

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Tuesday, 23rd February, 2016

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

[The Deputy Speaker (Sen. Kembi-Gitura) in the Chair]

PRAYERS

COMMUNICATION FROM THE CHAIR

VISITING DELEGATION OF STAFF FROM NYAMIRA AND KERICHO COUNTY ASSEMBLIES

The Deputy Speaker (Sen. Kembi-Gitura): Hon. Senators, I have a short communication to make on visiting delegations from various county assemblies on attachment at the Senate.

I would like to acknowledge the presence in the Speaker's Gallery, this afternoon, of visiting staff from Nyamira and Kericho county assemblies. The county assembly staffers are here on a five-day attachment visit in similar departments at the Senate. I request each member of the delegation to stand when called out so that they may be acknowledged in the Senate tradition. They are:-

From Nyamira County Assembly Research Department:-

- | | | |
|------------------------|---|------------------------------------|
| 1. Aloice King'ala | - | Principal Information and Research |
| 2. Eveyne Kiage | - | Research Officer II |
| 3. Boniface Ondieki | - | Research Officer II |
| 4. Justin Ogechi | - | Research Officer III |
| 5. Christopher Kinanga | - | Research Officer III |

From Kericho County Assembly Sergeant-at-Arms Department:-

- | | | |
|--------------------|---|-----------------|
| 1. Justus Maritim | - | Commissioner |
| 2. Benjamin Byegon | - | Security Warden |
| 3. Julius Sang | - | Security Warden |
| 4. Kiprono Rugut | - | Security Warden |
| 5. Diana Chepkemai | - | Security Warden |

I hope that they have a fruitful programme. On behalf of the Senate and on my own behalf, I welcome them to the Senate and wish them well for the remainder of their stay.

I thank you.

(Applause)

NOTICE OF MOTION

ADOPTION OF REPORT OF CPAIC ON THE FINANCIAL OPERATIONS OF
HOMA-BAY COUNTY EXECUTIVE FOR THE FINANCIAL YEAR 2013/2014

The Deputy Speaker (Sen. Kembi-Gitura): Is the Chairperson of the Sessional Committee on County Public Accounts and Investments here?

Sen. Okong'o: Mr. Deputy Speaker, Sir, if you may allow me a minute so that I can consult the secretariat to get the relevant documents to table.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Okong'o, can we defer this issue for a little while? I will reorganize the Order Paper.

Sen. Okong'o: Most obliged, Mr. Deputy Speaker, Sir.

(Notice of Motion deferred)

The Deputy Speaker (Sen. Kembi-Gitura): Next Order.

STATEMENTS

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Okong'o, you are supposed to seek a statement.

Proceed.

VALIDITY OF WEATHER FORECASTS ISSUED BY KENYA METEOROLOGICAL DEPARTMENT

Sen. Okong'o: Mr. Deputy Speaker, Sir, I rise pursuant to Standing Order No.45(2)(b) to seek a statement from the Chairperson of the Standing Committee on Land and Natural Resources regarding weather forecast issued by the Kenya Meteorological Department (KMD).

In the statement, the Chairperson should state:-

(1) The methodology used by the KMD to get the weather forecast and whether the methodology conforms with the established global standards.

(2) Whether the KMD is well equipped and has adequate infrastructure and manpower to give reliable forecasts.

(3) The credibility of the forecast issued by the institution, including the *El nino* forecast last year.

(Sen. Khaniri consulted Sen. (Dr.) Khalwale)

The Deputy Speaker (Sen. Kembi-Gitura): Is the Chairperson of the Committee here?

Sen. Khaniri: Mr. Deputy Speaker, Sir, I am here. Sorry I was consulting the Senator for Kakamega County.

The Deputy Speaker (Sen. Kembi-Gitura): Am sure on a different issue.

Sen. Khaniri: Yes, on a different issue, not on this one.

We will endeavour to provide the statement in two weeks' time. Should we not be ready, I will report progress to the House.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Okong'o, is that okay with you?

Sen. Okong'o: I have no issue, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. Kembi-Gitura): That is good. I so order, in two weeks' time let us get the statement.

I have no further request for statements. Sen. (Prof.) Lonyangapuo, I understand your statements are still undergoing process. Maybe they will be ready tomorrow.

Sen. (Prof.) Anyang'-Nyong'o, you may proceed.

Sen. (Prof.) Anyang'-Nyong'o: Mr. Deputy Speaker, Sir, I had sought leave of the Senate to make a statement on a matter which is important to us---

The Deputy Speaker (Sen. Kembi-Gitura): Sen. (Prof.) Anyang'-Nyong'o, would you allow me a minute so that Sen. (Prof.) Lonyangapuo can first seek a statement? I am seized of your request.

SHORTAGE OF TEACHERS IN WEST POKOT COUNTY

Sen. (Prof.) Lonyangapuo: Mr. Deputy Speaker, Sir, I rise pursuant to Standing Order No.45(2)(b) to seek a statement from the Chairperson of the Standing Committee on Education regarding the shortage of teachers in West Pokot County.

In the statement, the Chairperson should:-

(a) State whether he is aware that schools in West Pokot County have a shortage of 2,023 teachers in primary schools, which translates to a shortage of 46 per cent of the required number and 532 teachers in secondary schools, translating into a shortage of 48 per cent of the required number.

(b) Explain why the children of West Pokot County are being denied their right to education contrary to Article 53(1)(b) of the Constitution of Kenya.

(c) State when the teachers will be deployed and/or employed to cater for this shortage.

(d) Explain the immediate remedial measures that the Government will take to deal with the current situation.

Mr. Deputy Speaker, Sir, I have another statement.

The Deputy Speaker (Sen. Kembi-Gitura): Are they both related to the Committee on Education?

Sen. (Prof.) Lonyangapuo: Yes, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. Kembi-Gitura): Then proceed.

REMITTANCE OF TEACHERS' SACCO
DEDUCTIONS BY THE TSC

Sen. (Prof.) Lonyangapuo: Mr. Deputy Speaker, Sir, I rise pursuant to Standing Order No.45(2)(b) to seek for a statement from the Chairperson of the Standing Committee on Education regarding the remittance of teachers' sacco deductions by the Teachers Service Commission (TSC).

In the statement, the Chairperson should address the following:-

(a) Explain whether he is aware that the TSC has been effecting statutory deductions from teachers' salaries, but has not been remitting the same to the teachers' sacco in the country.

(b) Explain why the TSC has not been remitting the said deductions.

(c) Explain the measures that the Commission will put in place to ensure that the deductions are remitted within the stipulated time.

Sen. Karaba: Mr. Deputy Speaker, Sir, I undertake to give response to these concerns in two weeks' time.

The Deputy Speaker (Sen. Kembi-Gitura): On both issues?

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

The Deputy Speaker (Sen. Kembi-Gitura): Sen. (Prof.) Lonyangapuo, is that okay?

Sen. (Prof.) Lonyangapuo: Yes, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. Kembi-Gitura): Okay, let us have the statements in two weeks' time.

SENATORS' GENERAL STATEMENT

RECENTLY CONCLUDED ELECTIONS IN UGANDA
AND DEMOCRATIZATION IN AFRICA

Sen. (Prof.) Anyang'-Nyong'o: Mr. Deputy Speaker, Sir, I had earlier sought leave of the House under Standing Order No.45(2)(a) to make a statement and bring the attention of the House to a matter that concerns us as Kenyans, Africans and East Africans.

Mr. Speaker, Sir, last week general and presidential elections were held in Uganda. The outcome of the presidential election has been very problematic. This is the first time in an African country where an election is held and there is no celebration of victory anywhere. If anything the victory rally that President Museveni had planned in Kampala had to be cancelled because of tremendous discontent of the Ugandan people on the conduct of the election, the degree of freeness and fairness and the interference by the State in the democratic process to subvert democracy and deny the people of Uganda the freedom to choose their leaders without fear or hindrance.

We sit on a precipice of disaster. Like it happened in the 1970s, we may sooner than later, have to accommodate our Ugandan sisters and brothers in Kenya because of insecurity in their country. It is, therefore, we, as Kenyans, to become seized what is

going on and get ready to defend democracy, not just in our nation, but everywhere in the world. There is already international pressure going on and statements being made by peace lovers and democratization forces the world over, calling the attention of the world to the lack of democracy in Uganda.

His Excellency President Olusegun Obasanjo, the Chairman of the Commonwealth Observer Group to the 2016 General Elections in Uganda has already made it clear that nobody who believes in sanctity of democracy can put a stamp of approval on that election. The European Union (EU) made a similar statement, calling the attention of the world to the fact that the just concluded elections in Uganda, particularly the presidential elections were rigged, hollow and a sham.

Although the African Union (AU) and the regional group in the Great Lakes Region timidly approved of these elections as free and fair, we, a country, that is so proud of our 2010 Constitution that proclaims the universality of democracy and the equality of all men and women in this world and the right of every person to choose a Government of his own choice, is something that we must stand tall as Kenya and be counted among those who are rejecting the so-called democratic elections in Uganda. The elections are only democratic in so far as President Yoweri Museveni is concerned.

President Museveni himself is on record as saying that nobody should teach him about democracy. This is the kind of arrogance of the big man in Africa that should have been left behind.

The Deputy Speaker (Sen. Kembi-Gitura): Order, Sen. (Prof.) Anyang'-Nyong'o! I allowed this request for statement with my eyes open. It is a very thin line. I would like not to caution you, but to bring to your attention the provisions of Standing Order No.90(1). It says:-

“Neither the personal conduct of the President, nor the conduct of the Speaker or of any judge, nor the judicial conduct of any other person performing judicial functions nor any conduct of the Head of State or Government or the representative in Kenya of any friendly country or the conduct of the holder of an office whose removal from such office is dependent upon a decision of the Senate shall be referred to adversely, except upon a specific substantive Motion of which at least three days' notice has been given.”

Therefore, the moment you mention President Museveni, I will stop you because of the provisions of that Standing Order.

Sen. (Prof.) Anyang' Nyong'o: Thank you, Mr. Speaker, Sir. I stand guided. I will definitely honour your directions.

In the African scene, in the early 2000s when I was Minister for Planning and National Development, most African countries, indeed, all members of the AU, signed themselves to the African Peer Review Mechanism (APRM). The reason we acceded the APRM was because of the importance we attach to democracy in the new surge for good governance in our continent which is really needed for development.

Since then every African country which signed up to the APRM has been reviewed by their peers, including Uganda. If you read the report by the APRM, there is no doubt in my mind that all those reports, including the one on Kenya, lays emphasis to

importance of free and fair elections in order that we will nurture democracy in our nations. These reports also say that there is a very close correlation between good governance and development. African countries that have performed well in terms of development are those which respect good governance.

We are saying this is not to be paternalistic to the Ugandan people, but because we want to be brotherly to our Ugandan brothers and sisters. Something we share in common should not be sacrificed at the alter ego of dictatorship or big man syndrome. It is important too that we recognize the roles that certain countries have played in this continent to advise advanced democracy.

The recent elections in Nigeria, Ghana, Tanzania, Botswana and the pending election in South Africa make us proud. Since there are nations and Governments in African which have stood tall to defend and promote democracy, there is no need why in our region any Government should fall behind in the promotion and defence of democracy.

We, as members of the East African Community, should be brave enough to know too that in the East African Community there are standards of good governance that we have committed ourselves to and we should not allow any of our members to depart from. I brought this statement to the House because, at the moment, the rest of the world may judge us harshly if, indeed, what goes on in Uganda is allowed to continue and degenerates into blood that we have never seen before.

At the moment, the social media is filled with so many atrocities that have already been committed as a result of the fact that the people are resisting the rigging of the elections. However, the State is perpetuating its own repression on the people so that they may not speak. It was diabolical for the Government of Uganda to shut down social media during these elections. We know the role that social media has played to awaken the African people to the reality of democracy.

Freedom of expression and communication is enhanced by the social media. At times, I agree social media goes overboard, but nations and governments should establish rules and regulations to deal with this. However, taking drastic action of shutting down a major avenue of communication among the Ugandan people and between the Ugandan people and the world at large is undemocratic.

Further, arresting a leader of the opposition and stopping Mr. Besigye from going to the Electoral Commission to seek for results of an election shows very clearly that the victor is not the victor. The victor has become the victim of his own imagination that he is the victor.

These are issues that may visit us in this country. We, as Kenyans, must stand tall and resist that kind of development. I call upon the Government of Uganda to respect the democratic rights of her own people. I call upon the people of East Africa to respect the democratic rights of the people of Uganda. I call upon the International Community to come in solidarity with the people of Uganda. I call upon the United Nations Organization (UNO) whose charter was based on the freedom of all mankind, to come out boldly and tell the world that this is a member of the UNO which has abrogated the charter of the UNO. I call upon the AU not to be timid, but to stand with nations who

love democracy the world over to denounce what is happening in Uganda. I call upon the East African Community right here at home to do the same.

This Senate composes of men and women who have struggled for democracy and who know that democracy must be upheld in every nation. The Senate has distinguished itself to speak the truth and stand for the truth. I call upon this nation to lead the world in condemning what is going on in Uganda, in calling upon Ugandans to be strong enough to resist the creeping nature of a dictatorial regime that was going to be thrown away by a free and fair election. We, lovers of peace and democracy, will stand with them.

I beg to state.

The Senate Minority Leader (Sen. Wetangula): On a point of order, Mr. Deputy Speaker, Sir. I consulted with the Clerks-at-the-Table as to whether we can make complementary contributions to this Statement and they advised me that it is possible to do so.

I, therefore, seek your leave for me to do so.

*(The Deputy Speaker (Sen. Kembi-Gitura)
consulted with the Clerk-at-the-Table)*

The Deputy Speaker (Sen. Kembi-Gitura): Sen. (Prof.) Anyang'-Nyong'o requested to make this statement under Standing Order 45(2)(a), and I approved it. The request to make the statement under Standing Order 45(2)(a) is very clear. It says:-

“I would like to make a statement on the Floor of the House on the recently concluded elections in Uganda.”

I allowed him to make the Statement, whose request came in good time. Standing Order 45(4) reads:-

“No Senator making a Statement under this Standing Order shall speak for more than ten minutes, unless with the permission of the Speaker.”

Sen. (Prof.) Anyang'-Nyong'o spoke within the 10 minutes. I am sure the reason you sought the opinion of the Clerks-at-the-Table is because it is clear that if he was seeking a statement from anybody in the Government on the issue of the elections, in the normal procedure that we have adopted in the Senate. He could have ridden on that seeking of a statement, so that when an answer is given you could be taken into account. However, Sen. (Prof.) Anyang'-Nyong'o made a Statement. Since Standing Order 45(4) says that no Senator making a Statement under this Standing Order shall speak for more than ten minutes, unless with the permission of the Speaker, I interpret it to mean the Senator making the statement. It does not open a window for other Senators to contribute. That is my interpretation.

I know that Standing Order 46 is clear that there shall be no debate. In the same way, if my interpretation is clear, Sen. (Prof.) Anyang'-Nyong'o has made the statement that he wanted to make.

The Senate Minority Leader (Sen. Wetangula): On a point of order, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. Kembi-Gitura): Let us not be argumentative. I am sure Sen. (Prof.) Anyang'-Nyong'o understood this because I cautioned him when he was beginning. He has done very well because I raised with him the issue of Standing Order No.90. I will not open this debate because---

(Sen. Wetangula spoke off-record)

Sen. Wetangula, you sought a direction very respectfully and withdrew from the Table. That means that you accepted that there was going to be a direction. That is the direction I have given.

The Senate Minority Leader (Sen. Wetangula): You are always fair, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Wetangula, it is not about fairness. I know that I am fair, but you also know that I am very firm. You sought a direction and I have given it. I will not allow you to debate this issue, but you can make a comment which does not touch on the debate on this issue.

The Senate Minority Leader (Sen. Wetangula): Thank you, Mr. Deputy Speaker, Sir, for that fairness. Standing Order No.45(2)(a) that the distinguished Senator for Kisumu County made the statement under does not exclude other Senators with interest in the matter from making comments.

Secondly, Standing Order No. 45(4) limits the Senator making the statement to ten minutes. It does not say that the matter of that statement must be concluded in the ten minutes. The ten minutes is limited to the Senator making the statement. Other Senators can make statements on that statement within the discretion of the Chair. But more important, a precedent has been set by the Chair. Everytime statements are made or sought you allow other Senators to complement them. Equally important, as my distinguished senior in law you know the maxim "*expressio unius est exclusio alterius*." The reason we have Standing Order No.46 within the context of that maxim is that it is about a statement of a personal nature. The House rules do not allow Members to debate a statement of a personal nature made by a colleague. For example, if one was assaulted or something happened, we leave it there. However, this is a statement of general topical concern.

I want to implore you to interpret the Standing Orders liberally as the Constitution requires, and allow those of us who have tremendous interest in this matter. In the difficult days of Uganda, my county housed more than 50,000 refugees from Uganda. We have a very keen interest to know what is happening in Uganda, so that we do not fall back to those dirty old days. Kindly, allow me a few minutes to say something.

Sen. (Dr.) Khalwale: Mr. Deputy Speaker, Sir, I compliment you for opening up to Sen. (Prof.) Anyang'-Nyong'o to ask for this Statement. It was a difficult decision. Having done so, may I point out two things: First, the Speaker of the Senate is a Senator and whenever he makes a statement through Communication, he normally allows us to intervene---

The Deputy Speaker (Sen. Kembi-Gitura): Order, Sen. (Dr.) Khalwale! I know the difference in all these issues. The point I am making is that if you listened to me

because you noticed that when the Senate Minority Leader rose for the first time, he indicated that he spoke to the Clerks-At-the-Table who had told him that he could ride on it. This appeared to me that he was not clear. He also understood that it is not the normal Statement to seek and that Members can ride on it.

The Senate Minority Leader is a longstanding experienced Member of Parliament. If it was directed as you make it appear, the Senate Minority Leader would not have approached the Clerks-At-the-Table to ask for direction because he could have ridden on the Statement like we always do. The fact that he raised the issue with the Clerks-At-the-Table appears to me that you cannot quote the precedence that has happened in the past.

As correctly put, when I allowed Sen. (Prof.) Anyang'-Nyong'o to raise the issue, I knew that under Standing Order No. 90, it was not going to be an easy debate. Sen. (Prof.) Anyang'-Nyong'o was not seeking a statement to be ridden on, but he made it within the ambits of the directions I gave him when he commenced to give the statement. When he mentioned the name of the President, he respected and acquainted himself well.

It is a unique statement that he made and depending on who is interpreting - I have done my interpretation under Standing Order No. 45(4) - the Senator referred to in (4) could be any Senator according to you. However, according to me, it is the Senator making the statement. Therefore, for me and without being argumentative, that is my direction on this matter.

Sen. (Prof.) Anyang'-Nyong'o was careful because he could not come under a Motion of Adjournment, but he could have tried that and would have allocated time to debate it on a Motion of Adjournment. He did not do it, but he chose the path he chose and neither was he making a Personal Statement. As such, I have given the direction.

However, it could be dynamic in the sense that when it comes to tomorrow, a different Chair may make a different ruling. For now, it would be futile to try because you are not coming under review, but instead you are asking me to look at the ruling I have made. Therefore, I have no reason at all to change it.

Sen. (Dr.) Khalwale: Mr. Deputy Speaker, Sir, could you allow me to make a short comment?

The Deputy Speaker (Sen. Kembi-Gitura): You can comment because I have no issue with that, but it is important that as hon. Senators, in the same way you have your positions, you must accept the Chair who has the right to make a ruling under the provisions of the Standing Orders. It is important to respect that because from that, we can easily conduct business. Otherwise, you can raise points of orders until 4.00 p. m. and my ruling will stand. I appreciate if my ruling is wrong and that a different Chair can give a varied ruling. However, above all, I have made a ruling.

Sen. (Prof.) Anyang'-Nyong'o: On a point of order I stand with humility to request the Chair under difficult circumstances to reconsider opening the Floor to some comments from the Members using the prerogative you are given under Standing Order No.1.

Secondly, when I sought the permission of the Clerks-At-the-Table to raise this matter, they advised me to do it under Standing Order No.45(2)(a). However, I requested whether other Senators could comment and the reaction was that they could.

I am seeking your indulgence though it is rather difficult that you consider the importance of the matter and reconstruct your earlier ruling.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. (Prof.) Anyang'-Nyong'o strengthens my position that I have taken because he has moved from Standing Order No.45 to Standing Order No.1. The reason I made that ruling - believing it is correct in the circumstances - is because it is novel. We cannot say because we have done it before, we must also do it. If it were that easy, Sen. (Prof.) Anyang'-Nyong'o being an experienced Senator, would not have asked me to use my discretion under Standing Order No.1.

What we shall do is to await a finding by another Chair in the future to bring in the dynamism the Senate Minority Leader has talked about. But as of now, I have made a ruling.

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

The Deputy Speaker (Sen. Kembi-Gitura): Let me ask you a question before you raise your point of order. You are all giving it to your interpretation, are you not? The interpretation may come out contrary. All of you must agree on one interpretation. With a lot of humility, I have given one direction in order to bring the debate to a close because you have different views on the issue. The points of order you are raising might help the position in the future, but not today.

Sen. Muthama: Mr. Deputy Speaker, Sir, we are guided by the Standing Orders in this House. Standing Order No.45(4) provides for 10 minutes. It does not provide that it starts and ends within 10 minutes and that no other Senators shall make a contribution. Standing Order No.46 is different from Standing Order No.45 and both cannot be read and applied together. If this is a Personal Statement, we would be guided by the Standing Orders. However, because it is of a topical nature, there is no reason why we should not make a contribution. If allowed, we are not going to discuss about anybody, but to comment on issues that affect countries that neighbour Kenya. Sometimes we, as leaders, have the right to participate---

The Deputy Speaker (Sen. Kembi-Gitura): Order, Sen. Muthama! You are getting the Chair wrong. I am not being protective and that is where the Members are getting it wrong. You have said you will not mention names and I respect that. Understand me that I am not being a protectionist, but I am interpreting the Standing Orders.

Sen. Muthama: Mr. Deputy Speaker, Sir, I am not challenging the Chair, but Standing Order No.45 (4) is not applicable in this matter. Sen. (Prof.) Anyang'-Nyong'o did not issue the statement under Standing Order No.46. Tomorrow, you may transfer Standing Order 70 to be read together with Standing Order 81 and tell us that, that is the ruling. The Standing Orders must be obeyed. We can read between the lines that what is being applied is not right.

I rest my case.

Sen. (Eng.) Muriuki: On a point of order, Mr. Deputy Speaker, Sir. Standing Order No.45(2)(a) is specific because a Member sought a statement. There have been different opinions of Members, the Chair and other gurus of law. Such an issue would be appearing every so often because what Sen. (Prof.) Anyang'-Nyong'o sought will not be

the end of such statements. Would I, therefore, be in order to suggest that the Chair – like it has happened in the past – take time to bring up a well thought-out position or ruling?

The Deputy Speaker (Sen. Kembi-Gitura): I am sure you are not suggesting I have not thought out what I have said.

(Laughter)

Sen. (Eng.) Muriuki: Mr. Deputy Speaker, Sir, an argument of some sort ensued in House. I believe I am in order, but you could rule otherwise. It is in order because of tomorrow and the day after, so that a position is taken for such statements in the future such that when I seek a statement, I will know for sure whether other Members could intervene, comment on or not. That is all I am saying.

Sen. (Dr.) Zani: On a point of order, Mr. Deputy Speaker, Sir. I am looking at Standing Order No.45(3) and I just want to read a section that pre-empts the discussion. It states in part that:-

“..on the day on which the statement is proposed to be made, hand to the Speaker a written notification of the matter, but the Speaker may refuse to allow the request unless satisfied that the matter may be properly discussed in the Senate.”

That clearly suggests that under Standing Order No.45, there is provision for discussion only that the Speaker has to ensure that it is properly discussed.

From what other Members said, they can see the limitations quite clearly and they are happy to discuss within the confines. Therefore, you should allow for discussion and ensure that Members properly discuss. Standing Order No.45 provides for that and indicates quite clearly, that discussion can pursue from such a statement.

The Deputy Speaker (Sen. Kembi-Gitura): According to your argument, is discussion and debate synonymous?

Sen. (Dr.) Zani: Sorry.

The Deputy Speaker (Sen. Kembi-Gitura): According to your argument, is it true that discussion and debate, according to Standing Order No.46, are synonymous?

Sen. (Dr.) Zani: Mr. Deputy Speaker, Sir, I am looking at Standing Order No.45 specifically. There is no debate, but discussion and that is what we are requesting for.

The Deputy Speaker (Sen. Kembi-Gitura): Unfortunately, I have done my thought-out ruling. If you wish that a written ruling be done for the future, so that we do not rely on Standing Order Nos.1, 43 or 46, like Sen. (Dr.) Zani has done, then it will be clarified or a ruling will be made by the Speaker for future reference.

The Senate Minority Leader (Sen. Wetangula): On a point of order, Mr. Deputy Speaker, Sir. I have tremendous respect for the Chair, particularly yourself being my senior in law. I encourage you that the role of the Chair is to facilitate, but not to truncate debate. I urge you that we should not fall into the trap of what V.I. Lenin described as a mind that is like concrete mixed up, but permanently set.

The Deputy Speaker (Sen. Kembi-Gitura): Order, Sen. Wetangula! I will also not allow you to use that kind of language.

The Senate Minority Leader (Sen. Wetangula): Mr. Deputy Speaker, Sir, I withdraw.

The Deputy Speaker (Sen. Kembi-Gitura): No, I am not going to allow you to use that kind of language. For the benefit of every Senator sitting here and because you said I am fair, but also firm, you can make all the presentations you want to make but I will not change my position because we are not coming by way of an application for review. So, you can make all the arguments you want to make, but I have taken a position.

There are only two issues; we either accept Sen. (Eng.) Muriuki route where a ruling is going to be by a directive in writing given on this issue by the Speaker for the future or we accept that you raise points of orders for the whole afternoon although I have taken a position.

I heard you quoting V.I. Lenin and said that you hope I do not have a mind which is like concrete.

The Senate Minority Leader (Sen. Wetangula): Mr. Deputy Speaker, Sir, I did not say that about you.

The Deputy Speaker (Sen. Kembi-Gitura): The HANSARD is there and I listen, Sen. Wetangula. It is not that I do not listen. You quoted V.I. Lenin

The Senate Minority Leader (Sen. Wetangula): Vladimir Ilyich Lenin.

The Deputy Speaker (Sen. Kembi-Gitura): I know. You said that he talked about a mind that is like concrete. If you are referring to my mind, then maybe you are right for now, because I have made a decision that I am not going to change.

(Laughter)

So, basically, we are just wasting time.

The Senate Minority Leader (Sen. Wetangula): Let me finish, Mr. Deputy Speaker, Sir. A matter under Standing Order No.45(2)(a) cannot possibly wait for a reasoned ruling then you allow us to debate because topical means now. The issue of elections in Uganda, you should go to social media and see how angry people are. We, as leaders of the people, are entitled to speak to this matter.

I respect your ruling. It is wrong, but you have the right to make rulings, even wrong ones. I want to urge you that the dynamism of debate in the House and the duty and the role of the Speaker is not to be rigid about issues. Human beings make mistakes. A Speaker can make a ruling and, upon hearing Members, can change his mind. He or she, for example, could say; "I believe I was wrong, but now, I think you have a point which can improve the situation." A good idea must always be ready to give way to a better idea.

You said that you are not going to change your mind. In my community, we have a story where a hyena told a stone that; "even if you do not answer me, you have heard me."

The Deputy Speaker (Sen. Kembi-Gitura): The final point of order is from Sen. Abdirahman.

Sen. Abdirahman: On a point of order, Mr. Deputy Speaker, Sir. I listened to the last bit of interventions from my colleagues. As much as I came in late and found you had made a ruling, I thought we could also seek your indulgence as the Speaker, at times,

because Standing Order No.45(2) states that we could seek the indulgence of the Speaker as much as he may have made a ruling to allow room not for debate, but for interventions. With your indulgence, that could still happen.

Sen. (Dr.) Khalwale: On a point of order, Mr. Deputy Speaker, Sir. I agree with Sen. (Eng.) Muriuki that we need a written ruling on this issue, so that we remove doubt completely. If that is so, then, these points of orders that we are rising on could very well inform the decision that will be made.

Mr. Deputy Speaker, Sir, earlier I had risen to conclude by saying that your suggestion that Standing Order No.45(4) prevents us from commenting on the point of order; you should review it because if the Standing Orders wanted that Senators should not comment, under Standing Order No.45, then, that should have been stated. I say this because when it was found out that there is need for Senators not to comment anything, it was stated in Standing Order No.46.

Mr. Deputy Speaker, Sir, in conclusion, I, therefore, appeal to you because the issue in Uganda is very serious because we do not intend to debate the Government of Uganda or the President elect, but comment on the election in Uganda. Do not wait for the long written decision, but instead you should rescind your decision. We can ride on this because if the topical issue was that arising from the election, refugees have started crossing into Busia, Malaba and Lwakhakha, you would not have waited. We would still have gone ahead and debated the issue.

I beg you.

The Deputy Speaker (Sen. Kembi-Gitura): I am not going to change that position.

(Laughter)

All of you know that very well. So, you are just testing me because you know I will not change that position.

Sen. (Dr.) Khalwale, you have contradicted yourself by accepting or agreeing with Sen. (Eng.) Muriuki, in the first instance, before saying that I should rescind my decision. I will not rescind my decision, but abide that a ruling be made by the Speaker. The ruling will be informed very much by the points of order that you have raised. As you said, after further consultations, it could be found that I was wrong. There is nothing wrong with being wrong. Only, I, sitting here can make a final ruling on an issue in the House. I think that is accepted and as Sen. Wetangula would say, respected.

Therefore, I would rather we rest the matter at that and say that it is not as clear as you may want it to appear. That is why I would like it clarified as Sen. (Dr.) Khalwale and Sen. (Eng.) Muriuki have said, so that we can have a final decision once and for all, including if need be, clarification by amendment to the Standing Orders so that it is absolutely clear. That is all I seek from you.

The Senate Minority Leader (Sen. Wetangula): Can we then have it tomorrow and discuss it.

The Deputy Speaker (Sen. Kembi-Gitura): You can even bring a substantive Motion and nobody will stop you. The Speaker will have no discretion, but to allow you

to debate the issue. So, if you choose a narrow route, you know you have chosen it. If you proceed under Standing Order No.90(2) which talks about a substantive Motion, nobody can stop you from doing so.

Next Order.

CONTRAVENTION OF THE CONSTITUTION BY
CBK GOVERNOR ON CURRENCY PORTRAITS

The Senate Minority Leader (Sen. Wetangula): On a point of order, Mr. Deputy Speaker, Sir. I am so sorry. We have been so subsumed in that argument. I have two statements whose responses were to be given today. One is from the Chairperson of the Committee on Finance, Commerce and Budget on the continuing appearance of a human portrait on our currency contrary to the Constitution.

STATUS OF INTERNALLY DISPLACED PERSONS

The second one is on the disbursement of what was described as the final payment of Kshs1 billion to Internally Displaced Persons (IDPs); the broader issue of IDPs, how they have been paid and dealt with, including integrated IDPs – I learnt that we even have some in your County, Nyandarua and so on.

Those Statements were to come today. I think ---

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Wetangula, the tracking sheet that I have for statements shows that your statement on currency is due tomorrow, 24th February, 2016. The statement on IDPs is due on 10th March, 2016. So, tomorrow, we expect you to get the first statement.

The Senate Minority Leader (Sen. Wetangula): I stand guided.

ALLEGED ASSAULT OF POLICEWOMAN
BY CAPTAIN ALLISTER BROWN

Sen. Kittony: Mr. Deputy Speaker, Sir, I would like to request for a statement pursuant to Standing Orders No.45(2)(b) from the Chairperson of the Committee on National Security and Foreign Relations regarding an alleged assault of a police officer by one Captain Allister Brown in Kinangop, Nyandarua County on Sunday, 21st February, 2016.

In the statement, I would like the Chairman to explain:-

(1) The circumstances that led to the assault of a police officer who was on duty by the said Captain Brown.

(2) The measures that the Government has put in place to ensure that police officers on duty are protected.

(3) The action that has been taken against Captain Brown.

The Senate Minority Leader (Sen. Wetangula): Mr. Deputy Speaker, Sir, may I ride on that?

The Deputy Speaker (Sen. Kembi-Gitura): Yes, you can ride on this one. It is a serious statement.

The Senate Minority Leader (Sen. Wetangula): Mr. Deputy Speaker, Sir, if you saw the video clip, this white gentleman – if he is gentleman at all – was physically assaulting a police officer on duty. With such glaring evidence, open and shut case. We do not want to hear that the matter is under investigation. It was obvious. I have seen a 411 flash that he has been dismissed. However, the consequence of a physical assault on a police officer is not a dismissal. He was not even a Government employee, but an employee of a private company.

Can the Chairperson of the Committee bring the statement urgently? This should not wait for two weeks. As early as tomorrow, tell us:-

(1) Whether this gentleman is a Kenyan. We have white Kenyans and we have no problem with that.

(2) If he is not a Kenyan, whether the permit that allows him to stay in this country will be interfered with. We do not want to have visitors with a colonial mindset that thinks that an African is an object of assault as and when you wish.

(3) More importantly, whether the gentleman – if he is gentle at all – has been arrested, recorded a statement and taken to court. Even the Deputy President whom he was piloting has condemned the matter. So, we take him as a witness in the matter as well.

Sen. Wangari: Mr. Deputy Speaker, Sir, may I also ride on the statement. What happened in Nyandarua is despicable. We were embarrassed. As a woman, that case was and still is embarrassing. The action against this white man should be expedited as the Senate Minority Leader has said. We would also like to know how many flying hours he has as a pilot and how qualified he is.

Secondly, the language that he was using on that police woman, “Do your fucking job.” We, as a country, need to be told whether this guy is a Kenyan. He disrespected a woman in uniform and, therefore, the country. We are very embarrassed. We want to know if he has already been arrested. I have seen a 411 on investigations. In fact, we need him arrested today and not tomorrow. We hope this statement will be done and brought to this House as soon as possible.

Sen. Wamatangi: Thank you, Mr. Deputy Speaker, Sir. To add my voice to the concerns, I am one of the Kenyans who watched that in horror and disbelief. I am in support of the police officer herself and the general Kenyan population at large. We need to say it here very clearly that the prescription of the law and the offence of assault is clearly known. It does not require further interpretation that when you physically assault somebody, then your place is in jail.

Secondly, we also need to add to the questions as has been raised by Sen. Kittony. This is a statement of our national pride. I hope that gentleman – as it has been described, if he is a gentleman – is a Kenyan. If he is not, we should say categorically that he does not even meet a quarter of the regulations and requirements of somebody to qualify to hold a visa to stay and work in this country. So, his work permit should be withdrawn. He does not qualify to stay amongst the people of this country. He has no respect for us and our country. We need to say that clearly. If that is not done, we need to give notice that

we shall hit the streets ourselves, look for this man, demonstrate and make sure that he is “inside”. It is despicable.

Sen. (Eng.) Muriuki: Thank you, Mr. Deputy Speaker, Sir. While I condemn this action by this person that I do not think is a gentleman as one of the Senator said, I want to add that while issuing a statement, urgent action be taken immediately because this person might not be a Kenyan. Most of these guys have dual citizenship---

An hon. Senator: He is a Canadian!

Sen. (Eng.) Muriuki: Mr. Deputy Speaker, Sir, I am informed that he is a Canadian.

His passport should be seized immediately - he can sneak out - so that he faces the full force of the law.

Thank you.

Sen. Lesuuda: Thank you, Mr. Deputy Speaker, Sir. I wanted to add my voice and pose one question; whether by now – I wish this Statement could be answered this afternoon – he has been arrested. We saw a statement from the Inspector General’s office requesting him to report to the nearest police station. The statement stated: -

“The suspect has subsequently been ordered to surrender to any nearest police station”.

Mr. Deputy Speaker, Sir, it is almost at his own discretion whether he wants to go to the nearest police station or not. That is not what we see happening to ordinary Kenyans when they have broken the law. So, all the questions that have been raised here must be answered in that statement and in a very direct manner without beating around the bush.

I want to stress that this point. I will say it in Kiswahili language; *Iwe funzo kwa wengine wote ambao watataka kunyanyasa* our ladies in uniform serving this country.

Sen. Omondi: Thank you, Mr. Deputy Speaker, Sir. I join my fellow Senators to condemn this act. I want to register my disappointment by requesting the officer in charge to take action against the gentleman. This shows how violation against women is increasing. I want to say that as Kenyan women and women leaders, we cannot accept this. I want to thank our colleagues; male Senators who are joining us to condemn this act. We cry and ask for action to be taken so that justice may be seen to be done in this country.

Mr. Deputy Speaker, Sir, in other countries, if a Kenyan is found committing such an act, it is taken seriously, but in Kenya, we take it lightly. It is time that Kenya stands as a country and stops playing with the people who come in and violate the rights of Kenyans as we watch. I condemn this act seriously.

Thank you.

Sen. Madzayo: Asante sana, Bw. Naibu Spika kwa kunipa nafasi hii ili niweze kuchangia. Tunajua kisheria kwamba kosa la kupiga mwanamke au mama si sheria hata kidogo. Hivi sasa, huyu jambazi ambaye ni rubani amechukua hatua ya kupiga askari wa taifa letu. Hili swala la mtu ambaye anachukua hatua mikononi mwake, kuweza pia kuadhibu askari, sisi twajiuliza wenyewe: Je, kama sisi tuko na sheria, ni kwa sababu gani huyu mtu bado anarandaranda katika nchi yetu? Je, tukisimama hapa, tunajivunia

kuwa wakenya ama ni mambo la kubahatisha kwa sababu ikiwa askari wetu anaweza kupigwa, na kila mtu nchini akaweza kuona katika runinga?

Bw. Spika, je, kama yule askari angekuwa mwanaume, angeweza kufanya kitendo kama hicho? La! Kama angekuwa kibonge kama ndugu yangu Sen. Karaba, je angeweza kufanya kitendo kile? Wangepambana pale pale. Lakini alichukua nafasi hiyo kwa sababu aliona ya kwamba yule ni mama ambaye hana uwezo.

Sisi tunashtumu kitendo hicho sana kwa sababu ni kitendo cha dharau kwa Wakenya wote. Ni kitendo ambacho hakifai kufanywa na mtu yeyote hapa nchini. Licha kwamba kimefanywa na mtu ambaye tunamuona rangi yake ikiwa ni tofauti, hatujali kama yeye ni Mkenya au la. Jambo la muhimu ni kuwa sheria lazima ifuate mkondo wake. Huyu mtu ashikwe, apelekwe ndani na aweze kufunguliwa mashtaka mara moja. Tunataka kuona ni Jaji yupi atakayechukua kesi hiyo kama atamwaachilia au kumhukumu. Hii ni kwa sababu Wakenya wote waliona kitendo hicho cha dharau kikifanyika wazi.

Huyu ni mtu wa kufungiwa korokoroni. Ikiwa si mwananchi wa Kenya, sheria pia inasema kwamba achukuliwe hatua na afungwe vile vile. Hatutaki kuona mabalozi wakiingilia kesi hii kwa sababu kitendo hiki cha dharau kimetendeka.

Bw. Naibu Spika, kitendo kama hiki kiliwahi kufanyika miaka mingi iliyopita. Tulishuhudia kitendo kama hicho katika Pwani. Dada zetu walikuwa wakifanya biashara katika ufuo wa bahari na mtalii mmoja aliyejifanya askari akamuua dada mmoja. Hatimaye, kesi hii haikuchuliwa kwa uzito. Mabalozi mbalimbali waliingilia kati na mtalii huyo akaachiliwa huru.

Kwa hiyo, katika kesi hii ni lazima askari wetu wafanye kazi bila kuingiliwa kati na mtu au ubalozi fulani. Ikiwa sheria hii inaweza kutumika kwa Mkenya, wembe ni ule ule. Ni lazima huyu jambazi aliyefanya kitendo hicho achukuliwe hatua mara moja.

The Deputy Speaker (Sen. Kembi-Gitura): Order, Senator! You know you are riding on somebody's statement. Please, wind up. I hear where you are coming from, but wind up.

Sen. Madzayo: Asante, Bw. Naibu Spika. Ni hasira za kuona mama akipigwa na mtu ambaye hatumjui.

Sen. Kittony: Thank you Mr. Deputy Speaker, Sir. It has really provoked us, especially the mothers of this country. It is total abuse of our integrity. I do not know whether somebody has been deported. I would even recommend that this person be deported because where he comes from, in Canada, they do not want to see a black person, and maybe he thought he was back in his homeland.

The Deputy Speaker (Sen. Kembi-Gitura): Order, Senator! I will not allow you to get there.

Sen. Kittony: Thank you, Mr. Deputy Speaker, Sir. I say that it has really provoked us as Kenyan mothers and, more so, the family where that lady comes from because she is an officer in uniform, and if he could not respect our---

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Kittony, you know you are seeking a statement. I understand where you are coming from, but you are seeking a statement.

Where is the Chairman of the Committee? The Vice Chairman is not here. Who is from the National Security and Foreign Relations Committee? Sen. Kiraitu, is it you?

Sen. Murungi: Yes, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. Kembi-Gitura): Okay. Sen. Wetangula, when do you need the statement?

The Senate Minority Leader (Sen. Wetangula): Mr. Deputy Speaker, Sir, I will ask the Chairman to bring the statement tomorrow. It is urgent.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Murungi, did you want to contribute on this point?

Sen. Murungi: Yes, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. Kembi-Gitura): We are concluding on it.

Sen. Murungi: Mr. Deputy Speaker, Sir, I know what Kenyans are feeling about this matter. Indeed, you remember the old case of somebody called Sandstrom way back in the 1970s. This looks like another Sandstrom case. We deserve respect. I felt bad when I saw the lady in uniform being pushed like a *raia*. If the matter goes unpunished, people will lose confidence in our system. I plead with the House to allow the Chairman of the Committee on National Security and Foreign Relations to have this matter better investigated and bring a full statement to this House. I do not think he can do that by tomorrow. I plead that he be given a little more time, so that he can give a comprehensive statement to this House. We need to be reasonable.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Murungi, are you a Member of that Committee?

Sen. Murungi: Mr. Deputy Speaker, Sir, I am not a Member of the Committee, but the Chairman, Sen. Haji, is my friend.

The Deputy Speaker (Sen. Kembi-Gitura): He was here most of the afternoon.

Sen. Billow: On a point of order, Mr. Deputy Speaker, Sir. Is the hon. Member in order to suggest that the matter should be investigated? An assault is a criminal offence and does not need investigation; the police just need to arrest. We do not need to spend the Committee's time on investigation. That is a crime and the police should simply arrest.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Ndiema, did you want the Floor?

Sen. Ndiema: Yes. Mr. Deputy Speaker, Sir. This is an ugly incident. It would be of interest if we can also be told whether this person has a mother, wife or sister.

The Deputy Speaker (Sen. Kembi-Gitura): Order! Order, Senators! Sen. Wetangula, you have requested that the answer be given tomorrow, but it might not be practical because you have to inform the Chairman first who will then have to seek some information. The only reason I allowed a lot of time on this issue is because of the outrage that is in every person's mind who has watched that video. I propose that you endeavor to issue the statement on Thursday afternoon and not tomorrow, so that we can ventilate on it further. It is so ordered.

The Senate Minority Leader (Sen. Wetangula): Mr. Deputy Speaker, Sir, we will do that.

The Deputy Speaker (Sen. Kembi-Gitura): Hon. Senators, we are done with statements. Order Nos.8, 9, 10, 11, 12 and 13 have divisions and from where I am standing, I do not believe that we have the numbers or the threshold to do a division. In that case, I will stand down those Orders, so that we proceed with the next Order.

MOTION

ADOPTION OF REPORT OF MEDIATION COMMITTEE ON THE COUNTY GOVERNMENTS (AMENDMENT) BILL (SENATE BILL NO. 1 OF 2014)

THAT, this House adopts the Report of the Mediation Committee on the County Governments (Amendment) Bill (Senate Bill No. 1 of 2014) laid on the Table of the House on Wednesday, 18th November, 2015.

(Motion deferred)

BILLS

Second Readings

THE CANCER PREVENTION AND CONTROL (AMENDMENT) BILL (SENATE BILL NO. 3 OF 2015)

THE COUNTY OUTDOOR ADVERTISING CONTROL BILL (SENATE BILL NO. 11 OF 2015)

(Bills deferred)

COMMITTEE OF THE WHOLE

THE PUBLIC APPOINTMENTS (COUNTY ASSEMBLY APPROVAL) BILL (SENATE BILL NO.20 OF 2014)

THE HIV AND AIDS PREVENTION AND CONTROL (AMENDMENT) BILL (SENATE BILL NO.4 OF 2015)

THE COUNTY INDUSTRIAL DEVELOPMENT BILL (SENATE BILL NO.7 OF 2014)

(Committee of the Whole deferred)

*Second Reading*THE KENYA NATIONAL EXAMINATIONS COUNCIL (AMENDMENT)
(No.2) BILL (SENATE BILL NO. 14 OF 2015)*(Sen. Obure on 17.2.2016)**(Resumption of Debate interrupted on 18.2.2016)*

The Deputy Speaker (Sen. Kembi-Gitura): This is resumed debate. Sen. (Dr.) Zani, you have 13 minutes, if you want to contribute.

Sen. (Dr.) Zani: Mr. Deputy Speaker, Sir, I stand to support this important Bill by Sen. Obure that addresses the whole issue of setting up a tribunal. It is an amendment to the Kenya National Examination Council (KNEC) Act.

There have been various cases of cheating and the then Cabinet Secretary of Education Prof. Kaimenyi gave figures. In a report on the results of 2015, he alluded that 2,975 cases of cheating had been noticed. Prior to that, in 2013, 3,012 cases of cheating had been reported. The Senators who spoke before me talked about the worry that is consuming this country in terms of the cases of cheating. It is for this reason that the Kenya National Examination Council (KNEC) has been so strict that sometimes it cancels result. When students cheat, it means the grades that they get are not theirs. A student should be able to read, understand, articulate, answer the questions and then get a grade. The Council has reason to be worried about cases of cheating and bring provisions to ensure that cheating does not take place.

In some cases, however, results in some schools have been cancelled even when some of the students did not cheat. Indeed, there are cases where one student could have been sitting in one room and the other 49 or 50 students were sitting in another room and then all their results are cancelled. Definitely, this well supervised student was not part of the case. The Council has been trying to address all this.

Section 45 of the Act specifies the conditions under which the results can be nullified. Where the Council is satisfied that there is any sort of irregularities in the course of the exam, it can suspend or nullify the examination. Where the results have been obtained by any irregular means, the Council can nullify those results. The Council can conduct investigations on results and come up with conclusions. Investigations can be conducted and witnesses called. That is provided for in the principal Act. The amendment to this Act seeks to introduce the idea of a tribunal. In the principal Act the force and the authority of the Council is completely automatic and supreme. Once the Council has made a decision, there is no recourse for that student to later on come and say: "This and that are my circumstances." That is the reasoning behind this particular amendment; that a tribunal is created.

In the New Part 4(a), the National Examination Appeals Tribunal is proposed so that it can handle these specific components. We need to be careful because at the end of the day, the Council was doing its work up to a particular point and validly so. We have cases of students who may want the results to be relooked at, especially where they have

been cancelled or nullified all together. Therefore, this is important because it sets a different precedent from what we have had in this country. Most of the times, we have had situations where people do not have recourse, so that they can state exactly what happened or what can be investigated.

Clause 2 of this Bill says that the principal Act is amended by inserting the words “to provide for the establishment, powers and function of the National Examinations Appeals Tribunal” immediately after the words “and the conduct of examinations.”

This is very clear and well stipulated. Clause 3 introduces terminologies that are not there in the Principal Act.

I want to go to the specific aspects of the amendment at Clause 40 (a), especially on the composition of the Tribunal, which has about five people.

We have somebody from the Judicial Service Commission and another one from associations. This issue was discussed by other Senators; it seems that the membership is skewed towards one side and it does not give the student ability to have more support. We need to think of other associations that can cause this to happen.

When we look at the composition of the tribunal, it has five members but at Clause 40(f) of this amendment, we have a provision that states that a tribunal shall be properly constituted with at least three members. I feel that for a tribunal that is going to discuss something very critical like cancellation of results for a school, it needs to be spread out in terms of diversity. Therefore, when we shall be making amendments, we will want to have the composition of the tribunal to be increased and to have the sitting members increased to five members. This is to enable people to have confidence that a wide breadth of people from different backgrounds have been part and parcel of the process. This will make people feel more confident about the findings of that tribunal and the direction that is given for that tribunal at any one time.

The other issue is the nominating bodies and the idea of bringing in the Cabinet Secretary. This is fine because of due process. The Cabinet Secretary should deal with those specific nominees who have come from associations and key stakeholders. This will bring people who are very well-versed about examinations. In making the appointment, we should also ensure the adherence to the two-thirds gender rule. As much as we have this provision in most of the Bills and amendments, but in practice, it is not adhered to. We need to find a provision to make sure that the provisions are implemented. Somebody needs to put emphasis that no more than two-thirds from one gender should something be enacted and not just put on paper. The time for this tribunal is a two four-year term. The second term is to build up on the experience and the time is long enough to have stability in terms of solving cases. They will be paid by the Salaries and Remuneration Commission (SRC). That is in order.

[The Deputy Speaker (Sen. Kembi-Gitura) left the Chair]

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

I have a problem with Clause 40(e) where it says that the tribunal can sit at such place and time as the tribunal may appoint. This is will be a national tribunal and many people will want to be heard. If we have the tribunal moving so much from place to place or county to county, people would have a problem finding out where they are seated at a particular time. The idea of devolving it to different counties is a good one but I think it would be better to have sub-committees sitting at various locations for a specific issue. For example, if a particular school in Baringo County has their results cancelled, then the tribunal can go to investigate that issue in Baringo. I want this tribunal to have a level of regularity that allows people to quickly put their issues across. I fear that the *ad hoc* nature of this tribunal moving from one place to another might make it not have regularity.

Madam Temporary Speaker, the tribunal's mandate is wide but primarily they will be looking at the cancellation of results to allow for more investigation. It is giving 14 days for registering a complaint. This is ample time. We need to put a very clear caveat and caution about what this tribunal is going to do. I know that some Kenyans are going to misinterpret the work of the tribunal by thinking that if someone has a mean grade of C, he or she can request the tribunal to change it to a mean grade of A. I know that many students tend to complain and think that they have been downgraded. This is not a tribunal that will be looking at results relooking or remarking.

It will be important to put some cost element to it so that when someone presents a case to the tribunal, it should be vetted as an important matter. If there is some cost implication, it would reduce cases that are not very strong. We have to be careful because on the other hand, we do not want a poor student, who cannot afford the tribunal being unable to have their cases prosecuted. Therefore, some sort of due diligence needs to be done so that we can decipher the actual key cases. In the tribunal, it will be clear because we are talking about exam results that have been nullified or cancelled and cases of cheating. We might want to think about another forum where people can address the issue of remarking of examinations. This happens, for example, in the universities but there are conditions to be fulfilled. This tribunal is not about remarking but cancellation.

A person who is aggrieved and is a minor, the application will be done by a parent. This is good so that the parent can do due diligence and provide the right information. There is a provision for the tribunal to make a decision in 30 days. This will give the tribunal enough time to do investigations, come up with findings and present them. Let us improve on this amendment and give the details of what it will entail. What are we going to do if somebody is not satisfied even after the tribunal has pronounced itself on the appeal? Are we going to open up and say that there is another forum that somebody can follow up? Are we saying that the decision by the tribunal is final, if so, we need to have a sense of confidence and nobody needs to worry. This is going to be achieved because if you look at Clause 40(k), a process for verification has been put into place.

(Sen. (Dr.) Zani spoke off record)

The Temporary Speaker (Sen. Ongoro): Sen. (Dr.) Zani, I am adding you one minute to conclude.

Sen. (Dr.) Zani: Thank you, Madam Temporary Speaker. We need to think through this very carefully so that we can know whether we have a budget for this. I do not want to over-indulge and thank you for the one minute.

With those few remarks, I support this amendment Bill.

The Senate Minority Leader (Sen. Wetangula): Madam Temporary Speaker, I beg to support the Bill and congratulate the distinguished Senator for Kisii County for bringing it. It is a Bill that has been long overdue, but has probably been in consideration of the distinguished Senator for Kirinyaga County who is the Chairperson of the Committee on Education. This Bill is in keeping with the dynamism of CORD. You will remember that Sen. Musila, the distinguished Senator for Kitui County, brought another progressive Bill that obligated all the heads of schools to never withhold certificates of school-children. We went further to amend it to cover university students so that once a student has sat for examinations, passed or whether the grade they got, they are entitled to their certificate to move to the next level of particularly the job market.

This particular Bill is even more critical. You may recall when we had a *Kamukunji* here with the former Cabinet Secretary – I thank the President for removing that man from that Ministry – he exhibited extreme arrogance and total disregard for the plight of parents, students and the feeling of Kenyans. During that meeting, I could even see Sen. Karaba who is normally sympathetic with people from his side of the Government, looking very embarrassed with the manner of arrogance that Prof. Kaimenyi exhibited here and the impervious feeling, left me wondering whether he is a parent.

Madam Temporary Speaker, I have raised this matter with Sen. Karaba very many times that we have a very unique and an unacceptable, nearly illegal situation where the KNEC sets, marks, grades examinations and then disqualifies the students and there is no recourse to any appeal. If my memory serves me right, the KNEC has now come up with an even more draconian addition to their already awesome and lawful powers; that once you have been disqualified, you are not entitled to sit for any examination of the same nature in two years' time. Meaning, a child who for no mistake of his or her own, sits an examination in class eight and is arbitrarily disqualified, cannot have an opportunity to sit for the same examination in the next year; he or she has to go and wait for two years.

Madam Temporary Speaker, Sir, being a woman yourself, you know the plight of young girls. If you deny them an opportunity to re-sit the examinations in the next year, it is like telling them to elope and become mothers. In the process, we destroy very promising young Kenyans. You cannot tell a Class Eight girl child, that because her examinations have been disqualified, she should stay at home for two years before she goes back to school. It is very unfair. I have used a strong language against Prof. Kaimenyi and I have no regrets about it. He came here and looked like he had no feelings for anybody. We have parents in this county who sell all their possessions to take their children to school and those who turn themselves into beggars standing by the gate of their representatives everyday to look for money to go and pay school fees.

The other day, I saw a child in Kakamega who went to the referral hospital there and offered to sell his kidney to go to school. It is a pity that, at the end of it all, such a child is told by an extremely impervious KNEC that examinations were stolen and, therefore, he cannot get his certificate.

Madam Temporary Speaker, I keep wondering how a child in Kibish in Turkana can steal that examination which is set, moderated and marked in Nairobi. How does a child in Samburu access and steal that examination? How does a child in the village who has never even been to his divisional headquarters all his life access and steals that examination? I have never heard the KNEC on any occasion bring anybody to book as a principal offender in cheating in examinations. Even when there are teachers who participate in the Standing Order-called academies who want to remain at the “A” level in their grading or even in public schools who want to look good and go to the extent of spending their own money to corrupt officials to access examination papers way in advance; none of them has ever been brought to book. None of them has ever been admonished, sacked or in any way dealt with by the KNEC in conjunction with the employer; the Teachers Service Commission (TSC). This is because both of them are concerned with the quality of education in the country.

Madam Temporary Speaker, this Bill is very important in that it is trying to correct a wrong that has been visited on many students. Last year, I went to Nyamira County to attend the burial of Sen. Mongare’s mother, and the issue of examination cancellation was so hot. Every mourner, including women in the village, was demanding to hear from me what we were going to do about the mass cancellations of examinations in Kisii County. This has also happened in my county in most unexpected schools. Of course, I was delighted at the opportunity because it gave me an opportunity to say a few truths about the Jubilee Coalition. They are the ones who are presiding over this currently.

We want to see a situation where if a child or a candidate has issues with examinations, the least under the rules of natural justice that the KNEC can do is give notice to show cause. They should say that they have found anomalies and give an institution opportunity to give reasons. Nobody has ever been given a hearing in matters of cancellation of examinations. The word of the mandarins at KNEC backed by their bosses at Jogoo House is the *Alfa* and *Omega*. They say that you have stolen examinations and even though there is no evidence, you are disqualified. One time, I walked into their offices when I was a Member of Parliament to ask why a school in my constituency called Chebukaka had one subject and the rest left intact. They said that they had nullified the results because the students got nearly similar marks. How can that be a reason for cancelling examinations?

Madam Temporary Speaker, a good teacher like what Sen. Karaba used to be, can teach a class where every student can get a Grade “A”. However, that cannot be the basis for nullification of an examination because the whole class passed the subject of a specific teacher. That teacher should be promoted for that kind of performance. Believe me you, I was told that the reason they had cancelled the results of that subject was because everybody had passed. I asked them whether they had checked the quality of the teacher who taught that class and they said no. I asked whether any of them had gone to

find out how and why everybody passed, and they replied no. The only reason that they cancelled the examination is because everybody passed. That is grossly contrary to the rules of natural justice. Nobody can be deprived of their right without being given a hearing and an opportunity to challenge that decision.

During the draconian days of *baba na mama* when such things happened, even the teacher whose subject or the head teacher of the school that has been affected, now leaves in fear that he will be arrested, charged or parents some of whom are quite ruffians, will invade and assault him to demand the rights of their children. The teacher is left helpless.

I encourage the distinguished proponent of the Bill not to limit the challenge to this unreasonable conduct and decision by the Kenya National Examination Council (KNEC) to the aggrieved candidates, but also expand it and give the institutions to challenge these decisions; so that, for example, if you are the principal of Hekima or Akili Mingi School and they cancel examinations of your class, you do not have to leave the plight to individual candidates. The school must have the right to challenge that decision so that the KNEC can say their bit and the school their bit.

Madam Temporary Speaker, in this country, as the late J.M. Kariuki said, we have 10 billionaires and 39 million poor people. At that time he used the word “beggars.” There are people who cannot even afford to travel; leave alone where you, Sen. (Dr.) Zani, Sen. Obure or I come from; they can jump on a bus overnight and by the next day they are here. However, in places like Kibish, Nadabal, North Horr, Maikona, Moyale and Mandera, people are struggling to live; and all of a sudden you are told that your examination results have been cancelled because of irregularities. Even the dream of such a child or parent coming to Nairobi to challenge this decision is a nightmare. I remember, as a young lawyer, I used to practice law in Mandera, Habaswein, Elwak and Garissa. You arrive there and people ask you: “How is Kenya?” because they did not believe they are in Kenya. So, we need to make it easy. Of course, now we have county governments. I hope they will be sufficiently responsible to help situations like these when they arise.

I would like to encourage Sen. (Dr.) Zani to appreciate that, while this tribunal under Clause 40(e) can be domiciled in Nairobi, they should also make it easy for Kenyans in far-flung areas to go and hear them from there. They can have their principal registry here. Sen. Obure should also plug this into the final Bill. The KNEC tribunal that we want to set up will be obligated to have a field office in every county so that aggrieved parties do not have to come to Nairobi or we do not tell them, “post on the web or email.” What is an email to a child in Kibish? You know the lies that Jubilee has visited on the children of Kenya about laptops, tablets and all manner of gadgets, and nothing has come. So, through the judicial system, the law now allows that you can file your court documents through soft copy but if you ask a child in some remote area of West Pokot what a soft copy means, he or she will not understand. I encourage Sen. Obure to address that.

Madam Temporary Speaker, the establishment of the National Examination Appeals Tribunal is good because we want a situation where there is a responsible *quasi-judicial* organ; what used to happen in the past is that, when schools are aggrieved in this manner, they, at the very least, made appeals to the Minister. The Minister would just go to his office one morning and call his officers and say, dismiss all of them, without

looking at them; reason, he wants to look good that his departments are working without carrying that they hurt Kenyans. Therefore, we need a *quasi-judicial* independent body that can deal with this.

Regarding Clause 40(a), I encourage Sen. Obure, at the Committee of the Whole, to expand a little Clause 40(a)(2), the composition of the tribunal. We have many schools; in fact, the best schools in this country are sponsored by religious organisations. For example, my church, the Catholic Church has a hand in many schools. We also have Protestant and Quaker schools. We do not have to bring in everybody but we should give those religious based organisations that sponsor schools a chance to have a representative or two because their focus on the morality or otherwise of this draconian behaviour may be much better than some of the ordinary mortals so that we can have the Catholic fraternity with one and other denominations also bringing in one on a rotational basis; so that if the non-Catholic bring a Seventh Day Adventist (SDA), next time they can bring a Quaker, an Anglican and so on.

Madam Temporary Speaker, I would also like to encourage that in Clause (2)(c), which states “one person jointly nominated by the unions for the time being” – this will raise hell - the Kenya Union of Post Primary Education Teachers (KUPPET) on one side and the Kenya National Union of Teachers (KNUT) on one side. They will never agree to nominate one person. They will each say they are aggrieved differently. Therefore, I encourage the sponsor of the Bill to expand that to have a representative of KUPPET and KNUT respectively. For avoidance of doubt, I would have gone even further and just said, either the secretary general or the chairman of whichever union so that you also reduce the frictions within the union on arriving as to who should be representing them because the Secretary General of KUPPET and the Secretary General of KNUT are full time employees of their unions and can join in and be part of this so that they can represent the interests of their teachers who are accused of fiddling with exams.

We should also have a person representing the interests of parents. I do not know how we will arrive at this. There is a friend of mine called Mr. Musau Ndunda who has been quite vocal about parents’ issues; the Ministry has declared his association unlawful and told him that he will have nothing to do with education. If the parents association is not recognised by the Government, it will become very difficult, any parent will walk in and say, “I am here, I represent the parents,” but he or she has only one child. So, one cannot come and pretend that he or she is representing parents. There must be some structure. We need to see the distinguished Senator for Kirinyaga who is walking away, engage the Ministry and make sure that the parents’ union is recognised so that it can help.

Sen. Karaba: That is right.

The Senate Minority Leader (Sen. Wetangula): Madam Temporary Speaker, there is also the question of Clause 3(b). These days, Kenyans are so obsessed with degrees. We want to have a degree. We have people who are acquiring degrees on River Road and other places.

It is good to have a degree. Many of us have even more than one. However, there are Kenyans who, for some reason beyond their capacity, have not been able to acquire those degrees though they are very good. For example, if we ask churches to contribute a

person to this tribunal, most of our priests, who are very good, do not necessarily have degrees. Most of our preachers in our churches call themselves many names such as cannons, apostles, doctors, as so on yet they have no degrees.

I have a friend who was preaching at a bus stop, and after three years he was an apostle. After a few years later, he became an evangelist. After a few years, he became a doctor. I kept on asking him where he was getting the titles. The titles may not make a lot of sense. However, they carry them and their congregations revere them. Therefore, we should just have a degree or its equivalent in terms of experience. If my priest has been guiding a parish for the last 20 years, he is probably better than a five year graduate in many ways. They have got those feeling of the children of the people they lead. They see the pain. Sometimes people do not come to us, leaders, to tell us their problems, but they go to those priests and tell them what they go through. I, therefore, encourage Sen. Obure to think about that.

Clause 40(A)(4)(5) and (6) says as follows:-

“(4) “The nominating bodies under subsection (2) shall nominate and submit the names of at least two nominees, one a man, one a woman to the Cabinet Secretary (CS) for appointment.

(5) The persons nominated under subsection (4) shall be appointed by the Cabinet Secretary by notice in the *Gazette*.

(6) In making appointments under subsection (5) the Cabinet Secretary shall:-

- (a) Ensure that not more than two thirds of the appointees are of the same gender; and
- (b) Have regard to the principles of gender and regional balance.”

That I agree, except in matter of the unions. We should designate exactly who we want to be. There may be a provision in the parent Act and I encourage Sen. Obure to look at it. However, I want the provision for avoidance of doubt, that if anybody should not fiddle with exams and then ends up punishing innocent children. People who work at the Kenya National Examination Council (KNEC) end up selling papers to unsuspecting people who then go and expose them to students. Those are the culprits. We want very stiff penalties on the original thieves of the examinations; people who after preparing examination papers, pack 100 and put one in the pocket or the briefcase then go to drink on it in the backstreet by selling.

We saw a scandal last year. Even police constables guarding examinations were selling exam papers. It is incomprehensible that a police constable would access an examination paper from KNEC unless they have accomplices in there to give them. These are the people we should be looking for and punish. In fact, the cost that will be paid to litigants coming to this tribunal should come from fines levied on those errant characters that cause so much pain to children.

Going to school in this country and many African countries is not a matter of etiquette; it is a family and sometimes a community investment. We have pioneers in our countries, and Sen. (Dr.) Khalwale can attest to this; that people like Masinde Muliro, the whole Luhya nation raised money to send him to university in South Africa, as an investment of the community. Then after completing your studies, someone tells you that

you have stolen examinations yet you do not know where exams are set. The person who causes anyone to go through that pain must bear the greatest responsibility or to use the new phrases being used, those are the persons of interest. Those are the likes of Waiguru, you look for in as situation such as this, so that you deal with them firmly and squarely.

Clause 40(K) says:-

“The Tribunal shall have the power to summon witnesses, take evidence on oath or affirmation and order the production of documents.”

That will help the tribunal because when people are mentioned then they must be called and eventually the tribunal is likely to find the genesis of the theft of the examination and deal with the culprit.

Clause 40(J)(2) says:-

“In any proceedings under this part, the Tribunal shall act without undue regard to technicalities.”

That clause should end there. So that you remove;

“... and shall not be strictly bound by the rules of evidence.”

There will definitely be some rules of evidence there about hearsay, malice and all manner of things. Even the people we want to deal with, we must give them fair hearing, natural justice and so on. You can only find fairness and natural justice within the confines of rules of evidence. For example, somebody can just walk to the tribunal and say that they saw Sen. Karaba and thought he looked like a thief and, therefore, he stole examinations. Evidence must be called and within the rules.

I encourage Sen. Obure to stop that clause at technicalities. In fact, that would then be consistent with the provisions of the Constitution. That Kenyans can access justice without undue regard to technicalities that can lock them away.

On Clause 40(O), I encourage the sponsor of the Bill not to leave this open because this Senate has suffered immensely where the Government does things that serve them only. When something good comes, because it has come from another quarter, they do not deal with them in a manner we expect. I encourage Sen. Obure, at the Committee of the Whole, to change Clause 40(O) to obligate the CS to make the rules for regulating the practices and procedure of the tribunal within 60 days of assent to the Bill. This is to make sure the Bill does not end up with the CS and keeps it away for two years because he is busy with other things that he thinks are more important.

We are not passing this law in vain. Once it is assented, he must prepare regulations within 60 days. Under the new constitutional dispensation, those regulations must find their way into the House as delegated legislation that we then can deal with. I encourage Sen. Obure to liaise with Sen. Karaba to follow it up so that when those rules are being drafted, we can have an input to make it easier and faster. The rules will invariably come to the Standing Committee on Education that will then process them to bring them to the House.

On the complaints by the aggrieved children or candidates, I want an express provision, that those who are aggrieved and come to the tribunal for justice, should access it for free. This is because I do not know of any student who has the capacity and ability to steal and cheat in an examination. It is crooked third parties who always help them to

do this. Many parents are poor in this country. Therefore, if at the end of the day, a child is aggrieved they should access this bastion of justice for free.

There must be a provision for Sen. Obure to provide for the management of the tribunal within the budget provisions of the KNEC. For KNEC to be careless and reckless and allow examinations to be stolen and be passed on to unsuspecting candidates, they must bear the cost of the challenge to that reckless behaviour.

Madam Temporary Speaker, there are many outside there - like you have represented a slum constituency in this town - who do not earn Kshs200 in a month. There are also people in the villages that cannot access Kshs500 in a year yet they struggle *kuombaomba na kufanya kazi* until they see their children to school. They are then asked to pay Kshs5,000 to challenge a non-reasonable decision made by the Kenya National Examination Council (KNEC). Such persons give up in life.

If the child is a girl, the parents will ask her to get married because the groom might pay dowry that will recover the cost of education spent so far. If the child is a boy, he will be asked to get married and to procreate. That will not help the children of this country. I encourage Sen. Obure to deal with this so that access to justice is unfettered and easy.

Since the Tribunal is a *quasi*-judicial, when they make decisions that parties do not agree with, they must have access to the High Court for review. The office of the national defender should be operationalised because we have that provision in the Constitution. If a party cannot afford fees for the Tribunal, there is a likelihood that such a party will meet the filing fees in the High Court to challenge a decision of the tribunal. That will give us a complete picture on the philosophy, magnanimity and the foreword looking content of the Bill that is going to help children that are aggrieved. We must have the capacity to use the backstreet language *kumulika mwizi*. We must *mulika mwizi* and know who causes all these. I congratulate Sen. Obure for this Bill and I support it fully. I hope my suggestions will find favour with him so that he can bring some amendments to improve the content of this otherwise good idea.

Sen. Karaba: Thank you, Madam Temporary Speaker, for recognising that I should say something about this Bill. The Bill was before our Committee sometime back and we discussed it exhaustively and, in fact, this morning, we had a discussion pertaining to its content. It is important to note why the Bill came around this time.

The KNEC has been in existence since the time we were in school. Some of us sat an exam called East African Advanced Certificate of Education. That was an examination which was done by students from the three countries in East Africa namely Kenya, Uganda and Tanzania. The Secretary of the East Africa Examination Council then, was Mr. Kiwanuka. We used to be trained as examiners in Kampala or Entebbe. The issue of collusion and cheating is wrong. It dates back to 1960s and 1970s. However, in the recent past, it has become rampant and a practice in most Kenyan schools.

When the KNEC Act was enacted that repealed the East Africa Examination Council Act, Kenyans found it easy to penetrate to these offices to get access to information which otherwise would be important to gauge and examine students so that they can move to the next level. What it takes is that a student will be examined every other time in whichever class they are in by administering continuous assessment tests

usually called CATs. At the end of the year, it is possible for a student to be ranked and indexed based on their performances. Therefore, it is possible to know that index one is the best in the class in that order.

The repeaters are usually allocated the least index numbers. It is possible to tell the students who scores grades A, B and C because most of these numbers are given in cluster forms. The possibility of there being a last person if one is not a repeater being the best is questionable. Many scholars have doubted the credibility of the Kenya National Examination Council.

Madam Temporary Speaker, it is a dangerous trend if we do not curb cheating. I wish that the Senate Minority Leader listens to me because I will answer most of his concerns which he raised in his address. We should stamp out cheating in examinations because if we fail to do it, our students will continue to further their education outside Kenya and authenticity of their certificates will be questioned. That is the worst thing to happen in any country. It is important that the issue of examination cheating should be discussed by stakeholders like we are doing here. On public examinations, we are talking of the KNEC that offers Kenya Certificate of Primary Education (KCPE) examination in Class Eight and the Kenya Certificate of Secondary Education (KCSE) examination in Form Four. Doubts will be cast when students who are not indexed at the top appear to score lower than those at the top, a suspicion is raised that something is wrong in the examination. That is how those who mark the examination get to know. I have been a teacher for over 30 years and an examiner of high record. I used to be a senior examiner in Geography.

Madam Temporary Speaker, I was a senior examiner in Geography Paper 2 and I was a very serious teacher. Let Members know that it is possible for an examiner to detect cheating from the beginning because we are trained to do that. We should not assume that cheating happened. It is a long process for anybody to note that students cheated in an examination. It is not something that you wake up, as you mark, and say that candidate "A", "B" or "C" of a certain school cheated. It is a long process which starts from when a person enters the examination room and where they sit. A chart is drawn showing the sitting arrangement. If candidate index No.1 sat beside candidate index No.10 or 12 and it is discovered that their answers are similar, then you could suspect that cheating took place.

Madam Temporary Speaker, we have students who smuggle examination materials into the examination room. You will find someone either carrying books or information on a piece of paper or written information on their hand or something. Those things happen. We have had cases where examination officers are barred from accessing examination centres. People collude with examination officers and even those from outside. There is a way they communicate with students in the examination room. The communication could be in form of a song where they sing and students will know the answer being communicated to them. Things are becoming serious in Kenya.

As cheating continues, students who would not have passed will end up passing and the one who would have done very well will end up failing because failing, in this case, does not mean not doing very well. It means that somebody would have done better than the one who is supposed to do well. A school which does not perform well in

examinations will find its way at the top through cheating and collusion. You will find a school which is not known beating a school which excels annually. The value added to the academic performance will not be as much as another school which admits students with 200 out of 500 marks. For example, for you to be admitted to Alliance High School where most of us went, you need 400 marks and above. As a result, we expect a student in Alliance High School to do well when the results are released. However, you will find a school that admits students with between 150 and 200 marks getting As. That is suspicious because we have to find out the value addition of the school to the students, and moreso, the teachers.

Therefore, this Bill will address various forms of cheating – because they are there – and what will happen when cheating takes place.

The Senate Minority Leader (Sen. Wetangula): On a point of order, Madam Temporary Speaker. I do not know if I heard the distinguished Senator right. Is he in order to try to justify that a student in Alliance High School is bound to do better than a student in rural schools? Some of us went through schools whose names you cannot even remember and we are what we are because we worked hard. Even a child with average marks can go to a rural school and still excel. Is the Chairman in order to subtly convolute the contents of the Bill and try to justify what we were trying to move away from?

The Temporary Speaker (Sen. Ongoro): Senator, please clarify. What exactly did you mean?

Sen. Karaba: Madam Temporary Speaker, I did not even allude to what my friend, Wetangula, is saying. What I was trying to suggest – he might have heard me wrong – is that---

Sen. (Dr.) Zani: On a point of order, Madam Temporary Speaker. Did Sen. Karaba refer to Sen. Wetangula as Wetangula? There is a Standing Order that clearly indicates how Senators should be referred to.

The Temporary Speaker (Sen. Ongoro): Sen. Karaba, I heard very well.

(Sen. Karaba spoke off record)

Order Senator! You must refer to him appropriately.

Sen. Karaba: Madam Temporary Speaker, I want to refer to Sen. Wetangula as the distinguished Senator for Bungoma, a presidential candidate in 2017, I wish him all the best and good luck.

Madam Temporary Speaker, we are discussing very serious issues. I also want to tell Members the root causes of cheating, how it can be detected and what can happen after cheating because cheating is a process. It could involve the material smuggled and that is what I said earlier, it could involve the teachers themselves particularly in practical subjects like Physics and Chemistry, it could involve headteachers or the County Directors of Education officers (CDEs) who are in charge of schools in various counties because they may want their counties to be ranked among the top. That is the reason we do not support ranking of schools because it will try to prove that some schools were not even there. Other schools will want to be known when results are released. Therefore,

cheating will be rampant in some areas but not in others. That is what may culminate to cheating.

What happens, therefore, is that somebody will be admitted to Form One through cheating. Along the way, they may find it rough. The person may either commit suicide or transfer to another school because of failure to cope up with the standards of the school he or she was initially admitted to. The same thing may happen in the university. A boy may qualify for a certain course in a certain university through cheating and enrolled to a very serious course like medicine, law, engineering or architecture. He may not cope with the speed of other students who never cheated. As a result of that, he may drop the course or be discontinued. These are the dangers we may face. We have seen young fellows who commit suicide feeling that they should not continue with life. Therefore, they can easily terminate their lives.

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

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

Therefore, this Bill is trying to address all the ills particularly those emanating from the Kenya National Examination Council (KNEC) or a headteacher of a school. I am told that nowadays, mobile phones are a source of information and cheating. So, we should also come up with ways of curbing the use of the mobile phones. The Information, Communication and Technology (ICT) Department should come up with measures to curtail that kind of cheating. For that matter, we should recruit people who are ready to continue with studies in the next stage.

This Bill addresses a situation where if a boy finds access to some of the ways of cheating or he is involved in cheating, that could not be his fault but the fault of other people I have mentioned. It could also be a fault of the station he sat examination and we should not, therefore, blame the student. Instead, we should blame the teacher, the headteacher, the KNEC or the police. The tribunal which will be set will look into who was responsible because sometimes you might punish the wrong people. You could punish the wrong student or punish the parent wrongly. The tribunal will stipulate very carefully who should be held responsible and what should happen to such culprits.

So, the Bill is clear. It should curb cheating, which if not prevented at that level will produce robots. These are the fellows who will even continue causing problems in schools, always trying to disorganize the system so that they are seen as heroes and not other fellows who are good in reading to excel. The former ones would also like to take charge of such affairs like going on strike so that they are seen as heroes to that extent. This is a good Bill which should be supported. I am happy with the way it is coming up in the discussion.

I support.

Sen. (Dr.) Khalwale: Mr. Temporary Speaker, Sir, I thank you and the Mover. In so doing, let me confirm that I rise to support this Motion. This is a very important Motion. I have looked at it and I have seen that it has three limbs which we must apply our minds to very critically, Sen. Obure.

The first critical limb is the composition of the tribunal. If we do not get the composition right, we will miss division of this Bill. Secondly is the cost of appealing. If we make it too expensive, then we might not as well have put it there. Who are the people who appeal? It is the aggrieved parents and students, most of whom you will find that they have outstanding school fees balances which in the first place, they are unable to settle. So, if you put provisions that it should come at a high cost, it means that it will be inaccessible. The last limb is the timeframe within which the dispute will be resolved, which is a critical thing.

Allow me to address those three limbs by suggesting the following amendments on the Bill. I urge Sen. Obure to look at Clause 40(a)(2) The Tribunal Composition. In (1), you have said that the chairperson should be a man of that standing and nominated by the Judicial Service Commission (JSC). I would like you to align this with the current status of administration of justice. There is already a legal provision where we have created the Office of the Ombudsman that is responsible for the administration of justice. So, this person should not be identified by the JSC but the ombudsman because he is the one responsible for the administration of justice.

Mr. Temporary Speaker, Sir, the second amendment that I would like to make on the composition is that there is an attempt in (d) to introduce parents. You cannot bring parents into this tribunal. It is tantamount to you presiding over your own case. Every parent would like a situation where their child is rated to have gotten an A. So, they should comfortably wait for a fair system of appeal that gives them justice and not for them to sit on that team. They will push their case. So, I suggest that in (d), persons nominated by parents with their parents' interest should be left out.

Further, let me also caution that if you look at the composition of this tribunal, you are concentrating there people who have an interest. The person in (a) has no interest. The person in (b), headteachers, has an interest. All headteachers want their schools to do well. In fact, in some of the instances, some of the unscrupulous heads of schools influence the examinations. So, you are weighing this with too many people who have an interest. I suggest that we introduce other people who can counter that interest because they have none but they are stakeholders.

I, therefore, propose, Sen. Obure, that we have an additional of the Chief Executive Officer (CEO) of the Kenya National Examination Council (KNEC). This is because this is the person who is defending the fairness of the exercise that they did. We do not want to assume that all the people at the KNEC have a criminal mind of wanting to support theft. So, this person will sit on the tribunal and defend the KNEC and say that any fault was not necessarily that of the KNEC.

I would also like you to add one person nominated by owners of private schools which have become a major industry in this country. Therefore, if we allow these other stakeholders to be there – the headteachers of public schools and so on – we must also allow the owners of private academies and schools to sit on this tribunal.

Mr. Temporary Speaker, Sir, I would also like to convince you that we include one man and one woman appointed by the Commission for Higher Education. Why? They are the immediate recipients of these students. So, they are unlikely to sit there and preside over a result that is being allowed for a young man or woman who will not go

through university education, simply because he got the wrong marks. Those are my proposed amendments on the composition.

The next thing is on the cost. I would like you to go to Clause 40(1)(4) and add 40(1)(5), and provide that:-

“The appeals shall be free.”

This will provide that the appeals are for free.

Then, I propose that you go to the next page, 214. After 40(o) I propose that we add 40(p) and we provide:

“The decisions of the tribunal must be made within a reasonable time frame not too long to leave to aggrieved parties in limbo.”

Those are the specific amendments that I wanted to suggest on this Bill.

Allow me to make the following three running comments. The first one is the issue of ranking in both primary and secondary schools. I insist that if it is not through this legislation – I do not see why not – we provide that ranking of the performance of students, schools, sub-counties and counties across the nation must be by law.

The Senate Minority Leader (Sen. Wetangula): Yes. The purpose of an examination is to rank.

Sen. (Dr.) Khalwale: The purpose of an examination is to rank. Even in medical school where we thought, we were all more or less very close to par, we were still ranked. All of us had qualified for Medical School at the University of Nairobi (UoN) but you would still find number one and the last one.

This number one and the last one gave the medical school an opportunity to identify those students who would get scholarships and so on. I am glad that I am addressing a House where we have young lecturers like Sen. Murkomen who has suddenly become quiet because of the new office that he has been offered.

Mr. Temporary Speaker, Sir, ranking is good. I want to go further and insist that we should demand for ranking of our universities. We now have so many universities. If you go to Britain, they will tell you the best universities, the second tier and the worst so that when you are choosing where your child should go, especially given that today parents are starting to pay for privately sponsored students, it is important that we rank our universities so that when a child is studying at a certain university and they are paying the same amount of school fees like another university, there should be justification as opposed to where another is asking for more money.

Mr. Temporary Speaker, Sir, I have seen certain universities where the school fees is lower for privately sponsored children than at the Kenya Medical Training College (KMTC). It simply means that these people are in business, they are not keen on training children, they want to levy fees as low as possible so as to fill their theatres and balance their books.

The second is the issue of admission to Form One. I want to make this remark because I listened to the Senator for Kirinyaga and I was not too sure whether he was not going there. It is important that we insist that until such a time that the national Government will have stabilized all public schools so that they have an equal number of teachers and the same facilities like private schools, we should still cushion children from public schools because when you open them to competition with children from

academies, they miss out at the university, national schools and other lucrative training institutions.

Mr. Temporary Speaker, Sir, finally, I want to speak to the issue of the cost of paying school fees at the university. At the university, we have the Kenya Universities and Colleges Central Placement Service (KUCCPS) which is doing a good job. With KUCCPS admissions, education is reasonably affordable. However, the children who qualify for this are usually children who got grades A, A-, B+ and B. But children who get grades B-, C+ and C are still qualified for university but they have a challenge of paying school fees. Now that an attempt is being made by the national Government through the National Assembly to streamline the former Constituency Development Fund (CDF) because it has now been reserved for only national projects, I propose that 50 per cent of the money in the new look CDF be reserved for bursaries for children who have qualified for university but have not qualified to benefit from HELB.

Mr. Temporary Speaker, Sir, changing society is through educating people. That is why you will find a son of a *chang'aa* brewer from Ikolomani will later on come and sit on the same table with a child who schooled at St. Marys' School in Nairobi. Education is a social equalizer. More importantly, we have difficult areas in this country. We have areas in Turkana. You go to Chalbi Desert, for example, how can a child from there compete with a child who goes to schools in Nairobi and be able to be number one? It is completely out of this world. So, through these funds that have been made available through the new look CDF, we need to go for those children so that Kenya can be a Kenya of not just young people but young educated people.

Mr. Temporary Speaker, Sir, I was giving a speech to students at Moi University three Fridays ago. One thing that I went to provoke the children with was that what is becoming of Kenya today. The pride and premium that we had put on education - thanks to the guidance that we got from elder graduates like Sen. Wetangula and so on - is gone. Now, no child in the university is taking pride in academic excellence. Instead, they are saying that they want to finish university quickly and go make money. I can see another young lecturer Sen. Melly is here. They would like to change and go back to the original honorable way of approaching success in life such that young people do not rush to complete school and go and make money but they should go and earn money. To earn money means that you can go in the law firm of Orengo & Co Advocates---

With those few remarks, I support.

Sen. Melly: Thank you Mr. Temporary Speaker, Sir. I rise to support this Bill by Sen. Obure. Let me echo the words of Sen. (Dr.) Khalwale and the words of the former President of South Africa, the late Nelson Mandela who once said education is a great equalizer. The child of a President and a child of a peasant farmer, whether from Bungoma or Uasin Gishu, are able to come together and reason. It is only education that brings them together.

Mr. Temporary Speaker, Sir, while those words are true, we are today witnessing devastating effects of cheating in examinations. First, the quality of education in this country has kept on coming down because of exam malpractices where students are cheating in primary school during the Kenya Certificate of Primary Education (KCPE) and Kenya Certificate of Secondary Education (KCSE). We end up producing graduates

who are not able to defend even their own degrees and students who have no capacity to deliver on those courses which they specialized in at the university.

Secondly, it has made the cost of education expensive. You will recall that if a parent today pays school fees, if this student cheats in Form One and he manages to go through to Form Two and it happens that he is caught cheating in this exam, he can be expelled from school. This means that he will spend more years in school. If he or she was supposed to finish the programme, for example, in four years, he may take six years. This is going to be expensive for the parent.

Thirdly, Mr. Temporary Speaker, Sir, is the issue of the KNEC. Over time, I think the KNEC has completely failed to ensure that they do away with this problem of exam cheating. I think it is timely that this Bill is now with us to ensure that we have a tribunal that is going to be in charge of the issues of exam cheating. This tribunal, once formed, will ensure that the number of problems and challenges that were faced by the KNEC, because of the broad perspective of what it does, will only be limited to issues to do with exam malpractices, irregularities and cheating.

This tribunal will be limited to issues to do with examination malpractices. The same tribunal will also be fair to students because there will be room for them to appeal. If a student thinks that there was no fairness, this Bill provides that he or she can apply through a tribunal, so that he or she can be heard the second time.

Cheating in examinations has weakened the education system in our country. While we appreciate that the 8-4-4 system has contributed to the success and development of this country, through examination cheating, the system has been weakened. Students cheat and get away with it until they graduate. You cannot distinguish a student who worked hard and passed the exams and one who cheated and got away with it. Both students could get first class honours degrees. This has completely weakened the education system in this country.

Mr. Temporary Speaker, Sir, as I said earlier, education is supposed to transform the lives of people. It is supposed to change the attitudes and impart right skills on individuals for them to make decisions, work and deliver on exactly what they specialized in. That is not the case because of cheating. We now have young men and women who have no capacity to deliver, even after going through high school, university and tertiary colleges. Most of them cannot deliver on any job that they are given, because they cheated in examinations right from high school to college level.

I want to congratulate the Senator for bringing this Bill. We need to put checks on our system and come up with the best strategy to end examination cheating. Otherwise, if this continues, in the coming years, we will produce people who cannot even say their names. We will end up having people who cannot defend what they studied or deliver on anything, even after wasting a lot of time in school.

Once again, I thank the Mover of this Bill and hope that we will get the necessary support to ensure that this Bill is enacted. We want to see its implementation and our education system changing for the betterment of our country.

I support.

Sen. Hargura: Mr. Temporary Speaker, Sir, I stand to support this Bill and to thank Sen. Obure for having sought a way out of this serious situation. We all know the

importance of education. As it has been said, it is the only social equalizer. In the world that we are living in, it gives one a head-start in terms of a better living. Maybe that is one of the reasons some people are trying to get good certificates which they have not worked for.

When cheating occurs it is only the student who is penalized, yet it could involve many actors. With this kind of a tribunal, if the student is to defend his or herself, then, the other faceless actors who have been benefiting out of this social ill will also be unmasked. We will know who are actually behind this scheme. Every year when it comes to examinations time the main news item everywhere in Kenya is cheating.

Cheating happens because of what is attached to the academic certificate. Even the person who has not worked for it would like to have a good certificate, so as to move to the next level or secure a good job. Examination cheating is rampant because, unlike before, everybody would like to get good grades without working for them. There is also need to check the teachers. Some of them relax and do not cover the syllabus because they know that at the end of the day, there will be a way to cheat. They can compensate their lack of coverage of the syllabus by assisting the students cheat.

Mr. Temporary Speaker, Sir, there are other actors who are not getting punished, like teachers and businessmen who will try to get hold of examination papers, whether or not they are genuine. Due to the anxiety of the students, they will buy whatever they will come across as examination papers. This is rampant during the Kenya Certificate of Primary Education (KCPE) and Kenya Certificate of Secondary Education (KCSE) examinations. It also happens in the universities and that is why of late there are cases of projects and thesis being prepared and sold in River Road. Since there are people who are ready to buy, Kenyans have now become experts in coming up with thesis and projects for undergraduate. One will just task somebody in River Road to do the work for him or her and then they submit something which is not their original work, all in the name of getting a good degree, so that one can get a job which they cannot perform.

Currently, the students who are victims have no recourse. When their examination results are cancelled, they have to wait and repeat them later. Even if they are innocent, they have nowhere to go and defend or declare their innocence so that they can get their certificate. So, this is a timely Bill which gives the few innocent ones justice through this kind of a tribunal. In some cases, you will find a whole class disqualified in a subject. Is it possible that all of them cheated and no one was innocent?

Mr. Temporary Speaker, Sir, I concur with the Sen. (Dr.) Khalwale on the issue of the composition of the tribunal. We also need to have the Kenya National Examination Council (KNEC) to defend itself as to why it cancelled those results. The issue of the private schools is necessary because they have always had problems. Even when students are placed in secondary schools, those from private schools are always disadvantaged. In this case, the teachers from the private schools cannot trust their counterparts from public schools to decide on their fate. It is, therefore, necessary.

Clause 40(I) talks about the timeframe where one has to launch a complaint with the tribunal within 14 days from the date of decision of the KNEC. I understand that to mean that it is from the day the examination results are released. Somebody from Mandera County cannot get the results and travel to Nairobi within 14 days to come and

launch a complaint with the tribunal. It may not be practical. I request that, that clause be amended to increase it to at least 30 days. This is because, at that time, there is euphoria of examinations results being released. It is better if enough time is given to launch complaints. That will give each and every Kenyan a fair period to submit their complaint and they will not be time barred.

I beg to support the Bill and hope that this will be our way out for the few innocent. All in all, cheating is rampant and is eroding our education system. Therefore, cheating has to be brought to a stop. This could be one way of knowing the Kenyan who benefits out of it. Many of our children are losing their academic lives through this kind of cheating scheme by some people who are trying to make money. If there is no way of catching these people and punishing them, I am sure that they will get bolder and become more sophisticated. This will lead to eroding the Kenya education system.

I beg to support.

Sen. Wangari: Mr. Temporary Speaker, Sir, I thank and congratulate Sen. Obure for this timely Bill. I know that Kisii County and its surroundings have really been affected by cases of examinations cheating. As much as we condemn cheating, we must also look at the rights in the Constitution. Article 47 guarantees every person a right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair. We have had very many cases of cheating reported every year. We have had cherished dreams of children who have worked for very many years crushed in a day or through a decision made when results are released.

This Bill must not in whatever form be seen to condone cheating. It must give fair hearing to the aggrieved parties. As it is, the KNEC has had unilateral power and they have applied it as it is. However, we must have recourse in terms of having an appellate system where, if you feel that you do not agree with a decision taken by the KNEC, then you have a forum to air your grievances.

The issue of cheating in this country has been so rampant and it is getting worse by the day. We, as a country, have also glorified examinations. As the Cabinet Secretary indicated, the Ministry is reviewing the curriculum and this is something that we must consider. The pressure that we put in three days of examinations to our children is too much. We must ask ourselves whether the curriculum is serving the market that we are dealing with or not. The market is very dynamic. How we were learning and examining students 20 years ago is not the same way we are doing today. Today, we even have virtual classes.

Mr. Temporary Speaker, Sir, we must look at the curriculum and ask ourselves whether it is serving requirements of the market both nationally and internationally or not. To children, the issue of cheating has been a psychological one. We have seen children commit suicide because they felt that was the end of the world for them. Some students cannot fathom the idea of their peers going to universities while they remain at home because their result slips are showing 'Y'. Some end up committing suicide.

This tribunal is timely. However, I do not agree with parents sitting in this tribunal. Recently the Ministry disbanded the Parents' Association headed by one person who was collecting money from parents purporting to recruit parents in his association. The Ministry wrote to all public schools to stop dealing with this particular individual.

The Cabinet Secretary warned all head teachers and principals against engaging with that person. Parents are also a very interested party in this matter.

Sen. Karaba: Mr. Temporary Speaker, Sir, on a point of information.

Sen. Wangari: Mr. Temporary Speaker, Sir, I would like to be informed by Sen. Karaba.

Sen. Karaba: Mr. Temporary Speaker, Sir, I would like to inform Sen. Wangari that in this Bill, a parent is not qualified to sit in the tribunal because all of us can sit in it because we are parents. Therefore, it is the Cabinet Secretary who will determine who will sit in the tribunal.

Sen. Wangari: Mr. Temporary Speaker, Sir, I thank Sen. Karaba for the information. However, my understanding is that the person nominated to sit in this tribunal is one nominated jointly by the associations representing the interests of the parents. That is what I was talking about. We are all parents and even the person appointed under Clause 2(a) is a parent. However, he or she is not sitting to represent parents. He or she is sitting to represent the appointing authority who we will decide whether it is the Judicial Service Commission (JSC) or the Ombudsman as has been suggested by Sen. (Dr.) Khalwale. I feel that we need to replace the Association of Parents and get someone else who is impartial to this matter.

The Temporary Speaker (Sen. Sang): Sen. Wangari, do you mean that Sen. Karaba's point of information was not valid at all?

(Laughter)

Sen. Wangari: Mr. Temporary Speaker, Sir, our understanding is at different levels. I do not want to belabour this point.

From the outset, I support this Bill. The issue of cheating has always affected children and their parents. We have become a callous nation. We have actually lost our souls because we also have some unscrupulous headteachers who want their schools to shine. We also have parents who are colluding to help their children cheat. We, as a county, must interrogate our souls. We must desist from cheating through the *WhatsApp* platform.

Mr. Temporary Speaker, Sir, it is a pity that some parents see these papers, they print them for their children. You will find that these cases are very rampant whether it is the police officer guarding the papers or the examination invigilators. We must get people to take responsibility and not load blame on a child yet nobody is arrested. We have the machinery to track the information shared on *WhatsApp* using our arms of investigation, we should be able to know where the paper originated from.

This Bill is not to say that we condone cheating. The criminal responsibility must also be well administered and our bodies involved giving us results because we get examinations irregularities yet no one goes to jail for that offence. We take it as a joke yet we are talking about the future of our country. We are at a point where you get a university student who cannot construct a sentence in English. It is very important that we also separate the issue of cheating as has been alluded to by Sen. Wetangula, that it is not schools that cheat and it is not always that Alliance High School will top

examinations. We can have another school topping because it is the students that matter. It is not the school that performs, but the students. We must give equal chance to every child of this country to make a difference.

Mr. Temporary Speaker, Sir, I beg to support and hope that the necessary amendments will be included at the Committee of the Whole stage.

Sen. Elachi: Mr. Temporary Speaker, Sir, I rise to support the Kenya National Examinations Council (Amendment) (No.2) Bill (Senate Bill No. 14 of 2015). I recall that students from Maranda High School suffered because of examination cheating. This happened in the computer examination. We need to interrogate whether the Kenya National Examination Council (KNEC) at that time had mechanisms of understanding that exams done by computer can bring other issues.

How do you then verify that the students cheated knowing that it is not done on paper where a student writes his or her own examination but this is a computer? Therefore, you will find identical marks; either all students getting good grades or failing.

Having said that---

The Temporary Speaker (Sen. Sang): Sen. Elachi, are you questioning the capability of the KNEC to administer an examination that they are authorised to administer?

Sen. Elachi: Mr. Temporary Speaker, Sir, I am not questioning. I am just giving examples. The challenges that Sen. Obure has come across in Kisii are some of the things that we need to look at. When the KNEC decides that 122 students have to repeat a whole year in school because of cheating, we need to interrogate the teachers and the preparations that were done. This does not apply on the example that I gave earlier but in most cases, I believe the teachers are also culpable. How do you handle the case of students from the same school having identical grades? It does not mean that the students are the only ones guilty of cheating; it means that they colluded with a teacher who gave out the examination paper and guided them on how to do it. As we insist on a tribunal, we must know that the students, teachers and even the supervisors are part of examination cheating.

In addition, cheating in examinations reflects declining ethics. We need to find out whether the KNEC still has the capacity or we need to revamp it. As a country, we have left people to serve in an institution for more than 20 years. We witness decline in performance and negative reports but we still leave the same people to deal with the same challenges. It is time when an institution records a decline in performance, we need to change it; bring in different and vibrant blood that can come up with new ideas and technology to change that institution.

Cheating in examinations and cancellation of results is like an annual event in our country. It is normal! Every year when our students are going to do their examinations, we talk about cheating. It is a norm. How can we change this? It starts with attitude. It is a form of corruption. People just talk of corruption in monetary terms. However, this is the worst form of corruption. This is how we finish our children completely. As at that time, parents have paid school fees for four years and you are expecting that the teachers have prepared students for exams, then, all of a sudden you are told, "No, your school

cheated, therefore, the examination results are cancelled.” Hence students need to repeat the same class. It is a burden to parents.

Mr. Temporary Speaker, Sir, I thank Sen. Obure for bringing this amendment. We have a Cabinet Secretary who is willing to transform the education sector. He has quietly and without notice visited schools. This is very important because that is when you can find out whether students are alone; do we have teachers in school? Where have we reached in the syllabus? Days are gone when the syllabus was concluded by second term and revision started for the examinations. Nowadays, many schools go even up to third term without completing their syllabus yet they have finished their mock examinations. Those are some of the things I hope the Cabinet Secretary will look at and help the students and teachers to ensure that schools finish their syllabus by the end of second term so that children are left to revise all that they studied. This will reduce examination cheating.

The other issue is the senior officials at the KNEC who are doing thriving business by selling examination papers to schools. However, when they are caught, you will never find them in the courts or know how the case was handled. The only thing you will know is the cancellation of examination results when the Cabinet Secretary is announcing the results. Examination cheating does not start on the day of the examination, it starts earlier. Therefore, you can use a mechanism to ensure that cancellation of examination results does not happen but because it is a thriving business and we are in a digital era, examination papers end up in the hands of students by June, even before they do their mock examination.

As you may recall, there were days you could gauge the performance of a school by looking at their mock examination results. Those days are gone. Mock examinations then prepared students so that there was no cheating. If a student, for example, scored grade B upwards, he or she knew that there was excellence in the main exam, go beyond grade B and get an A. If you scored grade C, you knew very well that you are an average student and you can try your best to move to grade B. However, today, you cannot gauge the performance of your students in the main examination based on the results of the mock examination. It has become difficult.

It is also important to look at the issue of ranking based on schools. As Sen. Wangari has suggested, we need to rank the individual student. Therefore, in any school, even one in the remote area which is a day school, a student can excel as in other schools. Even those students who come from a small school and have performed well have a chance to be ranked with the rest. People will wonder how they passed. That is where we went wrong. We believed that it is only Alliance High School, Starehe Boys’ Centre and School and Precious Blood that are the schools that when our children join, they will perform and go to the university. That is how we have made students to cheat because if a student is not in Alliance High School and he or she wants to join university, he or she has to do anything to ensure they go to the university.

As was the case before, today, we do not have education officers who used to go round schools at random to monitor progress. As we realign this, the Government should come in. We also have many other factors that influence examination cheating. If we

ignore these factors, even if we bring in a tribunal, we will still have the same problem. So, it is important for us to look at the causes of examination cheating.

The Ministry decided to elevate many schools to national level. Some parents are saying that they would rather take their children to a provincial school than to a national school. This is worrying. It means that some national schools may not perform like any other national school. We need to find ways to create confidence in students who join a school which was recently elevated to a national school. We need to grade all national schools, not just those which were boosted by the economic stimulus package, but those that were performing well can be graded and given an opportunity to become national schools. Then, we will be talking of a different dynamic situation where it can be graded to compete with schools like Alliance, Starehe Boys Centre, amongst others. A school with a form one admission of about 500 students with approximately 375 marks - if they get the best teachers - they do not need to cheat because they passed their Kenya Certificate of Primary Education (KCPE) examinations. If such students cheated in their KCPE examination, they will have to cheat in the Kenya Certificate of Secondary Education (KCSE) examination. If that is the case, there is something wrong with the education system.

What happens in between the two examinations is something that teachers must look at. When a student in form one or two engages in examination malpractices, this is something that should be looked at. Last year, Chavakali High School became a victim. I know many parents whose children were invited for admission in this school but refused because they were afraid of a recurrence. An established tribunal will safeguard schools and the parents' confidence in schools because it will administer justice to the schools, students and parents.

The problem is that we have left the examination marking process to a few people. Therefore, we do not know how they mark these examinations. It is important because schools will demand to be shown what led to cancellation of their examination results. Cancellation may be a way of destroying the performance of some schools yet we do not know. There are no mechanisms in place to show what led to such cancellations yet we have been pointing fingers at each other. If the KNEC can produce the cancelled results, verification can be done and established if it is true that an examination malpractice occurred. It is true that with the establishment of this tribunal, parents will appreciate Sen. Obure because it will address many matters that parents are facing. I hope that as we move forward, exam cheating does not become a ritual.

I support.

Sen. Lesuuda: Thank you Mr. Temporary Speaker, Sir. I congratulate Sen. Obure for this important Bill. I support most of the sentiments that have been aired by my colleagues. It is an important Bill and timely as well. It is important that every student, parents, institutions of learning and anyone who has invested in the child has a forum where their grievances on examination results can be heard. Many of us wonder whether the results we got were ours. The answer booklets are never returned and what the Kenya National Examination Council (KNEC) gives is assumed to be true.

Many students are left with many questions and at times we see the bitterness the students are undergoing because they do not have an institution in place to petition. Every

year, there are schools whose results are cancelled. This tribunal will check on this regular trend so that the recommendations can be used to deter cheating in other schools. With time, the tribunal will determine the cheating trends in institutions or among the students and use them to curb future possible examination malpractices.

Mr. Temporary Speaker, Sir, our education system is result-oriented. Pressure is mounted on students to score high marks without minding what the input is. Debate has been on the rise about the nature of our education curriculum. We have also had many task forces, but over time, we should relook at what we want our children to be. There are some art subjects which have been abolished from schools. More focus has been placed on sciences yet there are some children who otherwise would benefit from skills in art subjects. When children are out of schools, it is not about getting white-collar jobs but learning arts is a way of nurturing talent.

The Bill is timely considering what happened last year. It was an embarrassment. In fact, we deliberated the issue in this House about how the examination leaked. We recommended that a whip should be cracked on the KNEC because they are ruining children's lives. Internationally, our education is undermined when such issues arise. Doubt is already built on the merit of the children who sat their national examinations last year. Once we have the tribunal, there will be guidelines that will curb any recurrence. In the meantime, we should get to the root of this and establish where the gaps that lead to leakage of examinations exist. Those who practice this malpractice should know they are doing a disservice to the children because they are not benefitting them in any way or improving a child's life. If anything, they are messing their lives.

You may give a child an examination paper and they go ahead to score a mean grade A. They will be called to a national school but they cannot fit in. They will be miserable for the next four or five years they will be in that school. Such children are called to join some good universities here in Kenya and that is why we see them dropping out. Students end up doing very many supplementary examinations because they cannot cope since that was not a true reflection of their Intelligence Quotient (IQ).

Many times we have talked here about focusing so much on results. I have seen many counties put aside money for polytechnics. I really hope that we can actually do that for the sake of our children, our young people and communities so that we shift a little bit of focus which has been concentrated on a results-oriented education system.

Secondly, I agree that we now have a very good Cabinet Secretary, Mr. Matiang'i. I have interacted with him and discovered that he is very passionate on issues to do with education. I even wonder what he has been doing elsewhere. He should have been at the Ministry of Education from the beginning to help the sector. We saw him walk to schools to check on the teachers and find out what goes on. I like what he said and I will quote it. He said that it is not about how clean a school is. We have had the assumption of making students to clean the school compound thoroughly. However, the most important thing is what goes on inside our learning institutions. The CS visits schools and finds that some teachers are absent and the principal does not know where they are.

As Sen. Elachi said, corruption is not necessarily just about the money. It is also about the time we take away from our children by not being there for them. That is also

corruption of the highest order and at the end of the month, one will want to draw a salary. I think the CS is on the right track on that and also on the whole issue that he has been following up to ensure that our universities meet the threshold.

For a very long time, we have been quiet about universities mushrooming on top of every building in this town. Our children get certificates which cannot be recognised and parents are really investing in the children. They sell all their property and take children to school only to later realise that the certificate is not even recognised. I like his approach because it is not so much vindictive but about correcting. It is about looking at the loopholes and the gaps, so that we can all move together to reclaim our glory because our institutions have for a very long time been known to be the best.

Mr. Temporary Speaker, Sir, because we are discussing about education, we will have to relook at the cost of education as a country. The cost of education has been high especially for those who are in high school. We have continued to encounter many students who perform very well but they cannot join schools of their choice. There was a story of a child on the national television and I am looking into her issue. This was the second time she sat for the Kenya Certificate of Primary Education (KCPE) and she did exemplary well. She attained 413 marks and she is not in school up to date. That broke my heart.

With all the bursaries that are there – from the Constituency Development Fund (CDF), counties, the money for vulnerable children from the national Government, partners like banks and corporates chipping in to pay school fees for our needy children - Beyond that, we need to review and look at the cost of education since it is a burden to parents who are not “doing well”. I do not know but I think it is God’s way of always balancing life. Most of the parents whose children perform well are unable to pay the school fees. I think it is only fair for the State and all of us who have the responsibility relook at the cost of education in our country.

As I conclude, as we said about the tribunal, and it is very clear what its role will be so that we do not have people who just take advantage of it, that I thought that I should have an A and now, I have a C so, we have to go to the tribunal. I hope that they will expedite and deal with the issues that will have been raised before them in good time so that if there are other processes that have to be followed, then they be followed in good time.

Mr. Temporary Speaker Sir, we passed here a Bill about the issues of certificates of all pupils to be released by their secondary schools. I do not think that it is happening. Up to now, I know a number of pupils who are still trying to get their certificates. It is up to us that if it is not working, then those in charge should say why. We know the schools also have a burden and a responsibility to meet the needs of the children and those working in those institutions. However, it is not fair that we pass Bills and Motions here and ultimately, we do not see them being implemented. These Senators work tirelessly to make sure they mobilise and pass Motions and Bills. So, I hope that once we pass this Bill, it will be implemented. I really believe that it is a reprieve to children, parents and those who are involved in the education of---

Sen. Karaba: On a point of order, Mr. Temporary Speaker, Sir. Sen. Lesuuda should have known that a pupil who scored 413 marks and qualifies to proceed to form

one can always do it. This is because the minimum for a national school is 350 marks and we have bodies like the Jomo Kenyatta Foundation (JKF), “Wings to Fly” and many other people and associations who sponsor such pupils. So, would I be in order to find out whether she is in order to have a pupil who scored 413 marks still at home, while others are proceeding with education?

The Temporary Speaker (Sen. Sang): Sen. Karaba, so, what is your point of order?

Sen. Karaba: Mr. Temporary Speaker, Sir, my point of order is that the Senator is ignorant that we have such foundations which cater for pupils who cannot afford school fees.

The Temporary Speaker (Sen. Sang): Are you suggesting that if we directed to you any student in the Republic of Kenya who scores over 350 marks and is unable to pay school fees, you know where they can find school fees?

Sen. Karaba: Mr. Temporary Speaker, Sir, I am not implying so. I am suggesting that there is a way of helping such pupils because I have helped them in the past.

The Temporary Speaker (Sen. Sang): Anyway, that was not really a point of order. Sen. Lesuuda you have one minute to conclude.

Sen. Lesuuda: Thank you Mr. Temporary Speaker, Sir. I will actually deal a little bit on what Sen. Karaba has said. I think he is the one who is ignorant of what is happening in our country on issues to do with education. I am very passionate about our children accessing education. These institutions are also not enough. I have a list because I have so many children who have benefitted from these institutions. I know what I can do about it but the truth of the matter is that, that child is at home. The school will not receive this child without any support. If anything, that child said she had applied for Equity’s “Wings to Fly” and from another organizations. They can only take as much.

Mr. Temporary Speaker, Sir, I think it is the reality and I do hope that we will see this as a real challenge and a problem so that as the State - because the mandate is on the State and not the institutions - makes sure that education is affordable in our country.

Thank you and I support this Bill.

Sen. Murkomen: Thank you Mr. Temporary Speaker, Sir. First of all, let me start by congratulating you. Since you became a Member of the Speaker’s Panel, I have not had a chance of making contributions before you and congratulate you for being elected and approved by this House to be a Temporary Speaker, a position that I served in for the last three years. I understand the challenges you are going through but it is also a position of great experience and knowledge.

I also want to congratulate Sen. Obure for making tremendous and very important contribution to the field of education and particularly in a matter that has bothered Kenyans for a long time, which is the question of the KNEC going to abuse its powers without any checks and balances and without a place where the citizens can appeal to.

Mr. Temporary Speaker, Sir, it is important that the phenomenon of tribunals which is in many sectors in the industry is introduced to this education sector particularly the examinations, as one way of making it more accessible by the members of the public, but also as a way of removing from the structures of courts the questions that are related

to examination, and particularly as the Bill provides, matters related to withholding, nullifying and cancelling examination.

Constituting this body is very important. I agree with what Sen. (Dr.) Khalwale has suggested that you may want to re-look at the representation so that it is not so much looking like a trade union where you just want this organization and the other to be there, but a lot of effort be put on the expertise of the people who are going to serve. This is so that as Sen. (Dr.) Khalwale had pointed out, when you look at the membership, you have a person nominated by the Judicial Service Commission (JSC). I do not have a problem with that. It can be the JSC as he said or a body like the Commission on Administration of Justice.

Mr. Temporary Speaker, Sir, when it comes to representation of teachers, principals and parents, maybe we need to re-look that. There will come a situation where the teachers unions will have a position in such decisions of the KNEC. They will be the ones appealing that decision to the tribunal. It will be suspect that if teachers and parents unions jointly have an issue against the Kenya National Examinations Council (KNEC), it is likely that people would view that those members who sit there are doing so on behalf of those unions and may not have in their heart or mind the intention of administering justice, but pleasing their appointing authority who perhaps will give them the chance to renew their positions as tribunal members when the renewal time comes. I would ask the Mover to re-think about the same.

If you look at the tribunals that deal with standards, intellectual property and industrial property, you will see that more focus is given to the qualification of the person. That person is appointed based on academic qualifications rather than representations of unions. We may need to re-look at that. I saw the provision that the Cabinet Secretary will designate a secretary, who is a member or person serving within the Ministry. The thought behind the Bill was basically to minimize costs, so that very many people are not hired. But considering that the tribunal will serve on *ad hoc* basis, it is important that the secretary and the secretariat becomes a fulltime institution. He is the person who will run the affairs of the tribunal on a day to day basis, preparing for the tribunal members. If the secretary serves on an *ad hoc* basis we run the danger of that person being pulled back to his or her Ministry. We need to amend the Bill to say that the tribunal will advertise and hire a secretary.

The practice of judicial and *quasi*-judicial bodies is that they prepare their own rules. I have seen in the Bill that the Cabinet Secretary may make rules for regulating the practice and procedure of the tribunal. Perhaps, it is better for the tribunal to make its own rules, so that those rules are approved in Parliament because they are just rules of procedure. Since other tribunals also make their own rules, and because there is precedent, they are likely to pick those rules from the many other tribunals that exist.

Mr. Temporary Speaker, Sir, one of the things that I like about this Bill is that the reason we have a tribunal and not a court is we make it more accessible. People are not forced to use very strict rules. It is important for that reason for the tribunal to keep within the principles of the law, to make it more accessible to as many people as possible. I also support the idea that a parent must be given the opportunity to make the appeal, because these are minors and one must be allowed to act on behalf of the child. That also

includes if we import our Constitution provision in Chapter 4, where rights can be enforced, not just by the person whose rights have been violated but also on behalf of that person.

That latitude must be given whether it involves Non-Governmental Organisations (NGOs), Civil Society Organisations or any other person who thinks that the child has been molested or his or her rights have been violated and act on their behalf. You do not expect situations like in places which are marginalized, far from Nairobi or the city - I am happy that the Bill provides that the tribunal can sit in different places - If there is a situation where the complaints are concentrated in one section of the country, it is better for the tribunal to sit in that section of that country and collect evidence and get witnesses, in order to save travelling costs. This issue must be dealt with accordingly.

Mr. Temporary Speaker, Sir, I support this Bill so that we have an institutional framework for dealing with disputes. The Constitution allows one to appeal in the High Court. However, I hope few cases will end up in the High Court because of the cost. I believe that we will have men and women in the tribunal who are competent and qualified to do the work that is expected of them. Most of the tribunals that exist today are *ad hoc* in nature, but in reality, they are full time. This is because if there is an overload of work, they end up operating full time. Considering that the tribunal will be presiding over matters related strictly to examinations, there will be a high concentration just after December when the Kenya Certificate of Primary Education (KCPE) examination results are released and in February or March when the Kenya Certificate of Secondary Education (KCSE) examination results are released.

There are also other technical institutions that do KNEC examinations to which appeals can be made. That is why it is important to have the tribunal operating full time. Examinations are set by the KNEC and students sit for them in different institutions; private schools, public schools and other institutions. With this kind of concentration, I hope adequate resources will be allocated to the tribunal to enable it do its job.

A Senator here suggested that they should not charge a fee. However, I beg to suggest otherwise. An affordable fee should be charged so that people do not just abuse it by going there on flimsy grounds. There must be room for a small fee and room to also waive that fee in situations that we call pauper briefs; where someone is completely unable to pay that fee.

The education sector must be reformed. This is part of reforming and strengthening institutions. As a former lecturer in the university, more needs to be done to bring credibility in the education sector. This is because there is too much commercialization in primary and secondary schools. We concentrate more on how many students a school has, how much they charge, what kind of marks they attain and which kind of schools they proceed to. However, a lot should go to what kind of talents, skills and competences are being given to the students. The other day, a parent asked me to assist him transfer his child from one school to the other. The consideration he had for the next school is that they pass examinations. I advised him otherwise. I told him that the other school may not have passed all the examinations overall, but it had excelled nationally in sports and drama. This is very commendable.

We must start investing holistically in our schools so that you have people who come out of schools not having just crammed theories to pass examinations. They must have a way of expressing themselves; they should have succeeded in talents and competencies. We should have a person who can think outside the box or better yet as they say nowadays, think without the box. We want to have students who are innovative in their thinking and have a focus on what they want to contribute.

The Cabinet Secretary must be supported when he says that we need to reform university education so that there is no mere mushrooming of universities without focus on skills and competencies. There is a lot in this country about getting a certificate for the sake of it and it being a basis of being promoted, without one showing what skills and competencies they have learnt and how to apply them to change this country. The Cabinet Secretary, Mr. Matiang'i must be supported when it comes to ensuring that when a university is expanding across the country, they must demonstrate that they have the resources to meet that kind of expansion. They should not just expand for the purpose of creating employment or getting more students to get certificates.

Mr. Temporary Speaker, Sir, we must also relook at how universities examine their students. I agree with the previous speakers who have said that the ranking of universities is very important. All over the world, even in the United States of America (USA), they rank universities not just on overall education, but they also rank them in terms of sports, international law, medicine, agriculture and many others. We need to have a proper scholarship system in this country that is transparent and that can reach the needy students.

The situation that was mentioned here by Sen. Lesuuda is a fact. We find situations where children who have excelled in their examinations are staying at home. Three years down the line, a student tells you that he had attained over 400 marks, he did not proceed because of lack of school fees, he or she is still at home. We need to have a system that works. We can talk of projects that Sen. Karaba mentioned here like the "Wings to Fly" scholarship and many others. However, those are initiatives of individuals that must be lauded and supported. However, the Government must also have its scholarship programme.

Secondly, we need to have more philanthropists in this country. What the Chairman of Equity Bank, Mr. Munga and Mr. Mwangi are doing can be replicated by many other Kenyans who have been endowed with resources. Instead of having this *ad hoc* way of supporting, which we do; I know that almost all politicians here are paying school fees somewhere; we might need to create more programmes that have institutional framework which can assist as many students as possible. Our counties can become the organizing institutions; assist and work with these philanthropists.

We need to appeal to more Kenyans that they do not need to pass on from this world with all that wealth; they can give back to society. For example, in the United States of America (USA), universities are growing because rich people are giving back to society by building classrooms, supporting scientific research and as on. That is why some of us had an opportunity to study in developed countries, for instance, South Africa, USA and other places. This was made possible by scholarships given by other people who want to fund needy students. That is the same thing that we need to grow in this

country so that we achieve what Sen. Lesuuda said, in terms of dealing with needy people.

With those few remarks, I beg to support.

The Temporary Speaker (Sen. Sang): Since there is no other interests to contribute on this matter, I now call upon the Mover to reply.

Sen. Obure: Mr. Temporary Speaker, Sir, I wish to express my thanks and gratitude to all those who have contributed to the debate on this amendment. I am happy that it has attracted high quality debate on the entire issue of provision of education and administration of national examinations in this country.

In particular, I acknowledge individually those who have made their contribution in enriching this amendment. I thank the Senator for Homa Bay, Sen. M. Kajwang, who seconded this Bill, Sen. (Dr.) Zani who gave very useful input, the Senate Minority Leader, Sen. Wetangula, Sen. Karaba, Chairman of the Committee on Education, Sen. (Dr.) Khalwale, Sen. Melly, Sen. Hargura, Sen. Wangari, Sen. Elachi, Sen. Lesuuda and lastly my friend Sen. Murkomen.

Colleague Senators, I assure you that I have been busy taking detailed notes. I will incorporate what you have said particularly in relation to the amendments. We have all agreed that the question of integrity of our national examination system is very crucial. We all have a duty as citizens of this country to protect the integrity of our national examination system. If we allow that system to be undermined, then our entire education system will collapse. Nobody will recognise our certificates and the kind of education we are offering to our citizens.

I made it very clear at the time when I was moving this Bill that we all agree on the need to protect the integrity of our national examinations. However, in moving this amendment, I was particularly concerned about arbitrary decisions which are made by the Kenya National examinations Council (KNEC). These are decisions where victims were not given an opportunity to tell their side of the story. The powers which were given to the KNEC are absolute; they cannot be questioned by anybody.

Sen. Wangari said that in as much as we all condemn cheating and malpractices in our examinations, we must also protect the right of victims to be heard. This is a very important statement. This is my concern; that decisions made by the KNEC must be subject to review because they impose untold penalties on students. The KNEC sets, invigilates, supervises, marks and grades exams and then the same institution is given powers to cancel those results. Withholding or nullifying the entire examination unilaterally without giving an explanation to those who have been affected should not happen at our level of development when we are enjoying the fruits of 2010 Constitution.

The establishment of a tribunal by this Bill is really one of the ways in which we can correct a lot of the wrongs made particular through unilateral and arbitrary decisions made by the KNEC. Every citizen in this country has a right to be heard. Even the rules of natural justice demand that an individual who feels offended or whose decision has been taken against, should be given an opportunity to explain himself or herself. Therefore, this Bill will give an opportunity to such people to be heard.

I have listened to various amendments made particularly on the composition---

The Temporary Speaker (Sen. Sang): Order, Sen. Obure. You have 30 minutes to reply. However, we have three more minutes before we adjourn the sitting. Therefore, you have the liberty to either exhaust your 30 minutes and that means the business goes to the next sitting day or you could conclude within the three minutes left.

Sen. Obure: Mr. Temporary Speaker, Sir, I am scheduled to be away. Therefore, I want to conclude this today.

The Temporary Speaker (Sen. Sang): You have three minutes to do so.

Sen. Obure: Mr. Temporary Speaker, Sir, this amendment will give candidates, particularly those who feel that they were not involved in any malpractice--- In the debate which has ensued in this House, we have been told about leakages from the KNEC headquarters itself. Therefore, the candidates may not have directly participated in releasing some of the leakages.

Even if some of these candidates have been punished, they have been punished unfairly. It is good that we give them an opportunity to respond through the creation of this tribunal.

I thank Hon. Members. I assure them that the various proposals for the improvement of this Bill have been taken on board. These are issues to do with composition of the tribunal, removal of parents from the tribunal and so on.

I, therefore, conclude by moving that, the Kenya National Examinations Council (Amendment) Bill No.2 of 2015 be read a second time. I also, pursuant to Standing Order No.54 (3), request that you defer putting of the question to tomorrow.

The Temporary Speaker (Sen. Sang): It is so granted.

(Putting of the Question on the Bill deferred)

ADJOURNMENT

The Temporary Speaker (Sen. Sang): Hon. Senators, it is now 6:30p.m., time to adjourn the business of the Senate. The Senate, therefore, stands adjourned until tomorrow, Wednesday 24th February, 2016 at 2:30 p.m.

The Senate rose at 6.30 p.m.