

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Thursday, 5th June, 2014

*The Senate met at the County Hall,
Parliament Buildings at 2.30 p.m.*

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

PRAYERS

STATEMENTS

The Temporary Speaker (Sen. (Dr.) Machage): Hon. Senators, according to the Order Paper today, we are supposed to be getting a Statement from the Leader of Majority. Where is he?

Sen. Kivuti: Mr. Temporary Speaker, Sir---

The Temporary Speaker (Sen. (Dr.) Machage): Are you the Leader of Majority?

Sen. Kivuti: I want to request that I undertake to inform him that you are looking for him.

The Temporary Speaker (Sen. (Dr.) Machage): Very well, you are a nice citizen. So, you can take five minutes.

Sen. (Dr.) Khalwale: On a point of order, Mr. Temporary Speaker, Sir. This is the one Statement that never misses and it is the one that gives direction to this House on what we should anticipate for the coming week. The person who is not here is none other than the Leader of Majority. You saw that at the beginning of the week, we complained about the absence of the entire Government side in the Senate. Today, the entire Government side is only represented by one Member and the Leader of Majority is not there. Is the Government still committed---

The Temporary Speaker (Sen. (Dr.) Machage): Order, Sen. (Dr.) Khalwale. I think you need a second pair of spectacles to be able to count well. Count. How many are they?

Sen. (Dr.) Khalwale: They have just walked in. Thank you for the correction. But could we be told if the Jubilee Government has now decided not to factor the

legislature in discharging its functions of running the affairs of the Republic of Kenya? This is very serious.

The Temporary Speaker (Sen. (Dr.) Machage): Who do you want to tell you that?

Sen. (Dr.) Khalwale: None other than the Leader of Majority but since he is not there, I do not know what to do. You could compel him, if he comes at a later time, to tell us.

Sen. Bule: On a point of order, Mr. Temporary Speaker, Sir. The current speaker says that the Jubilee Government had only one Member. He only counted one person.

The Temporary Speaker (Sen. (Dr.) Machage): We say “the current Member” and not “the current speaker”.

Sen. Bule: The current Member on the Floor said that he only saw one Jubilee Member, why is he not counting the other Members?

The Temporary Speaker (Sen. (Dr.) Machage): Order. I have already ruled on that.

Any information about the whereabouts of the Majority Leader? I give him the benefit of doubt. We can wait for a few more minutes because this is an important communication. I will address it again later.

Chairperson, Standing Committee of Agriculture, Livestock and Fisheries!

Sen. Ndiema: Mr. Temporary Speaker, Sir, I do not know whether the Senator who sought this Statement is here.

The Temporary Speaker (Sen. (Dr.) Machage): Who is the Senator?

Sen. Ndiema: It is Sen. Kittony.

The Temporary Speaker (Sen. (Dr.) Machage): The Order Paper is usually released to you many hours before the sitting. I believe every Member either through their laptops or printed copy have been able to see the Order Paper in the last about 12 hours. The question so sought belongs to this House. I find compelled not to consider the absence of the Member in view of the current situation of the House. I would rule that you continue.

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

MEASURES TO ADDRESS CHALLENGES FACED BY FARMERS IN THEIR ENGAGEMENTS WITH THE NCPB

Sen. Ndiema: This Statement is a response to a request by Sen. Kittony on transformation of National Cereals and Produce Board (NCPB) and specifically the request was on three items namely:-

(i) an explanation as to the measures that are being taken to address the systemic challenges within NCPB;

(ii) an explanation on the measures being taken to re-engineer and transform NCPB operations both as a supplier of last resort and a custodian of the country's strategic grain reserve;

(iii) an explanation on the measures being taken to cushion farmers from adverse suffering from erratic market forces.

Mr. Temporary Speaker, Sir, the mandate of NCPB is:-

1. commercial trading in grains;
2. provision of commodity handling and grain related services;
3. procuring and marketing of high quality farm inputs;
4. provision of storage and grain maintenance services to clients; and,
5. provision of information on national and international grain trading.

Mr. Temporary Speaker, Sir, the challenges faced by maize stakeholders are:-

- (i) post-harvest losses due to rotting and aflatoxin contamination;
- (ii) high cost of production, that is, high cost of fertilizers, seeds and land preparation;
- (iii) maize lethal necrotic disease;
- (iv) late or delayed payment to farmers by NCPB; and,
- (v) low productivity.

Regarding the specific issues, that is, measures being taken to address the systemic challenges within NCPB, the national Government through a consultancy firm; Ernst and Young, has conducted a study on restructuring of NCPB to make it more efficient and responsive to farmers. The study proposes the separation of the social and commercial functions of the Board. The social functions which include the strategic maize reserve and the famine relief will be under the Department of Agriculture and the Directorate of Special Programmes respectfully while NCPB retains the commercial function.

On the measures proposed to re-engineer and transform NCPB operations both as a supplier of last resort and a custodian of the country's strategic grain reserves, in the structured set up, the following entities and their functions have been proposed.

(a) Grain Regulatory Commission of Kenya – The overall role will be to ensure a competitive and efficient grain sector to protect investors maintain market integrity in a fair, orderly and vision manner and to facilitate grain production.

(b) National Food Security Agency – This will be a strategic Government agency complete with its own governance and board of directors. The functions will include; formulation of food security policy, monitoring grain market prices, determination of optimal strategic grain reserves scope, assessment of food security along the strategic grain reserves supply chain, improvement of the rotation and management of the strategic grain reserves, strengthening policy linkages with county governments and other food security stakeholders.

(c) Discussions are going on to establish the commodity exchange in order to decontrol the grain sector for the country to move forward in overcoming the problems facing farmers and millers and organize the market.

(d) Transformation of NCPB to a Grain Corporation of Kenya. The key functions of this body will include management, operation, development and maintenance of grain handling and storage infrastructure.

(e) Commercial trade in grain and farm inputs. Other commercial services such as use of weighbridges, grain drying and cleaning, quality control, aflatoxin testing and grading, pest management and fumigation. It will also partner with county governments to enhance food security through development and management of grain storage facilities.

Mr. Temporary Speaker, Sir, regarding measures being taken to cushion farmers from adverse suffering from erratic market forces, these include timely disbursement of funds – the national Treasury has been releasing funds for strategic maize reserve purchases for farmers early enough before harvesting starts. In the last two years, the national Government has allocated Kshs3 billion in each year for maize purchases. By purchasing maize at Kshs3,000 per 90 kilogramme bag through the NCPB, the Government ensures that farmers get good returns for their produce and protect them from exploitation by middle men whose prices are lower. The reviewed legal notice No.55 of 2002 that established the Strategic Grain Reserves is already being forwarded to the Treasury.

Mr. Temporary Speaker, Sir, on the issue of policy direction to enhance Strategic Grain Reserves to eight million bags of which four million bags are in physical stock while the remaining is in cash equivalent and also to include rice, beans, powdered milk, canned beef and fish products as part of food reserve.

The other measure is that the Ministry has been working with other stakeholders to have a structured market for maize through the warehousing receipt system. The draft Warehousing Receipt System Bill is already awaiting the approval of Parliament. This will give an alternative market because maize and the millers will no longer dictate the prices. It is envisaged that when the warehousing receipt system is fully operational through NCPB and other private sector stakeholders, it will help producers in storage of their maize when there is surplus.

Mr. Temporary Speaker, Sir, the other measure is commodity grain stores. The said Department of Agriculture has been mobilizing farmers to adopt the aggregation and cereal bagging concept which enable small-scale farmers to have a collective bargaining platform in the maize market and also attract direct buyers rather than relying on brokers.

The Ministry has partnered with the World Food Programme (WFP) through the initiative of purchase for progress to mobilize the small-scale farmers through training and assistance in store construction and aggregation of produce to access alternative markets such as WFP and schools, among others.

The Government's policy is to ensure that farmers fully benefit from their work through establishment of structured markets. Other measures to address challenges within the maize sector include establishment of maize driers to be available to farmers to prevent the maize from contamination.

With those few remarks, I wish to conclude.

The Temporary Speaker (Sen. (Dr.) Machage): Very well. Any interventions?

Sen. Khaniri: Mr. Temporary Speaker, Sir, the NCPB was established not only to cushion the farmers from the erratic market but also to ensure that farmers get their farm input whenever they need them and at the right time. It is quite clear that NCPB as it is now has failed in its responsibility because these are its core responsibilities.

Listening to the Statement from the Chairman of the Committee on Agriculture, it is also clear in my mind that this Government has no proper plans to restructure NCPB and this Government does not care about the Kenyan farmer. I do not think this Statement has addressed the issues raised by Sen. Kittony. My question to the Chairman is; NCPB stores are so sparsely populated and especially so in areas that rely on farming like the county that I represent in this Senate. Could the Government consider establishing an NCPB store in each and every sub-county to begin with so that farmers can access the inputs required and get market for their produce?

Sen. (Prof.) Lonyangapuo: Mr. Temporary Speaker, Sir, adding to what Sen. Khaniri has asked, I do not know whether the Chair is aware that NCPB was supposed to have assisted farmers in bringing fertilizers but ended up bringing a different brand of fertilizer that if you go to Trans Nzoia, parts of West Pokot and Uasin Gishu, maize is not growing because some strange brand of fertilizer was brought. It is called 2323 and 1717. They also declared what we normally use as unfit for the soil. I want to know whether the Committee is aware. I am a farmer and I am completely affected.

The Temporary Speaker (Sen. (Dr.) Machage): You have executed your question adequately.

Sen. (Dr.) Khalwale: Mr. Temporary Speaker, Sir, under the new Constitution, agriculture is devolved to the county governments. Could the Chairman indicate to us what structural amendments the Government is undertaking in the NCPB so as to make it to accord with the new Constitution?

Finally, the Government has been presiding over serious corruption within NCPB. Could the Vice Chairman tell us what the Government is doing to rid NCPB of corruption?

The Temporary Speaker (Sen. (Dr.) Machage): You can take those four.

Sen. Ndiema: Mr. Temporary Speaker, Sir, I would like to respond on the issues. First, I wish to cede that indeed the Ministry concerned has adequately planned to ensure that the services provided by NCPB are effectively executed. That is why there are those restructuring programmes going on. As you may realize, there was an improvement this season because fertilizer was available for farmers in good time. It may not have been adequate but at least, I can confirm that it came in good time.

Regarding the issue of stores which are not adequate, I think this is a genuine concern and I agree that stores should be in every county or sub-county not necessarily for production but even for storage in maize consumption areas so that we avoid a

situation where in handling the maize is contaminated or delayed in reaching the consumers.

With devolution, I believe there is an opportunity now for the counties because agriculture is a function of the counties. They also need to start putting up stores. I am aware some counties have already put in place programmes or plans to put up grain storage facilities in their counties in addition to the one held by NCPB. I believe the national Government will support the counties accordingly as I had earlier mentioned.

Mr. Temporary Speaker, Sir, regarding the issue of the fertilizer as raised by Sen. (Prof.) Lonyangapuo, these fertilizers; 2323 and 1717, are not new in the market. They have always been provided to farmers every year in addition to the most popular one called DAP. It is often provided but it is the choice of farmers to choose whether to go for DAP, 2323 or 1717. The effectiveness and efficiency will also depend on the type of soils. There are certain soils which are suitable for different types of fertilizers. It is important that farmers before applying fertilizer retain their soils to ensure that they apply the appropriate fertilizer.

Mr. Temporary Speaker, Sir, as you are aware, in most counties, DAP has been popular but it has a negative effect. It has the effect of acidifying soils. There has been a move to vary so that we do not use DAP year-in, year-out. The other fertilizers are non-acidic.

Regarding Sen. (Dr.) Khalwale's issue, I agree and indeed NCPB should accord with the principles and requirements of devolution. The governors have raised this issue that they would want to play some role through the petition that came to this House. This House has indicated that this is indeed the way to go and that counties should establish their own grain storage facilities.

On the issue of corruption, I may not be able to discuss it but I am not aware of any particular incident in relation to NCPB and corruption that was asked for. I would only say that corruption is a matter that is virtually everywhere and that the Government generally is trying to stamp it out.

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

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

Sen. Khaniri: Mr. Temporary Speaker, Sir, I am not satisfied that the Vice Chair has answered my question. My question was very clear "What steps are being taken to ensure that this NCPB stores are established at least in each and every sub-county of the agricultural depended counties?" He just said that he agrees with me that the stores are sparsely distributed but he has not told us the concrete steps that they are taking to ensure that these stores are established in areas that I mentioned.

The Temporary Speaker (Sen. (Dr.) Machage): Let us have that challenge answered first.

Sen. Ndiema: Thank you, Mr. Temporary Speaker, Sir. I said that agricultural issues are now devolved to the county level. It is up to each county to establish such

facilities within their areas of jurisdiction. I said that I, as the Vice Chairman of the Committee, agree that we need more storage facilities in all the counties.

Sen. (Prof.) Lonyangapuo: Mr. Speaker, Sir, the Vice Chairman has said that provision was given for fertilizer to be supplied by NCPB. That is not the true position. There was a decree that said we should not use Diammonium Phosphate (DAP) even on the land that we had already tested soil. I had tested my soil but could not access DAP. My soil was saying that we use DAP. We ended up using what he is telling us and the produce that has come is so contrary to what we get. I would like to know whether those of us who commercial farming will be compensated and whether you are ready to feed the people of North Rift.

The Temporary Speaker (Sen. (Dr.) Machage): What do you mean by a decree? Was this a presidential written order? Our Constitution does not allow roadside statements. Who gave that decree?

Sen. (Prof.) Lonyangapuo: Mr. Temporary Speaker, Sir, when we went to stores to buy fertilizer, we were told that DAP had been declared unfit for use. We were told that directive had come from the top. We want to know whether it came from the Minister, the President or who. That is exactly what happened. We went looking for it but could not find it.

The Temporary Speaker (Sen. (Dr.) Machage): You have changed the statement because you had said there was a decree. Now, you want to know who had given the decree. Are you aware of any decree?

Sen. Ndiema: Mr. Temporary Speaker, Sir, I am not aware of any decree. The Ministry has not issued a directive asking farmers to purchase fertilizers other than DAP. The DAP had been procured by the Government and issued in large quantities. However, I must admit that there has been debate as to the appropriateness of DAP in view of its acidified character. It is not true that DAP was not availed. I am at least aware that in the North Rift, it was available. However, there were certain campaigns, due to acidity, that farmers should consider using other fertilizers as well. However, no directive or instruction was issued by the Ministry concerned.

Sen. (Prof.) Lonyangapuo: Mr. Temporary Speaker, Sir, I promise to look for that directive. It does not matter who gave it. However, it is there.

The Temporary Speaker (Sen. (Dr.) Machage): Order, Sen. Lonyangapuo. The Standing Orders give you 24 hours to substantiate an allegation. If you can produce it in the next sitting day, Tuesday, I will accept. However, if you postpone it further, then that means that you will not give any statement to this House. You may need to raise another question to that effect. Therefore, I am bound by the Standing Orders of this House.

Sen. (Prof.) Lonyangapuo: I will get it by Tuesday.

The Temporary Speaker (Sen. (Dr.) Machage): I do not think we will have further interrogation on this Statement. The Senate Majority Leader has informed me that he has some urgent issues to attend to. However, he also has to be reprimanded because

he skipped Order Nos.5, 7 and we have to work in reverse. Could you apologise and table your Paper so that we prosecute Order No.5?

Sen. (Dr.) Khalwale: On a point of order, Mr. Temporary Speaker, Sir. Indeed, if the Senate Majority Leader has something urgent, we would then be anxiously waiting to listen to it. However, if the urgent matter he has is that he wants to seek leave so that he goes to attend to matters outside---

The Temporary Speaker (Sen. (Dr.) Machage): Order, Sen. Khalwale. It is at my discretion to make a decision.

Sen. (Dr.) Khalwale: Mr. Temporary Speaker, Sir, I am not challenging you but building my point of order.

The Temporary Speaker (Sen. (Dr.) Machage): You are doing it the wrong way. Could you redo it?

Sen. (Dr.) Khalwale: Mr. Temporary Speaker, Sir, we have no problem listening to the Senate Majority Leader immediately. We thank you for allowing him. Given that not him nor his assistant were in the House when we started and have repeatedly not been in the House when business is being transacted, what sanctions is the Chair considering against the office of the Senate Majority Leader because this is in contempt of the transactions of the business of the House?

The Temporary Speaker (Sen. (Dr.) Machage): Sen. Khalwale, being a highly mannered physician in this country, with an IQ above average, I believe you were listening when I demanded that the Senate Majority Leader apologises to this House. That is the punishment I am giving him for now unless he messes further.

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Temporary Speaker, Sir, I take this opportunity to apologise undeservedly to the Chair and to the House for not having been here at the time when I should table the Paper I intended to table. I apologise for that. I always take the responsibility of the Office of the Senate Majority Leader to this House as the first priority. I just want to apologise. I am greatly humbled that you have used your discretion to allow me. Thank you for not visiting further penal sanctions against me as was demanded by the Senator for Kakamega.

BUSINESS FOR THE WEEK COMMENCING
TUESDAY, 10TH JUNE, 2014

Having apologized, I beg to lay a statement of the business for the week commencing 10th June, 2014 pursuant to the provisions of Standing Order No.45 of the Senate on the Table of this House.

The Temporary Speaker (Sen. (Dr.) Machage): Read it before you lay it on the Table,

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The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Temporary Speaker, Sir, I rise under Standing Order No.45 to read the statement concerning the business of the Senate for the week commencing 10th June, 2014.

Hon. Senators, pursuant to the provisions of Standing Order No.45, this will be the business of the coming week.

Tuesday, 10th June, 2014, the Rules and Business Committee (RBC) will meet at 12 noon to schedule the business of the Senate for the week commencing 10th June, 2014. The Senate will continue with business that will not have been concluded in today's Order Paper and also commence Second Reading on the following Bills;

1. The Alcoholic Drinks Control (Amendment) Bill; and,
2. The Statutes Law Miscellaneous (Amendment) Bill.

The following Bills will also be introduced by way of First Reading.

1. The Intergovernmental Relations (Amendment) Bill
2. The Government Proceedings (Amendment) Bill,
3. The Public Finance Management (Amendment) Bill; and,
4. The County Assembly Powers and Privileges Bill.

Mr. Temporary Speaker and hon. Senators, on Wednesday, the Senate will continue with business not concluded on Tuesday and will also consider any other business scheduled by the RBC. The Senate will also deliberate on the following Bills and Motions:

1. The County Governments (Amendment) Bill No.1, Bill by Sen. (Dr.) Boni Khalwale.

2. Motion by the Chairman of the Standing Committee on Information and Technology on the adoption of the Report by the Standing Committee on Education, Information and Technology on the county oversight and network engagements.

3. Motion by Sen. (Prof.) Wilfred Lesan on the provision of the fibre optic connectivity to all referral Level Four and Five public hospitals in all counties.

4. Motion by Sen. Beatrice Elachi on strengthening relations with the United Nations.

5. Motion by Sen. Halima Abdille on the need for affirmative action to construct boarding facilities in schools in Arid and Semi Arid Areas as a means for facilitating nomadic children to access education.

6. Motion by Sen. Mositet on the need to restructure the Kenya Urban Roads Authority (KURA) and to expand its mandate to cover roads infrastructure in all 47 counties headquarters.

Mr. Temporary Speaker, Sir on Thursday, 11th June, 2014, the Senate will continue with the business not concluded on Wednesday and consider any other business scheduled by the RBC including the introduction of the following Bills by way of First Reading.

1. The National Honours (Amendment) Bill,
2. The Reproductive and Child Healthcare Rights Bill, and

3. The County Governments (Amendment) Bill, No.4, 2014.
I, hereby, lay the statement on the Table of this House.

(Sen. (Prof.) Kindiki laid the document on the Table)

The Temporary Speaker (Sen. (Dr.) Machage): Very well.

Sen. Billow: On a point of order, Mr. Temporary Speaker, Sir. We would appreciate if the Senate Majority Leader can brief us on the County Governments (Amendment) Bill. This is a vote that has been under negotiation for over two months now.

The Temporary Speaker (Sen. (Dr.) Machage: Order, hon. Senator. I do not think this is the appropriate time for that. If you wanted that, then you should have sought a statement. You could still do that after the reading of the statement and demand the Senate Majority Leader to produce the statement. For now, you are completely out of order.

Where is the Chairperson of the Standing Committee on National Security and Foreign Relations?

ACTIVITIES OF MR. ERICK DEAN PRINCE IN THE COUNTRY

Sen. Haji: Thank you, Mr. Temporary Speaker, Sir. I wish to respond to a question asked by Sen. Khalwale on the presence of Erick Dean Prince, an American mogul and a former Navy officer in the US.

The question is whether I was aware of his presence and his activities/transactions in Kenya.

1. The answer is that the Electronic Border Management System indicates that Mr. Erick Dean Prince is currently not within the territory of Kenya. The system further indicates that the person arrived in Kenya on 8th January, 2014 aboard Etihad Airlines Flight No.641 from Abu Dhabi, holding an American passport and departed from Jomo Kenyatta International Airport on 9th January, 2014 to London aboard British Airways Flight No.064, using the same passport.

He does not hold a work permit. Therefore, his activities as far as matters of immigration are concerned cannot be ascertained.

(b) With regard to whether the national Government knew that he had acquired Kijipwa Aviation in Kilifi and the circumstances surrounding such acquisition and whether due diligence was carried out by the national Government before acquisition, the answer to this is that on 18th March, 2014, the Kenya Civil Aviation Authority received a copy of a form 203(A) from Kijipwa Aviation Limited notifying of change of Directors and Secretaries as follows. With effect from 19th November, 2013, Alan Cullinan Herd and Simon Nicholas Herd resigned as Directors of the Company and Uldarico Ard

peregrine Jnr. (American) and Dorian Moshe Barak (Israel) were appointed as directors with effect from the same date.

With effect from 19th November, 2013, Lima Registrars resigned as Company Secretary and Virginia Ndunge of Kaplan and Stratton Advocates was appointed as Company Secretary.

On March, 2014, the applicant submitted CR12 (confirmation from Registrar of companies on both directorship and shareholding indicating new names of the shareholders and directors of the company with their particulars.

The Government is aware of the importance of security in the aviation industry and has implemented various security measures with regard to aviation security.

The other question was whether the national Government knows the history and track record of the said Dean Prince and his notorious undertakings at the Blackwater Worldwide Company especially but not limited to the activities in Iraq and Afghanistan.

The national Government will handle any applications by Mr. Dean through the relevant institutions. The history and track records of Mr. Dean will be considered when such an application is made.

As to whether the national Government, in view of the notoriety of Mr. Dean will veto his acquisition of Kijipwa Aviation and declare him *persona non grata* in Kenya, in view of the fact even a congress of the USA recommended that Erik Prince and his Blackwater Company could not do business with the US Government.

The answer is that from the C12 submitted, the ownership requirement falls within the Civil Aviation (Licensing of Air Travel) regulations 5 and 12. Fifty one (51) per cent of the shareholding of Kijipwa Aviation Company is held by a senior citizen whereas 49 per cent shares are held by a foreign company incorporated in Bermuda. The Government, through all the relevant arms involved will arrive at an informed decision once all facts are presented regarding the acquisition of Kijipwa Limited. The Cabinet Secretary, Ministry of Transport and Infrastructure, will continue to work with other relevant Government agencies to ensure that all entities comply with the national laws of Kenya.

Sen. (Dr.) Khalwale: Mr. Temporary Speaker, Sir, Mr. Erick Dean Prince, the American mogul I talked about in this question is a very notorious character to the extent that even the Congress of the United States of America (USA) voted that he should not be allowed to do any business whatsoever with the Government of the USA. This person has come into this country claiming that he is going to provide security in view of the emerging oil industry in this country.

Mr. Temporary Speaker, Sir, as a build up, allow me to conclude by telling the House that the same man went into Iraq and Afghanistan and ended up taking there a squad that killed women and children, in the name of providing security.

The Temporary Speaker (Sen. (Dr.) Machage): Sen. Khalwale, if I heard the Chairman correctly, his first segment was that Mr. Mogul is nowhere within the boundaries of this country. Do you doubt that?

Sen. (Dr.) Khalwale: Mr. Temporary Speaker, Sir, I am now coming to the questions. Whereas I would have no reason to doubt that aspect of his answer, but the question is: At every immigration desk, anywhere in the world, a subject upon arrival completes a form, where he states what activities he intends to participate in the host country. So, in this case, even if Mr. Erik Dean Prince arrived in Kenya on those dates, what does the immigration form that he completed show pertaining to the activities that he had come to perform in this country?

Mr. Temporary Speaker, Sir, secondly, the Chairman has told us that the Government was notified of the change of name of directors at Kijipwa Aviation. Could he confirm if these two are the only directors of Kijipwa? If they are not, who are the other directors, because this is the entry point of Mr. Erik Dean Prince?

Mr. Temporary Speaker, Sir, lastly, in the last part of his answer, the Chairman told us that 51 per cent of the shareholding of this company is by a Kenyan citizen and the balance of 49 per cent is held by a company which was incorporated in Bermuda. In view of the seriousness of the security docket and the challenges of insecurity that the country is faced with, could you unveil the name of this Kenyan and tell us who are the owners of the company that was incorporated in Bermuda?

Sen. Haji: Mr. Temporary Speaker, Sir, regarding the issue of the Americans declaring that Mr. Prince cannot do business in America that has nothing to do with us in Kenya, because we have never done business with him.

Mr. Temporary Speaker, Sir, secondly, the question that has been raised by Sen. Khalwale, regarding who the 49 shareholders are, is very valid. I am prepared to pursue the issue and bring the names to the House in the next two weeks, because I will be travelling out of the country.

Mr. Temporary Speaker, Sir, regarding the forms filled at the immigration desk, I do not think that those forms really give a lot of details. Nowadays even Kenyans arriving from abroad are not required to fill those forms.

The Temporary Speaker (Sen. (Dr.) Machage): Mr. Chairman, I may not agree with you on the latter. Foreigners fill details about what sort of business that they have to do on entry into this country, unless you, as the Chair, and your current Cabinet Secretary have interfered with that. I think that you must bring to our attention what business was signed on that paper. If it is lost, you can say that it is not there, but I think that it is a valid concern.

Maybe you will go through the HANSARD and see the other very relevant questions that Sen. Khalwale had raised, and include them in your answer. I will allow you two weeks to bring a complete Statement. For now, I will defer the issue to two weeks.

Sen. Haji: Agreed, Mr. Temporary Speaker, Sir. I am not trying to argue with you, but I think that I have been misquoted. I did not say that they do not fill the forms. I said that the forms that they fill might not have a lot of information. Somebody could fill

in the forms and indicate that he is a tourist. But I will ask them to find out and give us the answer as directed.

(Statement deferred)

Sen. (Dr.) Khalwale: On a point of order, Mr. Temporary Speaker, Sir. Thank you for giving us the opportunity to pursue the matter after two weeks. But I think that equally important, it should occur to the Chairman that for an American to come into Kenya, they acquire a Visa. A visa asks for very many details. Could he, please, also come with a copy of the forms that were filled when applying for the visa, so that we can see what business that this man was coming to do? He jetted in and then went out again. That simply means that he was coming to append his signature, as I expressed earlier on.

Sen. Haji: Mr. Temporary Speaker, Sir, we will try to do it.

The Temporary Speaker (Sen. (Dr.) Machage): Very well. You have another Statement. Continue!

DELAY IN ISSUANCE OF BIRTH CERTIFICATES IN MERU COUNTY

Sen. Haji: Mr. Temporary Speaker, Sir, this is supplementary information on the delay in issuance of birth certificates in Meru County.

Mr. Temporary Speaker, Sir, the Government is planning to decentralize and provide birth registration services as close to the people as possible. As explained in the previous Statement, from the year 2009, the Civil Registration Department worked closely with schools in the school-based registration programme, and was able to issue certificates to the Kenya National Examination Council candidates without them visiting the registration office. In order for this arrangement to work, the department hired temporary casual workers to fast-track office operations work, while the schools incurred transportation costs to and from the registration offices, to collect birth certificates for their respective people.

Mr. Temporary Speaker, Sir, similarly, the department is willing to issue certificates to newly born children before they leave hospital, so that their parents do not have to travel to the registration office. However, as stated in our previous Statement, such an arrangement will require additional resources to set up operational offices and hire more staff in each hospital with maternity wards. It is, however, worth noting that more births occur at home than in health facilities. Emphasis should have, therefore, been laid on ensuring that all births occurring at home are duly and promptly registered. As we had proposed earlier, the decentralization of registration services to the sub-counties will help to improve birth registration coverage and service delivery to citizens. The department on its part is prepared to embark on the process of decentralization to sub-

counties and, indeed, hospitals as soon as the National Treasury enhances the resources allocated.

Thank you, Mr. Temporary Speaker, Sir.

Sen. Murungi: Mr. Temporary Speaker, Sir, I want to thank the Chairman of the Standing Committee on National Security and Foreign Relations for that answer. Indeed, we appreciate the commitment by the Government to issue birth certificates immediately a child is born at the hospital level. But the reason that they need additional resources for them to issue certificates is a strange one. This is because marriage certificates are issued on the wedding day by the priest, who is not paid by the Government. Why can the doctor who delivers the baby not also be required to sign birth certificate as an agent of the Attorney General or Registrar General, without any additional resources?

Mr. Temporary Speaker, Sir, regarding the second issue of registration of those not born in hospitals being decentralized to the sub-county level, I think that we could further decentralize it, because the Constitution requires decentralization to go to the lowest level possible. We now have officers at the ward level known as ward administrators. We also have the Deputy County Commissioners. Why can we not decentralize this service to the ward level, because those officers are there? Indeed, having ceded most of the powers to the devolved system, most of the Government officers at the ward and sub-county level are idle. Why do we need additional resources when we have officers there? All we need is to give them additional responsibilities of registering births at the sub-county and ward level without any additional resources.

Sen. Billow: Mr. Temporary Speaker, Sir, this is a very critical issue in most of the counties, because there are many sub-counties where the birth certificates are not available. In this day and age when all the schools demand for birth certificates, this issue becomes very critical. I do not know how the Government comes up with a policy when it does not even have the resources in place. But I would appreciate if the Chairman could indicate when this decentralization to the sub-counties actually will take place. When do we expect all the sub-counties in the country to start issuing birth certificates?

Sen. Abdirahman: Mr. Temporary Speaker, Sir, my question is closely related to that of Sen. Billow. Many times our Government has not had clear plans, whether it is immediate or long-term. The reasons from the Chairman are as good as the traditional ones which say “when funds will be available or when possible.” Could he, honestly, tell us if there are immediate plans to do this, now and even for the future? The Government should have a strategic plan.

Sen. Chelule: Mr. Temporary Speaker, Sir, we all know that there is a document that is normally issued in hospitals immediately after babies are born, known as birth notification. If they can issue a birth notification, why can they not issue a birth certificate at that particular time? Probably, it is another way of collecting funds, but it is very possible.

Sen. Ndiema: Mr. Temporary Speaker, Sir, the chiefs for quite sometime have been the registration officers. They have been registering births for a long time, but the

issue of the document itself being released is the problem. Why can we not allow the chief to process everything and only submit data to the headquarters? In this digital age, why can we not even do it electronically? We can capture the data and submit it to the headquarters immediately.

The Temporary Speaker (Sen. (Dr.) Machage): I think that the question had already been asked by Sen. Chelule.

Sen. Haji: Mr. Temporary Speaker, Sir, I quite agree with Sen. Kiraitu that there is need really to look into this issue further and see how best we can fast-track the issuance of birth certificates. But we cannot compare marriages with births, because the births are so many compared to marriages. We could have only five or so marriages in a week. But I do agree, as Sen. Ndiema has observed, that the Government can come up with a better method of issuing birth certificates. Even in the issuance of identity cards, the delay is caused because all the forms are filled and pictures taken in the registration centres, but they have to be sent to Nairobi, and it takes a very long time for them to go back. I will take up the suggestions which have been made by the Senators with the relevant authorities. The chiefs should be given registration forms together with the certificates, so that they can issue them whenever parents register their children.

Mr. Temporary Speaker, Sir, regarding the question raised by Sen. Billow and Sen. Abdirahman on decentralization, it is really very difficult to give a timetable. As you have rightly said, resources must be found and it is the National Assembly which allocates funds to the Ministries. If they are given enough funds, I am sure that they will give us a timetable.

Mr. Temporary Speaker, Sir, I will take the sentiments that have been raised here--

Sen. Billow: On a point of order, Mr. Temporary Speaker, Sir. You have heard what the Chairman has said. It means that the answer that we were given is actually not helpful. This is because what he said is that funds are not available. With that kind of an open-ended engagement, it means that really the request that we are making that since these documents are now compulsory and required for any child to go to school or do an exam and because of the security situation--- I think that it is not a matter of Parliament. The Government and the relevant Ministry must know how to prioritize its requests. I think that we need a better answer that says: "We will by this month, year or date." We should not leave it open, because the lack of this document is really causing a lot of anxiety in the country.

The Temporary Speaker (Sen. (Dr.) Machage): Sen. Billow, you are the Chair of the Budget Committee. The Chairman has given what he thinks he can. There are no funds. I would have expected you to say: "I have heard the Chairman's concerns. As the Chair of the Budget Committee, I will make sure that the funds are available." Anyhow, it is a legitimate concern. Like Sen. Abdirahman said, these open-ended answers of "when funds are available" have become a nasty song in the Senators' ears. Can you be a little bit explicit on your definition of the time limit?

Sen. Haji: Mr. Temporary Speaker, Sir, I think that decentralization can be done without involving a lot of costs. As I suggested, the chiefs could be allowed to register and issue birth certificates. They are always there and have offices. I am going to communicate that suggestion and it will be considered but I cannot give a timeline that it will be done today or tomorrow, since resources are required.

The Temporary Speaker (Sen. (Dr.) Machage): Any further interrogation? Sen. Billow!

Sen. Billow: Mr. Temporary Speaker, Sir, my apologies, but I think the Chairperson can do better than that because if he accepts what the Ministry says; when funds are available, we cannot go far. If the Government wants to get money, they can. Last week, we were able to confirm that the Government had to pay some money to Anglo Leasing and the Government got Kshs1.4 billion. This week they paid Kshs1.2 billion on the syndicated loans because the Government knows how to re-allocate money. So, I think the Government Printer does print the certificates. It is a question of getting the staffing and the other issues related to the staffing. The Government has actually indicated that they want to lay off thousands of people who are in the Public Service when we need them in those kinds of departments. Could the Cabinet Secretary be in touch with the team at the Ministry so that he can say: In the next financial year, because we are now doing the budget.” If he does not get an answer now, it means that it will be considered again in the 2015/2016 Financial Year. Could he undertake that by July in the next Financial Year, that decision to decentralize this service to sub-counties will actually be effected?

The Temporary Speaker (Sen. (Dr.) Machage): The Chairperson, are you able to do that?

Sen. Haji: Mr. Temporary Speaker, Sir, I am not able. I think Sen. Billow is contradicting himself. The Anglo Leasing money was paid because of a shortfall in the Budget to cover it and, therefore, the Government does not have money---

The Temporary Speaker (Sen. (Dr.) Machage): Order! Do not open a Pandora’s Box.

Sen. Abdirahman: On a point of order, Mr. Temporary Speaker, Sir. We cannot allow this to go on.

The Temporary Speaker (Sen. (Dr.) Machage): Please, desist from pursuing that line.

Sen. Haji: Okay, Mr. Temporary Speaker, Sir. I cannot give a guarantee but I will communicate and see how best this can be addressed.

The Temporary Speaker (Sen. (Dr.) Machage): These are matters of policy and the powers of this House. The question is: Can we give an order to the Cabinet Secretary to implement what we want? It is very clear what this House wants. Communicate to the Cabinet Secretary that this is what the Senate wants instead of going to request him. I think maybe that might be a better way of doing it. But I think you are very legitimate in your answer that there is nothing you can do at this time. Any other interrogation?

Next Order!

MOTIONS

RELEASE OF KCSE CERTIFICATES WITHHELD BY SCHOOLS ON ACCOUNT OF FEES BALANCES

THAT, aware that on November 3, 2004, Parliament passed a Motion requiring the government to release all KCSE certificates held by schools on account of fees balances and requiring schools to cease withholding certificates on account of fees balances; appreciating that in December 2006, the Government ordered the release of all KCSE certificates held by schools but that the certificates were released only that one time; concerned that since 2007, schools have continued to withhold certificates especially those of orphans and children from poor families on account of fees balances; aware that Section 10(1)(b) of the Kenya National Examinations Council Act (No. 29 of 2012) outlaws the withholding of certificates by any person or institution; the Senate urges the national Government to take immediate measures to release all certificates held by heads of secondary schools since 2007 and to ensure that no head of a school, person or institution continues to withhold KCSE certificates.

(By Sen. Musila on 26.3.2014)

(Resumption of Debate interrupted on 04.6.2014)

The Temporary Speaker (Sen. (Dr.) Machage): Who was on the Floor? Sen. Elachi was on the Floor, but apparently, she seems to have finished.

Sen. Abdirahman: Thank you, Mr. Speaker, Sir, for allowing me to add my voice to this very important Motion that is not new here. I remember in one of the sessions, we had passed a similar Motion besides this that was passed in November, 2004 in the National Assembly then. Honestly, this is a reality and it is not something we can shy away from bringing it out because school heads keep on withholding certificates of very poor children, either orphaned or generally from poor backgrounds. I attribute this to the fact that the Ministry of Education has failed to give proper policy guidelines. As much as the National Examinations Council Act explicitly puts it that no school principal can withhold a school certificate, heads of schools have time and again kept on withholding these certificates. Worse of, of late, the fact that in the Ministry of Education, the Teachers Service Commission (TSC) has started managing the teacher management portfolio.

(Sen. Billow stood on his feet)

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The Temporary Speaker (Sen. (Dr.) Machage): Order, Sen. Billow. I cannot allow two Senators to be on their feet.

Sen. Abdirahman: Thank you, Mr. Temporary Speaker, Sir. The fact that the TSC has taken over the teacher management portfolio and the fact that the Ministry of Education headquarters has been left to handle issues that relate to purely administration, there seems to be a serious gap between the county directors of education and those who have been left in charge of the schools or the staffing officers at the county level. You may find that there is very little relationship between these people. Students are forced to come and talk to the County Director of Education, they are then sent back to the teacher staffing officers.

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

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

Madam Temporary Speaker, it is like the problem remains unresolved and it is not something we can keep on agreeing to let it be. The truth of the matter is that most of these children who failed to get their certificates are not able to beat the deadlines for recruitment either into colleges, universities or into the armed forces. Time is up for us as the leadership not to take this matter lightly. We should address it with all the strength that it deserves.

We have education committees both at the National Assembly level and at the Senate. It is important that these Parliamentary committees get down to serious business and summon the Cabinet Secretary because we cannot keep leaving this issue hanging. They must hold the Cabinet Secretary in charge of education accountable for this. We have always passed Motions in this House, and I am a Member of the Implementation Committee and last time, we took stock of how much we achieved and we realized that the Government assumes that Motions that are passed in this House do not have any implication. Through the Implementation Committee, we should actually put the Cabinet Secretaries who have failed to implement Motions passed by this House on the radar and ensure that they are summoned and taken to task. At the moment, in the National Assembly, Hon. Linturi is pushing for a Motion to impeach Anne Waiguru and indeed, they should be impeached for such failures. I do not see why the Cabinet Secretary for Education should be left scot free. He should face a similar fate in the hands of legislators because he seems not to care for the poor, the under-privileged and the plight of Kenyans who would have benefited from the various opportunities. This is not a privilege but a right. Once it is spelt out in the Act, why should it not be a right?

Madam Temporary Speaker, I am particularly perturbed because I personally know a number that I had assisted to pay their fees and then two days ago, I had to pay more money in respect of outstanding fee balance for an orphaned child. The school

heads should not keep on holding certificates. Heads of schools who think that they are above the law must be taken to task. The poor coordination between the Ministry of Education and the TSC must also be put on the spot so that we address the unfortunate occurrences in our counties.

Finally, I want to thank the Senator for Kitui County, Sen. Musila, for strongly following up this matter without giving up. Please, do not give up, pursue it to end and we will walk the journey with you to make sure that this particular item is followed to the letter.

Thank you.

Sen. (Prof.) Anyang'-Nyong'o: Thank you very much, Madam Temporary Speaker. I would also like to thank Sen. Musila for bringing this Motion. I am sure in his earlier life as a Provincial Commissioner; he must have met so many miserable cases of parents pleading with him to intervene in one school or the other with their children not being given certificates after they have completed their schooling. What surprises me is that the law is very clear and I am sure all of you in this House must have seen the law. The KNEC legal regime is the Act establishing it where the functions of the Council are, among other things, to award certificates and diplomas to candidates in such examinations, such certificates or diplomas shall not be withheld from the candidate by any person or institution. How then does a head of an institution go ahead to withhold a certificate when the body that examines has the law establishing it stating very clearly that the end result of sitting an examination is to get a certificate and whatever the condition, those certificates must be given to the students?

Nonetheless, let us look at the reality today in the Republic of Kenya. We have both private and public schools. Private schools are run in various ways; some are day schools, others are boarding schools and of course, the cost of running these schools is born by the parents of the students that attend these schools. Quite often, these schools are very generous. When you do not complete your fees, they allow you to continue attending the school hoping that by the time you are finishing the school, you have actually fulfilled your obligation of paying the cost of attending the school. But there are circumstances where this does not happen and this is where this regulation becomes rather tenuous. What do you do to a private school which must run its institution and which is also interested that the students attending that school graduate and get certificates? In public schools, it is different because this is a public institution and the Government can actually afford to absorb the debts as they do in hospitals. In health facilities, there is what we call writing off the debt. Now, both education and health are social services really, in the development and sustenance of human resources and, therefore, you can compare patients in a hospital to students in a school. Patients need to be cured and to leave the institution whereas the students need to be taught and to graduate. So, it is counter-productive when they have now been taught and they need to graduate for them either not to graduate or to retain them there. The logic of this argument is that in the final analysis when all is said and done, there must be a much

better and imaginative way of public financing of our educational health services in this country. It is not rocket science.

In fact, I had a young man who worked out a very good proposal for financing education in this country which would not have cost the Government any more. The only thing it would have done is that it would have made financing much more certain, efficient and definite. I am quite sure that if the Ministry of Education was interested in finding a way of financing education other than the traditional one we have used since Independence of paying fees, that would be available and that is why I was referring to Sen. Musila's experience as a Provincial Commissioner. If the problems that he faced as a Provincial Commissioner many years ago are still there in the same way, it means that we are not imaginative at all in this nation.

Madam Temporary Speaker, it is only spiders that make their webs in the same way year-in, year-out. Since no human being can make a web as complicated as a spider's, of course, we think that spiders are very clever. But the spiders have been making these webs in the same way from time immemorial. The difference between us and the spiders is that we are innovative and inventive. Therefore, if we have had this problem for so long and up to now, we have not been innovative and finding better ways of financing education, there is something wrong with us. I think that the end of dealing with this problem in the final analysis is to establish a financing mechanism for our schools based on two things; one, on insurance, pooled resources managed by banks and so on where parents and the Government put in money ahead of time and no matter how many students a family is going to have in school, provided you are an investor in this education fund, once your children start going to school, they will be financed. It is the same principle as insurance. You insure your health not because you know that tomorrow you are going to get sick, but in the event that you are sick, you will be taken care. The same principle I think should be used in education. Everybody, should, through whatever method; check off systems, taxation and so on, contribute to an educational fund; a fund which in the final analysis is used to finance education. Do not expect every parent every time a child goes to school, you do it out of pocket. This has proved very inefficient and very costly and quite often counter-productive as this Motion so shows. So, I would urge my friend, David Musila, that he has come a long way with this Motion but a step further is needed. Maybe in his next Motion, he will come back with a Motion for better financing of the educational system in this country. If he needs my help, I am quite prepared to participate in the framing of that Motion. I do believe that that is the only rational way of dealing with financing education in this country.

The second thing I wanted to talk about is that I hope that from now on, progressively, we are going to eliminate unnecessary examinations. I do not think in this day and age a child should go to school, sit an examination in Standard Eight and then another one in Form Four. I think what we should do to develop this country is a philosophy of basic education that comes from kindergarten to Fourth Form so that you go from kindergarten to Fourth Form just to sit examination at the school where you are

and not one which when you were in Standard Eight transfers you from one school to the other. These pupils that come out of Standard Eight, quite honestly, in this day and age, what do you expect them to do? How much had they prepared for life? When they complete Standard Eight, you hold their certificates. Is this not preposterous? So, I think the idea of having primary and secondary school is outdated. Just as much as we got rid of intermediate schools of our days which were going from Standard Five to Standard Eight in those days. In those days it was even worse. You had to sit an examination in Standard Four and then another one in Standard Eight.

If you went to some schools, you sat another examination in Form Two, then in Form Four and then in Form Six. This examination crazy education system is something that we should really get rid of. If we did, then we do not have this phenomenon of always complaining about certificates being held, because part of the problem is that we have too many examinations leading to the holding of certificates by headmasters, principals and so on, and leaving us to coming to this House and spending a whole two or three days discussing this since the days that Sen. Musila was PC up to today. I really do not think that that is a very efficient use of our time. I think we should have a much better system of financing education and secondly, let us get rid of these examinations which are not necessary especially the one in Standard Eight. That examination in this day and age is not necessary, especially a Government like this one that prides itself of being digital has not thought of this issue. It is quite surprising because this is an issue which it should have thought of *ab initio*.

I beg to support.

The Temporary Speaker (Sen. Ongoro): Sen. G.G. Kariuki.

Sen. G.G. Kariuki: Madam Temporary Speaker, I do not wish to contribute to this Motion, but my friend, Sen. Musila tried from the 8th, 9th or 10th Parliament; and we passed the Motion to this effect. Again in the last Parliament, he also talked about it, and this Senate now is talking about the same thing. I think it is a challenge to the representatives of the people and not only to Sen. Musila, because we need to ask ourselves why this thing is happening. We should continue talking and talking and even next year, we will still do the same thing. What is this that we cannot change? I asked myself several questions when I was seated here; how could a Senator pursue something for almost a year? This is something that is not even affecting taxation or anything. It is only that the Kenyans have decided that those who do not have, let them remain so because they are condemned to poverty.

(Applause)

We need to take this matter very seriously. It is not always good when you hear somebody wanting to talk about the eradication of poverty and he is taken for granted. Can you imagine how many people are poor in this country, living below the poverty line and yet, you expect them to compete with hon. Musila and Sen. G.G. Kariuki for that

matter? Can we say that we believe in God? Why do we deceive ourselves? I think time has come when this Senate needs to take the bull by the horns; let us know exactly what we can do and what we cannot do. If the officers who are withholding these certificates cannot even say why they are doing so, it is just a matter of issuing a circular from the Ministry of Education to release all these certificates. Even if they keep them for how many years, those guys will never be able to pay. Let us decide where we are, because this is a very serious matter.

Madam Temporary Speaker, there is money in the counties to deal with disasters and those who are so much affected by poverty. But if you go round those counties, there is no time you will find somebody saying “we have been given this money by the county government to reduce our poverty.” At the same time, the Constituencies Development Fund (CDF) has money for poverty alleviation. Why can we not find a way of releasing these kinds of monies which have already been voted for bursaries? If the Government does not want to support the idea of releasing all the certificates, they still have the power to request those who keep the money – the CDF and also the county governments – to release this money if they actually just want to receive money. But if they issue instructions to this effect, the whole thing will come to an end.

Therefore, Madam Temporary Speaker, we are talking of the Kenya National Examinations Council (KNEC); that they have issued a statement, they have done A, B, C or D; but is that our business? Our business is to actually find out what the problem is. Now, we are passing this as a resolution again; it is going to be another resolution which can also be passed next time.

(Laughter)

And I believe that Sen. Musila also tried to bring in a Bill to this effect---

Sen. Abdirahman: On a point of order, Madam Temporary Speaker. We followed closely or let me just say that I followed closely the statements from the honorable Senator, and I have two issues to pick up from him. One is the fact that funding in CDF has limits. If he remembers very well – maybe he has not served as a Member of Parliament (MP) when the CDF was established – it has limitations. It has a small percentage for education matters. Two, the fact that he is trying to really shy away from speaking to the point and on this subject, I do not know whether he is trying to defend the Government. I am in a state of confusion on his contribution. Is the Senator in order to really avoid the subject matter in this Motion, which is dear to all of us and actually avoid explicitly expressing that there is an express legal authority for heads of schools to release these certificates? Can he speak to the point?

The Temporary Speaker (Sen. Ongoro): Sen. Abdirahman, what, according to you is out of order?

Sen. Abdirahman: Madam Temporary Speaker, is he in order to actually not directly address the issues that the Motion addresses because we really want a solution to this problem?

The Temporary Speaker (Sen. Ongoro): Senator, I think that the Senator was still contributing and giving his opinion on the matter. I think he is really not out of order; he has not made his conclusion. I think he is in order to proceed.

Proceed, Senator.

Sen. Abdirahman: Maybe we could offer him some information then.

Sen. G.G. Kariuki: Madam Temporary Speaker, I do not understand what is agitating my friend because he just came in, took up the matter---

Sen. Abdirahman: Madam---

The Temporary Speaker (Sen. Ongoro): Sen. Abdirahman, you do not have the Floor yet. If you wish to give him information, then you should request appropriately.

(Sen. G.G. Kariuki stood in his place)

Sen. Abdirahman: Madam Temporary Speaker, I have not come in now--- He is standing.

The Temporary Speaker (Sen. Ongoro): Order, Senator! I think you are out of order because I had not even given you the Floor. But what is your point? Are you requesting that you want to give Sen. G.G. Kariuki additional information? For which then we would ask him and then he would respond.

Sen. Abdirahman: This was not a statement that he was responding to; it is his contribution and I agree that he is entitled to his opinion. But where a Member is not explicitly addressing the question as it is, then I thought we had an opportunity to intervene when it is in terms of sharing with him information or not.

The Temporary Speaker (Sen. Ongoro): You have been heard, but I do not find him out of order.

Sen. G.G. Kariuki, proceed.

Sen. G.G. Kariuki: Madam Temporary Speaker, I think I need to continue because I do not expect to be---

The Temporary Speaker (Sen. Ongoro): Just proceed.

Sen. G.G. Kariuki: Madam Temporary Speaker, I do not expect to be told what to say and what not to say as long as I am still in order.

Madam Temporary Speaker, I was just about to conclude my statement, but I want to repeat, with your permission, that this matter needs to be handled now in a more serious manner than we have been doing before because passing a resolution all the time is not enough. Maybe Sen. Musila should come up with a Bill to deal with this matter so that we can compel the entire system to go according to the wishes of the people of Kenya.

Therefore, Madam Temporary Speaker, I beg to support this Motion very strongly and hope that my friend, who has been a friend of mine for a very long time as my Provincial Commissioner; I respect him a lot and I wish him luck in this issue that we are discussing. But I appeal that he brings a Bill so that we can deal with the matter effectively.

Asante.

The Temporary Speaker (Sen. Ongoro): Sen. Beth Mugo.

Sen. Mugo: Thank you, Madam Temporary Speaker. I also would like to support the Motion on the Floor and very strongly so. This Motion is very clear. I want to also remember that I was present in the other Parliament when the honorable Senator presented his Motion and we passed it unanimously, and it was not even the first time. This matter has been revisited again and again, and I believe the question here is the implementation. The law is very, very clear as we have seen it here.

Section 10(1)(b) of the Kenya National Examinations Council Act says:-

“award certificates or diplomas to candidates in such examinations; such certificates or diplomas, shall not be withheld from the candidate by any person or institution;”

That includes the principals of schools for any reason. It cannot be because they need the money; they did not explain that in the Act so that they withhold the certificates.

So, Madam Temporary Speaker, I think ours should be now to ask the Cabinet Secretary (CS) in charge of Education to ensure that this law is complied with because it is a law passed by the National Assembly or by Parliament. Just like we do not discuss any other law, I do not believe there is room for deviating or discussing that it is done this way or that way; we should just be demanding for implementation. I myself had association with the Minister of Education and I know that these are some of the issues that when an order comes from a law or a policy from law, there is no other excuse but to implement it. So, we should be asking in this Motion that the CS makes sure that all the certificates which withheld by school heads are released immediately.

Madam Temporary Speaker, the Government is paying a lot of money for education of the children and the money is public money; it is from our taxes. So, when these children get their education and then their certificates are held in some drawer somewhere maybe because the parent has failed to pay because he or she does not have the money to pay, or because the child is an orphan or for whatever reasons, this means that taxpayers money has not been put to good use because this child cannot access further training, employment or even go beyond that class.

So, Madam Temporary Speaker, without even laboring so much on this issue, I do not think that anybody will oppose such a Motion. We would request the Ministry and the Government to make sure that the principals or the heads of schools comply with the Act, failure to which they should take action against such an officer.

Madam Temporary Speaker, I beg to support.

(Applause)

The Temporary Speaker (Sen. Ongoro): Sen. Wamatangi.

Sen. Wamatangi: Thank you, Madam Temporary Speaker. I also rise to support this Motion and strongly so, just like my colleagues. I am one such person who has gone through life from education and from my background in a lot of hardship. I know what it means not only to struggle to have one's school fees paid, but even to have those certificates released. Thus, I would speak from experience.

Indeed when a young person has graduated from high school and is probably seeking greener pastures or employment in any section or sector of our country without much support, because as it has been said by most of my colleagues, actually this problem affects largely the most poor of the poor in our communities. So, going job hunting and probably to be attached without certificates or maybe even without a fallback position where you would go probably to a relative who would help you, it is an extremely traumatizing experience for our young people. So, I support this Motion.

In the same breath, Madam Temporary Speaker, I would think that it is important then that we give this legislation the support and the legs it would need to be implementable, so that as has been said by the previous speakers, that indeed this piece of legislation was passed twice earlier in Parliament and we still have this problem; we need to ask ourselves: "Why do we have the problem persisting?"

Madam Temporary Speaker, we know that primary education is free in our country. So, when students join high school, as many as would have passed the grade of admission join. In a class, for example, we have students who can afford to pay fees; we have some who would probably struggle to pay fees; we have some that are poor and probably others that are abjectly poor. And because there is no regulation or policy framework that would say that this person can pay school fees and this one cannot, then that, left open as it is, is bound to make this problem continue to exist because probably a head of an institution would find himself or herself in a difficult situation whereby student A has paid, student B has paid, student C has not paid and maybe another student has paid. It would almost be very difficult for that head of school to implement this.

Madam Temporary Speaker, I urge my colleagues to support this Motion. It is important for Parliament to think of what other supportive legislation would require to be passed such that there is a threshold or a declaration at one point, whereby we are able to say that these students have made an application or maybe there is a law that then allows at this threshold or within the passing of this application, that student would be exempt. Otherwise, this might necessarily continue to be a problem. Otherwise, this is a piece of legislation that is worthy of support of all of us in this country, especially those of us who want to ensure and see that our young people are able to face the future with all the facilitation that is necessary for the young people and the opportunities that we have in our country.

With those few words and thoughts, Madam Temporary Speaker, I beg to support the Motion.

The Temporary Speaker (Sen. Ongoro): Sen. Liza Chelule.

Sen. Chelule: Thank you, Madam Temporary Speaker. I also rise to support this Motion. I really want to congratulate Sen. Musila for bringing this Motion to the Floor. I support this Motion because of two reasons; we all know that there is no candidate that can sit for examinations without paying the examination fees. To me, the fees cater for certificate issuance. The issue of certificates is not at any one time related to school fees. So, we would want to request the Ministry of Education to probably come up with a way of how they can collect their school fees, rather than linking the issuance of certificates to school fees.

Madam Temporary Speaker, we all know how much the affected people have suffered. Some youth have turned out to be drunkards and some to be robbers simply because they cannot continue with their studies without the certificates. So, there is need for this; and the problem really is the enforcement. If this matter has been on the Floor and it has been passed at any one time and the enforcement is the problem, then I think it is the mandate of this House again to make sure that it is enforced.

Madam Temporary Speaker, I beg to support.

The Temporary Speaker (Sen. Ongoro): Sen. Naisula.

Sen. Lesuuda: Thank you, Mr. Temporary Speaker, Sir, for giving me this opportunity to contribute to this very important Motion. I congratulate my colleague, Sen. Musila, for bringing this Motion and for doing a follow up on it. It is not every day that such a Motion is passed between the National Assembly and the Senate. He has taken it upon himself to follow up and to make sure that it comes before this hon. House so that we also contribute on it. This shows our lack of follow up on many other Motions that are passed regarding the lives of Kenyans but without proper implementation of the same.

I do not want to belabour the point that my colleagues have alluded to on why this is important. I just want to say that I am certain that the Ministry of Education and our institutions have the capacity and the mechanism to know who is very needy, who is from a poor family or who is an orphan in a school. The mechanisms are in place and can be followed to see that these children get their certificates and go on with their education.

We know that most of these needy children will be the breadwinners of their families later. However, we will be curtailing that by not giving them their certificates and we will have determined their future. It is important that this Motion is implemented. I also urge our county governments and those who are in charge of the CDF and the bursaries from the Ministry of Education to see to it that they give the very needy children and the orphans these bursaries. We understand that the running of these schools depends on school fees. If they had this money, which is allocated to bursaries and if it reached the very poor and the orphans in our counties, we would not have so many of them not having cleared school fees by the time they sit for their examinations.

I would also like to say that in this country, we have made great strides to see that basic education is accessible to all through the Free Primary Education (FPE). We also need to follow this up to see that these children are educated in secondary schools. We should also see that our institutions of higher education are accessible to all the children in our country. I would like to echo the sentiments of my colleagues and to thank Sen. Musila for this very important Motion. I would like to conclude by saying that education is what will bridge the gap between the rich children and the poor children and ensure that they also lead a meaningful life.

The Temporary Speaker (Sen. Ongoro): Hon. Senators, there being no other Senator interested in making a contribution, I call upon the Mover to reply.

Sen. Musila: Madam Temporary Speaker, I stand here to thank you for giving me an opportunity to reply. Let me take this opportunity to thank the distinguished Senators who have made their contributions to this Motion.

I have a list of 11 Senators who have supported this Motion on behalf of the House and I thank them. I want, in summary, to say that this matter has been going on for a long time. In 2004, Parliament passed a Motion that I moved. In 2006, the former Government released over 500,000 certificates that were being held. The Government did not become broke with that action. The Government helped over 500,000 former students to get their certificates. I am sure many of them accessed employment and further education and they are better off today.

Madam Temporary Speaker, what the Government did not do at that time was to ban further withholding of certificates. They simply asked schools to release the certificates that were held up to 2006. From 2007, school principals started retaining certificates and they have done so to date. It is very clear to all and sundry that these are poor students. Nobody can allow their certificates to be retained in an institution for seven years if they have money to pay. That is why when we were discussing the Kenya National Examinations Council Bill, I persuaded the then Minister for Education, the late Mutula Kilonzo, to let me move an amendment to make it amendment lawful to release the certificates. Therefore, right now, we have an Act of Parliament, Act No.29 of 2012 that outlaws withholding of certificates by any person or institution.

The Government has no option but to obey the law. The law does not give an option. The law says “shall not” be withheld. That is very clear. It is estimated that over 100,000 certificates are held by schools. Recently, I visited a secondary school near my village and I asked the principal to show me the certificates he was withholding. He reached out for a big carton where he had kept certificates which were collecting dust. He did not know the owners. Some, if ladies, are already married probably after giving up. Others belonged to men who hang around in the village. The principal admitted that he had no business with the certificates.

It is absolutely unfair for institutions to destroy the lives of children. They are destroying them. I had an occasion, and I am sure that my colleagues have experienced this too, when a student has come to me and told me that they wanted to join the army or

someplace but they need to pick their certificate but have a balance of Kshs20,000. I know that you have helped such students to collect their certificates and I have done the same. Should we allow this to continue? The answer is no. All we are asking is that the Government should obey the law. The law is clear.

My former Minister, Mr. G.G. Kariuki, asked that we come up with a law. The law is there, Act No.29 of 2012. I have drawn the attention of the Cabinet Secretary to this law and he has seen that the law is there. However, he also says that teachers want to collect their fees. The law does not say that you should hold certificates only when there are fees balances. I have also written to the Attorney-General to urge the Cabinet Secretary to have these certificates released. The hon. Attorney-General has not responded. I have written to the CEO of the Kenya National Examinations Council (KNEC) to consider sending certificates directly to candidates and he talked about logistical complications. He said he could not do it and had to send them to schools. I am appealing to this House to pass this Motion.

After passing the Motion, the Committee of the Senate that is responsible for implementation should take up this matter immediately and make sure that the certificates are released and that they will be no longer be held. We should not be passing Motions every day. Since the law is there, let the law be obeyed.

I agree with my colleagues that there must be a solution to the problem of financing institutions. Indeed, that is the responsibility of the Government to know what to do to ensure that schools are funded. I believe that the President also mentioned that his aim is to allow free education including boarding facilities. If that is done, then teachers will have no reason to hold certificates. There will be no balances since the Government will have taken care of that.

I thank my colleagues, once again. Let us hope that this will be the end of the Motion on the retention of certificates because of school fees. We will ask the Minister to implement this Motion and ensure that no future certificates are held which would be in contravention of the law.

I beg to move.

The Temporary Speaker (Sen. Ongoro): Hon. Members, I want to draw your attention to Standing Order No.72(1). I proceed to rule that this matter does not affect counties. I will, therefore, proceed to put the question.

(Question put and agreed to)

ESTABLISHMENT OF NATIONAL OPEN AND
DISTANCE LEARNING UNIVERSITY

THAT, aware that the Open and Distance Learning (ODL) offers flexible learning opportunities thereby freeing learners from constraints of time and place while enabling them to combine work and family

responsibilities with educational opportunities; aware that there is minimum use of ODL in both primary and secondary schools in Kenya; appreciating that this mode of learning would facilitate access to education in areas where physical and socio-economic factors hinder access; the Senate urges the National Government to institutionalize and mainstream policies to support ODL through the development of an effective regulatory and legal framework for ODL and to establish a national university dedicated to ODL.

(Sen. (Prof.) Lonyangapuo on 10.4.2014)

(Resumption of Debate interrupted on 10.4.2014)

The Temporary Speaker (Sen. Ongoro): This is resumption of debate interrupted on Thursday, 10th April, 2014. The last speaker had concluded his contribution. Any Senator can, therefore, rise to make a contribution. We have a balance of 1 hour 40 minutes.

Is there no Member interested in making a contribution to this Motion?

That being the case, I will call upon the Mover to reply.

Sen. (Prof.) Lonyangapuo: Thank you, Madam Temporary Speaker. As you rightfully put it, on 10th April, 2014, I introduced this Motion where the Directorate of Science and Technology is asking that the national Government institutionalizes and mainstream policies to support open and distance learning through the effective regulative and legal framework for Open Distance Learning (ODL) and to establish a national university dedicated to open distance learning popularly known as the Open University of Kenya.

Madam Temporary Speaker, as the previous contributor said, it is a challenge that Kenya has not adopted a system where people can acquire education programmes through distance learning just as other countries. There is no law that has ever been introduced to support this in our country except a mere mention in the Sessional Paper No.1 of 2005.

The Ministry of Education has attempted, particularly, during the beginning of the NARC Government to form a committee that was supposed to come up with policies and legal regimes that could support this. The only unfortunate thing that was done was the people who were identified to sit and drive this were mainly professionals who had gone through face to face instructions of learning. It is a big challenge when you are asking learners to come up with a policy that can support the form of learning where the students never interact with the teacher. We cannot afford at this time, as a country, not to come up with this policy. You will recall that in the Millennium Development Goals everybody is supposed to be able read and write. That is our intention and aim, but because of the challenges that we have in the countryside and counties, it is so essential that we come up

with policies that can enable pupils at the primary or secondary level to study on their own without necessarily going to class to interact with a teacher.

Madam Temporary Speaker, we are talking about an ambitious programme by the Jubilee Government, where every Class One pupil in our primary schools is supposed to be given a laptop. If that programme moves on, it, therefore, means that every part of the country will be linked to fibre connection. If every part of the country is linked, those who cannot go to school can easily access learning materials. Therefore, the Ministry of Education should introduce programmes and come up with a website where those educational materials can be posted for use by anybody who may want to study at their own pace.

Madam Temporary Speaker, in the developed world, young people who do not want to go to school can continue learning from their homes, because of the open and distance learning facility. Kenya is supposed to lead in this area. I am told that we attempted to come up with a version of the same but we only came up with what is found in Kikuyu Campus of the University of Nairobi, where students come over the holidays to pick material. This is not what this Motion is proposing. It is proposing to have a programme where you send the material to the students and they are able to access it. Sen. Musila has talked about the issue of certificates being detained because of lack of payment of school fees. This is a very cheap programme where we are not going to spend a lot of money. You only need registration fees to access the material. The extramural of the University of Nairobi has not assisted, because it is just like the school-based programme that we normally have. But countries like Tanzania, South Africa and Ethiopia copied from our system, but improved on it and made it law.

Madam Temporary Speaker, so many laws have been introduced by the Government and they have been passed by Parliament, but implementation seems to be a terrible and serious challenge. This is because when a law has been passed, we need to follow it up. I call upon the Government and particularly, the relevant department, to come up with a framework that is essential. Now that we have counties, so many staff have been employed, but they are unable to access university education and colleges, because not all universities are found in the counties. If we had a university or college that is dedicated to distance learning, it would be very easy for those counties to be linked. If this Motion is passed, my prayer is that the Implementation Committee will liaise with the Ministry of Education and ensure that this is done, particularly at this time when we have devolution. Everybody should access education at whatever level.

Madam Temporary Speaker, I beg to move.

The Temporary Speaker (Sen. Ongoro): Thank you, Senator. I once again draw your attention to Standing Order No.72 (1) and rule that this Motion does not affect counties. I will, therefore, proceed to put the question.

(Question put and agreed to)

TRANSFORMATION OF NAIROBI INSPECTORATE
DEPARTMENT INTO A MODERN METROPOLITAN SECURITY AGENCY

THAT, aware that pursuant to Article 6(2) of the Constitution, the national and county levels of government are distinct and interdependent and that they conduct their mutual relations on the basis of consultation and cooperation; recognizing that the respective functions and powers of national and county governments are provided for in Article 186 and the Fourth Schedule of the Constitution, and that under paragraphs 6 and 7 of Part 1 of the Fourth Schedule, national security is a function of the national government; further recognizing that Article 187 of the Constitution provides for the transfer of functions and powers from one level of government to the other; cognizant that Nairobi and Mombasa cities are the main gateways to Kenya; concerned, however, that the threat of terrorism continues to be a major challenge to the two cities and the country at large which adversely affects Kenya's image internationally and hampers investment; recognizing that Article 247 of the Constitution allows for establishment of police formations to supplement the National Police Service; the Senate urges the national government to-

a) enter into agreements with county governments with a view to cooperating and working jointly in executing functions and powers relating to security;

b) enter into agreement with county governments of Nairobi and Mombasa with a view to transforming their respective city inspectorate departments into modern metropolitan security agencies capable of detecting and combating terrorist and other criminal activities; and,

c) initiate legislation to provide for a legal framework for the complementary roles of the proposed metropolitan security agencies to supplement the National Security Agencies.

The Temporary Speaker (Sen. Ongoro): Is Sen. (Prof.) Kindiki not in the House? This Motion is deferred.

(Motion deferred)

ADJOURNMENT

The Temporary Speaker (Sen. Ongoro): Hon. Senators, there being no further business, the Senate, therefore, stands adjourned to Tuesday 10th June, 2014, at 2.30 p.m.

The House rose at 4.40 p.m.