

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Tuesday, 26th April, 2016

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

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

PRAYERS

MESSAGES FROM THE NATIONAL ASSEMBLY

The Speaker (Hon. Ethuro): Hon. Members, I have two Messages from the National Assembly to communicate to the Senate.

APPROVAL OF THE HEALTH BILL (NATIONAL ASSEMBLY BILL No.14 OF 2015)

The first one is on the approval of The Health Bill (National Assembly Bill No.14 of 2015).

Hon. Senators, I wish to report to the Senate that pursuant to Standing Order No.40(3) and (4), I received the following Message from the Speaker of the National Assembly regarding the passage by the National Assembly of the Health Bill (National Assembly Bill No.14 of 2015).

Pursuant to the provisions of Standing Order Nos. 41(1) and 142 of the National Assembly Standing Orders, I hereby convey the following Message from the National Assembly;

“Whereas the Health Bill (National Assembly Bill No.14 of 2015) was published vide Kenya Gazette Supplement No.44 of 17th August, 2015 to align the health laws and policy to the provisions of the Fourth Schedule to the Constitution of Kenya 2010 relating to the respective functions assigned to National and County Governments and to provide a framework for coordination between the two levels of Government in provision of health services and management of health facilities;

Whereas, the National Assembly considered and passed the said Bill on Wednesday 30th March, 2016 with amendments in the form attached hereto;

Now therefore, in accordance to the provisions of Article 110(4) of the Constitution and Standing Order No.142 of the National Assembly Standing Orders, I hereby refer the said Bill to the Senate for consideration.”

Hon. Senators, Standing Order No.148 requires that a Bill which originates in the National Assembly be proceeded with by the Senate in the same manner as a Bill introduced in the Senate by way of First Reading in accordance to Standing Order No.129. I, therefore, direct that the Bill be listed for First Reading in the Order Paper, tomorrow, Wednesday 27th April, 2016.

Hon. Senators, I also wish to bring to your attention that this Bill is one of those Bills that were required to be enacted within the five years of the enactment of the Constitution of Kenya 2010. This timeline lapsed on 27th August, 2015. However, the National Assembly by resolution extended the timeline by one year.

I thank you.

*(The Speaker resumed his seat to allow
Hon. Senators to enter into the Chamber)*

(Several Senators remained standing)

Order! Sen. Ole Ntutu, you will enjoy the generosity of the Chair. The sooner you sit the better.

Order! Senators Elachi and Prof. Lesan! Freeze! You do not seem to be listening.

PASSAGE OF VARIOUS BILLS BY THE NATIONAL ASSEMBLY

Hon. Senators, the second Message is on The County Governments (Amendment No.2) Bill (Senate Bill No. 02 of 2014), Mediated Versions of the Climate Change Bill (National Assembly Bill No.01 of 2014), and The Political Parties (Amendment) Bill (Senate Bill No. 03 of 2014).

Hon. Senators, I wish to report to the Senate that pursuant to Standing Order No.40(3) and (4), I have received the following Message from the Speaker of the National Assembly regarding the passage by the Assembly of the County Governments (Amendment No.2) Bill (Senate Bill No. 02 of 2014), Mediated Versions of the Climate Change Bill (National Assembly Bill No.01 of 2014) and The Political Parties (Amendment) Bill (Senate Bill No. 03 of 2014).

Pursuant to the provisions of Standing Order Nos.41(1) and 142 of the National Assembly Standing Orders, I hereby convey the following Message from the National Assembly;

Whereas the County Governments (Amendment No.2) Bill (Senate Bill No. 02 of 2014) was published as a Bill originating from the Senate to provide for gazettment of nominated Members of County Assemblies (MCAs) before commencement of sittings of county assemblies;

Whereas, the said Bill was passed by the Senate and referred to the National Assembly on 20th August, 2014 for consideration;

Whereas the National Assembly considered and approved the said Bill in the form passed by the Senate without amendments on Thursday 21st April, 2016;

Whereas, the Political Parties (Amendment) Bill (Senate Bill No.03 of 2014) and the Climate Change Bill (National Assembly Bill No.01 of 2014) were referred to Mediation Committees on 30th September, 2015 and 1st March, 2016, respectively;

Further, whereas, the National Assembly considered and approved the mediated version of the Climate Change Bill (National Assembly Bill No.01 of 2014) on Wednesday 20th April, 2016 and the mediated version of the Political Parties (Amendment) Bill (Senate Bill No.03 of 2014) on Thursday 21st April, 2016, in the forms developed by the respective mediation committees;

Now therefore, in accordance with the provisions of Standing Order Nos. 144 and 150(4)(b) of the National Assembly Standing Orders and Article 113 of the Constitution, I hereby convey to the Senate the decisions of the National Assembly on the said three Bills.

Hon. Senators, it is noteworthy to point out that the report of the Mediation Committee on the Political Parties (Amendment) Bill (Senate Bill No. 03 of 2014) is lined up for tabling today. The report of the Mediation Committee on the Climate Change Bill (National Assembly Bill No.01 of 2014) which is due for Division is scheduled under order No.9 in today's supplementary Order Paper.

As for the County Governments (Amendment No.2) Bill (Senate Bill No.02 of 2014) by Sen. Wangari, I will process it and present it to His Excellency the President for assent.

I thank you.

Next Order!

PAPERS LAID

REPORT ON PUBLIC OFFICERS LOAN SCHEME REGULATIONS

Sen. Sang: Mr. Speaker, Sir, I beg to lay the following Paper on the Table of the Senate, today, Tuesday, 26th April, 2016:-

Report of the Public Finance Management (State Officers and Public Officers Motor Cars Loan Scheme) Fund Regulations 2015.

(Sen. Sang laid the document on the Table)

REPORT ON PETITION: OLMOROGI PARCEL OF LAND, PARCEL NO. 21400

Sen. Khaniri: Mr. Speaker, Sir, on behalf of the Senate Standing Committee on Land and Natural Resources, I beg to lay the following Paper on the Table of the Senate, today, Tuesday, 26th April, 2016:-

Report of the Standing Committee on Land and Natural Resources on the petition of OlMorogi Parcel of Land, Parcel No.21400.

Thank you.

(Sen. Khaniri laid the document on the Table)

ANNUAL REPORT OF THE NIS FOR THE YEAR 2015

Sen. Adan: Mr. Speaker, Sir, pursuant to Section 28(1)(f) of the National Intelligence Service Act, 2012, I beg to lay the following Paper on the Table of the Senate today, Tuesday 26th April, 2016:-

Annual Report of the National Intelligence Service for the year 2015.

(Sen. Adan laid the document on the Table)

REPORT OF THE MEDIATION COMMITTEE ON THE POLITICAL
PARTIES (AMENDMENT) BILL (SENATE BILL NO.3 OF 2014)

Sen. Wako: Mr. Speaker, Sir, I beg to lay the following Paper on the Table of the Senate today, Tuesday 26th April, 2016:-

Report of the Mediation Committee on the Political Parties (Amendment) Bill (Senate Bill No.3 of 2014).

(Sen. Wako laid the document on the Table)

NOTICE OF MOTION

ADOPTION OF MEDIATION COMMITTEE REPORT ON THE POLITICAL
PARTIES (AMENDMENT) BILL (SENATE BILL NO.3 OF 2014)

Sen. Wako: Mr. Speaker, Sir, I beg to give notice of the following Motion:-

THAT, the Senate adopts the Report of the Mediation Committee on the Political Parties (Amendment) Bill (Senate Bill No.3 of 2014) laid on the Table of the House today, Thursday 26th April, 2016.

STATEMENTS

The Speaker (Hon. Ethuro): Chairperson, Committee on Finance, Commerce and Budget.

MISAPPROPRIATION OF PUBLIC FUNDS
BY THE NATIONAL BANK OF KENYA

Sen. Billow: Mr. Speaker, Sir, I gave this Statement last week and there was a ruling that the Speaker made regarding a statement made by the Senate Minority Leader. He was required to provide evidence to substantiate or withdraw. He requested to be given time until today. Otherwise, we dealt with the rest of the Statement.

The Speaker (Hon. Ethuro): We can give it a bit of time.

Let us move on to Statement (b).

PARTICIPATION OF CID OFFICERS IN VETTING COMMITTEE
SITTINGS FOR ID CARD APPLICATIONS IN TRANS NZOIA COUNTY

Sen. Adan: Mr. Speaker, Sir, at a Sitting of the Senate held on Tuesday 29th March, 2016, Sen. Henry Ndiema requested for a Statement regarding officers drawn from the Directorate of Criminal Investigations participation in the vetting of applications of national identity cards.

He particularly sought to be informed whether the Government is aware that the said officers are participating in vetting applications for identity cards in Trans-Nzoia. He also sought to know why the officers are interrogating and intimidating innocent applicants as if they have committed crime. He further sought to be informed on what action will be taken to withdraw the officers from the vetting committees.

Mr. Speaker, Sir, I wish to respond that the Government is aware that in some instances, officers drawn from the DCIO attend identity cards vetting committee meetings in Trans-Nzoia County. Their attendance is necessitated by suspicion of doubtful applicants. However, the Government is not aware that the officers are interrogating and intimidating innocent applicants as if they have committed a crime. The actual interviewing process is carried out by elders and technical officers, and not DCIO officers who are only meant to observe the vetting process.

The Ministry of Interior and Coordination of the National Government has no intention of withdrawing the DCIO officers from the vetting committees as their attendance is only required when there is suspicion of criminality.

In addition, we had a meeting with the Registrar of Persons who appeared before our Committee and this issue came up. The registrar confirmed that he will not allow intimidation of the members of public by the Criminal Investigations Department (CID). I believe that Sen. Ndiema attended that particular meeting.

Thank you, Mr. Speaker, Sir.

Sen. Ndiema: Mr. Speaker, Sir, I wish to thank the Vice Chairperson for the response. However, I would like to seek further clarification in view of the fact that the Ministry says that the CID officers do not always attend the vetting committees; they attend when need arises. The information we have is that all meetings, without exception, are attended by officers from the CID. Is the Vice Chairperson, therefore, saying that they will now be withdrawn and will not be attending all meetings?

The CID officers who are doing a very good job in my county of dealing with crime have been diverted from doing their core business of investigating crimes that occur. We need them to do their core business instead of sitting in vetting committees since doing so conflicts with their responsibility. What if in the process of vetting, some further crime is committed, will they investigate themselves? These officers are intimidating our people. Whenever they see those officers they cannot go there. Even criminals are entitled to apply and be considered for registration.

Moreover, in the event that they commit a crime, such people can be apprehended easily if they are captured in the records. Could the Vice Chairperson confirm that this is happening in all counties or only in particular counties like Trans-Nzoia?

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, I would like the Vice Chairperson to indicate whether there is an official policy by the Government towards lady applicants who were born in Uganda and married in Kenya. What is the policy because these young women are forced sometimes to go back to Uganda and bring proof? What more proof do they need other than that they are married to Kenyans?

Finally, could the Vice Chairperson confirm that some local politicians in Trans-Nzoia from constituencies neighbouring Uganda are deliberately assisting Ugandans in procurement of Kenyan National Identity Cards, so that they can register as voters and help them win elections?

The Speaker (Hon. Ethuro): Order, Senators! I wish to interrupt this particular Order, so that we can go to Order Nos.8 and 9.

(Sen. Hassan spoke off-record)

Sen. Hassan, you do not need to ask the obvious. It is time to vote because we have the numbers. We will resume this particular Statement thereafter.

(Interruption of Statements)

Hon. Senators, let us move to Order No.8.

BILL

Second Reading

THE DIVISION OF REVENUE BILL (NATIONAL ASSEMBLY BILL NO.4 OF 2016)

(Sen. Billow on 21.4.2016)

(Resumption of Debate interrupted on 21.4.2016)

The Speaker (Hon. Ethuro): Ring the Division Bell for one minute. I encourage the Senators to remain in the Chamber because the Division of Revenue Bill is running late.

(The Division Bell was rung)

Order, Members! Check if you can log into the system. If the one minute is over, draw the Bar and close the door.

(The Bar was drawn and the Door Closed)

Order, Members! You should now vote.

(Loud consultations)

Order, Members! Voting has commenced.

Hon. Senators: Mr. Speaker, Sir, the system is not working.

*(There was a technical hitch with
the Electronic Voting System)*

The Speaker (Hon. Ethuro): Order, Members! We will repeat the voting. Just remove your cards and then log in afresh. You may now proceed.

Let us now move on to the next vote.

An hon. Senator: What about the assisted voters?

The Speaker (Hon. Ethuro): Assisted voters will come to vote on both Order Nos.8 and 9 at the end of the Electronic Voting.

(Voting in progress)

*(Sen. (Dr.) Khalwale crossed the
Floor without bowing to the Chair)*

Order, Sen. (Dr.) Khalwale. I hope you have a copy of your Standing Orders.

(Sen. (Dr.) Khalwale bowed to the Chair)

The Speaker (Hon. Ethuro): Hon. Members, I think we are now ready to vote.

Hon. Members, we need to repeat the vote. On the printout that I have, the first vote was on the Report of the Mediation Committee on the Climate Change Bill (National Assembly Bill No.1 of 2014). We are now on the Division of Revenue Bill (National Assembly Bill No.4 of 2016).

Hon. Members, get ready now to vote.

Assisted voters, it is your time now. Remember there are two votes.

(Assisted voters walked to the Clerk-at-the-Table)

DIVISION

ELECTRONIC VOTING

*(Question, that the Division of Revenue Bill (National Assembly Bill No.4 of 2016) be
now read a Second Time, put and the Senate proceeded to*

vote by County Delegations)

AYES: Sen. Adan, Isiolo County; Sen. (Prof.) Anyang'-Nyong'o, Kisumu County; Sen. Billow, Mandera County; Sen. Cheruiyot, Kericho County; Sen. Chiaba, Lamu County; Sen. Elachi, Nairobi County; Sen. Hargura, Marsabit County; Sen. Hassan, Mombasa County; Sen. Kagwe, Nyeri County; Sen. M. Kajwang, Homa Bay County; Sen. (Dr.) Khalwale, Kakamega County; Sen. Khaniri, Vihiga County; Sen. (Prof.) Kindiki, Tharaka-Nithi County; Sen. Kivuti, Embu County; Sen. Leshore, Samburu County; Sen. (Prof.) Lonyangapuo, West Pokot County; Sen. (Dr.) Machage, Migori County; Sen. Madzayo, Kilifi County; Sen. Mohamud, Wajir County; Sen. Musila, Kitui County; Sen. Mutula Kilonzo Jnr., Makueni County; Sen. Mwakulegwa, Taita Taveta County; Sen. Ndiema, Trans Nzoia County; Sen. Ntutu, Narok County; Sen. Obure, Kisii County and Sen. Sang, Nandi County.

NOES: Nil.

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

AYES: 26

NOES: Nil

ABSENTIONS: Nil

(Question carried by 26 votes to 0)

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

MOTION

ADOPTION OF MEDIATION COMMITTEE REPORT ON THE CLIMATE
CHANGE BILL (NATIONAL ASSEMBLY BILL NO. 1 OF 2014)

THAT, the Senate adopts the Report of the Mediation Committee on the Climate Change Bill (National Assembly Bill No.1 of 2014) laid on the Table of the House on Thursday, 14th April, 2016

(Sen. (Prof.) Kindiki on 21.4.2016 – Morning Sitting)

*(Resumption of Debate interrupted on 21.4.2016
– Afternoon Sitting)*

DIVISION

ELECTRONIC VOTING

(Question, that the Senate adopts the Report of the Mediation Committee on the Climate Change Bill (National Assembly Bill No.1 of 2014) laid on the Table of the House on Thursday, 14th April, 2016, put and the Senate proceeded to vote by County Delegations)

AYES: Sen. Adan, Isiolo County; Sen. (Prof.) Anyang'-Nyong'o, Kisumu County; Sen. Billow, Mandera County; Sen. Cheruiyot, Kericho County; Sen. Chiaba, Lamu County; Sen. Elachi, Nairobi County; Sen. Haji, Garissa County; Sen. Hargura, Marsabit County; Sen. Hassan, Mombasa County; Sen. Kagwe, Nyeri County; Sen. M. Kajwang, Homa Bay County; Sen. (Dr.) Khalwale, Kakamega County; Sen. Khaniri, Vihiga County; Sen. (Prof.) Kindiki, Tharaka-Nithi County; Sen. Kivuti, Embu County; Sen. Leshore, Samburu County; Sen. (Prof.) Lonyangapuo, West Pokot County; Sen. (Dr.) Machage, Migori County; Sen. Madzayo, Kilifi County; Sen. Meli, Uasin Gishu County; Sen. Mohamud, Wajir County; Sen. Musila, Kitui County; Sen. Mutula Kilonzo Jnr., Makueni County; Sen. Mwakulegwa, Taita Taveta County; Sen. Ndiema, Trans Nzoia County; Sen. Ntutu, Narok County; Sen. Obure, Kisii County; Sen. Sang, Nandi County and Sen. Wako, Busia County.

NOES: Nil.

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

AYES: 29

NOES: Nil

ABSENTIONS: Nil

(Question carried by 29 votes to 0)

(Resumption of Statements)

STATEMENTS

PARTICIPATION OF CID OFFICERS IN VETTING COMMITTEE SITTINGS FOR ID CARD APPLICATIONS IN TRANS NZOIA COUNTY

The Speaker (Hon. Ethuro): You may now draw the Bar and open the door.

Hon. Senators, we had a statement on the Floor and it was the turn of the Chair to respond to the clarifications sought by Sen. Ndiema and Sen. (Dr.) Khalwale.

Sen. Billow: Mr. Speaker, Sir, I had pressed the button.

The Speaker (Hon. Ethuro): You never indicated interest, Sen. Billow. Before you proceed, Chairperson, let us allow Sen. Billow to seek a clarification.

Sen. Billow: Mr. Speaker, Sir, this issue of the CID officers involved in the vetting of national identity cards is in every county. I know it because it was there since time immemorial. I want the Chairperson to clarify that the intention of having a CID officer is to ensure that those elders who are involved in the vetting do not misuse their authority and give these cards to people who do not deserve or who are not Kenyans.

Could the Chairperson clarify that the presence of CID officers in the vetting panel of ID cards has not helped particularly in North Eastern region where, despite all that, these cards have continued to be issued to people who are not Kenyans?

Sen. (Dr.) Machage: Mr. Speaker, Sir, in border areas of this country, getting an ID card is a nightmare and we have older people above 40 years who have never had an ID card due to intimidation. It even gets harder when they are asked what they have been waiting for. Could the Chairperson assure this House that so long as you are above 18 years, you will not be intimidated in the process of acquiring an ID card?

Sen. Adan: Mr. Speaker, Sir, I wish to respond to interventions sought by various speakers. First, let me confirm to Sen. Ndiema that according to the information that I have, the CID officers are just observers in that process and not carrying out the actual vetting themselves. That has been indicated in the Statement. In the event that they are harassing any citizen, if there is evidence to that, we will ask the relevant departments to investigate and give feedback on the same.

Mr. Speaker, Sir, regarding the question of the CID officers not doing their core mandate; I believe issuance of ID cards is a sensitive security matter. Therefore, it is important for them to be involved whenever there are cases of irregularities or criminal cases that may come up in the process.

Mr. Speaker, Sir, with regard to what Sen. (Dr.) Khalwale has said about the Ugandan girls who are required to go back and get documentation, this matter came up when we had a discussion with the Registrar of Persons. We are informed that the regulation is that as long as one has proper documents to show that they are married and have lived in the country for years, there is no problem. Therefore, if Sen. (Dr.) Khalwale has a case that clearly shows that there is evidence to that effect, I can follow up and ensure that it is sorted out.

An issue was raised regarding politicians using Registrar of Persons to issue IDs to foreigners, especially the Ugandans. This is a criminal offence. If there is evidence to that effect, I would request that we give the information to the relevant Ministry to investigate and give us feedback, because that is not allowed.

A Member indicated that usage of the CID officers in vetting process does not help at all. I know that there are several problems and challenges that have come up, but this is a matter that we can follow up and review the challenges faced in this process. I will report back to the Senate in two weeks' time regarding the issue of failure by CID officers to do the right job. Kenyans have a right to get their IDs and should not be intimidated by CID or any other officers in the process of acquiring them.

Thank you, Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): Very well.

Next Statement!

Sen. (Prof.) Anyang'-Nyong'o: On a point of order, Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): What is it, Sen. (Prof.) Anyang'-Nyong'o?

Sen. (Prof.) Anyang'-Nyong'o: Mr. Speaker, Sir, I think the Statement that the Vice Chairperson is making is important. She stated at the end that the process is not meant to intimidate any Kenyan. Our Constitution is rich; it says we must respect our cultural diversity. It also says that in implementing any Government rules or regulations,

technicalities should not lead to denying any Kenyan their right. Our women have been denied their right to have IDs on technicalities, and I am glad that CID officers are there. To ask a woman in Luoland to produce documents to show that she was married is unfair to the cultural diversity. This is because usually people are married without any documents whatsoever. What exist are human beings who can give testimony that someone is somebody's wife.

Why can we not do what the colonialists used to do; relying on clergymen, elders and chiefs to give evidence that somebody is a citizen of a particular village? In order to get IDs, up to now, women are being told to go back to their homes to fetch their fathers. This is unconstitutional because it is against cultural diversity in this nation. Could the Chairman, who is a lady, take this issue seriously and ensure that our ladies enjoy their constitutional rights?

The Speaker (Hon. Ethuro): Order, Sen. (Prof.) Anyang'-Nyong'o! How can a "Chairman" be a lady?

Sen. (Prof.) Anyang'-Nyong'o: Mr. Speaker, Sir, the title 'chairman' is a neutral title. Although we refer to someone as the 'chairperson,' if you look at a dictionary the definition of a chairman is a person who chairs anything. Therefore, 'chairman' is not gender-aligned, but gender-neutral.

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

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

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, the 'Chairman' has challenged me that if I have got any case---

The Speaker (Hon. Ethuro): Order, Sen. (Dr.) Khalwale! You are also pursuing the line of Sen. (Prof.) Anyang'-Nyong'o?

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, the Chairperson challenged me, when she was responding, if I have such a case. I have several cases, but allow me to give only one example. Mr. Oscar Khayati, an Administration Police (AP) officer working in Wajir is married to a Luo girl from Karachuonyo. The girl has been denied an ID in Kakamega, unless she brings her father's ID, but he is dead. When she brought the mother's ID, they said that they do not know whether the mother was married to the father. I wrote a letter, as the Senator of Kakamega, stating that I know the couple, but they still denied her an ID. You have it on HANSARD; you can do the follow up. It is that sad.

Sen. Sijeny: Mr. Speaker, Sir, we have several cases in Nairobi. Some parents to young men and women get married and live in Nairobi slums and so, they do not have IDs. When I was going round in Kariobangi and Mathare during the *Okoa Kenya* Initiative, I saw many ladies who do not have birth certificates or IDs, yet everybody knows them. They have children and some are grandparents. Could the Vice Chairperson seek proper interventions, so that these people are given IDs?

The Speaker (Hon. Ethuro): Order, Senators. In fact, when Sen. (Prof.) Anyang'-Nyong'o said that you can only prove by other living persons; I thought he was willing to refer to the products of the union and not to the parties.

Proceed, Vice Chairperson.

Sen. Adan: Mr. Speaker, Sir, let me confirm to Sen. (Dr.) Khalwale that I will follow up on the particular case that he has raised and give him feedback in two weeks

time. I know there are a lot of challenges, especially in the way the vetting of individuals in the counties is done. However, I do not know specifically how the vetting process is carried out. I will discuss this matter with the Ministry of Interior and Coordination of National Government to find out the kind of information they require in the vetting process.

We, as a Committee, have organized a conference involving all the county directors and the Senate to follow up on the issues we face in this country regarding registration of persons. I hope we will all participate in that conference.

Thank you.

The Speaker (Hon. Ethuro): Let us move on to the next Statement (c).

MANAGEMENT OF MASINDE MULIRO UNIVERSITY
OF SCIENCE AND TECHNOLOGY

Sen. Karaba: Mr. Speaker, Sir, on Wednesday, 30th March, 2016, Sen. Elachi raised the following question to the Chairperson of the Standing Committee on Education regarding the management of Masinde Muliro University of Science and Technology. She wanted to know what informed the decision of the university to employ Prof. Frederick Otieno as the Vice Chancellor (VC) of Masinde Mulire University of Science and Technology (MMUST) considering that he resides in South Africa.

Secondly, the Member wanted the Chairperson to explain why the student population has been dropping since the appointment of the new VC.

Thirdly, she wanted the Chairperson to state the number and nature of cases involving the university that are pending in court.

Mr. Speaker, Sir, I beg to respond to the queries raised by Sen. Elachi on 30th March, 2016 as follows:-

Prof. Frederick Otieno resides in Kenya. Secondly, Prof. Otieno was appointed to the position of Vice-Chancellor of MMUST through a competitive process in accordance with the provisions in Chapter Six of the Constitution of Kenya, 2010; the Universities Act, No.42 of 2012 and the provisions in the university statutes of MMUST. The competitive process was carried out by the university council. This included advertisements in two widely circulated dailies and the university website; short-listing, interviews of candidates and recommending three names to the Cabinet Secretary in accordance with Section 35(1)(a) of the University Act, No.42 of 2012. At the end of the process, Prof. Fred Otieno was ranked best and, ultimately, appointed by the Cabinet Secretary to the position of VC for a term of five years with effect from 5th December, 2013.

The other question was about why the student population was dropping; I wish to state that since Prof. Otieno took over office on 5th December, 2013, the student population has been increasing as shown. From 2012 to 2013, the population was 10,745; in 2013 to 2014, the population dropped to 10,391; in 2014 to 2015, the population rose to 12,050; in 2015 to 2016, the population is 14,354 students. You should note that the drop in student enrolment by 354 in 2013/2014 academic year was as a result of

declaration of Kibabii University Campus as a university constituent college. Some students went to Kibabii University Campus.

The third question was about the number and nature of cases involving the university. The total number and cases pending in court are 71 as contained in schedules one to three, hereby attached. The period of the cases range from the year 2000 to 2016. For example, schedule one presents summary of the four cases instituted in the best interest of the university and schedule two highlights the summary of all 71 cases instituted against the university. Schedule three indicates a brief breakdown of the four cases that arose between 2014 and 2016.

Mr. Speaker, Sir, please, note that Prof. Otieno took office on 5th December, 2013. During his tenure 14 cases have been raised and four cases are related to the circular from the Office of the President requiring all non-academic staff to retire at 60 years of age. This was adopted and endorsed by the university council for implementation. The other two are related to a change in MMUST statutes and regulations which were approved before Prof. Otieno came into office and which required the registrars to have a PhD.

There is no evidence of increased cases against MMUST under the leadership of Prof. Otieno. I wish to assure the House that my Committee, the university council and the management are committed and doing all that they can do to make sure that the cases are heard and determined.

Sen. Elachi: Mr. Speaker, Sir, I want to thank the Chairman of the Committee for that response. When I raised these issues, the university was still open, but it is closed right now. Having said that, let me start with the second issue about the drop in student population. We need to verify the numbers. There is no way you can have students dropping from MMUST to go to Kibabii University Campus. Kibabii is a branch of MMUST and maybe the students went somewhere else.

Let me now go to the issue that most students raised and that is the issue of his Curriculum Vitae (CV); I would wish the VC to come out and tell the students that he is a resident of South Africa and that he teaches in Tswana University of Technology and his resident nationality number is 5610205933089 and that during the time he was doing the interview, he did not remember to tell the panel that he has a job in South Africa.

The law is very clear about a state officer in our country. The reason why I raised this issue is that the Petition came to the Senate in 2014 and either we were unable to take it to the Committee to handle the issue or we decided to leave it like that. When the students came up, I thought the best way is to bring it up as a statement so that the Senate can assist the university to move on to the next level.

Mr. Speaker, Sir, in terms of residence, he knows he is a resident in South Africa and he works there. It is clear and I will table the evidence on the Table of the Senate. We still need to understand that he has a lot of conflict with the staff and he has to find a way of working together with his deputy chancellors who, at the moment, have decided to leave. That is something that needs to be addressed so that the university can move on. This is what made the University of Nairobi go on strike and I wish the council manages these issues well.

The Speaker (Hon. Ethuro): Order, Sen. Elachi! This is statement hour, a time for clarification and not for your wishes.

Sen. (Dr.) Khalwale: On a point of order, Mr. Speaker, Sir. Sen. Elachi has alleged that Prof. Otieno is a South African. That statement must be taken very seriously because in many institutions, people talk of foreigners running institutions which sometimes lead to unrest. Could she substantiate her allegations because we, the elected leaders of Kakamega County, know Prof. Otieno as a man who was born in Musanda Village, Mumias West? He went to school from primary up to university here in Kenya and ended up as a teacher in South Africa. Could she substantiate so that you do not bring an unnecessary unrest in the university fraternity?

Sen. Elachi: Mr. Speaker, Sir, I said it clearly that since they think he is a resident in South Africa, it is important for him, through his CV and national identity number of South Africa to come out and tell the university that he is still a resident of South Africa. There is no dual citizenship, but he is working in South Africa. He has an identity number card for South Africa. I did not allege that he is a South African, but I said that he should have clarified the issue of residency during his interview so that the university does not think that he naturalized himself in South Africa, but working for us in Kenya. The CV is here and it has everything.

Sen. (Prof.) Anyang'-Nyong'o: Mr. Speaker, Sir, the point that Sen. Elachi is raising is very serious. I am concerned that universities are being run rather casually. The crisis at MMUST is common in other universities, particularly the new ones. There is nothing wrong with a foreigner being a VC in a Kenyan university, provided he is qualified and he is doing his work. Sir Bernard Debansen was a principal of Makerere College before it became Makerere University and did an excellent job. Dr. Author Porter was a principal of the University College of Nairobi and he did an excellent job.

The most important job is for that person to be resident at that university and take his job seriously. If Prof. Otieno is resident in South Africa, the moment he takes up a job as a VC of MMUST, he should take leave of absence from Tswana University and come to be VC full-time. Otherwise, he cannot serve two masters at the same time. He might end up failing both.

Sen. (Prof.) Lonyangapuo: Mr. Speaker, Sir, I hope we are not getting contradictory statements here. A university VC can come from anywhere in the world. He can be employed by the university council with the approval of the relevant Ministry. What may be of relevance and which the Chairperson needs to clarify is about problems in MMUST leading to the closure of the university. Was the closure related to the management problems that she cited? Furthermore, Kibabii is a constituent college run by a principal of MMUST, so the student numbers must add up. Lastly, there existed a branch of MMUST in Webuye; is it still there?

Sen. Murkomen: Mr. Speaker, Sir, there is a serious growing phenomenon in this country; the Chairperson needs to clarify whether it is an official public policy that a VC must come from the community neighbouring the university.

If you heard Sen. (Dr.) Khalwale, he was insisting that Prof. Otieno comes from Mumias, the neighbourhood of the university. The argument of Sen. (Prof.) Anyang'-Nyong'o is that people are not seeing that somebody is a foreigner from another country,

but there is the use of the “foreigner” in the local level; that so and so cannot be VC here because he does not come from this community. What is being done by the Ministry to ensure that the university is universal so that it attracts men and women who will come to lead it, for purposes of putting it at a universal stage and making it competitive? We have had this argument that if a university is stationed in Kakamega, you will find that more than a half of the teaching staff comes from that community. That loses the meaning of what a university should be.

Could diversity be made a critical and compulsory public policy in the appointment of university vice chancellors for the benefits of those who are learning in that institution? Why has the university been closed so many times if the professor is competent? It is not only Masinde Muliro University that has been closed in the recent past, but it is something that has become a wave in most of the universities. It seems as if the managers of the universities lack credibility and the students are aware that they lack credibility and legitimacy to run the institutions and, therefore, they take advantage to cause chaos and violence.

What is the correlation between the country getting near to the election and the disruption of student leadership elections in universities? There is a growing phenomenon that was not there when I was serving as a student leader, where a student defends the same seat more than four terms. Are we training and breeding Mugabes in this country; people who will not leave office by all means?

Sen. Sang: Mr. Speaker, Sir, is Sen. Murkomen, the Senate Deputy Majority Leader, in order to make references to a head of State of a friendly country in the manner and the light he has made - when he knows that President Mugabe has been very useful in helping our negotiations as a country throughout the Assembly of State parties and many other occasions - without bringing a substantive Motion to discuss?

Sen. Murkomen: Mr. Speaker, Sir, when I referred to President Mugabe, I was referring to the longevity of his leadership. What is good for Zimbabwe in having a president for more than 30 years may not be the kind of policy we want to breed here. It may be good in Zimbabwe, but not very good in Kenya to have student leaders refusing to leave the university, solely for purposes of being student leaders forever. Is there a link between the contributions of money to the university and the cost of public resources contributed by our students and the longevity of some “Mugabes” in leadership?

The Speaker (Hon. Ethuro): Order, Sen. Murkomen! You were responding to a point of order, but now you are adding more things.

Sen. Kagwe: Mr. Speaker, Sir, I would like your guidance because Sen. Sang said that President Mugabe was very instrumental in dealing with matters International Criminal Court (ICC). However, I am not sure that there is any such official position. Secondly, is Sen. Murkomen in order to compare a student leader to an aging president such as Mugabe?

The Speaker (Hon. Ethuro): Order, Sen. Kagwe! We are free to talk about ages. The Constitution has specific provisions for the elderly and the youth. Is that not comparing?

However, on the issue of Sen. Murkomen claiming that he was talking about longevity without reference to other issues is definitely not true because he said that

President Mugabe has refused to vacate office. The context in which he used it, is of a student who has refused to leave school in order to become a student leader.

However, I agree with Sen. Sang because Standing Order No.90(1) states that:-

“Neither the personal conduct of the President, nor the conduct of the Speaker or of any judge, nor the judicial conduct of any other person performing judicial functions, nor any conduct of the Head of State or Government or the representative in Kenya of any friendly country or the conduct of the holder of an office whose removal from such office is dependent upon a decision of the Senate shall be referred to adversely, except upon a specific substantive Motion of which at least three days’ notice has been given.”

Sen. Murkomen, I am afraid that you will have to swallow your words.

Sen. Murkomen: Mr. Speaker, Sir, I aware of that. I withdraw the name Mugabe and replace it with the late Omar Bongo.

(Laughter)

Sen. (Dr.) Khalwale: On a point of order, Mr. Speaker, Sir. The point of order that was raised by Sen. Kagwe is very important. The victims of the post election violence of 2007/2008 are still wondering what happened at The Hague. Sen. Sang has just informed us that President Mugabe played a critical, central or special role on those matters. Could Sen. Sang clarify to the victims of post election violations the role that President Mugabe played or is he confirming the fears of some of those victims that certain influential people were used to influence the court up to and including bribing?

Sen. (Dr.) Machage: Mr. Speaker, Sir, you referred Sen. Murkomen to Standing Order No.90(1) which I thought that he should have comprehended. Instead, he has repeated the same mistake by replacing the name of President Mugabe with that of the late President Omar Bongo. Can the Standing Order No.110 be used to educate Sen. Murkomen on the importance of obeying the Standing Orders of this House?

The Speaker (Hon. Ethuro): Order, Sen. (Dr.) Machage! One does not use punishment to educate people.

From where I sit, Sen. Murkomen’s utterance touches on the decorum and the dignity of the House and the Office. In fact, we do not refer to President Mugabe as Mr. Mugabe in this House, but we refer to him as President Mugabe. There is also no one known as Omar Bongo. We refer to him as former President Omar Bongo. Therefore, on that score alone, Sen. Murkomen is better off apologizing and vacating his utterance in entirety, without substitution.

Sen. Murkomen: Mr. Speaker, Sir, if we go that way, we will completely inhibit debate in the future. That will mean that when talking about genocide in this House, we cannot talk about Hitler who was a President at one point in time. That will also mean that if we have to give examples of bad leadership, we will not talk about former President Pinochet, among other people. The point is that, Standing Orders No.90(1)---

The Speaker (Hon. Ethuro): Order, Sen. Murkomen! You had the privilege of being a lecturer. I can confirm that this is not one of those classrooms. Nobody: Neither

Sen. Sang, I nor other hon. Senators who have asked you to withdraw or teach you a lesson have said you cannot. There is a provision in which you can do it. However, you cannot just do it the way you want.

Standing Order No.90(1) states:-

“Neither the personal conduct of the President, nor the conduct of the Speaker or of any judge, nor the judicial conduct of any other person performing judicial functions, nor any conduct of the Head of State or Government or the representative in Kenya of any friendly country or the conduct of the holder of an office whose removal from such office is dependent upon a decision of the Senate shall be referred to adversely, except upon a specific substantive Motion of which at least three days’ notice has been given.”

So, for you to rise and try to confuse us can only make your case worse. Just take this charitable directive of “withdraw and apologise.”

Sen. Murkomen: Mr. Speaker, Sir, I accept your liberal interpretation of Standing Order No.90 even if I do not agree. I accept your interpretation although that paragraph says, “President” and not “former President.” However, since you are the Speaker of the House, for the sake of decorum in the House, obedience of the rules, the rulings of the Chair – you gave me the privilege to sit there for some time – I withdraw and apologise.

Sen. Sang: Mr. Speaker, Sir, I made reference to the role played by President Mugabe as the Chairman of the African Union (AU) in ensuring the ICC follows the law in ensuring that every aspect of the Rome Statute is followed. It was in that regard that I made reference to President Mugabe.

The Speaker (Hon. Ethuro): Sen. (Dr.) Khalwale, I am sure you are satisfied.

(Sen. (Dr.) Khalwale spoke off record)

Order!

What is it, Sen. Wako?

Sen. Wako: On a point of order, Mr. Speaker, Sir. I would like to seek clarification from Sen. Sang. The President of the AU, then, Mr. Mugabe did not insist that every regulation and law should be followed, but, in fact, he was one of the leaders behind the call for amendment of the Rome Statute to ensure that while a President is in office, he or she should not be charged before the ICC. So, it was not so much to follow the current rules of the ICC because if he followed, then some people would be there; but it was to amend Article 17 to ensure that even a sitting Head of State is immune and should not be whisked to the ICC, but can be whisked there after ceasing to be President.

The Speaker (Hon. Ethuro): Order, Sen. Wako! You are now splitting hairs. Sen. Sang, do you want to pursue this matter? This was a by the way.

Sen. Sang: Mr. Speaker, Sir, I do not. In fact, I want to confirm that President Mugabe as Chairman of the AU addressed himself on a number of issues. Sen. Wako chose to follow that particular one, but the other more important one that he addressed himself to was the non-application of recanted evidence. That was carried all through. It includes what Amos Wako is referring to. However, he focused on that particular one,

but there were a number of other sets of issues that President Mugabe addressed himself to as the Chairman of the AU.

The Speaker (Hon. Ethuro): Order! Let us bring that matter to a close. First, Sen. Sang, there is no Amos Wako here, there is Sen. Amos Wako.

Secondly, for the benefit of Sen. Wako, President Mugabe is not and was not the President of the AU. He is the Chairman.

Proceed, Chairperson.

Sen. Karaba: Mr. Speaker, Sir, you noted that there was digression from the question to a point where we lost track. In this case, I assume that Sen. Elachi can remember that the Statement sought was about the closure of the university. This was preempted. However, universities are run by their Statutes, the University Council and the Senate. Every university has its own council and senate.

Therefore, if there is a problem of that nature, it is up to the council and the Senate to address it exhaustively. In the event of a crisis, they should be in a position to manage it. We should not even advise them. We cannot micromanage universities because they have their Acts and Statutes to follow. In this case, you seem to have followed the Statement. I am satisfied that we got the answers in the discussion.

Regarding Prof. Otieno who is alleged to work in a foreign country; I recall when I was in the University of Nairobi, we had Prof. Tota from Ghana. He taught in the university and there was nothing wrong with that. I am not aware of the allegation that Prof. Otieno works in South Africa. However, it was up to the university council to prove beyond any reasonable doubt that he was a resident or a visiting professor in South Africa.

On the problems which were there then, which could have led to the closure of the university, it could be true. However, those problems should be addressed by the University Council and Senate. I suppose that is what they are doing. Many other universities handle them in a similar manner.

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

Sen. Elachi: Mr. Speaker, Sir, the Chairperson of the Committee on Education should understand that it would be very wrong for us in the Senate to respond to the issues raised by the students who would like to resume their studies in a manner in which he has. The questions were very simple. First, to ascertain if Prof. Otieno is a resident of our country where he can manage his work properly or he is running two offices. If he is running two offices, this means that he is earning two salaries; one in South Africa; and this hinders his commitment to the work that he is supposed to do at Masinde Muliro University of Science and Technology. I wish he could have just clarified on that and stated the way forward.

The Chairperson is aware that Article 78(1) and (2) of the Constitution on dual citizenship is very clear. It states:-

“(1) A person is not eligible for election or appointment to a State office unless the person is a citizen of Kenya.

(2) A State officer or a member of the defence forces shall not hold dual citizenship.”

We are questioning the constitutionality of this situation.

Regarding the university management, the Chairperson should be serious. All the Deputy Vice Chancellors (DVCs) are not working in tandem with their Vice Chancellors (VCs). We must assist to curb this. The university is closed because of mismanagement, exams---

The Speaker (Hon. Ethuro): Order, Sen. Elachi!

Sen. Elachi: Mr. Speaker, Sir, all I am asking is that he should be clear in his answers. He should respond so that we can hand it over to the public. We do not seek statements for our own sake. We do so, so that we can give feedback to the people who would have wished to receive a proper answer.

Sen. Murkomen: Mr. Speaker, Sir, the Chairman should be serious on the question of the management of the universities and unrest by students. I did not hear him commit himself as to whether he will make a follow-up. There is a new culture that not only are students rioting but also one side of this House wants to eject officers from a public office. The sooner we arrest it in the universities, the better.

I saw some of the Members from this House trying to eject officers from a public office. That culture must stop. The Chairman must come back with a clear answer of what the university is doing to ensure that there is proper mechanism of dealing with disputes in the universities.

The Speaker (Hon. Ethuro): Chairman, the points that Sen. Murkomen and Sen. Elachi have made are fundamental. The Senators are asking what is happening in the universities but you are disputing it, claiming it is micro-management. It is not. We are not managing but we are asking what is being done by the relevant organs to ensure that the affairs of the universities are run properly. That is a legitimate concern by the Senators.

Sen. Kanainza: Mr. Speaker, Sir, may I inform Sen. Elachi that Masinde Muliro University of Science and Technology went on strike because of the zero balance issue and not because of mismanagement of the institution. However, the university is back on course and the students are sitting their examinations.

Thank you.

The Speaker (Hon. Ethuro): Sen. Kanainza, what is zero balance?

Sen. Kanainza: Mr. Speaker, Sir, that is a new regulation that was introduced by the management of Masinde Muliro University of Science and Technology to ensure that before students sit for their examination, they must have paid all the school fees. That means nil balance.

Thank you.

Sen. Lesuuda: On a point of order, Mr. Speaker, Sir. Is Sen. Kanainza in order to try to answer a question that has not been asked? There are questions that Sen. Elachi asked and we were trying to get to the bottom of them through the Chairman.

Sen. Sang: On a point of order, Mr. Speaker, Sir. Is Sen. Kanainza in order to confuse herself by telling us on one hand that the university was closed because of zero balance and not mismanagement? The directive was set by the same university management. It is the university management at the end of the day.

The Speaker (Hon. Ethuro): Further, she said that the university was reopened; is it the assumption that everybody paid up?

Sen. Elachi: Mr. Speaker, Sir, I wish the Chairman could clarify to the House whether we can help the university to move in a manner that we would wish. It is not a provincial university but a national university. Every parent would wish to---

The Speaker (Hon. Ethuro): Order Sen. Elachi. You are treading on dangerous grounds. Even if it were a provincial university or a village polytechnic, they are Kenyans. We must care for them.

Sen. Karaba: Mr. Speaker, Sir, the Senate would wish that all the universities are run in the right way. We wish them the best of luck. So, we will not be skewed towards one university.

In the case of Prof. Otieno, I undertake that within four days, I will find out the actual residence. Whether he is in South Africa or Kenya and if he is on double salary, I will answer next week.

Thank you.

The Speaker (Hon. Ethuro): I direct that you come with the answer on Tuesday, 2nd, May, 2016 and take into account all the issues which have been raised by the Senators.

(Sen. Wako stood up in his place)

Order, Sen. Wako!

Sen. Karaba, it is not our business to wish universities the best of luck. It is for others. Here we demand answers to questions because officers are paid by the taxpayers and we are here to represent them.

Sen. Wako: Mr. Speaker, Sir, now that you have said that, you have taken the words out of my mouth. May I emphasise that although the issue may appear to be about a particular principal having an office and working at Masinde Muliro University of Science and Technology and South Africa, that is serious at the lower levels.

I have been in accreditation committees and I found that the professors and lecturers are on Monday at the University of Nairobi, Tuesday at Egerton University, Wednesday at Moi University, Thursday at Karatina University and by the weekend, they are back to Nairobi. This is because of the shortage of professors and lecturers. Many of them are on a circuit. This affects the quality of teaching in the universities.

As we look at the Vice Chancellor's position in South Africa, I hope the Ministry of Education and the Commission for University Education will also look at what is going on at the lower levels. Many faculties of law in the university have today fallen short of standards set out by the Council of Legal Education. There is a tussle going on between the professional bodies and the accrediting bodies in various professions.

The Speaker (Hon. Ethuro): Order Sen. Wako. You have put your case. It is not a debate.

Sen. Wako: Mr. Speaker, Sir, on the issue of accreditation, Masinde Muliro University of Science and Technology's engineering graduates were not accepted by the Engineering Board of Kenya because of the issue I am talking about. As the Chairman seeks answers, he should ask the Ministry of Education to go back to the drawing board and ensure that all our universities, both public and private, are properly managed.

Otherwise, I am sorry to say our degrees will not be recognised internationally. If you say you are from the University of Nairobi in Kenya, it will be like talking about Punjab University in India.

The Speaker (Hon. Ethuro): Order Sen. Wako. You are being repetitive. The Chairman shall come with a complete answer on Tuesday with supplementary information.

Sen. Karaba: Mr. Speaker, Sir, most obliged.

CLOSURE OF MASINDE MULIRO UNIVERSITY IN KAKAMEGA COUNTY

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, two weeks ago, the Chair directed the same Chairman to bring an answer in response to my request for a Statement on why the university had been closed. On Tuesday when he came, he asked for more time. He did not respond on Thursday. Could he combine that answer with the one the Chair has directed? It is important that it is relayed expeditiously because the university means much to the “City of Kakamega”. It pumps up to Kshs200 million into the markets every month.

Sen. Karaba: Mr. Speaker, Sir, it will be done on Tuesday, next Tuesday.

The Speaker (Hon. Ethuro): Order! You cannot take advantage of a different thing because closure is a different a thing all together.

Sen. Karaba: Mr. Speaker, Sir, even this one by Sen. (Dr.) Khalwale---

The Speaker (Hon. Ethuro): I order that you respond to Sen. (Dr.) Khalwale’s Statement on Thursday this week. I appreciate there could be some similarities. However, the issues are quite distinct.

Sen. Karaba: Thank you, Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): That is the end of that particular Order

COMMUNICATION FROM THE CHAIR

VISITING DELEGATION OF STAFF FROM SAMBURU COUNTY ASSEMBLY

The Speaker (Hon. Ethuro): Before we proceed, I would like to acknowledge the presence in the Speaker’s Gallery of visiting staff from Samburu County Assembly. The County Assembly staff are here on a five-day attachment visit to the Senate. I request each member of the delegation to stand when called out so that they may be acknowledged in the great Senate tradition. They are:-

1. Augustine Lenkupae
2. Agnes Learat
3. Catherine Jollina Lorriakwe

I hope that they will have a fruitful programme.

On behalf of the Senate and on my own behalf, I welcome them to the Senate and I wish them well for the remainder of their stay.

I thank you.

Sen. Leshore: Mr. Speaker, Sir, I want to join you in welcoming the staff of Samburu County to the Senate. I hope they will have a good stay. They will learn a lot of things from us. I know one of them who was here sometime back as an intern. I wish them a good stay.

Sen. Lesuuda: Mr. Speaker, Sir, I want to echo the same. I welcome the staff from the County Assembly of Samburu. I wish them a fruitful learning here. I hope that they will pick the best practice from the Senate and take it back to the County Assembly.

The Speaker (Hon. Ethuro): Sen. Murkomen, just to not make this one look like a Samburu affair.

(Laughter)

Sen. Murkomen: Mr. Speaker, Sir, on behalf of the Senate, as one of the leaders in this House and former chairperson of devolution, and a Member of the Devolved Government Committee, I welcome the staff from Samburu County to the Senate. This is a great opportunity for them to sharpen their skills.

Mr. Speaker, Sir, you have done a very good job by providing your office as a very important office for inter-county exchange programmes. Everywhere I go, county assemblies see you as their patron even if it is not in writing or official. They appreciate the work you are doing by opening doors for county assemblies' staff like them to come here and serve the country.

Samburu, like Elgeyo-Marakwet, Turkana where you come from or Baringo where Sen. Moi comes from, is very rural. It is not a city. I hope nobody teargassed them yesterday in the streets of Nairobi. I also hope they will not learn anything about ejecting public officers by force from their offices. These are things we do not want to see in our counties. If they saw any Senator doing that, we apologise on behalf of those Senators. Those are not the mannerisms we would like to teach our counties.

The Speaker (Hon. Ethuro): Order, Sen. Murkomen! Where an apology was demanded from you, you were extremely reluctant. Now you are so quick to apologise on behalf of others.

(Laughter)

Finally, Sen. Moi!

Sen. Moi: Mr. Speaker, Sir, I too would like to welcome the staff from Samburu County. I wish them a fruitful and pleasant stay here. I thank you, for ensuring our relationship with the counties is a very good and fruitful one. *Karibu sana* and take our greetings to our people when you go back home.

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

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

The Temporary Speaker (Sen. (Dr.) Machage): What is it, Sen. Kagwe?

SENATOR'S GENERAL STATEMENT

DEMISE OF MAMA LUCY KIBAKI, FORMER
FIRST LADY OF THE REPUBLIC OF KENYA

Sen. Kagwe: Mr. Temporary Speaker, Sir, I had discussed this with the substantive Speaker before he left the Chair; to allow me to rise under Standing Order No.45(2)(a) on a matter that concerns not just our counties, but the country as a whole. I request that you order that we observe a one-minute of silence in respect of the passing away of the former First Lady of the Republic of Kenya, Madam Lucy Kibaki. Thereafter, allow a few minutes for Senators who may wish to condole the family.

I thank you.

The Temporary Speaker (Sen. (Dr.) Machage): Very well. That is not a matter that I can really put aside. Let us all stand and observe one minute of silence.

*(The Senators stood up in their places and
observed a minute of silence)*

Thank you very much. We can all be seated.

I allocate 30 minutes of the Senate time from now for messages of condolences and paying tribute to the departed; Her Excellency Lucy Kibaki.

Sen. Kagwe: Mr. Temporary Speaker, Sir, I thank you for allowing us as a House to condole the former President, Mwai Kibaki, and his entire family. I also condole the extended family in Mukurwe-ini Constituency where Mama Lucy Kibaki hailed from.

Temporary Speaker (Sen. (Dr.) Machage): Order! I will limit this to three minutes each.

Sen. Kagwe: Mr. Temporary Speaker, Sir, I learnt of the death of Madam Lucy with shock. I was aware she was unwell and had gone to England for check-up. However, it did not seem to me like it was a very serious matter. I wish to send my sincere condolences to former President Kibaki.

Madam Lucy was well known in this country as a woman of substance who did things for the nation. Besides her being the First Lady at the time, she was also a leader in her own right. I have personally spent time with her in fundraising functions, particularly in the Muhito Church in Mukurwe-ini where her father was also a reverend. She continued to support the church after the death of her father. I was very proud of that fact.

Madam Lucy Kibaki will also be remembered for her fight for the girl child. She supported girls across Nyeri County and also across the country. She was known nationally as a person who supported development. She was a no-nonsense woman who did not like lazy people or those who could take advantage of women. She stood her ground as any person who knows their right would.

On behalf of the Nyeri people, I reiterate that we will stand firmly with the former president as he mourns his dear wife. We will also celebrate the life of the late Mrs. Lucy Kibaki as a person who will always be remembered by the Nyeri people with pride.

Thank you very much.

Sen. Murkomen: Mr. Temporary Speaker, Sir, on behalf of myself, my family and the people of Elgeyo-Marakwet County, I would also like to send my condolences to the former President, hon. Kibaki, his children and the entire extended family for the loss of his wife and a mother of this nation. I read a very interesting fact about Mama Lucy Kibaki. In 1962, soon after her marriage, she left her job as a teacher to take care of her children. Throughout her public life, we saw her as a strong defender of her family.

Very many people do not know how much our families go through for all of us in politics. I am sure Mama Lucy Kibaki was a pillar for hon. Kibaki over the many years he was in politics since 1963 until he retired in 2013. That must have been because of the great contribution from Mama Lucy Kibaki.

We have lost a very strong lady and a person who spoke her mind whether you agreed or disagreed with her. In life, it is important to say things you must say. I remember a poem I heard one day when I was in Kampala in 2001. In the poem, someone said that; "If you want to love me, love me now." It is important for us, in public and private life, to appreciate those who support us or whom we know when they are alive, so that it does not become difficult for us to eulogize them when they are not there.

Mr. Temporary Speaker, Sir, we appreciated Mama Lucy Kibaki as our First Lady. We also appreciate the work she did as she rests in peace. Thank you.

Sen. Sijeny: Mr. Temporary Speaker, Sir, I also wish to condole with the family of the former President, hon. Kibaki. I know losing a loved one, especially a mother no matter how old she is, is the most painful thing. The gap she has left can never be filled. I know the entire nation is mourning. She was a darling to many people. I remember when she protested at the Kenya Television Network (KTN) studios, I had a daughter then who was just four years old but she really loved Mama Lucy. She asked me to invite the First Lady home for tea. When I asked her why, she said she is tough and she protects her family which is very important.

She has left a legacy to her family and, indeed, the entire nation. The family unit must be loved and protected at all costs. She gave us that teaching and we live to remember that. As a family lawyer, I did not have to say much after Mama Lucy spoke because she loved people and had very strong values. She protected the girl-child and even the vulnerable people living with or affected by HIV/AIDS in one way or another. We shall miss her. May the good Lord rest her soul in eternal peace.

The Senate Minority Leader (Sen. Wetangula): Mr. Temporary Speaker, Sir, I join hon. Kibaki, our retired President, his family, particularly his children Judy, Jimmy, David and Tony, whom I knew very closely, in mourning the passing on of Mama Lucy.

I served this country as an Assistant Minister and Minister for Foreign Affairs for more than nine years. In the process, I was very close to the retired President, hon. Kibaki. We traveled far and wide to New York, London, Addis Ababa, South Africa and many parts of the world. I can say without any fear of contradiction that Mama Lucy conducted herself with total distinction. She was a lady of decorum and dignity. She

never interfered with anybody's line of duty. She was extremely encouraging. She always told me that; My son, you are giving *Mzee* very good support and service.

I personally visited her twice to see her and say *pole* when she was in Nairobi Hospital the last time before she proceeded to London. This country has lost a lady who espoused very strong family values. Mama Lucy could go out of her way even to the discomfort of others to protect the image, standing and dignity of her family. She did it without fear or favour and this is what is expected of all mothers and good wives.

Mr. Temporary Speaker, Sir, I want to end by once again by sending my very sincere personal condolences and those of my family and the people I represent and lead politically, to hon. Kibaki. In fact, I wanted to visit his home this afternoon to say *pole* but I learnt that he is still in London. Upon his arrival, I will move that this Senate, which is not a very big House, seeks an opportunity to collectively visit hon. Kibaki and say *pole* to him. As we know, hon. Kibaki remains the most celebrated President of this country. Thank you.

Sen. Moi: Mr. Temporary Speaker, Sir, I too would like to send my condolences--.

(Loud consultations)

The Temporary Speaker (Sen. (Dr.) Machage): Order! Let us have some decorum in the House.

Sen. Moi: I would like to send my condolences to the family of hon. Kibaki. I grew up with him. For me, it is a personal loss. I know the feeling which Judy, Jimmy, David, Tony and hon. Kibaki are going through right now. Our prayers and thoughts go out to hon. Kibaki's family at this particular time.

We knew Mama Lucy as a no-nonsense and determined lady and a person who was extremely protective over her family. Over the 40 years that we have known her, those values that she espoused were very clear. Right now, I too would like to say *pole sana* to the family. Thank you.

Sen. Musila: Mr. Temporary Speaker, Sir, I join my colleagues in sending very sincere condolences on behalf of myself, my family and also the people of Kitui County to the family of the former President, hon. Kibaki. I worked very closely with the family during my tenure as the Provincial Commissioner (PC) for former Central Province and interacted very closely with the late Mama Lucy Kibaki. She was always passionate about issues of the youth, particularly girls, and also the less fortunate members of the society.

She spearheaded many development projects in Nyeri County, as the area Senator has just confirmed. No wonder Mama Lucy Kibaki worked even harder to ensure that the girl-child is looked after when she became the First Lady of this country. She was instrumental in the establishment of the Starehe Girls' Centre which performs very well in national examinations. You will also recall that it was through her initiative that the Mama Lucy Kibaki Hospital in Eastlands that caters for the lower category of members of the society was established. Therefore, as Sen. Wetangula said, she will also be remembered for the protection of her family which every mother has the right to do.

This lady worked so hard. In fact, she defended Mzee Kibaki when he was the President of this country. I am sure his success must have been as a result of this strong lady. We all know that President Kibaki, as of now, stands as one of the most outstanding presidents that this country has ever had. Behind every successful man, there is a successful woman. This woman, Mama Lucy Kibaki, was responsible for the success of the former President, Mwai Kibaki.

Sen. Elachi: Mr. Temporary Speaker, Sir, I also send my condolences to the former President and his family. I know the family has lost its pillar. Indeed, Mama Lucy was the pillar of her children. I hope that as they prepare to celebrate all that their mother has done for them and for this country, they will always remember the values that she instilled in them.

We celebrate Mama Lucy. First of all, she was the first to chair the Organisation of African First Ladies Against HIV/AIDS (OAFLA). I remember very well that she stood very firm for the less fortunate, especially children whose parents could not even bring them out. She went out to celebrate with those children and ensured their parents appreciated them and overcame that stigma.

We celebrate Mama Lucy and remember her humour. She taught us, women, one thing; that it is up to you to stand and fight for your family. She also taught us courage in the sense that you can stand and believe what you believe in without thinking of anything else. She taught us that one needs to be determined and believe that they can make it in any way, whether there are barriers or not. That is what she did.

As we celebrate her life, may the Lord rest her soul. We will continue to remember her as a teacher and mother for this country.

The Temporary Speaker (Sen. (Dr.) Machage): I see the list is long and I had only allocated 30 minutes. After Sen. Madzayo, I will limit the time to two minutes. I think we have been taking about two minutes.

Sen. Madzayo: Asante, Bw. Naibu Spika wa Muda. Pia, mimi natoa rambirambi zangu binafsi na familia yangu, watu wa Kaunti ya Kilifi na vile vile watu wa Shirika la Wakulima nchini Kenya – Agricultural Society of Kenya. Pole kubwa kwa Mzee Kibaki na familia yake kwa kumpoteza mama wa tatu wa taifa katika Jamhuri yetu ya Kenya, Mama Lucy Kibaki. Tunaomba Mwenyezi Mungu ampe Mzee Kibaki na familia yake faraja, ili kukabiliana na msiba huu mkubwa uliompata. Watu wa Kilifi tunasema pole sana kwa Mzee Kibaki.

Nilimfahamu Mama Lucy Kibaki nilipokuwa Mwenyekiti wa Shirika la Wakulima Nchini. Wakati mwingi alipokuwa na uzito wa kupanda gari la Amiri Jeshi Mkuu wakati Mwenyekiti anapoandamana na Rais na kuzunguka katika maonyesho ya kilimo, ndio wakati nilikuwa nikikaa na yeye tukizungumza huku tukitizama maonyesho ya wakulima.

Nakumbuka wakati huo nikiwa Mwenyekiti, hotuba za kitaifa zilikuwa zikitolewa na Mwenyekiti kwa Kiingereza. Mama Lucy wakati mwingi aliniambia: “Ikiwezekana, toa hotuba yako kwa Kiswahili kwa sababu mimi ninapenda vile unaongea Kiswahili.” Nyakati hizo tulikuwa tukicheka sana kwa sababu alikuwa mcheshi zaidi huku akiniuliza: “Mnasemaje neno hili kwa Kiswahili?” Kwa hivyo, tulikuwa watu wa karibu sana kwa ile miaka tatu nilipokuwa Mwenyekiti wa chama hicho.

Sen. Cheruiyot: Mr. Temporary Speaker, Sir, thank you for giving me this chance to also pass my condolences, on my behalf and that of the people of Kericho County, to the family of retired President Mwai Kibaki following the passing on of his dear wife and mother to his children.

It is a great honour to have had such a distinguished lady of substance to serve as the first lady of the country. She gave a very good example to many women of this country on many things. Let me simply point out two things that endeared her to me. One, she was quite instrumental in the establishment of Mama Lucy Kibaki Hospital in Umoja. That is a place that is dear to me because it is where I was born and grew up. That hospital stands where I played football as a child. For a long time, we used to struggle to get medication. People from that side of this city would travel all the way to Kenyatta National Hospital (KNH) to seek referral facilities. Through her efforts, residents of that part of the city can now access referral medical services from that hospital. For that, we give her a big plus.

Secondly is the event of the unfortunate fire incident in Sachang'wan. I remember her taking a firm stand as an ordinary citizen of this country, speaking to the political class and demanding better treatment and services for Kenyans. That is something that was quite distinguishable about her. We will live to remember that for a long time.

May God grant peace and comfort to Mzee Kibaki and his family. *Pole* and may God rest her soul in eternal peace.

Sen. Kanainza: Mr. Temporary Speaker, Sir, on my own behalf, my family and the youth that I represent in this country together with Likuyani Constituency in Kakamega County, I pass my dear condolences to the family of Mama Lucy Kibaki. We remember her for the virtues of leadership and commitment that she showed in this country. As a mother and wife, there is a lot to learn from what she did. It is also important that as male Senators talk about women, they should also emulate the same. She fought for the rights of women and girls. On the same note, I urge male Senators to join us in ensuring that the two-thirds gender rule is achieved.

Sen. Lesuuda: Mr. Temporary Speaker, Sir. I want to join my colleagues in conveying my sincere condolences to the family and friends of the former President Mwai Kibaki. Today, we are paying tribute to Mama Lucy Kibaki and, as a woman, I would like to pass condolences from all the women of Kenya. We know that Mama Lucy Kibaki stood for the rights of girls and women. As one of my colleague said earlier, she spoke her mind even on issues that touched on ordinary citizens.

Mr. Temporary Speaker, Sir, I remember when there was a tanker that burnt many people at Sachang'wan, she stood and asked for accountability and said it was important that the life of every Kenyan is taken seriously. I will always remember her for that and many other incidences. Also, from Samburu County, we will always pay tribute to her for fighting for the nomination of one of the greatest women from Samburu County; Hon. Maison Leshomo. She came to Samburu, liked her, liked her courage, what she stood for and regardless of what many have continued to say - that Hon. Maison is not educated - Mama Lucy Kibaki stood by her and said leadership sometimes is not about education but what you do for your people. So, for us as Samburu County and women of Kenya, we will always be grateful.

Mr. Temporary Speaker, Sir, as we pay tribute to Mama Lucy Kibaki, her death reminds us of the fact that as we talk about this; what legacy would you want to leave behind so that when your time is up and others will be seated in this room, or Kenyans will be paying their tribute on social media and other fora, what will they have to say about you? What did you stand for? So, we want to tell Kibaki's family that we celebrate and cherish---

Sen. (Dr.) Khalwale: Mr. Temporary Speaker, Sir, I would also like to pay my tribute to Mama Lucy Kibaki. Since they are in pain, allow me to send special condolences to the two people in the family who know me, that is, Mzee Mwai Kibaki and his son Jimmy Kibaki.

Mr. Temporary Speaker, Sir, it looks like it is a mourning period for many of us because in Kakamega County, we have also lost a former Assistant Minister who was also a former Member of Parliament for Ikolomani Constituency, hon. Seth Lugonzo, who passed away yesterday. I wish to send my condolences to the family as well.

Mr. Temporary Speaker, Sir, I want to thank the Royal Media Services who when I first tweeted about my condolences a few hours ago, all the Frequency Modulation (FM) stations used their tweeter handlers to amplify my message enough to the extent that I believe many of the friends and relatives of Mama Lucy Kibaki have heard me.

Finally Mr. Temporary Speaker, Sir because the burial must take place, allow me to appeal to President Uhuru Kenyatta that before he goes to Othaya, if what we saw in the papers is true, then it is sad that the Othaya Hospital started by retired President Kibaki has stalled because of finance while Uhuru is the President. I urge him that one of the pronouncements he should make at the burial is that he is going to complete that grand hospital. It is sad that he opened a hospital in Gatundu Constituency, which he started the other day and the one which Kibaki started has stalled. That is not the kind of leadership that people want to see, especially from young leaders like President Uhuru Kenyatta at the moment.

Thank you.

The Temporary Speaker (Sen. (Dr.) Machage): Fair words in giving condolences, I could not stop you because that was what was in your mind. **Sen.**

(Prof) Lesan: Mr. Temporary Speaker, Sir, allow me to join my colleagues to condole with the family of the late Mama Lucy Kibaki. I wish to personally extend my condolences and those of the people I represent, Bomet County, on this sad and unfortunate situation where we have lost an important personality in the country.

Mr. Temporary Speaker, Sir, Mama Lucy Kibaki was the First Lady of this country while I was a medical practitioner at the Kenyatta National Hospital. I still remember one incident when she came to the hospital and saw the plight of patients suffering from HIV/AIDs and she felt concerned. She went on to resuscitate the hospital in Eastlands which had been redundant for many years. It is through this visit that she saw the stigma attached to HIV/AIDs patients that she made a move from State House where she was and used the situation to resuscitate the hospital. Today, the hospital stands as a very useful facility for the people of Eastlands and Kenyans in general.

Today, we want to join the rest of Kenyans in mourning this great lady who did a lot for this country. I join the rest of Kenya in mourning her. May her soul rest in peace. Thank you.

The Temporary Speaker (Sen. (Dr.) Machage): The 30 minutes that I allocated is over but I have five interested Members and I cannot cut them short. I will not pronounce the reduction of time but for those who will speak; if you can limit your condolences to one minute or less, I will appreciate.

Sen. Wako: Thank you Mr. Temporary Speaker, Sir. I also want to condole with the family of my former boss. I first met Mama Lucy Kibaki just before the 2002 elections when Mwai Kibaki was bedridden as a result of an accident. I met him in his bedroom at Muthaiga house. I am glad to say I was joyous that Mama Lucy Kibaki was there supporting her husband and she treated me with the utmost respect during the entire period that I was the Attorney-General. For that, I am forever grateful.

Mr. Temporary Speaker, Sir, we remember her because of her love for the family. As you know, the family is the basic unit of any nation. She was a great defender of the family as a unit. We know her as a person who was committed to ensuring that we have proper public service where public servants are giving excellent services to the poor in the country. She had her heart amongst the less fortunate members of our society. I personally witnessed a number of occasions when she would call the highest in the Public Service and said they are not doing much. Those public servants who were admonished by her went and sat down on their desks, worked and provided services to the poor.

Mr. Temporary Speaker, Sir, we all know her for the girl child rights and as the Chair of the First Lady's Group Against HIV/AIDs. We mourn her and I hope that the Senate---

Sen. Chelule: Asante sana, Bw Spika wa Muda, kwa kunipa nafasi hii nitoe risala za rambirambi zangu na za watu wa Kaunti ya Nakuru. Ninatoa pole zetu kwa familia ya Rais Mstaafu Mwai Kibaki. Mama Lucy Kibaki ni mama ambaye alisimama wakati Rais Mstaafu Kibaki alikuwa rais wa nchi hii. Aliweza kusimama kama mama kiongozi kutetea wananchi wote na hasa wasichana na wale walioathirika na ugonjwa wa HIV/AIDs. Ni mama aliyekuwa na msimamo. Ninajua imekuwa ni pigo kubwa kwa familia na ninatoa rambirambi zangu na maombi yangu kwamba Mungu ataweza kusimama na kupatia usaidizi Mhe. Kibaki na familia yake na watu wa Nyeri.

Sen. Mungai: Mr. Temporary Speaker, Sir, in addition to what Sen. Chelule has said, the people of Nakuru County are together with the family of the former President at this time of sadness. This news was received with a lot of shock because for close to five years, we have been waiting to see former First Lady, Lucy Kibaki. The people of Nakuru have been waiting for an opportunity to sit down and dine with her but, unfortunately, this has not been realised. I, therefore, take this opportunity to condole with the family of the former President and the people of Nyeri, including the Senator of Nyeri.

Thank you, Mr. Temporary Speaker, Sir.

Sen.(Prof.)Lonyangapuo: Mr. Temporary Speaker, Sir, I also join my colleagues in passing my condolences and those of the people of West Pokot County, who know well what Mama Lucy Kibaki did. During the time of former President Kibaki, many

things were done in our county. It was during that time when we got the first Permanent Secretary from our county since Independence. We, therefore, stand with the family at this time. They say that behind every successful man lies a successful woman. Mama Lucy stood with Mzee Kibaki. The former President Kibaki put the nation together in the ten years when he was in power. This is a lesson that all of us who are in power and authority today need to emulate.

During tough times, you need to exercise leadership and restraint like the way former President Kibaki did. Mama Lucy Kibaki stood with him as the mother of the nation. I worked with them when I was a Permanent Secretary (PS) and I had time to move around in Nyeri and the former Central Province. I saw some of the schools that she started and the work that she did. As a nation, we stand with the family at this time, the children in particular and our former President. I wish them well, and may God comfort them at this hour of need.

The Temporary Speaker (Sen. (Dr.) Machage): The Speaker's Office will issue the appropriate condolences at the appropriate time. However, I want to pass my condolences on my own behalf and that of the people of Migori County to His Excellency the former President Mwai Kibaki, family and friends. We are together in this period of bereavement. I worked with Mama Lucy Kibaki when I was in her husband's Cabinet. She was a strict lady on matters of order, an example that should be emulated by not only ladies, but even men of this country. All of us should have the power to follow the rule of law. We will miss her charisma. We will miss her as a mother. *Poleni sana.*

We will defer---

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

The Temporary Speaker (Sen. (Dr.) Machage): Sen. Karaba, when I called you, you were not in the House.

(Sen. Karaba spoke off-record)

The Temporary Speaker (Sen. (Dr.) Machage): You do not need to give details. I will give you one minute.

Sen. Karaba: Mr. Temporary Speaker, Sir, I wish to say something about this lady who has left us. I am a neighbour to Nyeri County and on behalf of myself and that of Kirinyaga County, I send our deepest condolences and sympathy to the family of our former President Mwai Kibaki. In my community, we say that for every successful man, there must be a lady who is also equally important. That was Mama Lucy Kibaki during the tenure of our former President.

Mr. Temporary Speaker, Sir, about two weeks ago, I was in Paris and the former President was named the UNESCO Special Envoy for Water in Africa, which is a high regard in the continent. This came to Kenya through the former President Mwai Kibaki. If it were not for the support of Mama Lucy Kibaki to her industrious husband, this appointment would not have come to Kenya. We are saddened that she has passed on. May her soul rest in eternal peace.

The Temporary Speaker (Sen. (Dr.) Machage): Very well. I will defer Order Nos. 10, 11, 12 and 13.

COMMITTEE OF THE WHOLE

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

THE COUNTY ASSEMBLIES SERVICES BILL
(SENATE BILL NO.27 OF 2014)

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

THE COUNTY GOVERNMENTS DISASTER
MANAGEMENT BILL (SENATE BILL NO.40 OF 2014)

(Committee of the Whole deferred)

BILLS*Second Reading*

THE COUNTY GOVERNMENTS (AMENDMENT)
(NO.4) BILL (SENATE BILL NO.18 OF 2014)

(Sen. Murkomen on 23.3.2016)

(Resumption of Debate interrupted on 29.3.2016)

Sen. Kanainza: Mr. Temporary Speaker, Sir, pursuant to Standing Order No.99, I beg to move that we adjourn the debate until a later time, so that we can allow Members more time to debate.

The Temporary Speaker (Sen. (Dr.) Machage): Very well. I have read the said Standing Order. I agree with the reasons that were presented to me earlier; that we defer this to another date. Standing Order No. 98 (4) demands that somebody seconds the request.

Sen. Mungai seconded.

(Question put and agreed to)

(Debate on the Bill was adjourned)

The Temporary Speaker (Sen. (Dr.) Machage): I do not see the Movers of Order Nos.15, 16, 17, 18 and 19. It is not their mistake because this was not communicated to them. However, when Motions or Bills are in the Order Paper, it is a notification that

these Members must be available to execute the same when need arises. I will not be compassionate another time to give them a second chance. But since we have been sending condolences following to demise of the former First Lady, it will be unfair for me to punish anybody.

The Temporary Speaker (Sen. (Dr.) Machage): Hon. Senators, I have to defer Order Nos.15, 16, 17, 18 and 19 to a later date.

Second Readings

THE ORDER OF PRECEDENCE AND TITLES BILL
(NATIONAL ASSEMBLY BILL NO.11 OF 2014)

THE MICRO AND SMALL ENTERPRISES (AMENDMENT) BILL
(SENATE BILL NO.12 OF 2015)

THE NATIONAL HOSPITAL INSURANCE FUND (AMENDMENT)
BILL (SENATE BILL NO.9 OF 2015)

THE PERSONS WITH DISABILITIES (AMENDMENT) BILL
(NATIONAL ASSEMBLY BILL NO.43 OF 2013)

(Bills deferred)

MOTION

ADOPTION OF REPORT ON THE SECURITY SITUATION IN
MANDERA, LAIKIPIA AND KAPEDO

THAT, this House adopts the Report of the Standing Committee on National Security and Foreign Relations on the assessment of the security situation in Mandera County, Laikipia county and Kapedo (Border town of Turkana and Baringo Counties) conducted between 19th January and 5th February, 2015 and laid on the Table of the House on Wednesday, 29th July, 2015.

(Motion deferred)

What is it, Sen. (Prof.) Lonyangapuo?

Sen. (Prof.) Lonyangapuo: Mr. Temporary Speaker, Sir, I appreciate the direction that you have given. You have rightly mentioned that when an agenda is on the Order Paper, all the Members need to be present to execute it. My concern is that the leadership of both sides of the House needs to study the Order Paper in advance and make sure that we have the requisite numbers to transact business. However, when the leaders are absent, we, as a House, lack direction. As you can see, the Bills listed here are

key to this country. Therefore, the leadership of this House needs to take their responsibilities seriously.

The Temporary Speaker (Sen. (Dr.) Machage): That is correct, Sen. (Prof.) Lonyangapuo. I can neither overemphasize that fact nor put it any better than you have. It is the duty of the whips to make sure that Members from both sides are in the House for execution of business of the House. At least, I have a report that Sen. Wetangula had a dose of teargas yesterday and his eyes are in pain. He asked for permission to skip the day. However, I have no information on the Senate Majority Leader.

Sen. Sang: Mr. Temporary Speaker, Sir, as you have rightly noted that some Members of this House, primarily the Senate Minority Leader, had an incident yesterday, we had a number of Senators who were also caught up in the melee. Many of the Members of CORD Coalition were tear-gassed. Even those of us who were executing our ordinary business within and around the Anniversary Towers found ourselves in the mess. It is possible that Sen. (Prof.) Kindiki and Sen. Murkomen eyes' are in pain because of that experience.

The Temporary Speaker (Sen. (Dr.) Machage): Order, Sen. Sang! You started well. However, I cannot accept the excuse that it is possible that the two leaders were caught up in the chaos.

Sen. Wako: Mr. Temporary Speaker, Sir, this is a sad occasion. There was a feature yesterday on either NTV or KTN titled "Lack of Quorum". For half-an-hour, they featured the problem of lack of quorum in Parliament. Fortunately---

The Temporary Speaker (Sen. (Dr.) Machage): Order, Sen. Wako! No Member has drawn my attention to lack of quorum in this House. The Chair is blind and deaf on that.

Sen. Wako: Mr. Temporary Speaker, Sir, I am now drawing your attention to it although, normally, I would not have done that. However, I am obliged to do it because of the peculiar circumstances of this occasion. The Senate Minority Leader may have excused himself, but he should have made sure that his deputy is here. The Senate Majority Leader is also not here for good reasons according to Sen. Sang. However, he should have also made sure that his deputy is here. The work of deputies is to assist the substantive office holders.

The Order Paper is decided in the Rules and Business Committee (RBC). Therefore, the two leaders---

The Temporary Speaker (Sen. (Dr.) Machage): Order, Sen. Wako! Have you drawn my attention to the lack of quorum already?

Sen. Wako: Mr. Temporary Speaker, Sir, I have not yet drawn your attention to the lack of quorum, but I am coming to it. The Order Paper was made and approved by the RBC. Therefore, the whips ought to have made sure that the Members who are to move the Bills and Motions are present to execute them. It is on very rare occasions that the whips or the Speaker's Office have reminded me of a Bill or Motions that I am supposed to move. That is the work of whips who also have deputies. The substantive office holders or their deputies should be here to do their work.

It is good that---

The Temporary Speaker (Sen. (Dr.) Machage): Order, Sen. Wako! Can you execute your point of order? What is not in order?

Sen. Wako: Mr. Temporary Speaker, Sir, what is not in order is that people are not carrying out their responsibilities. Otherwise we would not be in the situation we are in now. Both substantive office holders as well their assistants are not doing their work. Consequently, we are left with very few Members in the House who are not in the leadership of the House to run business.

The Temporary Speaker (Sen. (Dr.) Machage): Order, Sen. Wako! You are a first time Member of Parliament. You may have been an *ex-officio* Member of Parliament by virtue of being an Attorney General, but I would like to remind you that what you are doing is repetition. I have authority to stop you. Can you execute your point of order properly? You have reminded me that there are substantive office holders who have assistants, but you have not raised your point of order. If you stop at that, it will be fair. However, you could use the provisions of the Standing Orders to draw my attention to the fact that there is no quorum.

What is it, Sen. Sang?

Sen. Sang: Mr. Temporary Speaker, Sir, since your attention has not been drawn to the issue of quorum. Is Sen. Wako in order to keep apportioning huge blame to the leadership of the House? Looking at the Order Paper, Order Nos. 11 and 12 are Bills within his Committee. Could he proceed on those two Bills instead of complaining and apportioning blame? He, as the Chairperson of the Committee on Legal Affairs and Human Rights, is not even ready to proceed on the two Order items?

Sen. Wako: On a point of order, Mr. Temporary Speaker, Sir. Is the young and dynamic Senator for Nandi County in order to raise that point of order when you have made a ruling to defer the orders? He was out of the House. He has just come in, running breathlessly. He does not know what he is talking about.

I wanted to raise it as a point of order. Is it in order that we should be in this state when the leadership of the House is not here?

(Sen. Murkomen walked into the Chamber)

At least, now the Senate Deputy Majority Leader has walked in whereas he should have been here from the beginning in the absence of the Senate Majority Leader.

The Temporary Speaker (Sen. (Dr.) Machage): Sen. Murkomen, I have just deferred all the remaining orders.

(Sen. Murkomen consulted loudly)

Order! I also have powers to reverse that decision if you convince me. So, stop mumbling. Just be focused. The reason as presented to us by Members of this House is that the leadership, you included, is not serious with their work.

(Applause)

What do you have to say about that?

Sen. Murkomen: Mr. Temporary Speaker, Sir, first of all, it is sad that the person who raised matters of quorum in this House is the Senator for Busia, Sen. Wako. If it were Sen. (Dr.) Khalwale maybe---

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

Sen. Murkomen: Mr. Temporary Speaker, Sir, I am coming to that.

The Temporary Speaker (Sen. (Dr.) Machage): When I say “order,” you sit. You are forgetting too quickly that you have just been a Member of the Speaker’s Panel and you know all the Standing Orders.

Any Member of this House, including the Senator for Lamu has that mandate to bring any matter to the attention of the Speaker including that of quorum. You are out of order.

Sen. Murkomen: Mr. Temporary Speaker, Sir, you are a medical doctor; a profession called the learned profession, very respectable and noble profession. However, in the profession that Sen. Wako is in, which I am too junior even to brush his shoes – if there is something like that – there is something called “taking judicial notice”. I only wanted you to take judicial notice that a man who has not been in this House for so many days could raise issues related to quorum only once when he has a chance to be here, but that was a by the way.

However, I wanted to raise a more fundamental issue. We were consulting on a very serious issue. I saw Sen. Sang come in. If there are ways of carrying the debate forward, I am willing and ready to proceed with the business on Order No.14. I had given a chance to other hon. Senators to continue contributing. I had not realised that it is time to reply.

I seek your indulgence, if there is no other hon. Senator who wants to contribute to the business at Order No.14; you have the residual powers which rest on that very powerful seat which I must emphasize for the sake of the nation. The country is watching that you are using those powers in the right manner. You can exercise powers vested upon you by Standing Order No.1 to reverse your past decision in the interest of the House and for purposes of carrying forward the business of the House so that we can conclude Order No.14. I am ready to reply if there is no other Member.

The Temporary Speaker (Sen. (Dr.) Machage): I will only do that, subject to one condition; that, Sen. Murkomen who is the sponsor of Order No.14 profusely apologizes to this House for his absence when this Order was called for and a Member of this House rose pursuant to Standing Order No.99 to request for an adjournment of the same. You took the whole process of these House rules to demand that it is adjourned. Hon. Senators had to vote on it. So, you owe this House an apology. Make that move first before I use Standing Order No.1 to allow you to reply.

Sen. Murkomen: Mr. Temporary Speaker, Sir, I apologise for not being here. I was in another consultative meeting. But even then, I am---

The Temporary Speaker (Sen. (Dr.) Machage): Order! That apology should not be qualified.

Sen. Murkomen: Mr. Temporary Speaker, Sir, I am not qualifying the apology. If you can be patient, I tell you something, you will appreciate.

The Temporary Speaker (Sen. (Dr.) Machage): Maybe make an excuse in another way but just apologise and say---

Sen. Murkomen: Mr. Temporary Speaker, Sir, that was done. I concluded with the apology.

The Temporary Speaker (Sen. (Dr.) Machage): You are treading on a tight line. So, just be careful on what you are saying. It may make me change my decision---

Sen. Murkomen: Mr. Temporary Speaker, Sir, I will not have any problem.

The Temporary Speaker (Sen. (Dr.) Machage): It may make me change my decision of giving you the leeway to continue with the Motion. So, be careful.

Sen. Murkomen: Mr. Temporary Speaker, Sir, even then, considering that I will use very few minutes to reply, there will still be need for Members to be present to continue with the business of the House. However, I am more than ready to do that.

The Temporary Speaker (Sen. (Dr.) Machage): Very well. That is fair. I reverse the decision of the House on Order No.14. One Member is interested in contributing to Order No.14.

Proceed, Sen. Sang.

BILL

Second Reading

THE COUNTY GOVERNMENTS (AMENDMENT) (NO.4) BILL (SEN. BILL NO.18 OF 2014)

(Sen. Murkomen on 23.3.2016)

(Resumption of debate interrupted on 29.03.2016)

Sen. Sang: Mr. Temporary Speaker, Sir, I rise to support this Bill. I congratulate Sen. Murkomen, the Senate Majority Leader and Senator for Elgeyo-Marakwet County for bringing this Bill. I am aware---

The Temporary Speaker (Sen. (Dr.) Machage): What is it, Sen. (Prof.) Lonyangapuo?

Sen. (Prof.) Lonyangapuo: On a point of order, Mr. Temporary Speaker, Sir. Did you hear Sen. Sang address Sen. Murkomen by a title which is not his? He referred to him as the Senate Majority Leader. He is the Senate Deputy Minority Leader. He should have referred to him as the deputy.

The Temporary Speaker (Sen. (Dr.) Machage): You are also out of order to give him a title which is not his.

Can you use the right titles?

Sen. Sang: Mr. Temporary Speaker, Sir, I stand corrected. He is the Senate Deputy Majority Leader. However, those of us in the majority side headed by Sen. (Prof.) Kindiki are not so much obsessed with titles. When you talk of the majority leadership, it refers to both the Senate Majority Leader and the Senate Deputy Majority Leader.

This is one of those Bills that Sen. Murkomen was approached by several deputy governors to prioritize. The forum of the deputy county speakers raised the same issue with him. It is important for us to note that if the counties have an issue or a challenge in the management and running of counties, this Senate and specifically each and every Member of this House will always be ready to hear them out and project the issues that they are raising and reduce them into a Bill so that we can help our counties.

The role and mandate of this House is to protect devolution. This House will always be willing to undertake any legislative proposal whether it comes from this House, individually or from suggestions from Members of County Assemblies (MCAs) or county executive. I congratulate Sen. Murkomen for taking up that challenge and bringing the legislative proposal on behalf of the deputy governors and the county deputy speakers.

Mr. Temporary Speaker, Sir, the essence of devolution was to take power closer to *wananchi* to ensure effective management of public affairs at the county level. However, what we have seen in the last three years is depressing. We have deputy governors who were nominated by these governors through different methods.

Mr. Temporary Speaker, Sir, in other counties, deputy governors have to sit with the Council of Governors and county leadership forum to agree on the sharing of the positions. There are counties that are cosmopolitan and in an attempt to have cohesive counties, some of the positions were shared among the regions and constituencies. The positions of the governor, deputy governor, Senate and that of the women representative were shared depending on the regions.

We appreciate that in many of our counties, negotiated democracy carried the day to ensure that there is an all inclusive county government. However, immediately after the elections we saw a tendency by some leaders, especially the governors who represented some of the cosmopolitan constituencies emasculating the deputing governors by taking all the powers and leaving every other leader with no responsibility. This is dangerous because in the next elections there is likelihood of a situation where every community in the county will be running for the position of governor. This will create huge competition that after the results are declared, it may create a divided country.

Mr. Temporary Speaker, Sir, we need to ensure that there is balance of power so that every elected leader plays their respective role. If the governor nominates the deputy governor, such a leader must be prepared to walk through the five years. The governors should ensure that their deputies contribute meaningfully. Some of the deputy governors are more learned and experienced than the governors. Therefore, by marginalizing some of them in the affairs of the counties, the county government is disadvantaged. The electorate will be sidelined because they are interested in benefiting from the experience and expertise of their deputy governors.

The Bill has attempted to bring deputy governors into the mainstream running of the county affairs so that every elected leader at the county has an opportunity to contribute to the running and betterment of our counties. Again even with regard to the position of the deputy Speaker, if you look at the County Governments Act, we know that it is not possible that the Speaker of any county assembly will always be available.

I think a legal framework in terms of the procedure of appointing and even removing a county deputy speaker is important so that then you have a procedural and predictable manner of appointing or even in terms of removing that deputy speaker. I think this is one of those Bills that we should have passed in this House immediately after this House was constituted or immediately devolution came into force.

Therefore, I want to support and encourage, especially the governors that the power given to them under the Constitution is for purposes of ensuring that there is effective running and management of the counties. That power is not loaded on the governor as an individual. We must appreciate what we have seen at the national level in the institution of the presidency. Under our Constitution, you have the presidency so that within the presidency you have the President and the Deputy President. At the national level, we have seen the way the President and the Deputy President share and carry out the responsibilities of that presidency together. We have seen the unity in terms of pooling the country together and moving in one direction between the President and his deputy.

Mr. Temporary Speaker, Sir, you will be surprised if you went to counties and heard some of the things that are happening there. In this House we did an impeachment process from the Murang'a County and immediately after that we saw politics playing out until - we are told - the deputy governor's office was broken into because somebody imagines that he was the one who engineered the impeachment process of the governor.

We are aware of situations in this country where deputy governors are not being invited to sit in county executive committee meetings, contrary to the law. If you look at the Constitution and the County Governments Act, the county executive comprises the governor, the deputy governor and the CECs. Therefore, if you have deputy governors who one or two years down the line are not being invited into the executive meetings in the counties, in fact, the composition and the decision of those county executive meetings can be subject of challenge in terms of validity.

It is important for each and every governor to understand and appreciate that you have to pull together to ensure that the development agenda moves forward. Interestingly, most of those deputy governors played a role in crafting the manifestos that this "package" of the governor and the deputy governor sold to *wananchi* within their counties; and that is why they were voted in. For example, in Nandi County, the deputy governor, Dominic Biwott played a great role in the entire crafting of the manifesto that myself, the governor, the deputy governor and the women representative sold to the people of Nandi.

If you were to lock out the deputy governor who was part and parcel of that team crafting the manifesto, definitely you are only left with the governor since he has already locked out the woman representative, the deputy governor and the Senator. You are only left with one individual who might attempt to implement a manifesto that was crafted by a team of four. That is not possible. It is important that every governor must appreciate the difference in opinions. You may have differences in opinion with your deputy governor.

Even in those counties where the deputy governor and the governor are working closely, it does not mean that they agree on each and every issue within the county.

Diversity in opinions should be seen as a mark of strength rather than a weakness. With all those divergent opinions, we should be able to sit down, pull together, agree, chart the way forward and appreciate the power of persuasion to ensure that you are able to drive the county in the right direction.

Mr. Temporary Speaker, Sir, I want to encourage most of the aspirants who are running for the governor's position, that since we have experienced the challenges with the current team of governors, they must take keen interest and time to identify a deputy governor that they will not regret. They should choose a deputy governor who we will work with them from day one to the end of the term. This way, we will avoid the current situation where some deputy governors are not in good terms with their governors.

The Council of Governors should be opened up to the deputy governors. If the deputy governors are to represent the governor in the Council, they should be allowed to be part of the forum. If they appear on only one day, they will not be aware of what has been going on. Therefore, it is important that the governors appreciate that their deputies are part and parcel of them. The governor and the deputy governor is one institution and are the apex of the county executive. It is important that they work together until the end of their term for the effective implementation and running of the county executive.

Mr. Temporary Speaker, Sir, I wish to congratulate the mover of this Bill, Sen. Murkomen, the Deputy Governors Forum and the County Assemblies Forum (CAF) for realising that this is the House and institution where they can refer their issues and they will be taken up. I also thank Members of this House for supporting this Bill to ensure that wheels of devolution run smoothly within our counties.

With those remarks, I beg to support.

The Senate Minority Leader (Sen. Wetangula): Mr. Temporary Speaker, Sir, thank you for giving me the opportunity to contribute to this Bill. I want to contribute to this Bill that has some good provisions and suggestions and some not so good provisions and suggestions. On the face of it, the Bill looks very harmless in trying to harmonise some of the procedures in the counties.

I congratulate the mover and seconder of this Bill to the extent of the issue of the deputy speaker and how they can be removed from office. The Bill tries to harmonise removal of a deputy speaker to be similar to the removal of the speaker. We all know that in parliamentary terms, in this country, whether in the county assemblies, the National Assembly or even the Senate, the most vulnerable persons are the Speakers. A Speaker could walk in this Chamber and be gone within the next 48 hours. All you need is to comply with the timeframe and file a Motion and if the powers that propelled you to the seat of Speaker have lost favour with you, you will be out and going home within the shortest time practically possible.

The Bill makes it - not insulated - but gives a deputy speaker an opportunity to go through a semblance of due process where you can be given an opportunity to be heard. In the previous law that we are seeking to amend, the deputy speaker, unlike a speaker, has no opportunity be heard before impeachment by an assembly and both Houses of Parliament. To that extent, I support the amendment of Section 11 of the Act to give a uniform treatment of the deputy speaker of a county assembly with the speaker.

Mr. Temporary Speaker, Sir, I have a problem on the next amendment to Section 30(3) of the County Governments Act. I have said here before that it is always dangerous to legislate or amend the law to protect particular individuals. We are fully aware of - like the distinguished Senator for Nandi has listed - situations where governors and their deputies are at loggerheads, do not see eye to eye or mistreat them. We even have the case of Machakos County where the Governor not only sponsored an impeachment Motion in Machakos County Assembly but also followed the impeachment process and attempted to bribe Members of this House to impeach his deputy.

That is gross abuse of public resources. In fact, it is a criminal act. One day, we will be constrained to name and shame some colleagues who attempted to convolute the process of the impeachment of Mr. Kiala, the Deputy Governor of Machakos County. I know Mr. Kiala very well. He is my friend. I also know Governor Alfred Mutua very well. He used to be my friend.

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

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

Mr. Temporary Speaker, Sir, we also have other cases. I am aware of the strained relationship between the Governor of Kisumu and his deputy to the extent that the deputy even participated in the prosecution of a petition against her governor in one of the committees in this House. We saw it happen in Murang'a and we have seen it in many other places. However, there are also places where the governors and their deputies work in extreme harmony.

The constitutional and democratic philosophy in a presidential system of having a running mate is not to define relationships in the law because a governor and a deputy governor are a package, just like the President and his Deputy are a package whether they come from the same party or different parties. I am aware that the current President and his Deputy are from different parties but they have formed a coalition on the relationship and structure of how they run the Government. This is found in their coalition arrangement, agreements, memoranda and structures.

The Constitution has a philosophy of assumption that the President and his Deputy come to office as a package. As a package, they remain the same until either one of them dies, resigns, is impeached or their term ends. They could go to the next elections again either as a pair or as competitors or the President may choose to drop his deputy and pick another running mate. This philosophy is predicated on the constitutional arrangement of not creating two centres of power in the country. That is why in Article 47 of the Constitution, the functions of the Deputy President are very terse and deliberate. The most important function of the Deputy President is outlined in Article 147(1) of the Constitution which states that:-

“The Deputy President shall be the principal assistant of the President and shall deputise for the President in the execution of the President’s functions.”

We even needed not to have had Article 147(2), 147(3) and 147(4). That is all-encompassing, self-explanatory and conclusive.

Within that context, the Deputy President is the principal assistant and shall deputise the President in the execution of the President's functions. That means that if the President is unavailable, the Deputy President shall deputise him in the execution of his functions. This creates a situation where there is avoidance of unnecessary, unhelpful and unproductive competition between a President and his deputy.

Mr. Temporary Speaker, Sir, the most illustrative point on this can be picked from Ghana where the former President, Jerry Rawlings, had Mr. John Atta Mills as his deputy. Mr. Atta Mills eventually became President after him and died in office. Their Constitution is worded, word for word, as our Chapter on the Executive. At one point where President Rawlings could not agree with his deputy or *vice versa* and he knew that the Constitution could not sack him, President Rawlings resorted to the unthinkable. Twice, he boxed his deputy in Cabinet meetings to demonstrate his displeasure in his own deputy disagreeing with him and his frustration in being unable to sack or sanction him.

President Rawlings was huge and Mr. Mills was small and you can imagine the weight of the box on the diminutive Mr. Atta Mills. It was news all over the world with Mr. Atta Mills on the floor of a Cabinet room and President Rawlings towering over him. It only explains that when you want to choose your running mate either in an arrangement between parties or clans like it happens in northern Kenya or in whatever manner that you want to conceive, you must choose very carefully. Your running mate must be compatible with you in many respects. You may not be uniform in every respect or think at the same level all the time because human beings do not do that.

However, you must have a running mate who, eventually, when he becomes your deputy, will not cause a rumpus around you all the time and with whom you will pursue and execute your manifesto and agenda. Short of that, the law will not come to superintend on your relationship. Let me say this to the many Senators who are striving to be governors and there is one sitting in front of me. You must be given - this is a very dangerous law if we pass it---

Sen. (Prof.) Lonyangapuo: On a point of order, Mr. Temporary Speaker, Sir. Incidentally, I am the only one sitting opposite, exactly in the line of vision of Sen. Wetangula. Did you see him looking me? I did not understand what he meant by saying that I will be either his presidential candidate or running mate?

The Senate Minority Leader (Sen. Wetangula): Mr. Temporary Speaker, Sir, I would love my distinguished friend, colleague and a man who is privileged to be married from my village to be my running mate. However, rumour has it that he has developed some appetite for the seat of governor of West Pokot County. If he has not, I regret the statement. If he has, I wish him well.

I was saying that you can count up to 18 Senators, including yourself - if what I have heard is correct - who have developed some appetite towards the seat of governor. Let me tell you that if you are the governor, you want to be the governor of your county with the capacity and ability to run the affairs of the county without a competing centre of power. Let us not be tempted to bring legislation to govern personal relationships in office where we do not need. If the chemistry between the governor and the deputy does not work, it is always prudent for the weaker party to reconsider his or her position and

go home. It is as simple as that. The amendment that Sen. Murkomen is bringing to Section 30(3) that the principal act is amended by inserting the following new paragraph immediately after paragraph (a). Section 30(3)(a), which says:-

“In performing the functions under sub-section (2), the governor shall provide leadership.”

It goes on and on, and then you bring a very curious clause. That:-

“In performing the functions, the governor shall consult the deputy governor.”

If, for example, the Governor of Kiambu County has appointed his deputy as one of the County Executive Committee (CECs) members because he is not excluded by virtue of being his deputy and the law allows him to sit in the CEC and executive meetings, then you appoint him with his consultation, he will be very happy to accept to be consulted to be appointed. Along the way, you find your deputy to be incompetent and then you are required to consult him to sack him - it does not make sense at all.

So, you now have to call your deputy and say: “My deputy; I now have the honour to consult you. I have reached a conclusion that I gave you a portfolio by mistake or one that I realise you cannot handle. In consultation with you, I want to sack you.” Who operates like that?

Mr. Temporary Speaker, Sir, we are making it impossible for county governments to work. What is good for the national Government must be good for the county governments. If the county governor wants to shuffle his cabinet, it is his cabinet and he does not have to consult anybody. All he needs to do is make a rational decision and not be vindictive or violate people’s rights. He can then wake up in the morning and say: “I thought this CEC was good for agriculture but he can be good for health.” You can then remove him. “I thought this CEC was good for education but I can see he is better for water.” Again, you move him.

Supposing you wake up and move them and you have or have not consulted the deputy governor and he says, no. Even the provision here is not good enough. “shall consult the deputy governor.” Does “consult” mean concurrence or information? What does it mean? When you say the governor, in the performance of the functions of his office shall consult the deputy governor is a blanket and dangerous provision. For example, if the governor wants to go and open a borehole somewhere, he has to consult his deputy. Otherwise, the deputy can go to court and say the act that the governor performed is unlawful because he did not consult him.

Mr. Temporary Speaker, Sir, when the governor wants to travel out of the country in performance of his duties, he has to consult the deputy and if he says, no, he cannot go because he is also travelling, how do you operate? I do not think this proposal is reasonable. I do not think it is going to enhance the performance of functions of the office of the governor. I have difficulties with many governors including my own due to inability to account for public funds, inflated purchases as you saw the case of wheelbarrows, an unaccounted for roads fund and so on, but I will spend all my energy to defend the structure of the office of the governor.

Mr. Temporary Speaker, Sir, since this Bill was published, I have taken the opportunity to speak to some governors whom I have reason to believe are level headed

and many of them are uncomfortable with this kind of provision, and for good reason. We cannot institutionalize consultation in circumstances where it is not necessary. The deputy governor is the principal assistant to the governor. If the governor wants him to do something, he instructs him. If the governor is out of the country, he becomes the governor and not the deputy. That is what the law says. If the governor leaves jurisdiction, for example, when he leaves Bungoma County to come to Nairobi County, for the time he is away, the deputy governor is the governor. That is the only way things can work.

Mr. Temporary Speaker, Sir, when the President leaves the country, his Deputy acts as the President. I do not expect that as a President, I should be constrained by the law to over-consult on everything I do. Where does the conduct of a governor in the performance of the functions of the governor begin and end? When do I cease to be a governor when I am in my jurisdiction? If I am going to watch a football match organized in some ward, I am still performing my duties as a governor going to cheer my electorate. Do I need to consult my deputy so that I go there? If you want to arm yourself with an AK47 rifle and go to the border of Uganda and deal with rustling like I would expect it to happen in the counties of West Pokot and Turkana, do you need to request the deputy governor to allow you to do that? It is your duty.

Mr. Temporary Speaker, Sir, I want to repeat where I started. Let us not legislate to pass laws and insulate---

Sen. (Prof.) Lonyangapuo: May I inform the Senate Minority Leader?

The Senate Minority Leader (Sen. Wetangula): I accept information.

Sen. (Prof.) Lonyangapuo: Mr. Temporary Speaker, Sir, I want to inform my distinguished colleague that in the current Constitution, consultation and communication are given prominence. Does he not remember that two years ago, the Head of State approved and said 10,000 young men and women go for training in the Police Service and some junior officers consulted upwards and nothing went ahead? Although he is saying there should be no consultation, there is standard measure.

The Senate Minority Leader (Sen. Wetangula): Mr. Temporary Speaker, Sir, even when the President said that 10,000 recruits go to Kiganjo in a convoluted way, he was challenged in court. Nowhere in the world is there any legislation to regulate the relationship between a deputy and his boss in governance structures. I do not like the Jubilee Government, but I will not accept a Bill that defines what the Deputy President should do and must not do. The Deputy President can do anything and everything that the President can do in the absence of the President or under an informal arrangement. He can be assigned to coordinate affairs of Government which we do not need to define.

Mr. Temporary Speaker, Sir, Sen. Murkomen is even making more bizarre proposals that the deputy governor shall coordinate the functions of the county executive committee. The executive committee belongs to the county. The governor may choose to coordinate these functions himself. He may choose to assign one of the County Executive Committee (CEC) members as a senior.

In Zimbabwe, when Joshua Nkomo was with President Mugambe, he was not only the first Vice-President, but also coordinating the affairs of Government. Some countries have the position of chief minister. It is not in the Constitution, but the

President can decide that among the Cabinet of 18 Members, the Minister in his office shall coordinate the functions of his Government as part of his portfolio. In fact, there is a Permanent Secretary in the Office of the President whose duty is to coordinate functions of Government. This is not in any law. I do not understand why we want to tie the hands of governors and their discretion on how to run the county.

Like I said, we should not condition the deputy governor to coordinate functions of the County Executive Committee, and I heard you very clearly when you were contributing. There are certain counties you could desperately want to be the governor, but the clan arithmetic does not allow you. A certain clan, therefore, imposes a buffoon on you and says: "This will be your deputy." You can tell very clearly that, that fellow cannot manage anything, but they tell you that he or she will be the deputy governor; take it or leave it. If you leave it, you will not become governor.

Therefore, the balance of convenience is that you must go with the buffoon. You end up in office and are forced to make him or her the coordinator of functions of the county executive, when he or she cannot even coordinate himself or herself. How will you run the county and he or she is the choice and darling of that clan? It matters not his or her capacity. He or she may have a degree, probably from River Road, and so he or she qualifies to be the deputy governor and a governor, in the absence of the governor. He or she may say that they must coordinate---

Sen. (Prof.) Lonyangapuo: On a point of order, Mr. Temporary Speaker, Sir.

The Temporary Speaker (Sen. Sang): Sen. (Prof.) Lonyangapuo, what is your point of order?

Sen. (Prof.) Lonyangapuo: Mr. Temporary Speaker, Sir, I worked in the university before I joined Sen. Wetangula in the Grand Coalition Government. We have two types of universities in Kenya; public and private. I never saw one called 'River Road' in any of the two categories.

Could the distinguished Senator tell us which university he is referring to and whether it is in Kenya?

The Senate Minority Leader (Sen. Wetangula): Mr. Temporary Speaker, Sir, as I do so, I invite my distinguished friend and neighbour to read a small book by Chinua Achebe called 'The Trouble with Nigeria' or the Bible where Jesus asked: "Why is it that people with eyes do not see and people with ears do not hear?" I have added that people with brains do not think. That last one is not applicable to Sen. (Prof.) Lonyangapuo because he is a distinguished brilliant man.

Mr. Temporary Speaker, Sir, last week you may have seen in the media when police officers busted counterfeiters and crooks on River Road street. They were found with title deeds and certificates of every nature; Kenya Certificate of Primary Education (KCPE), Kenya Certificate of Secondary Education (KCSE) as well as degree certificates. If you want a degree from a university in the United States of America (USA), you can get it there. We are in a country where fraud and criminality is almost a way of life. We know many people who have degrees yet they have never stepped in any university or studied online.

We have seen some protracted proceedings in court about the validity of university degrees. The Deputy Speaker and I are alumnus of the University of Nairobi.

However, we have seen some fellows who have been to universities and acquired very good academic papers but can hardly do anything. As a lawyer, I know some of our colleagues who have gone through university but cannot even construct a demand letter. When a client hires them to defend them in court, they accelerate the client's going to jail because of their sheer incompetence. There are so many people like that.

Mr. Temporary Speaker, Sir, if you are a governor with such a person as your deputy and the law obligates you to make him or her as your coordinator of functions of your executive. I can assure you that when hell breaks loose and when nothing works, nobody will notice the buffoon. Nobody will notice the failings or analyze the failing of the deputy governor. In fact, nobody will even analyze if the deputy governor was there or not. It is the governor who will bear the responsibility.

There is a famous saying in the USA by former President Woodrow Wilson who said, "I am the President and the buck stops on my table". That is exactly what the governor must be. Kenyans would be very angry with the President if he woke up and said that he is sorry a wrong decision was made, but it was not his fault. It was my deputy. People will ask him: "Are you not the President?" Therefore, that clause has no place in the governance of counties.

We know that many of the current crop of governors are not doing a good job. However, we cannot fix the inability of a slow runner by tying their legs. We should encourage them because many of them will walk out through attrition. Some of them will be weeded out in the next elections. Earlier on, I mentioned the Senators who want to be governors and I know that they will succeed.

Mr. Temporary Speaker, Sir, looking at Clause 5(b), there is another imposition on the discretion of the governor and his ability to maneuver freely and make his county government work by saying that the deputy governor shall coordinate service delivery in the county. That is a function of the governor. In fact, if I were a governor, the responsibility of coordinating functions and service delivery would be mine because I chair the executive. It does not make sense to transfer responsibility.

At the end of five years if you seek re-election, you will be carrying your report card with all manner of excuses such as; I did not do this well because it was the duty or responsibility of the deputy, I failed to do this and so on. Nobody will believe you or accept that explanation. I encourage this House not to pass a law of this nature. It should reject these proposals.

Mr. Temporary Speaker, Sir, for a very long time, I have been hearing Sen. Murkomen pontificating about this and how they want to insulate and protect deputy governors and make them to be felt, noticed and recognised. It is not the function of this House to insulate deputy governors. Insulate them against what and who? Protect them against whom? When you become the Governor for Nandi, a County where I partly grew up and come to visit, I want to meet a governor who has the capacity and ability to discharge his constitutional and legal functions without any fear or favour and will not stand up anywhere and give excuses that he has been let down because the person who is supposed to coordinate the functions has let him down. This way, we will be hitting a six inch nail in the progression of devolution.

Article 6(2) of the Constitution on devolution and access to services states:-

“The governments at the national and county levels are distinct and inter-dependent and shall conduct their mutual relations on the basis of consultation and cooperation.”

It means that the government at the national level is not any different from the government at the county level. Therefore, what is good at the national level is equally good at the county level. In fact, the governor and his deputy are a mirror at the county level of the President and his deputy at the national level. What is provided for and expected to happen at the national level must be what is expected to happen at the county level.

Anything less, this Senate will be abrogating our responsibility under Article 96 of the Constitution which reads:-

“(1) The Senate represents the counties, and serves to protect the interests of the counties and their governments.”

It is obvious that it is not protecting the interests of the counties and their governments by passing legislation that will cause chaos in the structure of county governments. We must leave governors and their deputies to work on the basis of their pre-election arrangement or agreements either as individuals or as parties. We must have a situation where we leave the personal chemistry and ability of the governor and his deputy to realise and see the bigger picture to run the county.

Mr. Temporary Speaker, Sir, even within the context of Coalition for Reforms and Democracy (CORD) - where I am a principal - in Turkana County, the governor is from my partner party, the Orange Democratic Movement (ODM). The deputy governor is from my party Ford Kenya. The two do not see eye to eye. The deputy governor cries that the governor cannot allow him to do anything.

I will be the last person – despite the protests and complaints from my party man - to superintend their relationship with the governor. If the deputy governor is unhappy he can reconsider his position. If he is not sufficiently unhappy, he can persevere to the end. I do not have an intention of being a governor because I know what I am looking for. Those who wish to be governors, this House wants to allow them to function as governors, similar to the way the president functions at the top. The deputy president deputises the president in the functions under the Constitution. Period!

Mr. Temporary Speaker, Sir, if there is an emergency, the president can ask the deputy president to go to Kwale to coordinate the rescue mission of flood victims. The president can send the deputy to the most dangerous places like the regions where Al-Shabaab are shooting people. Whether the deputy president is shot or not, it is not the president's business. When we open up to judicial challenges, it is not the way to run affairs of the State. I have a deem view of those Clauses that I have pointed out.

The sponsor of the Bill is in the House now and may I point out that I agree with him in the manner of handling the removal of the deputy speaker of the county assembly. The clauses touching on the governor are personal to the deputies that are suffering. The House does not correct, insulate and manage relationships between governors and their deputies.

Mr. Temporary Speaker, Sir, Clause 6 amends Section 33 of the principle Act on the voting of the impeachment of the deputy governor. This I agree but the vote should be

on the basis of delegations and not the membership of the House. A precedent has been set and the Constitution is clear that no Member other than the head of the delegation has an original vote on matters affecting counties. This was a terrible lacuna in the law from the beginning.

In the case of Kyalo, it was a well choreographed and designed conspiracy, starting with the mischievous Governor Mutua who sponsored an impeachment against his deputy. He brought the matter to this House. At one point he followed us to Mombasa in a retreat pretending to be better than other governors because he was the only one there. What he wanted was how to get rid of his deputy. When the matter came before the House - if I were ever challenged - I will name and shame the Senators who were hawking money on behalf of Governor Mutua to influence the House to impeach his deputy governor.

Mr. Temporary Speaker, Sir, if we do not hold the position of the heads of delegation sacrosanct, we could easily have Members of delegations who do not agree with their head of delegations. They would go wayward and do harm and injustice to a matter where an innocent man or woman has been put on the ropes. I do not want us to get to the level like the days of Jesus where the Jewish congregation was eager to save the robber but hang the innocent man. They were ready to suffer with their robbers. We do not want to go that way.

I urge Sen. Murkomen to rethink the issue on the deputy governors. Several delegations are not comfortable with defining what a deputy governor must do by insulating him with unnecessary consultations. The Senator was not here when I said the word “consult” is not clear. Does it mean concurrence or agreement?

The Temporary Speaker (Sen. Sang): The Senate Minority Leader, we have one minute to 6.30 p.m. It is either you conclude or you will have your balance of about 16 minutes.

The Senate Minority Leader (Sen. Wetangula): Mr. Temporary Speaker, Sir, I will conclude. This Bill is good and I support to the extent that I have said. The clauses that I do not agree with, I advise the sponsor that the general opinion in the House is unfavourable on the issue of deputy governors. The Senator may rethink his position at the Committee Stage.

I beg to support to that extent only.

The Temporary Speaker (Sen. Sang): There being no other interest to contribute, the Mover may reply in the half a minute remaining.

Sen. Murkomen: Mr. Temporary Speaker, Sir, I have heard the contributions of the Senate Minority Leader and those of Sen. Wako. Since we sit in the Committee on Human Rights and Legal Affairs, the issues raised will be canvassed accordingly in order to find a solution. I had made all the contributions on the Bill and I do not wish to prolong the debate.

I beg to reply.

The Temporary Speaker (Sen. Sang): Do you want to make an application?

Sen. Murkomen: Mr. Temporary Speaker, Sir, may I make an application under Standing Order 54 (3), that the vote on this matter be put off to the next day.

Thank you.

The Temporary Speaker (Sen. Sang): It is so granted.

ADJOURNMENT

It is now 6.30p.m., time to interrupt the Business of the Senate. The Senate stands adjourned until tomorrow, Wednesday, 27th April, 2016 at 2.30p.m.

The Senate rose at 6.30 p.m.