

# PARLIAMENT OF KENYA

## THE SENATE

### THE HANSARD

Tuesday, 7<sup>th</sup> May, 2013

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

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

### PRAYERS

#### QUORUM CALL AT COMMENCEMENT OF SITTING

**The Speaker** (Hon. Ethuro): Order! Hon. Senators, we need to determine if we have a quorum. Mr. Clerk, do we have a quorum?

**The Clerk of the Senate** (Mr. Nyegenye): Mr. Speaker, Sir, we have 17 hon. Senators present. We have a quorum

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

### NOTICES OF MOTIONS

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): Mr. Speaker, Sir, I rise to give notices of the following two Motions:-

#### ESTABLISHMENT OF SENATE LIAISON COMMITTEE

THAT, the Senate resolves to establish a Committee to be designated as the Liaison Committee comprising Chairpersons of all Senate Committees, excluding Joint and *ad hoc* Committees to co-ordinate the activities and operations of all Committees of the Senate.

#### APPROVAL OF SEN. ELACHI AND SEN. BULE TO COMMITTEES TO REPLACE SEN. (DR.) KHALWALE

THAT, pursuant to Standing Order No.135(3) and 177(3), the Senate approves the following hon. Senators nominated by the Rules and Business Committee to be members of the respective committees as indicated below, to replace Sen.(Dr.) Khalwale, who has been discharged from the respective committees pursuant to Standing Order No.178.

STANDING COMMITTEE ON FINANCE, COMMERCE AND  
ECONOMIC AFFAIRS

Sen. Beatrice Elachi

SESSIONAL COMMITTEE ON IMPLEMENTATION

Sen. Ali Abdi Bule

Thank you, Mr. Speaker, Sir.

### POINT OF ORDER

#### DIVISION OF REVENUE TO COUNTY GOVERNMENTS

**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, I rise on a point of order to seek clarification or direction from the Chair. It is now in the public domain that there seems to be either a standoff or a misunderstanding between the Commission for Revenue Allocation (CRA) and the Treasury. The country is made to understand that there is a disagreement on how much money the Treasury intends to disburse to the devolved governments.

Mr. Speaker, Sir, I want to refer you to Article 217 of the Constitution on Division of Revenue. If you allow me, Article 217 reads as follows:-

“Once every five years, the Senate shall, by resolution, determine the basis for allocating among the counties the share of national revenue that is annually allocated to the county level of government.”

Mr. Speaker, Sir, Article 217(2) (b), (c) and (d) goes on to say:-

“In determining the basis of revenue sharing under clause (1), the Senate shall-

(b) request and consider recommendations from the Commission on Revenue Allocation;

(c) consult the county governors, the Cabinet Secretary responsible for finance and any organization of county governments;

(d) invite the public, including professional bodies, to make submissions to it on the matter.”

Mr. Speaker, Sir, Article 217(3) further says:-

“Within ten days after the Senate adopts a resolution under clause (1), the Speaker of the Senate shall refer the resolution to the Speaker of the National Assembly.”

Mr. Speaker, Sir, the reason for seeking the Chair’s direction is because I am concerned that the public is aware that we are the custodian of the interests of the devolved governments. For such an important issue to take place in the country and the Senate is quiet, the public will be forgiven if they thought that we are sleeping on the job. All the things that I have pointed out to in the Constitution have not been met by the Senate, the Treasury and the CRA. Could you direct how we should handle this very critical issue? It is being purported that the money meant to go to the county governments

is less than what people expect the county governments to get, if you calculate from the last audited accounts of the Government.

Thank you.

**The Speaker** (Hon. Ethuro): Sen.(Dr.) Khalwale, you have raised quite fundamental issues. Let me make that ruling after I look at your submission. I will then determine the way forward.

### MOTION

#### ESTABLISHMENT OF PUBLIC UNIVERSITIES IN ALL COUNTIES

**Sen. (Dr.) Khalwale:** Mr. Speaker, Sir, I beg to move the following Motion:-

THAT, aware that during the first years after independence the best equipped public schools were established in certain regions of Kenya to the exclusion of other regions, resulting in such regions having undue advantage in producing educated manpower; appreciating that the introduction of the devolved system of Government in the Constitution of Kenya, 2010, was aimed at achieving equalization of development and other opportunities, including education across the country; noting that the Government has lately embarked on establishing more public universities in the country and further concerned that the majority of the public universities are currently concentrated in a few regions of the country to the exclusion of the rest of the country; the Senate urges the Government to take urgent and immediate steps to ensure that there is equitable distribution of universities in the country and to ensure that at least one public university is established in every county in Kenya before the expiry of the term of the current Government.

Mr. Speaker, Sir, as I move this Motion, I would like to request hon. Senators to recall the objectives of devolution. These objectives are spoken to at length, even by the Constitution.

Mr. Speaker, Sir, I beg your pardon, allow me to me pick a copy of the Constitution.

*(Sen.(Dr.) Khalwale picked a copy of the Constitution)*

Mr. Speaker, Sir, the purpose of putting these objectives in the Constitution was intended to force the Executive to observe these provisions, so that never again would we live in a country which is as unequal as Kenya is today. For the interest of hon. Senators, I would like to refer them to Article 174 of the Constitution that speaks to the Objects of Devolution.

Mr. Speaker, Sir, Article 174(b) of the Constitution says:-

“The objects of the devolution of government are-  
(b) to foster national unity by recognizing diversity;

A Government that leaves out one community or region in a critical issue like education is not recognizing the diversity of this country. Therefore, this Motion, if it speaks to this, will be emphasizing nothing new but the provisions of the Constitution.

Mr. Speaker, Sir, Article 174(e) of the Constitution says:-

“The objects of the devolution of government are-

(e) to protect and promote the interest and rights of minorities and marginalized communities.”

As I will be speaking later on in the Motion, you will find that the same bad practice that we found when national schools were being established is the very same pattern that has taken place in so far as the creation of new universities is concerned. It is important that, we, in one voice, support this Motion so that the Government realizes that they have started breaching the provisions of the Constitution as stipulated in Article 174(e).

Mr. Speaker, Sir, Article 174(f) says:-

“The objects of the devolution of government are-

(f) to promote social and economic development and the provision of proximate, easily accessible services throughout Kenya. ”

If we do not have a university in Mandera County, for example, that means that we are going against the letter and spirit of Article 174(f) which requires that this facility be easily accessible to the people of Mandera County.

Mr. Speaker, Sir, lastly, Article 174(g) says:-

“The objects of the devolution of government are-

(g) to ensure equitable sharing of national and local resources throughout Kenya.”

Indeed, it goes without saying that education and educational institutions are a great national resource. If education is not shared in the meaning of Article 174(g), the Government will be breaching the Constitution.

Mr. Speaker, Sir, it is important that if the Government listens to this particular Motion, they should do it in the interest of us, as leaders, and the consumers of the sweat of our leadership. It is only through establishment of these institutions in all regions of Kenya that we will give educational institutions the face of Kenya.

I would like to remind hon. Senators present here today that we must all pause and acknowledge the presence of many eminent Kenyans, some of them in this House, who rose from abject poverty. It is only because of education that some of the men and women in this country have made it. Many of us read the story of the late Sen. Mutula Kilonzo. He is a man who rose from abject poverty to the position he got to. Therefore, no one in this country should ever take the issue of education lightly. As they say in philosophy, education, indeed, is the only social equalizer that is able to pick a child, like the late Sen. Mutula Kilonzo, and enable him to sit on the same high table with some of the people that he wined and dined with.

Mr. Speaker, Sir, allow me to briefly comment on the historical perspective of education in this country. It is sad to note that for a whopping 50 years, educational institutions – at that time the premier institutions were national schools – were deliberately skewed in distribution so that they favoured the Nairobi and Mt. Kenya regions of this country. For example, for the last 50 years, until only two years ago, the western region, where I come from, had no single national school. But during the same

period of 50 years, the regions around Nairobi and Mt. Kenya had over 15 national schools. So as to attempt to correct the wrong that was done, an effort was made by the Ministry Education, thanks to the late Sen. Mutula Kilonzo, to create a paltry five national schools in the western region. This was done 50 years after the other areas have had 15 national schools. These national schools have nothing new. There are even better schools in the same region that were not elevated to this status. If somebody thought those five were good enough, they left out other giants in our region that would have benefited. By this I mean the five schools were only limited to Bunyore Girls High School, Kamusinga Boys High Schools, Lugulu Girls High School, Kakamega High School and Butere Girls High School.

Mr. Speaker, Sir, an important resource like this one should not be decided on in the absence of the National Assembly and the Senate. Had this matter been tabled before the National Assembly then, probably this wrong would have been corrected. But because that was not done, we still have sufficient time, now that we have the Senate, for us to expand the number of national schools as we move towards the objectives of this Motion, namely, creation of universities in every county.

Mr. Speaker, Sir, what is the current status of the establishment of universities in Kenya today? Kenya, with a population of 40 million, has 22 public universities. We can quickly compare this to a small island called England, with a population which is not so different from that of Kenya; England has a population of 56 million people; it has 91 public universities and 132 university colleges. This clearly shows that even as we run towards populist approaches of solving the intention of reaching Vision 2030 through provision of the so-called laptops to primary school pupils, the bigger picture is being missed because the industrialization status of a country is changed through research and technology.

It is very sad that out of this 22 public universities that we have in Kenya today, again, Nairobi and Mt. Kenya regions host 10 of these universities so that the country is not left guessing which these 10 universities that are confined to Mt. Kenya and Nairobi regions are, they include; the University of Nairobi, Kenyatta University, the Jomo Kenyatta University of Agriculture and Technology (JKUAT), the Dedan Kimathi University of Technology (DKUT), Chuka University, Technical University of Kenya (TUK) in Nairobi, Laikipia University, the Multi-Media University of Kenya (MMUK) in Nairobi, Karatina University and Meru University of Science and Technology (MUST). We are simply walking the same path that our founding fathers walked when they skewed education against the rest of the country in favour of this particular region. We must object to this by supporting this Motion, so that development of manpower is seen to capture all regions, minorities and marginalized communities included.

Mr. Speaker, Sir, since I do not want to speak for too long on a Motion that I suspect is fairly straightforward and which is not controversial, allow me to end with a plea to the Government. We already have the Masinde Muliro University of Science and Technology (MMUST) in a community of over six million Kenyans. The Government should expedite the intended conversion of Kakamega Approved Primary School (KAPS), so that it reverts to the MMUST for purposes of expansion. The President has visited us on three different occasions and has spoken to this issue. However, the Ministry of Lands has been dragging its feet.

Mr. Speaker, Sir, I would also like to plead that they expedite the expansion of the Faculty of Nursing---

**The Speaker** (Hon. Ethuro): Order, Sen.(Dr.) Khalwale! Which President are you referring to?

**Sen. (Dr.) Khalwale:** Mr. Speaker, Sir, the third President of the Republic of Kenya, the hon. Mwai Kibaki. Thank you for the correction.

I plead that they expedite the expansion of the Faculty of Nursing at MMUST, so that it becomes a fully fledged school of medicine.

In view of what the immediate former President stated when he was at Kakamega Provincial General Hospital, I would like the Government, to expedite the expansion of the hospital to a teaching and referral hospital that will be affiliated to MMUST.

Mr. Speaker, Sir, before I conclude, I want to comment on the quality of education in our universities. If you saw what happened during the nomination process of the president, governors and deputy presidents in this country at the just ended election, it spoke volumes on the inefficiency of the Commission on Higher Education (CHE). The CHE should come out strongly and ensure that as we increase the number of universities, each university that is given a charter must be seen to have a sufficient number of prerequisite lecturers; and those lecturers should have the proper qualifications to teach our children. At the same time, the parallel degree program should be properly monitored to ensure that students who register for it are only those who have met the minimum qualifications to join those courses and that they are given quality education.

Mr. Speaker, Sir, the quality of education in this country is something that is very attractive, and very many rich parents waste a lot of foreign exchange taking their children to universities abroad. I have done a bit of survey on the internet and I have found that there is no university in the United Kingdom (UK) which costs less than 9,000 UK Pounds *per annum*. This translates to around Kshs1.2 million *per annum* in the form of tuition. Our children at local universities, receiving quality education, only need between Kshs200,000 to Kshs400,000 *per annum* to study at the university. I would, therefore, like to encourage Kenyans to believe in Kenya so that the foreign exchange which we waste in paying university school fees for the children who learn out of this country can be put to good use for our economy to grow.

Mr. Speaker, Sir, having said all those many things, I am privileged to have a House of men and women of letters; today I will request none other than Prof. Lonyangapuo to second the Motion.

With those remarks, Mr. Speaker, Sir, I beg to move.

Thank you.

**Sen. (Prof.) Lonyangapuo:** Mr. Speaker, Sir, I arise to support this Motion---

**The Speaker** (Hon. Ethuro): Remember you have ten minutes.

**Sen. (Prof.) Lonyangapuo:** Mr. Speaker, Sir, I think this Motion has come at a right time when we are establishing the new systems of devolved government. Looking at the way the Constitution was written, it came in to correct some of the issues that had not been put right; one of them was education.

Mr. Speaker, Sir, you know that a county like Turkana – which is almost the third or fourth-largest county in Kenya – has had only one secondary school for boys called Lodwar Boys Secondary School for a mighty long time. The girls' schools are not even there, similarly in West Pokot. Therefore, the pool of educated people in some of the

counties is quite low in this country, and this came in because we did not put things right at the beginning when we were putting premium in education through national schools. You recall that up in the entire north rift, it is only Moi Girls, Eldoret, that has existed for a long time, and getting a girl, for example, from West Pokot to that place is like, they say, forcing a camel through the eye of a needle because the same exam that a class eight pupil in West Pokot does to acquire those top marks required to go those top schools is quite high. So, I rise to support this Motion to say; let us use, as the Government, the same agenda of devolution that has come to remember that schools of quality must be done. I have a suggestion; two years ago, the current President introduced the Economic Stimulus Program when he was the Deputy Prime Minister and Minister for Finance, and every constituency was able to tap into it to build a quality school. If, in the same model, the Government approaches education in the same manner, we could correct this impression where we are saying we now have new national schools in every county. We have some that were just acquired one or two years ago but the communities have not accepted that there are top schools which they have built themselves. Where I come from, parents have sold their cows and goats to get their children admitted to the Government schools; what we call national schools. I would prefer that, in order to stabilize and equalize, funds are obtained and set aside by the Ministry of Education to pick national schools from grass to grace. We will give you land in the “bush,” rather than going to inherit existing schools that people have already known. I have an example of Tartar Girls Secondary School in West Pokot which now has five kids from West Pokot County out of the 180 girls there. Initially, Tartar used to take a significant number of girls from the area. So, I would say that we need to see how such a fund can be set aside and good schools are built.

Mr. Speaker, Sir, I also want to second the fact that we also need universities in every county so that we can interlink and work together. Some counties have niche products that need to be paid attention to. As we produce manpower all the way from national schools to technical colleges and universities, some counties have to specialize in some courses. For example, we have just discovered oil. Which county would be best placed to build a college that is going to specialize in petroleum and oil studies other than where this thing has been found – Turkana or the neighboring counties? So, I would ask that the new Government considers to liberalize education and we build universities across the counties as well as also looking at the colleges. For example, in 1976, in West Pokot, the first nursing school was built and it stalled in 1978 up to date. The first four classes and a dormitory were built and nobody has occupied them to date. That is a significant almost 40 years ago, yet we require nurses and trained health personnel to deal with our problems, the diseases which are quite common in some of these areas. I would urge that as we consider expanding education in every county, West Pokot Kapenguria Nursing School should be restarted so that some of these common diseases can be handled. You notice that some of the areas they call ‘marginalized’--- and you post a nurse or even a teacher from Nairobi to go to some of these areas, they do not want to go there. Some of these colleges are quite near Nairobi County and so on.

Mr. Speaker, Sir, I would support the Motion by saying that even teachers’ colleges and nursing training institutions must be built in every county. This will attempt to correct some of the impressions we have heard, like we have mentioned in this House that there are places where you will look for a professor in an entire county and you will

never get one, whereas, if you go to some places in this Republic, in a village, there are too many. What does this tell you? It tells you that we do not need to discuss this topic for long; that we need to be serious to the extent that the Government needs to correct where things went wrong in the past.

Mr. Speaker, I have a lot of hope in the agenda that the Jubilee Government has brought and I believe that if it is put in motion, some of these things can be corrected. We have a shortage of teachers in West Pokot, but somebody will ask me: “But you did quite well last year; where did the teachers come from?” We used some of the students who have just finished Form Four and university students who are not trained teachers. Suppose we had some of the training colleges nearby, we would have so many attending them, resulting in sufficient trained manpower that can be able to handle these things.

Lastly, Mr. Speaker, Sir, we are now working on our Vision 2030. Employment of the youth of the Republic of Kenya is not going to be found anywhere else except in industrialization and in value addition. Which industrialization will you do in some counties that are already full, without land to plant and to plough, from which we can get some of these raw materials to add value to? I would say that we need to put emphasis on the right type of education as well, like in the agricultural sector. We need to add value to all the products we get from the maize or from our farms, including the animal products. This can only be found when we have the relevant kind of training scattered across the country and specifically stationed in every county, where the choice or niche product is supposed to come from so that we can be able to have people attaining this. You will notice that when we talk of value addition, you look at the water I have here; you will find that in some counties, water is imported all the way from some urbanized counties like Nairobi going to Samburu, yet we can also do the same thing there. When you ask yourself why, the reason is because of this issue we are talking about here; inequitable distribution of education. If people were educated, they would be able to learn these ideas, then tap into it, using the money they have. Some of these products can be produced anywhere else in the country.

Mr. Speaker, Sir, I think Kenya will be developed if we put a lot of emphasis on education – the right quality of education – and the people who are taking their children outside the country for studies can only stop doing so if we come up with specialized colleges scattered across the country in some of the counties where the courses can do well. For example, if you look at the new university called Southern University College (SEUCO), they now have a program for dry land agriculture, of which you note that over 60 per cent of our land in Kenya is dry. If we can be able to enlarge that so that those colleges offering the same course are opened across the country, especially in areas where the technique is required, it will be good.

Mr. Speaker, Sir, I beg to second this Motion.

*(Question proposed)*

**The Speaker** (Hon. Ethuro): Order, Senators; I also want to make a communication just to brief you. It will come at the time when you should be voting, but I think you need to know it from the very beginning.



**COMMUNICATION FROM THE CHAIR****COMMUNICATION ON WHETHER A MOTION AFFECTS COUNTIES  
AND HOW TO PROCEED WITH THE VOTE**

**The Speaker** (Hon. Ethuro): Hon. Senators, I wish to draw to your attention the provisions of Standing Order No.69, which states as follows and I quote:-

“(1) When the Senate is to vote on any matter other than a Bill, the Speaker shall rule on whether the matter affects or does not affect counties.

(2) The Speaker’s ruling under paragraph (1) shall be made after conclusion of debate on the matter but before the question is put.

(3) When the Senate votes on a matter that does not affect counties, each Senator has one vote.”

That is what you need to note.

Hon. Senators, the Motion on any matter that affects counties, if the decision of the Senate on the matter, either in the affirmative or in the negative, impacts or has the prospect of impacting on the counties in a positive manner. In the present case, I rule that this Motion affects counties within the meaning of Standing Order No.69 and Article 123 of the Constitution. And accordingly, when the Question will be put, each county delegation shall have one vote to be cast on behalf of the county by the head of the county delegation. So, if the head of your county delegation is not present, you need to look for that head or in the absence of the head of delegation, by another member of the delegation designated by the head of the delegation. You cannot purport to represent your head of delegation without the head of delegation designating you as the one to vote. So, pursuant to Article 123 (4)(c), this Motion will be carried only if it is supported by a majority of all the delegations. That is by at least 24 county delegations. Under Standing Order No.73(2), I would direct that when the roll will be taken, this being an instance where the Senate is to decide on a matter that requires voting by county delegations, for the benefit of the Senators, I want to go to Standing Order No.73, which states as follows:-

“(1) The Speaker shall direct a roll call vote to be taken, if a Senator claims a roll call division and –

(a) the Speaker considers that there is a reasonable doubt as to the outcome of any question in an electronic vote; or

(b) if, on a question other than a question of procedure, fifteen or more Senators rise in their places to support the Senator claiming the roll call division.

(2) The Speaker shall direct a roll call vote to be taken in every instance where the Constitution lays down that a fixed majority is necessary to decide any question and in instances where the Senate is to decide on a matter that requires voting by county delegations.”

So, be advised.

**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, I am rising to seek a further clarification from you because when political parties were nominating senators, they were not

nominating them because of the geographical area they come from; they were nominating them as their party members.

Mr. Speaker, Sir, when a Senator claims to belong to a particular delegation, what is the lowest denominator that connects that senator to that delegation? Is it the certificate of birth; or is it as a registered voter? I would like that you make it clear because we have a few people who will find – and I know them and I can give examples – that they come from a different county and they are registered as voters in a different county. So, in this case, to which delegation do they belong?

Thank you, Mr. Speaker, Sir.

**The Speaker** (Hon. Ethuro): Sen. (Dr.) Khalwale, we are looking for the exact position in the Constitution but suffice it for now that if the political parties nominated Members on any other criteria, then we are not aware of it. The one the Constitution gives us and the way we determine that you are a Member of a particular county is on the basis of where you are a registered voter. That is the law and the Chair will faithfully implement it. We have taken the trouble of finding from the Registrar of Political Parties where each Member present or each Senator is a registered voter and that is what counts. Let me just read to you the Constitution of Kenya which you used quite extensively when you were moving your Motion, Article 123(1) reads,

“On election, all members of the Senate who were registered as voters in a particular county shall collectively constitute a single delegation for purposes of Clause 4 and the Member elected under Article 98(1) (a) shall be the head of the delegation.” So, the Senator who was elected is the head of delegation. Any other Senator nominated will belong to that county on the basis of being a registered voter.

**Sen. Kembi-Gitura:** Mr. Speaker, Sir, I think that is an important point that will be put to the test today when we are voting on this because you have ruled that this is a county Motion. The fact that the head of delegation must designate who in his or her absence will vote, I think we need to have a ruling on what that “designation” means. Is it in writing? Is it from time to time? Is it permanent or one off? Has it been deposited in the Clerk’s office? How is it done? I think that is important. I think, Mr. Speaker, Sir, you need to rule on that case because supposing your Deputy Speaker is on the Chair when the voting is done and suppose the Senator in the Speaker’s Panel is on the Chair and he is the head of the delegation, does that person have a vote or does the delegation lose the vote on that Motion? I think we need to have a ruling on that matter.

**The Speaker** (Hon. Ethuro): Hon. Senators, that is why I took the trouble although the Standing Orders dictate that I should have read this when we are about to vote. I have appreciated that this is the first time we are doing it differently and maybe it is also in the history of the Republic. So, I thought I should raise these issues upfront and definitely the kind of responses it has elicited are necessary.

Sen. Kembi-Gitura has raised a number of issues: One is what constitutes designation and whether it is just somebody shouting that I have designated so-and-so or is it in written form? On that one, I wish to rule that, if you look at Constitution of Kenya 2010, Article 123(4), it says:-

“Except as provided otherwise in this Constitution, in any matter in the Senate affecting counties-

(a) Each county delegation shall have one vote to be cast on behalf of the county by the head of the county delegation or, in the absence of the

head of delegation, by another member of the delegation designated by the head of the delegation.”

So, designation would be the head of delegation writing to the Speaker that “I have delegated Senator so and so, on my behalf”

In Article 123(4) (b), it is a requirement that the person who votes on behalf of a delegation shall determine whether or not to vote in support or against the matter after consulting the other members of the delegation. So, it has been imposed on the delegation head. I would rule that the delegation should be on the basis of per item on the matter at hand. It cannot be permanent so that the head of delegation can be given opportunity every time the matter comes to exercise a bit of discretion if they are lucky to have more than one.

Regarding the matter if one is presiding, I do not think it is the intention of the Constitution or the House to deny a Member, like the Deputy Speaker or a Member of the Speaker’s Panel, the opportunity to represent the county. The reason why we did this is to ensure that each county is fully and properly represented. Any other assignment given to someone by the House should not deny him or her the opportunity to represent the county. So, it would be my consideration that any Member on the Chair who is representing a county will have the vote for that county when the vote is taken.

The Chair of the Committee, Mr. Kagwe!

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): On a point of order, Mr. Speaker, Sir.

**The Speaker** (Hon. Ethuro): What is it Sen. (Prof.) Kindiki?

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): On a point of order, Mr. Speaker, Sir. I have two things; first, the Leader of Majority would have wanted to make a few comments with your permission before sectional chairs. The second point of clarification that I am looking for is whether the ruling that you have just made also applies to the party House leadership because we are also Senators representing counties and in some cases, there is no other member. So, it is a delegation of one.

**Sen. (Dr.) Machage:** On a point of order, Mr. Speaker, Sir. Since the House opened, we have heard Members raise two or three points of orders. Is it a precedent being set that one Member can raise more than one point of order at a time or do we follow the precedent that was set by Parliament in the previous events?

**The Speaker** (Hon. Ethuro): Which was?

**Sen. (Dr.) Machage:** That only one point of order will be raised at a time.

**The Speaker** (Hon. Ethuro): To the best of my recollection, I do not think we ever imposed a limit on the number of points of orders you can raise. Secondly, this is a new House, assuming that what you are saying is true. This is a different House and should be at liberty to set its own rules. The Standing Orders do not determine the number. The Standing Orders say that a Member can stand at his or her place on a point of order and it is up to the Speaker to rule whether that point of order is admissible or to disallow it. In this particular case, I do not see where that situation is arising from. There was a point of order by Sen. (Dr.) Khalwale and another by Sen. Kembu-Gitura and the third one has come from the Leader of Majority. So, I do not see where one person repeated.

**Sen. (Dr.) Machage:** Mr. Speaker, Sir, I request that I am not misunderstood on this. What I was raising is that the Leader of Majority raised two points of orders in one instance.

**The Speaker** (Hon. Ethuro): The first one he was requesting whether he would be allowed to make some comments before another Member and it was really the second one that was a point of order seeking a clarification. In my view, I was disposing that point of order before I come to the other one. I think that some of these things are at the pleasure of the Chair in terms of points of order. Actually, he stood up on a point of order and raised two different issues. So, I do not think that amounts to two points of order but one.

So, if you are satisfied with my ruling on the first one, then I can address the point of order. Of course, he is at liberty to make his contribution at any time during the Motion. In fact, from the Procedural Motion that we passed when we came to the House, he is allocated a definite time. It says that the Motion has a maximum of three hours with not more than 20 minutes for the Mover, 15 minutes for the Majority party official responder. So, he will respond as an official party responder. So, I decided that I want to give a chance to Sen. Kagwe. The Leader of Majority can hold his horses for now.

Proceed, Sen. Kagwe!

*(Debate on the Motion resumed)*

**Sen. Kagwe:** Mr. Speaker, Sir, I rise to support this Motion with a proviso on the language so described in the Motion because I prefer to support something from a positive perspective rather than from a negative one. My friend, Sen. (Dr.) Khalwale has very serious concerns and which I take very seriously as well, but let us put things in perspective because when you say that it is concentrated in a few regions at the exclusion of others, it connotes certain negative things. Instead of saying, it is concentrated in a few areas of the country and not in others, why do we want to split hairs? I think that the Motion is well-deserved and it is a matter of concern to Kenyans. The purpose of education is not just to bury youths in an information overload but to transform them in a manner that they can transform our societies. Therefore, if we have colleges and universities across the country, it is possible for us to take advantage of research and other conditions that exist in various parts of our country.

Mr. Speaker, Sir, when we talk about specialization of universities, for example---

*(Sen. Wako entered the Chamber carrying a bag)*

**Sen. Murungi:** On a point of order, Mr. Speaker, Sir. I was wondering whether it is in order for Sen. Wako to walk in the Chamber carrying a bag whose contents we do not know.

**The Speaker** (Hon. Ethuro): He is definitely not in order but the Chair is being engaged by the Senate Minority Leader and I am wondering whether there was a conspiracy between him and the Senator for Busia so that the Chair cannot determine the size of the bag.

Senator for Busia, did you have a bag? The only bags we allow are the ladies bags.

**Sen. Wako:** It is a ladies bag, actually!

*(Laughter)*

**The Speaker** (Hon. Ethuro): Order, Senator for Busia! If you have a bag, then we do not allow men to bring bags in the Chamber and you cannot donate it to a lady now. You have to retrace your steps and deposit it with the Serjeant-at-arms.

**Sen. Wako:** Much obliged, Sir.

**The Speaker** (Hon. Ethuro): Proceed, Senator for Nyeri.

**Sen. Kagwe:** Mr. Speaker, Sir, even though it is gender discrimination for Sen. Wako to take away his handbag---

To continue with my contribution, and hopefully that time was noted, we can use universities in various regions of our country to provide the much needed unity that Kenya requires. In saying that, let me say that universities, irrespective of where they are located, are not for the exclusive use of those people living where the university is located.

Sen. (Dr.) Khalwale noted the “Nairobi University” and other universities in Nairobi. I happened to have been the Chairman of the Multi-Media University Council and I can tell you that it is a constitutional requirement that universities---

**The Senate Minority Leader** (Sen. Wetangula): On a point of order, Mr. Speaker, Sir. Did you hear my very distinguished friend, the Senator of Nyeri, making reference to “Nairobi University”; which university is this? I know The University of Nairobi and not Nairobi University.

**Sen. Kagwe:** Mr. Speaker, Sir, I meant universities in Nairobi and they are many; not one. Even so, it is indeed the University of Nairobi where Sen. Wetangula and I went to school. Thank you very much.

I was saying that the location of a college does not necessarily determine who is going to attend that college. As we well know, for example, Kimathi University in Nyeri has students from all over this country. I presume the universities that are going to be built in other areas of the country will likewise have students from all over the country because in addition to education as I had mentioned, universities can be used to unify our nation. Indeed, some of us are of the view that the more integrated a school is in terms of the various races and tribes, including at high school level, the more funding it should actually get from the Government to encourage our people to integrate as much as they can in a school environment rather than trying to integrate when their minds have already been poisoned against other regions and tribes.

Mr. Speaker, Sir, however, as we plan to have these universities in the various counties, it is important that we do not sacrifice the quality of education in our nation. Not only that, but the standard of our education; the benchmark, should actually be global. We should not rate ourselves against universities in East Africa and Africa but globally so that if you are educated in any university in any county in Kenya, you will be as good as anybody educated in Harvard University in the United States. This must be something that we must maintain. If you look at the global ratings of universities, the best ranked in Kenya will probably be number 2,000. The best university in Africa which is the Cape Town University in South Africa is ranked number 200. Consequently, it means that the 200 best universities globally belong to the rest of the world and not anywhere in

Africa. Some of the best universities that we have here according to global ratings will be ranked number 4,000. The University of Nairobi is globally rated number 4,000. So, as our ambition is to have graduates who can get jobs not just in Kenya but anywhere on earth, it, therefore, behooves on us that our education standards must be those that can be found anywhere else in the world. To do so, we need to emphasize on the research capacity that our universities will have. When you hear global ratings, they are basically based on the research capacity that a university has. The other issue is specialization. If we think about Turkana – somebody made that qualification – where oil is, that is where we need to have research on oil. I concur and agree, but again even if you look at the same region having visited Loyangalani, there is a very big hospital that was abandoned there when the war in South Sudan ended. Some of these facilities can be used as universities because they can be converted easily. The infrastructure is there and therefore converting them means just providing the software so to speak, because the hardware exists.

Mr. Speaker, Sir, when we think about the regional universities or having universities in the various counties, let us ask ourselves: What is the best utilization of that university? We now have colleges based on research, for example, if it is marine research, it should be based either in Kisumu or Mombasa. That is where we should also place the marine research facilities. If you talk about research in mountains, it should be possibly be in Nyeri County. So, let us address the issue of where are we best placed and what is the purpose of setting up a certain research university.

There is also the issue of management of those universities. It is one thing to create a university and quite another to manage the university. If you look at the Universities Act, it envisions a situation where university professors must necessarily manage universities and university colleges. I think this is a wrong notion. Elsewhere in the world today, General Managers and Managing Directors of Universities are not necessarily college professors. I feel very strongly, having been a chairman of a council, that this is something we must address within the discussion of this matter. We should have serious management in universities through getting serious managers and not necessarily serious professors to run a university because it is one thing to be a college professor and quite another to manage a university. Therefore, as we plan on these county universities, it is also very important to keep note of that particular issue.

Mr. Speaker, Sir, as I finalize my contribution, I urge that we support this Motion and also urge that the county governments also contribute towards investing in education. Further, I think we should amend the Education Act to allow for infrastructure of schools to be given to the county governments. This is because as we stand today, the infrastructure of a school somewhere in Nyeri or Kasipul Kabondo or Turkana is still in the mandate of the Ministry of Education here. That money should be channeled through the counties and the county governments be allowed to manage the infrastructure of schools even as the Central Government manages the teachers and so on and so forth.

I beg to support.

**Sen. (Dr.) Machage:** Mr. Speaker, Sir, at times, it is painful to address historical injustices. At times, it is not easy for the beneficiaries to accept that that happened. This House must be explicit and we must be open not because we condemn certain communities in this country, but because we condemn what happened in the contexture of history. Of the 22 purported public universities, 14 chartered private universities and

12 universities with intention to be given authority, I do not need to go to the statistics Sen. (Dr.) Khalwale has given to show where these universities are positioned.

The last debater had a point; put universities where the need arises. But was this used to establish these universities? All I remember is that communities have to bow to the Head of State to have a university positioned in their place. You should pledge your loyalty. How long did it take to establish Mombasa University? Look at the changing of Western Kenya College of Arts and Applied Science (WECO) to a fully fledged university, how many years and kneeling did it take to establish that university? These are things that can be statistically proven. If you look at the list that was printed two weeks ago of people who qualified to be interviewed by the Public Service Commission for the positions of Principal Secretaries, it tells you. Migori County had only one candidate. There was no candidate from Suba, Kuria and not to mention the other six constituencies of my county. This is just an example I have given. Is it because the people from this region did not meet the threshold of the requirements? This is not true. Be that as it may, skewed the establishment of universities in this country is evident and obvious. We should accept the truth. We should have a university in every county because every county has a resource.

Mr. Speaker, Sir, every former province has a resource that a university can identify itself with. We know that some of these institutions were established because of the skewed laying of the railway and the establishment of towns. So, there are more factors on the establishment of universities as a result of skewed allocation of resources, not only to schools and colleges but even to health services. If you have a mortality rate of 180 per 1,000 children dying in Homa Bay compared to 36 per 1,000 in Thika where do you expect to get professionals from when everybody dies in the first five years or the first one year of life? I will be coming up with another Motion on the establishment of Level Five Hospitals in every county because that is what is now required. It is required of us, as Senators of this country, to identify the truth and act on it. We should not be ashamed to say the truth. So, let us not hide and bury our heads in sand; that you see, you can have education from another university where you do not come from. We are not saying that those universities that will be established in the counties should only concentrate on educating the children from those counties; they will be universal. These are established to accept a certain quota of students from other regions into universities. We see these students in a very calculated move right from Independence.

At Independence, I think we had the best professionals in this country from Nyanza and Western provinces. However, is that the situation now? This was a calculated move and I am worried. If you look at the trend of the Ministers whom we now call Cabinet Secretaries and where they come from, you will be worried. If this is the trend that we will continue to see, that will bring a problem. However, we must legislate that these institutions must, by law, be established in each county in this country. This should not only apply to universities but also to service industries, among other things.

I support.

**Sen. Hargura:** Mr. Speaker, Sir, I come from the northern part of the country and this inequality still exists. Even though it was there during the colonial times, in our times, it still exists. This kind of a Motion will, to an extent, remedy some of that. If you look at the Northern Frontier District (NFD) which covers all the area from the Ugandan border to the coast, you will see that during the colonial times this area was closed. What

we are talking about was brought about by the colonialists. They made sure that nobody had access to any education and before Independence, they only allowed in faith-based organizations like churches to come to the area. Among the jobs given to them was that they had to develop educational institutions and even health facilities. The Government did not consider that to be its duty. The colonialists took up the running of the Government. Right now if you check, you will see that the schools that are set up there are faith-based. This also applies to hospitals. You could find only one hospital in a whole county or even being used by two counties. The national schools were not also established there. There was only one national school in upper eastern and one in northern Kenya which is Garba Tulla High School. This one was allowed to die as a national school, and now it performs worse than district schools. This shows the kind of importance that the Kenyan Government attaches to education in some parts of this country. Therefore, this kind of a Motion will correct some of these irregularities in terms of access to educational facilities. You should not expect people to get educated just because an area has schools. You have to check the kind of standards there right from primary level to university level. The facilities provided by the Government to schools in northern Kenya are very minimal that a child cannot be expected to perform the same as any other child in this country. I will give an example.

When pupils write their examinations, a few of them make it to the national schools. I have looked at a report form of one of the students. A school like the Alliance Boys School keeps records, up to Form Four, of the position that a student has achieved since he was admitted in comparison to the Kenya Certificate of Primary Education (KCPE) results that he got. I know of a student who was recorded as number 100 out of a class of 120 as his KCPE performance. However, he used to be among the top ten in his class. What does that mean? That means that at the primary level, access to quality education in some parts of the country caused the disparity of about 90 per cent compared to what other students from other parts of the country were getting.

In terms of teachers from the Teacher Service Commission (TSC), whenever these teachers are posted to northern Kenya, they take this as a disciplinary measure. When one gets a letter posting him or her to northern Kenya, the first question that he or she will ask is; what have I done wrong? This is not taken to mean that someone will be giving service in this country. It appears like one is being sent on demotion or punishment. That is how teachers take it when they are posted to those parts of Kenya. That contributes to poor performance and inability to compete with others in getting positions in the existing national schools.

One Senator said that it does not matter where the college is. This matters a lot because accessing an institution has some cost implications to parents. Right now, we do not have proper schools. One has to always travel and the transport component is also part of the costs required to be met by parents so that they can get their children to school. We need to have these facilities. The reason why we have not had research being conducted on dry area farming and in livestock production is because most of these universities are concentrated in other parts of this country where those ways of life are not relevant. So, if we had universities in northern Kenya, we would not only be dealing with rain-fed agriculture but livestock production and dry-area farming. We also have things like minerals. We would be doing research along those lines. So, it is necessary to



have these facilities there, first, for us to have relevant research so their output can be applied to the improvement of livelihoods of people there.

Having all these facilities spread throughout the country will give purpose to what we are driving here, which is devolution. We will have Government facilities everywhere and access to many other facilities which will bring about equal or fair development throughout the country.

Thank you.

**Sen. Musila:** Thank you Mr. Speaker, Sir for this opportunity to make my contribution. On the outset, I would like to say that I support the Motion. During my contribution to the Presidential Address, I dwelt on the marginalization of certain areas of this Republic especially now 50 years after Independence. We can look at what development has taken place and where. It is clear that correcting issues of marginalization must be the agenda of this Senate if we are to play the role that those who drafted the Constitution expected. In my view, that is the reason why we went into devolution. This was to try and correct developmental injustices as Senators. Therefore, I would like to implore my colleagues that we stand together whenever we point out injustices so that we do not appear defensive. Here, we are speaking facts. We must rise to the occasion and assist in correcting these injustices.

Mr. Speaker, Sir, the Senator for Marsabit talked about primary school education as the basis for these injustices. If you go to certain counties, Kitui County included, you will find that even in primary schools there are no teachers. If you go to other counties, you will find that the schools are overstaffed. Therefore, injustices begin right from the foundation where you have no primary school teachers.

Talk about laptops being issued to these schools where 100 students are studying under a tree because they have no classrooms and have no teachers, that is an issue for another day. However, the point I am making---

*(Mr. Wetangula stood up in his place)*

**Sen. Musila:** Mr. Speaker, Sir, protect me from the Leader of the Minority because he does not want to allow us to contribute.

**The Speaker** (Hon. Ethuro): I cannot protect you from your own leader.

*(Laughter)*

**Sen. Musila:** Mr. Speaker, Sir, while on that Chair, you are supposed to protect all of us.

I was talking about marginalization in education; right from primary education. As we talk about university education, we must also address issues of primary education and to a certain extent, secondary education because these are the institutions that produce students for the universities. I said that we will dwell, in this Senate, on talking about injustices and appealed to my colleagues to stand up and be counted so that we correct these injustices for the good of this Republic.

The Senator for Migori hinted that he will be bringing a Motion on the establishment of the Level Five hospitals in the counties. I will also be bringing a Motion on the marginalization of counties as far as infrastructure is concerned. Therefore, we

will have many Motions of this nature and I want to appeal to Senators who come from counties that have been favoured to support these Motions. By doing so, they will be living to the expectations of our forefathers who made this Constitution because it was made, to correct the injustices, once and for all. If you want to believe, take a stock of the student population in our public universities in Kenya today. You will, no doubt, find that the students of these institutions come from certain areas. That makes what the Chairman for the Education, Information and Technology Committee has said, that institutions can be anywhere and be of no substance.

I challenge the Chair of the Committee on Education, Information and Technology to ask for statistics of the student population of our public universities and we see how many students we have from the County of Turkana, how many there are from the County of Kitui and how many come from the County of Meru among other areas. Unless we correct this, we will keep on singing the song of equal opportunities in the country.

As the Senator for Migori said, in the current interviews going on, you can clearly see that some counties cannot even produce a candidate for the post of Principal Secretary, yet we claim that our education system is fair and the universities can be anywhere since they are accessible to all communities. I think that is a fallacy. Therefore, I urge, that in supporting this Motion, the Government deliberately starts immediately to establish universities in these counties, particularly counties that have no university close by so that at least, by the end of the five year term, as the Mover of the Motion envisages, we can at least count a number of new universities not concentrated on traditional areas, but concentrated or spread over the country. This way, we would be not only showing that this country has a uniform kind of development, but will also be showing that all Kenyans are equal and have equal access to facilities like education.

So, Mr. Speaker, Sir, I want to conclude by urging that the Government follows this spirit of the Motion, but not only start at universities; let us start at primary education by ensuring that, first and foremost, there are enough teachers to teach those kids in primary schools and then move on to secondary education and make sure that there are enough teachers in secondary schools to teach those students in order to prepare them to access university education. I gave an example of my own county where I know that there are certain secondary schools in Kitui County with Form One to Form Four, but with only one teacher employed by the Teachers Service Commission (TSC).

In contrast, Mr. Speaker, Sir, you would find in other counties which have been favored, teachers are more than necessary, but they cannot be transferred to those other areas, like one hon. Member said earlier that if they are transferred to certain areas like Marsabit, they will think that they are being punished and they would like to go back to their home counties. So, we must really open up; we must take drastic measures – measures which have never been taken in this country before – to correct these developmental injustices which have prevailed in this country for 50 years and we cannot allow these injustices to go beyond the period that they have already taken.

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

**The Senator for Kajiado County** (Sen. Mositet): Thank you, Mr. Speaker, Sir, for your eyes actually to have captured me today. Since I came to this House, many are the times that I have really rose, but maybe because of gender or age, I have not been given a chance.

I just want to take this opportunity to thank the members of my county, which is Kajiado, for electing me as their Senator. I also actually congratulate them for the way they have always lived together within our county, which is purely a cosmopolitan region. We also have an area which is purely a pastoral area. For those of you who do not know how good our county is, talk about this in this country and you will just know that it is Kajiado which you can really happily have a good home and live. For the new Senators, I congratulate you all for finding yourself here. For those who went campaigning, I know the struggle all of us went through. For those who went through the nominations, I also congratulate you; you must have contributed to the party in a bigger way.

Mr. Speaker, Sir, I rise to support the Motion that every county deserves to have a public university. Other than just a university, may I say that universities are quite good in producing managers. I would really still go on to say that for the middle level colleges, I would want to suggest, if possible, every county should have as many middle level colleges as possible. In my county, we do not have any single teacher training college or a medical training college. I think other than the village polytechnics, which are quite few, I can just say literally that we do not have middle level colleges in our county. So, I will not really want to dwell so much on historical injustices, but I would just wish to support this Motion and say that it is good if we really talk about devolution and also devolve education into the counties.

In my county, we have a lot of problems. Water is a major problem in my county. Yesterday I happened to have met the Chief Executive Officer (CEO) who is supposed to take care of my county plus the Board of Directors and managers and I was shocked that they do not even know my county. They just know Kitui, Machakos, Kibwezi, Kajiado Central and part of Ngong. When I told them about Mosiro, Magadi and Ewaso Kedong, I was talking Greek to them, and yet these are officers who are supposed to make sure that they are taking care of the people there. So, I really ask the Government to make sure that those who are supposed to make sure that the services are delivered to the people know the area properly. If they do not know, they should undergo some orientation before they take up their jobs.

On the issue of roads, I think we only have two tarmac roads in my county; the road which actually comes all the way from South Africa through Namanga, Kajiado, Kitengela up to Nairobi. Then the other one is the one which was done so that we can get salt to Nairobi; from Magadi to Nairobi. For those people who live in Kiserian and Ongata Rongai, you know the traffic jam which is there simply because the road is narrow. It was designed to have taken maybe about 30 years. But since it was designed and built, it is now actually supposed to be a dual carriage way. So, I look forward to seeing the road well done.

Because of time, I may not be able to capture so many things about my county. We have a serious investor who has been doing a lot of studies for the last four years in Ngong Hills to make sure that he can give us electricity – about 50 megawatts – at subsidized rates, but some people in this country are frustrating that investor. I am sorry to say that I even applied to be a member of the Energy, Roads and Transportation Committee but I was not allowed. I know the Jubilee Government really wants to make sure that the Kenyan people get energy at subsidized rates and there is a Mr. Kirigwa, who is a Chairman of a board which does not even exist – KFS – he has actually

frustrated the investor, who even had an agreement with the community to do a hospital worth Kshs200 million to make sure that, at least, he supports a number of students who are in colleges, but he cannot go on. Why? When this person was appointed as a director of KFS, I think just a few months ago, he went on to allocate himself a portion of the land the investor had really done a lot of tests to know that, that is the particular area where he is going to put up the wind mills. So, that director of KFS plus Mr. Mbugua of KFS, to me, are just frustrating the efforts of Jubilee Government to implement its manifesto.

On the other side, my members of the County Assembly are really frustrated. I find that, for example, Ewaso Kedong goes all the way up to Suswa, bordering Narok, and then they come all the way up to Ngong Hills. This area is just represented by one member of the County Assembly. That member of the County Assembly must go up to Kajiado, which is about 200 kilometers away where he is supposed to be for three days; from Tuesday to Thursday. His sitting allowance is only Kshs3,000. He will have to sell maybe a goat or a cow to reach there, and then the salary was reduced from Kshs120,000, which was covering a small electoral area, to about Kshs79,000. Currently, the ward covers about three wards. In fact, I support the Members of the County Assembly when they say that the Serem Commission did not do the work they were supposed to have done. I do not think they researched well enough to know the kind of work that the members of the county assemblies do, where they live and the location of the headquarters of the assemblies. Right now, those people who are doing their first term are contemplating to resign simply because of the allowances. I feel, as a Senator, that if we do not protect them, we would really have a problem because we would not actually achieve devolution at the county level.

So, I want to ask this House that, as we speak, let us look at the allowances and salaries and make sure that Members of the County Assemblies are well remunerated and taken well care of.

I beg to support.

**Sen. Karaba:** Thank you very much, Mr. Speaker, Sir, for giving me the chance to contribute on this Motion.

Mr. Speaker, Sir, this is a Motion which should have taken time before being brought to this House. To me, it looks okay, but a bit more ambitious going by the level of development that we are in. There are many people here who challenge areas just because of the way the environment of that area is. But going by history, it is important to state that when we had the discovery of this country, the first person who settled in Kenya preferably settled along the coast, and I have been to some of these schools along the coast, and they are not even to the level of being called schools because they have not been developed enough to match the competition of other schools, as you talk of this area around Nairobi. If you check the reason why some of these schools have not been developed, it has nothing to do with history, because these are the first schools which were started by people like Dr. Krapf himself. Coming to the development of universities, it is very important to note that universities will take a lot of resources. It will, of course, have people who will be enlisted and most of these people will have to come from primary schools all the way to secondary schools, up to the universities.

It is unfortunate to note that most of our primary schools, as it was stated by Sen. Musila, have inadequate facilities. So, for us to imagine that we are going to have universities without even having those primary schools well done and staffed with

sufficient teachers, it is a tall order having universities in every county. We are trying to upgrade secondary schools. Recently, there has been a call that every county or every district must have a model school. To my amazement, today, some of these model schools have not taken off; they are still struggling. Some of them have stalled and these are the ones that will form the catchment basis of the students who otherwise would have joined or can join the same universities that you are talking about.

So, let us first of all criticize the system which does not include students from one area moving to another; that is the quota system of education. This system has disadvantaged most of our students who wish to move from one region to another. So, if we are going to think about a university in every county, then we need to think about the catchment of these students and where they will come from. Going by the fact that some of the counties are disadvantaged and a mean grade of C plus is the qualification for joining universities, do we have enough students generated from the secondary schools in the county? So, for me, it would have been better to think of whether the secondary schools in those counties are equipped or not, whether primary schools have enough teachers and can generate enough students to join secondary schools so that they are translated to the universities. If that does not happen, these will be white elephant projects and at the end, we stand to lose. Therefore, I will advise that before universities are established, we need to think about how many students we are churning out from every primary school to secondary schools and how many students are moving to local universities that are available. By the way, universities can be open and it is possible to imagine that you can become a student without necessarily attending a physical university. Therefore, I am advising the Mover of the Motion, if he thinks this can be passed, to introduce various amendments so that we cannot only have a university in every county but also have quality secondary schools so that the students can move to where we have established universities.

It is good to note that some of these universities are located around Nairobi. We should ask ourselves why. This is historical and we need to find out what happened during those days. I have been a teacher for a long time and I am a strong supporter of good cadres in various schools and these are the standards that we do not have now. So, if we are going to think about universities, which I believe are very expensive to construct, expensive to manage and even very expensive to get the catchment, we need to think about the quality of students who are going to join those universities. To me, mobility of a student is more important than even that university you are talking about. A student can move from North Eastern Province, for example, and come to Nairobi if the infrastructure is good. If the infrastructure is not there and some areas are backwards in terms of bridges and there is no access to universities, then it means that there is something wrong that we should think about before we talk about the establishment of universities. I was thinking that if universities are going to be constructed, we should start from primary schools. Let us improve our primary schools first and if we are comfortable, we go to secondary schools and we move on to universities. It is just a matter of having one university established in a designated area that is important. We have some marginalized areas which have universities. For example, there is “Kibwezi University”, which is run from Nairobi and there is nothing wrong.

*(Loud consultations)*

**The Deputy Speaker** (Sen. Kembi-Gitura): Order, hon. Senators! Could we hold consultations in an orderly manner, please?

**Sen. Karaba:** Mr. Deputy Speaker, Sir, I am trying to impress on the hon. Senators not to be so ambitious. It is important to know that some of us are products of the same universities or the famous Tom Mboya Airlift in 1950s and we are still professionals. So, you can be a professional not because you have studied in your area but you can even go to those universities which are already established and which have well-done opportunity cost. Therefore, I would expect the Mover of the Motion, much as I would support it, to introduce those amendments so that we can contain those students who can even manage to get the minimum requirement of a C plus. If most of the students from those areas cannot get a C plus, how then do they go to those universities that you have established? Some of these things can be done and if it has to happen, then we have to change our requirements for university entry as we establish universities in the marginalized areas.

With those few remarks, I support with amendments.

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. Ong'era!

**Sen. Ongoro:** It is Sen. Ongoro.

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. Ongoro, I apologize.

**Sen. Ongoro:** Mr. Deputy Speaker, Sir, I rise to support this Motion in its entirety. This is a Motion that was supposed to be introduced maybe 40 years ago. I want to state that this Motion is in agreement with the Government policy of decentralization. It is in tandem with Vision 2030 and it supports the spirit of the new Constitution of devolution. We cannot talk of devolution when we want to be so hard on certain core areas like education. I believe that without education, there is no manner of development that can take place in any region, area or county. Indeed, education is the key that opens all areas of development in every sphere of life. It is also true that this injustice, that I call historical, can be traced to the pre-colonial era. When the colonialists came to our country, they had preference of certain geographical areas and to certain climatic conditions that were found only in a few areas. So, areas that were not conducive climatically did not have the opportunity to host these colonialists and by extension, the development they brought with them in terms of hospitals and educational facilities. Unfortunately, subsequent governments only helped to entrench what the colonialists had already established by increasing these facilities in those areas that were already established. These kind of advantages have not been decentralized by successive governments. It is a pity that all Kenyans pay taxes equally and belong to this country, but we have uneven concentration of the key to life. When we vet people to various positions, educational degrees have actually become the very basic requirement for anybody who needs to get any meaningful employment or appointment in this country. So, it is not possible for us to state that we are being over-ambitious not to establish universities in every county because then it means that some counties are going to be locked out of core appointments because their counties will not have that privilege. When you have a university in a county, it is a motivation in itself to all the students and members of that county. So they will put more effort in their education right from nursery school because they can see a university in their county which will motivate them.

Mr. Deputy Speaker, Sir, while we want to correct this historical injustice, which, in my opinion, should have been corrected like yesterday, we should support the counties which have been left behind 50 years after Independence without a single university. We should give them express support in terms of infrastructure development and financial allocation. Remember that as we debate this, we have unique scenarios of urban areas like Nairobi, Mombasa, Kisumu and other urban areas that are cushioning the rest of the nation by taking in so many people. So, a place like Nairobi is a unique situation, so even with 20 universities it might not be enough. So, let us exclude these urban centres while we are debating this critical Motion. We should think of regions like Kilifi County, Migori County or Siaya County and all the counties that have suffered historical injustice BY producing very bright students but who are not able to proceed to university due to poverty and lack of proximity to such institutions. The Government has not seen the need over the years in their budgetary allocation or educational policy to establish the educational facilities in those areas.

I support this Motion, and I hope my fellow Senators are going to see the need to do the same. I support.

**Sen. G.G. Kariuki:** Mr. Deputy Speaker, Sir, first of all, I need to congratulate my friend, Sen. (Dr.) Khalwale, for being the first Senator to introduce a Motion in this House. All of us should follow the queue so that the public can know that we are here for a purpose.

Having said that, I think we should not spend a lot of time talking about the past. We have been given the authority by the people of this country to do what we think has not been done before. We should not then appear as if we have discovered that some people have been left behind forever. It is not a discovery. Everybody knows that. My tribe is Kikuyu and I come from Laikipia. My friend, Sen. Musila might think that I am doing so well just because of that name but I think time has come when we have to forget our petty wars or simply making statements for the public to hear. We are not here to serve public ears but to do a job and to deliver services to the public and not just to talk to them and tell them what we are doing by showing that we are talking strongly against those who have marginalized them. That is not an issue any more. If you look at our new Constitution that we have today, there is an Equalization Fund but we are speaking as if something has not changed. A lot has changed and it is upon us to take over that situation and make sure that nobody is left behind in this country. Talking about the past will just be playing to the gallery.

Mr. Deputy Speaker, Sir, in my view, we should make sure that a very important Motion like this one is passed and implemented. Having been a Member of Parliament for quite some time, I think somebody should come with an amendment to our Standing Orders to give us additional power to investigate and to make sure somebody implements what is passed here. Let us not be like the Lower House which has passed numerous motions, but none has been implemented. In fact, they have done so much, but if you follow to find out what has been implemented, you will be shocked because there is nothing.

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

**Sen. G.G. Kariuki:** Yes!

**Sen. Musila:** Mr. Deputy Speaker, Sir, I thank my colleague Sen. G.G. Kariuki for allowing me to inform him. I want to inform him that there is a Committee on

Implementation which should be following the implementation of the Motions we pass in this Senate. I understand he is a Member of that Committee.

*(Laughter)*

**Sen. G.G. Kariuki:** Mr. Deputy Speaker, Sir, I think I know better. The honorable friend thinks that I do not know. I came to Parliament before him and I know what I am talking about.

*(Laughter)*

You can have 101 Motions in the Committee, but you will be talking to “stones” that will never agree with whatever you want to say. Here we have the power to pass Motions, but do we have the money to implement? Do we have the power to take somebody to task that this thing has not been done or implemented? These are the powers we need. We want to make sure that we are well armed, so that if a Motion has been passed here, it must be implemented within a specified period. If there was a way, we should have started as the Senate to give the Ministry of Education a timeframe within which this Motion should be implemented. In my view, I think that would be a very important thing to do.

Mr. Deputy Speaker, Sir, we could flood universities all over the place, but there is something more important than that. Are we capable of paying for university education? Unless we decide on how to get our young people to the university, there are a lot of other things that are needed to be fulfilled by a child before they join university.

The cost of university education nowadays is very high and we know it very well. There is one thing that has been omitted in the Motion, that students from the so-called marginalized areas shall be given free university facilities. If we do so, we shall appear to be doing something. But just to have a university in every county is not enough. You will find that all the students from Kitui County will join a university in Turkana County because the Turkana people cannot afford the cost of educating their children in that institution. You will also find students from the former Coast Province joining Laikipia University because we cannot afford the cost and so on. At the end of the day, there would be no need for that kind of a university. I, therefore, think we need to understand that there is a lot involved in this matter.

I beg to support my friend’s Motion. I ask him to go ahead and I wish him good luck. God bless you.

**Sen. Bule:** Thank you very much, Mr. Deputy Speaker, Sir. I rise to support the Motion. I belong to the pastoral community which has lagged behind in all aspects of life because the education system in Kenya did not favour them. About 95 per cent of the people in Tana River are pastoralists. They have lagged behind in all aspects of life due to illiteracy. There is need to share all aspects of development equally, including schools and universities.

I support the Motion because it would favour us. We have been suffering for long.

**Sen. Elachi:** Thank you, Mr. Deputy Speaker, Sir. I beg to support the Motion because education is the key to bridging the gap between the rich and the poor. At the time of Independence, most children from the poor families had not accessed education.



As we talk about education, we need to look at it in a holistic manner. First of all, we should look at it through a gender lens so that we encourage both boys and girls to enroll in schools. We must ensure that they join universities once they complete their secondary education. Currently, many girls drop out of schools due to many reasons.

Mr. Deputy Speaker, Sir, we are now in a new dispensation. I want to thank the former President, His Excellency hon. Mwai Kibaki for upgrading many colleges to university status. We have many universities spread all over the country. I would also like to thank former President Moi for starting many girl's schools. However, most of our universities are not well equipped in terms of infrastructure. We need to improve on the infrastructure so that our students get quality education.

Today when students in private universities fail to pay fees in full, they are forced to pay a penalty when paying in installments. So, I think it is very important to have a university in every county. At the same time, we need to have proper infrastructure in place. We also need to do a feasibility study to see whether a university in Mandera County, for example, will attract students. There was a time we were debating whether the University of Nairobi should be relocated from Nairobi to Mandera or somewhere out of the City. That was a good idea. But today we find that all the private universities are located in this City and other major towns. This is because of physical infrastructure in those towns. So, as much as we support this Motion, we must make sure that we have proper infrastructure in place. We also need to encourage students in secondary schools to work hard and join universities.

I would urge our universities to focus more on science and technology because the United States of America and other countries intend to change their Immigration Acts to attract people with skills in technology. So, I think as we advocate for more universities, we need to advocate for universities that will deal with science and technology.

I beg to support the Motion.

**Sen. (Dr.) Zani:** Thank you, Mr. Deputy Speaker, Sir, forgiving me the opportunity to contribute to this very important Motion. Education is a good that every Kenyan seeks right from the beginning to the end. It is the one that will make a difference in terms of social and economic mobility. In this society, you will find the poorest peasant farmer selling his piece of land to take his child to school. That is why we find parents struggling to take their children to public and private institutions to ensure that they get the best quality of education.

The classification of schools is very critical in the Kenyan context because the type of school you enroll your child in will determine the kind of education he will get. We have national, provincial and district schools. Parents struggle to get their children the best schools because they will be assured of joining universities. Therefore, as much as we say that we have moved away from the historical injustices, they form the basis for that particular classification.

Mr. Deputy Speaker, Sir, we all know that the best 18 national schools in this country are concentrated in Kiambu and Uasin Gishu counties. This was for a very long time until the 16 secondary schools were upgraded to national level status. There was not a single national school in the coast, eastern, western and the north eastern region.

**An hon. Senator:** Shame!

**Sen. (Dr.) Zani:** About two per cent of the University of Nairobi student population was from those schools. So, you can imagine how many of these students will make it into the university with that sort of transition rate. So, the reasoning and the importance of this classification has to be put into place. Therefore, the basis of that marginalization is felt from the word “go”.

Mr. Deputy Speaker, Sir, the coast region has consistently been second from the bottom in sending both boys and girls to the universities. I am looking at the figures of public universities rather than private universities because that has changed over time. For a long time, it has been impossible for a child who has grown up in the coast region to join a public university. Maybe it is because there have not been enough role models, especially across the gender divide. Therefore, the socio-cultural issues cannot be underplayed. The reason everybody struggles to get into a national school is because of availability of facilities. In fact, for a long time, once your child is able to get a place in the national school, you knew from the word go that he will join university. He will enjoy good facilities and be guided by very qualified teachers. They are able to do research and have access to the laboratories. That is why the competition for places in national schools is so high.

If you look at schools at the Coast Province, for example, Shimo la Tewa and Star of the Sea, they would have been upgraded to national level status long time ago. It took time for the Government to upgrade them. We expected them to have produced many students to join public universities.

Mr. Deputy Speaker, Sir, as we think about devolving the public universities, it is critical that we devolve even the content of the public universities at the county level. As the transition and devolution has been taking place, most of the public schools have already had some sort of devolution in place in terms of courses offered at the county level. In fact, most of the public universities that have devolved at the county level are now offering the Module II Programme. The Module II Programme is an economy programme where people pay for their university education. The issue of sustaining this programme is very critical. So, even as we debate this Motion, it is important to state that when public universities devolve, they should devolve fully, so that we have courses in the social sciences, sciences and technology, devolved at county level. Of course, that has a cost implication as well. We do not expect people from marginalized areas to pay the high cost of education. Therefore, it is not enough to devolve universities at the county level and not ensure that people have the capability to join those institutions.

The historical path interjectory also indicates that over time if there has been poor performance, it becomes very difficult for students in given areas to attain grade C-plus. Therefore, if students do not attain grade C-plus, they cannot join public universities. It is important also that we think about other programmes that will help somebody move from a grade C-plus to a better grade. This can be done through bridging programmes so that students from those areas get better grades and join those universities.

There are various branches of different universities in Mombasa County, but a big proportion of students who have joined those universities are not from that region. I am not saying that they should not join those universities because they need to attract students from all counties, but it is important to have many students from that region in those institutions. We need to have a university in Mombasa County offering courses in marine studies. A university in Kwale County can offer courses in tourism and so on.

However, the whole idea of affirmative action is to ensure that, at least, a certain proportion of the indigenous people of those specific counties receive the right university education required.

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

**Sen. (Dr.) Zani:** I beg to support.

**Sen. Kajwang:** Mr. Deputy Speaker, Sir, first of all, I would like to pay tribute to the previous speaker because of the content and the emphasis she gave to the right places.

Kenya is one of the most unequal countries in the world. In fact, we are ranked third after South Africa and Brazil. In South Africa, you can understand why. This is because of apartheid. You can also understand why it is so in Brazil. This is because of the Red Indians. However, I have not quite understood why it is so in Kenya; the most unequal country in the world. It is not a joke that the new Constitution was campaigned for and promulgated. In fact, what Kenyans were doing was avoiding a revolution. If we continued being an unequal society, then the poor of the poor who have nothing to lose would have destroyed the rich. That is what has brought revolutions the world all over. This country was wiser to say: "Instead of having a very disruptive revolution, we manage the revolution." That is how we came about with this Constitution. That is how we packaged it into something called devolution.

The country is watching this House to see how it will deal with the injustices that were almost at the brink of bringing a revolution. If they watch us for five years and they do not see anything happening, we will go back to where we were. Some of us have been privileged to be in this House. I have been privileged to go to school. I am also privileged to eat three meals a day. We do not want to lose that privilege. However, we will lose it if we do not sort out the social injustice in this country. Let us not pretend that when we say that we are against this community or this tribe---

I come from a place called Suba where nobody has appeared in the lists for the interviews you are talking about because they do not add up. This is not because they are stupid. Some of them who got opportunities like Otieno Kajwang are sharp like a razor.

*(Laughter)*

However, marginalization has been structural and deliberate.

When I came to Parliament for the first time, 15 years ago, I told the Speaker then that my constituency did not have a metre of tarmac road. I also told him that my constituency did not have a metre of piped water. It did have a national school which my sister has just talked about. They laughed at me. Now, at least, I can say that we have some electricity, water and tarmac road. Many people do not have a Member of Parliament to mourn about these things. I heard my sister, the other Senator; say that she only saw tarmac when she came to the University of Nairobi for the first time. When you are taught about tarmac in high school, you just imagine how it is.

Students in Mfangano Island in my Constituency saw a vehicle for the first time when we got a ferry to take the first vehicle to Mfangano Island. Some people told me; you mean, hon. Kajwang, that there are some people in this country who have not seen a vehicle? I told them that there were also many people in this country who had not seen a boat. In that part of the country, the vehicle used is a boat. At least now they have a road, ferry and vehicles. This was deliberate marginalization. That is what I am talking about.

I saw the Permanent Secretary for Education, refreshingly, in Garissa launching a public college which will eventually graduate into a university. He said that it is Government policy to build a university in every county. So, the idea that if they are built in the 47 counties they will turn out to be white elephants or that there will be no students to go there because our people are very poor to take students there, is not true. Most of us did not go to university using our own money. We did not have our own money to go to university. We borrowed from the Higher Education Loans Board (HELB). I think we should give it more funds so that it can loan more students to join universities in this country.

We are ambitious. Of course, we have to be ambitious. You can go nowhere without ambition, not even to the Senate. So, we will be ambitious and invest. For example, the Ramogi Institute of Advanced Technology (RIAT) was born out of a deliberate effort by the people of that region. They had ambition to build the first *Harambee* School of technology. The Kimathi Institute of Science and Technology (KIST), Kiambu Institute of Science and Technology (KIST), the Rift Valley and Coast institutions of technology came after it. However, all those are now universities, except RIAT. This is deliberate marginalization which is structural.

In the Tenth Parliament, the Member for Juja Constituency who has since been voted out, boasted after we had gone with the President to Ruiru that he was the only Member in the country whose constituency has five universities. He thought that he was amusing me, but this was very painful to me. This was very painful, but it is the truth. There is Mount Kenya University, Kenyatta University (KU), and Jomo Kenyatta University of Technology (JKUAT), United States International University (USIU) and the “Kiambu University.” That is all in one constituency.

However, in my county, there is no college or university, yet we are very sharp people because we eat fish. Let me say the last thing. The private universities you are talking about, which could be as many as you wish, are businesses. We want public universities which are funded using public funds where we have access using public resources and where people can talk about equality. In fact, if you do not know the business of this House, I will tell you. The business of this House is to address the inequalities and injustices. If you think that is not our job in this House, then you are in the wrong place. That is the job of the Senate. We will do what we must do to bridge that gap. It is not decent to talk about Kenya as the most unequal country in the world after Brazil and South Africa.

South Africa and Brazil are definitely doing something about it. Kenya must do something about it through this devolution. I love my brother who said that another Motion on Level Five Hospitals is coming. These are teaching and referral hospitals. We must have hospitals which teach nursing and other courses, including training medical doctors in every county. That is the way to go. Another one that we will bring is for polytechnics to be set up in every county. When I talk about polytechnics, I am talking about what the University of Nairobi used to be or what Mombasa Polytechnic used to be. These have all been taken over by universities. I hope that we will put money into building polytechnics in every county. That way, we will have skilled labour and educated people all over the country and not in one area. It is dangerous for you, if you think it is good, to be too rich in a sea of poverty.

I support.

**Sen. Mohamud:** Thank you, Mr. Deputy Speaker, Sir. I would like to take this opportunity to support this Motion. I believe that education is the backbone of every aspect of life. For everything to succeed, be it development or any other, there must be quality education. Having universities or qualified institutions in every county will make students who have been marginalized to feel they are part of Kenya. It will also help parents in various counties to appreciate various aspects of education. For example, when I completed my high school education, I applied for a course in Business Administration and Commerce (B-Com). When my father asked me what I had applied for, I told him that this was a B-Com course. He told me to explain to him what this was all about.

The knowledge I got from my business class made me know that commerce meant the ability to trade. I, therefore, explained to him in our mother tongue and he told me that he could also do it. That meant that the only course they appreciated was teaching, medicine and training to become a soldier. Those are the only things that they knew. So, having various universities or institutional organizations will help parents to know the various courses offered. Also, having universities in various counties will reduce travelling costs encountered by students. This will also help their accommodation costs. When one is far from his county, he is supposed to pay for accommodation by hiring a house or a hostel. So, having various universities in counties will reduce that cost. This will also help the learning of the student. By this, I mean that if you have a university in a place like Wajir County, this will help improve the quality of education for those who are in secondary schools. The students in secondary schools will feel encouraged if they see university students around them. This will help them imitate what the university students are doing. This will improve the quality of education at the county level. This will also improve the accessibility to education. For example, the working class people in Wajir should not travel to Nairobi to attend university.

With those few remarks, I beg to support.

**Sen. Haji:** Bw. Naibu Spika, ningependa kukushukuru kwa kunipa nafasi hii ili kuchangia Hoja iliyo mbele yetu. Kwanza, ningependa kuiunga mkono.

Bw. Naibu Spika, Hoja hii ni nzuri kwa sababu imekuja wakati unaofaa. Huu ni wakati wa kuthibiti kaunti zetu. Wakati kama huu kuna haja ya kuboresha mambo ya kielimu katika kaunti zetu. Ikiwa ni hivyo, kile tunataka sisi ni tuwe watu wa kwanza kufaidika na mbinu za kuweza kuleta vyuo vikuu karibu na watu ili iwe ni rahisi kwa watoto kuweza kusomea katika vyuo vikuu. Tunataka kuwapa nafasi wale walioko katika shule za upili kuiga mfano wa wale ambao watakuwa wakisoma katika vyuo vikuu hivyo ili kuweza kufanya bidii na kuwa na tamaa ya kujiunga na vyuo vikuu kule mashinani.

Jambo hili litasaidia katika kuimarisha uchumi wa sehemu ambazo vyuo vikuu vitakuwa. Yule atakayekuwa na mbuzi wake ataweza kuuza, mwenye mboga zake ataweza kuuza kwa sababu kutakuwa na wanafunzi na wahadhiri wengi ambao watakuza uchumi wa sehemu hiyo.

Bw. Naibu Spika, kama vile wengi walivyosema, si makosa ya watu wa sehemu fulani kwamba sehemu yao imebaki nyuma kimaendeleo. Ni vizuri tujifahamishe na historia ya nchi hii. Kutoka wakati wa ukoloni, kulikuwa na mipango, ikianza na ya reli iliyowekwa kuanzia Mombasa hadi Kisumu na Laikipia, sehemu ambao Wazungu walikua wakikaa. Kwa hivyo, ilivutia wafanyakazi wengi, hasa kutoka mikoa ya Magharibi na Nyanza, ambao walikua wakifanya kaza aidha kama wapagazi ama kwa Wazungu. Kwa hivyo, kulikuwa na nafasi ya watu kuweza kusoma wakati huo. Lakini

sisi watu wa Kaskazini Mashariki, hasa ile sehemu iliyojulikana kama “*Northern Frontier District*” (NFD) – ambayo ilijumlisha sehemu za Lodwar, Samburu, Isiolo, Garissa, Wajir, Mandera, Moyale na Marsabit – ilibaki nyuma kimaendeleo. Shule ya kwanza iliyoanzishwa na Serikali ya ukoloni ilianzishwa 1948 kule Isiolo. Baada ya hio, ikahama ikaenda Garissa katika mwaka wa 1949 na mwisho ikapelekwa Wajir. Na watoto hawa katika hizi wilaya zote, walikua wakienda Wajir kupata masomo ya shule ya upili. Sehemu zingine za nchi, wamishenari ndio walianzisha elimu – hata si Serikali ya Ukoloni. Wale ambao walikua katika dini ya Ukristo walikuwa na nafasi nzuri ya kuweza kusoma katika shule hizo.

Isitoshe, Bw. Naibu Spika, hii *Sessional Paper No.10* ilitengezwa na afisa wa upangaji wakati Waziri wa Mipango alikuwa Tom Mboya. Tom Mboya alitoka wapi? Yeye alitoka Mkoa wa Nyanza. Yeye alipanga kuwa nyanda za juu za Kenya ndio zitafanyiwa maendeleo zaidi kuliko zile sehemu ambazo zilisemekana sio *productive* kwa Kizungu; yaani hazizalishi kitu chochote ambacho kinaweza kusaidia uchumi wa nchi hii. Isitoshe, tuchukue kalamu na karatasi tuangalie Wizara ya Elimu ilikua inaongozwa na nani. Seneti hii inatakikana iwaunganishe Wakenya wote kutoka sehemu zote za nchi. Na kama kuna shida, tuizungumzie pahali ilipo bila ya sisi kuzungumza juu ya sehemu fulani ambayo inalenga kabila fulani. Hiyo haitakua vizuri kwa sisi. Ni lazima tuwe na mfano mzuri kwa wananchi wote wa Kenya. Sisi tunataka kuwaunganisha Wakenya wote ila si kuwatenga wengine kama mjadala huu unavyowalenga watu kutoka Mlima Kenya na kwingineko. Mimi sitoki Mlima Kenya, lakini ukweli lazima usemwe; watu wa sehemu hii wana bidii sana. Hawa watu wa Mlima Kenya wanaonewa kwa sababu wako na bidii na wanafanya kazi zao kwa bidii---

(*Loud consultations*)

Chama cha Kenya Peoples Party kilianzishwa na Mzee Oginga Odinga nilipokuwa Mkuu wa Wilaya ya Bondo. Kuna maneno ya Kijaluo aliyokuwa akiyatumia kila mara. Alikuwa akisema *Cham gi wadu* akimaanisha “kula na wenzako”. Tom Mboya akaja akasema “*Cham luchi*” kumaanisha “kula jasho lako.” Kwa hivyo, watu wasilalamike. Wale jasho yao, wafanye bidii, wasome na washindane na watu wengine kutoka sehemu mbalimbali za nchi.

Kwa hayo machache, naomba kuunga mkono Hoja hii.

**Sen. Murungi:** Mr. Deputy Speaker, Sir, thank you for giving me an opportunity to contribute to this very important Motion. I also want to thank my good friend, the bull fighter, Sen. (Dr.) Khalwale, for being the very first Senator to bring a Motion to this Senate. A Motion on a very important subject, that is education.

Mr. Deputy Speaker, Sir, I am supporting the Motion on principle. Education is no longer a privilege to be enjoyed by a few rich and powerful people. Education is a basic human right to be enjoyed by all Kenyans irrespective of their economic, social or political status.

Mr. Deputy Speaker, Sir, the core business of this Senate is to make sure that all the counties in this country are developed; it is to ensure that we correct the historical injustices and ensure that there is even distribution of development in all the counties. I think that is the spirit in which this Motion is brought. It is in that spirit that we are supporting this Motion.

Mr. Deputy Speaker, Sir, I do not want to go into history, but it is obvious that there have been both historical and geographical disparities in the distribution of institutions of higher education in this country. There have been glaring disparities in the concentration of universities and the top schools; mostly following the so-called white highlands.

But, Mr. Deputy Speaker, Sir, I think my friend, Dr. Khalwale, seems to be having misconceived ideas about an area called Mt. Kenya region. There is no such a region in any map of this country. Mt. Kenya is a mountain, just like Mt. Elgon. Even these regions we are talking about – Western, Nyanza and Coast provinces have all been abolished by the Constitution. We should now be talking about counties. Talk about Bungoma County, Kakamega County, Turkana County, Meru County, Laikipia County, Nyandarua County, *et cetera*. That way, we can understand each other.

Mr. Deputy Speaker, Sir, if we unpack that broad, vague formula called Mt. Kenya, you could find out how many public universities are there in Kirinyaga County; for instance, you will find there is none. As I speak, if you go to Embu County, how many public universities are there? It is only this last weekend that Sen. Kivuti went there to organize their people, so that they can open the first university in Embu County. As for Nairobi County, of course, everybody is in Nairobi. There are more Luhyas in Nairobi than in Meru, so you cannot complain about Nairobi. Nairobi *ni yetu sisi sote*. So, the University of Nairobi is for all Kenyans; it is our university. You cannot say that it belongs to any particular ethnic group. It is very far from any mountain.

*(Laughter)*

So, Mr. Deputy Speaker, Sir, let us not mislead Kenyans and try to heap blame. Let us blame victims who need universities just like those others. We are aware there is Masinde Muliro University, where the Mover of this Motion comes from. He should be thanking President Kibaki day and night because he is the Chancellor of Masinde Muliro University. The former President is not a chancellor of any other university; he is only a Chancellor of Masinde Muliro University. The senator should ask why he is so lucky that it is only the university in Kakamega County where the former President is a chancellor and not a chancellor of any other university.

Mr. Deputy Speaker, Sir, I think the approach we should take is really to move on. What do we do as the Senate to make sure that we correct the historical injustices? What do we do as a Senate to make sure that university education is spread in all the counties of this country? What do we do as a Senate to make sure that, given where we have started, we have done affirmative action so that those who are behind catch up with the rest? I think this is the language we should be talking as a Senate.

Mr. Deputy Speaker, Sir, the Motion is appealing to the national Government to establish, at least, one university in every county. I support this Motion because under the Constitution, it is the core business of the national Government to deal with issues of higher education. But we have been in Government; even the Mover was an Assistant Minister and he knows what competition there is for national resources. We will try our best to get as much resources from the national Government to all the counties as we can. But I think we can do more. We can pass a law here in the Senate which makes it mandatory for all the county governments, in their budgets, to include the establishment

of one university in their county. So, if there is another one coming from the national Government, that is well and good. We should make it mandatory for the county governments to establish universities in their counties. Since the Senate has oversight functions, I think we can go round and see whether they are doing it or not. In my own county, I have one public university established about two years ago; that is the Meru University of Science and Technology, just like Masinde Muliro University of Science and Technology. We have done more because we have three universities now. We have Mt. Kenya University and Nazarene University.

In addition to the resources from the national Government and the county governments, we should also be able to mobilize people and create the right conditions for the private sector to invest in the expansion of university opportunities across the country. Our main concern about this proliferation of universities is the quality and the relevance of what is being taught in those universities. We might invest so many resources to produce unemployable graduates. I was talking to one Minister from a neighbouring country, the Minister for Disaster Management. He was telling me that the greatest disasters that we are likely to face in East Africa are not natural disasters, but social disasters. When you walk around Nairobi, you will see many people coming from universities at night, but if you ask them what they are doing you will find that most of them are doing MBAs. What are you going to do with hundreds and hundreds of MBAs? They are going to learn good English and Strategic Planning, but what are they going to be planning in future? They will be planning demonstrations in the streets. They will be planning how to make sure that the country is ungovernable. So, I think it is important that we find out what this country really need. There is no point of teaching architecture as a separate subject, quantity surveyors as a different subject and construction as another. We should be able to produce one degree where you have one person who can design and do basic building. The local builder does all these things alone. We should improve those skills so that we have one professional who can build a house from the beginning to the end. That way, we shall be using our resources well. We need to encourage more people to study engineering in this country. We need to push more of our students to study medicine, clinical sciences and nursing.

Mr. Deputy Speaker, Sir, investing so much in history and other subjects is not going to help us to move this country forward. I think the Government should offer special scholarships to encourage students, especially in those marginalized areas to study medicine, engineering and other courses which are going to benefit and uplift those marginalized areas.

With those few remarks, I beg to support.

**Sen. (Dr.) Kuti:** Mr. Deputy Speaker, Sir, I beg to move the following amendment to this Motion in line with Standing Order No.52.

THAT, the words “and middle level technical college” be inserted immediately after the word “university” or “universities,” respectively wherever they appear in the text of the Motion.

Mr. Deputy Speaker, Sir, while we all appreciate the importance of universities, middle level technical colleges are actually the reason our progress towards industrialization is slowed. It is also for the same reason that most of the roads constructed by our local engineers, due to lack of high quality clerks of works or middle level technicians that they break apart to the extent that we invite these Chinese to build



our roads. It is for the same reason that we are not making our own vehicles or making our own computers. Industrialization is lagging behind because the critical mass of personnel with technical know-how other than at the university level are lacking in this country. To the detriment of what I have just said, the middle level universities are now being swallowed because they are being converted to universities. Even in the regions that have been endowed, most of those technical colleges are now universities. I would like to move so that the whole amendment reads as follows:-

THAT aware that during the first years after Independence the best public schools were established in certain regions of Kenya to the exclusion of other regions resulting in such regions having undue advantage in producing educated manpower; appreciating that the introduction of the devolved system of government in the Constitution of Kenya 2010 was aimed at achieving equalization of development and other opportunities including education across the country, noting that the Government has lately embarked on establishing more public universities and middle level technical colleges in the country; concerned that the majority of public universities and middle level colleges are currently concentrated in a few regions of the country to the exclusion of the rest of the country, the Senate urges the Government to take urgent and immediate steps to ensure that there is equitable distribution of universities and middle level colleges in the country and to ensure that at least one public university and a middle level college is established in every county in Kenya before the expiry of the terms of the current Government.

Mr. Deputy Speaker, Sir, I beg to move and ask Sen. Hassan Omar to second.

**Sen. Hassan:** Mr. Deputy Speaker, Sir, I come here to second the Motion and the amendment to the Motion on the basis that we all realize that education plays the most critical role in terms of our development agenda. In fact, during the civil rights movement of the United States of America (USA), many believed that equality can be best be promoted through education. For me, I do not think it is just about the physical structure called the university as alluded to by some of our colleagues, hon. Senators. I do believe that the university and the middle level colleges will act as fodder for development.

If you look at many countries which are developed, there is a certain college in that county or city. So, the university or middle level college acts as the engine for growth. It is the support given that leads the university to grow and make the area into an urbanized area. This is the kind of manpower that we will need to ensure that our country and devolved structures are sufficiently capacitated by the right technical expertise and the right professionals who will equip us with the right formula and human resource that will drive the engine of devolution.

Therefore, university education will no longer be termed as a privilege. In fact, all over the country today, the basic minimum requirement for many positions is the university degree. Even the Senate was once taunted to set a basic minimum of a university degree. If you look at the reasons advanced by the Salaries and Remuneration Commission (SRC), is that the Senators and the Members of the National Assembly do not hold a minimum of university degree or any particular qualification. Therefore, they do not hold merit or any particular consideration in terms of professionalism. Education has grown into a right; education is a right. I know that Mombasa is not taken to be marginalized. But for all intents and purposes, the local communities in Mombasa have

been marginalized. That is why we see the kind of social discomfort that has led to some youths organizing or mobilizing around certain themes like marginalization and exclusion.

So, these universities and tertiary institutions or technical colleges that are set up in the counties must have a deliberate quota that tends to satisfy the needs of that locality. There must be programmes of affirmative action even if the standards of education do not grow at the same momentum, but there can be certain bridging courses that can be instituted to facilitate admission to these universities. It would defeat the purpose to have a university in Mandera, Garissa or any other part of the country, but the local communities are unable to gain admission. Therefore, there must be a proviso in the law that allows the local community to have a certain quota that is guaranteed through scholarships and financing of the central government and county governments to ensure that everybody receives quality education that can satisfy the goal of devolution.

Mr. Deputy Speaker, Sir, I rose to second this Motion because I know the critical and central nature of education. Many of us remain marginalized because of the lack of quality education. We can only remove our counties from marginalization through quality education at all levels from primary school to university level.

I beg to second both the Motion and the amendment.

**The Deputy Speaker** (Sen. Kembi-Gitura): Order, hon. Senators! I am proceeding under Standing Order No.53(2) and I want to propose the Question.

*(Question of the amendment proposed)*

**Sen. (Eng.) Muriuki:** Mr. Deputy Speaker, Sir, thank you for giving me the opportunity to support that amendment. I do support the main Motion of establishing a university in every county. However, if you see the trend in our country in the last five or ten years, there has been a move, I do not know whether it is by the Government or all of us, to actually kill the technical colleges. When you look at what used to be Kenya Polytechnic, it is now a university. What used to be called Mombasa Polytechnic is gone. We had colleges of science and technology in Murang'a, Kiambu, Western and so on, but they are now gone. When you look at it, the net effect of killing these middle level technical colleges is that the professionals, for example, in engineering, it is becoming easier to get a graduate in engineering than to get a holder of a diploma or a higher national diploma. Yet these are people who do the actual work in construction and design. These people are slowly getting finished in our country. The reason we shall continue looking for technicians from China is because we seem to have missed the point. Everyone is now going for a degree, but when you go to other countries like in the United Kingdom which we are supposed to copy from, they still value their diplomas and higher national diplomas. They still have programmes of people who did their diplomas moving to the higher national diploma and then degrees after years of technical experience in the industry. What we are doing in our country is that we are killing the support technology which is supposed to work hand in hand with the so called professionals at the top.

If you look at the quality of degrees that we have now, I only have an ordinary degree that is Bachelor of Science (BSc). But when I talk to people who did BSc and went ahead to MBA and we talk about engineering in terms of improving our production,

with all due respect to everybody concerned, very often you will find that you are not getting the difference. That person who did MBA---

**The Deputy Speaker** (Sen. Kembi-Gitura): As you are aware, this Motion is supposed to go for three hours, but we have an amendment in place. Again, as you are aware we have to vote on the amendment first before we conclude the main Motion. So, I am constrained by time and I have to put the Question.

Hon. Senators, as you recall at the commencement of this debate the Speaker made a ruling that this is a Motion that affects counties. In that case, the voting will be by delegations and there will have to be a roll call. So, at this time on this Motion, I order that the Division Bell be rung so that we can take a roll call on the voting of the amendment to the Motion.

*(The Division Bell was rung)*

**Sen. Wetangula:** On a point of order, Mr. Deputy Speaker, Sir. This is just a question of procedure. Do I understand that we are proceeding to vote on the Motion before the Mover has been called upon to reply?

**Hon. Senators:** On the amendment.

**The Deputy Speaker** (Sen. Kembi-Gitura): Right now we are only dealing with the amendment.

**Sen. Wetangula:** Okay. Sorry, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. Kembi-Gitura): Ring the Division Bell!

*(The Division Bell was rung)*

**The Deputy Speaker** (Sen. Kembi-Gitura): Order, hon. Senators! The Division Bell has been rung. I now direct that the doors to the Chamber be locked and the Bars drawn. If we do not have Bars, then the door should be locked. The tellers are Sen. Hassan for the CORD Coalition and Sen. Sang for the Jubilee Coalition. Please, take your positions.

## DIVISION

### ROLL CALL VOTING

*(Question of the amendment put and the Senate proceeded to vote by County Delegations)*

Now I direct the Clerk to call out the names of Senators in alphabetical order in the presence of the tellers and when called out, each Senator shall rise in his or her place and declare assent or dissent to the Question in the following manner: I vote "yes" or I vote "no" or I abstain. In the voting, since you are going to be called by delegations, you must keep in your mind the ruling that was made earlier by the Speaker on who is eligible to vote if the head of delegation is not present in the Chamber. For that purpose, if you are not the head of delegation, you only vote if the head of delegation has designated you in writing and deposited that designation with the Speaker as the person who is going to

vote for that delegation after you have consulted amongst yourselves, if you are more than one in that specific delegation.

Now the voting can proceed.

**Sen. Khalwale:** On a point of order, Mr. Deputy Speaker, Sir. This Senate is now building its own practice and traditions. You just said that you have named tellers for the Jubilee Coalition and for the CORD Coalition. Probably, you want to think about this. Some of us think that you are referring to the tellers for the Majority and the tellers for the Minority. Traditionally, in Parliament, we do not vote using parties.

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. (Dr.) Khalwale, however you look at it, the end will be the same. We have two tellers. Whatever you call them, they are the ones who will conduct the voting. I understand and hear you and, perhaps, in the future, we will look at it differently.

*(Hon. Senators proceeded to vote)*

**AYES:** Sen. Kerrow, Mandera County; Sen. Boy, Kwale County; Sen. Bule, Tana River County; Sen. Chiaba, Lamu County; Sen. Kembi-Getura, Murang'a County; Sen. Haji, Garissa County; Sen. Harguara, Marsabit County; Sen. Abdirhman, Wajir County; Sen. Omar, Mombasa County; Sen. Kajwang, Homa Bay County; Sen. Karaba, Kirinyaga County; Sen. G. G. Kariuki, Laikipia County; Sen. Keter, Kericho County; Sen. (Dr.) Khalwale, Kakamega County---

**Sen. (Dr.) Khalwale:** Mr. Speaker, Sir, I consulted Sen. Kanainza and she asked me to vote yes.

*(Hon. Senators proceeded with voting)*

Sen. Khaniri, Vihiga County.

**The Clerk of the Senate** (Mr. Nyegenye): You will take note that the next would have been Makueni County. So, I will move on to Kiambu County.

Sen. Wamatangi, Kiambu County; Sen. (Prof.) Kindiki, Tharaka Nithi County; Sen. Mbuvi, Nairobi County; Sen. Kivuti, Embu County; Sen. Munyes, Turkana County; Sen. Dr. Kuti Isiolo County; Sen. Lesang, Bomet County; Sen. Leshore, Samburu County; Lonyangapuo, West Pokot County; Sen. Dr. Machage, Migori County; Sen. Madzayo, Kilifi County; Sen. Melly, Uasin Gishu County; Sen. Moi, Baringo County; Sen. Mositet, Kajiado County; Sen. Mungai, Nakuru County; Sen. Muriuki, Nyandarua County; Sen. Murkomen, Elgeyo Marakwet; Sen. Murungi, Meru County; Sen. Musila, Kitui County; Sen. Kagwe, Nyeri County; Sen. Muthama, Machakos County; Sen. Mwakulegwa, Taita Taveta County; Sen. Ndiema, Trans Nzoia County; Sen. Ntutu, Narok County; Sen. (Prof) Anyang'-Nyong'o, Kisumu County; Sen. Obure, Kisii County; Sen. Okongo, Nyamira County; Sen. Orenge, Siaya County; Sen. Sang, Nandi County; Sen. Wako, Busia County; and, Sen. Wetangula, Bungoma County---

**Sen. G.G. Kariuki:** On a point of order, Mr. Deputy Speaker, Sir. There are some Senators who are not with us here and yet they supported the Motion. How will you handle this?

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. G.G. Kariuki, you have been in this House for a very long time. If a Member is not present so as to vote, you cannot give the power of an attorney to vote. The best you can do is to designate somebody to vote on your behalf. I think this has now become clearer. Some votes were lost because no designations were made as to who could vote in a delegation. If you are not in this House, you cannot vote and you have no vote. You cannot also give the power of attorney so that anybody votes on your behalf. The best you can do is to designate the head of the delegation. I had made a ruling on that issue earlier.

*(The Clerk proceeded to count the votes and announced the results as follows)*

**AYES:** 23

**Tellers of the Ayes:** Sen. Sang

**NOES:** Nil

**Teller of the Noes:** Sen. Hassan

**Abstention:** Nil

**The Deputy Speaker** (Sen. Kembi-Gitura): Hon. Senators, as you may be aware, in the earlier ruling that the Speaker made; for a Motion related to counties to pass, there must be, at least, 24 Ayes. Therefore, the Motion to amend is lost.

*(Question negated by 23 votes to nil)*

*(Debate on the original Motion resumed)*

**Hon. Senators:** Oh no!

**The Deputy Speaker** (Sen. Kembi-Gitura): We are now back to the original Motion.

*(Several hon. Senators stood up in their places)*

Order, Senators! Order! There are a lot of votes here which were not cast because the heads of delegations were not here. But if they designated a Senator to vote on their behalf, maybe the outcome would have been different. But, now, following that result and I had explained that Article 123(1)(c) and Standing Order No.68 where this vote requires 24 affirmative votes to pass, I declare that the Motion to amend is lost. We now go back to the original Motion.

Now, taking into account the time of the Motion; it has only three hours. We are just about to conclude the three hours and we have to go into division again to vote on the main Motion, I would now want to call on the Responder from the Majority to do so immediately. I will give you only five minutes.

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

**The Deputy Speaker** (Sen. Kembi-Gitura): The doors may be opened now. What point of order do you have, Sen. (Dr.) Machage?

**Sen. (Dr.) Machage:** Mr. Deputy Speaker, Sir, you realize many hon. Senators wanted to make their contributions to this Motion. Would I be in order, therefore, to request that we do not vote today and continue debating and we do the voting tomorrow?

*(Loud consultations)*

**An hon. Senator:** Three hours are over!

**The Deputy Speaker** (Sen. Kembi-Gitura): Order! We have voted already for the amendment.

**An hon. Senator:** For the main Motion?

**The Deputy Speaker** (Sen. Kembi-Gitura): For the main Motion, you can make that proposal.

*(Several hon. Senators stood up in their places)*

*(Loud consultations)*

Tellers, you can take your seats in the Chamber.

What is your point of order, Sen. (Dr.) Khalwale?

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

It is not that I want to contradict you, but I just want to comment on Standing Order No.51. Realizing the risk we are headed to, I would like to move under Standing Order No.51(3), which I may read:-

“Despite paragraph (2), the Speaker may, on the request of a Senator, defer the putting of the question to the following day in which case the Speaker shall thereupon nominate a time at which the question shall be put.”

Mr. Deputy Speaker, Sir, I am rising on this point of order to request that as soon as the Leader of the Majority finishes and when the time for putting the Question is due, you apply Standing Order No.51(3) so that we vote on a different day.

**The Deputy Speaker** (Sen. Kembi-Gitura): I want to propose that the Leader of the Majority responds now and that can come with that so that we deal with the voting afterwards. As I said earlier, I am giving you a maximum of only five minutes.

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): Thank you, Mr. Deputy Speaker, Sir. I want to take this opportunity on behalf of the Government to thank Sen. (Dr.) Khalwale for bringing this Motion before this House. I also want to take this opportunity to thank all those Senators who have contributed in support of this Motion. I have not heard any of the Senators dissenting to this Motion.

*(Loud consultations)*

Mr. Deputy Speaker, Sir, the consultations are a bit loud.

**The Deputy Speaker** (Sen. Kembi-Gitura): Could you, please, consult quietly?

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): Thank you, Mr. Deputy Speaker, Sir. So, I thank those who have contributed and the Mover of this Motion as well.

Mr. Deputy Speaker, Sir, I also thank the determination of the Chair that this is a Motion that relates to concerns of the counties. In the coming days, we know or we believe that the Constitution or the Standing Orders will be interpreted liberally, so as to find as many matters as possible that relate to counties if the Senate is to discharge its duties of being the protector of the interests of counties and county governments.

Mr. Deputy Speaker, Sir, this Motion, to me, is the first salvo that has been shot; that the Senate of the Republic of Kenya has begun its work in earnest. For that, we are grateful to its Mover and those who have supported it. We have begun our work in matters education. I just want to quickly say that the Jubilee Coalition Government and the President of the Republic of Kenya support enhanced access to education, the relevance of that education, the quality of that education as well as the affordability of that education. This was well articulated by the Mover of this Motion as well as those as those who contributed in support of this Motion.

Mr. Deputy Speaker, Sir, mine is to reiterate that we, as Jubilee, will be happy to implement this because, it not only corresponds to our constitutional duty, but it also rhymes with our manifesto with regard to education.

Mr. Deputy Speaker, Sir, we might have to reflect on whether it is feasible in four years, the remaining time, to establish up to 47 universities, but the broad direction of equalizing the country; the broad direction of creating equity in our country is a direction that this Government supports fully.

Mr. Deputy Speaker, Sir, having said that, I want to make two comments before my time expires.

I would like to say that this Senate has a very sensitive duty. I must thank those colleagues who have contributed here because talking about marginalization and historical injustices is a sensitive national discourse. So, we must dignify the politics of our land by looking at our problems in the eye without necessarily tearing apart our society. So, I want to thank those who have contributed on this sensitive matter regarding past injustices. I want to say that the Senate is dignifying the politics of this country and we are very proud of the output that is coming from this House.

Mr. Deputy Speaker, Sir, finally, as we think about democratizing and devolving education and other services in this country, this House will have to consider in the long term whether there are certain functions that could be assigned to the national Government that may need to be transferred to the county governments in accordance with Article 187 of the Constitution which says that even matters of education that rests with the national Government may be transferred, if found to be necessary, to the county governments. I think we have a rich menu of agenda.

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

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): Yes, Mr. Deputy Speaker, Sir, my time is up. I am about to end, but allow me to---

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

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): Thank you, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. Kembi-Gitura): Does the Senate Minority Leader wish to contribute?

**The Senate Minority Leader** (Sen. Wetangula): I will speak on another matter later if you will allow me.

**The Deputy Speaker** (Sen. Kembi-Gitura): The Mover!

**Sen. (Dr. Khalwale):** Mr. Deputy Speaker, Sir, I am being nagged by my colleagues that they are not sure about your decision on the voting. Can I proceed and you will sort it out at the end of my contribution?

**The Deputy Speaker** (Sen. Kembi-Gitura): Order! My decision on the voting is final. I have done it and that is it.

**The Senate Minority Leader** (Sen. Wetangula): On a point of order, Mr. Deputy Speaker, Sir. We have just voted and lost a very important amendment to this Motion. In doing so, I think we overlooked the provisions of Standing Order No.68. Where thresholds are set clearly in the Standing Orders or in the law, like if we had brought a constitutional Bill, we will only go to vote if the Chair and the House is satisfied that we have a requisite minimum requirement. We should have not gone to vote in the first place if you had not satisfied the provisions of Standing Order No.68 (2) (c) which requires that a matter that is being voted on by delegations can only be carried if it is supported by a majority of all the delegations. This means that we should only have gone to vote if we are satisfied that there is a requisite majority of delegations; minimum majority required of the delegations. Otherwise, it becomes an exercise in futility because we went to vote knowing – the Clerk and his team should have guided us – that, in fact, we did not qualify to vote at the time we voted because we did not have the requisite numbers.

Mr. Deputy Speaker, Sir, this means that since we are evolving a new system and processes of conducting our business, I think the Chair should be invited to guide the House; that in any matter where we are required to vote within the context of Standing Order No.68, we shall not proceed to vote until we have the requisite numbers. So, a matter can be debated and be put aside to wait voting when we have the numbers. This is what we have been doing in the Lower House whenever we debated constitutional Bills. You can only ring the Division Bell if you are satisfied that you have the requisite number, the threshold set to cast a vote that can either carry or defeat the Bill.

I beg to submit and I think if we took this direction we will in future avoid this situation where we lose something of such immense value. If I had been given an opportunity to speak, I would have also moved the same amendment that Sen. Kuti moved because that is the direction we should go. But now we have lost it.

In which case, therefore, I would suggest to the Chair that you exercise your discretion either to allow the Mover to reply and stay the voting until tomorrow or you step him down so that at the time he replies or responds then we go straight to the vote when we have the requisite numbers.

Thank you.

**Sen. Kajwang:** On a point of order, Mr. Deputy Speaker, Sir. It is on the same line, but with a different angle to it and to support what Sen. Wetangula has stated.

We are dealing with a situation which is new to the jurisprudence of this House on matters of voting. It is my view that we should develop a rule that would require that any matter that requires voting, especially where now we know--- Because in the Lower House, even if you were eight Members, so long as somebody does not raise a quorum issue, a vote would pass and we would shout. We did not have to vote per delegation and be there physically. We would develop a culture in which we can say that debate can go on and be closed, but a date and time be set for voting. It happens like that in many jurisdictions. The debate ends and you are told, for example, on Thursday at 2.30 p.m.,



we are voting on this issue and you will see all Members coming to vote and then they can go and do their other business. Some people fly from abroad to come and vote and go back to their business. I wish we did that because this now makes it very important that as many Senators as possible come to the House even when it is overwhelmingly supported. Like the Motion that we have just debated can be lost and we all cry that we have lost a very good component of it. But if we go on like this we are going to lose the entire Motion and if we do, I think the public will laugh at us; that we have made rules that are hindering our own participation in national debate and development.

So, like Sen. Wetangula has urged, we can finish the debate and set a date for the voting. The Clerk will then inform all Senators that we are going to vote on this Motion on this date, at this time.

Thank you.

**Sen. Haji:** On a point of order, Mr. Deputy Speaker, Sir. In view of the fact that we find ourselves in this quagmire, is it really in order for us to expect the Chair to play the role of Chief Whips, who should make sure that an important Motion like this one is attended to by hon. Senators when it comes to voting?

Secondly, in view of the seriousness of this matter, I have seen a letter you have written to say there will be an opportunity for us to amend the Standing Orders. Maybe this is the opportunity we should use to amend the Standing Orders so that we revert to the “yes” or “nay” type of voting instead of calling out the names.

**Sen. Murkomen:** Mr. Deputy Speaker, Sir, I wish to give another angle to the issue raised by Sen. Wetangula and Sen. Kajwang. There is a lot of jurisprudential value in what Sen. Wetangula was requesting you to make a decision on, particularly when it comes to the importance in future decisions. Considering the weighty nature of the decision we are about to make, is it in order to request you to sleep over this matter and give a more weighty ruling tomorrow?

**The Deputy Speaker** (Sen. Kembu-Gitura): Hon. Senators, there is nothing for me to sleep over, if you think about this issue dispassionately. At the beginning of the vote, I indicated that the vote would be by the heads of the delegation or by a duly designated member of that delegation. At the beginning of this session this afternoon, the Speaker always starts by confirming whether or not there is a quorum. It is up to hon. Senators thereafter to raise the issue of quorum if there is no quorum. But at the time that we called this matter to vote, there was and there is still quorum in the House. The Speaker has no way of knowing how you are going to vote or whether or not, you, as heads of delegations have been designated to vote in a particular manner. If you count the number of hon. Senators in the Chamber this afternoon, you will see that we are well over the threshold. Therefore, we proceeded to vote blindly expecting that we would have a “yes” or “no” or whatever other result there would be. That is the reason I say that there is really nothing to sleep over. The thing we need to sleep over on is whether or not we need to amend our Standing Orders, so that we deal with situations like this one. This is the first time we have had to deal with this situation in this House. It is important to recognize the importance of rules and regulations as drawn in the Standing Orders.

I want to emphasise to, you, hon. Senators, to make sure that when important Motions like these are on the Floor of the House and you know you will not be present that you appoint an hon. member of your delegation who is present in this House. It is

upon you, as the head of the delegation, to write to the Speaker and indicate who you have designated to vote on a matter in your absence.

It is unfortunate that it has been lost, but we counted everybody who voted. But there were Senators in this House, who are still here who did not vote because they did not have the right to vote under the Standing Orders. Therefore, the matter must rest at that.

*(Several hon. Senators stood up in their places)*

What is your point of order, Sen. (Eng.) Muriuki?

**Sen. (Eng.) Muriuki:** Thank you, Mr. Deputy Speaker, Sir. Allow me to re-emphasize the point of order raised by Sen. Wetangula. With all due respect, I think the explanation you have given is slightly outside what Sen. Wetangula was saying. He says at the point where we are starting to vote as a House, is there a way or can we establish a way or should the Chair go out of his way to establish that, in the House, there is that threshold. I think that is the point; not that the numbers are not there. Even if it meant that all the delegates stay on one side of the House and the non-delegates on the other side so that, at least, before we go through that whole motion of voting, we make sure that we have enough delegations. If, in fact, it happens that there are some heads of delegation who are not here and there are some Senators who could very well have been given that mandate, but they were not given – that is a different story. We should not have proceeded, looking at the point raised, if we had counted the delegations and we saw we do not have 24, I think that is the point.

**Sen. Musila:** Thank you, Mr. Deputy Speaker, Sir. I stand to support what my colleagues have said. I have a lot of respect for the ruling you have made.

But, Mr. Deputy Speaker, Sir, I think we should make it a practice from now on that before such a vote takes place, it is incumbent upon the Clerk to ascertain whether that threshold of voting – not of the quorum - is there before we undertake any vote. I think this being the first time that we have taken a vote, we are all learning; it is a new Chamber. It is a new Senate and I think the Clerk will also be learning that before such a vote is taken, he must satisfy and inform the Speaker whether the threshold for voting exists before we undertake that exercise.

Mr. Deputy Speaker, Sir, I plead with you that you still sleep over the matter, as my colleague Senator has said.

*(Laughter)*

*(Several hon. Members stood up in their places)*

**Sen. (Dr.) Machage:** Mr. Deputy Speaker, Sir, the rule is that when a Senator wants to delegate to another Senator for the purposes of voting, a letter is written to you. I, therefore, believe that if there was any such delegation, you had the letter. Indeed, it so appears that you had none. So, what actually you have proved is that the threshold had not been met before the voting. Would I, therefore, be in order – on the Standing Order as quoted by Sen. Wetangula and the others – to request you sincerely to set a good

precedent for this House that we do not vote today? In any case, we are still learning. Please, listen to us.

(Laughter)

**The Senate Minority Leader** (Sen. Wetangula): On a point of order; you being an immensely experienced lawyer, I want to invite you to read three Standing Orders No.1(2), 51(3) and No.68(c). Let me read them loud for the benefit of the Chamber.

**The Deputy Speaker** (Sen. Kembi-Gitura): Please, proceed slowly.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Deputy Speaker, Standing Orders No.1(2), 51(3) and 68(3). Let me read them aloud for the benefit of the House. Standing Order No.1(2) refers to cases not provided for. The most important bit is:-

“The decisions made in paragraph (1) shall be based on the Constitution of Kenya, statute law and the usages, forms, precedents, customs, procedures and traditions of the Parliament of Kenya and other jurisdictions to the extent that these are applicable in Kenya.”

This falls in sync with the submission of Sen. Murkomen that you give us a reasoned ruling that will form part of our precedent for the future.

Standing Order No.51(3) gives the Chair the discretion, with the advice of the Clerk or on your own Motion, you could have put off the vote by not putting the question, under that Standing Order, which on the issue of the amendment we have passed, but on the issue of the main Motion we have not.

Standing Order No.68(3) is the one that gives you the threshold. So we are inviting you to combine the three Standing Orders and not give us a ruling *ex tempore*, but to give us a ruling that will go into the annals of our precedents for the future, for the use of this Chamber and the next Chamber on matters of this nature.

**Sen. (Dr.) Khalwale:** Mr. Deputy Speaker, Sir, it is you lawyers who say that when you read sections of the law, you should always try and stretch to read them alongside with other sections. Sen. Wetangula has left out a very important thing. I just want to augment. That is Standing Order No.1---

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen.(Dr.) Khwalwale, you only have one minute before the rise of the House, if you expect me to make a ruling on this issue.

**Sen. (Dr.) Khalwale:** Yes, Mr. Deputy Speaker, Sir, alongside what Sen. Wetangula has said, there is Standing Order No.1(1). This Standing Order was deliberately put there to continuously remind you of the immense powers that you have. I am requesting that as you rule on Sen. Wetangula's submissions, because of the immense powers you have under Standing Order No.1(1), and in view of the importance of the amended Motion moved by Sen. (Dr.) Kuti, the Chair applies Standing 1(1), so that if we come back for a proper voting, we reconsider that law. For your information Albert Einstein went through a technical college in Germany and he became what he became. So, technical colleges are part and parcel of these universities.

I beg that you consider rescinding your decision and that of the House on the earlier Motion.

**The Deputy Speaker** (Sen. Kembi-Gitura): Hon. Senators, I had made a ruling on this issue. But considering that there are some weighty issues that have been raised by

hon. Senators, and considering the seriousness of the amendment that was proposed by Sen.(Dr.) Kuti, I shall consider the issue and give you a Considered Ruling on this matter.

In the meantime, on the main Motion, and since we have not voted on it and he had requested that the voting be deferred, I also order that this debate be deferred for voting purposes, if need be pursuant to the ruling that shall be made, to tomorrow morning, after or before the Motion that is listed on the Order Paper. The Chair orders accordingly.

*(Hon. Senators began withdrawing from the Chamber)*

**The Deputy Speaker** (Sen. Kembu-Gitura): Order, hon. Senators! Like an hon. Senator said, we are all learning, which is a major process. We need to adjourn first.

### ADJOURNMENT

**The Deputy Speaker** (Sen. Kembu-Gitura): Hon. Senators, it is now time for the adjournment of the Senate. The Senate stands adjourned to tomorrow, Wednesday, 8<sup>th</sup> May, 2013 at 9.00 a.m.

The Senate rose at 6.30 p.m.