

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Thursday, 18th February, 2016

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

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

PRAYERS

NOTICES OF MOTION

APPROVAL OF NOMINATION OF SEN. BILLOW AS A MEMBER OF THE PAN-AFRICAN PARLIAMENT

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

THAT, pursuant to Article 5 of the Protocol to the Treaty establishing the East Africa Economic Community relating to the Pan-African Parliament, the Senate approves the nomination of Sen. Billow Kerrow as a Member of the Pan-African Parliament to replace Sen. Kipchumba Murkomen.

ADOPTION OF MEDIATION COMMITTEE REPORT ON THE NATIONAL DROUGHT MANAGEMENT AUTHORITY BILL

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

THAT, the Senate adopts the Report of the Mediation Committee on the National Drought Management Authority Bill (National Assembly Bill No. 42 of 2013) laid on the table of the House on Thursday, 3rd December, 2015.

NOTING OF REPORTS OF THE ACP-EU JOINT PARLIAMENTARY ASSEMBLY MEETINGS

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

THAT, the Senate notes the Report of the ACP Parliamentary Assembly and the 29th Session of the ACP-EU Joint Parliamentary Assembly held at the Grand Pacific Hotel, Suva, Fiji, from 10th to 17th June, 2015, laid on the Table of the House on Wednesday, 25th November, 2015.

The Speaker (Hon. Ethuro): Sen. (Eng.) Muriuki, your name is in the Order Paper but you are unable to attract my attention.

Sen. (Eng.) Muriuki: Sorry, Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): Proceed.

ADOPTION OF REPORT OF AD-HOC COMMITTEE ON
COUNTY HEADQUARTERS

Sen. (Eng.) Muriuki: Mr. Speaker, Sir, I beg to give notice of the following Motion:-

THAT, this House adopts the Report of the Ad-Hoc Select Committee on County Headquarters laid on the Table of the Senate on Thursday, 3rd December, 2015.

The Speaker (Hon. Ethuro): Next Order.

STATEMENTS

Sen. Musila: Thank you, Mr. Speaker, Sir, for giving me this opportunity. I wish to request for two statements.

KILLINGS IN KITUI COUNTY

The first statement is directed to the Chairperson of the Standing Committee on National Security and Foreign Relations on the security situation at the Kitui-Tana River Border.

In giving this statement, I would like to draw the attention of the Chairperson that on 17th July, 2015, a number of people were arrested and charged in court following the killing of 15 people from my county along the Tana River-Kitui border. I would like the Chairperson to give the progress of the prosecutions following the killing of these 15 people.

Secondly, I would like to ask the Chairperson to tell this House whether the Government cannot consider training and arming homeguards to secure this volatile border and avoid risking continued insecurity at the border as the Government has done in other areas facing similar security challenges.

STATUS OF CASH TRANSFER PROGRAMME

My second statement is directed to the Chairperson of the Standing Committee on Labour and Social Welfare. This concerns cash transfers to senior citizens and other marginalized groups. In his statement, the Chairperson should address the following issues:-

(1) How many senior citizens and other disadvantaged citizens are receiving cash transfers under the cash transfer programme?

(2) Could the Chairperson give the names of senior citizens and other disadvantaged citizens receiving these funds from each of the 47 counties and contrast them with the population of each county?

(3) Could he give the names of citizens receiving these funds from each of the constituencies?

(4) In the estimation of the Chairperson, how many eligible citizens are not benefiting from cash transfers in this country?

Finally, it is instructive to note that a similar statement was sought from the same Chairperson on 19th February, 2015. This is exactly a year since. However, as at the close of the last Session, the Chairperson, despite making a lot of efforts, did not give a satisfactory statement. I, therefore, appeal to you to impress upon the Chair to hasten the issue of this statement. This is a matter of great national concern as the whole programme is surrounded with secrecy with millions of eligible citizens going without the cash transfers and allegations which cannot be ignored, that these funds are going to the wrong hands.

The Speaker (Hon. Ethuro): Is the Chairperson of the Committee on Security and National Relations here?

Sen. (Dr.) Zani: On a point of order, Mr. Speaker, Sir. I would like to ride on to that statement by asking: There is a reason why those who are eligible are not receiving those funds. What are the reasons for those who are eligible not receiving these funds?

The Speaker (Hon. Ethuro): Order, Members. That is a statement sought by one Member. You can wait for the response to add.

Sen. Adan, when do we expect a response?

Sen. Adan: Mr. Speaker, Sir, I request that we be given two weeks to respond to the statement because this requires the department to go to court to understand the status of the cases that are pending.

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

Where is the Chairperson of the Committee on Labour and Social Services?

Sen. Wangari: Mr. Speaker, Sir, first, allow me to apologise to Sen. Musila. I know he has been very insistent on this issue. However, we had a problem with the Ministry last year. We hope to do better. In the next two weeks, we should be able to respond to that statement.

The Speaker (Hon. Ethuro): Okay, let us have the response in two weeks time.

ALLOWANCES AND FACILITIES PROVIDED TO NOMINATED MCAS

Sen. (Prof.) Lonyangapuo: Mr. Speaker, Sir, I rise, pursuant to Standing Order No.45(2)(b) to seek for a statement from the Chairperson of the Sessional Committee on Devolved Government regarding allowances of Nominated Members of County Assemblies (MCAs) and facilities provided to them.

In the Statement, the Chairperson should:-

(a) State the allowances payable to Nominated MCAs and facilities availed to them as compared to their elected counterparts.

(b) Explain the policy that informed the decision not to pay Nominated MCAs mileage allowance.

(c) Explain the measures that will be put in place to ensure that nominated MCAs are treated like their elected counterparts.

Sen. (Prof.) Lesan: Mr. Speaker, Sir, we need two weeks to deal with this. Please, give us two weeks.

The Speaker (Hon. Ethuro): Order, Sen. (Prof.) Lesan! I am glad that they are reluctant to congratulate you. I thought you would demonstrate appreciation for the new office by giving us one week.

Sen. (Prof.) Lesan: Mr. Speaker, Sir, I am new in office. However, we will try very hard in the first one week to deliver. If we are not successful, we will come back to the House and seek for more time.

The Speaker (Hon. Ethuro): Okay, two weeks' time; the sooner the better.

BUSINESS FOR THE WEEK COMMENCING

TUESDAY, 23RD FEBRUARY, 2016

Sen. Elachi: Thank you, Mr. Speaker, Sir. Hon. Senators, pursuant to the provisions of Standing Orders No.45, this is to present the Senate business for the coming week.

On Tuesday 23rd February, 2016, the Rules and Business Committee (RBC) will meet at 12:30 p.m. to schedule business for the Senate for the week. Subject to further directions by the RBC, the Senate will continue with business that will not be concluded in today's Order Paper focusing on debates on Bills at the Second Reading stage and Committee of the Whole.

Further, the following Bills, among others, will be scheduled for voting at various states;

(1) The Cancer Prevention and Control (Amendment) Bill (Senate Bill No.3 of 2015).

(2) The County Outdoor Advertising Control Bill (Senate Bill No.11 of 2015)

(3) The Public Appointments (County Assembly) Approval Bill (Senate Bill No.20 of 2014)

(4) The HIV and AIDS Prevention and Control (Amendment) Bill Senate Bill No.4 of 2015)

(5) The County Industrial Development Bill (Senate Bill No.7 of 2014)

(6) Division on the Report of Mediation Committee on the County Governments Amendment Bill (Senate Bill No.1 of 2014).

On Wednesday, 24th February, 2016, the Senate will continue with the business not concluded during Tuesday's sitting, especially Bills at the Committee of the Whole and any other business scheduled by the RBC.

On Thursday, 25th February, 2016, the Senate will consider Bills at Second Reading, deliberate on Motions, especially focusing on Reports of Committees and any other business scheduled by the RBC.

Hon. Senators, the House has many Bills at both the Second Reading stage and Committee of the Whole. I, therefore, appeal to you to make yourselves Available to transact this and other businesses as soon as they are scheduled. I, hereby lay the Statement on the Table.

(Sen. Elachi laid the document on the Table)

BILL*First Reading*THE CONSTITUTION OF KENYA (AMENDMENT)
BILL (SENATE BILL NO. 1
OF 2016)

*(Order for First Reading read – Read the First
Time and ordered to be referred to the Committee on
Legal Affairs and Human Rights)*

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

Sen. Elachi: Thank you, Mr. Speaker, Sir. I request you to use your powers under Standing Order No. 39(4) to allow me to move a procedural Motion on the appointment of Sen. Billow as a member of the Pan-African Parliament (PAP).

The Speaker (Hon. Ethuro): So, ordered! That Motion can proceed before we go to the Committee of the Whole.

PROCEDURAL MOTIONAPPROVAL OF NOMINATION OF SEN. BILLOW
AS A MEMBER OF THE PAN-AFRICAN PARLIAMENT

Sen. Elachi: Thank you, Mr. Speaker, Sir. I want to thank the House and the Members of the PAP. As we bring in Sen. Billow to replace Sen. Murkomen who has now has taken over from---

The Speaker (Hon. Ethuro): Order, Sen. Elachi! You are a senior Member of the House and the learning curve is no longer applicable.

Sen. Elachi: Yes, Mr. Speaker, Sir. Let me read the Motion.

The Speaker (Hon. Ethuro): Order! You move the Motion. You do not read.

Sen. Elachi: Thank you, Mr. Speaker, Sir. I beg to move the following Procedural Motion:-

THAT, Pursuant to Article 5 of the Protocol of the Treaty establishing the African Economic Community relating to the Pan-African Parliament, the Senate approves the nomination of Sen. Billow as a Member of the Pan-African Parliament to replace Sen. Murkomen.

Mr. Speaker, Sir, this is a straightforward Motion. Sen. Murkomen was appointed to take over from Sen. Keter who was the Deputy Majority Leader and now a Cabinet Secretary. We hereby request you and the House to appreciate that Sen. Billow will join the team in South Africa. This is team has made us proud in the Senate.

We are hoping that when Sen. Billow goes to South Africa, he will be the leader of the team. We hope he will bring in a different brand and vibe as he continues with what the team has been doing. We hope they will be able to get any of the chairs in the PAP. We also hope that we will get a report from the PAP to know what is happening there.

I, therefore, ask Sen. Sang to Second this Motion.

Sen. Sang: Mr. Speaker, Sir, I wish to second this very important Motion.

(Question proposed)

Sen. (Dr.) Zani: Thank you Mr. Speaker, Sir. As the Mover of this Motion said, this is a straightforward process arising from the fact that Sen. Murkomen was appointed the Deputy Majority Leader; but I stand to express my confidence that Sen. Billow takes over that position because of who he is, the dedication that he has shown in the Finance, Commerce and Budget Committee where I also sit and his sense of service. I think it will bring value in terms of him becoming a Member of that Parliament. I think he will represent us well and make us proud from the contributions that he is going to make.

I thank you.

Sen. Obure: Thank you, Mr. Speaker, Sir. First of all, I want to appreciate the work of Sen. Murkomen in representing the country at the African Union Parliament. I also appreciate the choice of Sen. Billow, an outstanding son of this country of whom we are all proud. We have full confidence in him as a leader and what he stands for. We know that we will be very adequately represented at that Parliament through him.

Mr. Speaker, Sir, I do hope by this appointment, there are no intentions of removing Sen. Billow as the Chairman of Finance, Commerce and Budget Committee of this Senate because I know that he has the capacity to discharge both functions effectively.

I support his appointment.

Sen. (Prof.) Lonyangapuo: Thank you, Mr. Speaker, Sir. I also rise to support this Procedural Motion and to say that Sen. Billow has diligently discharged his duties as the Chairman of Finance, Commerce and Budget Committee. We are very happy with the work he is doing and the energy he has. I hope he is going to be very helpful at the Pan African (PAP). We all know that PAP is supposed to look at developments and linkages in Africa as a whole. I ideally thought that Sen. Ong'era and Sen. Murkomen who were there earlier were supposed to occasionally come and brief the Senate here about what they have done but three years down the line, I have not seen any report and I hope with the inclusion of Sen. Billow, it will be easier for us to be apprised and be able to know what is happening across Africa.

Mr. Speaker, Sir, mine is to support and to wish Sen. Billow the best of luck as he goes to serve at the PAP. I normally call him the president of the pastoralists. So, he should not go and get lost in South Africa because I am his deputy.

I thank you.

Sen. Ong'era: Thank you Mr. Speaker, Sir, for giving me this opportunity so that I may support this Motion. I welcome the nomination of Sen. Billow to be a Member of the Pan African Parliament (PAP) representing the Senate. Sen. Billow is a distinguished Senator who has not only vast experience but is also widely knowledgeable in the diaspora particularly in international affairs which we mostly deal with in the PAP.

As a Member of the PAP, I also want to thank Sen. Murkomen who has been our leader of delegation, and I hope that the reports we have written can be tabled in this House. We have had many issues that we have discussed in the PAP and we did write

reports. I hoped that the leader of delegation would have tabled these reports in the House.

Mr. Speaker, Sir, as you are aware, soon PAP is going to become an independent Parliament so that we will no longer have Members nominated from the parliaments but we will have elections by universal suffrage, so that whoever we elect there is our representative, elected by the people from the grassroots. Once the amendment to this Protocol is passed – which has been brought before the National Assembly- I believe then that PAP will now become an independent Parliament just like the East African Legislative Assembly (EALA).

Mr. Speaker, Sir, as we are going to represent this House in PAP, I want to assure Members that we represent the Senate well in our discussions. We always bring to the knowledge of PAP Members that Kenya is now a bicameral Parliament and it has the Senate as the “Upper House” and the National Assembly as the “Lower House”. We always articulate this position because sometimes people tend to forget that Kenya has a bicameral parliament. Should this Motion pass, we welcome Sen. Billow who I am sure will add a lot of value and enrich our delegation.

I thank you.

Sen. Sijeny: Thank you Mr. Speaker, Sir. I wish to congratulate Sen. Billow for having been nominated by the Jubilee Coalition but I would say that it is good and bad for us that he is going. It is good for the country because we know we have a very good and competent leader who is going to represent the country well and articulate all our issues.

It is not only bad because we are going to miss him at the Senate, but I have learnt to know Sen. Billow as a no nonsense leader and a debater. We definitely need his input within the Senate. He has always guided us and hit issues on the spot without beating about the bush. That has been a good lesson to most of us. This has always directed and upheld the Senate stature very high.

Mr. Speaker, Sir, while he will be there, I know we will only ask him to open his eyes. While he will be giving reports, let us know which job opportunities, leadership positions are available within the governance of the PAP so that Kenya can also take many of them. They should not be left to West African countries only. He should open his eyes together with Sen. Ong’era so that we can capture the map of Africa in leadership.

I support.

Sen. (Prof.) Anyang’ Nyong’o: Thank you, Mr. Speaker, Sir. I would like to add my voice in congratulating my Chairman, Sen. Billow, a man of substantial integrity. I am sure, as Sen. Billow is sitting there, he is wondering whether we mean the words we are saying here. Usually, you find that when in such an occasion, you feel as if it is a funeral. At least in your own funeral, you do not hear what they say but at least here, he can hear what we are saying. So, I hope that all these good words going to Sen. Billow are well-meant.

Mr. Speaker, Sir, let me just say one thing; apart from bringing back reports to the House, I do believe that as our representatives, they should also go there with our objectives and missions. One of the things that are happening at the PAP level is that an initiative that was taken in the early 2000 in New Partnership for Africa’s Development (NEPAD), is actually being relegated to the back banner. Our own President is the

current Chairman of the African Peer Review Mechanism (APRM) but we are not seeing much happening. I will take the opportunity to give Sen. Billow my book “NEPAD, A New Path”, so that when he goes there, at least he will have something to refer to in reviving NEPAD and ensuring that our President, who is the Chairman to APRM, takes that job seriously.

(Sen. Billow consulted with Sen. Elachi)

The Speaker (Hon. Ethuro): Order, Sen. Billow. There is an offer on the Floor and you are not following.

Sen. (Prof.) Anyang’- Nyong’o: Mr. Speaker, Sir, I think he is being distracted by an enthusiast. What I was saying is that tremendous initiative was taken at the African level in the early 2000 and I was involved in improving governance especially through NEPAD and the APRM. Our President is the current Chairman and even then, APRM does not seem to be taken seriously. It is a very important instrument for improving governance in Africa.

Mr. Speaker, Sir, elections, for example, are not playing an important role in democratization as they need to. I am sure Sen. Billow will go to PAP with one mission; to revive debates on good governance necessary for healthy economic transformation of Africa.

I thank you.

Sen. Gwendo: Mr. Speaker, Sir, I would like to add my voice in congratulating Sen. Billow Kerrow who is very honest and truthful. In life, I have learnt that honesty does not earn you many friends, but it earns you the good ones. Definitely, it has now earned him this position. He will represent this Senate and the country out there truthfully.

Thank you, Mr. Speaker, Sir.

Sen. Mositet: Asante sana, Bw. Spika. Naunga mkono Hoja hii kwamba Sen. Billow Kerrow ambaye tunamfahamu vizuri kwa kuchapa kazi. Ni mtu mwadilifu. Nina hakika kwamba atatuwakilisha vizuri katika Bunge la Afrika. Mwaka uliopita kila mtu alishuhudia akiwatetea watu wake. Wengi walitarajia anyamaze lakini alipowatetea, watu walidhani kwamba alikuwa haungi mkono Serikali tena. Namwomba asimame kidede katika kutetea haki za watu wake na taifa letu la Kenya. Nampongeza sana kwa uteuzi huu.

Asante sana.

The Speaker (Hon. Ethuro): Order, Members! I will limit the debate to one minute per contributor. You can say a lot in one minute if you prioritize.

Sen. Nabwala: Mr. Speaker, Sir, I also wish to support this Procedural Motion and welcome the nomination of my able Chairperson of the Committee on Finance, Commerce and Budget to be a Member of the Pan African Parliament (PAP). Sen. Billow Kerrow is a very good leader who has the capacity to represent the country at the PAP. I am sure he will articulate issues affecting the Africans and improve the image of our country. I hope that he will not forget his county while he is away.

Mr. Speaker, Sir, I beg to support.

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, before I make my comments in support of this Motion, I want you to guide the House because we seem to be setting a precedent.

Under Standing Order No.39, you have the discretion to vary the sequence of business in the Order Paper. However, if you want to introduce new business, we are supposed to be given a Supplementary Order Paper. Since this business is not in the Order Paper this afternoon, maybe you could guide the House, so that, that precedent is clear.

Having said that, may I contribute by saying that---

The Speaker (Hon. Ethuro): Order, Sen. (Dr.) Khalwale. If you really valued the guidelines, you would have just given up your time. But since you have not, I will not guide you because by allowing it, I have already guided you. I will allow you one more minute in consideration.

Sen. (Dr.) Khalwale: Thank you, Mr. Speaker, Sir. I just want to encourage my friend and colleague, Sen. Billow, that as a Member of the PAP, he must remain alive to pronouncements from the African Union (AU). The AU has been taking very serious decisions on international protocols. It reminds me of the latest case, where members were being urged to have the African states pull out of the International Criminal Court (ICC). On such an important issue, we would like to see Sen. Ong'era and Sen. Billow reporting back to the House regarding the debates and decisions of the PAP. We do not want heads of states of the African countries to run rogue and be dictators by using the mob psychology of the AU.

I beg to support.

The Speaker (Hon. Ethuro): Sen. Abdirahman, I will allow you two minutes by virtue of where you are sitting.

Sen. Abdirahman: Thank you, Mr. Speaker, Sir. I join my colleagues in congratulating Sen. Billow for the nomination to the PAP. In terms of ability, expertise and competence, I believe that he will represent us very effectively.

Mr. Speaker, Sir, I was fortunate to serve as one of the Members of the PAP during the Ninth Parliament. Twelve years down the road, things should really be different. We should no longer have it as an institution that has members from over 50 African states who are just nominated. It is about time that the PAP transforms itself like the East African Legislative Assembly (EALA), so that we can have representation from the various countries that can deliberate on a legislative agenda that touches on the heart of Africans.

I encourage Sen. Billow and our sister, Sen. Ong'era, to push on and present issues touching on trade, development and the challenges that face Africa. We need to see a more vibrant PAP. If the situation is still the same as when I was nominated to the PAP in 2004, it will not help us. I wish you well on your nomination and have no doubt that you will do well.

Thank you.

Sen. Ndiema: Thank you, Mr. Speaker, Sir. I join my colleagues in congratulating the Senator for Mandera on his nomination to this important organization. Sen. Billow Kerrow is committed and steadfast. On issues of national importance, he has remained committed and non-partisan. I believe that he will be the best representative of this Senate in the PAP. I urge all Senators to approve his nomination.

Thank you.

The Speaker (Hon. Ethuro): Order Members. It has been brought to my notice that some Members are contributing as if Sen. Billow will be leaving the Senate to the extent that they are expressing the fact that they will miss him.

(Laughter)

For your comfort, Sen. Billow remains the Senator for Mandera.

Sen. (Dr.) Machage: Thank you, Mr. Speaker, Sir. I have served with Sen. Billow from the Ninth Parliament. I know him as a skilled politician, very knowledgeable and one who knows how to express what is in his mind in good language and sense. His nomination to this position is not a surprise to some of us. However, it has to be accepted that Sen. Billow is a Chairman of an active Committee. I am concerned about Members of the African Legislative Assembly serving in important positions such as the Speaker's or Chairpersons Panel and other active Committees such as the Committee on Finance---

The Speaker (Hon. Ethuro): I grant you one more minute because you are a Member of a panel.

Sen. (Dr.) Machage: Thank you Mr. Speaker, Sir. I strongly feel when a Member is appointed to that position to represent this Parliament in the Pan-African Parliament, he should be relieved of some active positions in this House so that he takes enough time to plan on how to represent this country in that Parliament. In so doing, we will have a more productive representation in that Parliament.

Whereas I also thank Sen. Murkomen for having represented us effectively, we all knew the incapacitation he had when he was the Member of the Speaker's Panel. More often, he was not around. This should be noted and something done about it in the Standing Orders.

Thank you.

The Speaker (Hon. Ethuro): Order Senators. I give you notice of closure of this matter. I only have three registered interested Senators namely: Sen. Kittony, Sen. Mutula Kilonzo Jnr. and Sen. Murkomen.

Sen. (Prof.) Lesan: Thank you, Mr. Speaker, Sir. I also join my colleagues in applauding the nomination of Sen. Billow to the Pan-African Parliament. I commend, congratulate and appreciate the work done by Sen. Murkomen who, when he was in the Pan-African Parliament, he was also a member of the sky-team. He was present at the conference most of the times. I also appreciate Sen. Billow because I know him as a stickler for processes and regulations.

Sen. Kittony: Thank you Mr. Speaker, Sir. I also join my colleagues in congratulating Sen. Billow. I have worked closely with him and we will miss him. I hope he will be finding time to chair our Committee on Finance, Commerce and Budget because he is a good Chair. Congratulations, Senator.

Sen. Mutula Kilonzo Jnr.: Mr. Speaker, Sir, Winston Churchill said that when you are in a situation and you need to do something but you do not know what to do, do nothing. However, when you have a situation that you need to say something and you do not know what to say, say the truth. The person who fits that bill is Sen. Billow. Therefore, I support this Motion that on the side of the Jubilee Coalition, that is the person that I would give that commendation.

Thank you.

Sen. Murkomen: Mr. Speaker, Sir, I request that you will allow me one extra minute because I am the outgoing Member of the Pan-African Parliament. First, I thank the House and my colleagues who are Members of the Pan-African Parliament for not only supporting me as a Member but also as their team leader. I also congratulate Sen. Billow for the good job he has been doing in this House and for being nominated to that

Parliament. It is an important institution because there are reforms that are ongoing and particularly in making it a permanent Parliament with permanent Members serving for a particular period of time.

Sen. Billow will be among the Members of the Pan-African Parliament who will spearhead the reforms and---

The Speaker (Hon. Ethuro): I grant you one more minute in the capacity as the Senate Deputy Leader of Majority.

Sen. Murkomen: Mr. Speaker, Sir, I congratulate him and when he will serve there, I will miss my colleagues from all over Africa but also Sen. Ong'era and the team who are also Members of the Kenyan Parliament. I wish them the best, and I hope that I will get a chance to visit them in one of the sessions.

Mr. Speaker, Sir, for the comfort of those who are in the Committee on Finance, Commerce and Budget and others, understand that they are committees that one should not be away for a long time. However, they will be in session for one week in March and two weeks in October. Therefore, it is not true that one will miss a lot of sessions here.

Thank you.

The Speaker (Hon. Ethuro): Order Members.

(Question put and agreed to)

Order, Members! While at it, the Senator for Kakamega County sought the guidance of the Chair on why this Notice of Motion was allowed on the Order Paper. The practice is that we allow at least one day notice so that the following day, it can be moved. If you noticed, what happened in this case is that, we did a Supplementary Order Paper which gave both the Notice of Motion and the Motion itself. So, there was a miscommunication for that purpose but I had agreed to it given the urgent circumstances in which our participation in the Pan-African Parliament was needed.

It is true I used the discretion under Standing Order No. 39 in order to re-organize the business. More importantly, at least the business of the House is printed. I determined that it was more of a procedural matter in terms of replacing a Member than raising substantive issues that the Members would have been interested in. The intrusion on my part has been carried by the mood of the House that each and every contributor has supported the Motion and none of the Members who spoke dissented. That should satisfy Sen. (Dr.) Khalwale.

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, most obliged.

Sen. Murkomen: Mr. Speaker, Sir, I do not wish to challenge your clarification but it may appear to the audience out there that the reason why Sen. Billow is being appointed is because of my inability to represent the country in the Pan-African Parliament. In order to avoid that misconception, it should go on record that once I was approved as the Senate Deputy Leader of Majority, and based on the principles of selfless leadership, I had to forfeit all the other duties I was doing to others so that we can share responsibilities. I do not want the impression that---

The Speaker (Hon. Ethuro): Order Sen. Murkomen. To the contrary, you are creating that impression that you are making the determination that you are still around and that it was your position. Everybody has been following the proceedings of the House and they know what has been happening.

Sen. Billow: On a point of order, Mr. Speaker, Sir. I thank all the Senators for their kind words and the confidence they have expressed in my ability to represent them in the Pan-African Parliament (PAP). My pledge is that the PAP will certainly hear a lot about the Kenyan Senate, the Kenyan Parliament and the Kenyan nation in general regarding our priorities in terms of policies, other protocols and some legislative directions that are of interest to us. So, I will hopefully meet your expectations. Thank you very much for your confidence in me.

The Speaker (Hon. Ethuro): Order, Members. Before we move to the next Order, I will go back to the petitions. I have quite a number of them which I am required to read. Since we are getting concerned as a House that there are too many petitions, we would also like to appreciate that the citizens are looking up to the House to solve some of these issues. I will read all of them and you can choose whichever you would like to intervene on. So, listen carefully.

PETITIONS

UTILIZATION OF BUKHAYO CENTRAL WARD DEVELOPMENT FUND

Hili ni ombi la wakaaji wa Wadi ya Bukhayo ya Kati katika Kaunti ya Busia kuhusu matumizi ya fedha zilizotengwa kupitia Hazina ya Maendeleo ya Wadi (*Ward Development Fund*) na Serikali ya Kaunti ya Busia katika Mwaka wa Kifedha 2014/2015.

Maseneta Waheshimiwa, kwa mujibu wa Kanuni za Bunge la Seneti, Vipengele Nambari 220(1)(a) na 225(2)(b) ninatoa taarifa kwa Seneti kwamba dua limewasiliswa, kupitia kwa Ofisi ya Katibu wa Bunge la Seneti, na wakaaji wa Wadi ya Bukhayo ya Kati katika Kaunti ya Busia kuhusu matumizi ya fedha zilizotengwa kupitia Hazina ya Maendeleo ya Wadi (*Ward Development Fund*) na Serikali ya Kaunti ya Busia katika Mwaka wa Kifedha 2014/2015.

Katika dua lao, wakaaji hawa wanaomba msaada wa Bunge la Seneti ili kubaini ukweli na kupata haki kuhusu miradi ya maendeleo iliyopaswa kutekelezwa katika wadi hiyo katika Mwaka ambao umetajwa, na ambao utekelezwaji wake aidha haukufanyika ama ulifanyika kwa njia ambayo hairidhishi kabisa.

Miongoni mwa miradi katika wadi hiyo ambayo utekelezwaji wake haubainiki, licha ya fedha kuwa zimetumika, ni zifuatazo:-

- (a) miradi ya ujenzi wa barabara;
- (b) miradi ya maji;
- (c) usaidizi wa watoto wanohitaji msaada wa elimu na mafunzo ya kiufundi;
- (d) mafunzo ya udereva kwa vijana 50; na,
- (e) kumalizia ujenzi wa Zahanati ya Sidende.

Kwa hivyo, wakaaji hawa wanaomba Bunge la Seneti lichunguze kwa kina utekelezwaji wa miradi iliyokusudiwa kutekelezwa katika Wadi ya Bukhayo ya Kati kupitia Hazina ya Maendeleo ya Wadi na Serikali ya Kaunti ya Busia katika Mwaka wa Kifedha 2014/2015, na litoe mapendekezo sahihi ya kulishughulikia na kutatua swala hilo, ili wakaaji wa wadi hiyo wapate haki.

Maseneta Waheshimiwa, kwa mjibu wa Kipengele Nambari 226 cha Kanuni za Bunge la Seneti, nitaruhusu maoni, mitazamo au ufafanuzi kuhusiana na dua hii kwa muda usiozidi dakika 30.

PROPOSED FORMULA FOR DIVISION AND ALLOCATION
OF REVENUE TOWARDS REALISATION OF THE SDGs

This is a petition to the Senate by Mr. David O. Gesicho concerning a proposed formula for division and allocation of revenue towards realisation of Sustainable Development Goals (SDGs).

Hon. Senators, pursuant to Standing Orders Nos.220(1)(a) and 225(2)(b), I hereby report to the Senate that the petition has been submitted, through the Clerk, by Mr. David O. Gesicho, a resident of Kakamega County, concerning a proposed formula for division and allocation of revenue at the national and county government levels towards the realisation of the SDGs.

In summary, the petitioner states:-

(a) Since Independence, Kenya has struggled to tackle hunger, poverty, ignorance and disease; challenges which are still with us 52 years after Independence.

(b) THAT Kenya has also made commitments under various international instruments to allocate at least 15 per cent and 10 per cent of the national annual budget to health and agriculture respectively. These commitments are, however, yet to be implemented.

(c) THAT in the United Nations (UN) Sustainable Development Summit held in September, 2015, world leaders adopted the 2030 Agenda for Sustainable Development which includes a set of 17 sustainable development goals to end poverty, fight inequality and injustice and tackle climate change by the year 2030.

(d) THAT Kenya may not attain the SDGs with the current formula for division and allocation of national revenue which underfunds critical sectors such as health and agriculture, both at the national and county levels of governments, in favour of sectors such as infrastructure development and national security.

(e) THAT there is also an urgent need to broaden Kenya's tax revenue base and to reduce the national Budget deficit to attain accelerated economic growth.

The petitioner, therefore, prays that the Senate investigates this particular matter and comes up with appropriate recommendations to address the same. Some of the proposals which the petitioner has outlined are the following:-

(1) THAT the Senate introduces legislation to provide for a minimum budgetary allocation of 10 per cent and 15 per cent of the national annual budget to agriculture and health respectively.

(2) THAT the Senate introduces or amends existing legislation to provide that the national annual deficit shall not exceed 5 per cent of the gross national budget.

(3) THAT the Senate initiates a paradigm shift in budgeting from economic development to human development and take account of the same in subsequent budget-making processes, including enhancing allocations to agriculture, health, water and irrigation, sanitation, education, shelter and security.

In line with these proposals, the petitioner has further set out, in the petition, a proposed formula for division and allocation of resources at the national and county levels of government, which he prays that this House do consider for adoption.

Hon. Senators, pursuant to Standing Order No.226, I shall now allow comments, observations or clarification in relation to the petition for not more than 30 minutes later.

TIMELINES FOR DISBURSEMENT OF FUNDS BY THE
NATIONAL TREASURY TO COUNTY GOVERNMENTS

This is a petition to the Senate by hon. Teddy Mwambire, the Deputy Speaker of Kilifi County Assembly, concerning timelines for disbursement of funds by the national Treasury to county governments.

Hon. Senators, pursuant to Standing Order Nos.220(1)(a) and 225(2)(b), I hereby report to the Senate that a petition has been submitted, through the Clerk, by hon. Teddy Mwambire, the Deputy Speaker of Kilifi County Assembly, concerning timelines for disbursement of funds by the national Treasury to county governments.

The petition states that contrary to Section 17(6) of the Public Finance Management Act No.18 of 2012, the national Treasury has been disbursing monies to county governments monthly, instead of quarterly, and this has occasioned numerous challenges to county governments in planning and execution of development projects.

The petitioner, therefore, prays that the Senate investigates this matter and comes up with appropriate recommendations to address the same. This will include taking legislative interventions where appropriate.

Hon. Senators, pursuant to Standing Order No.226, I will later allow comments, observations or clarifications in relation to the petition for not more than 30 minutes.

AMALGAMATION OF EXISTING PROPOSALS
FOR CONSTITUTIONAL AMENDMENTS TO PRODUCE ONE
HYBRID DRAFT FOR A NATIONAL REFERENDUM

Hon. Senators, pursuant to Standing Order 220(1)(a) and 225(2)(b), I hereby report to the Senate that a petition has been submitted to the Clerk by Maj. Rtd. Joel Kiprono Rop, concerning the need to amalgamate existing proposals for constitutional amendments to produce one comprehensive hybrid draft for a national referendum.

The petitioner knows that various initiatives have been launched for amendment of the Constitution, among them, *Okoa Kenya* and *Boresha Kenya*. It appears inevitable that a referendum will have to be held on at least one of these initiatives.

The petitioner further notes that the different initiatives are likely to polarize the country and that it would be better if the processes would be managed so as to ensure the country, if it is going to a referendum, does so as one united nation.

The petitioner, therefore, prays that the Senate intervenes to consolidate the proposals made through the various initiatives and calls for further proposals from the public to come up with a single hybrid draft constitutional amendment Bill that will then be subjected to a national referendum.

Hon. Senators, pursuant to Standing Order No.26 and the rest, I shall now allow comments, observations or clarifications in relation to all the petitions for not more than 30 minutes.

Sen. Khaniri: On a point of order, Mr. Speaker, Sir. You notice that I have pressed both intervention and contribution buttons.

The Speaker (Hon. Ethuro): That is correct.

Sen. Khaniri: Mr. Speaker, Sir, the first one is a point of order. You just said that you will allow Members to comment on the petitions; choose the petition that you want to comment on. How about if one wants to comment on all the four, two or more than one petition?

Secondly, our Standing Orders are clear that comments on a petition will be limited to about 30 minutes. You have read to us four petitions. So, will you allocate 30 minutes per petition or for all the four petitions?

The Speaker (Hon. Ethuro): It is true, Senator, that our track record on our responses to petitions has been extremely poor. So, we have discussed this matter as the House leadership and we are trying to give some guidance. In order to make use of the limited plenary time, we have made certain interventions including reading all of them and Members making interventions. Thirty minutes of interventions for four petitions is a lot of time. Given your interventions— sometimes life is a matter of prioritization – I will allow that, may be, interventions for two and the total time for all the four for contributions is the 30 minutes. It is just to get our business going on.

Sen. Khaniri, You may now proceed.

Sen. Khaniri: Bw. Spika, ninashukuru kwa kunipa nafasi ili nichangie ---

The Speaker (Hon. Ethuro): In fact, it has been brought to my attention. There is a bit of contradiction. Standing Order No.224 says:

“The total time on the Order on “Petitions” shall not exceed 30 minutes.”

Now, Standing Order No.226 says:

“The Speaker may allow comments, observations or clarifications in relation to a petition presented or reported and such total time shall not exceed 30 minutes.”

Sen. Khaniri: Mr. Speaker, Sir, I am guided. Ninakushukuru kwa kunipa nafasi hii. Nitachangia kwa rufaa ambayo imeletwa katika Bunge hili na wakaazi wa Wadi ya Bukhaya ya Kati.

Kwanza kabisa, niruhusu niwashukuru wazalendo hao ambao wamewasilisha ombi hili kwa kuwa macho na kutaka kujua ni maendeleo gani ambayo wanapata katika sehemu yao. Ugatuzi ulikuja kunufaisha wananchi mashinani; pesa zitoke hapa Nairobi ili ziwafaidi wananchi kwa maendeleo mbalimbali ambayo wanahitaji katika sehemu zao. Kwa hiyo ni muhimu sana viongozi walio mashinani, *Members of County Assembly (MCAs)* pamoja na gavana na ofisi yake, kuhakikisha ya kwamba kabla ya kufanya mradi katika sehemu yoyote katika kaunti yao, wazungumze na wakaazi ili watoe maoni yao kuhusu miradi ambayo wanapendekeza kutekeleza katika sehemu zao.

Hatutaki waanzishe miradi bila kuhusisha wananchi ambao wanatarajiwa kufaidika kutokana na miradi hiyo. Hata katika kaunti yangu, nimeona miradi mingi ni ya kufaidisha watu binafsi wala sio wananchi. Kwa hivyo, itakuwa muhimu sana wananchi wahusishwe katika mipango ya miradi ya maendeleo.

Mwisho kabisa, ninajua utaelekeza rufaa hii kwa Kamati na Sheria za Bunge zinatupatia muda wa siku 60 kushughulikia rufaa. Vile umesema, kuna maombi mengi ambayo yameletwa hapa, muda huo umepitwa na siku nyingi sana hata miezi mitatu au minne na bado Kamati hazijaleta ripoti yake. Kwa hivyo, tunaomba ofisi yako ihakikishe ya kwamba rufaa zinazowasilishwa kwa kamati, iwe ni muda ule uliowekwa katika Kanuni zetu za Senate – muda wa siku 60 wala isipite.

Ninaunga mkono rufaa hiyo.

The Speaker (Hon. Ethuro): Maseneta, ninaomba wakati ambapo mnachangia, msipitishie muda wa dakika mbili.

Sen. Wangari: Asante sana, Bw. Spika. Ninaelewa kuwa hatuna muda wa kutosha, kwa hivyo, nitasema tu mambo mawili. Kwanza, ninaunga mkono dua la wakaazi wa Wodi ya Bukhaya ya Kati, Kaunti ya Busia. Ninawashukuru sana kwa sababu wametambua uwezo na mamlaka yao katika Katiba, ambayo ni kuangalia vile fedha ambazo wametengewa na Serikali zinatumika.

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

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

Ombi langu ni kwamba rufaa hii itakapowasilishwa kwa kamati inayohusika, tungetaka Kamati hiyo iaangalie rufaa hiyo kwa haraka. Sio lazima ifikishe zile siku 60. Ikiweza kufanyika kwa siku 10, tungependa ripoti hiyo iwasilishwe hapa mapema ili tuijadili.

Vile vile, ninaomba tuangalie maombi ambayo yalikuwa yamepelekwa kortini kuhusu fedha za wodi ambazo zinasimamiwa na waakilishi wa Wadi, ili tujue kama ni haki wao kufanya hiyo kazi.

La pili ni kwa lile dua ambalo limeletwa na Bw. Tedy Mwambire ambaye ni Naibu wa Spika kule Kaunti ya Kilifi. Fedha zinachelewa sana kutoka kwa serikali kuu na mwongozo wa Bajeti ya mwaka huu, utapata kati ya Kshs2,087,000 ni 34 asilimia ama karibu Kshs100,000,000 ambazo zimetolewa kufikia Disemba mwaka uliopita. Kwa hivyo, huenda tunauliza magavana maswali ilhali sio makosa yao. Lazima swala hili liletwe katika hili Bunge la Seneti. Hata hivyo, tukumbuke pia jana kuna Seneta ambaye aliuliza mwongozo kwa hili jambo na tutapokea taarifa hiyo kwa muda wa wiki mbili zijazo. Taarifa hiyo itatusaidia sana kwa kutoa mwongozo kuhusu jambo hilo.

Sen. Musila: Thank you, Mr. Temporary Speaker, Sir. I would like to make a few comments on the Petition by the people of Bukhaya Central Ward in Busia County. This is a clear indication of failure of two organs, not only for Busia County but throughout the country. For *Wananchi* to bring us this Petition, it clearly shows that there is failure on the body that has been given the responsibility of oversight namely, Members of the County Assemblies (MCAs). This is a great failure throughout the Republic. You do not hear MCAs questioning or overlooking governors; it is very sad.

Secondly, is the failure of the Office of the Auditor-General. We have said here time and again that we need this office to have offices in each county and competent officers to carry out the audit. As I speak, in the counties, we are witnessing governors spending public funds as if it is their own money. I urge the Committee as it investigates this matter to find out why Busia County Assembly has not looked into these issues until

Wananchi have to bring them to the Senate. The Committee should also find out why the Auditor-General who is charged with the responsibility of auditing these expenditures is not able to draw the attention of this Senate to those funds, including many other counties, for instance, Kitui County.

Sen. Mutula Kilonzo Jnr.: Mr. Temporary Speaker, Sir, first, I thank the residents of Busia County for the Petition. I am praying that the spirit that touched the lady who swore the affidavit on “Waiguru deals” does the same about counties. We cannot have this sort of wasteful expenditure and stealing by counties.

However, I am more concerned that even in our Senate, we seem not to have resolved disputes about our County Public Accounts and Investments Committee. I hope that we can set precedent by putting our House in order.

Regarding the last Petition, I am not quite sure how that Petition was approved because we are also an interested party.

The Temporary Speaker (Sen. (Dr.) Machage): Order! Do you doubt the powers of the Speaker?

Sen. Mutula Kilonzo Jnr.: Mr. Temporary Speaker, Sir, I am not, but I am speaking loudly.

The Temporary Speaker (Sen. (Dr.) Machage): No, be careful.

Sen. Mutula Kilonzo Jnr.: Mr. Temporary Speaker, Sir, let me rephrase. We are an interested party in the referendum. Therefore, by approving a Petition in which we are being asked to amalgamate Petitions that seem to say that this Senate should be abolished is a contradiction in terms. It does not meet the threshold.

The Temporary Speaker (Sen. (Dr.) Machage): Look at the Standing Orders. Every *Mwananchi* has a right to petition the Senate. However flimsy, ridiculous and unacceptable it maybe to your ears, you as the Senate must listen and pay attention to that. You have a duty to present your views to the Committee that I will announce today.

Sen. Mutula Kilonzo Jnr.: Mr. Temporary Speaker, Sir, hence the reason why we are making comments. That is why it is not a finding.

Thank you for your guidance but this is not a finding; I am just giving you my comments. It is a contradiction in terms but more importantly, the only method of popular initiative that has met the constitutional threshold that can be called an initiative is the *Okoa Kenya Initiative*. This *Punda Mzigo* and all other things is a waste of time.

The Temporary Speaker (Sen. (Dr.) Machage): Order! I am also pro to the *Okoa Kenya Initiative* but being on the Chair, I cannot take sides with you.

Sen. Mutula Kilonzo Jnr.: Mr. Temporary Speaker, Sir, I know. That is why it is a comment.

The Temporary Speaker (Sen. (Dr.) Machage): Can you debate that elsewhere?

Sen. Mutula Kilonzo Jnr.: Mr. Temporary Speaker, Sir, thank you but again, just like the rest of the Senators, we need to clear the deck on these Petitions. We are taking too long here.

Sen. (Prof.) Lesan: Mr. Temporary Speaker, Sir, I wish to comment on the Petition on the division of revenue. I am sure that we are all aware that this is one of the issues that we are dealing with in the House. I am happy that these citizens have brought up this issue because we have quite a lot to say about the division of revenue using the criteria that we have.

Land area is one of those criteria that we use but we have not looked at it very closely. We have considered the land area of some of our counties, for example, Lamu, Mombasa or Kwale as land area only. We have the land and the maritime area which comprises Lamu County, for example. We have been unfair to the people of Lamu or Mombasa County by ignoring to consider that the territorial water which is attached to these counties is part of them. When citizens as these ones raise these issues, it reminds us that even as Senators, we need to look at some of the criteria which we are using to divide revenue for the country.

I am sure when the citizens of Mombasa wake up in the morning; they go to the ocean to find a livelihood. The ocean is in their county and must be considered as part of the areas in the formula for division of revenue for those counties. These are some of the things that we need to be looking at.

I support the Petitioner for raising the issue, that, we need to look at the criteria further in order to divide revenue fairly to all the citizens of the country.

Sen. Sang: Mr. Temporary Speaker, Sir, I join my colleagues in appreciating and thanking the petitioners for bringing their Petition to the Senate. However, I believe that this Senate needs to take these Petitions seriously. It appears that Kenyans and residents in our counties out there take this House seriously. When a Petition is presented before the Senate and it takes us three, four or five months, to be responded to, it does not augur well with the public. We need to take them seriously and appreciate that people believe in the mandate of this Senate. We need to expedite the process of reporting on petitions.

I, therefore, call upon the particular committees that already have many petitions pending, including my Committee on Legal Affairs and Human Rights - there is a Petition from Nandi County that is still pending. We need to take it seriously, expedite the process and send a message back to the counties so that we do not find ourselves in the same trap as the MCAs and other constitutional institutions which have the mandate to deal with some issues that come through these Petitions.

Mr. Temporary Speaker, Sir, with those remarks, I request the Senate and the Committees to take these petitions seriously.

Sen. M. Kajwang: Mr. Temporary Speaker, Sir, I also wish to thank the residents of Bukhayo Central Ward for approaching the Senate. I concur with my colleague, Sen. Musila, that this is evidence of failure in primary oversight. We set up county assemblies to interrogate and be the voice of the people on some of these basic matters. We need to make it our business as a Senate to upgrade the capacity of our county assemblies so that they are in a better position to deal with some of these issues so that the Senate is not flooded with many issues.

Yesterday, in my home county, Homa Bay County, there was a very furious fight that erupted in the County Assembly. In as much as we put metal detectors at the entrances of some of these assemblies, we also need to put detectors of pepper because someone went into the assembly with pepper and sprayed it all over other people. That tells you the kind of activities that take place in some of these assemblies. So, we need to make it our business to improve the capacity and upgrade our county assemblies to deal with serious matters.

Finally, regarding the Standing Orders, we need an “*Okoa* Senate” kind of initiative. When a petition is brought here, we comment on it for 30 minutes. When the Committee processes that petition and brings its report, debate on it is restricted to 20

minutes. When the Committee submits its report, debate on it is restricted to 20 minutes at the pleasure of the Speaker. I would rather we had more time to debate the report of the Committee that has processed the Petition rather than discussing something whose depth we do not understand. We need to change our Standing Orders.

The Temporary Speaker (Sen. (Dr.) Machage): Order. May I advise that you have the mandate to bring a Motion to amend any of the Standing Orders? You are complaining against yourself.

Sen. Hargura: Mr. Temporary Speaker, Sir, we have been receiving petitions from Kenyans of all walks of life and like some of my colleagues have said, we are not processing them on time. That will make them lose confidence in this House.

The first Petition from Busia County shows clearly that the county assemblies are not doing their oversight role. These projects must be factored in the budgets they pass and they have the capacity to check whether they are being implemented. This requires physical audit which the county assembly should be doing, because the Auditor-General's staff will just do audit of books and will not follow what is on the ground. That is why the public is complaining. It might have been done on paper, but it is not on the ground. We need to sensitize the county assemblies to do proper fiscal oversight.

Today we are going through the Budget Policy Statement—

The Temporary Speaker (Sen. (Dr.) Machage): Order! I want to refer you to Standing Order No.95. Be careful on your comments on the county assemblies because our own Standing Orders bar you from discussing the conduct of the county assemblies.

Sen. Hargura: Mr. Temporary Speaker, Sir, I stand guided. On the second Petition, when we are discussing the Budget Policy Statement, it is clear that the kind of projected growth rates that we have in this country is in the range of 5 per cent, while the Vision 2030 talks about 20 per cent and above. This Petition has brought up something pertinent because we are not funding the sectors which we expect to propel the economic growth in this country like agriculture and health. It is a pertinent issue and we need to take it up seriously.

I support the Petition and hope that we will satisfy the requests of these Kenyans because they have faith in this House.

Sen. (Dr.) Khalwale: Mr. Temporary Speaker, Sir, I support the Petition from Bukhayo Ward in Busia County. But I beg to disagree with my colleagues who think that there is failure in the county assemblies. County assemblies all over the country are working. The problem is that whereas in the national Parliament we have tyranny of numbers, in the county assemblies we have tyranny of the governors' loyalists. The good Members of the County Assemblies (MCAs) who are out there doing oversight and challenging the governors are usually over-run. Therefore, it would be unfair for us to condemn all the MCAs.

For example, MCAs in Vihiga County are doing a good job. There is a Petition which came from Vihiga the other day where out of the whole assembly only 13 MCAs refused a bribe from the governor. In Kakamega County, MCAs are doing a beautiful job, which led to the illegal removal of the Deputy Speaker who has since been reinstated by the High Court. Let us not condemn the MCAs wholesomely.

It should disturb people in Kenya that whereas Bukhayo Central Ward, like many other wards is complaining about failure to have optics by way of development, one thing that the Controller of Budget is screaming about in her latest release is how county

governments are squandering billions of shillings on foreign travel, even after we had attempted to put some form of capping. The report says that Kshs1.954 billion was spent by the devolved structure of government on foreign travel. The top offenders are 10 and include the following: Nairobi County, Kshs160 million; Machakos County, Kshs88 million; Kiambu County, Kshs87 million; Bungoma County, Kshs68 million; Kisii County, Kshs68 million; Kakamega County, Kshs66 million; Nandi County, Kshs65 million; Vihiga County, Kshs58 million; Wajir County, Kshs57 million; Tana River, Kshs52 million.

The Temporary Speaker (Sen. (Dr.) Machage): You forgot Migori County which spent Kshs170 million. Which number does that make it?

Sen. (Dr.) Khalwale: Mr. Temporary Speaker, Sir, I will allow the Chair to have his bite on the cherry.

I want to comment about Vihiga County. Whereas the governor is spending millions on foreign travel, the week that he breaks from travelling, he then opens houses that he has built to improve housing in Vihiga County. The funny thing is that the county government has built mud houses which the governor is happily opening.

With those few remarks, I beg to support.

The Temporary Speaker (Sen. (Dr.) Machage): We only have five more minutes. I have five speakers and I want all of them to speak. I give one minute to each speaker.

Sen. Nabwala.

Sen. Nabwala: Mr. Temporary Speaker, Sir, I support the Petition from Bukhayo Central Ward, Busia County. Article 201(a) of the Constitution states that:-

“There shall be openness and accountability including public participation in financial matters”

If county governments carry out public participation to create awareness so that people in the counties know what is happening, we will reduce petitions to the Senate. Under Article 96 of the Constitution, it is the role and mandate of the Senate to oversight. We need to strengthen our role as the Senate, so that we can interrogate some of the things in the counties. Petitions come to the Floor of this House, we talk about them but we do not conclude them. We need to follow up keenly to find out how petitions are concluded.

The Temporary Speaker (Sen. (Dr.) Machage): Order. Your time is up.

Sen. Ongoro.

Sen. Ongoro: Mr. Temporary Speaker, Sir, I want to add my voice on the four Petitions. This is a good indication that the county governments and the nation at large are now beginning to appreciate the role of the Senate as stipulated in the Constitution. We have debated in this Senate the teething problems of devolution that are exhibiting themselves in county governments. It is a good indicator that there is an avenue of ventilation that was provided for in the Constitution.

Increased communication from the county governments to the Senate and our communication back is a good indicator that we have an avenue to address those problems. This also enhances the relationship between the national Government and county governments. We have said before that the Senate is the bridge between these two levels of government.

Sen. Ndiema: Mr. Temporary Speaker, Sir, I think these three petitions are well-founded and rightly here because they fall within the mandate of the Senate. Looking at the Petition from Bukhayo, it reminds me of a ward in my county, Trans Nzioa, where I visited to view projects and was told that Kshs32 million was spent on roads and yet there were no roads but payments had been done.

Regarding the issue of agriculture and health, it shows that there is no linkage between national policies and what is happening in the counties. It is important that commitments which we have entered into under Maputo or Abuja declarations. The Senate can play a role in harmonizing all these proposals and come up with a Bill. I think he is reading with us because we have a Bill that we want to sponsor as the Senate to address these issues.

The Temporary Speaker (Sen. (Dr.) Machage): You can go on for one more minute.

Sen. Ndiema: Mr. Temporary Speaker, Sir, these petitions show that there is failure in systems. There are quite a number of counties, looking at the reports, where the auditor has gone for auditing but the county governments have refused to give documents to the auditor. The case in point is Trans Nzioa County. The auditor cannot give any opinion because he was denied to any document that would have been used to confirm whether expenditure was rightly done or wrongly done. In this case, why should the auditor not have power to do something about any government that cannot comply with financial regulations? This is going on and the same individuals continue holding office.

Sen. Okong'o: Mr. Temporary Speaker, Sir, from the onset, let me support all the petitioners who have brought these petitions to the Senate. It shows that they have faith in this House. I concur with the sentiments of my brother, Sen. M. Kajwang on the need to urgently review our Standing Orders. The timeframe required for a committee to report to the House is too lengthy. I will be consulting with Sen. M. Kajwang so that we can come up with relevant Motions to review those orders.

We also need to capacitate the county assemblies. We know that they have undergone many trainings but it is incumbent upon us to work with them and direct them on how to deal with most of these primary issues which they can deal with in the assembly instead of coming to the Senate.

It is also incumbent upon the Parliamentary Service Commission not to dilly-dally in raising money to Senators for oversight. If Senators had money for oversight, some of these petitions would be dealt with at the county level.

The Temporary Speaker (Sen. (Dr.) Machage): Order, Senators. I need to decide on these Petitions. There is a Petition by residents of Bukhayo Central Ward, Busia County concerning application of funds set aside under the Busia County Ward Development Fund for the financial year 2014/2015. I make the following ruling, since it was put in Kiswahili, I will do it in Kiswahili.

Kwa mujibu wa Kipengele Nambari 227, cha kanuni za Bunge la Seneti, Kamati hiyo inatakiwa kukamilisha uchunguzi wake kwa muda usiozidi siku 60 kuanzia leo, tunapowakilisha ombi hili rasmi na kuwasilisha ripoti itakayotumwa kwa waombaji hao na kuwasilishwa rasmi kwenye Bunge hili. Ninaamrisha Kamati ya Fedha, Biashara na Bajeti, kuchukua jukumu hili kulingana na kipengele cha 226.

With regard to the Petition to the Senate by the Maj. (Rtd) Joel Kiprono Rop, concerning the need to amalgamate existing proposals for constitutional amendment to

produce one comprehensive hybrid draft for a national referendum. I make the following observation:-

Pursuant to Standing Order No.227, the Petition stands committed to the relevant Standing Committee, in this case, the Standing Committee on Legal Affairs and Human Rights in terms of Section 2 of the same, the Committee will be required in not more than 60 days from the time of reading the prayer to respond to the Petition by way of a report addressed to the petitioner and laid on the Table of the Senate.

Regarding the Petition to the Senate by Hon. Teddy Mwambire, the Deputy Speaker of Kilifi County Assembly concerning timelines for disbursement by the national Treasury of funds to the county governments, I make this decision:

Pursuant to the Standing Order No. 227, the Petition stands committed to the relevant Standing Committee in this case, the Standing Committee on Finance, Commerce and Budget. In terms of Section 2 of the same, the Committee will be required, not more than 60 days from the time of reading the prayer, to respond to the Petition by way of reports addressed to the Petitioner and laid on the Table of the Senate.

Regarding the Petition by David O. Gesicho concerning a proposed formula for division and allocation of revenue towards realization of Sustainable Development Goals (SDGs), I make the following decision:

Pursuant to Standing Order No. 227(1) of the Standing Orders, the Petition stands committed to the relevant Committee and this is the Standing Committee on Finance, Commerce and Budget. In terms of Section 2 of the same, the Committee will be required in not more than 60 days from the time of reading the prayer to respond to the Petition by way of a report addressed to the Petitioner and laid on the Table of the Senate.

QUORUM

Sen. Mutula Kilonzo Jnr.: On a point of order, Mr. Temporary Speaker, Sir. Before you move to the next Order, which is the Committee of the Whole, I notice that we have no quorum in the House. Therefore, if you call for the Committee of the Whole, in fact, we do not have a Chair, do we? Therefore, will I be in order to suggest that you ring the Quorum Bell so that we can bring people here.

The Temporary Speaker (Sen. (Dr.) Machage): Indeed, we do not have a quorum. Let the Quorum Bell be rung for five minutes.

(The Division Bell was rung)

We have a quorum now. Next Order!

COMMITTEE OF THE WHOLE

(Order for Committee read)

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

IN THE COMMITTEE

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

THE OFFICE OF THE COUNTY ATTORNEY BILL
(SENATE BILL NO. 37 OF 2014)

The Temporary Chairperson (Sen. Ongoro): We are in the Committee of the Whole to consider the Office of the County Attorney Bill, (Senate Bill No. 37 of 2014) to be moved by Sen. Sang on behalf of the Chairperson of the Committee on Legal Affairs and Human Rights

Clause 3

Sen. Sang: Madam Temporary Chairperson, I beg to move:-

THAT, Clause 3 of the Bill be amended by deleting the words “Deputy County Attorney” appearing immediately after the words “County Attorney”, and substituting thereof the words “County Solicitor”.

The purpose of this is to harmonize the Bill and its wording with the national legislation on the office of the County Attorney where the deputy county attorney is referred to as the county solicitor.

(Question of the amendment proposed)

Clause 4

Sen. Sang: Madam Temporary Chairperson, Sir, I beg to move:-

THAT, Clause 4 of the Bill be amended in sub-clause (2)-

(a) by deleting paragraph (b) and substituting therefor the following new paragraph-

(b) the County Solicitor; and

(b) by inserting the word “Board” immediately after the words ‘County Public Service’ appearing in paragraph (c).

(Question of the amendment proposed)

Clause 5

Sen. Sang: Madam Temporary Chairperson, Sir, I beg to move:-

THAT, Clause 5 of the Bill be deleted and substituted therefor with the following new clause-

5. The County Attorney shall be appointed from among persons-

(a) with at least ten years experience as an Advocate of the High Court of Kenya; and

(b) who meet the requirements of Chapter Six of the Constitution.

The purpose of this is to raise the qualification for the county attorney from five years experience to ten year experience. As a Committee, we felt that it is important to get a very qualified person with the necessary experience as the County Attorney.

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Ongoro): Hon. Senator, you do not have to go into details. You can just paraphrase by saying that you propose the Clause be amended as indicated in the Order Paper.

Clause 6

(Question, that Clause 6 be part of the Bill, proposed)

Clause 7

Sen. Sang: Madam Temporary Chairperson, Sir, I beg to move:-

THAT, clause 7 of the Bill be amended-

(a) in paragraph (b) by deleting the words “shall have no right to vote on any matter before such committee” appearing immediately after the words “committee meeting but” and substituting therefor the words “as an *ex officio* member of the executive committee”;

(b) by deleting paragraphs (g) and (h); and

(c) in paragraph (i) by deleting the word “shall” appearing at the beginning of the paragraph and substituting therefor the word “may”.

(Question of the amendment proposed)

Clause 8

(Question, that Clause 8 be part of the Bill, proposed)

Clause 9

Sen. Sang: Madam Temporary Chairperson, Sir, I beg to move:-

THAT, Clause 9 of the Bill be amended-

(d) in paragraph (a) of sub-clause (1) by inserting the words “within the county” immediately after the words ‘involve public property’; and

(e) in sub-clause (4) by deleting the word “shall” appearing immediately after the words ‘administrative body’ and substituting therefor the word “may”.

The purpose of this amendment is to confine the powers of the County Attorney to matters relating to property of the county and not any other public property.

(Question of the amendment proposed)

Clause 10

Sen. Sang: Madam Temporary Chairperson, I beg to move:-

THAT, Clause 10 of the Bill be amended by deleting the words “the Deputy County Attorney” appearing immediately after the words ‘County Attorney’ and substituting therefor the words “the County Solicitor”.

Madam Temporary Chairperson, the amendment is to replace “Deputy County Attorney” with “the County Solicitor.”

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Ongoro): Division will be at the end.

Clause 11

Sen. Sang: Madam Temporary Chairperson, I beg to move:-

THAT, clause 11 of the Bill be amended by deleting the words “the Deputy County Attorney” appearing immediately after the words ‘The County Attorney’ and substituting therefor the words “the County Solicitor”.

The amendment is to replace “Deputy County Attorney” with “Solicitor General.”

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Ongoro): Division will be at the end.

Clauses 12 and 13

(Question, that Clauses 12 and 13 be part of the Bill, proposed)

The Temporary Chairperson (Sen. Ongoro): Division will be at the end.

Clause 14

Sen. Sang: Madam, Temporary Chairperson, I beg to move:-

THAT, Clause 14 of the Bill be amended-

(a) in sub-clause (1) by deleting the words “Deputy County Attorney” appearing immediately after the words ‘delegate to the’ and substituting therefor the words “County Solicitor”; and

(b) in sub-clause (2) by deleting the words “Deputy County Attorney” appearing immediately after the words ‘performed by the’ and substituting therefor the words “County Solicitor”.

This amendment is simply to replace the word “Deputy Attorney” with “County Solicitor.”

(Question of amendment proposed)

The Temporary Chairperson (Sen. Ongoro): Division will be at the end.

Clause 15

(Question, that Clause 15 be part of the Bill, proposed)

The Temporary Chairperson (Sen. Ongoro): Division will be at the end.

Clause 16

Sen. Sang: Madam, Temporary Chairperson, I beg to move:-

THAT, the Bill be amended by deleting clause 16 and substituting therefor the following new clause-

16. (1) A department or public entity established within a county government shall not engage the services of a consultant to render any legal services relating to the functions of the County Attorney without the approval of the County Attorney.

(2) A request by a department or public entity to the County Attorney to engage the services of a consultant under subsection (1) shall be made in writing.

(3) An approval by the County Attorney of a request by a department or public entity to engage the services of a consultant under subsection (1) shall be made in writing.

The purpose for this amendment is to provide that if a consultant is to be engaged, the approval must be in writing. This is in conformity with the entire Bill.

Sen. Obure: Madam Temporary Chairperson, I commend the work of this Committee in particular for raising this particular amendment. Counties are spending huge amounts of money hiring consultants. This provision here will pin down the responsibility to some individual. Therefore, we are moving in the right direction by adopting this particular amendment.

The Temporary Chairperson (Sen. Ongoro): I will now propose the question.

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Ongoro): Division will be at the end.

Clause 17

(Question, that Clause 17 be part of the Bill, proposed)

The Temporary Chairperson (Sen. Ongoro): Division will be at the end.

Clause 18

Sen. Sang: Madam, Temporary Chairperson, I beg to move:-

THAT, clause 18 of the Bill be deleted and substituted therefor with the following new clause-

County Solicitor

18. (1) There shall be a County Solicitor who shall be competitively recruited and appointed by the County Public Service Board.

(2) A person is qualified for appointment to the office of County Solicitor if the person-

(a) has at least ten years experience as an advocate of the High Court of Kenya; and

(b) meets the requirements of Chapter Six of the Constitution.

(3) The County Solicitor shall be the principal assistant of the County Attorney in the execution of the County Attorney's functions under this Act and any other written law.

The rationale for this is to enhance the qualifications for the County Solicitor from 5 years' experience to 10 years' experience. The reason and rationale is the same. We need very qualified and experienced people to support the counties in this position.

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Ongoro): Division will be at the end.

Clause 19

Sen. Sang: Madam Temporary Chairperson, I beg to move:-

THAT, Clause 19 of the Bill be amended in sub-clause (2) by deleting paragraph (b) and substituting therefor the following new paragraph-

(b) meets the requirements of Chapter Six of the Constitution.

The reason for this is to realign the wordings of this Clause to the constitutional provisions with regard to Chapter 6 so that instead of just giving an ambiguous statement that the person being appointed should be, "a person fit and proper to hold office", we are saying; "a person who meets the provisions of Chapter 6 of the Constitution on leadership and integrity".

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Ongoro): Division will be at the end.

Clause 20

(Question, that Clause 20 be part of the Bill, proposed)

The Temporary Chairperson (Sen. Ongoro): Division will be at the end.

Clause 21

Sen. Sang: Madam, Temporary Chairperson, I beg to move:-

THAT, Clause 21 of the Bill be amended in sub-clause (2) by-

(a) deleting the word “shall” appearing immediately before the words ‘enjoy the same benefits’ in paragraph (b); and

(b) deleting the word “shall” appearing immediately before the words ‘be required to comply’ in paragraph (c).

This is just to address a typo where the word “shall” was repeated.

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Ongoro): Division will be at the end.

Clauses 22, 23 and 24

(Question, that Clauses 22, 23 and 24 be part of the Bill, proposed)

The Temporary Chairperson (Sen. Ongoro): Division will be at the end.

Clause 25

Sen. Sang: Madam, Temporary Chairperson, I beg to move:-

THAT, Clause 25 of the Bill be amended by deleting the word “local” appearing immediately after the words “County laws and” and substituting therefor the word “legal”.

This is just to address a typographical error where instead of “legal” we indicated “local”.

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Ongoro): Division will be at the end.

Clause 26

Sen. Sang: Madam, Temporary Chairperson, I beg to move:-

THAT, Clause 26 of the Bill be amended by deleting the word “public seal” appearing immediately after the words ‘custody of the’ and substituting therefor the words “county seal”.

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Ongoro): Division will be at the end.

Clauses 27, 28 and 29

(Question, that Clauses 27, 28 and 29 be part of the Bill, proposed)

The Temporary Chairperson (Sen. Ongoro): Division will be at the end.

Clause 30

Sen. Sang: Madam, Temporary Chairperson, I beg to move:-

THAT, Clause 30 of the Bill be amended in paragraph (b) of sub-clause (3) by deleting the words “National Assembly” appearing immediately after the words ‘provided by the’ and substituting therefor the words “County Assembly”.

This is a Bill relating to the county governments. Therefore, the resources available for use in this office shall be provided for and appropriated by the County Assembly and not the National Assembly.

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Ongoro): Division will be at the end.

Clauses 31 and 32

(Question, that Clauses 31 and 32 be part of the Bill, proposed)

The Temporary Chairperson (Sen. Ongoro): Division will be at the end.

New Clause 10A

Sen. Sang: Madam, Temporary Chairperson, I beg to move:-

THAT, the Bill be amended by inserting the following new clause immediately after clause 10- Status of the office of County Attorney.

10A. For the avoidance of doubt, the County Attorney shall have the status and rank of a member of the County Executive Committee.

(New Clause 10A was read a First Time)

Sen. Sang: Madam Chairperson, I beg to move:-

THAT, Clause 10A be read a second time.

Madam Chairperson, this is a new inclusion looking at the qualification of the office holder and the office of the County Attorney, we realized that we needed to anchor and structure it properly within the setup of the county public service and to give the County Attorney the status which is the same as that of the County Executive Committee (CEC) Members because they will be sitting together within that county cabinet.

As a Committee we thought that this section is important to anchor these positions properly within the structure of the county government. I ask Sen. Mutula Kilonzo Jnr. to second.

Sen. Mutula Kilonzo Jnr.: Thank you madam Chairperson, I beg to second.

*(Question, that New Clause 10A be read a
Second Time, proposed)*

Sen. Ong'era: On a point of order Madam Chairperson, it is not that I am opposing this but I do not know how this Clause shall be, considering that this is an Act of Parliament because under the Constitution, the CEC Members are provided expressly under the Constitution. If we now raise them to the rank of executive committee, how will that be in tandem with the Constitution because this is just an Act of Parliament?

Madam Chairperson, does it mean that when a governor is appointing an attorney, he must include in his executive committee an attorney so that he can be at that rank because he will be appointing as per the constitutional provisions or would this be a separate clause that we are providing for knowing that the rules that an Act of Parliament cannot override the express provisions of the Constitution? I just wanted a clarification.

Thank you.

The Chairperson (Sen. Ongoro): Sen. Sang, I think it would be proper for you to give further clarification but before that, let me give the Floor to Sen. (Dr.) Machage.

Sen. (Dr.) Machage: Thank you Madam Chairperson. My concern is the phrase "for the avoidance of doubt". Really, Sen. Sang is a lawyer and I think this phrase was unnecessary if the objective was to have that status, then the phrase should just be "the county attorney shall have the status and rank of a member of county executive committee".

Madam Chairperson, I do not think Sen. Ong'era's observation would hold much water. You can have the same rank and status but not in terms of payments and respect but you are not an executive member. So, you are out of the constitutional election mandate. I would not buy that. It is only that the opening clause is not a very good clause.

Sen. Mutula Kilonzo Jnr.: Thank you Madam Chairperson. The thinking of the committee at the time was not to make the County Attorney subservient to the persons who are serving as executive members. The intention of the committee at the time was to ensure, just like the Attorney-General in Kenya, that the county attorney can sit in the county executive committee.

Therefore, it is what we call *numero uno*. He is able to sit in the county executive committee, his appointment is the same as the county executive committee. In terms of approval and removal, his is the same as that of the county executive committee, so that he is able to advise and liaise.

Madam Chairperson, any other way would mean that he will not be able to give advice to the County Executive Member being subservient to them. That is the purpose so that he can issue a direction to a County Executive Member in the way the Attorney-General is the legal adviser and, therefore, the Ministers are not under obligation to follow that advice.

The Chairperson (Sen. Ongoro): Thank you. I hear you but can the Mover shed further light on the issues that have been raised by Sen. (Dr.) Machage and Sen. Ong'era.

Sen. Sang: Thank you Madam Chairperson. With regard to the point raised by Sen. (Dr.) Machage, I want to mention that it is really the advice we got from our drafting team in terms of proper practice of drafting; that it was important for us to indicate that for the avoidance of doubt, the status of the County Attorney shall be the same rank as that of the member of the CEC. That is drafting practice.

Madam Chairperson, with regard to the issue raised by Sen. Ong'era, you will realize that the procedure for appointment, the Constitution indicates that there shall be CEC members but the details of how they are appointed and the approval process is detailed within the County Governments Act.

The County Governments Act will enjoy the same status as the office of the County Attorney Bill, once it becomes an Act of Parliament. Therefore, since this position was not captured within the County Government Act, we are providing a new Act, the procedure for appointment and that does not disagree with the Constitution because if you look at the Constitution, it has not expressly prohibited the creation.

Madam Chairperson, in fact, it has given the national Parliament the powers to create an office and we have done that by creating the office of the County Attorney. If you look at the qualification of the County Attorney, the mandate given to this office and the functions, you really must provide some proper balance of power so that they can be respected and be able to advise the other departments. So, I do not see any contradiction to that effect.

The Chairperson (Sen. Ongoro): I think that is enough clarification and you are satisfied.

(Question, that New Clause 10A be read a Second Time and be part of the Bill proposed)

First and Second Schedule

(Question that Schedules 1 and 2 be part of the Bill proposed)

Clause 2

Sen. Sang: Madam Temporary Chairperson, I beg to move:-

THAT, Clause 2 of the Bill be amended by-

(a) inserting the following new definition immediately after the definition of the word "County Legal Counsel"- "County Solicitor" means a person appointed as such under section 18. ; and

(b) deleting the definition of the word "Deputy County Attorney"

Again the reason is the same.

(Question of the amendment proposed)

Title and Clause 1

*(Question, that the Title and Clause 1 be part
of the Bill proposed)*

Sen. Sang: Madam Chairperson, pursuant to Standing Order No. 139, I beg to move that the Committee of the Whole doth report progress on its consideration of the Office of the County Attorney Bill (Senate Bill No. 37 of 2014) and seek leave to sit again tomorrow.

Sen. Mutula Kilonzo Jnr. seconded.

(Question proposed)

(Question put and agreed to)

(The House resumed)

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

PROGRESS REPORTED

THE OFFICE OF THE COUNTY ATTORNEY BILL
(SENATE BILL NO. 37 OF 2014)

Sen. Ongoro: Mr. Temporary Speaker, Sir, I beg to report progress; that the Committee of the Whole has considered the Office of the County Attorney Bill, (Senate Bill No. 37 of 2014) and seeks leave to sit again tomorrow.

Sen. Sang: Mr. Temporary Speaker, Sir, I beg to move that the House do agree with the Committee of the Whole in the said report.

(Question put and agreed to)

COMMITTEE OF THE WHOLE

(Order for Committee read)

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

IN THE COMMITTEE

[The Chairperson (Sen. Ongoro) took the Chair]

After public hearings from the stakeholders, parents, the Teachers Service Commission (TSC) and the Ministry of Education, it was found difficult to proceed in the manner in which we had proposed in the Bill.

It was to take the examination certificates through the District Education Officers. Therefore, I propose that we adopt this. During the debate on the Floor, you will recall that Members introduced the issue of result slips. Therefore, Clause 45A is meant to ensure that result slips are forwarded to candidates after the Examination results are released.

We also introduced a new Clause 45A. It relates to the issue of certificates so that they do not need to be issued through schools and that they will be released through the Principals. We also proposed that the candidates' names and the code of examinations are done properly and that the candidates should identify the discrepancies in the certificates. The Kenya National Examinations Council shall rectify the discrepancies notified within a period of 30 days and at their cost.

Madam Chair, Sub-Clause 7 gives a penalty for those teachers or headteachers who withhold these certificates. In the past we had not prescribed any penalty. We had only proposed a fine of Kshs500,000 but the Members proposed a lower penalty of Kshs 200,000 and or six months imprisonment.

Thank you.

Sen. (Dr.) Zani: Thank you Madam Chair. First, I commend Sen. Musila for this new amendment. I know from the Committee of Education that there has been a lot of discussion in trying to streamline and solve the issuance of examination certificates through the district education office. The issue of the result slips has also caused a lot of problems.

Students usually wait for a long time before they get their examination certificates. With this amendment, it will be possible for them to collect their certificates quickly and they will be doing this from a central point which is their respective examination centres. From there, they can be scrutinized to ensure that they are the exact owners. The amendment gives the provision for that scrutiny and a time limit of two months from the release of the certificates.

The amendment moved away from the District Education Officer who would be deemed far removed from the examination centres and probably keeping the control of the issuance of the certificates within the centres. With this, the issuance will be expedited without the headteachers holding on to them because of fee issues.

Thank you.

(Question of the amendment proposed)

Clause 2

The Temporary Chairperson (Sen. Ongoro): I propose the Question that Clause 2 be part of the Bill.

Sen. Musila: Madam Temporary Chairperson, I beg to move:-

THAT, Clause 2 of the Bill be amended by inserting the words "Section 2 of" immediately before the words "The Kenya National".

The proposed insertion on Clause 2 is simply to make it meaningful. You will notice that we omitted the word 'of'. It is just a matter of tidying it up and making it clear.

Thank you.

Sen. (Dr.) Khalwale: Madam Chair, I support this amendment; but may I point out that the practice of legislation does not compel this House to take care of clerical matters. The assumption usually is that, this goes to the Attorney-General's office that sorts out the typographical errors. Therefore, for purposes of record, let us set it straight.

I support.

New Clause 2A

The Chairperson (Sen. Ongoro): I propose the New Clause 2A.

Sen. Musila: Madam Temporary Chairperson, I beg to move:-

THAT, the following new clause be inserted immediately after clause 2-

2A. The principal Act is amended in section 10 by inserting the following new subsection immediately after subsection (2)-

(3) A person who contravenes the provisions of subsection (1)(b) commits an offence and shall be liable, upon conviction, to a fine not exceeding two hundred thousand shillings or to imprisonment for a term not exceeding six months or to both.

(New Clause 2A was read a First Time)

Sen. Musila: Madam Temporary Chairperson, I beg to move:-

That, New Clause 2A be read a Second Time.

Again, the purpose of this new Clause is to enforce Clause 20 of the mother Act. The Act provides that no institution or individual shall withhold certificates. That is why we stopped. It is from the experience that we have seen that although the law was enacted in 2012, teachers are still keeping the certificates because there was no penalty prescribed.

Therefore, the purpose is to put a penalty of Kshs 200, 000 or imprisonment for a term not exceeding six months or both for those teachers or institutions that withhold the certificates.

The Temporary Chairperson (Sen. Ongoro): Thank you. Who is your seconder, Sen. Musila?

(Sen. Musila spoke off record)

Mention his name for the sake of records.

Sen. Musila: I request Sen. Obure to second.

Sen. Obure seconded.

The Temporary Chairperson (Sen. Ongoro): Thank you.

(Question, that New Clause 2A be read a Second Time, proposed)

Sen. Mutula Kilonzo Jr.: Madam Temporary Chairperson, this is what I have concerning New Clause 2A. I am a big proponent of the non-withholding of certificates because the only person who may withhold certificates is a headteacher somewhere in a village and the fine and imprisonment is extremely high. We should have reduced it. We should make it punitive in terms of the offence but reduce the penalty. We might alienate our very big supporters who are teachers in the process. That is my view.

Sen. (Dr.) Khalwale: Madam Temporary Chairperson, I would like the Mover of the Bill to clarify to me why we find this New Clause necessary given what is in Section 45A(a)(vii) on the same page. Just above the New Clause, there is the same provision; that a person who contravenes the provisions of this Section commits an offence and shall be liable on conviction to a fine not exceeding Kshs200,000 or to imprisonment of a term not exceeding six months, or both. How is it different? How does that New Clause make it tighter? Are we not being repetitive? Just clarify to me.

The Temporary Chairperson (Sen. Ongoro): The Mover, you need to clarify because Clause 7(2)(a) actually repeats what we already have word for word. Could you clarify?

Sen. Musila: Madam Temporary Chairperson, you can see my feelings about this. That is why I have been struggling with this since 2004. Last time, as I told you when you were on the Chair; that when I moved this Motion, I did not even have a single grey hair. When you look at my head, you will see a lot of grey hair. I am frustrated. Maybe, that is why I am repeating.

(Laughter)

Therefore, I will have no objection to removing it altogether, because it is repetitive. However, since we are going to the principal Section 10(b) – that is where this amendment belongs – I think the New Clause is relevant. If we were to remove any, then, we should remove the previous one. However, because this one enforces the already existing law of Section 10(b)---

My lawyer, Sen. Mutula Kilonzo Jr., who has even gone to the High Court with me on this matter, will agree that it is very relevant that the last New Clause be held but I have no objection to deleting the previous one.

The Temporary Chairperson (Sen. Ongoro): I will give the Floor to Sen. Ong'era and another intervention to Sen. (Dr.) Khalwale. However, I want to draw your attention to read with me again because Section 7 states: "A person who contravenes the provisions of this Section." It does not talk about provisions of this Act. If we sustain it in reference to this Section, it means that it might be referring to the punitive measure for contravening the Section and this one also for contravening this New Clause 2A(iii), if you look at it like that.

I know it is repeated but it means that you will be punishing a person for contravening provisions of that Section. We will come to you later. Let me give the Floor to Sen. Ong'era and then Sen. (Dr.) Khalwale.

Sen. Ong'era: Madam Temporary Chairperson, I just wanted to support the New Clause 2A that is being introduced. We know that the Mover of this Bill has been very passionate on this issue. I think the intention is to make it extremely impossible for

teachers to withhold certificates; that they must immediately release them. That is the idea of New Clause 2A.

In other words, if you do not release certificates, it means that you will have to pay the Kshs200,000 fine or face imprisonment for six months, or both. I think it is a necessary provision.

I thank you.

Sen. (Dr.) Khalwale: Madam Temporary Chairperson, I just wanted to request the Mover to then move an amendment without notice, that we delete Section (vii) under Section 45A(a), so that we remain with the New Clause 2A.

The Temporary Chairperson (Sen. Ongoro): Before the Mover responds, I just want to take you back to my earlier clarification that this Section refers to a person contravening the provisions of this Section and not the Act. If they had substituted the word "Section" with the word "Act", then, we would say that New Clause 2A is repetitive but they are very specific by mentioning "this Section." That means it refers to this particular Section. This one fortifies whatever is supposed to be a different Section. Before the Mover gives his final submission, let us listen to Sen. Mutula Kilonzo Jnr. Those are my observations because of those particular words that have been used.

What is your take, Senator?

Sen. Mutula Kilonzo Jnr.: Madam Temporary Chairperson, in real sense, the Mover has created two separate offences for two separate Sections but not one. Therefore, there is a penalty in Section 10 and another one in Section 45. It appears the same but it is actually different. So, you can actually be charged for committing an offence in Section 10 and Section 45.

The Temporary Chairperson (Sen. Ongoro): That is also my take. That being the case, therefore, we can sustain both, because they refer to different Sections.

Sen. Musila: Madam Temporary Chairperson, I thank the contributors to that. I have also persuaded my brother, Sen. (Dr.) Khalwale, to withdraw whatever he said; that it remains the way it is because it does no harm even if it is repeated.

The Temporary Chairperson (Sen. Ongoro): He does not need to withdraw. We will sustain his submission for the records, but we will also sustain all these. You have convinced us.

Thank you very much Sen. Mutula Kilonzo Jnr. That being the case, I can now put the question.

*(Question, that New Clause 2A be now read
a Second Time, proposed)*

Division will be at the end.

Let us proceed.

Title and Clause 1

*(Question, that the Title and Clause 1 be
part of the Bill, proposed)*

Division will be at the end.

We are through with the amendments. Could the Mover report progress?

Sen. Musila: Madam Temporary Chairperson, pursuant to Standing Order No.139, I beg to move the Committee do report progress on its consideration of the Kenya National Examinations Council (Amendment) Bill (Senate Bill No. 7 of 2015) and seek leave to sit again tomorrow.

(Question proposed)

(Question put and agreed to)

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

(The House resumed)

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

PROGRESS REPORTED

THE KENYA NATIONAL EXAMINATIONS COUNCIL
(AMENDMENT)(NO.2) BILL (SENATE BILL NO. 14 OF 2015)

Sen. Ongoro: Thank you, Mr. Temporary Speaker, Sir. I beg to report progress; that the Committee of the Whole has considered the Kenya National Examinations Council Amendment Bill (Senate Bill No.20 of 2015) and seeks leave to sit again tomorrow.

Sen. Musila: Mr. Temporary Speaker, Sir, I beg to move that the House doth agree with the Committee in the said report.

Sen. (Dr.) Khalwale seconded.

(Questioned proposed)

(Question put and agreed to)

Sen. (Dr.) Khalwale: On a point of order, Mr. Temporary Speaker, Sir. I insist that the casual manner in which we are moving away from the tradition of Parliament will start from small transgressions and move on to something grave. The purpose of the Chairperson of the Committee of the Whole reporting to the Speaker is that the Chairperson is now reporting to the whole House. There was good reason why the Speaker could only go to that Chair from the main entrance or from the Speaker's backroom. When you now emerge from the Plenary and go to the Speaker's Chair, it means that the Committee of the Whole is reporting to itself.

Therefore, it is important that since you are new in the position, it be encultured that you can only be reported to because you were not part of the Committee of the Whole. So, you want to hear what took place. It is wrong for the Speaker to be coming from the plenary. He should be coming from the back or the front. That is the tradition even in Commonwealth ---

The Temporary Speaker (Sen. Sang): Other than tradition, do you have a specific supporting Standing Order?

Sen. (Dr.) Khalwale: Mr. Temporary Speaker, Sir, Standing Order No.1(2) which provides as follows:-

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

Do not take this lightly because I remember this law on 15th January, 2008, saved the country. Sen. Orenge had moved that the Clerk could not swear Members to take the oath. However, Speaker Marende who had just been shortly brought to the seat was allowed through this to get the House to order for people to take oath and that brought peace to the country when it was fighting. So, this Standing Order is very powerful. You might find that what I am saying will be useful in future.

The Temporary Speaker (Sen. Sang): Sen. (Dr.) Khalwale, thank you for that concern. The Speaker will pronounce himself to that particular matter. However, you also need to note that if you have a Member of the Speaker’s Panel, our own Standing Order Nos.15 and 16 on the appointment of the Members of the Chairperson’s Panel, you will appreciate that these Members are Members of the House and they are entitled to participate in the deliberations of the House.

If, for example, you are talking about the Speaker himself and not a Member of the Panel, you definitely will not find a situation where the Speaker is emerging from the Floor of the House and taking up the seat. However, if you are talking about a Member of the Panel who is a Senator and who is entitled to participate in the deliberations of the Senate, if that particular Member of the Panel has to preside over the House as the Speaker, there cannot be any provision that cannot allow such a Member to move from the plenary and proceed to assume the position of the Speaker.

Do you want to pursue that matter further?

Sen. (Dr.) Khalwale: On a point of order, Mr. Temporary Speaker, Sir. I want to pursue it because it is important. Standing Order Nos.15 and 16 are not new under the current Parliament. Even in previous Parliaments, these Standing Orders were there; only that they were numbered differently.

The tradition is then the Clerk – Mr. Mogere has done it severally – informs the Member who is a Member of the Speaker’s Panel who will be the one that the Chairperson will be reporting to, to then withdraw from the plenary and go to the Speaker’ office or the space behind. That has been the tradition. Why do we want to break it?

The Temporary Chairperson (Sen. Sang): Noted. Thank you, Sen. (Dr.) Khalwale, for that point.

Next Order!

Order No.12 is deferred. Sen. Hassan, the Mover of that Bill, is not in the House.

COMMITTEE OF THE WHOLE

THE PRESERVATION OF HUMAN DIGNITY AND ENFORCEMENT OF
ECONOMIC AND SOCIAL RIGHTS BILL
(SENATE BILL NO. 8 OF 2015)

(Committee of the Whole deferred)

The Temporary Chairperson (Sen. Sang): Next Order.

COMMITTEE OF THE WHOLE

(Order for Committee read)

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

IN THE COMMITTEE

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

THE OFFICE OF THE COUNTY PRINTER BILL
(SENATE BILL NO. 42 OF 2014)

The Temporary Chairperson (Sen. Ongoro): Hon. Senators, we are in the Committee of the Whole again to consider the Office of the County Printer Bill (Senate Bill No. 42 of 2014) by Sen. Mutula Kilonzo Jnr. The Division will be at the end.

Clause 3

(Question, that Clause 3 be part of the Bill, proposed)

Clause 4

Sen. Mutula Kilonzo Jnr.: Madam Temporary Chairperson, I beg to move:-

THAT, Clause 4 of the Bill be amended in sub-clause (2) by deleting the words “county Secretary” appearing immediately after the words “office of the” and substituting therefor the words “county executive committee member”.

(Question of the amendment proposed)

Clause 5

Sen. Mutula Kilonzo Jnr.: Madam Temporary Chairperson, I beg to move:-

THAT, Clause 5 of the Bill be amended-
(a) in paragraph (a) by inserting the words “within seven days of such authorization” immediately after the words “an authorized officer”; and

(b) in paragraph (b) by deleting the word “government” appearing immediately after the words “the county” and substituting therefor the words “executive and the county assembly”.

Madam Temporary Chairperson, following the amendments in Clause 4, the Committee on Information and Technology proposes that Clause 5, part “a” and “b” be amended as proposed.

(Question of the amendment proposed)

Clause 6

(Question, that Clause 6 be part of the Bill, proposed)

Clause 7

Question, that Clause 7 be part of the Bill, proposed)

Clause 8

Sen. Mutula Kilonzo Jnr.: Madam Temporary Chairperson, I beg to move:-

THAT, Clause 8 of the Bill be amended-

(a) in sub-clause (2) by deleting the word “may” appearing immediately after the words “county printer” and substituting therefor the word “shall”; and

(b) by inserting the following new sub-clauses after sub-clause (2)-

(3) For purposes of subsection (1), the county printer may publish an electronic version of the gazette and such version shall have the same effect as a physical version of the gazette.

(4) The county printer shall make available issues of the gazette to the National Council for Law Reporting.

We have proposed that the word “may” be replaced with the word “shall” as proposed in the Order Paper to make it mandatory for the special issue of county gazette to be published when required.

In “b”, we have proposed that a new sub-clause “2” be added into sub-clause 8 to include sub-clause 2, 3 and 4 to ensure that this Bill complies with the digital system so that we can have a digital county gazette. I propose that it be amended as proposed.

(Question of the amendment proposed)

Clause 9

Sen. Mutula Kilonzo Jnr.: Madam Temporary Chairperson, I beg to move:-

THAT, Clause 9 of the Bill be amended in sub-clause (4) by deleting the words “the county executive committee member” appearing immediately after the words “may be assigned” and substituting therefor the words “any other written law” appearing in paragraph (f).

We propose that clause 9 of the Bill be amended as proposed in the Order Paper so that we can change the words “county executive committee member. It is pretty straightforward.

(Question of the amendment proposed)

Clause 10

(Question, that Clause 10 be part of the Bill, proposed)

Clause 11

(Question, that Clause 11 be part of the Bill, proposed)

Clause 12

Sen. Mutula Kilonzo Jnr.: Madam Temporary Chairperson, I beg to move:-

THAT, Clause 12 of the Bill be amended by deleting the words “county secretary” appearing immediately after the words “subject to the provisions of this Act” and substituting therefor the words “county executive committee member”.

In order to have consistency in the amendments in Clause 4 and 5 which had proposed that the authorised officer be the county secretary, we have deleted the words “county secretary” appearing after the words “subject to the provisions of the act” and replaced with the words “county executive member” who is now the authorised person.

(Question of the amendment proposed)

Clause 2

Sen. Mutula Kilonzo Jnr.: Madam Temporary Chairperson, I beg to move:-

THAT, Clause 2 of the Bill be amended by-

(a) deleting paragraph (c) appearing in the definition of the term “authorized officer”;

(b) inserting the following new definition immediately after the definition of the term “authorized officer” - “county executive committee member” means the county executive committee member responsible for matters relating to information;

(c) deleting the definition of the term “county secretary”.

Madam Temporary Chairperson, in order to have uniformity in who authorizes the printing of this county gazette, we have proposed to delete paragraph c, the definition of the authorised officer, inserting the words “authorised officer as the county executive and then deleting the definition of county secretary as proposed above.

(Question of the amendment proposed)

The Title

(Question, that the Title be part of the Bill, proposed)

Clause 1

Sen. Mutula Kilonzo Jnr.: Madam Temporary Chairperson, I beg to move:-

THAT, Clause 1 of the Bill be amended by deleting the words “and shall come into operation on such day as the cabinet secretary may, by notice in the Gazette appoint, which date shall not exceed ninety days from the date of publication of the Act” appearing immediately after the words “ County Printer Act, 2014”.

Madam Temporary Chairperson, we have proposed to amend this Clause so that the Act would come into force immediately on publication of the Act as opposed to what has been proposed before.

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Ongoro): We are through with the amendments.

Mover.

Sen. Mutula Kilonzo Jnr.: Madam Temporary Chairperson, I beg to move that the Committee of the Whole reports progress on its consideration of The Office of the County Printer Bill (Senate Bill No. 42 of 2014) and seeks leave to sit again tomorrow.

(Question proposed)

(Question put and agreed to)

(The House resumed)

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

PROGRESS REPORTED

THE OFFICE OF THE COUNTY PRINTER BILL
(SENATE BILL NO. 42 OF 2014)

Sen. Ongoro: Mr. Temporary Speaker, Sir, I beg to report that the Committee of the Whole has considered the Office of the County Printer Bill (Senate Bill No. 42 of 2014) and seeks leave to sit again tomorrow.

Sen. Mutula Kilonzo Jnr.: Mr. Temporary Speaker, Sir, I beg to move that the House do agree with the Committee on the said Report

Sen. (Dr.) Zani seconded.

(Question proposed)

(Question put and agreed to)

BILL

Second Reading

THE KENYA NATIONAL EXAMINATIONS COUNCIL
(AMENDMENT) (NO. 2) BILL (SENATE BILL NO.14 OF 2015)

The Temporary Speaker (Sen. Sang): Clerks-at-the-Table, how many minutes does Sen. Obure have? You have a balance of 59 minutes.

Sen. Obure: Mr. Temporary Speaker, Sir, thank you for giving me the opportunity. At the rise of the House yesterday, I had moved that the Kenya National Examinations Council (Amendment) (N0.2) Bill (Senate Bill No.14 of 2015) be read a Second Time.

The principal object of this Bill is to amend the Kenya National Examinations Council (KNEC) Act in order to provide for the establishment of an independent appeals tribunal. Provision of education to citizens of this country and the manner in which examinations are administered has a direct impact on the qualifications of public officers available to discharge the functions of the county governments, as envisaged and provided for under Part 2 of the Fourth Schedule of the Constitution. All county governments, therefore, must have a keen interest on the subject of provision of education and the way national examinations are administered. It has a strong relationship with the success of devolution and performance of devolved units, particularly in the area of service delivery.

Article 43(1)(f) of the Constitution guarantees every Kenyan the right to education. It further envisages that the education provided will meet certain minimum quality standards. Examinations are, therefore, a means of ensuring quality education and assessing the readiness of students to move from one level of education to another. Therefore, the question of integrity of our national examinations system is important. Our examinations system must be sound and beyond reproach. We all have a duty as citizens to protect the integrity of our national examinations system.

Section 10(2)(e) of the KNEC Act gives the Council power to withhold, nullify or cancel the results of a candidate and candidates suspected to have been involved in irregularities or malpractices. My problem is that this law gives KNEC absolute and unquestionable powers to withhold, cancel or nullify candidates' examination results without giving any explanation whatsoever, therefore, leaving victims without recourse or option.

From the results that were announced last month, a total of 2,709 candidates who sat the Kenya Certificate of Primary Education (KCPE) in 2015 had their results nullified because of being suspected of cheating. The 2,709 young Kenyans were consequently condemned and denied the opportunity to advance their studies further. They were also denied the opportunity to be heard. Most of these children are aged 14.

In 2011, 8,000 KCPE candidates were affected because their results were cancelled. In 2014, about 3000 students did not get their KCSE results because of

suspected cheating. This experience is encountered every year when results of examinations are released. This is a large number of candidates whose ambitions and future are shattered on account of cheating, which is at best an allegation.

Mr. Temporary Speaker, Sir, we all agree on the need to protect the integrity of our national examination system. However, this law which gives the Kenya National Examinations Council (KNEC) absolute and unquestionable powers to determine the destiny of our young people is a dangerous law. It particularly becomes dangerous if these powers are exercised arbitrarily. I have reason to believe that these powers have been exercised arbitrarily on several occasions. This is because, often, KNEC does not have enough time to conduct exhaustive and conclusive investigations.

For example, last year at the Gusii Institute of Technology, the KNEC decided to withhold examination results of all the 36 candidates who sat for those exams on account of collusion. The students were suspected to have colluded during the exams. It so happened that out of the 36 candidates, one candidate was sitting for the paper on his own in a room with the invigilator. That candidate was also suspected to have colluded.

Mr. Temporary Speaker, Sir, collusion means that two people or more acting together. However, on this occasion, there was one student in a separate room with his invigilator yet his results were also withheld on account that he had also colluded. Therefore, you can see that a lot of the time, the KNEC makes arbitrary decisions. Fortunately, after protestations by the students themselves, the results were ultimately released. Where these powers are exercised arbitrarily, the candidate is adversely affected severely; he or she cannot proceed to the next level of education or even secure employment anywhere. Chances are he or she drops out of school and is thus destined to oblivion. In such a case, the life of a young Kenyan is ruined permanently.

The effect of withheld, cancelled or nullified examination results on affected candidates is tragic and devastating. In fact, it means a lifetime condemnation. For the families, the decision brings despair and hopelessness. It is the duty of this Parliament to ensure that all persons have a right to fair administrative action as enshrined in Article 47(1) of the Constitution. Article 47(3) also requires Parliament to pass legislation to provide for the review of administrative action by court or if appropriate by an independent tribunal. These provisions are in the Constitution and, therefore, the basis for which I am proposing these amendments to the KNEC Act.

Mr. Temporary Speaker, Sir, the Bill being presented seeks to establish the National Examinations Appeals Tribunal to act as a check on the powers of the KNEC to withhold, cancel or nullify examination results. The Bill puts in place a mechanism for checking the powers of the KNEC. The Bill will further seek to fulfill the constitutional duty of this Parliament to put in place mechanism of review of administrative decisions by organs of Government. Therefore, the Bill seeks to establish a tribunal consisting of the chairperson who will be nominated by the Judicial Service Commission (JSC). This is expected to be a person who is an advocate of the High Court of Kenya of at least 15 years standing.

There will be one person nominated jointly by the association of head teachers and principals of schools. One person will be nominated jointly by the unions representing the teachers. One other person will be nominated jointly by the associations representing the interests of parents. Lastly, one person will be nominated by the technical and vocational education authority. The provision is in this Bill for members to

serve for a term of four years, but will also be eligible for reappointment for a further term of four years.

Mr. Temporary Speaker, Sir, the proposed law also empowers the Cabinet Secretary in charge of education to designate a public officer to be the Secretary to the tribunal. The Cabinet Secretary will also have powers to determine any allowances or remuneration to members of the tribunal in consultation with the Salaries and Remuneration Commission (SRC). The functions of the tribunal will be to consider appeals made against the decision of the KNEC to withhold, nullify or cancel examinations, prepared and administered by them. The tribunal has also been given the powers to summon witnesses, take evidence on oath or affirmation and order the production of any documents that they may require. Other provisions contained in this Bill will be procedures for making appeals, the manner in which any communication will be done and the timelines within such communications may be made.

I am convinced that this Bill will give an avenue for redress for candidates whose results are withheld or cancelled. Those aggrieved may seek to be heard by the tribunal once this Bill is enacted into law. I appeal strongly to my colleagues in this House to support this Bill, taking into consideration the amount of damage which has been done already and the number of young people whose future has been shattered by the decisions of the KNEC, particularly when such decisions are arbitrary.

Such decisions are taken arbitrarily without taking into full consideration the circumstances or even listening to the views of those affected. I feel strongly that the time has come when this amendment should be considered and passed by Members of this House.

Mr. Temporary Speaker, Sir, I, therefore, strongly appeal to colleagues to consider this seriously for the sake of the future of our young people. For the benefit of those who may have been condemned without being heard, it is important to pass this particular law.

I beg to move and request Sen. M. Kajwang to second.

Sen. M. Kajwang: Thank you, Mr. Temporary Speaker, Sir, for the opportunity. I rise to second this amendment Bill. There is a saying that a child who has washed his hands clean is fit to dine with elders, but that does not make him an elder. So, I do appreciate that Sen. Obure is like a father to me considering the great service he has rendered to this nation. I am only a child who has washed his hands clean.

Few Acts of Parliament have attracted the kind of attention that the Kenya National Examination Council (KNEC) Act has attracted. If you recall, it was only in December 2015, that the President assented to amendments to KNEC (Amendment) Act that abolished examination fees in primary and secondary schools. That Act was effective 2nd February, 2016. It is good news for the children and parents in Kenya that effective this year, children will not be required to pay examination fees.

Mr. Temporary Speaker, Sir, in 2015, even though the distinguished Senator for Kitui County said that he came up with this Bill when he did not have any grey hair, he proposed an amendment Bill to direct KNEC to release examination results and it is a matter that is still alive in this House. I, therefore, firmly support this further amendment by Sen. Obure to look into the plight of the thousands of young children whose future is destroyed because of arbitrary and dictatorial decisions by KNEC.

Mr. Temporary Speaker, Sir, this is the kind of Bill we should have dealt with like yesterday. The justification and the facts just speak for themselves. It is unfortunate, wrong and unconstitutional to condemn someone without giving them an option or a right to fair hearing. Article 50 of our Constitution is very clear that every citizen has got a right to a fair hearing. Article 47 also talks about fair administrative action as a right that has to be enjoyed by all citizens of this nation. It cannot be that with all these provisions in the Constitution, KNEC is given the powers to set exams, monitor exams and to discipline students and teachers without there being recourse to another body.

I do recall the late Mutula Kilonzo, when he was moving from the Ministry of Education to the Ministry of Justice and Legal Affairs, said that KNEC cannot be allowed to police itself. It should not be allowed to operate as a dictator. That was way back in 2012 and he recommended certain amendments along the same line that Sen. Obure has brought today. Since 2012, that has not been achieved. This is our opportunity to leave a legacy and to change this skewed approach towards dealing with examination malpractices.

Mr. Temporary Speaker, Sir, Sen. Obure has provided the statistics on the number of children who have been affected by the arbitrariness of KNEC. I want to remind you of what happened in 2011 in North Eastern Province. You do recall in 2011, 1,650 students had their examination results cancelled by KNEC. These are young men who had worked hard from pre-primary all the way to Form Four, only for their results to come back and the grade they had been assigned was "Y". Grade "Y" is a grade you are assigned when there are questions about the integrity of your effort in an examination.

This further drove a region that was already marginalized into deeper trouble. May be, we should not wonder too much why it is that in north eastern and in places like Garissa which was one of the areas that was widely affected, we still have a lot of cases of young men and women who are radicalized, who have gone to school, who are lawyers and those that are quite competent, that they are willing to take up arms, kill and maim other people.

Mr. Temporary Speaker, Sir, it might be because of this kind of injustice that they are subjected to from an early age. Sometimes KNEC does not look at the prevailing circumstances. One of the residents in north eastern explained something that you will find unimaginable. When you go, for example, in a chemistry laboratory when they are doing practical examinations, because of inadequate facilities in the laboratory, they are forced to share items.

Therefore, when you get an invigilator or an examination monitor who comes from a different part of the country where all these things have been provided for since Independence, and he goes to north eastern and finds these people sharing laboratory equipment, they think it is collusion yet these people are trying to make the best use of limited resources.

Mr. Temporary Speaker, Sir, when KNEC cancels examination results of such people, it is important that they have recourse. They should have another body that they can appeal to. The proposals as laid out in this amendment Bill are very clear; that we set up a tribunal, a chair appointed by the Judicial Service Commission (JSC), membership from the teachers unions, membership from the school heads.

Sen. Obure has talked about one representative from head teachers. However, in my experience and dealings with teachers, I know that there are two groupings; there is

the Kenya Primary School Heads Association (KEPSHA) and the Kenya Secondary School Heads Association (KESSHA). Maybe both parties might want to be part of this particular tribunal.

Mr. Temporary Speaker, Sir, when it comes to teachers' union representatives, we also have the Kenya National Union of Teachers (KNUT) and the Kenya Union of Post-Primary Education Teachers (KUPPET). Maybe when we proceed and we subject this to further interrogation, we might ask ourselves if we want to have both unions represented in the tribunal. The beautiful thing is that anyone aggrieved by KNEC, now has an option of appealing within 14 days. One might argue that even in the current set up, a student or a pupil or a parent can go to court to challenge the decision of KNEC.

That is an option that is available, but we know having seen some of the interesting debates and disclosures coming out of the judiciary that, sometimes, access to justice is not that easy for the poor, the underprivileged and for people who come from some of these marginalized areas. So, instead of saying people can go to court and challenge KNEC decisions, it is a much better idea to have a tribunal which will act specifically in cases where they feel that KNEC has made a wrong decision.

Mr. Temporary Speaker, Sir, this will guarantee fair trial and will make sure that any administrative action that is taken is done in a proper manner. Whereas students are usually victimized for examination malpractice, sometimes teachers get off the hook. When the teachers are employed, the Teachers Service Commission (TSC) has a code of conduct. It would be important that TSC also reviews its code of conduct; that a teacher who is found to be complicit in examination irregularities, this should be grounds for interdiction. However, that should only be done after due process has been undertaken and where the teacher has been given the right to appeal or to explain themselves.

Mr. Temporary Speaker, Sir, KNEC can also not escape blame for cases of examination irregularities in this country. It is only last year when we saw examination papers being circulated in the social media, on *WhatsApp* and even on television stations. It is quite unfortunate that this nation was being treated to 9.00 p.m., news bulletin with the exact examination paper that would come up the following day.

It is important that KNEC undertakes serious scrutiny of its own operations to make sure that we stem these many cases of examination irregularities. The Mover of this Amendment Bill did not mention that in a certain year, ten secondary schools in Kisii County had their examination results cancelled. That is a serious mass condemnation of an entire generation. Once this Bill becomes a law, we believe that they will find a way of finding some of these decisions reversed.

Finally, with regard to the issue of integrity in national examinations, we can blame the KNEC, parents and students, but it is a reflection of the kind of rot in our society. If you access the East Africa Youth Survey Report which was released by the Aga Khan University a month ago, it gives you some interesting findings about the attitude of young people in this country. About 60 per cent of the people who were interviewed said that they would want to get rich and they do not care whether through theft, they just want to get rich provided they are not caught. You also saw about 40 per cent of young people saying that in the coming elections, they will only vote for people who are going to pay them. They will not vote for free.

Mr. Temporary Speaker, Sir, it tells you there is a huge problem and a decay in our moral fiber which, if not treated as a crisis, dealing with examination irregularities

will be dealing with a symptom rather than addressing the underlying problem. We have seen in the last one week how people who God has been very graceful to and moved them from a low position - a salonist - to a big contractor executing tenders worth millions of shillings and keeping huge amounts of money in safes in their houses. They are tossing Kshs80 million to anyone who makes a call.

These are the people that our young people are idolising. These are their heroes and they are the same people who will come back and buy votes and challenge those of us who spend all of our time in the House up to 6.30 p.m. so that we can do the legislative business. We will lose to people who spent most of their time looking for money because they have realized that what young people in this country want is money.

They are not going to make the distinguished Speaker the next governor for Nandi County if he does not give them money. I wonder where the distinguished Senator and the current Chair will get enough money to bribe an entire county so that he is elected the governor. There is a big problem and it is important that we declare corruption a national crisis. This is an issue that should unite all of us whether we are in the opposition or the ruling coalition so that we find a way of dealing with it.

I support.

(Question proposed)

Sen. Musila: Thank you, Mr. Temporary Speaker, Sir. First, I congratulate my brother, Sen. Obure, for this timely Bill and the contributions that he has made while moving it. I also want to congratulate Sen. M. Kajwang for the excellent contributions that he has made.

This is an important Bill. This House should express concern over the issue of cheating in examinations. This is because of the culture of corruption that is rampant in this country; that cheating in examinations has reached the levels it has reached at the moment. Happily, it has not gone to the levels I saw in India where parents climb walls to go and reach the source of the examination in order to cheat.

Mr. Temporary Speaker, Sir, that notwithstanding, it does not give us any comfort because the quality of leadership in this country in the future, whether in industries, in government or wherever it is, will depend on the quality of education that our children get. Therefore, when children resort to cheating in examinations, they are taking a shortcut and, in future, if we allow that practice to continue, there is no doubt that we will have poor leadership in every sector of our economy.

The KNEC has in the past been given powers that are excessive. How does one body set examinations, administer examinations, do the marking and make a decision which is always final; that they are withholding and cancelling this examination without another body or those who are affected being given a chance to make an appeal? The rule of natural justice requires that you be heard. As of now, I have never known the criteria that KNEC uses when cancelling or withholding examination results of students. It is a matter that is closed; they take those decisions and the decisions appear to be final.

Mr. Temporary Speaker, Sir, no one is able to answer to attempts by students to seek clarifications or explanation as to what they did to warrant that punishment. Therefore, I want to support the establishment of this tribunal because it will give justice to students. If they are aggrieved, they can go and present their grievances and also

KNEC will be given an opportunity to explain why they have taken the decision to punish that candidate.

Mr. Temporary Speaker, Sir, this Bill is long overdue. As one Senator said, it should have been done like yesterday. I do not understand why we have allowed this law to continue giving KNEC such sweeping powers.

The bigger problem is within the KNEC itself because the setting of examinations is done by them. How come the examinations leak even to the social media to the extent that we can see papers to be done the following day? In fact, that action alone ought to have sent the KNEC members packing. If the action was clearly investigated, people should have been taken to jail. However, since impunity is so rampant in this country, it is like nothing happened.

In other countries where the rule of law is upheld and quality education is encouraged, heads would have rolled in that situation. However, in our case, it was business as usual and they said everything is okay. In fact, the credibility of last year's examination is in question. It also discourages honest students who never cheated in examinations because those whose examination was cancelled cannot be the only ones who cheated, if ever they cheated.

Mr. Temporary Speaker, Sir, first and foremost, we must correct ourselves as a society. We must improve on the governance structures. We must ensure that people are punished when they make mistakes. If we do not do that, I can assure you we have not reached the end of cheating and it will go on and on. Therefore, I support the establishment of the tribunal, so that it will give justice to candidates. It will also send a strong signal to respective candidates that a fair action will be taken against them if they do anything that is illegal in future. We must also send a very strong message to KNEC itself that where they are found to have made any errors, they must also be accountable.

We are talking of a council that you have heard; that it has been involved in the "Chicken gate" scandal and nothing happened. As I speak today, people who bribed KNEC officials are in jail in the United Kingdom (UK). Those who were bribed are free, but those who gave the bribe are in jail. Which is more serious? I know they are both crimes, but we should have started with KNEC officials in this country who were bribed. We got the information and we should have prosecuted them. However, it is business as usual and the same is happening in other organisations like the Independent Electoral and Boundaries Commission (IEBC). Nothing happens and everything is okay, but those who gave the bribe are already serving jail terms. So, it is a bigger problem than we can see. We will be trying to reduce the problem by establishing a tribunal.

Mr. Temporary Speaker, Sir, having said that, I just want to propose an amendment to this Bill. First, in the composition of the tribunal, the Mover has recommended that it comprises of a lawyer with experience of up to 15 years to be the Chairperson of the tribunal and that is not a problem. If you look at the composition of the remaining members, you will see that most of them lean on one side. For example, we have the teachers' union and then parents on the same side. Actually three members of the tribunal would more or less be leaning on one side. To be precise, we have the headteachers' association, teachers' union and parents. Obviously, those would be leaning on one side.

If we want to make a credible and independent tribunal, I propose that we enlarge and balance it. That way, we can have people in education and also other areas like the

civil society, for example, and other people who will appear to be independent so that they are not influenced either way. This is just a proposal that I am making. I request that when we go to the next stage, the Third Reading, the Mover will consider it so that we can have a balanced tribunal. That way, any decision that they will make, everyone will say: “Yes, that is a fair decision.”

Mr. Temporary Speaker, Sir, this is the way forward. Again, I commend my brother, Sen. Obure. I believe that this will make us improve this institution. In the Third Reading, we have just passed an amendment on KNEC. In the same Act, we have already added another Bill to amend. It, therefore, shows the flows that have been witnessed in the administration of examinations where KNEC administers examination, the certificates are sent to schools and the principals sit on them until poor children pay their fees balances that amount to figures that their parents have never even heard of. It is the way to go. We must rectify the education system and KNEC so that whatever it does is in keeping with fair play and is credible. That way, this country’s examinations will be credible and may be recognized even internationally.

As of now, thanks to last year’s flaws by KNEC, you go with your degree to the United Kingdom (UK) and someone will say: “Oh, are you from Kenya? If you are from Kenya, sorry, we are going to investigate whether your certificate is correct.” We want to remove this doubt so that that fame of the Kenyan education system that used to exist is returned.

Finally, I went to the United States of America (USA) in 1964, one year after Independence. When I produced the Cambridge School certificate from Kenya, I was exempted from many courses because they said: “Oh, you are from Kenya.” I was very advanced. Today, you cannot be exempted from any examinations if you are from Kenya because of the adverse publicity that we have suffered, thanks to the KNEC.

I support.

Sen. (Prof.) Lonyangapuo: Thank you, Mr. Temporary Speaker, Sir. I join my colleagues in congratulating and thanking Sen. Obure who is “enjoying” his neighbour that he went to USA in 1964 when most of us had not been born. I had been born. I was one year old then.

It is surprising that we can hear such a statement from Sen. Musila. In 1964 when they did their quality examinations, I note that maybe during that time, quality and standardization of our examinations was still being held at Cambridge in London.

That is why they had high esteem; that they could go anywhere. However, as you may recall, Mr. Temporary Speaker, Sir, that even when Sen. (Prof.) Kindiki and I, went to school, the quality of education was not very bad. I went to England in 1995 for my PhD and I was fast-tracked. I did not do the examinations that students are normally now subjected to. However, our children, including mine, when they go England, all of them must pass through this examination just because of the shame that we have put ourselves into. It is a surprise that for the very first time, we are creating a law that will be the guardian angel to the children that we are terrorizing; because somebody just wakes up and talks of something called “collusion.”

Mr. Temporary Speaker, Sir, the KNEC has a terrible way of disqualifying students. There is something called collusion. I followed it personally because in 2012, they disqualified all the candidates in a school that I was supporting in West Pokot. They said; “how could every student in this bush school score Grade A in Mathematics?” They

were 48 boys in total. Then, they nullified everything yet the examinations were done in two different rooms. The design of the school is U-shaped, so the other students did their exam in the opposite side. Then, they called it “collusion.” So, this collusion means that even the policemen who are providing security in the examination centres colluded, the same applied to the head teacher and everybody else, but at the punishment level, KNEC only punishes the child. This is shocking. If surely one thinks that collusion has taken place, whoever facilitated it should be the first culprit to be arraigned in court or dismissed from service, but this does not happen.

However, in many cases, it is the children who have no voice. They are simply shut off from life. I was assisting most of these boys and that is when I realised what it is. From 2012 to date, this group of 48 boys is the most difficult to deal with. They tell me; “we passed our examinations. Senator, you are a mathematician and we emulated you. We prepared properly, competed and reached your stature. Why should we be punished when we know that we never did it?” Using the term “collusion” is a very dangerous way of hiding things.

I followed it up personally to KNEC so that they could explain to me the meaning of “collusion.” They said that the matter is never opened for discussion. As soon as the students in a school have been implicated in collusion, there is no room for investigation. So, even somebody who is malicious can quickly say that there was collusion yet it is so serious. Unfortunately, most schools and some children in Kisii and Nyamira counties are implicated in collusion to the point that students have feared to sit for their examinations in some regions of Kenya. They even categorize people from a certain region. It is so serious.

Mr. Temporary Speaker, Sir, the Government has enacted all other laws, but it has forgotten this one. I do not know why this is so because when I was the Permanent Secretary (PS) for Industrialisation; there was a parastatal called the Kenya Industrial Property Institute (KIPI). They have a tribunal called the Industrial Property Tribunal (IPT) so that if you have a competition and someone steals your idea and patents it, and, there is a dispute; it is not KIPI that will engage in resolving the dispute; it is IPT. Any tribunal must be led by a lawyer. Therefore, what Sen. Obure has proposed is in order. This is so because this is *quasi-judicial*. It has to be somebody who has firsthand knowledge on legal matters because you are dealing with a dispute. I do not know why we forgot, yet the Ministry of Education has created many institutions under it.

Last year, when these problems arose I made a statement that triggered activity in KNEC. I said that “KNEC” had changed to “SSS.” This meant that they set, steal and sell the examinations themselves. When they heard me say that, they called me. For the first time, I sat in their boardroom. That is when I realised that we made a mistake. This is because they are the ones who set the exams, know where the exams strong room is and still administer those exams. It does not make sense. Whom should we run to when there is a dispute?

The teachers mark the examinations set by the KNEC. Occasionally, teachers unions have had disputes with their parent Ministry, particularly the TSC, regarding increment of salaries. Sometimes, students become their weapon. They refuse to mark examinations so that their salaries can be increased. I want to laud Sen. Obure because he has felt the pinch more than us. The other day, some pupils complained about a pupil who did the examinations alone in the room. This is a likelihood of collusion because one is

alone in a room. The situation was said to have been corrected, but it is still happening. Sometimes, some schools that perform well in examinations are punished because they think that some areas are meant to pass more than others.

We need to look at this Bill thoroughly at the Committee stage. Sen. Musila suggested that the Cabinet Secretary should be among the people that will sit in the tribunal. We need to make sure that the persons sitting there will do the necessary. It is stated in the Bill that one person should be nominated by technical, vocation education and training authority, yet the Ministry of Education deals with KCPE and KCSE. There are two levels of academic cycles that we are dealing with; the primary and secondary level. We want to see how they will be accommodated.

I prefer not to entertain the technical students who have completed Form Four. Sen. Obure, his neighbour, Sen. Musila, or any other Senator should think of creating a tribunal for higher institutions because we cannot put them together. Maybe we should have a different Ministry for lower education - like the one that we are handling - so that examinations do not come from the same source. This is because there are many primary and secondary schools. Obviously, we should have a teachers' and parents' body in the tribunal.

We should also find out how the tribunal can have a representation in the county. They should have one or two officers in every county that sits in the county on their behalf. The main office could be in the national arena here, but we have one or two persons in the counties or regionally. For example, auditors have the Nyanza hub, North Rift hub and so on. This way we will not create a monster sitting in Nairobi that takes time to rectify problems, for example, in Lodwar. Should there be problems in Turkana or Mandera, for example, we should have people who are easily available.

The Senator has suggested four years. We are not creating a job for these people. I do not know what the practice for other tribunals is. We may ask the originator of this Bill to check on this. Is it three or four years? We need to check on this so that we do not go out of the norm. We should do what others do. When we were in the then Ministry of Public Works with Sen. Obure, there was a case where there was a dispute because work had been given to a contractor and they had failed to do their part. People used to go there for solutions. This chairman has powers and he is appointed on full time basis. I do not know whether it is right to get the Secretary or the CEO of the tribunal coming from the parent Ministry. We may need to check what the practice for the others is.

Mr. Temporary Speaker, Sir, if we move on this way, even with the issue we passed a few minutes ago, should have been handled quickly. When a student realizes that his or her certificate has been withheld by a principal or the DEO, they should proceed to the tribunal. Since the Government will say that it is free, it works and Parliament has come up with a law, that way we will have something that puts teeth and action into it rather than passing these Bills and Motions and there is no implementation that follows. We will be asking that at the necessary stage, we fast-track it so that we move on.

With those remarks, I support this Bill.

Sen. (Dr.) Zani: Mr. Temporary Speaker, Sir, in the report where Prof. Kaimenyi gave the results for the 2014 group, around March, 2015, he indicated at that time that the grades of 2,975 candidates had been cancelled. This included five national schools. That sent shivers down the spines of most Kenyans that even in national schools, this cheating

scam was rampant there. At that time, when he was the Minister for Education, he reported that this was a significant drop from 3,812 candidates. This was a drop in figures. However, 2,975 is a bad figure to report when it comes to issues of cheating.

What comes into your mind is: What is happening to our young people, their confidence and reading abilities? They want to score “As” without working for them. They want to look for all means to get there. What was most shocking is that when he gave those results, he went on to further assert that in one way or another, teachers and principals were part of the cheating.

This reminds me of a story my father told me many years ago about students in Form Four who were sitting for an exam and there was somebody who was herding cattle just around the corner. All those students would just be looking up and when the herder said something, everybody would write. Apparently, this was the teacher pretending to be herder and giving answers---

The Temporary Speaker (Sen. Sang): Order, Senator. Sen.(Dr.) Zani! You will have 13 minutes to conclude your contribution when debate on this Bill resumes.

ADJOURNMENT

The Temporary Speaker (Sen. Sang): Hon. Senators, it is now 6.30 p.m., time to adjourn the Senate. The Senate, therefore, stands adjourned until Tuesday, 23rd February, 2016 at 2.30 p.m.

The Senate rose at 6.30 p.m.