

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Wednesday, 4th March, 2015

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

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

PRAYERS

PETITIONS

FINANCIAL MANAGEMENT AND IRREGULARITIES IN PROCUREMENT BY NAROK COUNTY GOVERNMENT

Sen. Ntutu: Mr. Speaker Sir, I presented a Petition from Narok County by one Joseph ole Karia. The Petition is overdue and people of Narok want to know when the Senate Committee on Finance, Commerce and Budget will Table it. The issues of Narok do not need rocket science to get the answers because things are obvious.

(Laughter)

The Speaker (Hon. Ethuro): Order, Sen. Ntutu; issues do not need rocket science to be dealt with.

(The Speaker consulted the Clerk-at-the-Table)

I am informed that the Chairperson of the Committee sought an extension of two weeks last week. The extension was granted, so maybe we need to wait for those two weeks to elapse and then he can respond. I am hoping the Chairperson of the Committee will at least abide by that extension.

Sen. (Prof.) Anyang'-Nyong'o: On a point of order, Mr. Speaker, Sir. Prior to my colleague, Sen. Ntutu, standing on the issue of a Petition from Narok, I also had a Petition from Kisumu County which I was given a go ahead to present.

The Speaker (Hon. Ethuro): Sorry Senator, you are not loud enough!

Sen. (Prof.) Anyang'- Nyong'o: Mr. Speaker, Sir, I was saying, prior to the Senator for Narok standing regarding a Petition from Narok, I was also standing

regarding the Petition made to the Senate by leaders from Kisumu County. Yesterday, I was given a go ahead to present it to the House today.

The Speaker (Hon. Ethuro): Let me find out. The only reason the Speaker could not acknowledge you at the time of the Petition was because you had not put in any request. It is only your height that has now salvaged the situation.

Sen. (Prof.) Anyang'-Nyong'o: Mr. Speaker, Sir, the Clerks will brief you.

The Speaker (Hon. Ethuro): Sen. (Prof.) Anyang'-Nyong'o, you will have to bear with us a bit because there is some process to be followed before it is put in the format and the style that will be now read in the House. So, they are still processing it. I do not know how you got your undertaking that it will be here today.

Sen. (Prof.) Anyang'-Nyong'o: Mr. Speaker, Sir, I have received the proper process presented by the Clerk's Office today and my responsibility was just to lay it on the Table of the House.

The Speaker (Hon. Ethuro): Maybe you will need to approach the Chair later on and then we will give you another day to do so. However, it will definitely not be today.

Next Order!

STATEMENTS

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

Sen. Karaba: Mr. Speaker, Sir, hon. Senators who asked for the Statements are not here today with us. So, what is the way forward?

(Laughter)

The Speaker (Hon. Ethuro): The way forward is that you stay put.

Sen. Karaba: I stay put, Mr. Speaker, Sir?

The Speaker (Hon. Ethuro): Yes.

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

I can see one of them is seated right here. He says he would prefer his Statement issued tomorrow.

The Speaker (Hon. Ethuro): Order, Sen. Karaba! Speak for yourself. The Statements that have been listed should be ready because they were due today. So, where is the Chairperson of the Committee for Lands and Natural Resources? He is not here.

Where is the Chairperson of the Committee for Energy?

BUDGET ALLOCATION FOR RURAL ELECTRIFICATION PROGRAMME IN MAKUENI COUNTY

Sen. Moi: Mr. Speaker, Sir, I have discussed with the hon. Senator who had requested this Statement on the prospects of deferring it until Tuesday. I beg the House and the hon. Senator's indulgence.

Thank you, Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): I am sorry, Sen. Moi. Could you repeat what you have just said?

Sen. Moi: Mr. Speaker, Sir, I had discussed this matter with the hon. Senator who had requested this Statement and we agreed that I issue it tomorrow. Unfortunately, our Committee will be in Lamu tomorrow. I have told him so and we have agreed that it can be deferred to Tuesday, next week. So, I was begging for the House's indulgence and his too.

Sen. Mutula Kilonzo Jnr.: Mr. Speaker, Sir, Sen. Moi was courteous enough to inform me in advance. Therefore, I have accepted to indulge him until they are ready on Tuesday, next week.

The Speaker (Hon. Ethuro): Hon. Members, that is the way to go because we are not at war with each other. It is always good to consult beforehand so that it makes it much easier on the Floor.

Where is the Chairperson of the Standing Committee on Agriculture, Livestock and Fisheries? Where is the Vice Chairperson? Sen. ole Ndiema, proceed.

CLOSURE OF LIVESTOCK MARKET IN WEST POKOT COUNTY

Sen. Ndiema: Thank you, Mr. Speaker, Sir. The reply is not ready yet and we have discussed this with Sen. (Prof.) Lonyangapuo. We are meeting the Cabinet Secretary on Wednesday, next week.

Sen. (Prof.) Lonyangapuo: Mr. Speaker, Sir, my neighbour mentioned a few minutes ago that they have not gotten the answer. I have asked him to go and examine the urgency of that Statement because most of my children in high school are now at home for lack of school fees. So, if he can bring this Statement, latest, next week on Wednesday, the better.

Sen. Ndiema: Mr. Speaker, Sir, I seek your indulgence. Since we are meeting him on Wednesday, let it be Thursday, next week.

The Speaker (Hon. Ethuro): Thursday is fairly reasonable; it is in the immediate neighbourhood of Wednesday. Since you are also dealing with the other neighbour, it is so ordered Thursday, next week.

Where is the Chairperson of the Committee on Education?

ENROLMENT OF PUPILS TO FORM ONE AND THE FREE PRIMARY EDUCATION

Sen. Karaba: Mr. Speaker, Sir, so far, I have received two Statements and this Statement for Sen. (Prof.) Lonyangapuo will be due on Tuesday, next week.

The Speaker (Hon. Ethuro): I do not understand you, Mr. Chairman. Do you mean that you have received two Statements?

Sen. Karaba: Mr. Speaker, Sir, I have two statements with me. The first one was sought by Sen. Wangari and she is not here.

The Speaker (Hon. Ethuro): That one we had disposed of, Mr. Chairman.

Proceed.

SCRAPPING OF SCHOOL AND STUDENT RANKING BY GOVERNMENT AND
CONFUSION IN ADMISSION OF STUDENTS TO FORM ONE

Sen. Karaba: Mr. Speaker, Sir, the other one is by Sen. (Prof.) Lonyangapuo, but it is not with me here. I am informed that it will be ready next week.

The Speaker (Hon. Ethuro): Did you inform the Senator?

Sen. Karaba: M. Speaker, Sir, I have informed him now.

(Laughter)

The Speaker (Hon. Ethuro): Sen. (Prof.) Lonyangapuo, what do you have to say?

Sen. (Prof.) Lonyangapuo: Mr. Speaker, Sir, I had asked this question and most Members can attest to the fact that yesterday when the Kenya Certificate of Secondary Examinations (KCSE) results were released, everybody in the entire country wanted to know how their children and schools performed. I had asked about why there was a scrapping of school and student ranking. The Chairperson is now pushing it to next week whereas you had ordered him to come and give the answer today. It would have been appropriate to hear the answer today so that, maybe, tomorrow, the relevant Ministry would correct the ranking that we required. This is the week of celebrations because of how students performed.

The Speaker (Hon. Ethuro): Mr. Chairman, you have not provided the House with any reason you are delaying giving the Statement.

Sen. Karaba: Mr. Speaker, Sir, the problem here is the Ministry of Education, which also released the examination results yesterday. The reasons for which Sen. (Prof.) Lonyangapuo sought this Statement might have been contained in yesterday's release of examination results. So, that is the combination of reasons it should be issued next week.

The Speaker (Hon. Ethuro): Hon. Senator, you are flogging a dead horse.

Mr. Chairman, will you give the Statement on Tuesday, next week?

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

The Speaker (Hon. Ethuro): So, it is so ordered. The Statement will be given on Tuesday, next week.

Are there any requests for Statements?

Hon. Senators: Yes!

The Speaker (Hon. Ethuro): Sen. Khaniri, do you have a Statement to make?

STATUS OF THE KWS COMMUNITY ENTERPRISE
DEVELOPMENT FUND

Sen. Khaniri: Mr. Speaker, Sir, it is listed on the Order Paper that my Committee is supposed to issue a Statement on Kenya Wildlife Service (KWS) Community Enterprise Development and implementation of the Wildlife Conservation and Management Act; a Statement sought by Sen. Wangari on 12th February, 2015.

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Mr. Speaker, Sir, first of all, I do not see Sen. Wangari here. Secondly, I have just received the Statement from the Clerk's office two minutes ago. I want to be on record that we want to request that, we, as a Committee, will go through this Statement in our next session so that we are given an opportunity to deliver the Statement next week.

The Speaker (Hon. Ethuro): When, Next week?

Sen. Khaniri: Mr. Speaker, Sir, any day next week; either on Wednesday or Thursday.

The Speaker (Hon. Ethuro): Let us do it on Wednesday, next week. That is exactly one week from now.

POLLUTION OF ATHI RIVER

Sen. Mutula Kilonzo Jnr.: Mr. Speaker, Sir, I rise to seek a Statement, pursuant to Standing Order No.45(2)(b), from the Chairperson of the Standing Committee on Land and Natural Resources regarding pollution of Athi River in Machakos and Makueni counties. In the Statement, the Chairperson should state the following:-

(1) Whether the Government is aware that there is disposal of effluence into Athi River in Machakos and Makueni counties.

(2) Whether there is a current Environmental Impact Assessment (EAI) report on the river and table the same.

(3) Whether the National Environmental Management Authority (NEMA) has offices in Makueni and Machakos; if so, whether action has been taken against those NEMA officers for dereliction of duty.

(4) Whether there is any budgetary allocation for cleaning and monitoring of Athi River.

(5) The measures that have been put in place to deal with the person(s) who are polluting and/or disposing effluence into the river.

(6) The immediate measures that have been taken to alert the communities in Machakos and Makueni on the hazards of using the water from the said Athi River.

Thank you, Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): Where is the Chairperson; Sen. Khaniri?

Let us move on to the next Statement. When you are ready, you will let us know.

MANAGEMENT CRISIS, ALARMING DECLINING ACADEMIC PERFORMANCE AND RAMPANT THEFT OF SCHOOL PROPERTY IN GARBATULA HIGH SCHOOL, ISIOLO COUNTY

Sen. Adan: Mr. Speaker, Sir, I requested for a Statement from the Chairperson of the Committee on Education regarding Garbatula High School about two and a half weeks and up to now, the Statement has not been issued. I have not gotten a response from him.

The Speaker (Hon. Ethuro): Where is the Chairperson of the Committee on Education?

Sen. Karaba: Mr. Speaker, Sir, I have already explained to the Senator. It all surrounds the County Government of Isiolo which has been asked by the Ministry to submit the damages, cost and details surrounding the stolen items from Garbatula. As soon as that is done by the end of this week, I am sure by next week on a day like today, I will issue the Statement.

Thank you, Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): Next week?

Sen. Karaba: Yes.

The Speaker (Hon. Ethuro): Do you have another request Sen. Adan?

IMPLEMENTATION OF MALKA DAKA IRRIGATION PROJECT IN GARBATULA

Sen. Adan: Yes, Mr. Speaker, Sir. I rise to seek a Statement from the Chairperson of the Standing Committee on Agriculture, Livestock and Fisheries regarding the Malka Daka irrigation project in Garbatula, Isiolo County.

In the Statement, the Chairperson should:-

(1) State whether a needs analysis was conducted before the initiation of the project and, if so, table the report.

(2) Explain why the affected community and the County Government of Isiolo were not involved in the design and implementation of the project.

(3) State how much money was allocated for each of the two phases of the project; the duration and completion of each phase of the project.

(4) State when the tenders for the first and second phases were awarded, to whom and what procedure was used in awarding them.

(5) Clarify whether the implementation of the first phase was ever audited and if so the finding of the audit.

(6) Clarify whether the Ministry of Agriculture, Livestock and Fisheries and the National Irrigation Board (NIB) intend to put in place any measures for capacity building and inclusion of the community in the project. If so, what measures?

Thank you, Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): Where is the Chairperson of the Committee on Agriculture?

Sen. Ndiema: Mr. Speaker, Sir, we will give the response in two weeks' time.

The Speaker (Hon. Ethuro): It is so ordered. The statement will be given in two weeks' time.

Sen. Khaniri, are you ready now?

POLLUTION OF ATHI RIVER

Sen. Khaniri: Yes, Mr. Speaker, Sir. I have just gone through the request and, the issues being raised by the hon. Senator regarding the pollution of Athi River are very weighty. I would suggest that we be given three weeks. I want to propose that, rather than just wait for a Statement from the Cabinet Secretary, the Committee makes a visit to the

site to have a firsthand experience of the situation before we issue a Statement. I request for three weeks.

The Speaker (Hon. Ethuro): Three weeks will be granted, especially considering that you are proposing for a visit. In fact, to do a good job, you can even have four weeks because that is an important matter.

Proceed, Sen. (Prof.) Lonyangapuo.

INSECURITY IN VILLAGES ALONG THE WEST
POKOT-TURKANA COUNTY BORDERS

Sen. (Prof.) Lonyangapuo: Thank you, Mr. Speaker, Sir. I have some requests for Statements. One, I rise to seek a Statement from the Chairperson of the Standing Committee on National Security and Foreign Relations concerning insecurity in villages along the West Pokot-Turkana County borders. In the Statement, I would like the Chairperson to:-

(1) State whether he is aware that on Tuesday, 3rd March, 2015, a heavily armed group of cattle rustlers besieged a *manyatta* called Kasses in Pokot North District and drove away all livestock belonging to the residents of that *manyatta*.

(2) Confirm that there are a number of cattle rustlers or bandits who roam around the border of the two counties, that is Turkana and West Pokot, and who are making the lives of residents difficult.

(3) Explain what the Government is doing to address these current problems.

(4) State when the West Pokot-Turkana County border will be clearly demarcated.

The Speaker (Hon. Ethuro): Where is the Chairperson of the Committee on National Security and Foreign Relations? Where is the Vice Chairperson?

Sen. Adan: Mr. Speaker, Sir, I request to be given two weeks to respond to that Statement.

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

Sen. (Prof.) Lonyangapuo: Mr. Speaker, Sir, my second request for a Statement is ---

The Speaker (Hon. Ethuro): Order! How many Statements do you want to request?

Sen. (Prof. Lonyangapuo): Four, Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): I will only allow you two today. You can request for the other two tomorrow.

LONG TERM MEASURES TO STAMP OUT CATTLE
RUSTLING IN WEST POKOT COUNTY

Sen. (Prof. Lonyangapuo): Mr. Speaker, Sir, I rise to seek a Statement from the Chairperson of the Standing Committee on National Security and Foreign Relations concerning the need for long term measures to stamp out cattle rustling in West Pokot, especially along the Turkwel - Kainuk Junction.

In the Statement, the Chairperson should explain why the national Government has not established a GSU camp or an Anti-Stock Theft Police Unit camp at Perkeye Junction along the border between West Pokot and Turkana counties despite a promise to do so, for more than ten years.

Secondly, considering the constant instances of loss of life and livestock in this area, could the Chairperson state when the national Government will establish the said camps?

Sen. Adan: Mr. Speaker, Sir, I would equally request Sen. (Prof.) Lonyangapuo to give us two weeks to respond to that Statement he has sought.

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

EXTENSIVE CORRUPTION IN THE COUNTRY

Sen. Bule: Bw. Spika ninakushukuru kwa kunipatia nafasi hii nikiwa na masikitiko makubwa sana, kwa sababu huu ni wakati Wakenya wengi wanaomboleza ufnisadi uliokithiri nchini. Wakenya wengi wameathirika kwa mikono ya viongozi ambao hawajali hali ya wanyonge. Wakenya walituchagua kuambatana na sheria na kutupatia uwezo wa kuwakilisha kaunti zetu. Kufuatana na Kipengee 96(1) na (2) tumepewa uwezo wa kuwakilisha, kuwalinda, kuwatumikia, kuwatatea na kuunda sheria zinazoweza kuleta maendeleo nchini Kenya. Hatukuchaguliwa kukaa hapa Bungeni na kusindikiza wafisadi na wakora.

Bw. Spika inafaa hii Seneti ipeana mwongozo kwa Wakenya. Inafaa tume maalum ibuniwe ili ichunguze kiwango ambacho ufnisadi umeathiri nchi ya Kenya. Asilimia 99 ya Wakenya wanakufa njaa, hawana makazi na ni walala hoi. Kenya hii ilichagua Rais na Makamu wa Rais---

The Speaker (Hon. Ethuro): Sen. Bule, hiyo idadi ya asilimia 99 inatoka wapi? Na pia, huu ni wakati wa kuuliza maswali.

Sen. Bule: Bw. Spika, hiyo asilimia 99 ni kulingana na hekima, fikira na uchunguzi wangu.

(Laughter)

Bw. Spika, hata Sen. (Dr.) Khalwale hawakilishi Kaunti ya Kakamega peke yake, bali anawakilisha Wakenya wote ili wapate hudumu kule mashinani. Watu wanapigana ngumi na kuteta huku wakitaka pesa zipelekwe mashinani. Hiyo pesa inaishia makaburini ama inaenda kuwafanyia kazi wananchi wa Kenya?

(Applause)

Muda umepita wa kupiga gumzo ilhali Wakenya wanaendela kumia. Pesa za Serikali zinavujwa na watu binafsi ilhali Serikali haiwachukulii hatua. Kama hatuwezi kuwahudumia Wakenya kama Maseneta, inafaa tujiuzulu ili pesa ambazo tunalipwa zigharamie miradi ambayo itawasaidia Wakenya.

Nina huzuni mkubwa na ningependa tusimame kidogo ili tuomboleze pamoja na Wakenya walio wengi.

(Laughter)

The Speaker (Hon. Ethuro): Order, Sen. Bule! Maagizo kama hayo yanatolewa na Bw. Spika peke yake. Kwa hivyo, ningependa umalize mazungumzo yako na uketi.

Sen. Bule: Bw. Spika, hiyo ni kwa sababu ya hasira na masikitiko niliyonayo. Hatuwezi kuendelea kuyafungia macho yale mambo ambayo yanafanyika kule mashinani. Huwezi kutoa pesa kwa jamii yako kama baba na hujui inakoenda. Hii ni kama kupeleka pesa kaburini. Asilimia 98.8 ya pesa iliyotengewa Kaunti ya Tana River imeenda kwa mifuko ya watu binafsi. Kifungu cha Sheria 96 kinatupa uwezo wa kutunga na kulinda sheria ilhali tunatunga sheria nyingi hapa Seneti, lakini inatupiliwa mvunguni. Hoja yoyote inayopitishwa katika Seneti hii haitiliwi maanani na Serikali. *Corruption starts right here!*

Kamati ya Hazina ya Fedha, Biashara na Bajeti imefanya uchunguzi mwingi ilhali hatujawahi kuona ripoti yake kuhusu uufisadi unaoendelea kule mashinani.

(Sen. Bule banged the table)

The Speaker (Hon. Ethuro): Order, Sen. Bule! Unakubaliwa kusema maneno yako hapa lakini haukubaliwi kupiga meza ngumi. Tafadhali maliza maneno uliyo nayo.

Sen. Bule: Bw. Spika, naomba msamaha. Kila MCA alitumia Ksh198,000 kama marupurupu yake kwenda Merekani na Uingereza ilhali wengine wao hawafahamu hata lugha ya Kiswahili na lugha za kigeni. Wakenya wanaumia kutozwa pesa hizo ambazo zinatumia na MCAs kutalii nchi za ulaya.

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

Hon. Senators: *Endelea!*

The Speaker (Hon. Ethuro): Hon. Senators, I am on my feet. I am definitely ordering him to sit down. He can do so, after I have sat.

Sen. Bule, you have done your bit. You can resume your seat now.

Sen. Bule: Asante, Bw. Spika. Naomba---

The Speaker (Hon. Ethuro): Order, Sen. Bule! Nimesema wakati wako umeisha. Namekuamuru uende uketi. Nafikiri tumeelewana.

(Sen. Bule resumed his seat)

Sen. (Dr.) Khalwale: Thank you, Mr. Speaker, Sir. The issues raised by Sen. Bule are mainly hinged on the issue of oversight. I remember asking in this House that you guide us as the County Public Accounts and Investments Committee on what to do, given that the audited accounts of the last Financial Year 2013/2014 are now over due by more than 60 days. The Constitution deadline is that those accounts should have come for tabling by 31st December, 2014. Could you, please, guide us?

The Senate Minority Leader (Sen. Wetangula): Thank you, Mr. Speaker, Sir. Just for the record; while we enjoyed the speech by the distinguished Senator for Tana River County, this is Statement Time. Was he seeking a Statement? And if so, from who? Was he making a personal Statement? If so, about what? We should have the record on the HANSARD clear.

Sen. Haji: On a point of order, Mr. Speaker, Sir. Is the distinguished Senator for Bungoma in order to ask that question because I believe that he was not demanding or making a Statement? He was making a personal observation on the responsibility of the Senate. The Speaker allowed him.

Sen. Mutua Kilonzo Jnr.: On a point of order, Mr. Speaker, Sir. If I understood Sen. Bule correctly, he stated that, in fact, corruption begins from this House. That statement needs to be clarified. He has also mentioned two Committees; the Committee on Finance, Commerce and Budget and the County Public Accounts and Investments Committee; attributing corruption to them. It would be in order, even if he was making a personal statement, to clarify that he did not mean that any of the Committees are involved in corruption. It is a serious allegation.

The Speaker (Hon. Ethuro): Order, senators! What you are expressing this afternoon is what happens when you do not allow rules to prevail. There was a unanimous consideration by the House, including the latest complaints from the Senators themselves. When I was stopping the Senator, they said that he should carry on, led by the Senate Minority Leader. So, let the matter rest there, except just to confirm that under Standing Orders No. 45(2), you can raise any matter; that was the understanding that I had with Sen. Bule, but he exceeded his brief. However, since you are following a previous matter, I will undertake to give directions on Tuesday, next week, on Sen. (Dr.) Khalwale's matter.

On Sen. Mutula's Kilonzo's Jnr. point, that is a serious assertion.

Sen. Bule, tafadhali njoo utuambie ufisadi umeanza wapi?

Sen. Bule: Bw. Spika, nitarudia tena yale niliyoyasema. Wajua, mtu akikana yale aliyoyasema, anaweza kukana hata mtoto wake. Mimi nilizungumza na nikamaanisha yale niliyoyasema.

The Speaker (Hon. Ethuro): Order, Sen. Bule! Yale uliyonena ni yapi kulingana na yale umeulizwa na Seneta wa Kaunti ya Makueni?

Sen. Bule: Bw. Spika, nilisema kwamba ufisadi unatokana na Seneti hii. Hii ni kwa sababu sisi tumeajiriwa na Wakenya ambao wanatupa pesa nyingi. Tumetuma Kamati ichunguze ufisadi kisha wao wanaenda kuonana na Magavana na hakuna ripoti wanayoleta kuhusu mambo yanayo fanyanyika mashinani. Ni Marekani au World Bank inayotuletee habari kuhusu yale yanayotendeka.

The Speaker (Hon. Ethuro): Order, Sen. Bule! Nafikiri kwamba umefafanua na tumekuelewa. Lakini, ningependa kukukosoa hivi: ni vizuri kwamba Sen. (Dr.) Khalwale alikuunga mkono kwa kusema kwamba yeye alikuja Bungeni wiki iliyopita na kusema kwamba kazi yake imetatizwa na yule anayeangalia vitabu vya matumizi ya pesa. Kila anapowaita wanaenda kortini mpaka muda ambao Katiba inaruhusu unaisha. Kisha wanauliza wapewe mwelekeo. Kwa hivyo, wewe nawe vumilia mpaka tupeane mwongozo.

Hon. Senators, I had disallowed the Petition by Sen. (Prof.) Anyang'-Nyong'o on the information that I had been given, but he has convinced me, through documented evidence, that he was actually promised that he will make the Statement today. I want to honour that promise. So, proceed Professor.

PETITION

CORRUPTION AND GROSS MISMANAGEMENT BY THE KISUMU COUNTY GOVERNMENT

Sen. (Prof.) Anyang'-Nyong'o: Mr. Speaker, Sir, thank you for giving me this opportunity to lay before the House a Petition made to the Senate by Kisumu County leaders and residents on corruption and gross mismanagement by the Kisumu County Government. Let me read the Petition as abridged.

We, the under-signed, members of the County Assembly of Kisumu, representing Chemilil Ward in Muhoroni sub-county, East Seme Ward in Seme sub-county and Central Nyakach Ward in Nyakach sub-county of Kisumu County, wish to draw the attention of the Senate to the following:-

(i) That Kisumu County is heaving under a lot of issues that weigh on the capability of the county to realize any meaningful growth, ranging from corruption, abuse of office, gross mismanagement and neglect of duty.

(ii) That recruitment and employment of persons to key positions in the county is riddled with nepotism and clanism.

(iii) That the County Government of Kisumu, through the County Public Service Board, advertised and interviewed for ten vacant positions for chief offices, the county assembly vetted and cleared only four persons but the governor went ahead and appointed 14 chief officers without following the due process.

(iv) That there is inordinate delay in filling vacancies in crucial dockets such as county secretary and county finance officer, thus hindering service delivery.

(v) That the Governor has failed to constitute the City Management Board as required by the Urban Areas and Cities Act and has gone ahead to appoint the city manager without due process and that the city manager, in the absence of the city management board, has no person to oversight his or her activities.

(vi) That the county government presided over a flawed tendering process which does not adhere to the requirement of the Public Procurement And Disposal Act such as renovating the 9th Floor of Prosperity House to be used by the governor, the deputy governor and the county secretary and procurement of motor vehicles from CMC.

(vii) That the county government set aside the development vote for the year 2013/2014 budget and instead requested for more development funds in the supplementary budget of 2013. There have also been several cases of irregular budget re-allocations.

(viii) That the county budget and economic forum whose main responsibility is to play a consultative role in the budget-making process, has met only once since it was established, in breach of Section 137 of the Public Finance Management Act.

(ix) That there are loopholes in revenue collection in the county with revenue declared unbanked being more or less similar to the former municipal council of Kisumu and yet there are five former local authorities in the county.

(x) That the healthcare system in the county has collapsed due to poor funding. Jaramogi Oginga Odinga Teaching and Referral Hospital was allocated Kshs396 million in the financial years 2013/2014 but the hospital only received Kshs72 million in the whole year from the county treasury.

(xi) That the county government has failed to disburse funds appropriated for use by the county assembly to the county assembly account, thereby compromising the assembly's capability to effectively play its oversight role;

(xii) That the county government has failed to prepare an annual financial report and forward it to the Auditor-General, Controller of Budget, Commission on Revenue Allocation and the county assembly in contravention of Section 163, 164, 165 and 166 of the Public Finance Management Act.

(xiii) That there is rampant misuse of public resources by the county government by allocating vehicles and fuel to persons who are not employees nor performing official duties of the county and also incurring extravagant amounts in the name of entertainment in official functions.

(xiv) That that governor has been creating unconstitutional offices within his office that are meant to usurp roles of Ministers and further that this unconstitutional offices are headed by cronies of the governor.

(xv) That efforts by leaders from the county led by the area Senator to dialogue and find ways of remedying the situation have not borne much fruit.

(xvi) That none of the issues raised in this Petition is pending in any court of law, constitutional or any legal body.

Wherefor, your humble Petitioners pray that the Senate intervenes and:-

(1) Investigate and look into the enumerated issues that continue to undermine the spirit of devolution and to take appropriate action.

(2) Request the Commission on Revenue Allocation and the Controller of Budget to cease any further disbursement of funds to Kisumu County until such a time that a forensic audit of the county fiscal management is carried out and concluded.

(3) Invite the Auditor-General to set up a team to carry out a forensic audit of the county with a view to unearthing the glaring financial mal-practices as per the dictates of Article 22(4) (6) of the Constitution

(4) Dated this 4th March, 2015 and signed by hon. Joseph Osano, MCA Chemilil Ward, hon. Aggrey Ogesi, MCA East Seme Ward, hon. Elijah Omondi, MCA Central Nyakach Ward.

Mr. Speaker, Sir, I beg your indulgence that I do this in accordance with Article 119 of the Kenyan Constitution which says that:-

- i. Every person has a right to petition Parliament to consider any matter within its authority, including to enact, amend or repeal any legislation.
- ii. Parliament shall make provision for the procedure---

The Speaker (Hon. Ethuro): Order, Senator! Once you make the reference to the Article, we can read for ourselves.

Sen. (Prof.) Anyang'-Nyong'o: Mr. Speaker, Sir, this was for listeners out there who may not know the procedure. Therefore, I read that in conjunction with Standing Order No.220 of our Standing Orders so that they know that I am doing this not on my behalf, but on the behalf of the Petitioners.

Standing Order No.220(1) states:-

“A Petition to the Senate shall-

(a) be submitted to the Clerk by the petitioner and reported to the Senate by the Speaker; or

(b) presented by a Senator on behalf of a petitioner, with the consent of the Speaker.”

Mr. Speaker, Sir, thou hath provideth your consent.

I thank you.

The Speaker (Hon. Ethuro): Order, Professor! I am just wondering whether the last bit is your claim to professorship because everything we do here is subject to the Constitution and our own rules in the Standing Orders. So, unless you are really challenged, that is the only time you have to demonstrate your knowledge of the same. Anyway, having said so, you need to table the Petition which is more of a requirement than the sections you read.

Sen. (Prof) Anyang'-Nyong'o: Mr. Speaker, Sir, I beg to lay the Petition on the Table of the Senate.

(Sen. (Prof.) Anyang'-Nyong'o laid the document on the Table)

Sen. Kagwe: On a point of order, Mr. Speaker, Sir. I rise to seek guidance as a matter of procedure going forward on these Petitions. I am concerned about petitions from Members of County Assemblies (MCAs) because they have oversight capacity on county governments and, particularly, on governors. The MCAs have the capacity to recommend serious action on governors, including impeachment and so on. In view of that particular constitutional mandate that MCAs have, if we entertain and say that a single or two MCAs can bring a petition to this House and we get petitions from 47 counties, how do we proceed with these issues, going forward? I say this appreciating what Sen. (Prof.) Anyang'-Nyong'o is currently going through.

Sen. Billow: Mr. Speaker, Sir, I echo the same sentiments, but also alert Members to the fact that when you see petitions coming from MCAs to this House, that is an indication of the challenges that county assemblies are facing in dealing with county governors. We need to appreciate that the dynamics in the counties are making it very difficult for some of the assemblies, both in terms of capacity or other dynamics, to effectively carry out their oversight role. This is an indicator that there are challenges that county assemblies are facing that we, as a House, need to address.

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

Sen. (Dr.) Khalwale: On a point of order, Mr. Speaker, Sir. In consideration of your expected ruling on the point of order by Sen. Kagwe, I would like you to put into consideration the fact that if governors have refused to appear before the Senate, will they

really submit themselves before the MCAs? As you deliberate further, also consider the provision that any Kenyan under the Constitution is free to petition the Senate. It does not, therefore, in my view, mean that any Kenyan other than an MCA. Therefore, if an MCA feels sufficiently provoked, he should be free to petition this House.

(Sen. Murkomen walked to the Dispatch Box)

The Speaker (Hon. Ethuro): Sen. Murkomen, I wish to remind you that every time somebody moves to the Dispatch Box, there is an implication that they want to talk a bit longer than the normal.

Sen. Murkomen: No, not really, Mr. Speaker, Sir. It is just that a colleague is sitting next to where my card is. It could be Sen. Sang.

Mr. Speaker, Sir, I agree with the Senator for Nyeri County in terms of some of the remedies that are being sought here. Those issues could have been investigated effectively by the county assembly so that in the second instance, this House can have a second look. However, like Sen. (Dr.) Khalwale has said, this House must always dispense justice. We cannot say we are incapable of dealing with certain issues.

In my own opinion, the best thing would be to commit the process to the relevant committee. It is that committee that will advise the House and the Speaker about the necessary procedures. If there are certain processes that if this House takes will negate constitutional processes by the county assembly, then the committee will advise so that it can be ventilated on. If it means that one of the challenges the committee face, for example, if they invite the governor and he does not come, then that becomes a basis for certain recommendation by the House. The Petition should be committed to the necessary committee. It will then advise the House at length. However, the caution here is that looking at the petition as it is, the Senator for Nyeri County is correct in terms of; it would have been better if county assemblies started and failed at a certain stage and were devoted to this House.

The Speaker (Hon. Ethuro): Order! Give your views, not to agree or disagree. Sen. Elachi.

Sen. Elachi: Mr. Speaker, Sir, the issues we raised are very pertinent. As much as we are trying to say that the county assemblies will work with governors, we may be wrong. Look at how the governors have manipulated this process and they have realised that the courts will always protect them. Looking at Makueni County today, the Executive has resources while the county assembly does not have. County executives have realised that they can do without county assemblies.

It is this Senate, therefore, that has to come up with a solution. Even the Council of Governors has not given this Senate a report. We have no idea how much they have removed and what they have used. So, how do county assemblies survive? Most of them will be in the pockets of governors whether we like it or not. It is for us to unlock this, either through a framework or by looking at the County Governments Act and amending some of the laws that were put there.

The Speaker (Hon. Ethuro): Let us conclude this with two more submissions; Sen. Wetangula and then Sen. Mutula Kilonzo Jnr.

The Senate Minority Leader (Sen. Wetangula): Mr. Speaker, Sir, under Article 119 of the Constitution, every person in this country, including the distinguished Senator for Nyeri County, has the right to bring a petition to this House or to any House of Parliament. So, there is no problem there.

Secondly, the fact that the Petition has found its way to the Floor means that it passed through your hands and you found it legitimate to be tabled.

Thirdly, the issue is much wider than the Petition. It begs a much larger question about the institutions of governance in this country. We have been agonising in our Committee on Finance, Commerce and Budget ably chaired by the distinguished Senator for Mandera County, that you, probably, need to convene a retreat between the Senate and the institutions of governance in the country. These include: the Ethics and Anti-Corruption Commission (EACC), the Controller and Auditor-General, the Criminal Investigation Department (CID), the Judiciary and any other institutions that are involved in governance.

Mr. Speaker, Sir, as a constitutionally mandated organ for oversight, we will go down quite badly in history because of the manner in which the runaway pilfering, theft and corruption is going on in the counties. We may be blamed when we are not the only authority that can deal with this issue. So, we need a synergy.

I urge you to take time and see, as we go to recess, whether you can create two or three days and have these institutions meet with the Senate so that we take the bull by the horns and see how we can tackle this ogre that is permeating into the system and undermining the very good idea of devolution.

Sen. Mutula Kilonzo Jnr.: Mr. Speaker, Sir, just to echo the sentiments of Sen. Wetangula, Article 119 read with Standing Order No.219 are clear that any person can petition Parliament. But my own view is that the interpretation that we should give to Article 119 is the one contained in Article 259 (1) (d) which reads:-

“This Constitution shall be interpreted in a manner that contributes to good governance.”

Mr. Speaker, Sir, the Committee on Finance, Commerce and Budget has even appointed a sub-committee on petitions, because we realize that the only way that this Senate can become effective is not by the number of petitions that we receive, but the amount of time that we spend disposing them off. Therefore, we should encourage Kenyans to file petitions everyday in this Senate.

The Speaker (Hon. Ethuro): Order, Senators! That is a nice finish. I now appreciate why Sen. (Prof.) Anyang’-Nyong’o read Article 119 of the Constitution and Standing Order No.227. Maybe the Senator for Nyeri was not listening, but it has been repeated by other Members. Article 119(1) says:-

“Every person has a right to petition Parliament to consider any matter within its authority, including to enact, amend or repeal any legislation.”

I would imagine that Senators and MCAs are also persons. So, it is a matter within the authority of Parliament. The authority that we have under Article 96 is to protect, promote and represent the interests of counties. So, this is a matter that is legitimately brought to the Senate.

Secondly, it demonstrates to me the frustrations that maybe those MCAs – in this case three of them – are expressing. It makes a lot of sense when they realized that they have another authority higher than them that they can petition. All of us also know the history of the institutions of governors and the Senate in particular. So, we must demonstrate a lot of sympathy and empathy to the MCAs. When you look at this particular Petition, it is really comprehensive. It basically touches on each and every issue that a county must be performing. I do not want to draw conclusion. However, I want to explain that when you have a breakdown in the appellate processes or institutions that should be dealing with matters---

This is the reason you start witnessing situations like in Narok and counties whose leaders are not meeting. That will just lead to anarchy, breakdown of law and order. Therefore, if there is something that at least the Senate can do in order to forestall such situations, like convening a governance organ, it is important for us to make the necessary intervention so that things do not reach such a level that they turn ugly and brutish. Literally, people lose lives. In fact, I expected somebody even to ask about cases where everytime we have a demonstration somewhere and the police shoot some people dead. Why should people lose lives just because they are demonstrating? The police should use rubber bullets if need be or rather, other ways. We do not want to reach that situation.

The Petition is perfectly in order. The Senator himself feels frustrated as well, because the Petition says:-

“Efforts by leaders from the county led by the area Senator to dialogue and find ways of remedying the situation have not borne much fruit.”

That is the Senator himself speaking, in addition to the MCAs. We are also told in 12:-

“The county government has failed to prepare an annual financial report and forward it to the Auditor-General, Controller of Budget, Commission of Revenue Allocation and the County Assembly in contravention of Sections 163, 164, 165 and 166 of the Public Finance Management Act.”

These are weighty issues. While I appreciate the caution that you are giving to the House; that it is important – just for sheer logistics and time management – that not every issue should be thrown to the Senate. So, if there is a possibility of that, then we can allow the Committee to make such recommendations. But in terms of the right of every person to come to Parliament, that right is theirs and they are entitled to it. It is our job to ensure that they exercise it.

Regarding Sen. Wetangula’s point of calling institutions of governance together to dialogue in order to remedy these kinds of situations, it is always welcome. The Senate, as one such institution, has distinguished itself in promoting dialogue and good governance. We will pursue the issue. However, the major issue was whether the MCAs can petition the House. The answer is that they can. They have been doing so, and we will encourage them, in the words of Sen. Mutula Kilonzo Jnr., to continue bringing their petitions.

(Laughter)

I order that this Petition is submitted to the Committee on Finance, Commerce and Budget. But since the issues are really many, I want to encourage the Committee on Finance, Commerce and Budget to work very closely with the Committee on Devolved Government. This is because in summary it says:-

“Investigate and look into the enumerated issues that continue to undermine the spirit of devolution.”

I direct that there be a joint Committee on Finance, Commerce and Budget and the Committee on Devolved Government. Together you can agree on who tackles what kind of issues, so that this can be expedited.

I thank you.

Next Order!

MOTION

ADOPTION OF REPORT ON SUITABILITY OF NOMINEES TO THE COMMISSION OF INQUIRY INTO THE PETITION TO DISSOLVE THE MAKUENI COUNTY GOVERNMENT

THAT, this House adopts the Report of the Sessional Committee on Devolved Government on the suitability of the Nominees to the position of Commissioner in the Commission of Inquiry into the Petition to Dissolve the Makueni County Government, laid on the Table of the House on 26th February, 2015.

(Sen. Murkomen on 3.3.2015)

(Resumption of Debate interrupted on 3.3.2015)

(Several Senators withdrew from the Chamber)

The Speaker (Hon. Ethuro): Order, Senators! There is more business before the House than the Petition from Kisumu County and we invite all of you. We have to dispose of the next two Orders today. So, you can take a break, but, please, come back.

Sen. ole Ndiema, you had six minutes to conclude your contribution.

Sen. Murungi: On a point of order, Mr. Speaker, Sir. He is my deputy in the Committee on Agriculture, but definitely not in this House.

The Speaker (Hon. Ethuro): How relevant is that now?

Sen. Murungi: Mr. Speaker, Sir, considering the fact that we dedicated Wednesday afternoons for voting, especially on matters which affect counties, and I can see my good friend, the Professor and others getting out, would I be in order to request that we cut our contributions to two minutes, so that we can conclude the debate as quickly and dispose of the two items as directed by the Chair?

The Speaker (Hon. Ethuro): Order, hon. Senators! We had agreed with Sen. Murungi that we would dedicate Wednesday afternoons to voting. Of course, we will not vote on everything without contributing. Therefore, we need to have some limited contributions. However, since this began yesterday, we spent two and a half hours on the Report; that was sufficient time for contributions. If you do not mind, I will allow you more interventions during the next order. We should just allow Sen. Ndiema one minute to conclude then we move on.

Sen. Ndiema: How many minutes do I have?

The Speaker (Hon. Ethuro): You have one minute.

Sen. Ndiema: Mr. Speaker, Sir, as I was saying, this attempt to dissolve the Government is something that the county government has invited. This has happened because the institutions of government that are supposed to set standards have failed. The issue here is about ceilings. The Commission on Revenue Allocation (CRA) cannot set the ceilings. If we had ceilings set, perhaps, the grandstanding we are seeing would not be there.

The County Government of Makueni has failed its people. They are grandstanding to prove a point or to satisfy their personal egos. This is very unethical. They should not deny the people who elected them services. They have failed the integrity test. Therefore, the EACC should have set in to ensure that the state officers concerned face the law.

You will recall that the EACC was at one time pointing fingers at the National Assembly Members. This was more serious than that. It would not be proper even if consideration for dissolution and reelection was considered. It will be unfair for such leaders to be cleared again for elections. As I speak today, counties and Governors are watching. If dissolution is approved, they will have seen a loophole which they can use as a tool to blackmail and threaten county assemblies. Those county assemblies are now suffering.

Most county assemblies are now suffering. The Director of Budget and the CRA should look into how funds will go to county assemblies. As I speak today, allocation to county assemblies is not going directly. It is being controlled by the county executive for the purpose of ensuring that they do not operate freely. The Constitution separates the functions of the two. Why should one arm of the Government have more authority than the other? Even at the national level, we have disagreed on revenue allocation, but we have never considered going for an election or dissolving the national Government just because we had disagreed. If two arms of Government disagree at the county, then resolution becomes dissolution, suspension and desolation.

With those few remarks, I support.

The Speaker (Hon. Ethuro): Hon. Members, I will now put the question and remind you that this is a matter concerning counties.

Please, ring the Division Bell for five minutes.

(The Division Bell was rung)

The Speaker (Hon. Ethuro): Order Senators, I think we can now proceed with the voting. Assume your positions, close the door and draw the Bar.

(The Bar was drawn)

Make sure that the cards are working. Technicians, make sure your systems are working.

Log in. We will take one minute to vote.

(Voting in progress)

Order, Sen. Karaba!

(Sen. Mungai approached the Clerks-at-the Table)

(Sen. Karaba, Sen. Murkomen, Sen. Moi, consulted loudly)

For the benefit of Sen. Murkomen, Sen. Moi and Sen. Karaba---
Sen. Mungai from Nakuru County had come to register his manual vote.

Standing Order No.80(4) – Quorum during Division – states that:-

“During division, Senators shall maintain order in the Senate and shall be in their designated seats and shall remain seated until the result is announced.”

DIVISION

ELECTRONIC VOTING

(Question that, the House adopts the Report of the Sessional Committee on Devolved Government on the suitability of the Nominees to the position of Commissioner in the Commission of Inquiry into the Petition to Dissolve the Makeni County Government, put and the Senate proceeded to vote by county delegations)

AYES: Sen. Abdirahman, Wajir County; Sen. Anyang’-Nyong’o, Kisumu County; Sen. Billow, Mandera County; Sen. Bule, Tana River County; Sen. Boy Juma Boy, Kwale County; Sen. Elachi, Nairobi County; Sen. Haji, Garissa County; Sen. Kajwang’ M, Homa Bay County; Sen. Karaba, Kirinyaga County; Sen. Kembu-Gitura, Murang’a County; Sen. (Dr.) Khalwale, Kakamega County; Sen. Khaniri, Vihiga County; Sen. (Prof.) Kindiki, Tharaka-Nithi County; Sen. (Dr.) Kuti, Isiolo County; Sen. Lesan, Bomet County; Sen. Leshore, Samburu County; Sen. (Prof.) Lonyangapuo, West Pokot County; Sen. Madzayo, Kilifi County; Sen. Melly, Uasin Ngishu County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Murungi, Meru County; Sen. Musila, Kitui County; Sen. Mositet, Kajiado County; Sen. Mungai, Nakuru County; Sen. Mutula Kilonzo Jnr., Makeni County; Sen. Ntutu, Samburu County; Sen. Moi, Baringo County;

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Sen. Ndiema, Trans-Nzoia County; Sen. Obure, Kisii County; Sen. Orengo, Siaya County; Sen. Sang, Nandi County and Sen. Wetangula, Bungoma County.

NOES: Nil

The Speaker (Hon. Ethuro): Hon. Senators, I wish to announce the results of the Division as follows:-

AYES: 32

NOES: Nil

ABSTENTIONS: Nil

So, the “Ayes” have it.

(Question carried by 32 votes to nil)

(Applause)

Draw the Bar and open the door!

Next Order!

MOTION

Sen. Haji: Mr. Speaker, Sir, Article 245(1) and 245(2)(a) of the Constitution provide that:-

“There is established the office of the Inspector-General of the National Police Service.

(2) The Inspector-General—

(a) is appointed by the President with the approval of Parliament; and

(b) shall exercise independent command over the National Police Service, and perform any other functions prescribed by national legislation.

The Speaker (Hon. Ethuro): Order, Mr. Chairperson! There is no business you are trying to dispose of. You should Move the Motion for which you gave a notice yesterday.

ADOPTION OF JOINT COMMITTEE REPORT ON VETTING OF NOMINEE FOR THE POSITION OF INSPECTOR-GENERAL OF POLICE

Sen. Haji: Mr. Speaker, Sir, I beg to move:-

THAT, this House adopts the Report of the Joint Committee of the Departmental Committee on Administration and National Security of the National Assembly and the Standing Committee on National Security and Foreign Relations of the Senate on the vetting of Mr. Joseph Kipchirchir Boinett – Nominee for appointment to the position of Inspector-General of the National Police Service, laid on the Table of the House on Tuesday, 3rd March, 2015.

Mr. Speaker, Sir, Articles 245(1) and 245(2)(a) of the Constitution provide that:-

“There is established the office of the Inspector-General of the National Police Service.

(2) The Inspector-General—

(a) is appointed by the President with the approval of Parliament;

(b) shall exercise independent command over the National Police Service, and perform any other functions prescribed by national legislation.”

Mr. Speaker, Sir, after receiving the name of the nominee for the position of the Inspector-General (IG) on 17th February, 2015, the Speakers of both Houses directed that the vetting of the nominee for appointment to the position of the IG of Police shall be conducted jointly by both Houses and, in particular, the Departmental Committee on Administration and National Security of the National Assembly and the Standing Committee on National Security and Foreign Relations of the Senate.

In exercise of its mandate, the Joint Committee held five meetings; that is, two pre-vetting meetings to prepare for the vetting exercise on 18th and 25th February, 2015; we carried out the vetting exercise on Thursday, 26th February, 2015, and two meetings to prepare the Report on the vetting exercise and adoption of the Report on Monday, 2nd and Tuesday, 3rd March, 2015, respectively.

The Joint Committee complied with the Constitution and legal requirements and established procedures for vetting. It ensured public participation and openness in carrying out the procedures. Notifications inviting the public to submit memorandum were placed in the mainstream print media on the 18th of February, 2015, in tandem with the law.

On 25th February, 2015, the Committee considered two memoranda, one of which was recommending the appointment of the nominee and the other one was contesting his appointment.

The Joint Committee conducted the vetting exercise on 26th February, 2015. In doing so, it relied on the provisions of the Constitution, the Public Appointments (Parliamentary Approval) Act, No.33 of 2011, the Standing Orders of the respective Houses and the National Police Service Act, 2012.

Mr. Speaker, Sir, the Committee made several observations during the vetting exercise, key among them being the fact that:-

(a) Article 245(2)(a) of the Constitution read together with Section 12(1) and 12(2) of the National Police Service (NPS) Act, 2011, as amended by the National Police Service (Amendment) Act, 2014, and the Security Laws (Amendment) Act, 2014, gave the President discretion in the exercise of nomination for appointment of a candidate to the post of the IG of the NPS.

(b) There was no evidence to suggest that the President did not take into consideration any observation, the provisions of Articles 232(g) and (h) and (1) of the Constitution providing for fair competition and merit as the basis for appointment in public service in exercising his powers of discretion before nominating the candidate to the position of IG of the NPS.

(c) The Statute Law Miscellaneous (Amendment) Act, 2014, made amendments to the University Act in November, 2014, and provided for the following new sub-section as a function of the Commission of University Education (CUE):- “Promote, advance,

publicize and set standards relevant in the quality of university education, including the promotion and support of internationally recognized standards.”

The new sub-section provides that the CUE can promote and support internationally recognized standards. Taking cognizance of this, the recognition of academic qualification from Washington International University by the United Nations Education, Scientific and Cultural Organization (UNESCO) falls under internationally recognized standards and can, therefore, be recognized in Kenya.

Mr. Speaker, Sir, these observations guided the Joint Committee in making its final recommendation, which is solely based on evidence and information from the proceedings of the Committee during the vetting exercise.

The Joint Committee recommends that having considered the suitability, capacity and integrity of the nominee and pursuant to Article 245(2)(a) of the Constitution and Section 8(2) of the Public Appointments (Parliamentary Approval) Act No.33 of 2011, the Committee recommends that Parliament approves the nomination and subsequent appointment of Mr. Joseph Kipchirchir Boinett to the position of the IG of the NPS.

Mr. Speaker, Sir, the Joint Committee wishes to thank the Office of the Speakers and Clerks of both Houses of Parliament for the logistical support accorded to it during the vetting exercise. The Committee is also grateful to the media for their live coverage of the proceedings of the Committee, thus enabling accountability and transparency of the vetting. I wish to add that there was no time when the Committee voted on their deliberations as reported by some of the newspapers. I would like to commend *Daily Nation* and *The Standard* newspapers for reporting factually what transpired at the end of our meeting.

Mr. Speaker, Sir, on behalf of the Committee and pursuant to Article 245(2)(a) of the Constitution, Section 8(1) of the Schedule to the Public Appointments (Parliamentary Approval) Act, No.33 of 2011, it is my pleasant duty to table the Report of the Joint Departmental Committee on Administration and National Security of the National Assembly and the Standing Committee on National Security and Foreign Relations of the Senate on the vetting of the nomination of Mr. Joseph Kipchirchir Boinett to the position of IG of the NPS for debate and adoption by the Senate and request this House to adopt the Report of the Joint Committee, laid on the Table of the House on Tuesday, 3rd March, 2015.

Mr. Speaker, Sir, with your permission, I call upon Sen. Fatuma Dullo to Second this Motion.

Thank you, Mr. Speaker, Sir.

Sen. Adan: Thank you, Mr. Speaker, Sir, for giving me this opportunity to second this particular Motion. I am a Member of this Committee that vetted the nominee for the position of IG of Police. Mr. Boinett, who actually appeared before the Committee, meets the requirements of the provision of the National Police Service (NPS) Act, 2011; in particular, Sections 11(1) and 11 (3). Mr. Boinett produced various testimonials, one of them, being satisfaction of the provision of Section 11(1) of the NPS Act, 2011, which says that he should hold a Degree from a recognized university in Kenya.

In the deliberations on this particular Article, there were so many questions that were raised but according to our assessment we went a long way in terms of interrogating

his documents. We even had to actually summon the Chief Executive Officer (CEO) of the Commission for University Education (CUE), who proved that Mr. Boinett has a requisite Degree to be nominated to the position of IG.

Secondly, Mr. Speaker, Sir, Mr. Boinett had actually served in various capacities. For example, he has served in the police between 1984 and 1986 as a police officer cadet in Central Province. This means he has the capacity to run the Office of IG. I would like to clear the air because there are actually rumours that were going round saying that Mr. Boinett was a graduate of St. Paul's University and that is not true. He has never actually gone to St. Paul's University to attain his Degree from there.

Mr. Speaker, Sir, he has worked with our diplomatic missions, which means that he has a lot of experience that he has carried from that area. This means that he can actually compare the challenges that we have in trying to solve the problems of insecurity that we have in our country.

Thirdly, he has worked for the intelligence department for a very long time. I remember this House severally questioning the capacity of security officers to deal with intelligence information. But according to our assessment, Mr. Boinett proved to us that he has worked in data analysis in the intelligence department and he can deal with intelligence information. He can analyze the data given to him and to carry out security checks in our country.

Mr. Speaker, Sir, another area that I really feel that he will help us---

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

Sen. (Dr.) Khalwale: Thank you, Mr. Speaker, Sir. The Senator is telling us that they sought the concurrence of the CUE to ascertain whether, indeed, the nominee has got university education. I believe that she is referring to a letter dated 27th February, 2015. Could she clarify why in the Report, they have refused to give us a copy of the letter and, instead, they have just given us one page of that letter which has no conclusion whatsoever to convince us that he was cleared by the CUE? Could she show us where?

Sen. Adan: Mr. Speaker, Sir, as far as I am concerned, the copy of the minutes that deliberated on that matter is attached to the Report. Again, as my Chairperson pointed out, there was an amendment to the Universities Act, the Miscellaneous Amendment, 2014; this cleared up that particular issue. Therefore, I would request Sen. (Dr.) Khalwale to look at the Report and also the briefing that was given by my Chairperson before me.

Sen. (Dr.) Khalwale: On a point of order, Mr. Speaker, Sir. I am not trying to split hairs, I have a copy of that Report and the letter she is referring to is dated 27th February, 2015. It is on the letter head of the CUE. They are responding to the Clerk of the Senate after the Clerk sought their confirmation. You have not given us the whole letter, you have only given us one page. We are begging that you give us the letter so that we see what Prof. Some said. It is not here in your Report.

The pages are not paginated, but I will approach the Chair if you do not mind.

The Speaker (Hon. Ethuro): Proceed Sen. Adan.

Sen. Adan: Mr. Speaker, Sir, we received that letter from Prof. Some and after going through it, we actually requested him to appear before us to clear the air. Actually, that is in the HANSARD.

(Loud consultations)

The Speaker (Hon. Ethuro): Order, Members! This is a small matter. The issue is whether the letter is complete or incomplete. Just respond to that part, Madam Vice Chairperson.

Sen. Adan: Mr. Speaker, Sir, I might not have a copy of the letter. I would request Sen. (Dr.) Khalwale to show me if he has it because the letter that we have is complete.

In further clarification to the letter that was given to us by Prof. Some, we requested him to appear before us. He came and he cleared the air in terms of proving Mr. Boinett's qualification and also the authenticity of his Degree.

(Sen. (Dr.) Khalwale consulted the Speaker)

Mr. Speaker, Sir, if I may continue, Mr. Boinett has a lot of experience to run the office of the IG. I would request the House to look clearly at the Report of the Committee. We have done due diligence in terms of going through all the legislations and the Constitution to make sure that he meets the requirements that have been provided for within the Constitution and also the legislations that are available.

Mr. Speaker, Sir, I would like to add that Mr. Boinett was cleared by relevant authorities as per requirement for appointment to this position. What really made me to conclude that Mr. Boinett really fits the position of IG - one of the requirements is command and control. This is an area that we really have a lot of challenge with, especially in terms of what happened at the Westgate Mall where the relevant security agencies were having challenges. What he said when he appeared before us was that he will be able to put together all the relevant agencies and bring everybody on board, including Members of the public to make sure that he has control of the security of this country.

People have raised the issue about Mr. Boinett being a very polite person to be able to run that particular office. That should not be an issue because being polite does not mean that he does not have capacity.

I would like to finally conclude that we need to give Mr. Boinett a chance to be able to run this particular office. He has given us the assurance that he will be able to prove to this country that he has dealt with the issues and challenges that are being faced in this country.

Thank you.

(Question proposed)

The Speaker (Hon. Ethuro): Sen. (Dr.) Khalwale, you can make your contribution.

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, before I declare my stand on this matter of the appointment of Mr. Joseph Kipchirchir Boinett, allow me to congratulate him. He

must, indeed, be one of the few lucky Kenyans still alive in this country for the reason that---

Sen. Orengo: On a point of order, Mr. Speaker, Sir. We have put tools on how to request for time to give a contribution. I checked whether I was on the list or not, or whether I could take a walk and if the rules are changing and there is a better way of showing that I am itching to speak, then I stand to be guided. However, I feel offended with respect to go and check on the list of speakers and find my name on the list and then it is completely disregarded. I have had problems with this.

The Speaker (Hon. Ethuro): Sen. Orengo, I invite you to also check my screen.

(Sen. Orengo approached the Chair to check the Speaker's screen and then walked back to his seat)

Sen. Orengo, indeed, you have confirmed with the Chair. We will consider, but for now Sen. (Dr.) Khalwale has the Floor.

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, I was just drawing the attention of the country to the fact that this particular officer; a patriotic Kenyan, must really be lucky. He is lucky in the sense that when he joined the Kenya Police Service, he did so as a Direct Inspector. He never broke a sweat. He was just shoed in, courtesy of none other than Rtd. Brigadier Boinett, former Director-General of the NSIS who is the younger brother of his father.

Sen. Haji: On a point of order, Mr. Speaker, Sir. Is he in order to say that the candidate became an Inspector courtesy of Rtd. Brig. Boinett, when he had the qualifications and among other Kenyans, he was interviewed and appointed as a cadet inspector? Is he in order to impute improper motive against somebody who cannot defend himself here?

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, I was very clear in my English. I said "direct inspector" courtesy of his uncle. If he cares to know, a "direct inspector" means the youth who after Form Six were not being subjected to breaking their sweat. There were many Form Six leavers at that time who would have loved to join direct as inspectors, but they were forced to join as police constables. I know what I am talking about.

He is lucky because he then went on and was quickly recommended to join the Directorate of State Intelligence where he was given the position of Superintendent of Police, courtesy of Rtd. Josiah Arap Rono, former Deputy Director of Intelligence in 1986.

Mr. Boinett has never held any position whatsoever of leadership; a position of command, within the Police Service or the NIS. This is critical because the country must know that the man who now wants to command the entire police force has never in his life, leave alone the two years of experience as a police officer, not to mention the other balance of years in the NIS, held a position of command.

Mr. Speaker, Sir, after his nomination as Inspector General (IG), Mr. Boinett was conveniently promoted at the beginning of the year to the rank of, Director of National Intelligence Service to make it appear as if he is senior.

(Loud consultations)

I have the evidence here but you will not force me to table because there is something called the Witness Protection Act. This information was given by officers who have sought anonymity because if I disclose, they can lose their jobs immediately. I would not know about these things because I do not know anything about the police. However, patriotic Kenyans are complaining to us. They want the country to know about our new IG. I have not even said whether I am opposing him or not.

The Speaker (Hon. Ethuro): I want to confirm to you that our Standing Orders are clear. So, please, proceed.

(The Speaker (Hon. Ethuro) spoke off record)

Sen. (Dr.) Khalwale: Thank you, Mr. Speaker, Sir. The officer who is being asked to be responsible for our security was nominated because he had to fit the bill, that is, be a tribesman of the former IG, Mr. David Kimaiyo, because the local leaders had loudly demanded that a kinsman must be the replacement for the former IG. Should we succumb to the loud demands of the leadership from one corner of the country so that we can we can give them an opportunity to have their egos massaged? The answer is “no”.

Mr. Speaker, Sir, given that he only served as a Cadet Inspector of Police in the National Police Service (NPS) for two years, it is my view that he does not understand the work of an Officer Commanding Police Station (OCS), an Officer Commanding Police Division (OCPD), the former position of the Provincial Police Officer (PPO) or the new one called County Commander, yet he will be expected to command these people.

As we take a vote, let us ask ourselves: What shall we do about the traditional chain of command that we have in all armed forces and militaries in the world where, senior officers cannot be commanded by a junior officer? It is estimated that in Kenya today, we have about 400 senior police officers who are more senior than Mr. Boinett. How on earth shall we be comfortable and assured that he will not be exposed to sabotage?

Some of us asked the President at a very early stage to remove Mr. Kimaiyo, because we were persuaded that there were some officers working under him who might have been sabotaging him. No wonder as soon as he stepped aside and a career police officer, Mr. Arachi started acting, there has been a slight drop in the crime incidences.

(Sen. Murkomen consulted loudly)

May I inform the young Senator from Elgeyo-Marakwet that before Mr. Kimaiyo was appointed, we were the ones who vetted and approved him in this House. He had earlier been dropped by Maj. Hussein.

Mr. Speaker, Sir, we are persuaded that probably, the reason why there is some little semblance of calm is that there is a possibility that some police officers who were

sabotaging Mr. Kimaiyo, have now recognized Mr. Arachi, because he was picked from the rank and file of the police. I am not holding brief for Mr. Arachi and I have never even met him. If need be, then we should oppose Mr. Boinett and have a senior police officer. They are many of them. In fact, for your information, if you cared to do research, the two best educated and experienced senior officers in the Kenya Police Service (KPS) today are; a Kalenjin and a Luo. I will not give their names because you will think that they sent me here. You could have chosen to pick anyone of them. They would fit the bill very well. However, because they do not come from a village from Elgeyo-Marakwet, this is the price they are paying.

Mr. Speaker, Sir, talking to some of the retired former senior police officers who had the opportunity to command Mr. Boinett as his bosses, listen to what they told me. They told me while he was working in Nyeri, they described him as an introvert who needs supervision and guidance to perform and that while there, he proved to be a poor intelligence analyst. These are not my words. We just want to think about it if we want our country to be safe. If the Jubilee Government has the intention of pleasing a certain tribe in this country, they can do so, but they should be guided by one thing---

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

Sen. Murkomen: On a point of order, Mr. Speaker, Sir. I have restrained myself for very long. Is it in order for the hon. Member to try to insinuate and conclude that this matter is just a personal attack on the Kalenjin Community? Secondly, is it in order for him to try to cook whatever he calls evidence from fictitious people; products of his fertile imagination and try to mislead this House by trying to say that so-and-so told me when there is no evidence tabled in this House?

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, because I have spoken before my brother, and colleague, he will have an opportunity to confirm that what I am saying is a figment of my imagination. However, because of the rules of debate, I am free to debate, based on the research that I have done.

(The Speaker (Hon. Ethuro) spoke off record)

I was very careful in my statement. I said that if the Jubilee Government wanted to please a certain ethnic community. If he had challenged me to say the ethnic community, I would have said it. I did not say it with due respect. I was therefore drawing this analogy---

Sen. Murkomen: On a point of order, Mr. Speaker, Sir. Can the Member substantiate the purported statements that he says he was given by certain police officers? Can he table evidence in this House where he took the interview? Can he substantiate the source and table before this House? This is a House of record.

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, in the CV that is in this report, we are not only told that he was born in 1962; but we are also told where he was born. I am simply reading from here.

I was drawing the analogy by saying that it would be dangerous to look for a scientist whom you want to employ and post a doctor of medicine---

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

Sen. (Dr.) Kuti: On a point of order, Mr. Speaker, Sir. With all due respect to my colleague, the Senator for Kakamega, we are discussing personalities and specific people with their qualifications. Understanding very well that this is a country of diverse tribes and ethnicity, I do not think that we should carry the ethnic card to the extent of infuriating and raising emotions. Can the distinguished Senator for Kakamega stick to the person rather than talking about ethnic relationships?

The Speaker (Hon. Ethuro): I think Sen. (Dr.) Kuti has made a good observation. The issue before us is not ethnicity and I will take great exception from Members who try to anticipate and imagine what I am about to say. I am referring to words already spoken and not the ones imagined and I am very clear in my mind. We are all fully aware of the issue of ethnicity and Sen. (Dr.) Kuti is asking us not to be. The issue of discussing personality is completely out of order because we are discussing a nominee. We can discuss about his qualifications and other issues being the subject of this Motion but to extend it to an ethnic angle is not acceptable. I am not going to allow unnecessary debate. Everybody will have a chance to contribute. Just take notes.

Proceed, Sen. (Dr.) Khalwale.

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, so that the country is not misled by Sen. (Dr.) Kuti that I am pursuing an ethnic agenda, I would like to draw his attention to Article 238(2)(c) and (d) of the Constitution of Kenya which provide that recruitment by the national security organs shall reflect the diversity of the Kenyan people in equitable proportions and that in performing their functions and exercising their powers, national security organs shall respect the diverse culture and communities within Kenya.

Mr. Speaker, Sir, I was alluding to---

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

The Speaker (Hon. Ethuro): Order, Members. I am sure Sen. (Dr.) Kuti would want to say the same thing. Let me respond to what Sen. (Dr.) Khalwale has said. That is applicable when you are profiling the entire service but this is just one position.

Proceed, Sen. (Dr.) Khalwale.

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, this appointment is the case trying to recruit a scientist, then you take a doctor of medicine---

The Speaker (Hon. Ethuro): Your time is up.

Sen. (Dr.) Khalwale: I oppose this tribally instigated appointment that is not serving the 42 communities of Kenya.

The Speaker (Hon. Ethuro): Senators, whatever you wish to do, do it within your time allocation.

What is it, Sen. Wetangula?

The Senate Minority Leader (Sen. Wetangula): On a point of order, Mr. Speaker, Sir. My point of order has to do with the altercations that I have seen on the Floor. We are vetting an individual to go to a public constitutional office. In so doing, we are at liberty, in my view to look at the Constitution. Issues of diversity, issues of national values, issues of inclusivity, profile of the individual including previous holders of the office to which he is being appointed. I do not believe that it is out of order for us to either support or assault the character, the profile, the ethnicity, lack of inclusivity and everything else about the nominee.

The Motion is about an individual and once you are paraded, we have the right and duty to look at every aspect that makes you suitable or unsuitable. Therefore, it is not right for our colleagues to develop a short fuse every time something is mentioned because it is simply going to create altercations that do not help debate in this House.

The Speaker (Hon. Ethuro): I said as much, Sen. Wetangula. I was trying to avoid the altercations you are talking about. I only allowed Sen. (Dr.) Kuti one time and disallowed subsequently. So, what moral basis do I have to stop Sen. (Dr.) Kuti when you want to be allowed? The best you have done is just to eat in Sen. Orengo's time.

Sen. Orengo: I have not even started.

Mr. Speaker, Sir, in contributing to this Motion, let me also thank the Chairman.

The Speaker (Hon. Ethuro): Sen. Orengo, I will not use it against you, you will have your ten minutes and any further accessory to you will be out of your time.

Sen. Orengo: Mr. Speaker, Sir, let me, first of all, thank my Chairman who, together with his counterpart in the National Assembly; they did a great duty to the Republic in performing this particular function which the Senate is going through, not really for the first time, but I think this is the first substantial case that is coming before us.

I must also recall that I apologized for not attending some of the meetings but, essentially, I attended some of them. I think this process should be wholly and independently driven by the Senate on its own. Mixing these two committees in a way undermines the authority, spirit and structure of bicameralism as announced in the Constitution.

Having said that, I want to say that at the end of the day, anybody who is going to be appointed as the Inspector-General will be an Inspector-General of one indivisible nation called Kenya. That is why we have to speak about him in a very careful and reasonable manner. Whatever disagreement we have, at the end of the day, he will be the Inspector-General of the Republic of Kenya.

Mr. Speaker, Sir, he will not just be the Inspector-General of the Republic of Kenya and he will not just be the appointee of the President of the Republic of Kenya, but he will be my Inspector-General. Looking at the provisions of the Constitution on the functions and duties of an Inspector-General, there are things he is supposed to do, which in a way determines the way all constitutional offices should operate in the Republic of Kenya.

In relation to the Inspector-General as a member of the national security organ, if you look at Article 238(3), the Inspector-General is not supposed to act in a partisan manner; he is not supposed to further any interest of a political party or cause; and, he should not prejudice a political interest or a political cause that is legitimate under the Constitution. So, whoever is in that office must serve me as a member and a citizen of this country called Kenya.

Mr. Speaker, Sir, further, looking at the function of the Inspector-General himself, there are provisions there that suggest that when he is carrying out his duties and functions as the Inspector-General, there are matters that he cannot be directed by any authority or any power under any law including the Constitution which says he cannot be so directed.

This Inspector-General, we want to appoint him in circumstances where we have found the previous Inspector-General wanting and that is why he did not serve his full tenure. He had a protected tenure of six years. Why was the previous Inspector-General not allowed to fulfill his performance for those six years? In appointing the new Inspector-General, has he shown himself to be such a person who will perform so that the failures that were experienced under the other Inspector-General will not be repeated? These are exceptional circumstances. We are even made to go through a process where we have to put new Acts of Parliament to provide for exceptional circumstances in this country that is suffering from the threat of terrorism.

Mr. Speaker, Sir, looking at all those things in totality, I am looking at this Report, I do not understand why we removed Mr. Kimaiyo from being the Inspector-General of Police. Looking at the professional experience of this particular person in the police force; he is said to have served as a cadet inspector in the police between 1984 and 1986. That is his experience in the mainstream police force. That is the experience that he wants to use to manage the entire security sector as the Inspector-General of Police. I think that there is something wrong; we are appointing an Inspector-General of Police of the Republic of Kenya. I do not care where he comes from.

I have said this before about former President Moi. When it came to some sectors, he never bowed to tribalism. When it came to things to do with security and finance, he never advanced an ethnic cause. That I can grant to him and I can repeat it because it is not the first time I am saying it. However, looking at what is happening in major appointments, we are looking forward to who is going to be the Central Bank Governor. I can tell you that one of the things that make nations go into conflict is something called exclusion. You may not do anything wrong but the fact that day in day out when appointments are made, they go in a particular direction. The Senator for Mombasa County is going to speak for himself about that.

(Laughter)

For me, looking at the record which my brother, the Senator for Kakamega County, was going through, I do not find any exceptional experience that this officer is bringing into the police force or to the police service. It is not there. Look at page 16 of the Report; professional experience. He was not even a head of a section, unless at the time he was an Assistant Director, National Intelligence Service (NIS).

My father was a police officer and I know as a matter of fact that, when you are serving in the police force and you have done a good job within the force, you get a decoration, a medal or a commendation. We should have seen, in this Report here, that in year one or two, this particular person was awarded some decoration or recognition so that we know why he is being appointed as opposed to other police officers who are there who merit to have this position.

Mr. Speaker, Sir, even those who look after our dogs in the police force; dog handlers; when they have done exceptional service, they are given a decoration. I have seen in State House a dog handler being given a commendation by the Head of State. What has this particular individual, who is a Kenyan and must be protected under the

Constitution, done in this Republic to make a whole Senate be persuaded that he is the one who is fit to be the Inspector-General? I can tell you, looking at my friends across and my friends behind, this is something that we have to do.

However, you can say no and the sun will still rise up again. You will be wiser and you will have told those people in authority that every time they do an appointment, it should be of a person who qualifies and somebody who is good for the nation and for Kenya. For that reason and the fact that we went through that nomination process with the former Inspector-General of Police, Mr. Kimaiyo, and we regretted down the line, I think we should be very careful about what we are about to do. I will invite my friend and person whom I worked with very closely, Sen. Murkomen, that if it must be somebody from Elgeyo-Marakwet, please bring us another person.

(Laughter)

Under the law, there is nothing stopping any civilian from becoming the Inspector-General of Police. If this was Sen. Murkomen, I would vote with my eyes closed. In this particular one, I disagree and oppose not for personal reasons but because Kenya deserves better. If not better, then the process of appointment should have even been more transparent so that Kenyans who deserve these positions - the last word is the President – are given an opportunity including those in the police force. They would have participated in this process in an open and accountable manner.

Finally, Mr. Speaker, Sir, days move very fast. We are just about to start campaigning for the next General Election. Every time - I remember when we are talking about the leadership in the security forces and I look at my friends on the other side, those names were being called, they wanted to close their eyes. They were ashamed because they thought we had not made the right decision. However, in this particular one, I beg you, if we want one indivisible nation called Kenya and security to be where it should be, we should decline this appointment and ask the President to bring another name which has been competitively sought in an open and transparent manner.

Mr. Speaker, Sir, I beg to oppose.

The Speaker (Hon. Ethuro): Sen. Murkomen.

What is it, Sen. Ndiema?

Sen. Ndiema: On a point of order, Mr. Speaker, Sir, notwithstanding provisions of Section 100 of the Standing Orders because of the interest that I see, I request you to limit the time for this contribution to 10 or even five minutes each.

The Speaker (Hon. Ethuro): Order, Members. It is actually six minutes past Five O'clock and we must conclude this latest by 6.30 p.m. and the interest is quite enormous as well. So, I agree with Sen. Ndiema that we reduce it to five minutes.

Proceed, Sen. Murkomen.

Sen. Murkomen: Mr. Speaker, Sir, I like the way Sen. Orenge spoke. As I have always said, I admire him. You know, even if you do not agree with other people, there is a more diplomatic and friendly way of passing a message. He managed to make me laugh even in his opposition of a candidate whom I think is one of the best candidates.

The Speaker (Hon. Ethuro): Sen. Murkomen, even as you exercise your admiration, remember time is counting. It is five minutes.

Sen. Murkomen: Mr. Speaker, Sir, I want to go straight to Article 245 of the Constitution. The Constitution is very clear that the Inspector-General of Police shall be appointed by the President with the approval of Parliament. That is our Constitution. In fact, it was erroneous in the past that we had to create extra---

This is a direct appointment from the President. When we talk about matters of security, we are basically saying that the buck and ultimate responsibility stops with the Commander-in-Chief. In the past, it was very difficult for him to fire anybody. Article 245 (7) of the Constitution still provides in the Constitution that:-

“The Inspector-General may be removed from office by the President only on the grounds of—

(a) serious violation of this Constitution or any other law, including a contravention of Chapter Six;

(b) gross misconduct whether in the performance of the office holder’s functions or otherwise;

(c) physical or mental incapacity to perform the functions of office;

(d) incompetence;

(e) bankruptcy; or

(f) any other just cause.”

We have a candidate who has been provided for by the person with whom the buck stops. He is confident that this is the person who is capable to deliver the service under him. He reserves the constitutional responsibility to fire him. If that person, after six months, a year, two years or before the four years end is incompetent, the same appointing authority has the power to fire that person, appoint another person and bring his name to this House for vetting and approval. So, we must first trust that, ultimately, apart from just having an Inspector-General who is going to serve us, that Inspector General sits in the National Security Council and is answerable to the President.

Secondly, there have been stories here which have been said about Mr. Kimaiyo, which are not true. Mr. Kimaiyo is a career policeman of over 35 years. He rose from the lowest rank to the highest rank. He was not fired but resigned voluntarily in writing. So, trying to insinuate here that he had failed is not right. It was not about failure. He made a very courageous decision that is rarely taken by many people in this country. If you were to tell Sen. Khalwale to resign today, he would not.

Very few people are willing to take responsibility, but Mr. Kimaiyo did and offered to retire early, so that he can give another person a chance. It is not because he had failed, but he felt that it was important to have another person. Even Mr. Arachi is not a career policeman. He joined the Police late in life. Before then, he was in administration. So, I think the points raised by Sen. Khalwale were misleading.

Mr. Speaker, Sir, I want to conclude by saying that a lot has been said about the size of the nominee for the position of Inspector-General of Police and his community. A lot has also been said about whether he studied online or he was physically in class. It is not the size of the dog that matters, but the size of the fight in that dog. Most people have looked at this man as slim and quiet. That is the same way that the children of Israel and

Jesse saw his children. No one talked about David who was a small boy somewhere herding goats and cows. But he was the most qualified person because he had the attributes that God wanted and the people of Israel needed, that is, courage, determination and focus. There is no better and more courageous person than Mr. Boinett. Let us support him because he is qualified and capable to deliver the service.

Thank you, Mr. Speaker, Sir.

Sen. Musila: Mr. Speaker, Sir, first, I have a lot of respect for all those people involved in this nomination; from the President to the Co-Chairs and membership of the Joint Committee; but having said that, I cannot, with a clear conscience, support this nomination. I say this because we are looking for the Inspector-General of the Kenya Police Service; a man who is going to be in charge of the security of this country. Even so, at this time when we have all these security threats by terrorists, it is a very heavy burden that we are placing on the holder of the office that we want to appoint.

The big question is: Does the candidate have the necessary experience for this position? I have looked very carefully at the Curriculum Vitae that has been supplied by this Committee in respect to this candidate. His experience in the Police Service includes serving as a junior Inspector of Police for two years in Nyandarua. He left the service and soldiered on to various positions in intelligence and diplomatic services. But there is nowhere, as a previous speaker has said, he was given leadership. Recently, we wanted a Director of Intelligence in this country and this gentleman was serving in the Directorate of Intelligence. If he was qualified, why did he not become the Director of Intelligence? Why did we have to seek Maj-Gen. Kameru from the Army when he was sitting there? There are very serious questions about this nominee.

Mr. Speaker, Sir, let us talk about the police structure and command. I have been in the service for many years and know how the police work. We have so many Deputy Commissioners of Police who are qualified to take this position. How are the Deputy Commissioners of Police going to feel when they see a junior person coming from the Directorate of Intelligence - not even the Director of Intelligence, but an Assistant Director of Intelligence - to be their boss? We are misplacing this matter. This matter will have a demoralizing effect on the Kenyan Police Service and it will be very difficult to reverse it.

Remember when Maj-Gen. Mohamed Husssein Ali was brought into the police force from the Army, it was the first time ever for the police to be commanded by an outsider. The whole police force was demoralized and many things did not work. The post-election violence could not be controlled easily because Maj-Gen. Ali did not have the support of the police force. I am saying this with all honesty. Unless this gentleman is going to perform miracles, he will not perform well in the Kenya Police Service that I know today, with all the senior police officers that he is supposed to command.

Mr. Speaker, Sir, we have talked about tribalism. We had rallies in the area where this candidate comes from; where the leaders said: "This is our seat and we will not allow it to go elsewhere." This is common knowledge. That alone shows that this person has been nominated only for tribal interests. If that is the case, it appears to me that some positions have been reserved for certain communities. If this position of Inspector-

General of Police is reserved for that community, can I know which jobs are reserved for the other 41 tribes?

You started on a wrong footing and went tribal. You appointed somebody who did not have experience and now you are telling Kenyans to lay their lives on a man; a pure greenhorn---

The Speaker (Hon. Ethuro): Your time is up!

Sen. (Prof.) Anyang'-Nyong'o.

Sen. (Prof.) Anyang'-Nyong'o: On a point of order, Mr. Speaker, Sir. I rise to raise one point. We must take this Report seriously because it is the only basis upon which we can make our decisions. Our Constitution says that the Inspector-General of Police shall be appointed by the President with the approval of Parliament. So, giving our approval is a serious matter and not just a procedure. One of the things that alarmed me – I was very concerned – is that this man is reported to have received a Bachelor's Degree from Washington International University. I happen to know universities in Washington. However, I do not remember such a university. Nevertheless, I went to the internet and googled Washington International University.

I invite you, Mr. Speaker, to do the same and the comments you will meet about this university will be rather unfortunate. Much more so, the transcript from that university is only one page. The degree programme, reading assignment and or research project or thesis dissertation, are the only three things that Mr. Boinett seems to have done. These were a book report, another book report and another book report.

(Laughter)

I am a university professor. I do not understand how you can get a bachelors degree which is a basic degree by writing book reports. There must be certain basic course works that you have to do. If you take a basic degree in Bachelor of Arts in International Studies and Diplomacy, there is something called Theories and Concepts of International Affairs or World International Relations that you must do. Therefore, I was alarmed that he earned a degree on the basis of this transcript. He then did a research report on *Regional and Economic Integration; Africa's Experience* and got a grade "B". I have written a book on *Regional Integration in Africa: An Unfinished Agenda*. I would be happy to see the report and find out its content. The topic itself is uncannily reflective of the title of my book.

If you go further and look at Wikipedia to find out what a Bachelor's Degree in the US means, you will see that a Bachelor's Degree in the US is typically designed to be completed in four years of full time studies although some programmes such as engineering and architecture usually take five years and some universities and colleges allow ambitious students, with the help of Summer School, to complete them in as little as three years. The only thing you will know from this transcript is that he got it in the year 2001. There is no history before 2001 on how he arrived there and whether writing book reports took Mr. Boinett three good years and why he only did three book reports.

A Bachelor's Degree is very fundamental before you move to any other. The Commission on Higher Education writes, with regard to this university as follows;

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“Washington International University of USA is not recognised by the Council for Higher Council Accreditation in the USA.” They will also refer you to a website. The Distance Education and Training Council in the USA do not recognise it. He neither did course work in a campus nor through distance correspondence as far as the accredited universities are concerned. They also say; “Distance Education and Training Council is the body responsible for the accreditation of institutions in the USA that of degree programmes primarily by distance learning education method.” If this man cannot be accredited for getting a Bachelor of Arts through distance education nor can the Commission for Higher Education tell us that they have no ocular approval that he sat in a campus to write three book reports in three years. I do not see how he went ahead to get a Masters Degree. What is really interesting is that the course work during the Masters Degree is very elaborate.

I would be very reluctant if I were giving you a Masters Degree to accept you in a course programme if I do not see the course work that you did at the Bachelors Degree.

Sen. Keter: Thank you, Mr. Speaker, Sir, for giving me this opportunity. I want, from the outset, to thank the Committee Chaired by Sen. Haji for the good work it has done. I have heard comments from my colleagues with regard to the fact that this nominee is not qualified for this position because he has not served in the police force for a certain length of time.

What are the qualifications of one to be appointed to the position of Inspector-General of Police? One is that he must be a citizen of Kenya; he must hold a degree from a university recognised in Kenya. He must have a distinguished career in his respective fields; meet the requirements of Chapter 6 of the Constitution and fundamentally the last one which says; one must have served in a senior management position for, at least, 15 years and must have knowledge and experience in matters relating to any of the following disciplines: One, criminal justice, policy development and implementation. Three, he must have knowledge in finance and public administration, strategic management, security, law, sociology and Government.

There is no law that says one must have served for at least 15 years in the service or one must have been a policeman. Therefore, as we contribute to this Motion, it is good to know the basic qualifications for one to hold that position. Mr. Boinett, after serving in the police force joined the National Intelligence Service where he served in various portfolios. He was seconded to various countries leading the intelligence team.

When it comes to leadership, he has been a leader because he was a leader in the countries he was serving. Mr. Boinnet is bringing in a lot of experience---

Sen. Hassan: On a point of order, Mr. Speaker, Sir. It seems as if Sen. Keter and Sen. Murkomen are the only ones with curriculum vitae of the nominee beyond what has been presented here. I am not sure where all these facts are coming from.

Sen. Keter: Mr. Speaker, Sir, I do not want to argue with him. We have researched on him and he has served in various missions. This depends on the research you want to carry out. This is not hearsay. These are facts. This person has served in various missions. He has been a leader. Therefore, his appointment to the position of Inspector-General of Police is good in the sense that he knows the intelligence network very well. He has also served in various countries. Therefore, I urge my colleagues to

support the appointment of Mr. Boinett to the position of Inspector-General of Police. I do not want to take much time but I support his appointment. I have not met Mr. Boinett myself. I want to remind you of something.

During the last Parliament, I served under the Labour and Social Welfare Committee. We had three nominees to the Gender Commission. I remember my brother, Bonny Khalwale, fighting for position number four saying that the Chair of that Commission came from Kakamega. I remember that very well. Therefore, for him to say that I am supporting Mr. Boinett because he comes from Elgeyo-Marakwet is wrong. This is wrong in the sense that instead of supporting a candidate number three who was also Luhya but came from the Rift Valley, he went for number four who came from Kakamega.

I rest my case.

The Senate Minority Leader (Sen. Wetangula): Thank you, Mr. Speaker Sir, for allowing me an opportunity to contribute. I enjoin myself with the previous contributions from Sen. (Dr.) Khalwale, Sen. Orenge, Sen. (Prof.) Anyang'- Nyong'o and Sen. Musila. Just to wind up on the issue of qualifications, I thank the Chairman for participating in this process but my position remains that it was a flawed process. There should never have been a Joint Sitting between the two Houses. Each House should have vetted the Inspector- General nominee on its own.

On the question of qualifications, I fully support what Sen. (Prof.) Anyang-Nyong'o has said but I also want to draw the attention of the House to the degree certificate photocopy that is part of the documentation. Curiously, that degree certificate is not signed by the president of the university, it is probably a forgery I am not saying it is, but it is not signed by the president of the university. I do not believe that, the position for the president of the university to sign was put there to decorate the document.

We are being called upon to approve the appointment of a gentleman whom we personally do not know but we go with the records. The police force in this country has had a lot of challenges, you may recall even when the distinguished General Mohammed Ali was taken from the army to the police, there was disquiet, resistance and even sabotage because the rank and file of the police felt that he was an outsider.

Mr. Speaker, Sir, the distinction of the candidate here is that he served as a policeman for two years in a very junior position, he has never commanded a base, a division, or any unit of the police. There is no evidence that he has worked at the report office in a police station to gather some experience that can help him run the police force. The process of appointing this gentleman violates the Constitution. The Constitution requires a dual approach in nominating, recruiting and appointing the Inspector- General of Police. If you look at Article 246(3) (a), it was not put there to decorate the Constitution, it states that:-

“The National Police Service Commission (NPSC) shall recruit and appoint persons to hold or act in offices in the service, confirm appointments and transfers within the National Police Service”

One would then conclude that, the National Police Service (NPS) would competitively recruit, that the President would nominate for appointment, Parliament would vet and then approve the appointment.

This process has been completely side-stepped and circumvented. There is no evidence in the Report that the NPSC had any role in the process of appointment. Equally important---

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

Sen. Murkomen: Mr. Speaker, Sir, the Senate Minority Leader has just spoken, is he in order to mislead the House that there was need for involvement of the NPSC in the appointment of the Inspector-General? He is quoting fictitious provisions of law that do not exist.

The Senate Minority Leader (Sen. Wetangula): Mr. Speaker, Sir, you know that is the problem when one is overawed by arrogance and then you fail to listen to others. I just read Article 246(3) (a) of the Constitution, he was not listening and I had him saying "what, what". We are not going to debate that way. When the distinguished Senator spoke, I listened quietly and I encourage him to do so to others because what you give is what you get.

The Speaker (Hon. Ethuro): Expect that, Sen. Wetangula you have been challenged. Which article are you reading?

The Senate Minority Leader (Sen. Wetangula): Mr. Speaker, Sir, the Constitution provides for two articles in the process of appointing for the Inspector-General.

(Loud consultations)

Mr. Speaker, Sir, can you restrain this young Senator?

The Speaker (Hon. Ethuro): Order, Sen. (Prof.) Lesan! Sen. Wetangula, let me help you.

The Senate Minority Leader (Sen. Wetangula): Mr. Speaker, Sir, Article 245 must be read together with 246, in the process of appointing the Inspector-General of Police--

The Speaker (Hon. Ethuro): Order. You requested me but you also do not want to be assisted.

I was just wondering because you requested the younger Senator to be restrained, that was also not an invitation for the senior Sen. (Prof.) Lesan to take over. So both of you are restrained, let Sen. Wetangula respond to the point of order.

The Senate Minority Leader (Sen. Wetangula): Mr. Speaker, Sir, in appointing the Inspector-General of Police, Article 245 must be read together with Article 246. Those who have the Constitution can read it because I have constraint of time, let me carry on. When you say the NPSC shall recruit persons in the police service, it does not exclude the Inspector-General. They will interview, recruit and pass on to the President for nomination for appointment and then it will go to Parliament for vetting and eventual appointment. That is my point of view, you may have a different one but the Constitution says so.

(Sen. Murkomen spoke off- record)

Mr. Speaker, Sir, did you hear Sen. Murkomen say that I am lying? Is that parliamentary language?

The Speaker (Hon. Ethuro): I did not hear, he was not on record.

The Senate Minority Leader (Sen. Wetangula): Mr. Speaker, Sir, I can be quite nasty if I want to be but I do not want to be today because this is very important. We are talking about the person who is going to take care of the security and the lives of 40 million Kenyans. In doing this, we must avoid wearing blinkers of ethnicity, narrow minded regionalism and all manner of things. For me, it does not matter if the appointed person came from the smallest community, the Elmolo or any other community. The statistics show that the Elmolos are the least in numbers. If we want to have a country, it is very dangerous for the Jubilee Regime to start driving this country- and we have said over and over, “*kupinga ukabila si ukabila*” and we will continue saying this.

Kenyans are asking themselves and they have the right to ask as the alternative Government: “Is it fair and just that when somebody leaves office you have to go to his village to appoint a replacement, however qualified?” That is a dangerous direction to take. Equally, I want to tell this House that sometimes you get overawed and think that numbers are right, numbers can be very wrong and very misleading. If you look at this Curriculum Vitae (CV), that this gentleman worked in an embassy and somebody extravagantly said here, that he was leading a team of intelligence at the embassy. At every embassy, if there is any intelligence officer, there is only one officer, there is no team to lead. It is only one officer who goes there and we know what they do. That has nothing to do with the security challenges we are having in this country.

Equally important is the fact that we have very senior seasoned officers in the police who have served in the rank and file, in positions to be appointed, but because they come from communities that are not in the favour of the Jubilee Regime today, then you see what we are doing here. I want to tell this House that I will be the first to vote for Mr. Boinett as the Inspector- General of Police if he has the requisite experience, qualifications and all that it takes to be an Inspector- General. I opined that he does not. Why does he not have?

(Loud consultations)

This chorus will not turn into votes; there are also votes on this side. So, if you want to pursue an agenda, convince us to vote for this gentleman instead of engaging in unhelpful chorus that does not take us anywhere. You can be excited as much as you can.

Mr. Speaker, Sir, I heard Sen. Murkomen sitting here and saying “this is my appointee; he has to go through;” I thought this was an appointee of the President of the Republic of Kenya. We want to move away from this kind of talk; you should persuade us to vote for this gentleman---

(Sen. Murkomen stood up in his place)

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

Sen. Murkomen: Mr. Speaker, Sir, the Senate Minority Leader would like to be the President of the Republic of Kenya and I have always respected him for that. Is it in order for him to actually make preposterous imaginations? Even a small child cannot say that because I have absolutely no capacity to appoint anybody. Even if anyone shouted---

The Speaker (Hon. Ethuro): Order, Sen. Murkomen! The point is very easy; did you say so or not?

Sen. Murkomen: Mr. Speaker, Sir, I did not and I never even imagined to appoint the IG until that time. The only thing I told the Senate Minority Leader jokingly was that if he ascends to the presidency, he should remember me as a running mate. That is the only thing I joked about!

(Laughter)

The Senate Minority Leader (Sen. Wetangula): Mr. Speaker, Sir, I am never frivolous. The Senator told the distinguished Senator for Makueni, sitting here – and he can testify because I was seating here – that “this is my appointee.” But that is neither here nor there. Let us move on to---

(Sen. Murkomen spoke off record)

I have a witness, if you want to prove the point.

(Laughter)

Mr. Speaker, Sir, we want to save this country from the problems we are having; and we want to approach these matters in a bipartisan manner. I would have expected that our colleagues, who are championing the interest of Mr. Boinet, to humble themselves and talk to the men and women on this side and say:- “Look, let us take this approach.” You cannot come here and expect to lord it on anybody and get away with it just because you are proximate to what you think is power. It is extremely wrong!

(Applause)

Mr. Speaker, Sir, I want to urge you that when the history of this country is written, you will be asked “who sat here; who said what and who voted?” We are not pursuing an agenda against anybody---

The Speaker (Hon. Ethuro): Order, Sen. Wetangula! There is no imagined proximate power; there is power!

(Laughter)

The Senate Minority Leader (Sen. Wetangula): Mr. Speaker, Sir, it is a question of my opinion.

Mr. Speaker, Sir, I want to urge the President of this country that it is now obvious---

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

The Speaker (Hon. Ethuro): Let the Senate Minority Leader conclude his remarks, Senator.

The Senate Minority Leader (Sen. Wetangula): Mr. Speaker, Sir, now that it is obvious that we are going to reject this nominee, I want the President to go through due diligence, allow other organs in the country, including the National Police Service (NPS)-
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The Speaker (Hon. Ethuro): What is it, Sen. (Dr.) Kuti?

Sen. (Dr.) Kuti: Mr. Speaker, Sir, I am a bit confused because this is a debate where we are talking about the merits and demerits of passing this nomination by the Head of State. Why are we engaging as if we are talking about each other? Why would the people who have evidence – like the way Sen. (Dr.) Khalwale had issues about qualifications and when the officer was in Nyeri – not just speak to the person? Why are we debating---

The Speaker (Hon. Ethuro): Order! Order, Senator! I thought I made a ruling on that one. So, keep the confusion to yourself; we are very clear on that issue.

(Laughter)

The Senate Minority Leader (Sen. Wetangula): Thank you, Mr. Speaker, Sir. As I conclude, I want to urge the President of the Republic of Kenya that it now looks imminent that this House is unlikely to approve his appointee and I would, therefore, like to urge him to appoint a qualified person who will look after our security in this country. This is so urgent and critical.

The Speaker (Hon. Ethuro): Order, Senator! Your time is up. You must also appreciate that in recognition of your position as the Senate Minority Leader, your time was doubled from five minutes to 10 minutes.

The Senate Minority Leader (Sen. Wetangula): I am obliged to you, Mr. Speaker, Sir.

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

Sen. Elachi: Thank you, Mr. Speaker, Sir. I also want to thank the whole Committee and all the Members who went through this process of vetting Mr. Boinet. Today is historic in this Senate because this is our first vote in the House – which is a very delicate one – since we started the Senate. It is also a very historic day when we are now looking forward to again getting a new IG, who is coming in when we are facing a lot of challenges in this country.

Mr. Speaker, Sir, one of the things that this country has always had is that when we come to such appointments, we look at so many demerits that sometimes the country wonders what it is about ethnicity. But I think, for the Senate, we should not really go down in terms of what ethnicity is because we are the Upper House. We should ensure that we look at a person as a Kenyan first.

Mr. Speaker, Sir, I want to plead with the House that while we are debating, yes, we have raised issues of education. But in this country also, we need to question ourselves because I know there are many people in many senior positions who have gone there and when you look at their qualifications, you will also wonder. So, I think the issue of qualification also means that this House will never give a youth an opportunity to sit in any position because if we really want to look at the experience of Mr. Boinet from where he started as a policeman, it means that every young person has to go for 35 years to become an IG in this country. But what we are saying is that let us start---

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, did you hear the distinguished Senator attempt to persuade the House that we should give Mr. Boinet, a youth, this position for the sake of being a youth? This is a man who was born in 1962 and he is now 53 years old; is he a youth? Is she in order to mislead the House?

Sen. Elachi: Mr. Speaker, Sir, I think the Senator for Kakamega is also misleading the House. I said it very clearly that if, indeed, we are questioning Mr. Boinet, who was born in 1962, and yet we are saying that we have young people whom we would want to give senior positions in this country like that one of the IG, what questions will we ask?

Sen. (Dr.) Khalwale: What qualifications do they have?

Sen. Elachi: Yes; we will ask about their qualifications. But, Mr. Speaker, Sir, this young person will not have the experience we are looking for now. So, it is up to us to say that if a young person comes from the university and has, indeed, the papers; he can sit in a vetting panel and prove that, indeed, he can sit at the helm of the NPS as the Inspector-General, then I believe we can give him the opportunity. There is no place in the Constitution---

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

The Speaker (Hon. Ethuro): What is your point of order, Sen. Chiaba?

Sen. Chiaba: Thank you, Mr. Speaker, Sir. Would I be in order to request that you call upon the Mover to reply since this matter has been ventilated upon and the time is running out?

(Loud consultations)

Hon. Senators: No! No! No!

Sen. Elachi: Mr. Speaker, Sir, it is us, again, who make these laws and we are the ones who should amend them. We never said that when an IG nominee is being vetted, he should go through these processes so as to be experienced. So, if we feel that it is an issue worth considering, then we must amend the law also.

But having said that, Mr. Speaker, Sir, today, the country is waiting to see an IG and, indeed, the Members – especially the ones who were in the Committee – when you look at the Report, we are unable to understand whether, indeed, they agreed or disagreed, because the Report is not as full. So, let us give Mr. Boinet a chance and if he

will not perform, then it will be time again for us to look for another Gen. Ali and put him at the helm of the NPS of this country.

Mr. Speaker, Sir, it is very important for all the leaders who have worked in this country to remember that one youth can take over the National Police Service (NPS) and transform it as long as he or she does not have interest and cannot be manipulated. Indeed, if we are doing reforms in the police sector today, it means that there is a challenge and an issue even with the senior police officers that we are talking about. That is why we have had all these problems. Those senior police officers are sitting pretty in their positions but Kenyans are still suffering on security issues. So, we are wondering whether it is the same senior police officers that we are talking about who have left us begging and wondering what to do. It is important for us to say that we have a challenge in the security sector and we are dealing with that challenge. Therefore, this House can give Mr. Boinett a chance; let us see what he can prove to us regardless of his experience. He will prove to us with actions but not with paper.

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

Sen. Hassan: Mr. Speaker, Sir, I thank you for this opportunity. I shall also be making certain reactions to the Report. First and foremost, I refer to the minutes of the Committee which actually did the vetting on 26th February, 2015. As I look at the minutes therein, the threshold the Committee set was similar to an interview of a Commissioner of Police in the old regime. This test that they applied fails the test of a modern Constitution, particularly as articulated under Chapter 14 of this Constitution.

When this Constitution was being written, we had several issues that we wanted to take care of; we wanted to depoliticize, de-ethnicize and professionalize the police force. In my assessment, this nominee fails all the tests.

Mr. Speaker, Sir, under Article 239 (3) the Inspector-General (IG) of Police is under the obligation of all the security organs to act in an impartial manner, not to further any interest of a political party or a cause or to prejudice a political interest or political cause that is legitimate under this Constitution. The process of his nomination pours cold water onto these provisions because he has been appointed in a political manner; neither was he tested on issues of neutrality and impartiality during the interview.

(Sen. Hassan spoke off record)

We have to oppose this Report but yet again, we are unable to meet that test of impartiality.

Mr. Speaker, Sir, equally under Article 245(5) of the Constitution, to further depoliticize the police force, every direction from the Cabinet Secretary (CS) must be in writing. Therefore, that shows that we are striving as a country to depoliticize and more importantly also to de-ethnicize and to professionalize the police force.

A lot has been said about the qualifications of the nominee and I can tell you for a fact that those qualifications do not meet the criteria that is set that could lead to professionalization of this police force. Neither is there anywhere in these minutes that this interviewee was challenged on existing, changing or evolving paradigms of security. Nowhere in this Report does it show that this police officer was interrogated on his

knowledge on contemporary challenges of insecurity, countering terrorism and radicalization. This is a pure case of political patronage rather than competence taking the centre stage in this appointment.

If you look at the current policing trends, policing has become a science. It is not a Kiganjo art. It is not about which police stations you have managed; it is about what kind of competence you bring on board. I wanted to see elaborate training on matters---

(Sen. Hassan spoke off record)

Mr. Speaker, Sir, could you tell my friend and colleague, Sen. Murkomen, to allow me the peace to contribute? Sen. Murkomen, what you guys do here and what others do in the Hill has poured cold water on this paradigm of youth leading this country. So---

(Laughter)

The Speaker (Hon. Ethuro): Order, Sen. Hassan! I have had occasions to say the same things that you are telling Sen. Murkomen and for now, Sen. Murkomen was just cheering you in the normal way.

Proceed, Senator!

Sen. Hassan: I did not need that cheering, Mr. Speaker, Sir. I can see that he is trying to say that my time is gone. This police force will continue to be politicized, ethnicized and be unprofessional. Some of you, who are seated on that side of the aisle, look at your conscience! We cannot continue to disenfranchise some of the regions and the societies that we come from, day in, day out, for political interest.

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

(Laughter)

The Speaker (Hon. Ethuro): Order, Members! We have thirty five minutes to go and the interest shown for Members to contribute is still high. I want to give as many Members opportunities as possible, so we are going to reduce the time from five to two minutes.

Sen. (Prof.) Lesan: Thank you, Mr. Speaker, Sir. First of all, I also wish to congratulate the Committee that conducted this vetting process of the Inspector-General of Police, Mr. Boinett. Before I say much, I probably want to thank the former IG, Mr. David Kimaiyo for doing a great job in the police force despite the many challenges that he faced towards the end of his term.

The vetting process is meant to instill confidence and a sense of participation for Kenyans to choose the IG. So, this process has been done and it has instilled some sense of participation by the people of this country.

Mr. Speaker, Sir, the process of evaluating the degrees and the professional qualifications of the candidate is a due diligence exercise that has been done by the relevant offices. It is not the business of the Committee to look at those things. The

Committee did the right thing by looking at the ideology of the individual. What does this gentleman think about terrorism? What does he think about information technology? What does he think about the forensics? This is because these are the kind of things that the new IG is going to be called upon to do to assist this country.

I think the newly vetted officer is going to do a good job because he gives the impression that he has a technology background and this is the kind of background that we require to have because we are going to confront the kind of insecurity that is happening in this country by using technology. We know the usefulness of technology. Recently, we had CCTV cameras assisting us to identify and apprehend the killers of one of our colleagues and this is very important that we will go this way in terms of improving the security.

The Speaker (Hon. Ethuro): Order, your time is up!

Proceed, Sen. Abdirahman.

Sen. Abdirahman: Thank you Mr. Speaker, Sir for this opportunity to contribute to this very important Report relating to the appointment of the Inspector-General of Police.

I have two to three comments. First, in this country when appointments are done, though it is the prerogative of the President and within the Constitution to allow him to pick the individual, it is important that a number of factors are considered. The first one should be merit. We do not just have to nominate people from nowhere to go to the helm of the entire police force like in this particular case and in many other appointments that have happened in the Kenya Police Service in the past.

I am not particularly paying attention to the question of academic qualifications. We need an Inspector-General who is hands on and who must have led any of the departments within the police force. He would have better fitted in the intelligence department as a Director-General or a Director of Criminal Investigation Department than appearing at the helm of the police force.

Mr. Speaker, Sir, we very well know the challenges that the internal security docket faced under the leadership of our good friend ole Lenku. This is because we did not think wisely. Look at the difference after bringing in Maj. Nkaissery. I am not just opposing the appointment of somebody because he is favoured by one side of the House. We really need to be careful on the kind of people we nominate to lead important institutions like the police force amid the current challenges of terrorism and insecurity all over the country.

I oppose.

Sen. M. Kajwang: Mr. Speaker, Sir, I wish to, first of all, congratulate Joseph Kipchirchir Boinett for coming this far. Whether we vote him today or not, he will indeed be successful because he will have got so close to it.

I want to address the issue of suitability, capability and integrity of the nominee for Inspector-General. Whereas I do not have any evidence to talk about his integrity or lack of it, even though the questions on his academic qualifications might cast a shadow on issues of integrity, allow me to address issues of suitability and capability. We have set the bar too low for this particular role of Inspector-General of Police. Yes, the nominee has been cleared by the Credit Reference Bureau (CRB), HELB, the CID and

various other miscellaneous bodies as the minimum requirement for one to be an Inspector-General, but should we go for the minimum requirements or should we set the bar high? We are talking about the Inspector-General of Police and not any other role. This should not be an experiment.

We saw what happened when we got somebody from the hospitality industry to be the Cabinet Secretary in charge of security. He was fired barely 60 months after he got the job. We cannot afford to spend time doing orientation and induction for the job of Inspector-General. We know the challenges that Kenyans face. Probably above issues of the cost of living, insecurity is the next one. The challenges that we face need to be fixed yesterday and not even today. I believe that we should set our standards high as a nation.

When we scrutinize this particular nominee, if it was my choice, I would make him to be the OCPD of Homa Bay County but not the Inspector-General of Police. Even when you are going for surgery, you will not go for a doctor who left the university the other day or a doctor who meets the basic requirements; you will look for a doctor who is best equipped to work on you.

I oppose.

Sen. Melly: Mr. Speaker, Sir, on the outset, let me inform Sen. (Dr.) Khalwale that Mr. Joseph Boinett is a resident of Uasin Gishu County and not Elgeyo-Marakwet County.

I have known Mr. Boinett for a number of years. We have met a number of times in the county and we have interacted. Our security agencies should be led by persons of great intelligence and experience. Mr. Joseph Boinett and Maj. (Rtd.) Nkaissery are two great minds of phenomenal experience. I want to thank the President for nominating Mr. Boinett. Our job now as Parliament is to approve the name of Mr. Boinett and give him a chance to work with Maj. (Rtd.) Nkaissery in restoring security in this country.

Mr. Speaker, Sir, it is the core mandate of any Government to provide security for its people. I think it is a high time we gave a chance to the President who is the head of the National Security Council to instill confidence in issues of insecurity in this country. The challenge of insecurity in this country has nothing to do with any political party or tribe. If today we have good security mechanisms in this country which will spur development, it is for the benefit of all of us and not just a single political party or tribe. We must appreciate that we have the opposition. However, like any other Government, we must realise that we have a President of this Republic who is duly elected, His Excellency President Uhuru Kenyatta, who is charged with providing security to this country. Let us give him time to put things in order. We have confidence as the Senators of Jubilee---

The Speaker (Hon. Ethuro): Time is up, Sen. Melly.

Sen. Mutula Kilonzo Jnr.: Mr. Speaker, Sir, at the back of this Report is an affidavit of a gentleman whom we should credit. His name is Mr. Nyakina Wycliffe Gisebe. This gentleman put his phone number and swore an affidavit that runs up to 41 paragraphs highlighting various reasons why Mr. Boinett should not be appointed to the position of IG. I am disappointed by the Committee. I am one of those people who will not congratulate them. Under Article 125, this Committee was supposed to act like a

court. When you are given an affidavit, you interrogate the person but they missed the point by calling it a memorandum. This is what they had to say:-

“The Committee observes that Article 245(2) of the Constitution read with Section 121, the President has discretion in exercise of nomination of appointment of a candidate”

This is in answer to an affidavit of a person who has highlighted 41 issues that should have been considered by them. In that respect alone, the Committee has failed the Senate. We had an opportunity to---

The Speaker (Hon. Ethuro): What is it, Sen. Kembi-Gitura?

Sen. Kembi-Gitura: On a point of order, Mr. Speaker, Sir. With a lot of respect to Sen. Mutula Kilonzo Jnr., I think that he also needs to give credit to the Committee. We considered that affidavit but it is not talking about contentious issues. It is talking about matters of law. I can assure you that this Committee gave a lot of time to that affidavit by Mr. Gisebe. However, we did not consider that it was important to call him, because it was raising matter of law and not facts upon which you could call him for interrogation.

Sen. Mutula Kilonzo Jnr.: Mr. Speaker, Sir, my senior, the Senator for Murang'a County is out of order. I do not think that he has read this document carefully. This document points to matters of facts, seniority and appointment---

(Sen. Haji stood up in his place)

The Speaker (Hon. Ethuro): Order, Chairman! You will have an opportunity when you are replying. Do not interrupt Sen. Mutula Kilonzo Jnr.

Sen. Mutula Kilonzo Jnr.: Thank you, Mr. Speaker, Sir. The correct procedure when you are acting as a court, and the Committee was acting as the High Court under Article 125, is that you do not sit and consider it yourself, you call the person. To that extent alone, the Committee has possibly brought some discredit to the Senate by just considering it in a room instead of calling this person who had the audacity to write statements and things that not every ordinary Kenyan would write. To that extent alone, we have let down that Kenyan.

The Speaker (Hon. Ethuro): Sen. Mutula Kilonzo Jnr., they have explained why they did not feel it was necessary to call him.

Sen. Mutula Kilonzo Jnr.: Mr. Speaker, Sir, that is the reason I am saying that it is a failure on our part because when---

(Sen. Haji stood up in his place)

Sen. Haji: On a point of order, Mr. Speaker, Sir. What is wrong with me?

The Speaker (Hon. Ethuro): Order, Sen. Haji! I can confirm that there is nothing wrong with you. You may now resume your seat.

Please, conclude, Sen. Mutula Kilonzo Jnr.

Sen. Mutula Kilonzo Jnr.: Mr. Speaker, Sir, recommendation number one and two would have looked better for us, as a Senate, by giving a person what is called a fair

hearing under Article 50 of the Constitution. I need to remind you, Senators, that we have a Constitution of this Republic, which requires that you conduct matters like the way a court would conduct a matter, and that is a fair hearing. There is no substitute for a fair hearing.

Thank you Mr. Speaker, Sir. I oppose.

The Speaker (Hon. Ethuro): Although I am not competent enough to challenge you, being a practising lawyer in court, but who was being accused? It was not Gisebe. You are talking about fair hearing; it should be to the accused.

Anyway, proceed Sen. Sang.

Sen. Sang: Mr. Speaker, Sir, I rise to support this Motion. I also want to appreciate the work done by the Committee. This is the first vetting of public officers that the Senate is doing. I want to take this opportunity to appreciate the process that has been developed between the two Houses. We may be faced with this kind of appointment in future and the precedence that has been set is very important. One of the challenges that has faced this country in terms of security is the failure to co-ordinate in terms of using intelligence to ensure that we get quick responses within our country in matters of security.

The nominee for the appointment of Inspector-General has worked with the intelligence service in this country. This is where we have failed in this country; not being able to use intelligence information to ensure that we secure our country. With the background in intelligence and also looking at the age and competence of the person, I have no doubt that this is a man who fits the bill and can carry out that responsibility.

Mr. Speaker, Sir, I also want to appreciate that, as leaders in this country, we may not agree with the choices proposed by various leaders but let us appreciate that our views are different. When you listen to the discussion by the Minority Leader, I know he is aspiring to be the president of this country, but I want to tell him to hold his horses, he will have his opportunity when Kenyans decide to vote him in.

Sen. Kittony: Mr. Speaker, Sir, I would like to thank the Committee that vetted and approved Mr. Boinett for appointment to the post of Inspector-General of Police. With all due respect, we should support the presidential nominee because he cannot just appoint from nowhere; he must have done his research.

The Committee that deliberated on this issue did its work competently. I watched the interview live and I was very convinced that the young man is confident and up to the job. Some of the deliberations have tribal insinuations. I have not met Mr. Boinet but listening to him, I am convinced that he is up to the job.

I support his appointment.

Sen. Lesuuda: Mr. Speaker, Sir, I rise to support the report of the Joint Committee that was vetting the nominee for the post of Inspector-General. As a country, we know how important this matter is to us. After the former Inspector-General, Mr. Kimaiyo, and also Mr. ole Lenku, Kenyans have been looking forward to having these people in place. We now have Maj-Gen. (Rtd.) Nkaierry in office and I am very hopeful that we will have Mr. Boinett as the Inspector-General of Police.

We hope that the security situation will be addressed. I also believe that the Joint Committee sat together, interrogated all the documents and made recommendations.

Thus far, we have not seen any reservations by the Committee Members. I am aware that some of the Committee Members who are now opposing, were in that Committee and yet they did not make their reservations.

Having said that, it is important for us, as the Senate, to speak out that, indeed, issues of security are very key to us. We hope that Mr. Boinett is aware of this and he will not embarrass Parliament in the discharge of his duties. After a few months, we should not come and say that the Joint Committee which approved his appointment to the post of Inspector-General of Police---

(Sen. Lesuuda spoke off record)

The Speaker (Hon. Ethuro): Sen. Lesuuda, your time is up.

Honourable Senators, I will direct on the balance of time. The Senate Majority Leader will have 5 minutes and then, we will call upon the Mover to reply on the balance of the 10 minutes.

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Speaker, Sir, I take this opportunity, first and foremost, to say that I support the Report of the Joint Committee of the two Houses. This was the first time that the two Houses of Parliament carried a joint vetting exercise. We are very happy because we have seen the kind of report that has been presented to us. I, therefore, thank the Committee Members since they are the ones who did the vetting, listened to the candidate and asked the questions where there was need to ask questions. It is in order that we, as colleagues, respect the position that was taken by the specialists in the Committee that listened to the candidate and reviewed all the evidence.

Secondly, Mr. Speaker, sir, I have looked at the National Police Service Act, especially with regards to the functions of the Inspector-General of Police as well as---

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

Sen. (Prof.) Anyang'-Nyong'o: On a point of order, Mr. Speaker, Sir. Is it really in order for the Senate Majority Leader to say that we should respect the position taken by the Committee because they did perfect work? When I look at the degree that was earned from Washington International University, I see that it is not signed by the president of the university. How authentic would such a Report be?

The Speaker (Hon. Ethuro): Order Sen. (Prof.) Anyang'-Nyong'o. You cannot reduce the entire work of the Committee to a signature. You had already made that point.

Proceed, Senate Majority Leader.

The Senate Majority Leader (Sen. (Prof.) Kindiki): Thank you Mr. Speaker, Sir. Thirdly, I want to say that it is hoped that all these functions that are listed in Section 10 of the National Police Service Act are functions that the new Inspector-General of Police, if this House approves, will perform and reassure the people of this country, who have been very concerned about their security, that the country is on the right path to recovery with regard to the damage that has been caused.

Mr. Speaker, Sir, one aspect that we would want the new Inspector-General of Police, if approved, to assist this country in is the area of inter-agency collaboration between the National Police Service and other security agencies especially in complex

police operations. In the past, we have seen a bit of incompetence and lack of coordination.

Lastly, Mr. Speaker, Sir, the reason why I support this nominee is not just because the Committee listened to him but because not less than six agencies of the Republic of Kenya gave him clearance. That means he is a person who is beyond reproach and a person of integrity.

Finally, looking at the Report, I see that the Committee asked all the relevant questions and the candidate answered convincingly and exhaustively on each and every of those questions.

Mr. Speaker, Sir, with those remarks, I support and urge my colleagues to support the nominee, Mr. Joseph Kipchirchir Boinett, for appointment to the position of Inspector-General of Police.

The Speaker (Hon. Ethuro): Order! Order, Senators! It is now time for the Mover to reply.

Sen. Haji: Mr. Speaker, Sir, from the outset, I want to support the Motion. I also wish to give Sen. Kembi-Gitura five minutes.

The Speaker (Hon. Ethuro): Order, Chairman! I plead that you give Sen. Kembi-Gitura three minutes and Sen. Kerrow two minutes.

Sen. Haji: Mr. Speaker, Sir, I will give Sen. Kembi-Gitura five minutes and Sen. Kerrow three minutes.

I want to address the concerns of most of the people who are opposing the appointment.

The Speaker (Hon. Ethuro): Order, Senator! You allow the donations first and then conclude. You should be the last one.

Proceed, Sen. Kembi-Gitura.

Sen. Kembi-Gitura: Mr. Speaker, Sir, I want to thank the Chairman of our Committee for allowing me the five minutes to make a contribution.

I would like to persuade my colleagues on the other side to vote with us for the nominee. I am a Member of this Committee and wish to thank the Co-chairs for the way they steered this matter of the vetting. The decision that we made was unanimous and that is important.

I have listened to the contributions of my colleagues in the Senate. I have heard Sen. Orenge and want to thank him for a very well thought out contribution. I have also listened to my other colleagues. Sen. Orenge and Sen. Wetangula, people I have great respect for, are Members of our Committee, but did not come for the vetting. If they had come, maybe, they would have persuaded us on certain aspects of their arguments. As a result, we had a unanimous decision.

I listened to my colleague and friend, Sen. Khalwale. He said that he got some information from where this gentleman was working in Nyeri. I wish that information was brought to the Committee, because it is unfair to give hearsay evidence or contribution against a person who has no chance then of replying to your statement. I have also listened to Sen. (Prof.) Anyang'-Nyong'o's contribution.

Sen. (Dr.) Khalwale: On a point of order, Mr. Speaker, Sir. Sen. Kembi-Gitura has said that I was referring to hearsay and that the person who gave me the documents

should have come before the Committee. Is he in order to say that when we know that one of the people who swore an affidavit and presented it to them was not invited? Up to this time, that person has not been heard. Is he in order?

Sen. Kembi-Gitura: Mr. Speaker, Sir, I insist that Sen. Khalwale would have been very helpful to the Committee if he had brought that evidence before us, so that he could try to persuade us.

As regards the qualification of this gentleman, whom I had never met in my life until the vetting, and so I am not holding brief for him--- It must be remembered that even as we talk about experience, which Sen. Musila talked about, the President had a right even to nominate a civilian without any knowledge about the police force, if that person was qualified under the law. So, it is not fair, again, to visit it upon Mr. Boinett; that he has not been to the top of the police ranking. I heard Sen. Orengo say that if it was Sen. Kipchumba Murkomen, he would have voted for him with his eyes closed, yet Sen. Murkomen has absolutely no experience about the police.

In fairness to Mr. Boinett, first of all, as pertains to the degree, this is a matter that we interrogated at great lengths. We even called the CEO of the Commission of University Education, Prof. Some. The law says he needs to have a first degree. A first degree is just a degree. A masters is a degree and a PhD is a degree.

Sen. Orengo: On a point of order, Mr. Speaker, Sir. Is it right for the Deputy Speaker and the Senator for Murang'a to downgrade my feeling and estimation of the nominee and to compare it to that of Senator Murkomen? If you look at Sen. Murkomen's qualifications, even in law, you will see that they are nothing compared to Boinett's. Are you trying to downgrade the Senator?

The Speaker (Hon. Ethuro): Proceed, Sen. Kembi-Gitura.

Sen. Kembi-Gitura: Mr. Speaker, Sir, if we agree like we must and Prof. Some brought this out very clearly, the degree from Australia---- If you go to the internet, you will see that they do not require you to have a first degree. However, they admit you if you have certain qualifications. Boinett has a degree. He is qualified under the law. If you want to crucify him for any other reason, look for it but it will not be out of experience or education. He is qualified. I support because we need to have somebody.

I was at the vetting board and I was very impressed with Mr. Boinett; the way he answered the questions, his demeanor and his comportment and sincerity. I do not want to talk about passion.

I support.

The Speaker (Hon. Ethuro): Where is the Mover?

Sen. Haji: Mr. Speaker, Sir, he is qualified; he has the experience more than President Obama who served one term before becoming President. He is also a left-handed person, a qualification which many heads of states have.

I beg to move.

The Speaker (Hon. Ethuro): Order, hon. Senators. I will now put the question.

(Several hon. Senators stood up in their places)

Order, I do not need any assistance. Anybody standing while I am on my feet is breaching orders. Sit down, Sen. Wetangula. We have been running time properly. I will now put the question and this is not a matter affecting counties.

(Question put and agreed to)

(Several Senators stoop in their places)

Hon. Senators: Division, Division.

The Speaker (Hon. Ethuro): Order, hon. Members. There is a call for division. Please, count the numbers.

(The Clerk-at-the table counted the Senators)

Order, hon. Senators! We have counted. You are 11 instead of 15. Therefore, the call for division is lost.

ADJOURNMENT

The Speaker (Hon. Ethuro): Order, hon. Senators. It is now time to interrupt the business of the House. The Senate stands adjourned until tomorrow, Thursday, 5th March, 2015 at 2.30 pm.

The Senate rose at 6.30 p.m.