

NATIONAL ASSEMBLY

OFFICIAL REPORT

Wednesday, 10th June 2015

The House met at 2.30 p.m.

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

PRAYERS

QUORUM

Hon. Speaker: Ring the Quorum Bell.

(The Quorum Bell was rung)

COMMUNICATIONS FROM THE CHAIR

PRESENCE OF DELEGATION FROM THE PARLIAMENT OF NAMIBIA

Hon. Speaker: Hon. Members, I wish to introduce to you parliamentary staff from the National Assembly of the Republic of Namibia on attachment to our Parliament. They are:-

- | | | |
|-------------------------|---|----------------------------------|
| 1. Mr. Andreas Shivute | - | Learning and Development Officer |
| 2. Mrs. Matriede Lipito | - | Senior Human Resource Officer |
| 3. Mr. Mati Amunime | - | Senior Accountant |

They are in the country to learn and share experiences with our members of staff on, among other things, human resource management and accounting services. On my own behalf and that of you, Hon. Members and members of staff, I welcome them to the National Assembly and wish them fruitful engagements.

Thank you.

(Applause)

THE BUDGET HIGHLIGHTS FOR 2015/2015 FINANCIAL YEAR

Hon. Speaker: Hon. Members, I wish to inform the House that subject to the provisions of Standing Order No. 241, the Cabinet Secretary of the National Treasury will present to the National Assembly the Budget highlights and revenue raising measures for the National Government for the fiscal year 2015/2016 on Thursday, 11th June 2015 at 2.30 p.m.

Hon. Members, in this regard, I wish to inform you that parking will be provided within Parliament Square and at the COMESA Grounds, Kenyatta International Convention Centre (KICC). You are, therefore, requested to remove your vehicles parked at the former Ministers' Parking, currently reserved for the House Leadership; as this area is reserved for a reception and for the Budget Statement. Consequently, on Thursday 11th June 2015, all vehicles should be driven to the designated parking areas after dropping off the Members at Parliament Buildings. These Measures are intended to ease congestion at the Main Building. Your cooperation in this regard will be highly appreciated.

PETITION

ESTABLISHMENT OF CONSTITUTIONAL COMMISSION ON INNOVATION AND INVENTIONS

Hon. Speaker: Hon. Members, this is a conveyance of a petition on the amendment on the Constitution to provide for establishment of a Constitutional Commission on Innovation and Inventions.

Standing Order No.225(2)(b) requires that the Speaker reports to the House any petition other than those presented through a Member. I, therefore, wish to convey to the House that my office is in receipt of one such petition.

The petition is signed by one Maj. (Rtd.) Joel Kiprono Rop, a resident of Bomet County, regarding establishment of National Policy Formulation and Innovation Commission in Kenya. In the petition, the petitioner prays that the National Assembly, through the Departmental Committee on Finance, Planning and Trade, initiates the process of amending the Constitution and all the relevant laws to provide for the establishment of a Constitutional Commission with the mandate of mobilising, developing and promoting appropriate policy on innovation and inventions.

Hon. Members, pursuant to the provisions of Standing Order No.227, this Petition stands committed to the Departmental Committee on Finance, Planning and Trade for their consideration.

Thank you.

PAPERS LAID

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Hon. A.B. Duale: Hon. Speaker, I beg to lay the following Papers on the Table of the House:-

The Report of the Auditor-General on the Financial Statements of the Ministry of Health for the year ended 30th June 2014 and the Certificate of the Auditor-General therein

The Report of the Auditor-General on the Financial Statements of the National Hospital Insurance Fund for the year ended 30th June 2014 and the Certificate of the Auditor-General therein

The Report of the Auditor-General on the Financial Statements of the Ministry of Agriculture, Livestock and Fisheries for the year ended 30th June 2014 and the Certificate of the Auditor-General therein

The Report of the Auditor-General on the Financial Statements of the Constituencies Development Fund for Starehe Constituency for the year ended 30th June 2014 and the Certificate of the Auditor-General therein

The Report of the Auditor-General on the Financial Statements of the Constituencies Development Fund for Kajiado Central Constituency for the year ended 30th June 2014 and the Certificate of the Auditor-General therein

The Report of the Auditor-General on the Financial Statements of the Constituencies Development Fund for Kasarani Constituency for the year ended 30th June 2014 and the Certificate of the Auditor-General therein

Thank you, Hon. Speaker.

(Hon. A.B. Duale laid the documents on the Table)

Hon. Abongotum: Hon. Speaker, I beg to table the Report of the Departmental Committee on Administration and National Security on the Vetting of Amb. (Dr.) Monica Kathina Juma, the nominee for appointment to the position of Secretary to the Cabinet.

(Loud consultations)

Hon. Speaker: Hon. Members, you must remain alive to the Standing Order on laying of Papers. So, I do not understand the excitement. It cannot be the occasion for any Question to be put.

Hon. Kamama, proceed.

(Hon. Abongotum laid the document on the Table)

NOTICE OF MOTION

ADOPTION OF REPORT ON VETTING OF NOMINEE FOR

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CABINET SECRETARY POSITION

Hon. Abongotum: Hon. Speaker, I beg to give notice of the following Motion:-

THAT, pursuant to the provision of Article 154(2) and Standing Order No.45, this House adopts the Report of the Departmental Committee on Administration and National Security on the Vetting of the Nominee to the position of Secretary to the Cabinet laid on the Table of the House on Wednesday, 10th June 2015, and rejects the appointment of Amb. (Dr.) Monica Kathina Juma as the Secretary to the Cabinet.

Hon. Speaker: Just a minute, Hon. Kamama. Did you say “Article 154” or “Article 153?”

Hon. Abongotum: Hon. Speaker, I am talking of Article 154, but I can be guided if there are errors; we are rushing. We have just come from the retreat.

Hon. Speaker: You are right, Hon. Abongotum. It is Article 154.

(Some hon. Members clapped)

Hon. Members, there is still no occasion for any question. I do not understand why there is clapping.

Next Order!

STATEMENT

GOVERNMENT’S POSITION SOUGHT ON MISSING
GARISSA UNIVERSITY STUDENT

Hon. Speaker: Hon. Members, before we go to that Order and before I give Hon. Marcus Muluvi a chance to raise some issue, I want to draw the attention of the House to the existence of a Supplementary Order Paper. Mr. Clerk, Members do not have the Supplementary Order Paper.

Hon. Members, sometimes it is advisable that as you enter, do not just key in. Also look for the documents around there.

(Loud consultations)

Can the staff from the Serjeant-at-Arms Office distribute to Members the Supplementary Order Paper very quickly.

(Serjeant-at-Arms distributed the Supplementary Order Paper)

Hon. Members, we can now proceed. Is that correct?

Hon. Members: Yes.

Hon. Speaker: I wanted to draw your attention to the existence of a Supplementary Order Paper. If everybody has a copy, I can now allow Hon. Marcus Muluvi to make his intervention.

Hon. Muluvi: Thank you, Hon. Speaker for giving me this opportunity. I rise to seek your intervention on a matter which, in my view, is very urgent. I sought a Statement on a student who was in Garissa University College and who has not been accounted for to-date. I requested the Deputy Speaker then to allow this Statement to be presented in view of what is happening in the village.

To-date, mourners are still in the house of the father of this girl, Mutindi Kasyoka. Sen. David Musila and I had the opportunity to visit the home last week. We request that you allow this Statement to jump the queue so that the Cabinet Secretary for Interior and Coordination of National Government can come, be interrogated and give the Government's position on this matter.

Hon. Speaker: That is a legitimate request and it is accordingly acceded to. The Clerk's Office is directed to give priority to that question so that it comes up on Tuesday if the Cabinet Secretary is scheduled to appear on Tuesday or whenever he is scheduled to appear so that this becomes one of the first questions.

The Leader of the Majority Party, do you want to comment?

Hon. A.B. Duale: Hon. Speaker, this is a very serious matter. That student being from my constituency, I would ask you to indulge that we also bring both the Cabinet Secretary for Education, Science and Technology and the Minister for Interior and Coordination of National Government next Tuesday. They will be in the schedule we are going to read to the House tomorrow. As a matter of urgency, we are going to write to the two Ministers this afternoon through the Office of the Clerk so that between now and Tuesday they come up with an answer to the family and to the nation.

Hon. Speaker: Similarly, that is acceded to. The Clerk's Office to take action accordingly; write to the two Cabinet Secretaries.

Next Order!

BILL

Second Reading

THE HIGHER EDUCATION LOANS BOARD (AMENDMENT) BILL

(Hon. Kang'ata on 29.4.2015)

*(Resumption of debate interrupted on
10.6.2015- Morning Sitting)*

(Several hon. Members walked into the Chamber)

Hon. Speaker: Hon. Members making your way in, could you take your seats? Take your seats or you freeze, whichever you choose.

(Hon. Mwaura stood up in his place)

Hon. Mwaura, just remain standing. Next time, Hon. Mwaura, if you behave in that manner, you will be out of the Chamber for the balance of the day. So, you must know that it is not just a laughing matter.

Hon. Members, debate on this Bill was concluded this morning. What remains is for the Question to be put.

(Question put and agreed to)

*(The Bill was read a Second Time and
Committed to a Committee of the whole House tomorrow)*

MOTIONS

APPROVAL OF PROTOCOL ON STANDARD GAUGE RAILWAY

THAT, this House adopts the Report of the Departmental Committee on Transport, Public Works and Housing on its consideration of the Protocol on Development and Operation of the Standard Gauge Railway laid on the Table of the House on Tuesday, 26th May, 2015, and pursuant to Section 8 of the Treaty Making and Ratification Act, 2012, approves the ratification of the Protocol on Development and Operation of the Standard Gauge Railway within the Framework of the Northern Corridor Integration Projects.

(Hon. (Eng.) Mahamud on 3.6.2015)

(Resumption of debate interrupted on 9.6.2015)

(Hon. Cheruiyot consulted loudly)

Hon. Speaker: Order, Members including the elderly Z.K. Cheruiyot! Again debate on this Motion was concluded yesterday. What remains is for the Question to be put.

(Question put and agreed to)

ADOPTION OF REPORT ON VETTING OF NOMINEE FOR CABINET SECRETARY POSITION

Hon. A.B. Duale: Hon. Speaker, I beg to move the following Motion:-

THAT, this House adopts the Report of the Committee on Appointments on the Vetting of Nominee for appointment as the Cabinet

Secretary for Water and Irrigation, laid on the Table of the House on Wednesday, 10th June 2015 and pursuant to the provisions of Article 152(2) of the Constitution, approves the appointment of Hon. Eugene Ludovic Wamalwa, as the Cabinet Secretary for Water and Irrigation.

Hon. Speaker, that tells me that we will spend very little time on this Motion because of the mood of the House. The Committee on Appointments which you chair is established under Standing Order No.204(4). It says that the Committee on Appointments shall consider for approval by the House appointments under Article 152(2) of the Constitution. That refers to only Cabinet Secretaries.

Pursuant to Article 152 of the Constitution, again the President forwards to the Clerk of the National Assembly the nomination of Cabinet Secretaries, in this case, Hon. Eugene Wamalwa, through a letter for vetting by this Committee.

Pursuant to Standing Order No.42(1) the Speaker then informs the House and gives notification of the nomination of Eugene Wamalwa as the Cabinet Secretary through a Message from the President.

The Committee had three sittings and the nominee appeared. He was vetted in accordance with the provisions of the Constitution, the Public Appointments (Parliamentary Approval) Act No.33 of 2011 and the National Assembly Standing Orders on suitability for appointments to the position of Cabinet Secretary.

Hon. Speaker, I want to take this opportunity to thank all the Members of the Committee on Appointments for their input and valuable contribution during the deliberation and the vetting exercise. I also want to thank the Office of the Speaker and that of the Clerk of the National Assembly for the logistical support that they gave to the Committee. Finally, the Committee is grateful to the media for the coverage of the proceedings in enhancing accountability and transparency of the vetting exercise.

Hon. Speaker, on behalf of the Committee on Appointments and pursuant to Article 124(4)(b) of the Constitution, Section 8(1) of the Public Appointments (Parliamentary Approval) Act, No.33 of 2011 and the provisions of Standing Order No.199(6), it is my pleasure and duty to present to the House the report of the Committee.

(Loud consultations)

Hon. Speaker, there is a serious *Kamukunji* going on around Hon. Moses Kuria and his colleagues. Parliament has provided enough facilities for such consultation. It is now my pleasure and duty to present to the House the Committee's report on the vetting of Hon. Eugene Wamalwa, nominee for appointment to the position of Cabinet Secretary for Water and Irrigation.

The report is very clear on the academic qualifications, the employment record, professional affiliation, knowledge of the relevant subject and the overall suitability for the position. It is clear on integrity, vision and leadership and the expectations of Hon. Eugene as a nominee for this position, which I do not want to dwell much on because the

Members have the report and they can read it. I will go to the last bit of the report. This is what the Committee observed in as far as the nominee is concerned.

The Committee, having considered his curriculum vitae and heard his oral submission during the vetting exercise made the following observations: First, Hon. Eugene Wamalwa has satisfied the requirements of Chapter 6 of the Constitution of Kenya on leadership and integrity.

Two, he has been cleared by the Criminal Investigation Department, the Kenya Revenue Authority on tax compliance and has paid his outstanding loans with the Higher Education Loans Board. He has a clearance from the credit reference bureau. Thirdly, Hon. Eugene Wamalwa has never been charged in a court of law. He has no potential conflict of interest as he has resigned as the party leader of the New FORD (K) and decided to join the Executive.

Fourthly, he has never been dismissed from office for the contravention of the provisions of Article 75 of the Constitution, which deals with the conduct of State officers. He has never been adversely mentioned in an investigation, report of a Parliamentary Committee or any commission of inquiry.

Having observed all those, the Committee noted that the nominee exhibited impressive knowledge of the topical and legal issues touching on the docket of water and irrigation. He has the required abilities, qualifications and experience. Therefore, the Committee found the nominee suitable for appointment as a Cabinet Secretary, Ministry of Water and Irrigation.

(Several hon. Members stood up along the gangway)

Hon. Speaker: Order, Members! Many of you appear to have forgotten the rule against standing on passages and gangways. Whatever you are lobbying for, please, why can you not take some time off and go out of the Chamber? It looks like it will be exciting and would distract the rest of us from following what is being said by the Leader of the Majority Party. It is not necessary. If it is not underhand business, let us just listen to what is happening. I can see excitement about certain things.

Hon. A.B. Duale: Hon. Speaker, this is exciting and very hot for some of us. There is no problem we will find a way of handling it. That is why we are in leadership.

Hon. Eugene Wamalwa, on a lighter note, has joined two other party leaders, namely, Hon. Charity Ngilu and Hon. Najib Balala. I am sure that is a very good indication for party leaders that the President has not forgotten them. More party leaders are bound to join the Cabinet in the near future. Among them is Hon. Dida, my good friend, Hon. Martha Karua, my good friend, Hon. Peter Kenneth, Hon. Kalonzo Musyoka, Hon. Moses Wetangula and many others. I wish them well if they are appointed to the Cabinet.

Pursuant to Article 152(2) of the Constitution and Standing Order No.204(4), the Committee on Appointments recommends that this House approves the nomination of Hon. Eugene Wamalwa for appointment by His Excellency the President as a Cabinet Secretary, Ministry of Water and Irrigation.

I beg to move and ask the Leader of the Minority Party in the National Assembly, my good friend, Hon. Francis Nyenze, Member of Parliament for Kitui West, to second the Motion.

Hon. Nyenze: Thank you hon. Speaker for giving me this chance. As I second this Motion, I wanted to do a correction. I have heard the names of Hon. Kalonzo Musyoka, Hon. Martha Karua and others in the Opposition being touted to join the Cabinet or taking appointments in the Government. I do not know whether it is right, but it is a surprise to me.

We met Hon. Eugene Wamalwa and as the Leader of the Majority Party has said, he impressed the Members who sat in that panel. We checked his background and we found him to be a man who has served this country. Before he was a Cabinet Minister and he has all the qualifications. As the Leader of the Majority Party has said, he has never been convicted in any court of law. It is not fair to deny him a chance if he is nominated by the President to take up that position. We hope that he will do a good job. My prayer is that it is not seen as a political appointment pointing to 2017 because the Luhya vote is for the CORD leadership.

I second.

(Question proposed)

Hon. A.B. Duale: Hon. Speaker, I want to thank my colleagues. It shows the confidence this House has in Eugene Wamalwa. I hope the confidence he has in this House is the same he will have from the people of Kenya in the docket he has been nominated. I beg to move.

Hon. Speaker: Hon. Nyikal, what is your point of order?

Hon. (Prof.) Nyikal: Hon. Speaker, I understand and I know what will happen. I just ask a simple question: Where is the report? Two, what did the Mover reply to?

Hon. Speaker: Hon. Nyikal, familiarise yourself with Standing Order No. 95.

Hon. (Prof.) Nyikal: Which says?

Hon. Speaker: You know this is the problem. Honestly, you are making me become like a primary school teacher. The procedure adopted either in subsection (1) or (2) could still happen that way. On the other aspect of your point, surely, when Papers are laid, they are not kept by the Speaker. You go to where the reports are kept. The Report was tabled this morning. That is the way but most importantly, remember it is your right to vote whichever way.

Hon. (Prof.) Nyikal: *(Inaudible)*

Hon. Speaker: Hon. Members, where it has reached just look at that Standing Order No. 95 (1) and (2). You will see that it is perfectly in order as long as the Speaker is satisfied and it is not an abuse of the proceedings of the House. I am satisfied that this request to put the Question is not an abuse of the House's proceedings. Certainly it is not. So, I proceed to put the Question.

(Question put and agreed to)

Next Order!

BILL

Second Reading

THE FISHERIES MANAGEMENT AND DEVELOPMENT BILL

(Hon. (Dr.) Shaban on 23.4.2015)
(Resumption of debate interrupted on 9.6.2015)

Hon. Speaker: The Leader of the Majority Party.

Hon. A.B. Duale: The Member for Gatundu South has really disorientated me. In replying, at the outset I want to thank Members for their valuable contribution to the Fisheries Management and Development Bill. Meru County is all behind me. They are people I respect because we share a very rare commodity.

An Hon. Member: *Miraa.*

Hon. A.B. Duale: Yes. Hon. Speaker, I want to thank my colleagues for their valuable contribution to the Fisheries Management and Development Bill, 2014. This is a very important Bill because of the global demand for fish which has put pressure on the natural fish stocks. This was very critical in the food security of our country. We felt as a country that we should align our fisheries laws and management to global standards. Kenya earns close to Kshs18 billion, approximately USD250 million.

(Loud consultations)

Hon. Speaker: Order, Members! Those who want to consult, please do so in low tones.

Hon. A.B. Duale: Due to that and Kenya being a leader in legislation, we felt that the Fisheries Management and Development must be aligned to global standards because

this is a very serious sector that gives us Kshs18 billion every year. It gave us Kshs4 billion in exports in 2013. Fish farmers in fish farming areas are very critical components of the Kenyan population. That is why we have a Department of Fisheries.

I wish to tell my colleagues that this new law is doing a review to the existing Fisheries Act, Cap.378 which has now been put together in a more inclusive Fisheries Management and Development Bill, 2014. I will ask each and every Member and the Departmental Committee on Agriculture, Livestock and Cooperatives to prepare the amendments for the Third Reading that we anticipate to have next week. This Bill has stayed with us for long in the House. We want to deal with some of the Bills of 2014 and Reports of Committees this month of June and early July.

With those many remarks, I will ask each and every one of us to be aware of the timings when this Bill will come for the final Third Reading.

I beg to move.

Hon. Speaker: Hon. Members who are on the gangway, could you take your seats so that we can transact business? The Member walking out, you are new; take time to understand what is happening.

(Question put and agreed to)

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

Hon. Speaker: Hon. Members, before we move on to the next Order, let me recognise and welcome to the National Assembly the following Members of Bomet County Assembly. They are accompanied by their staff and staff from the Homa Bay County Assembly. They are:-

Joyce Korir - Deputy Speaker;

Julius Korir - Member of the County Assembly

Susan Toweet - Member of the Speaker's Panel in the Assembly.

The members of staff from Homa Bay County Assembly are Nancy Onyango and Salome Oketch.

(Applause)

You are welcome to the National Assembly.

Let us move on to the next Order.

MOTION

REPORT ON UNPAID PENSION DUES TO RETIRED TEACHERS

THAT, this House adopts the Report of the Departmental Committee on Education, Research and Technology on the Unpaid Pension Dues to Retired Teachers (1997 group), laid on the Table of the House on Wednesday, 15th April, 2015.

(Hon. Melly on 30.4.2015)

(Resumption of debate interrupted on 9.6.2015)

Hon. Speaker: Hon. Abass Mohamed was contributing to this debate when the House rose yesterday. He has a balance of seven minutes. Is he present? He is absent not desiring to be present and so, he loses his chance for the balance of those seven minutes. He should, therefore, remain silent for the balance of the period of debate on this Motion. Any other Member is at liberty to contribute.

Let us have Hon. Robert Pukose.

Hon. (Dr.) Pukose: Thank you, Hon. Speaker for allowing me to contribute to this Motion on the adoption of the Report on the unpaid pension dues to retired teachers. Many teachers retired in 1997 but apparently, most of them have had a lot of difficulties.

Before I contribute further, I want to thank the House for having approved the nomination of Hon. Eugene Wamalwa, who comes from my county. I want to thank the Head of State for appointing him to that position.

The issue of unpaid pension dues to the teachers who retired in 1997 is crucial. I want to thank the Committee on Education, Research and Technology for doing a good job by looking into the issues that affect these teachers. These are citizens who offered their services to this country. Some of the people they taught then and before that could be in this House. Others could be serving the country in various positions and yet the teachers have continued to languish in poverty. They suffer and cannot afford even basic needs such as healthcare. This is very sad.

As much as we argue about this issue of the retired teachers, today, I want to thank the Teachers Service Commission (TSC) for blacklisting a number of teachers who have been pests to our students. This is a warning to the rest of the teachers that when we place our children under their care, they should not abuse that privilege. This has been very sad. We went through the list of the teachers who were involved in sexual activities with the students. That is the right action that the TSC took. I hope that other bodies will follow the TSC.

Hon. Speaker, we hope that the National Treasury will act fast on this Report so that once this House approves that the teachers be paid, it implements it very fast. We should see action the soonest time possible. This should not take long. If possible, those teachers should be given the money in this financial year. I hope that this has been budgeted for in the next financial year because the Budget will be read tomorrow.

With those few remarks, I support the Report.

Hon. Speaker: Let us have Hon. (Prof.) Nyikal. Did you wish to contribute to this Motion?

Hon. (Prof.) Nyikal: No, Hon. Speaker.

Hon. Speaker: So, your intervention was on other business. Let us have Hon. Wangamati.

Hon. Wangamati: Thank you, Hon Speaker forgiving me this opportunity to join other Members who have contributed to this important Motion.

I have very little to speak about this today but my main question is why this issue has taken too long. The Tenth Parliament discussed this issue, but nothing was done about it. This is the Eleventh Parliament and we are still talking about paying pension to the retired teachers. This House should be given reasons why there has been that delay. Those teachers are citizens of this nation. They did some good work and retired like other public servants who have retired in this country. Why have they not been paid their dues? I request Hon. Members to pass a resolution today those teachers should be paid their retirement dues and this should be taken seriously by the people who are responsible.

Hon. Speaker, before I conclude, I want to congratulate the Members of the National Assembly for approving the nomination of Hon. Eugene Wamalwa for appointment as the Cabinet Secretary for Water and Irrigation. As the Chairman of the Luhya Elders in this country, I want to thank the President for doing a wonderful thing. I appreciate this with all my heart. The Leader of the Majority Party should advise the President to continue appointing people from this community.

(Laughter)

Hon. Speaker: Yes, Hon. Joseph M'ruaki.

Hon. M'uthari: Thank you, Hon. Speaker. I support the Report of the Committee on Education, Research and Technology on the payment of pension to those retired teachers. Teachers are very important members of the community. They do a great job in terms of forming and transforming the young people. It is important that after people have given this Republic useful services as these teachers have done, they are recognised and paid their dues.

It is unfortunate that we are discussing matters that were settled more than 18 years ago. This is the case and yet some of those retired teachers are languishing in poverty while others have died. For this reason, they will not enjoy their pensions.

Hon. Speaker, as a Committee, we interrogated a number of people involved in this matter including the Office of the Attorney-General (AG) and the Solicitor-General. We realised that there has been a bit of negligence in terms of implementing the recommendations that have been made. This matter has consistently been before a court of law but the decisions of the High Court and that of the Court of Appeal have not been implemented. Those senior citizens should be paid their dues since some money has been set aside for that purpose. I make this proposition as per the recommendations of the Report of the Departmental Committee on Education, Research and Technology.

The High Court ruling dated 23rd October 2008 should be obeyed. The retired teachers' advocate had requested for Kshs42 billion. The Government should set aside some money so that those retired teachers can be paid their dues. They should also be paid their salary arrears so that even as they age and retire, they can enjoy their lives and spend their resources. A community which does not respect the aged and vulnerable

people does not take care of itself or respect the lives of its people. Those retired teachers are an aged and vulnerable lot.

It is, therefore, important that the Government takes heed and ensures that those retired teachers are paid their dues as per the recommendation of the Committee so that they can utilise them.

Thank you, Hon. Speaker.

Hon. Speaker: Yes, Hon. Onyura.

Hon. Onyura: Thank you, Hon. Speaker. I rise to support this Report. My take on this Report is fairly straightforward.

As far as 1997, the Government and the Kenya National Union of Teachers (KNUT) agreed on these payments. I have never understood why the Government decided to renege on an agreement that the two parties had made voluntarily. This matter has taken a long time and the teachers have been treated unfairly. Teachers are doing a good job under fairly difficult circumstances. As we speak, we know that they have been pushing for the Government subsidy they are supposed to be given as a result of the many hardships they face so that they can do their job effectively.

Teachers deserve recognition, support and motivation. One way of ensuring that they are motivated is by ensuring that the payments that are due to them, particularly when they have retired and have done a good job, are made. What the Government did is a breach of contract. Therefore, we should put pressure on the Government, so that these dues can be paid as soon as possible. I am not sure whether with the resolution that we are making here this matter will be taken seriously.

From what I read in the Report, the Tenth Parliament discussed this matter exhaustively. Hon. Members have asked many questions and passed a resolution before but to date, nothing has happened. It is high time those concerned took this House seriously. We should come up with ways of taking action against those who take this House lightly even after we have passed resolutions.

We should do everything possible to encourage many of our people to take up the teaching profession as a calling and as something they can be committed to. Unless we ensure that this cadre gets good terms, we are likely to have people joining the teaching profession because they have nothing else to do. This is obvious because it was agreed that the Government should look for money and pay those teachers.

With those remarks, I support that the outstanding pension for those teachers is paid as soon as possible.

Hon. Speaker: Yes, Hon. Injendi.

Hon. Injendi: Thank you, Hon. Speaker. Before I make my contribution, I would like to join my colleagues in thanking the President for appointing Eugene Wamalwa as a Cabinet Secretary. As the Secretary to the Western Parliamentary Caucus, let me say that we support his appointment.

(Applause)

Hon. Speaker, looking at the case of teachers, particularly those who have retired, they are suffering for no apparent reason because this is money that was due to them but somehow the Attorney-General's Office has delayed to pay them. This Motion is before

us because there have been some deliberate efforts by the Government to delay the payments.

During one of our meetings, it emerged that the teachers were aware that they were to get only Kshs42 billion but interestingly, the Controller of Budget came up with a figure of Ksh151 billion in order to cause confusion with regard to the payment of these dues.

Some of those retired teachers are sick while others have died and left behind families that are suffering and yet there is money that clearly belonged to their departed keen. A sum of Kshs16.7 billion has actually been budgeted for this exercise but has been lying at the Government Treasury all this time. I urge the Government to pay the sum of Kshs16.7 to those teachers immediately since the money is there.

We wonder why the Attorney-General would appear before the Committee and lie that certain measures have been taken. You realise that it is an open lie when you check the records. For example, when we urged him one time, to authorize the payment – of course there was the issue of interpretation of the court ruling – he lied to us that the matter was before the Supreme Court. However, when we checked the records, we realised that what he told us was not the case. Even the advocate of the teachers, Mr. Kimata, confirmed the same.

Hon. Speaker, the Deputy Solicitor-General was supposed to help bring the two groups together but in the course of the arbitration she pulled out of the negotiations thus delaying the whole process and taking it several steps backwards.

Hon. Speaker, I urge the Government to pay these teachers immediately to alleviate the suffering they are undergoing. There is a simple question we are asking ourselves: “Why are we treating teachers of this country the way we are treating them?” I thought that the Government is the mother of all! Without speaking too much, I believe that if we resolve in this House that we pay these teachers, this will happen and the teachers will have confidence in us as their representatives.

Thank you.

Hon. Speaker: Hon. John Waiganjo.

Hon. Waiganjo: I wanted to speak on the Transfer of Prisoners Bill, Order No. 13 but---

Hon. Speaker: Okay. Let us get somebody else. I am just following the request list. Hon. Members, could you confirm whether those of you who are putting requests, you want to contribute to this one or---

Hon. Waiganjo: Hon. Speaker, however, I am completely not lost to the fact---

Hon. Speaker: Can I get an indication of those who want to contribute in the unusual way of---

(Several hon. Members raised their hands)

The next one is Samuel Gichigi. Are you contributing on this Motion?

Hon. Gichigi: Yes, Hon. Speaker.

Hon. Speaker: Proceed.

Hon. Gichigi: Ninashukuru, Mhe. Spika kwa kunipatia hii nafasi. Nitanena machache tu. Ninaunga mkono hii Ripoti ya Kamati. Nitataja tu kuwa ni jambo la

kusikitisha sana kuwa hawa walimu ambao hata sisi wengine wao walitufundisha, tunakutana nao kule mashinani wakiumia kwa sababu ya kutolipwa pesa zao baada ya kustaafu.

Serikali imechelewa sana kubadilisha mipango ya malipo ya uzeeni kwa sababu hili jambo la kuwa kila mmoja anategemea Serikali kumlipa hayo malipo ni mbaya sana. Ilikuwa ni muhimu na hata sasa nitaomba wale ambao wanahusika katika Wizari mbalimbali za Serikali waweze kutimiza mpango wa malipo ya uzeeni ambao kila mmoja anachangia; mwenye kuajiri anachangia na mwajiriwa pia anachangia. Hatutaki watu wangojee kustaafu ndio ikae kama wanaomba kutoka kwa yule ambaye amewaajiri. Hayo mabadaliko yamechelewa sana katika mipango ya Serikali. Kila wakati tunaona hata Waziri wa Fedha anaweka pesa katika Bajeti kushughulikia hilo jambo lakini baadaye huo mpango hautimizwi. Kwa hivyo, ni muhimu sana. Ni vibaya sana kwa sababu hawa walimu walitimiza wajibu muhimu. Hii nchi haingeweza kufika mahali ilipo kama hawa walimu hawakuwafundisha wanafunzi ambao sasa ni viongozi katika hii nchi.

Tatizo lililetwa na mahakama ambayo iliamuru kuwa malipo yapeanwe ambayo ni zaidi ya mishahara walimu hao walikuwa wakipata. Unakuta kuwa Ofisi ya Mkuu wa Sheria inajipata pabaya kwa sababu inaambiwa ishauri Serikali ilipe pesa ambazo kikatiba ziko na shida kidogo. Lakini kwa sababu kuna pesa ambazo zilikuwa zimetengwa na ni zaidi ya Ksh16 bilioni, ninaomba wahusika wote wawili; Tume ya Kuwaajiri Walimu na pia hao walimu ambao wamestaafu na (*Technical hitch*)

Hon. Speaker: Hon. Gichigi, your time is not over.

Hon. Gichigi: Ahsante sana, Mhe. Spika. Nikimalizia, nitasema kuwa katika kesi, na hata mahali ambapo pana uamuzi, kuna wakati mwingine wahusika wote wawili wanaketi chini pamoja. Ikiwa mahakama imeamuru malipo yalipwe, wanaketi pamoja kukubaliana. Kwa mfano, kama ni Kshs42 korti imesema ilipwe, basi watakaa pamoja ili kushauriana kuhusu kulipwa kwa hizo pesa hata kama ni kwa njia ya polepole. Hayo ni mambo wanastahili kuketi chini kujadili. Ninaomba maofisa katika ofisi ya Mkuu wa Sheria wasiliondokee hili jambo. Hii ni kwa sababu wanaacha Serikali pagumu sana.

Mwisho, inasikitisha kuwa uamuzi wa mahakama, uamuzi wa hili Bunge na ofisi nyingine za Serikali huwa hazitiliwi mkazo. Kama Serikali yenyewe haitii uamuzi wa mahakama, wananchi wengine wanatarajiwa wafanye kitu gani? Kwa hivyo, ni muhimu sana hilo liweze kufanyika na yale mambo ambayo yanapitishwa na hili Bunge kama hili la kulipa hawa walimu liweze pia kutimizwa. Tunaunga mkono kwa nguvu. Tunaunga mkono hii Ripoti. Walimu walipwe pesa zao kwa sababu walistaafu kitambo.

Ahsante Mhe. Spika.

Hon. Koyi: Thank you very much, Hon. Speaker for giving me this chance to contribute on this issue of the retired teachers. These teachers have suffered for a very long time. Since 1997 is a long time and some of them have died without getting their pension. Let me thank the Government for participating and ordering that they get their pay. Out of these retired teachers who are affected, there is one who was my teacher in primary school. When he sees me in Parliament he makes sure he comes home. He has been coming to my home all the time disturbing me and saying, "We taught you and our money has not been paid." The Government should pay them all their dues since 1997 to date.

It is very frustrating when you have taught or worked for several years but when it comes to time to retire you are not paid your money. The lives of these people are not as was expected. Some of them have been unable to educate their children because they were depending on that pension boom.

I stand here to support fully that they should be paid their dues. Thank you.

Hon. Speaker: Hon. Members, let me draw your attention to one thing that I keep reminding you. It is not enough to just speak about general things; about 1997, people having died and others having taught you. Please, take note that there is a Report by a Committee so that your debate is focused. It is not about the general debate like you are in a public rally. Your debate must be relevant to the Report. Look at the Report. It is recommending some specific issues. If we just talk generally, it is not enriching the debate but rather repeating one thing after the other. Some of you do not appear to be even aware that there is reference to some court rulings, figures which have been discarded and reference to others that have been agreed to between the national Treasury and the Controller of Budget. I am saying this so that you do not just discuss because it is fashionable to debate. Honestly, the debate must be focused.

Hon. Grace Kiptui, focus your mind to this.

Hon. (Ms.) Kiptui: Thank you, Hon. Speaker for this opportunity. I have only one point to make.

Hon. Gikaria: On a point of order, Hon. Speaker.

Hon. Speaker: There is a point of order. What is your point of order?

Hon. Gikaria: Hon. Speaker, just as you are giving us some direction regarding the debate on the Motion before the House, I rise on Standing Orders No.95 and 106. Hon. Members are just repeating themselves and nothing new is coming out of this. I seek for your permission to request that the Mover be called upon to reply. We are just saying the same things and everybody seems to be in agreement with what is being said. I request that the Mover be called upon to reply.

Hon. Speaker: Let us hear this one point that Hon. Grace Kiptui is making. She said she only had one point.

Hon. (Ms.) Kiptui: It is, indeed, one point, Hon. Speaker. It is a great moment for the litigants who have been in court for very many years and the courts have already decided on this matter. They have been awarded. I request the Government to pay this money as a matter of urgency because even blessings come from God when you pay somebody his dues.

Hon. Speaker: This is not about God but it is about specifics! What you are saying is exactly what is in the Report, that the Government pays unequivocally. Hon. Members, the point raised by Hon. Gikaria is that the Mover be now called upon to reply.

(Question, that the Mover be now called upon to reply, put and agreed to)

Yes, the Mover, Hon. Sabina Chege.

Hon. (Ms.) S.W. Chege: Thank you, Hon. Speaker. I want to thank the entire House for supporting this Report. We have sat in many sittings with those retired

teachers. My prayer is that the Government will honour the requests and the prayer from the Committee and this Report so that these retired teachers are paid their dues.

I thank you, Hon. Speaker.

Hon. Speaker: You do not conclude by thanking me!

(Laughter)

Hon. (Ms.) S. W. Chege: Sorry, Hon. Speaker.

I move.

Hon. Speaker: You beg to move!

Hon. (Ms.) S. W. Chege: I beg to move.

Thank you, Hon. Speaker.

(Question put and agreed to)

BILL

Second Reading

THE TRANSFER OF PRISONERS BILL

Hon. A.B. Duale: Hon. Speaker, I beg to move that the Transfer of Prisoners Bill (National Assembly Bill No.25 of 2014) be now read a Second Time.

This is a very important Bill. I want to make a confession that Kenyans across all shades of life accost me a number of times telling me that, as the National Assembly, we must enact this law because our children are languishing in foreign prisons.

As we go into the Second Reading, let us debate and finish this Bill by the end of next week so that the President can assent it into law so that the parents and citizens can be helped.

The main objective of this Bill is to facilitate the transfer of prisoners who are citizens of Kenya but are serving sentences of imprisonment in foreign countries and where an agreement for transfer ceased between Kenya and the other foreign countries. Such systems, legislations or pieces of law exist and have been established in many countries for the repatriation of their citizens who are imprisoned in other countries. This is not something new. It is something which is practiced globally. Such schemes are essentially for medical and humanitarian grounds.

It is not a secret that many Kenyans have continued to be arrested and sentenced to imprisonment in foreign countries. There are Kenyans who are languishing in jails in China, Western capitals, America, Africa and within the East African region.

This Bill, if enacted, will provide a legal system through which such persons may be transferred to serve their sentences or the remaining part of their sentences in Kenya where they can be attended to by their relatives, get better treatment, eat Kenyan food, wear Kenyan clothes and get spiritual nourishment from Kenyan bishops and sheikhs.

Prison is not a good place although I have never been in prison. It is better to be in

a prison near home than in a very far land where at times you even do not understand the language of the prison warders in that country.

Part I of this Bill clarifies the provisions which will apply when an agreement for the transfer of prisoners between Kenya and other countries is enacted.

Part II of the Bill is the application to be made with respect to transfers. For a transfer to take place, application must be made to Kenya or Kenya has to make an application. To make it a bit clear, once we enact this law, even foreigners who are jailed in Kenya will have an opportunity to also serve the remaining jail terms in their countries. It is a two-way traffic. We bring back our Kenyan prisoners and we also allow other countries to take their prisoners to serve the remaining jail term in their country. Applications and the Memorandum of Understanding (MOU) can be signed by the Government, the Attorney-General or the family of the prisoner on behalf of the prisoner.

Part II of the Bill deals with the requirements for consent and requirements and conditions for transfer of prisoners. It also sets out the conditions under which a transfer of a prisoner to or from Kenya can be arranged.

Part III of this Bill sets out the procedures for the transfer of a prisoner from Kenya.

Today, issues to do with the 76 Chinese prisoners who are serving their sentence and are working here in Kenya are covered by that part of the Bill.

Part III of the Bill deals with the procedures for the transfer of prisoners from Kenya to their country of origin. This includes the application that one has to make to the Attorney-General of the Republic of Kenya and how that application will be considered by both the Attorney-General and the Cabinet Secretary in charge of prisons or the Cabinet Secretary responsible for matters relating to the sentence. The Attorney-General can then contact the transfer country. The whole of that procedure is well stipulated in Part III of the Bill.

Hon. Speaker, the same Part III gives privilege to the Attorney-General to cancel a warrant issue for the transfer of a prisoner from Kenya at any time. So, if the Attorney-General, in his opinion, feels that a certain prisoner should not be transferred, then this law gives him powers to cancel the warrant.

Part IV of the Bill provides for transfer of prisoners to Kenya. There are many Kenyans who have been jailed in China, Europe, America, Africa and Asia because of committing various offences. This law does not discriminate on the charges; whether or not it is a drug-related charge, or human trafficking. This law is about any Kenyan who is serving in a foreign jail. It provides for the procedure that is to be used to transfer such persons back to Kenya. You will find the provisions in Part IV of the Bill. The same Part provides for the procedure of applying through the Attorney-General. It also provides that a sentencing country may apply to the Attorney-General. The parents and relatives of victims can apply too.

Part V of the Bill provides for the enforcement of the sentences. What do we do when we transfer Kenyan citizens serving in foreign jails? This Part provides for the enforcement of the transferred sentence. It specifies that we cannot alter the sentence passed and is being served. So, if the prisoner was sentenced for 10 years then it remains so.

Part V also specifies the condition of the prison. If you transfer this prisoner from China and you bring him to Kamiti Prison and then you subject him to a harsher punishment then you will have contravened this law. So, you are supposed to maintain the same standards. If the prisoner, for example, is a hardcore prisoner then he will maintain the same standards in our prisons here.

More importantly, if that prisoner is transferred, there is no recourse for appeal. One cannot appeal to the Kenyan courts for one to be released. So, if one has been jailed for life imprisonment, the only thing that this law gives one is that one will now serve one's life imprisonment closer home and vice versa for the foreigners serving sentence in our prisons.

Part VI of this Bill deals with miscellaneous provisions. It talks about how to recover the expenses incurred in the transfer of that prisoner. How do the two agencies share information on the prisoner being transferred? I hope this law will be amended so that if at all there are Kenyans who are serving imprisonment in Guantanamo Bay then they should also be accorded this chance.

I will study the USA Patriots Act to understand that if there are any Kenyans serving imprisonment in Guantanamo Bay then they should be given an opportunity to serve the remainder of their sentence in Kamiti, Manyani, Kodiaga in Kisumu, and the small prison in Garissa for petty offenders. We rarely have serious guys in Garissa.

This Part also provides for the re-arrest of a transferred prisoner. If the prisoner who has been transferred to Kenya escapes, then Part VI provides the procedure on how to re-arrest him. So, this is a small Bill, but it is very important.

I remember that during the December vacation, an elderly couple accosted me at Nakumatt Junction. This Bill has been with us since early 2014. They told me:-

“Honourable Leader of the Majority Party please, talk to your colleagues and the Speaker. We have our kids and they are languishing in foreign jails. Enact that law because you have the powers to do that. We need our children to serve their sentence in Kenya.”

So, this is a serious social problem and this law will help the citizens of our country.

I beg to move and ask Hon. Waiganjo to second this Bill. I hope that we will conclude it at the end of the day and then next week, we bring it to the House for Third Reading. I also hope that the President will assent to it before the end of June.

Hon. Speaker: Yes, Hon. Waiganjo.

Hon. Waiganjo: Thank you, Hon. Speaker. I rise to second this very important Bill. In doing this, I want to start from where the Leader of the Majority Party has stopped. I would like to indicate that this is one of the Bills that require the support of the entire House considering that tens of thousands of Kenyans are languishing in jail in foreign countries having been sentenced by foreign jurisdictions and having exhausted their appeals.

In the United Arab Emirates (UAE), for instance, we have approximately 40,000 Kenyans living in that region of the world, but 17 of those Kenyans are in jail. Many others are held incommunicado awaiting their hearings to be conducted. Even so, there are no bilateral agreements between this country and the UAE. There is no law in Kenya which can assist these Kenyans who are languishing in jail to come back here to serve

their sentences. Therefore, this Bill, if passed, this Parliament will be as proud as it was when we passed the Persons Deprived of Liberty Bill. This is currently an Act of Parliament.

As we pass Bills that have a human rights face, and those that buttress our sovereignty, we need to pass this Transfer of Prisoners Bill because we must always be aware of where Kenyans are be it in jail or outside this country.

This Bill has given us a structure through legal representatives of people serving jail terms abroad or through the office of the Attorney-General we can make applications to foreign countries to ask that Kenyans serving jail sentences in those countries be brought back to complete their jail terms here.

This is a comprehensive Bill because its objective as set out in Part 1 on preliminaries at Section 2, among other things, is to enable prisoners to serve their sentences of imprisonment in the countries of their nationality or in countries where they have community ties. In other words, somebody will go outside this country, get on the wrong side of the law and be arrested. He or she will be tried and jailed in that country. Notwithstanding the fact that the person may have been found guilty, the rights of that prisoner do not diminish at the point of his imprisonment.

Therefore, what we are saying in this Bill is that the person who has been arrested outside this jurisdiction and jailed has a spouse, children, grandparents and businesses. Therefore, it is only fair for that person to be brought here to serve the remainder of the sentence.

This law also allows that when that person is brought back to this country then the laws of this country can be used to pardon him to commute the sentence and do all that appertains to a prisoner who is serving such a sentence in Kenya.

Hon. Speaker, this Bill shows how an application ought to be done. The applications to have Kenyans abroad to come and serve their sentences here can be done by a legal representative of the inmate or the person in prison. The Attorney-General can also do an application to ask for that person who has been jailed outside to be brought back. For instance, I am aware there are Kenyans who have been serving their jail sentences in Tanzania.

This law will enable the Attorney-General to make an application to the Attorney-General of the Republic of Tanzania and ask that a person serving a sentence there be brought here. When that application is done, the Attorney-General will consult the Cabinet Secretary (CS), for instance the CS in charge of Immigration, and seek to know whether that CS has any interest in the person serving that jail term. Once the two institutions agree that that person should come and serve the sentence here and that the offence that that person committed out there is also an offence in Kenya, by consent a warrant is issued for that person to be brought to serve that sentence here.

However, we also know that there are people who would not like to come and serve their sentences here for various reasons. For instance, when we had political prisoners, a person jailed outside would not have wanted to come and serve the sentence here for obvious reasons. Therefore, the consent of the person serving a sentence out there is required so that we know that they are, indeed, interested in coming to complete their sentences in Kenya.

Another issue is that you may find that a Kenyan serving a jail term in the United States, for instance, is not eligible to apply to the United States to be released to go and complete their sentences in the UK because they are not eligible to go and serve that sentence in the UK. So, the transfers can only happen between the transferring country and the country of resident of that person. There is the issue of eligibility of the applicant. One of the issues is that that applicant must be a Kenyan citizen, for example. Our country must have an agreement, bilateral or otherwise with the transferring country and there has to be consent.

This Bill has addressed extradition very well. We know there are instances where a country is asking for an extradition of a suspect to the jurisdiction of this country to be tried. This Bill addresses this issue this way. If a person needs to be extradited or if, for instance, this country is asking another country to extradite a suspect to this country and it happens that that person is already serving a sentence in that country, the Attorney-Generals of the respective countries have to look at the various legislative proposals contained in the extradition proceedings of those countries. They have to look, for instance, at the likely event that that prisoner is probably asking for a transfer to this country to avoid extradition. These are issues addressed in this Bill.

However, there are conditions for transfer in Kenya and those conditions must be met before extradition proceedings are commenced. Again, if a person serving a sentence in a foreign jurisdiction has not exhausted all the appeal processes or if the matter is on appeal, that person is not eligible because he or she must have completed his or her appeals. This is because if you come here under a transfer, you cannot appeal against that sentence here. So, the condition for transfer must be that the prisoner being transferred is only coming to complete their sentence and not to argue on any appeal.

The only problem I notice with this Bill is that it says under Clause 41(b)(v) that:-

“The Attorney-General may, at any time, direct a person having custody of the prisoner under paragraph (iv) to release the prisoner from custody.”

This is a very serious loophole because a person may apply for a transfer from a foreign jurisdiction and once they get here and before they get into our custody to complete their term, the Attorney-General releases them.

I beg to second this Bill.

(Question proposed)

Hon. Speaker: Hon. Dan Kazungu.

Hon. Muzee: Ahsante sana, Mhe. Spika kwa kunipatia nafasi hii ili niongee kuhusu Mswada huu mpya ambao umeletwa katika Bunge la Taifa la Kenya. Mswada huu unahusu suala la kuwarudisha wafungwa walioko katika nchi geni ili wamalize vifungo walivyopewa katika nchi zao asilia. Shida yangu ni moja tu.

Sisi Wakenya tukienda katika nchi za nje, ni vizuri kwanza tuhakikishe kuwa tunazifuata sheria za nchi ambazo tumeenda. Sharti tuheshimu na tutii sheria ili tusingie katika shida. Kwa hivyo, ningependa kuwahimiza Wakenya wote kwamba kokote waendako sharti watilie maanani nidhamu na watii sheria za nchi ambazo wamezuru ili wasijipate kwenye shida. Vile vile wageni ambao wanakuja kwetu hapa Kenya sharti nao wahakikishe wanatii sheria zetu na wanazifuata vilivyo ili wasiingie katika matata.

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

*[The Temporary Deputy Speaker
(Hon. (Ms.) Mbalu) took the Chair]*

Jambo la pili ambalo nimeona, na namshukuru Mhe. Waiganjo kwa maana amelitaja, ni kwamba kuna uwezekano wa watu kutumia vipengele vya sheria hii vibaya na kuanza kuharibu mambo. Huenda mfungwa akaletwa hapa na badala ya kuendelea na kifungo chake kizungumkuti kinachezwa kisha mfungwa huyo anaachiliwa huru. Hiyo haitakuwa vizuri. Kwa hivyo, tuhakikishe kuwa tunaangazia sheria hii vilivyo ndiposa haki ifanyike. Isiwe kwamba mfungwa akishafika katika nchi yake anaachiliwa huru na hali alikuwa amefungwa kwa kutenda dhambi. Ni vizuri tuangalie suala hilo ili sheria hii isiharibiwe na wale ambao wako na mipango yao tofauti.

Lakini kuna kitu ambacho ningetaka pia tuangazie zaidi. Juzi kule Africa Kusini, tuliona mfano mmoja wa mwanariadha kwa jina la Pistorius ambaye alimuua mpenzi wake na akafungwa kifungo cha miaka mitano. Ajabu ni kwamba ni juzi tu alipofungwa. Lakini saa hii tunaambiwa kwamba kuanzia mwezi wa nane, kuna uwezekano wa kuachiliwa. Unajua sheria katika nchi mbali mbali ni tofauti. Kwa hivyo, ni lazima tuhakikishe kwamba sheria za nchi zingine na sheria zetu hapa Kenya zanaambatana vilivyo ili watu wasianze kuchukua mipangilio hiyo na kujinufaisha. Kuna kipengele kinachomruhusu Mkuu wa Sheria kuamua kumuachilia mtu. Hapo ni lazima tuhakikishe kuwa haki inatendeka. Ikiwa mtu atafanya kitendo kibaya, ni lazima ahukumiwe na kuadhibiwa vilivyo.

Ningeomba pia tuelewane kitu kimoja. Nimeambiwa kwamba korokoro zetu ziko hali mbaya sana. Sasa nashindwa hivi: Inakuwaje mtu angependa kutoka gereza la Uchina aje katika gereza hapa? Tumeambiwa korokoro zetu ziko katika hali mbaya sana. Sasa, sijui kama Mswada huu utakuwa unawasaidia ama utazidi kuwapatia shida wakiletwa nyumbani. Kwa hivyo, ningeomba tuangazie sheria zetu na tuhakikishe kwamba hazitatumiwa vibaya. Mkuu wa Sheria ahakikishe kuwa haki inatendeka. Hatutaki atumiwe na watu wengine ili wapate nafasi ya kuwa huru tena.

Lakini jambo la muhimu ni hili: Ikiwa wewe ni Mkenya ama mgeni, tafadhali ukija hapa kwetu, zingatia sheria zetu. Na wewe Mkenya ndugu yangu, dada yangu, na mama yangu, ukienda nchi za nje, hakikisha umefuata sheria za nje vizuri ili usiingie katika mashakani. Itakuwa ni shida kwa sisi kuanza kufanya juu chini ili uletwe nyumbani. Pia, lazima ufikirie familia yako maanake wao ndio wanaumia zaidi. Wanalilia kila siku. Wewe unapata shida kule nje na sisi hapa tunashindwa tutafanya nini.

Nakushukuru sana, Mhe. Naibu Spika wa Muda kwa kunipa nafasi hii. Tuwe watu ambao wanaheshimu sheria - na hasa sisi ambao tunaunda sheria hapa Kenya. Asante sana.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Ahsante sana. Member for Nakuru Town East, Hon. David Gikaria.

Hon. Gikaria: Thank you, Hon. Temporary Deputy Speaker for giving me this opportunity to deliberate on this very important Bill regarding the transfer of prisoners both from Kenya and also from other countries. I was listening very carefully to the

Mover, Hon. A.B. Duale, as he was moving the Motion and later, when Hon. Waiganjo was seconding. A few issues have arisen. If, indeed, what Hon. Waiganjo has expounded on is what is supposed to be in the Bill, then I think that it is a Bill that we need to consider.

If you look at Part Two of the Bill, it talks about the request of the transfer that can be done by the prisoners themselves, the Attorney-General, the representatives, the parents or the guardians. It can also be done if the prisoner is a minor. That is important. That is something that we need to look at in this country. If thousands of Kenyan prisoners are jailed away from their homes, then we need to look at the way we build our prisons. I am in the Departmental Committee on Administration and National Security. We have visited a few prisons in the country. I also had an opportunity to visit the prison in Nakuru. We played a match between the lawmakers and law-breakers. The situation in our prisons is pathetic. Recently in our Departmental Committee on Administration and National Security, we were talking on how best we can improve the housing not only for the prison wardens, but also for the prisoners. The former Vice-Presidents, Moody Awori and Hon. Kalonzo Musyoka, did some good things to try and improve the well-being of the prisoners within our prisons. We need to consider whether those prisoners are in a better position to be where they are than coming to this country.

We have already said in the Departmental Committee on Administration and National Security that the congestion in our prisons is unacceptable. I want to applaud the move that was taken by the Chief Justice (CJ) the other day. He was thinking on how best we can reduce the requirement of holding prisoners in prisons by making it more lenient. They can pay fewer fines and be free. So, as it has been indicated, it is important that our prisoners come home. But, at the same time, we need to improve the facilities within the country so that prisoners can come here. A prison is not a place of punishment. It is supposed to be a place of correcting people's behaviour so that they can become better people. We should not look at a prison and see a prison.

One of the advantages is that this country has moved along in trying to reform the prisons and how the prisoners are handled. Recently, we have moved to where prisoners can be visited by their family members. It is a good move. Those prisoners can feel that they are still acceptable in their society and by their families and friends. We have specific days set aside for visits. That is an advantage.

Secondly - and this is something that we shared with some of the prisoners in Nakuru when we visited them with Hon. Agostinho Neto - the "power of mercy" should be extended to long-serving prisoners. Would they also be able to benefit from the "power of mercy"? I know Hon. Agostinho Neto was coming up with some amendments to see whether the "power of mercy" can be extended to long-serving prisoners.

Lastly - and this is very important and one of the issues that we need to look at in the Bill - is the appeal process. Hon. Waiganjo has made it clear. When Hon. A.B. Duale was moving, we were wondering whether a prisoner who has an opportunity of appealing could be given a chance if he comes to this country. Hon. Waiganjo has made it very clear that any person with a possibility of an appeal process that has not been exhausted will not benefit from this Bill. That is the question we were asking ourselves then. Of what help is this because the procedure for an appeal is not stipulated? Within 14 days after your sentencing, you are supposed to make an appeal. I am talking about the current

situation in the country. The process of appeal is now being listened to by the Court of Appeal or the High Court, and then to the Supreme Court. It is not stipulated. It might take years. The purpose of this Bill might not be of any help because if the process of that appeal will take 10 years, then that prisoner will never have an opportunity of ever being brought to this country.

The other bit - and this is something that we also need to be very careful about is--
- You might bring back a terrorist who has been jailed abroad and has been radicalised to our prisons. That can have a lot of effect where such a terrorist can influence others. I remember the other day when we were trying to amend the security laws. We had specified that they should be isolated. A terrorist should be isolated from the other prisoners. The Bill of Rights again came in and this was part of it. Assume that we have 5,000 Kenyans who have been jailed outside this country and they are brought back to our various prisons. What will be their effect regarding radicalisation? They might come, get the opportunity, use it and take it up from where they left. So, again, it is important for us to think which calibre or type of prisoners we want to bring back.

At the Third Reading, we will bring some amendments. We can isolate some specific criminals and terrorists who have been jailed abroad. We can pick the ones to be brought back to this country. Normally, when you look at many other countries, whenever you are jailed, there is a possibility of parole if you are of good behaviour. After some time, your sentence can be reduced. That is in the legislation of those countries. What will happen now when you come to this country? Do you benefit from parole if you are of good behaviour? That is very important for us. Even if you have been given a life sentence, and you have exhibited good behavior - maybe, after 10 or 20 years - you can come out depending on an application that is made by your lawyer. So, that condition is also applicable in this Bill.

Hon. Temporary Deputy Speaker, the other bit I found - as I was perusing the Bill - is the cost of the transfer of prisoners. Who will meet the cost? If my son has been jailed abroad and I request that he is brought back to the country, who is going to meet the cost? Will it be him, the parents or the State? Those are the other issues that the country needs to think about. Let us not involve the country in unnecessary expenditure and bring problems. Some of those people are hardcore criminals. They will never change. We need to be specific in this Bill as to who is going to meet the cost.

The last thing I want to talk about - as Hon. Waiganjo has just read - is scary. The Attorney-General can make a decision and have someone released. Those are issues we need to highlight. Part V on enforcement needs to be removed so that you do not give the Attorney-General an opportunity to release a prisoner.

With those few remarks, I would like to say that this is a very important Bill. Soon, we will be bringing amendments in the Third Reading. Thank you, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Thank you, Hon. David Gikaria. Very well presented! Your amendments will be welcome. I am sure the Leader of the Majority or his representative is in the House to note the same. Hon. Member for Turkana Central, proceed.

Hon. Nakara: Thank you, Hon. Temporary Deputy, for giving me this opportunity to contribute to this Bill. A country needs to protect and value its citizens.

When we transfer our prisoners back to this country, we show respect and safeguard the dignity of our citizens. As a country, we need to be proud of our people wherever they are, despite the fact that some of them are jailed because of criminal activities or the evil that they have committed. A country that stands by its people wherever they are is a country that everybody admires, and a good example is USA. Wherever the citizens of the USA are, they are proud of their country because they know the country protects and values them.

Human rights in our Constitution are paramount. Some countries do not have such a Constitution like the one we have. Their human rights are violated in different ways. If we allow our citizens to be jailed in those countries, it is like we are tormenting them. It is like we are torturing them. It is like we do not value them. As a country that respects human rights, we need to make sure that we have a law that governs our citizens wherever they are or whenever they are jailed in foreign countries.

The cost to families going to visit the prisoners in foreign lands is very high. For instance, just two months ago, we had a case in India where a Kenyan lady was jailed. Her family discovered that two years after she disappeared. The issue became public knowledge after somebody exposed that there is a Kenyan in India who had been jailed. Her family had to raise money to go and see her in India. If the Government will take the initiative of bringing back such prisoners to the country, it will offer relief to poor citizens who cannot afford to travel to foreign countries to see their relatives who have been jailed there.

It is important for all of us to make sure that this Bill goes through because it will help the poor citizens of this country who cannot afford to go to foreign lands to see their relatives who have been jailed there.

Our prison facilities were rehabilitated during the times of Hon. Moody Awori, when he was the Vice-President of this country. They were upgraded to the extent that one feels human when you go there. But in some countries, prison facilities are not good for people to be jailed in. When we leave our citizens to be jailed in those countries without good facilities, some of them perish because of poor hygienic conditions. There is congestion in the prison facilities in those countries.

As a country, we need to be respected. For us to have that law, we must make sure that Kenyans in foreign countries register themselves in our embassies. I am a member of the Departmental Committee on Defence and Foreign Relations. We have travelled quite a lot. When we visit some countries, our ambassadors tell us that some Kenyans are there illegally and they have not reported to the embassies. When such people are jailed, we cannot know them because they are not in the records of the embassies. So, we need to encourage Kenyans that when they get out of this country, they must report first to the embassy so that they can be known. Some Kenyans who are suffering now in some foreign lands did not register with our embassies in those countries. So, as we make this law, we should make it compulsory for every Kenyan to register with our embassies in foreign countries.

We must also put in place measures and standards for transferring prisoners in and out because some countries are very strict. If you do not have measures and standards that can be respected worldwide, they will not accept the transfer of prisoners. That means that this House must enact a law that will be respected and honoured. You cannot

transfer a prisoner from the USA to this country when our law and standards are weak. They will say that will encourage people to commit crimes. So, we must have measures that will cut across both countries.

There are non-Kenyans like Ghanaians, Nigerians, Tanzanians and Ugandans who hold our passports because of corrupt officials in this country. They issue those passports to foreigners. When they go to jail, they are counted as Kenyans and yet, they are not Kenyans. They will benefit from our resources. They used corruption to get their passports and pretend to be Kenyans. We must ensure that the person we are spending our resources on is a Kenyan by birth. We need to enact a law to support that. Otherwise, we will bring everybody to this country.

As I conclude, we must, as Kenyans, be proud of our country. Hon. Temporary Deputy Speaker, if you travel - and I know you have travelled to some countries - we have been called negative names because we do not live according to the standards of those countries. We misbehave, commit crime, lower our dignity, lower our names and, in so doing, Kenyans appear as not good people.

Hon. Temporary Deputy Speaker, we should ensure that we lead a good and respectful life, so that we can win the respect of those countries.

With those few remarks, I support.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): You have supported. Very well spoken. The Member for Subukia Constituency, Hon. Nelson Gaichuhie.

Hon. Gaichuhie: Thank you, Hon. Temporary Deputy Speaker for giving me this opportunity to support the Transfer of Prisoners Bill (National Assembly Bill No. 25 of 2014). At the outset, I support this Bill. I know that there are prisoners who are languishing in jails outside this country. They suffer a lot and that has caused a lot of suffering to their family members. This Bill that seeks to transfer such prisoners from foreign countries back home is a welcome move. It will enable Kenyans who are in prisons in foreign countries to come back and enjoy the kind of life they are used to in their homeland though not in freedom, but in prison. I support the Bill because it stipulates that one has to ask for consent to be transferred. There are some people who may be in prisons outside this country, but who would not wish to come back to Kenya because of the state of our prisons. This Bill gives one the authority to consent whether he or she wants to come back or remain wherever they are.

There are hardcore criminals, just like my friend has stated. But the Attorney-General has the authority to refuse such prisoners to come back home. This Bill is taking care of all that. When Kenyans are imprisoned out there and the conditions are tougher, they suffer twice. In some areas, there is a lot of discrimination – like in most Arab countries. They discriminate against the blacks and when they are in prison, they suffer quite a lot. This will Bill gives the prisoner the right to choose whether to come back or not. It is a Bill that should be passed very fast and, as the Leader of the Majority has said, there are many Kenyan prisoners out there who want to come back home and continue to serve their terms here in Kenya.

The Bill does not say that once a prisoner comes back to his motherland, his term will be shortened. The prisoner will continue to serve for the rest of his jail term. It also provides that once the prisoner is in Kenya, he can be pardoned by the President. When

one is in prison in a foreign country, he or she cannot be pardoned. This Bill is taking care of all that and I support it.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Thank you, Hon. Gaichuhie. The Member for Igembe North, Hon. Joseph M'eruaki is next on my request list.

Hon. M'uthari: Thank you, Hon. Temporary Deputy Speaker. At the outset, I rise to support this Bill. It is important in the sense that it provides the opportunity for transfer of prisoners from foreign countries. Some of our citizens who go out for one reason or another might find themselves on the wrong side of the law. In the process, they end up being imprisoned. That causes a lot of trouble for the families of those prisoners. Some of those prisoners are in faraway places like China, India, the United States and United Kingdom. Members of their families may want to go and console them, but they are not able to do so because of the costs involved in travel. This Bill gives an opportunity for those prisoners to be brought back home. That can also unite the families. It is also better to be jailed at home. One Member spoke about our prisons being bad. They may be bad but, whatever the case, home is home and it is the best.

This Bill also gives an opportunity to the Kenyan Government, through the Attorney-General, to reach out to the countries where Kenyans may be jailed and request for their transfer back home or their countries of origin. We also have cases where criminals from other countries are jailed here in Kenya. When foreigners are jailed here, we end up spending our resources on them for corrective services. Prisons are supposed to be humane places that provide an environment for rehabilitation. It should not be a place for hardening the culprits. It is essential for us, as a country, to make prisons a rehabilitation place. Prisoners should be engaged in a way that can enable them to become better citizens when they come out.

The Bill provides that after the transfer, the prisoner should serve the remainder of his or her term. They should not be punished the same way they were being punished in their former prisons. This is a good provision. All in all, it is an opportunity for such prisoners to seek the transfer. They should be in prison within their motherland. This is a good provision that should have been there from the beginning. When the prisoners are transferred, they should be supported so that, at the end of the day, their dignity as human beings is upheld.

With those few remarks, I support the Bill.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Okay. You have supported the Bill. The Member for Narok North Constituency, Hon. Moitalel ole Kenta.

Hon. ole Kenta: Thank you, Hon. Temporary Deputy Speaker, for giving me this opportunity. Like my colleagues, I also support the Bill. We have many Kenyans who are suffering in foreign lands. Most of the times, they are in jail or in custody not because they are guilty, but because of racial, religious and other kinds of prejudices. This new law will ensure that they serve their sentences at home where they are near to their people. They will be in their country. I believe the sentences will be softer on them.

Everybody knows that Kenyans are suffering in the Middle East. They are suffering false imprisonment and all the prejudices that I have mentioned. The worst part is that nobody can assist them. Their own families cannot visit them because of financial constraints. Kenya should do more than it is currently doing.

The Kenyan law permits pardon of prisoners within Kenya. The other good thing about this law is that when other nationals are jailed in Kenya, they can be taken to their countries. This is humane and in line with their human rights. This is beneficial to both the Kenyan Government and foreign people who are jailed in Kenya. In countries like China, there is a death sentence for petty offences. This Bill provides that if it involves the death penalty, the prisoners cannot be transferred. But when the prisoners are committed to life imprisonment, they can be transferred. This should be looked into so that even if it is a death sentence, they should also be included.

Hon. Temporary Deputy Speaker, a colleague who has just spoken before me has said that it is actually a small problem as far as the proposed Section 40 is concerned. It provides that the Attorney-General can actually call for the release of somebody who is in transit. I believe that is something that can be easily abused. It is a lacuna that should be filled. I believe that it is something that should be looked into.

I do not really want to say much because a lot has been said. But all I can say is that this is a good law. I do not know whether there is a policy that informs it. I believe we should have a policy in place. How do we know or decide which countries we can enter into an agreement with and which country this law can apply? I believe it must also be informed by policy. If we can look at this law and have a sound policy, then that will be good for us. That is because we might have actually put the cart before the horse.

I wish to support and tell my colleagues to support the Bill. We will look at the amendments that will be carried in future.

Thank you, hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Thank you. The hon. Member for Narok North, your amendments are welcome. Let us get to know the position of Kwanza Constituency represented by Ferdinand Wanyonyi.

Hon. F.K. Wanyonyi: Hon. Temporary Deputy Speaker, this Bill has come at the right time. I have a family that has been coming to me concerning somebody who is now in Malaysia, and has been sentenced to death. More so, the family cannot even access the child. The story is that the child was not actually the one who was on the wrong, but her classmate. She had gone for studies and did not know that she was staying with a wrong person. That girl has been sentenced to death as we speak now. The family has come to me and, basically, I do not know what to do. Therefore, I am hoping and praying that this Bill will be passed as soon as possible, so that I may be able to save that girl's life. I am told that the girl she was staying with was actually dealing in drugs. It is a very moving story. The innocent girl, just because of her association with a friend from this country and Nigeria, is now in trouble. The girl who was actually peddling the drugs has disappeared. You can see how an innocent person can be killed or hanged just because of the law. I hope this comes at the right time. I hope it can be fast-tracked so that it can be passed and assented to by His Excellency the President. We can then use the Act to save that particular soul that is so innocent. I am so moved by the incident.

The other thing is that imprisonment should not be treated as punishment. It should be deterrent – a way of correcting somebody. I agree with the former speakers who have said that when one is sentenced to prison, it does not mean he or she is being punished. It is just to correct him. Therefore, I quite agree that we should be able to bring back prisoners to our country.

However, we have the other side - particularly the terrorists. The terrorists are there. We have hardcore criminals who are out there. They will be very happy to come to our country because they know once they are here; they can always buy their freedom. We hope the Attorney-General and whoever is going to be involved will be looking at each case on its own merit, rather than having people coming here and yet, they are hardcore criminals. Of course, we know the level of corruption in this country. I know for sure that people coming from America, Africa or wherever it is can come here and buy their freedom. We hope that the nuts will be tightened so that we do not have that kind of thing.

The other thing - and I am not sure of because I am not a lawyer - is whether some of those jailed people are rightly sentenced. I hope that we have got compatible laws here that can deal with somebody who has been sentenced to death or life imprisonment, and who comes here to serve the sentence.

We hope that corruption in this country is not going to allow people who have been sentenced elsewhere to here. They might come here and buy their freedom. It is possible here because we know the levels of corruption.

Last but not least, I know of a case where a crook has been sentenced in America because of presenting wrong papers. I do not know what will happen when he gets here. He said he had actually finished training as a pilot there. Now he has been caught up there. When he comes here, I do not know what will happen to him. All I am saying is that some people out there would rather serve their sentences elsewhere than come here. That is because the cells and prisons are in a very bad state. They are so bad that one would prefer to die elsewhere than come to die in a place like Kamiti Maximum Prison. I have not been there but I am told the conditions are bad and horrible. Therefore, some of the prisoners would rather serve their life sentences elsewhere because they are treated humanely. They will not agree to come to a place where you sleep on the floor, you do not have something to cover your head and you are given meals that are not even salted. The conditions there are very bad. As much as we are going to have this Bill - which I want to be fast-tracked - I think some prisoners who are jailed elsewhere would rather stay where they are than come over here. That is because the conditions in our prisons here are in a very bad state.

I support the Bill

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): You have supported the Bill, indeed. You are a real representative of the people. Hon. Esther Gathogo, Member for Ruiru County. She is a member of the other gender. The Floor is yours.

Hon. (Ms.) Gathogo: Ahsante Mhe. Naibu Spika wa Muda kwa kunipa nafasi hii. Nilikua nafikiri sionekani kwa maana niko mbali. Kumbe niko karibu sana.

Nataka kuunga mkono Mswada huu. Ni vizuri sana kufikiria mambo ya wafungwa. Wengine wako katika nchi za nje na wengine wako katika nchi yetu. Ni vizuri mtu akiwa na shida, awe karibu na nyumbani. Nataka kuunga mkono.

Mtu akipatikana na hatia akiwa katika nchi za nje, ni vizuri arudishwe nyumbani angalau atembelewe na familia yake. Hii ni kwa sababu hapa Kenya, wengi wanatembelwa. Ni vizuri kujua ya kwamba hata mtu akiwa na makosa, anawezwa kurekebisha.

Wale ambao wako nje waje hapa ili waweze kuhukumiwa wakiwa karibu. Ukiwa nje haujihisi ya kwamba unataka kukaa katika nchi hiyo tena. Unataka kurudi nyumbani. Kwa hivyo, yangu ni kuunga mkono Mswada huu ili tuweze kuwasaidia watu wetu ambao wako nje.

Hata wakirudi, Mhe. mwenzangu amesema ya kwamba mahali pa kulala katika magereza ya huku kwetu yako katika hali mbaya. Lazima magereza yetu yawe katika hali nzuri ili kuwafaa wale ambao wanaenda huko. Pia, magereza yanaweza kuwa katika hali nzuri lakini ile tabia wanaofanyiwa huko ni mbaya zaidi. Kwa hivyo, ni lazima tuangalie pande zote ili wakiingia huko, wakae kwa njia ambayo inafaa kwa Mkenya yeyote.

Asante Mhe. Naibu Spika wa Muda. Naunga mkono.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Umeunga mkono. Let us have Hon. Michael Kisoi from Mbooni Constituency, Makueni County.

Hon. Kisoi: Thank you, Hon. Temporary Deputy Speaker for giving me this opportunity. This Bill is well thought out. Kenyans must realize that they have an obligation to observe the rule of law in whichever country that they visit. The duty to respect the laws of the countries that we visit is not discretionary. It is obligatory. Therefore, as much as we debate on how we need to repatriate our prisoners to continue serving their sentences in this country, we must also realize that the duty to uphold the rule of law in any country that you visit is so significant and paramount that it supersedes anything else. The interests of the citizens of this nation override any other interests.

We know that this country has taken tremendous steps in trying to reform our prisons. That is quite positive considering the past situation and the current situation. It is obvious that a lot needs to be done to improve our prison environment, so that our prisoners can serve their terms as human beings. We have an obligation under the human rights treaties and other reforms in our Constitution to uphold human dignity. However, as much as we are talking about repatriating the prisoners, our prisons are very congested due to petty offenders. Something needs to be done in our country, so that we can offload that economic burden in our prisons. Petty offenders can be given home sentence or community service judgments. This will ensure that our prisons continue to be institutions that are geared towards rehabilitating prisoners, but not as avenues and houses for punishment.

It is important that we look at this law very objectively. I have perused through certain sections in this Bill that have made careful consideration of this issue as we go forward. For instance, Clause 36(1) talks of amnesty. This is very dangerous. It reads:-

“During the period in which the sentence of imprisonment is served in Kenya by a prisoner transferred to Kenya under this Act, the prisoner may be pardoned or granted any amnesty or commutation of sentence of imprisonment that could be granted under Kenyan law if the sentence of imprisonment had been imposed for an offense against the Kenyan law”.

I also refer to Clause 10(3). Some of those discretionary powers contained in this Bill could give rise to impunity and a lot of corruption. We are only giving one person the authority and the power to make judgement and decision on whether someone can be pardoned or needs to be given an opportunity to be heard. So, as we look at this Bill, we must be very careful during certain stages that amendments are brought to ensure that

powers are curtailed and checks and balances are put in place to ensure that corruption does not rein in the process.

Some of the people who are serving sentences outside this country could find their way into this country and, in a very short period of time, we could find all of them in this country. We must ensure that we put legal road-blocks so that those powers are not abused.

Our rights as the citizens of this nation have been abused by some countries, especially in the Middle East. They do not consider Kenyans as human beings who are worth living. We have had serious cases where Kenyan citizens have been treated under very inhuman conditions in those countries. Some may not even have got fair judgement and trials in the countries that they have been tried. Therefore, it is important for us to give them an opportunity to come back to this country. We also need to look at this law carefully and create an appellate process. If those countries can treat our citizens in the manner they do when they have not committed any offence, then what happens when they are imprisoned? That means that those Kenyans could be suffering wherever they are. As a nation, we must realise that despite whatever offences those citizens have committed wherever they are, they are still Kenyan citizens. The much we can do for them is to ensure that their interests are protected.

I support this Bill, but we need to do a critical analysis of some of the clauses, so that they can be polished. Otherwise, its significance and spirit is good for the citizens of this country.

I support.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Let us have the Member for Murang'a County, Hon. Sabina Chege.

Hon. (Ms.) S.W. Chege: Thank you, Hon. Temporary Deputy Speaker. I support this Bill. I have gone through the Bill and there are several things that I like about what is being proposed. Several Kenyans have gone out there, have been arrested and their relatives are not able to see them. Prison is not supposed just to be a way of punishing a criminal, but a place where somebody is supposed to be corrected and he or she changes. Therefore, if the sole purpose of somebody being to prison is not just to be punished, then there are several rights that should be looked at, especially access to family members.

Looking at this Bill, the country of transfer is either where there is a parent, a grandparent or a child of such a prisoner. There is also clear indication that the transfers can only be done in countries that are in agreement. I support this Bill. Sometimes, our prisons are congested. Foreigners who are in our prisons do much more harm than good. With the threat of terrorism, if such a prisoner interacts with our prisoners, we will be spreading bad seeds within our prisons. It would be important for such a criminal to be allowed to go and serve his sentence in his country, and that will serve as a way of decongesting our prisons.

In the same breadth, I will not ignore the fact that some of our prisons are in a very bad state and shape. I would like to call upon the Government and also ourselves, as Members of Parliament, to assist those facilities to be places where human beings can stay comfortably. That would be a proper contribution towards growth, correction and trying to make those people change their ways.

The Bill proposes that if somebody is to be given the transfer, he or she cannot appeal the case when they transfer or when they come back to Kenya. That is a very good way of trying to curb corruption. We know that some people can come from another country, come here and appeal their cases and they are let go by our courts. They can also go to their countries and appeal. I like the provision that a person cannot appeal.

Hon. Temporary Deputy Speaker, I like the part which says that a person cannot appeal for the case when they are given that kind of a transfer. This is a very good way forward. I hope that we can speed up its passage, so that Kenyan citizens who are suffering out there, without seeing their families, can be allowed to come back home.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon. Member for Molo Constituency.

Hon. Macharia: Thank you, Hon. Temporary Deputy Speaker. I rise to support this Bill.

I remember watching a programme called *Case Files* in one of the television stations in Kenya. In the programme, there was a lady from South Africa, who is currently serving a term at Lang'ata Women's Prison. The lady kept on saying that it would be very good to see some of her relatives coming to see her. She went on to say that they were poor, and she looked very desperate. She said that she would probably die here without seeing her relatives.

Hon. Temporary Deputy Speaker, this is a very important Bill because currently, I have two constituents who are jailed in China. I have heard that it is better to die than be jailed in China. Being jailed in China is one of the most horrific experiences that one can go through. We know that there are other Kenyans who have been jailed in the Middle East and America. We also know that there are foreigners who have been jailed in this country. This Bill will allow people to continue serving their jail terms in their home countries. It is important because Kenyans who are jailed, for example, the two people I have said have been jailed in China; if they were to come back, they would probably get a chance to get a presidential pardon.

We are also aware of thousands of foreigners who are serving jail terms in some countries, having been fixed by some criminal gangs or having been tricked into crime as they were trying to seek a living. Therefore, this is a God-sent opportunity.

With those remarks, I beg to support.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon. Lati Lelelit!

Hon. Lati: Thank you, Hon. Temporary Deputy Speaker. I support the general principles of this Bill, but we have to be very careful, as a country. We should appreciate that we are not dealing with ordinary people in this case; we are dealing with people who have committed offences and crimes. We are not transferring somebody from a college in the United States of America to a college in Kenya. We are transferring people who have committed crimes of different intensities. Therefore, we have to be very careful about what we are doing.

Hon. Temporary Deputy Speaker, there are obvious merits in this Bill. In my opinion, transfer of prisoners is better served by a treaty framework between countries rather than a legislative framework like the one we have here. On average, criminals are not good people. As much as there are some injustices that might get people to prison, we can say quite honestly that on average, prisoners are not good people. Therefore,

whichever framework we are going to use to make life better for them, it has to be in such a way that we do not try to reduce the punishment that is meant for them. Generally, prisons are supposed to be correctional facilities. Depending on the crime you have committed, be it in Kenya or in the USA, the correctional facility serves you better in the country where you have committed the crime.

When you compare living in a foreign country and knowing that if you commit a crime you can somehow get back to your home country and, on the other hand, knowing that if you commit a crime you cannot get back to your home country, provides an incentive for committing a crime and a dis-incentive against committing a crime, respectively. For example, we get many tourists in this country, particularly in the coastal areas. Imagine that people, for some reason, think that even if they commit heinous crimes, like molesting our children and rape, they can still be taken back to their home countries. I lived in a foreign country. If you know that you will be jailed in that country if you commit a crime, that knowledge serves as an incentive for you to behave well so that you do not languish in a foreign jail.

On the other hand, if you know that even after committing a crime in a foreign land you can get back to your home country, if you are a very bad person, just like some people are, you can think of bad things to do. You can molest a child in Mombasa and then be taken back to the United Kingdom (UK) to serve your sentence there. Such an arrangement takes away the fear of the crime that you are about to commit in a foreign country. Some countries, particularly the western countries, tend to demean our legal system. Everything that is particularly African and the so-called “Third World” is demeaned. Therefore, we have to be careful about the kind of people we are going to release to the western world, because they might get there and get away with the crimes that they may have committed in our country. The westerners think lowly of our own laws.

Hon. Temporary Deputy Speaker, the other thing I noticed here is that we have not defined the level of crimes. We need to establish why you are in prison. We have not defined serious crimes. We must believe in our legal system and appreciate that there are cases which are not transferable. I also conversely believe that countries where our people commit crimes believe in their legal system, particularly regarding crimes that are very serious. Therefore, we have to be very careful about what we are doing through this Bill. It can put us in a position where we might be transferring bad people to our country as much as they may be Kenyans. If one is in jail because of being a serial killer or rapist, why would we want to transfer such a person back to our country? We know the conditions of our prison. Somebody might escape and harm somebody else within the country. We have to be very careful. You can only be Kenyan if you are a well behaved Kenyan. If you are caught selling illegal drugs to children in China or the USA, even though we love you as a Kenyan, we would not want to bring you back home with the same habit simply because we are sympathetic. We can be sympathetic to you as an individual. But are we being sympathetic to others by bringing you back home to continue committing the same crime? If you are a serial rapist and you are caught in the USA, even if you are Kenyan, why should we bring you back home when we know that you can continue committing the same crimes once you are released from Kenyan jails?

Hon. Temporary Deputy Speaker, obviously, there are merits for preferring transfers. We know that, for prisoners, our jails are too congested. We do not want to congest them any further. We would rather decongest them. So, releasing some prisoners to be transferred to prison facilities in their mother country would be a merit. However, if you think of a prison facility as a truly correctional facility where we try to correct people and impart them with skills, so that they can do better in life, what is wrong with having a Kenyan serving a jail term in the USA acquiring skills that we do not have in our country? Since prison is a correctional facility, once released, such person can come back to the country with some skills and end up being a better Kenyan, with transfer of technology.

Hon. Temporary Deputy Speaker, it is good to be home. We want to be a country that loves her people. But I insist that when we are talking of prisoners, we are not talking of college students being transferred from the USA back home. Rather, we are talking of, on average, bad people who have done bad things. They probably need to be punished; be it in Kenya or outside Kenya. I lived in the USA for some years. I always tried to be careful not to commit crimes. I do not find it proper that a Kenyan, as mentioned here, should be caught selling killer drugs in China, and that we should sympathise with such persons and bring them back.

Hon. Temporary Deputy Speaker, Hon. (Ms.) Tobiko wants to speak. Having just arrived from the Philippines, she might be having some good information from that country. Therefore, let me stop at that point. I might support or not support.

Thank you.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Are you supporting?

Hon. Lati: In principle, yes.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Let us go to hon. Member for Suba.

Hon. Members, let us avoid repetition. I know it is a Bill that is limited. Let us get done with the Transfer of Prisoners Bill (National Assembly Bill No. 25 of 2014), so that we can transact other business.

Member for Suba, Hon. John Mbadi.

Hon. Ng'ongo: Thank you, Hon. Temporary Deputy Speaker. I was in some Homa Bay corner here. Thank you for giving me this opportunity to make a contribution to this Bill: The Transfer of Prisoners Bill, 2014. I wanted to start by saying that prisons are correctional institutions. The main reason why we set up prisons is to correct certain characters that we feel need to live differently with us in the society. In this era of international crime, where we are a global village and people move from one place to another, many Kenyans are jailed outside there in other countries sometimes on petty offences, and we would not want a Kenyan to suffer in foreign prisons.

We also get other nationalities; people from other countries come to our country and commit crimes, some of which are so serious that you do not want them to be put in our prisons. You would want them to go back to their countries after sentencing, so that we are not exposed to unnecessary risks. I have in mind those foreigners who come here and commit terrorist activities. The moment you keep them in our prisons then you subject our country to acts of terrorism. Therefore, there is need, as a country, to have a legal framework in place which will help us seek transfer of some of the prisoners whom

we believe are undesirable in our country. It is important that we are providing a law that will allow the Attorney-General (AG) to request other countries where foreign prisoners originate for transfer of the burden of keeping these prisoners and correcting them in their countries. Also, we will have an opportunity, as a country, to allow Kenyans who are imprisoned elsewhere in the world to be transferred back home, so that even their relatives--- Even if you are a prisoner, you still have a society; you still have connections with your family members whom you would like to meet once in a while when they come to see you in the prison.

Therefore, looking at this Bill, and given that we are actualising the provisions of the Bill of Rights in the Constitution – these rights encompass the rights of even those arrested and imprisoned – we want to allow Kenyans to enjoy their rights even in prison. I am particularly concerned about the provisions in the Bill which give the AG too much power, in my view. We need to relook into this matter and determine whether we really want the AG to have these powers. Yes, a prisoner can ask to be transferred whether in Kenya or outside there. Parents, guardians or anybody connected to the prisoner can also request on the prisoner's behalf. The State, that is the AG, can also request. However, the AG has got so much power to the extent of determining certain aspects of the procedure on transfer as an individual. Despite the fact that the AG is a legal adviser to the Government, still as an individual, he can easily abuse excess powers that are given to him. But I am happy that reference is made in the Bill to the fact that the AG has to refer also to the Cabinet Secretaries (CSs) responsible for various aspects; this will connect the prisoner to those Ministries.

I am also concerned about the provision in the Bill that says that you can only be transferred if your case is not subject to appeal. For me, this transfer should not be conditioned on the possibility of appeal or otherwise. If the appeal succeeds, then wherever you have been transferred, you will still be released to enjoy your freedom, or you will still face a fresh sentence. We need to provide in law something that will still allow appeal to proceed; the moment you limit it, you deny these individuals their rights which are enshrined in the Constitution. Therefore, it is my wish that we relook into the provision that only those whose cases are not subject to appeal will be transferred.

The other thing that I wanted to speak to, and which my colleagues have spoken to--- I want to also emphasise that for us, as a country, to even succeed in signing agreements with other countries to actualise the transfer of prisoners provisions, we must continue to improve and reform our prisons. Prison reforms have somehow stalled, in my view. We remember those days when His Excellency Moody Awori was in charge of prisons. We saw the prisons changing the way in which our prisoners were handled. Of late, we have started hearing of cases where prisoners even lose their lives; because of carelessness in the prisons an inmate kills other inmates. That to me is a clear case of carelessness in our prisons. We need to be careful about our prisons.

Prisons are not death dens; they are places where we are supposed to correct bad habits. People change. There are people who have changed in this world. People who, initially, were not very good people have changed. Some people have gone through approved schools. I would not be surprised if I found someone in this House, an hon. Member who went through an approved school. That indicates that at one point that person did not have a very good character, but now that person is an hon. Member; I

assume that to be an hon. Member you must have a good character. Otherwise, why would your electorate elect you to represent them unless they are telling the whole world that yours is a character that they are happy with?

As I wind up, I want again to get back to the point that I started with. I want to believe that Clause 15 (3) states that it is the AG who will decide whether or not consent should be given for the transfer of a prisoner on the terms proposed by the transferring country and notify the transferring country whether consent--- When it comes to matters of determining legal issues, we should not condition it on individual. We need to come up with a committee to be making such a decision because the Attorney-General, as an individual, can expose us, as a country. We have seen cases where the recklessness of State officers has exposed this country. I want to mention something not so related but similar, this is the Anglo-Leasing scandal. The AG's Office has been accused of exposing this country badly in the Anglo-Leasing cases. Supposing the Anglo-Leasing cases were cases of terrorists who wanted to harm this country, the decisions of the AG would have exposed this country to serious harm. I would urge that when we come to amending this Bill, we remove the excess powers given to the AG.

Thank you, Hon. Temporary Deputy Speaker. I support.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Your amendments are welcome in the House. The House will decide in the next stage of the Bill. Let me appreciate your contribution and the request by the Hon. Member for Kajiado East Constituency, Hon. Peris Tobiko.

Hon. (Ms.) Tobiko: Thank you, Hon. Temporary Deputy Speaker. I rise to support the Bill because it is of good intent to protect all Kenyans equally.

Earlier on, the Hon. Member for Narok North, Hon. ole Kenta, spoke and I agree with him. I am not sure whether it is a case of putting the cart before the horse in this Transfer of Prisoners Bill. Last night, we came as members of the Departmental Committee on Labour and Social Welfare from the United Arab Emirates (UAE), having visited the country because of our migrant workers; we also visited Manila City, Philippines, to see the policies they have put in place in the protection of their citizens in foreign countries. What we got to learn there is that Kenya is yet to sign bilateral agreements with other nations. When we talk about prisoners, or Kenyans in prisons abroad, and we are not even putting the necessary policies and agreements in place, then I feel like we have started the process from the back coming forward. It is a good Bill either way and we support it.

I also believe that from what we learned for a whole week in those countries we need to put the necessary labour laws in place to protect Kenyans who migrate to other countries. We also realised that for Kenyans who have left the country, our system has not made a follow up to know who has left the country, even through migration. So, we have 40,000 Kenyans in the UAE but nobody can really account for them. An earlier speaker said that we have 17 in prison. Yesterday we were told that we have around 22 in Dubai and several in Abu Dhabi; there are more. We are not monitoring the movement of Kenyans as we should.

I also agree with the Bill that it is important to seek the consent of the prisoner, and know if he or she wants to be brought back to the country or not. They will have to weigh whether it is the family ties that are stronger than the environment that they are

going to live in. We know the way our facilities look like right now. Our correctional facilities are in deplorable conditions. It is sad that the Executive has not given enough attention to these facilities. Not long ago, I visited the GK Athi River Prison to just see what was going on there, how our Kenyans were being handled and what there was by way of facilities. I was shocked that prisoners were almost in celebration that a Member of Parliament had visited them; the last time they had a dignitary visiting them was when ole Oloitiptip visited the facility, and that must have been a long time ago. We have neglected our facilities, and so it is very difficult to understand why we want to bring back those who are abroad when, maybe, they are in better environments.

I agree with the earlier speakers about Clause 36 (1) which states that the AG can grant amnesty. This will compromise the spirit of this law. We would not want to give exceptions after a judgement has been passed and somebody has been imprisoned. It is only fair that they serve their full term.

I agree that it is important that we follow up on Kenyans leaving the country. We should have some form of pre-departure training for these Kenyans. They should know the countries they are visiting. Those going to the UAE should know a bit of Sharia law and understand it. It is also good to encourage these Kenyans to speak some foreign languages or learn a little of, say, Arabic. It will make their stay in those countries a lot more comfortable.

The situation out there is so bad. Before we left the UAE yesterday, we had to do some fundraiser for young Kenyan girls who had gone there as house-girls. They are suffering; they were crying, and the Consulate had no money to take care of them or bring them back. We had to do some fundraising as Members of Parliament to see that three of them were brought back into the country, because they were going through a lot.

We must also ensure that any Kenyan who leaves the country through our airports, or whichever avenue, to go to other countries are people who will brand Kenya. We must also be able to vet the character of Kenyans leaving the country. If they are persons of dubious character, they must not leave this country. Let us hold them here, deal with them here and let Kenyans who can do better branding of our country leave it.

We were told in the UAE that Kenyans who could get better jobs are being locked out because of the number of house-girls who are going there. If I were asked, I would say we should discourage the going out of Kenyans of such low status, who have not even received training. A girl comes from Keroka to Nairobi for the first time, goes to Jomo Kenyatta International Airport (JKIA) to transit to Dubai or to other places the same day. This is a Kenyan who has not even known how to handle a microwave, or a washing machine and they are going to serve out there. We had better allow Kenyans who have qualifications to go out and do better and dignified jobs, so that we are not known as the good State that produces a lot of house-girls who are treated more like slaves and not workers.

I support the Bill. I also believe that some amendments to add value to the Bill would be proper.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Thank you for the experience from your visit. I am sure taxpayers' money was not badly used. Member for Siaya, Hon. Christine Ombaka.

Hon. (Ms.) Ombaka: Thank you, Hon. Temporary Deputy Speaker for this opportunity. I would also like to add my voice to this Bill concerning the transfer of prisoners back home.

First and foremost, what I have observed is that Kenyans leave for countries abroad for various reasons. They go to study, to work while others just go to visit. They end up sticking there. They may not get jobs there and, therefore, commit crimes there. The crimes that I imagine warrant to be considered as cases for transfer are murder, serial rape cases, and burglary. I fail to understand what kind of crime would require a Kenyan abroad to be transferred here. A crime is a crime. If the prisoners are abroad, I would wish that they finish their term there. After that they can come back home. Normally, what I see happen is that Kenyan prisoners, as soon as they finish their prison term, are repatriated back home straightaway because they are no longer needed there. After all they are seen as criminals or people whose life even prison has not changed. They tend to be repatriated immediately they are released from prison.

What we have failed to capture in our system is the kind of people who go abroad, and whether or not the Kenyan Government knows that they are there. A lot of them do not even report to the embassy. A lot of them live abroad, but the ambassador or the consulate, in that area has no idea that there are Kenyans there. Two weeks ago, I was in the UK monitoring elections. When we paid a visit to the ambassador and asked him whether it was going to be possible for Kenyans living abroad to participate in elections he said that can only be possible if all Kenyans abroad register at the embassy. He said that he did not know many of them because they arrive in the UK and then disappear. The embassy is not aware of where many Kenyans live in the UK. That in itself is a problem. When a Kenyan is imprisoned out there, the ambassador should know. He should know that there is a Kenyan who has committed a crime, is imprisoned and needs to be transferred to Kenya. The system that should make the ambassador aware of all Kenyans who are there is not in place. We need to start from there. All Kenyans should register or make their presence known at the embassy, so that whatever happens to them the ambassador can take action and facilitate their coming back home. That is where we have a problem.

My second issue is this: If you transfer a criminal back home, what happens to the status to them once the prison term is over, especially if that criminal had a Green Card? When a person has a Green Card it means that the person is a resident or a citizen of a foreign country to some extent. The person has some right to be in that country again. When we transfer them here, will they go back to those countries when they finish their jail term here? In many cases they may not get a visa to go back because they will not have a good record. Therefore, this matter needs to be clarified in this Bill. Will they still enjoy the liberty to travel and be in those countries? Will they be guaranteed a visa? Will they visit? Will they live in the UK, USA and many other countries apart from the Middle East? Who will want to come home to be imprisoned here from the UK or USA? I think that opportunity must be available; whoever wants to come home and be imprisoned here should be able to do so. That choice will be theirs; but the question is: Will he come with his entire family and how much will it cost us? How many Kenyans out there are committing crimes that require them to be repatriated? We need to look at the money part of it and the family part of it. We also need to establish how many

Kenyans are abroad and whether or not they are registered with the Ministry of Foreign Affairs. The question is whether or not we can track them down. Americans are very good in knowing where their citizens are. They are very smart in knowing that their citizens are suffering in another country, and they act quickly to rescue them. Do we have such a system? I believe that we do not have such a system.

This is the time this Bill is going to raise many issues; we will need to know where our children and grandparents are, so that we ensure that they are safe wherever they are. What I know is that Kenyans love living abroad, whether prisoners or not. They simply love living abroad, settle and own property there. If you transfer a prisoner to Kenya because he is a Kenyan, how about his family? Are you also going to transfer his family? How costly can that be? In a way we need to understand the cost of transferring a prisoner. How much will it cost the Kenyan Government to transfer prisoners? How many will they be in a year? We need to start budgeting along those lines. How about their families who live in foreign countries? Do you want to transfer the criminal only or the entire family? Those are the challenging issues that I see emerging in this Bill; we need to ensure that this is a good Bill. Otherwise, we need to protect Kenyans abroad. In some cases, there may be no need to transfer them here, because the prisons over there will be already taking care of them.

The few Kenyans I have met abroad seem to love living abroad even if they are prisoners. They still enjoy being there. They do not want to come home. They simply associate home with suffering and hardship. So many of them would rather stay there and enjoy prison life.

Hon. Anyango: Thank you, hon. Temporary Deputy Speaker. This is a very important Bill and, in fact, it is overdue. I would like to thank the Leader of the Majority Party for speeding it up for consideration.

I want to support this Bill by first saying that Kenyans are our responsibility. The good, the bad and the ugly of Kenyans is our responsibility. All those Kenyans are our duty. It is up to us to make them good citizens, if they turn out to be bad citizens. As of now, Kenyans are going all over the world. You get shocked when you land in a small country, say an island in the Caribbean and you find Kenyans there. We are going to have to encourage Kenyans to go all over the world to seek whatever opportunities are available there. However, they remain our responsibility. We have a new Constitution which has privileges and rights that may not be available in so many other countries. It is really the choice of the criminal who has been jailed in another country, particularly those who have been jailed for life, or are due to be hanged in those countries according to the different laws that may exist, and that may be required where we have a bilateral exchange programme to bring Kenyans back home. We need to give examples to our people. We need, for instance, to tell our people: "Your mother was selling cocaine in Thailand and she was arrested. She was going to be hanged in Thailand, but we have negotiated and she has come back home. Please, be aware that anybody you know who is selling drugs anywhere in the world is committing a crime; be far away from such a person."

However, if terrible criminals, who are products of our own cultural systems and socio-economic challenges are jailed in, say, China and we do not get to see or hear from them, what lessons do they give us to help us strengthen our correctional services, which

we have committed ourselves to as a basis for the management of our own prisons? Let them come back. Let it also be known that we have rescued so-and-so out of a terrible crime. When you only hear that somebody has been jailed in Bangkok, and you do not have a chance to go and see that person in prison, you do not have a chance to contribute to the rehabilitation of that person. In fact, you have not learnt enough from that crime. In a society, there is a principle that I have come to accept. It is that you can only know a good person after you have seen a bad one. You will only know a bad person if you have an opportunity to see a good one. So, these people have roles they play in our society. So, let our bad ones come back to be lessons to our good ones, so that they do not cross the border to become bad in future in their efforts to earn a living.

I support this Bill. It is really a very helpful Bill. I have a person I know who has been selling drugs, but other people do not know about it. That is they betray one another. I am talking about a widow. Somebody took advantage of the widow, gave her drugs and then she was betrayed in Bangkok. She is now awaiting hanging in Bangkok. Honestly, some of them have been cheated into committing crimes. Not that they knew fully what they were getting into, but they thought they were friends of some Nigerians; they thought those people meant well. She did not know that somebody was on the same plane with her all the way to Bangkok. When she was arrested the person ran away. So, some have landed in crime out of deceit by other hardcore criminals.

For the prisoners who will qualify for transfer, this Bill provides the process through which their rehabilitation and return will be handled. Each case will be examined on its own merit. The previous practice was that one's relatives had to make a request, which was then examined. Maybe we should even get an undertaking from the prisoner. I know of a bishop who is not afraid of mentioning that he was a hard-core criminal. He is Bishop Ng'ang'a. If we can have more Ng'ang'a's converted to come and preach to our criminals, it will strengthen the correctional service principles that we have committed ourselves to. It is possible for human beings to change. It is possible for behaviour to be corrected. Let us accept that all Kenyans, wherever they are, are our responsibility.

With the passing of this Bill, we must have a registration process in our laws. This will enable Kenyans who arrive in a foreign country where we have an embassy to register and provide their addresses in those countries. You do not have to physically go to the embassy. You can always register online, so that we are able to monitor and know which Kenyans are in which country and what they are doing.

That brings me to those who have gone to look for jobs elsewhere, particularly in the Middle East, where cultural practices are different and discrimination is still rampant. Exit to go and seek employment elsewhere should be after proper orientation in our country. It should be mandatory that anybody who is going out under an employment arrangement has to go through a scheme approved by the Government. We must also know who is going to be the employer. We must have that in our bilateral agreements with other countries. If you are going to seek any qualified labour from Kenya to go and work in your country, there are certain procedures that you have to go through. We must know the employer and his or her address, so that if a Kenyan is going to suffer in the hands of any employer then our embassy can access the authorities in that country to save the Kenyan.

At any time, we should be able to learn from what the Americans do. When they realize that Kenya is in a crisis they will be the first ones to call all their citizens in Kenya to the Jomo Kenyatta International Airport (JKIA) and airlift them back to the US. It is possible for us to also provide mechanisms for knowing who the Kenyans in a place are and what they are doing there. It is still our duty to ensure that Kenyans in trouble are comfortable wherever they are. If they fall in the wrong hands and get into prison, this law is going to be very useful in getting them back to our country, if they so wish. If you want to die abroad, welcome. It is your choice. You can go ahead. Leader of the Majority Party, this Bill should have come much earlier.

Thank you very much.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): I call upon the Leader of the Majority Party to reply. Indeed, you are the last one on my request list.

Hon. A.B. Duale: Thank you, Hon. Temporary Deputy Speaker. At the outset, I want to thank my colleagues who contributed immensely to this very important and timely Bill. This is a very important Bill. My senior, Hon. Dalmas, was not in the House. This is one of the Bills that when I walk on the streets of Nairobi, I am reminded about. Even in December when I visited Nakumatt Junction, very elderly members of our society accosted me because they follow the calendar of Parliament. They said: “Hon. Duale, tell your colleagues and the Speaker to pass that Transfer of Prisoners Bill.” There are many of our people, as Hon. Dalmas has said, who are languishing in jails in Europe, Asia, China, the Americas, Africa and even within the East African region.

Prison is a bad place, but I am sure far-land prison is worse. All that this Bill is doing is to allow our citizens, who are jailed in other countries to have the opportunity to serve their sentences in their own country and locality, and allow other countries, if they have their people who are serving in our jails, to also have the same opportunity. So, I am happy today. I have asked my colleagues that we finish the Second Reading today and do the Committee Stage early next week so that before the end of this month, this will be a law after the President assents to it.

I am sure the Attorney-General (AG) and the Cabinet Secretary (CS) for Interior and Coordination of National Government can pick from there. Our citizens and their family members can use the law that this House is going to provide to fill the required applications for their loved ones to come and serve sentences in Kamiti, Kodiaga, Manyani or in a prison in Garissa. This will enable them to have Kenyan food, enjoy the Kenyan weather and the spiritual guidance offered at our prisoners, so that their loved ones can visit them.

Thank you, Hon. Temporary Deputy Speaker. I beg to reply.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Thank you, Leader of the Majority Party. Hon. Members, we are not in a position to put the Question. I order that the Question be put in the next sitting, at the most appropriate time. This is because of the obvious reason that we are all aware of, and that the Leader of the Majority Party needs to work on.

Next Order!

MOTIONS

REPORT ON THE STATUS OF IMPLEMENTATION
OF HOUSE RESOLUTIONS

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Chairperson of the Select Committee on Implementation, can I see you? It can only be moved by the Chairperson or delegated Member. Do I have that communication? Hon. Members, the Chairperson of the Select Committee on Implementation is not in the House because of the meetings outside and no communication to that effect is with the Chair. So, I defer Order No. 14 on the Motion on the Report on Status of Implementation of House Resolutions.

(Motion deferred)

ADOPTION OF SPECIAL REPORT ON RESTRUCTURING
OF KENYA PETROLEUM REFINERY LIMITED

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Again, hon. Members, the Chairperson, Public Investments Committee (PIC) simply because of the deferment of Motion No. 14 is not able to move it. He is not in. I order that we also defer it.

There is a point of order from the Leader of the Majority Party.

Hon. A. B. Duale: Thank you, Hon. Temporary Deputy Speaker. I want to go on record on the HANSARD that Order No.14 was supposed to be moved by Hon. Soipan. She was in the House this afternoon.

Secondly, Order 15 is supposed to be moved by Hon. Adan Keynan. Last night in the House Business Committee (HBC), we decided to deal with reports of committees. A decision was made to give more weight to reports.

I want to go on record that the Chairpersons must be very serious. I had to stay around to make sure that I reply to my Bill. You need to give guidance and make a communication because if the Chairperson is away, the Vice Chairperson should not be away. If the Vice Chairperson is away, a member of that committee can move the report. This is not fair to Parliament and to the Kenyan citizens because these reports touch on individual citizens and institutions. The Petitions and the Reports are what Kenyans are waiting for.

Following the decision of the HBC, the Order Paper is on the website 24 hours before the sitting of the House. The Clerks of those committees are under obligation to notify their Chairpersons and Vice Chairpersons that their agenda is on the Order Paper. They must prepare notes and come to move, so that Members can contribute. However, it looks like we might be going early today by 35minutes just because one or two Chairpersons abdicated their role. As the Leader of the Majority Party, I am protesting because I should have been given an opportunity to bring Government agenda since I am always prepared. So, if Chairpersons are not ready, then there is an opportunity and I am sure that the Leader of the Minority Whip is here. He was with me last night in the HBC. We cannot put reports on the Order Paper and then Chairpersons and Vice Chairpersons decide to take the House for granted. I am sure that a communication will be given by you or the substantive Speaker.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Thank you, the Leader of the Majority Party. As I told you before, it is important that we observe the procedures of the House; Order No. 14 has been deferred because the Chairperson, Select Committee on Implementation, is not in the House. The Leader of the Majority Party has confirmed that she was in. It is important that when we are given the positions of Chairpersons we respect our positions. If we are not available in the House, we are allowed even to delegate our duties, so that we can transact business in the most appropriate manner. I am an official communication will be given to this House relating to the Chairpersons of the committees.

As a member of the HBC, I can confirm what the Leader of the Majority Party has said is true. We should be a bit serious. Let me hear one more comment on the same from the Minority Party Whip, Hon. Thomas Mwadeghu, before I call the next Order.

Hon. Mwadeghu: Thank you, Hon. Temporary Deputy Speaker. I concur with the views expressed by the Leader of the Majority Party on this particular issue. We were together in the HBC last night and we really pressed for these reports to be handled, so that we may do away with them as soon as possible. They have been piling pressure on the HBC to allocate time for these reports. It is my sincere hope that Chairpersons will heed the views expressed not only by the Leader of the Majority Party but also by the Minority Party Whip; I am concerned.

I am a member of the Public Investments Committee (PIC) and we would have moved this report and discussed it. I have been pushing for these reports to come to the Floor of the House and the Leader of the Majority Party concurred with me last night. I have really been pressing hard for these reports. It is my sincere hope that these reports will be dispensed with as soon as possible, so that we may do away with them, otherwise we have wasted time. We would have given the Leader of the Majority Party time to bring a Government business. Nonetheless, most likely, they assumed that we would not reach this particular stage. That was the assumption. We know that under the Standing Orders, it was their responsibility to make sure that they were here. They present their reports but they have squandered this opportunity. I believe that we will plead with the HBC to see if they can allocate them time next week, so that we can do away with these reports.

With these few remarks, I beg to concur with the views expressed by the Leader of the Majority Party. Thank you, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Thank you. Let me hear the views from Hon. Dalmas Otieno.

Hon. Anyango: Thank you, Hon. Temporary Deputy Speaker. Honestly, you are even asking for more Members to be brought to this House to complete the one-third gender rule. This House has so many committees with Chairpersons who are paid to lead this House. They are part of the leadership of this House. All of them are members of the Leader of the Majority Party's coalition. Not even 50 per cent of them are here.

Hon. Temporary Deputy Speaker, you are chairing an empty House. We were trying to be disciplined by not raising the quorum issue, and so that the public does not think that we are becoming irresponsible. We should be blunt, Leader of the Majority Party. We have to find other mechanisms of ensuring that Members attend to House business. We still have eight items and each of them is very important to this country.

There are policy papers and reports that are remaining. We are getting the impression that the large majority of the Jubilee Alliance is a useless majority because the Opposition are learning from you. If you are not interested in the business brought by your party, you do not expect much support from us. These are serious policy items in the business of the House; we expect detailed ideas from the Jubilee Members of the House.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Let me hear the point of order, though this is not a debate. We are just hearing the sentiments of---

Hon. Anyango: Hon. Temporary Deputy Speaker, how do you allow him to rise on a point of order when I am on a point of order?

Hon. A. B. Duale: Hon. Temporary Deputy Speaker, he is totally out of order.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): It is just a discussion. We are not debating.

Hon. A. B. Duale: Hon. Temporary Deputy Speaker, my good friend and senior, has not looked at the Order Paper. At Order Nos.13 and 14, the Chairman of PIC belongs to the Opposition. He is not a Jubilee Chairman. It is not about Jubilee or Coalition of Reforms and Democracy (CORD) matter. We are dealing with the 11th National Assembly of the Republic of Kenya. Chairpersons of committees report and work under the Directorate of Committees. The functions of the Leader of the Majority Party under Article 108 of the Constitution do not include the daily running of committees. It is a collective responsibility. However, I agree with him that the House is empty.

I also want him to note that as he looks at the speck in the eyes of the Majority Jubilee Coalition, the Minority Party that we gave the two serious oversight Committees of PIC and Public Accounts Committee (PAC) is not doing very well, especially when we look at the circus that was in Hon. Ababu Namwamba's PAC.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Thank you. Leader of the Majority Party; we can argue and argue on this one but Members, what is coming out is that it is not about where the Chairperson comes from.

Let me direct you; if you look at Order No.14, it does not say from which side the Chairperson is from. From where I sit, I may not want to say much on Order Nos.14, 15 and 16. For Order No.14, the Chairperson is from the side of the Leader of the Majority Party – if I can call it that - but what is important is that it is about the Chairpersons of committees. That is why I am giving you some minutes to ventilate on the same. It is about their absence. I am sure if the Chairperson of the Select Committee on Implementation was here, we would have dealt with Order No.14.

Order Nos. 15 and 16 are Motions by the Chairperson of the Public Investments Committee, who is not present; they are going to be deferred. I will only give one chance so that we can move. I have listened to your sentiments. I report that there is an official communication that was given by the previous Chair; the substantive Speaker communicated to Members. Of course, we have had leadership meetings for Members of the House Business Committee (HBC). This issue has been discussed not once or twice, but repeatedly - how Chairpersons of Committees should conduct themselves in this House, especially when transacting business. For us to move, I agree that an official communication will be given on this.

Thank you.

(Motion deferred)

Let us move to the next Order. Order No.15 will not be transacted because I cannot see the Chairperson.

So, we move to Order No.16.

ADOPTION OF NINETEENTH REPORT OF
PUBLIC INVESTMENTS COMMITTEE

THAT, this House adopts the Nineteenth Report of the Public Investments Committee (PIC) on the Audited Financial Statements of State Corporations (Volume I & II), laid on the Table of the House on Tuesday 31st March, 2015.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Again, the Chairperson of the PIC, from where I sit, is not in the House. So, I order that we defer the Motion.

(Motion deferred)

ADOPTION OF SESSIONAL PAPER ON NATIONAL PRODUCTIVITY POLICY

THAT, this House adopts the Sessional Paper No.3 of 2013 on the National Productivity Policy, laid on the Table of the House on July, 17 2013.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): The Leader of the Majority Party, are you ready?

Hon. A.B. Duale: Hon. Temporary Deputy Speaker, I am ready but because you deferred three other Orders, that is Order Nos.14, 15 and 16 and looking the time they were allocated time, I anticipated that my Sessional Papers, beginning with Order Nos.17, 18, 19, 20 and 21 would not be reached. I seek your indulgence that I prosecute them in next sitting of the House, and that in future my business should come first so that I can have enough time to play my part. I assure you that I am ready for Order Nos. 17, 18, 19, 20 and 21. I will dispose of them in the next sitting of the House.

These Sessional Papers are very important. They touch on the basic lives of the people of Kenya. I agree with Hon. Dalmas Otieno that these are some of the things that will make this House be full. For example, look at Sessional Paper No.3, it talks about the National Productivity Policy. The next one is the Employment Policy and Strategy for Kenya. All the cases in the Middle East are discussed in this Sessional Paper. Look at the one that talks about---

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Leader of the Majority Party since we had called for Order No.17 which is a Motion let us dispense with it and then the rest can go to the Clerk.

Hon. A.B. Duale: Hon. Temporary Deputy Speaker, I want to make your work easy. They all belong to me. I am not ready to move them at this hour.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Let the Clerks-at-the Table call for them, so that I can tell which Motions they are. But Order No. 17 had been called, and the Leader of Majority has given his position.

(Motion deferred)

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Next Order just for the HANSARD purposes.

ADOPTION OF SESSIONAL PAPER ON EMPLOYMENT POLICY AND STRATEGY

THAT, this House adopts the Sessional Paper No.4 of 2013 on the Employment Policy, laid on the Table of the House on July, 17 2013.

You can just read out all of them. We have deferred them since the Leader of the Majority had already expressed himself.

Hon. Manje: On a point of order, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Let me get the point of order. I can tell you there is nothing out of order. Make sure it is a point of order.

Hon. Manje: On a point of order, Hon. Temporary Deputy Speaker. I want to say that as a Member for Kajiado North Constituency representing my people, I was ready and prepared to contribute to most of these Sessional Papers. The Chairpersons of the various Committees have let us down. I also want to state that I left a very serious appointment to come and contribute in this House. In the future, let them be ready and present---

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon. Member for Kajiado North Constituency, let us not go back. Since we have already said that we are going to give a communication, let us allow the communication to come.

Next Order!

(Motion deferred)

ADOPTION OF SESSIONAL PAPER ON NATIONAL SOCIAL SECURITY PROTECTION
POLICY

THAT, this House adopts Sessional Paper No.2 of 2014 on the National Social Security Protection Policy, laid on the Table of the House on 17th June 2014.

(Motion deferred)

ADOPTION OF SESSIONAL PAPER ON NATIONAL POLICY FOR
PEACE BUILDING AND CONFLICT MANAGEMENT

THAT, this House adopts the Sessional Paper No.5 of 2014 on the National Policy for Peacebuilding and Conflict Management, laid on the Table of the House on 31st July 2014.

(Motion deferred)

ADOPTION OF SESSIONAL PAPER ON NATIONAL COHESION AND INTEGRATION

THAT, this House adopts the Sessional Paper No.9 of 2014 on the National Cohesion and Integration, laid on the Table of the House on 31st July 2014.

Hon. Members, Order Nos.18, 19, 20 and 21 as called out are Sessional Papers. As expressed by the Leader of the Majority, since they are Sessional Papers for him to move, given the discussion that we have had and the position taken, we are not ready to transact business on the same. So, I defer the Motions.

(Motion deferred)

ADJOURNMENT

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Order, Hon. Member! This is a House of rules and procedures. There being no other business and the time being 6.12 p.m., the House stands adjourned until Thursday, 11th June 2015 at 2.30 p.m.

The House rose at 6.12 p.m.