. This Bill seeks to provide for a structured format for coordination and liaison between the national Government and the county governments on matters to do with university education. This Bill also specifically will require the CUE to update the National Assembly and this Senate on achievements made and challenges faced by universities in our counties.

Mr. Temporary Speaker, Sir, the Bill also seeks to put in place a framework which will give guidance on how best activities of the universities could impact on the

counties; how research conducted by the universities could be harnessed to benefit citizens of the counties and the county governments to discharge their mandates effectively. For example, in the area of agriculture, many universities have conducted research; they have come up with new findings. This Bill will help to provide a framework for coordination on how best counties could benefit from those research findings and how these findings could help improve agricultural productivity so that we can move towards being food secure in our counties.

If that happened, we would be grateful to the universities for the contribution they would have made in that respect. Of course, we recognise that what we do not have a mechanism to coordinate all these activities. These amendments by Sen. Mohamud aim at providing that kind of framework for consultation, liaison and collaboration. I also believe that universities could contribute in the development of other sectors. For example, in the health sector, universities could contribute in enhancing provision of health care. The universities could help in solving some of the transport and public works issues, trade and planning and pre-primary education. I am sure that universities in our counties could make a significant contribution, particularly in matters relating to pre-primary education.

I am grateful to Sen. Mohamud because this is the intention of all these amendments; to provide that kind of framework for liaison, consultation and collaboration between the national Government institutions and county governments on matters relating to education. I am convinced that through this Bill, and the collaboration it intends to bring, county governments could clearly benefit from research, innovation and new knowledge imparted by the universities in our counties.

Mr. Temporary Speaker, through this collaboration, I am convinced that there is a huge scope for universities to help our counties in alleviating poverty, improving economic welfare and quality of life of our people in our counties. Therefore, in my opinion, there is a very strong case for this mechanism for coordination and liaison between the national Government institutions and the counties for citizens to reap the full benefits of the activities of universities in our counties.

I will give the example of Kisii County. Working together with Kisii University, the county has entered into an arrangement through which they will establish a medical school at the Level 5 hospital in Kisii. It will also be a teaching hospital as a result of this arrangement. If this happens, we will expect top medical practitioners to come and teach there.

ADJOURNMENT

The Temporary Speaker (Sen. Murkomen): Order, Sen. Obure! When we resume, you will have 11 minutes when the Bill comes up again for debate.

Hon. Senators, it is now time to interrupt the business of the Senate. The Senate stands adjourned until tomorrow Thursday 16th July, 2015 at 2.30 p.m.

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The Senate rose at 6.30 p.m.