

# PARLIAMENT OF KENYA

## THE SENATE

## THE HANSARD

**Tuesday, 27<sup>th</sup> October, 2015**

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

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

### PRAYERS

### PAPER LAID

THE NACADA BI-ANNUAL REPORT ON ALCOHOL  
AND DRUG ABUSE

**Sen. Haji:** Mr. Speaker, Sir, I beg to lay the following Paper on the Table of the Senate today, Tuesday, 27<sup>th</sup> October, 2015.

The Bi-Annual Report on Alcohol and Drug Abuse from the National Authority for Campaign against Alcohol and Drug Abuse (NACADA)

*(Sen. Haji laid the document on the Table)*

### STATEMENTS

**The Speaker** (Hon. Ethuro): Hon. Members, because of the number of Statements listed on the Order Paper, if you are not here the first time, we will drop that Statement.

Let us begin with Statement “a” as listed on the Order Paper.

ONGOING PROPERTY DEVELOPMENT AT THE JUNCTION OF LORESHO  
RIDGE ROAD AND KAPTAGAT ROAD

I thought I saw the Vice Chairperson of the Committee on Land and Natural Resources. We will come back to this statement.

Let us move on to the Statement listed as “b” on the Order Paper.

## DEATH OF MR. ALEX MADAGA FOLLOWING A ROAD ACCIDENT

Vice Chairperson Committee on Health, I recognize you.

**Sen. Kittony:** Mr. Speaker, Sir, I have the Statement requested by Sen. Dullo to include specific information on the suspension of radiotherapy treatment at the Kenyatta National Hospital (KNH).

**The Speaker** (Hon. Ethuro): Order, Sen. Kittony. We are dealing with Statement “b”.

**Sen. Kittony:** Mr. Speaker, Sir, the Statement is ready, but the signature of the Cabinet Secretary has not been appended. He was out of office. We shall issue the Statement tomorrow.

**The Speaker** (Hon. Ethuro): Sen. Khaniri, your Statement will come up tomorrow. It is so ordered, there is not much you can do.

*(Statement Deferred)*

Let us have the Statement listed as 2(c) to be answered by the Committee on National Security and Foreign Relations.

DETENTION OF MR. DON BOSCO GICHANA IN  
ARUSHA, TANZANIA

*(Sen. Haji stood up in his place)*

Order Chairman, Sen. Okong’o is not here at the moment. We will defer his Statement to tomorrow.

*(Statement Deferred)*

We are now at Statement 2(d)

DEATH OF MS. MAUREEN TATA AND THE DETERIORATING  
HEALTH STANDARDS IN THE COUNTRY

Sen. Kanainza is also not here. This Statement is deferred to tomorrow.

*(Statement Deferred)*

Let us move on to Statement 2(e). Chairman, Committee on National Security and Foreign Relations, you may proceed to respond.

*(Sen. Haji and Sen. Adan consulted)*

Order, Chair and Vice Chair!

**Sen. Haji:** Mr. Speaker, Sir, I apologise. Let me proceed and respond to the Statement.

## INSECURITY IN NANDI COUNTY

Sen. Sang had requested for a Statement regarding the security situation in Nandi County and in particular Kapsabet, its environs and Mosoriot Town Centre. He particularly sought to be informed on---

Mr. Speaker, Sir, to save the time of the House, I will not read what was I asked I will go ahead and give the answer. I wish to state as follows:-

The Government is not aware of the increased incidents of insecurity in Nandi County. However, the Government is aware of isolated cases of motor cycle thefts and burglary reported in Kapsabet and Mosoriot towns which have been investigated and appropriate action taken accordingly. Most of these cases are now before court, awaiting hearing.

Since April, 2015, cases involving theft of motorcycles and burglaries in Kapsabet and Mosoriot were reported as follows:-

At Kapsabet Police Station, on burglary, in August three cases were reported and in September one case was reported. The total cases reported are four.

On theft of motor cycles, in May, one case was reported, in June, one case, July, one case, August, two cases, September two cases, giving a total of seven.

The total of burglaries and motorcycle cases put together give a total of 11 cases.

At Mosoriot Police Station, the burglaries were reported as follows: One in August, three in September coming to a total of four.

On theft of motor cycles, one case was reported in August. The total of burglaries and theft of motor cycles reported at Mosoriot Police Station are five.

As per the above figures, the status does not indicate runaway crime and the security situation is under control.

Similarly, the Government is not aware of public outcry over alleged collusion between police officers and suspects. The officers have a mandate to provide services fairly and professionally without fear or favour in accordance with the requirements of the Constitution of Kenya, 2010. However, in circumstances where individual officers are reported to contradict the code of regulations, appropriate action will always be taken against them.

Mr. Speaker, Sir, the Government is aware that on the night of 12<sup>th</sup> to 13<sup>th</sup> August, 2015, three suspects were apprehended by members of the public for house breaking and stealing of a television set at Ndaptabwa Area. They were all booked at Mosoriot Police Station and processed for court. However, the following night, the three suspects escaped from police custody. Investigations into the escape were initiated immediately vide File No.2/2015 and is pending under investigations.

Mr. Speaker, Sir, on allegations of reckless and indiscriminate shooting of two innocent school going children by police officers, the circumstances involving the case are that on 15<sup>th</sup> September, 2015 at about 4.00 p.m., information was received at Kapsabet Police Station that a group of about 400 *boda boda* riders armed with crude weapons had apprehended some suspects at Langas in Eldoret and were heading to Kapsabet Town where they intended to lynch them.

The ensuing violent confrontation between the police officers and the rowdy riders prompted police to shoot severally in the air to scare away the riotous mob. During the confrontation, two girls aged eight and one year were hit by a stray bullet while in a nearby

house and sustained injuries. They were rushed to hospital for treatment and thereafter an inquiry file No.7/2015 was opened and is pending under investigations since no report has been made.

Mr. Speaker, Sir, the Government is not aware of any collusion between the county government officials and suspected criminals to issue fake *boda boda* operating licenses and stickers to unsuspecting and law abiding *boda boda* operators.

Lastly, the Government is equally not aware of any persons who are inciting communities against each other in the area.

**Sen. Sang:** Mr. Speaker, Sir, I want to thank the Chairman for this response, though you will appreciate that this was an urgent matter but it has taken the Ministry more than two months to respond.

In the Statement given by the Chairman, I want to seek a number of clarifications. One, on the incident in Mosoriot, the Chairman has indicated that the Government is aware that on the night of 12<sup>th</sup> and 13<sup>th</sup> August, 2015 three suspects were apprehended by members of the public. He goes on to tell us that they were booked in a police station but they escaped. We are talking about a police station with more than ten police officers.

How possible is it that suspects are able to escape from a police cell, whatever time of the night when we know that the security around a police station is provided 24hrs, seven days a week? Can he clarify how the suspects escaped from police custody in a police station that is supposed to be manned 24 hours in a day?

Secondly, if you have a situation where suspects are apprehended by members of the public, then you have police officers being unable to explain how the suspects escaped---

**The Speaker** (Hon. Ethuro): Order, Sen. Sang. This is clarification time.

**Sen. Sang:** Mr. Speaker, Sir, the second clarification on that particular one is, even with the opening of the inquiry file, has any of the police officers who are responsible for the manning of the police station on that particular night been forced to step aside? Have they been interdicted?

Secondly, the Chairman has indicated that on 15<sup>th</sup> September, 2015 about 400 *boda boda* riders armed with crude weapons rode from Eldoret towards Nandi. It is shocking for the Chairman to imagine that anybody can believe that there were 400 *boda boda* riders with crude weapons, riding from Langas to Eldoret, all the way to Kapsabet. This incident of indiscriminate shooting happened in Kapsabet. How possible is it that security officers would have allowed these 400 *boda boda* riders, carrying crude weapons, to ride from Eldoret all the way to Kapsabet, which is approximately 40 kilometres away? Is it not possible that they would have been intercepted in Eldoret or anywhere before they got to Kapsabet?

Finally, the Chairman says that the two children aged eight and one were injured by stray bullets. The families of these two children went to Kapsabet Police Station. Is the Chairman aware that at Kapsabet Police Station they were denied the P3 forms and they had to go all the way to Nandi Hills to report the incident and be given these forms? These are the same police officers who were responsible for the shooting.

The last one on this; what is the Government doing to ensure that these police officers, both in Mosoriot and in Kapsabet who do not abide by the code of regulations of the force are met with the rightful force of the law, by ensuring that they are interdicted so that we can have confidence between members of the public and the police being enhanced?

**The Speaker** (Hon. Ethuro): Chair, you can now respond.

**Sen. Haji:** Mr. Speaker, Sir, it is not strange for people who have been arrested to escape from police stations. Kamiti Maximum Prison has one of the highest security alert systems. However, sometimes you hear that prisoners have escaped.

Secondly, according to the Statement, an inquiry file has been opened. When it is concluded and they are found guilty of letting prisoners run away, they will be dealt with.

There was also the issue of the 400 *boda boda* riders who were travelling from Nandi to Langas. Even during weddings, so many bike riders operate freely, unless they are suspected of an intention to commit a crime. Therefore, one police officer on the road cannot do much. That is why a big number of police officers were sent to stop them from causing any havoc.

With regard to the P3 form, I am not aware. This is a totally new question. However, I will find out from the CS why these people have been refused P3 forms where the offence was committed. I will, therefore, answer him at an appropriate time.

SUSPENSION OF THE RADIOTHERAPY TREATMENT  
AT THE KENYATTA NATIONAL HOSPITAL

**Sen. Kittony:** Mr. Speaker, Sir, this is about the Statement on the Suspension of the Radiotherapy Treatment at the Kenyatta National Hospital. It was requested by Sen. Dullo Adan and she wanted the specific information as follows;

May I have your indulgence? Sen. Dullo Adan requested me to give her time to read the Statement first. She pleaded with me to present it tomorrow. Would I be in order to do so?

**Sen. Adan:** Mr. Speaker, Sir, I have not seen the Statement---

*(Sen. Adan and Sen. Kittony stood up in their places)*

**The Speaker** (Hon. Ethuro): Order, Senators! Both of you cannot be standing at the same time.

**Sen. Adan:** Mr. Speaker, Sir, I have not seen the Statement. That is why I requested her to do it tomorrow after I have gone through it and interrogated it.

**The Speaker** (Hon. Ethuro): What do you mean? How did you request for something if you are not aware of its existence?

**Sen. Adan:** Mr. Speaker, Sir, I have not seen the response.

**The Speaker** (Hon. Ethuro): You must have seen it. It is only that you have not read it.

**Sen. Adan:** Mr. Speaker, Sir, I have not seen it.

**The Speaker** (Hon. Ethuro): Order, Members. I have had an occasion to state and I want to restate that those kind of administrative issues can be canvassed with the Chairpersons of Committees instead of being done at the plenary. So you can do it tomorrow afternoon.

**Sen. Adan:** Most obliged, Mr. Speaker, Sir.

**The Speaker** (Hon. Ethuro): In any event, the Vice Chairperson was trying to issue that Statement. It is only that, that was not the Statement for that particular moment. So, you had enough time to approach the Chair and tell me what you had agreed on. Let us proceed.

**Sen. Kembi-Gitura:** On a point of order, Mr. Speaker, Sir.

**The Speaker** (Hon. Ethuro): Order, Senator. We know yours is pending. However, we have to go through the list. Sen. Khaniri, I hope you have taken note that he rose on a point of order when it was supposed to be a Statement.

Vice Chairperson for the Standing Committee on Health, can you respond on part (g)?

**Sen. Kittony:** Mr. Speaker, Sir, the Senator who requested for the second Statement is not present.

**The Speaker** (Hon. Ethuro): Order, Sen. Kittony! You should go as per the Order Paper. It has an appendix. We are on page 765 under item (2) (g).

#### THE STATUS OF NEW NHIF RATES

**Sen. Kittony:** Mr. Speaker, Sir, that Statement has not reached us. So, I have no information. I will find out and bring you the answer tomorrow.

**Sen. Khaniri:** Mr. Speaker, Sir, I am taken aback when the Chairperson says that the Statement has not reached her. It is on record that this Statement was requested about three months ago. Is she in order? I requested for this Statement in June.

**The Speaker** (Hon. Ethuro): Vice Chairperson, why has the Statement delayed?

**Sen. Kittony:** Mr. Speaker, Sir, that Statement has not come to us. I promise to table it tomorrow.

**The Speaker** (Hon. Ethuro): Table it tomorrow afternoon, including the reasons for delay.

**Sen. Kittony:** Most obliged, Mr. Speaker, Sir.

**The Speaker** (Hon. Ethuro): On parts (h) and (i), I do not see the respective Members. So, it will be given in a week's time. So, we go back to 2(a). Where is the Vice Chairperson for the Standing Committee on Land and Natural Resources?

#### ONGOING PROPERTY DEVELOPMENT ON LORESHO RIDGE

**Sen. Khaniri:** Mr. Speaker, Sir, after we sent the second reminder to the Cabinet Secretary (CS) for Lands, Housing and Urban Development, we received a Statement which I got just an hour ago.

Sen. Kembi-Gitura had asked five substantive questions in the Statement. However, question one and two are not properly answered. It is unsatisfactory. I do not want to deliver this kind of answer to the House. The answer is a bit rude, particularly to this House.

In the first question, the Senator wanted---

**The Speaker** (Hon. Ethuro): Order, Sen. Khaniri! You said you have an answer that you are not comfortable with.

**Sen. Khaniri:** Yes, Mr. Speaker, Sir.

**The Speaker** (Hon. Ethuro): So, why are you splitting it? Why would you want to answer one and not the other? You either answer in totality or answer none.

**Sen. Khaniri:** Mr. Speaker, Sir, I want to seek your guidance on this matter. We directed the Statement to the Ministry of Lands, Housing and Urban Development. The CS has

deliberately refused to answer the first and the second questions. He told us to get the answer from the Nairobi County.

I expected the CS to liaise with the City County and furnish this House with the response we require. Now he is “detouring” us by sending us to the Nairobi County. I do not know how to handle this. That is why I need your guidance on the same.

**The Speaker** (Hon. Ethuro): How many parts did the Statement have?

**Sen. Khaniri:** Mr. Speaker, Sir, it had five parts. Three have been answered.

**The Speaker** (Hon. Ethuro): You will be advised appropriately.

**Sen. Kembi-Gitura:** Mr. Speaker, Sir, I have also seen the answer this afternoon. When we were Assistant Ministers, we were often given the role of answering Questions in Parliament. We were not allowed to answer Questions we did not know how to. For example, you could not say; “refer to (a) above” when answering a different part of a Question.

This is rude. I have never seen anything like this. Why did he answer parts 3, 4 and 5? He could have sent us to get all the answers from the Nairobi County. It is unsatisfactory and an insult to the Senate. I agree with Sen. Khaniri that the matter should go back to the CS for a proper answer. If they have the answers for the three parts, then they must be having answers to part one and two.

**The Speaker** (Hon. Ethuro): It is so ordered. Let the CS be directed to respond to all parts of the Statement. Can we get the response within a week? The job is easier now. There are only two parts remaining.

**Sen. Khaniri:** Yes, Mr. Speaker, Sir. In fact, I have already instructed the Clerk to do so. We will write and request for the answers. We will give the progress report in a week’s time.

**The Speaker** (Hon. Ethuro): We are about to complete that particular order. Could we get a request?

#### INSECURITY ALONG THE MERU-ISIOLO BORDER

**Sen. Murungi:** Mr. Speaker, Sir, I want to request the following Statement, if I could refer to it; “by private notice” because the matter is very urgent. Recently, there was banditry attack at Kithiorone near Kaongoka-Mpiyo-Kabashi location, Amwathi ward, Meru County. Five locals lost their lives, over 800 head of cattle were stolen and property of unknown value was destroyed by bandits from Isiolo County.

*(Loud Consultations)*

Mr. Speaker, Sir, would you save me from the ongoing consultations?

**The Speaker** (Hon. Ethuro): Order, Senators! In fact, I will save you from more than just consultations. It is out of order to stand in between a Member and the Chair when the Member is on the Floor.

**Sen. Murungi:** Mr. Speaker, Sir, I request for an urgent Statement from the Chairperson of the Standing Committee on Security and Foreign Relations clarifying the following issues;

- (1) What urgent steps is the Government taking to reverse the rapidly deteriorating security situation on Meru/Isiolo counties border? The five deceased are; Mr. Muthamia Mbiti, Mr. Kanyili M’Akaibua, Mr. Njilu M’Ithiaba, Mr. Julius

Mutuma M'Mauta, Mr. Ng'olua M'Arangacia? They were killed by heavily armed cattle rustlers from Isiolo County on the night of October, 1, 2015.

(2) What steps is the Government taking to trace three people; namely, Kaunga, Karaya and Maore and over 800 head of cattle whose whereabouts still remain unknown, one week after the said brutal attack?

(3) What steps is the Government taking to stop and punish the Borana herdsmen from Isiolo County who routinely cross into Meru County and forcefully graze their camels and other livestock on Meru farms thereby destroying crops? In fact, this season alone, we have lost crops worth over Kshs30 million through forcible grazing by Borana herdsmen in Meru County.

(4) When will the Government construct, equip and maintain police posts at Bulu, Kiamone and Kaongo or Thaya as requested by the residents and recruit homeguards from Meru County as it is done in Isiolo County?

Mr. Speaker, Sir, the Government has routinely recruited homeguards for Isiolo County but it does not recruit any homeguards in Meru County. Our people are complaining bitterly about this discrimination. This is a cause of serious insecurity.

Finally, just yesterday, some leaders met in Isiolo at Rangeland Hotel. One of the Isiolo leaders said that the Meru-Isiolo County boundary would be fixed over his dead body. The Districts and Provinces Act of 1992 clearly states where the boundary between Meru and Isiolo County should pass through. My question is---

**The Speaker** (Hon. Ethuro): Order, Senator. Could you seek your Statement and stop prosecuting the issues?

**Sen. Murungi:** Mr. Speaker, Sir, when will the Government fix civil beacons to mark the existing boundary between Meru and Isiolo County as it is specified in the Districts and Provinces Act of 1992 because that is the cause of all the insecurity on that border?

Thank you.

**The Speaker** (Hon. Ethuro): Sen. Hassan, make a very brief intervention because the Statement is not yours.

**Sen. Hassan:** On a point of order, Mr. Speaker, Sir. Just to add to that, what measures is the Government taking to ensure that the boundaries issue does not degenerate into inter-tribal or inter-ethnic conflicts because I can feel the tone of the distinguished Senator?

**Sen. Haji:** Mr. Speaker, Sir, first and foremost, I want to send my condolences to the bereaved families and all those who might have lost their livestock. Secondly, this Statement, ideally, should be given on Wednesday next week. That is one week from now.

**The Speaker** (Hon. Ethuro): It is so directed. The Statement will be issued in one week's time.

Order, Members, that is the end of that particular Order. Before we proceed, I have a communication and a petition. Let me dispose of the communication first.



**COMMUNICATION FROM THE CHAIR****VISITING DELEGATION OF STAFF FROM  
LAMU COUNTY ASSEMBLY**

**The Speaker** (Hon. Ethuro): Hon. Senators, I would like to acknowledge the presence, in the Speaker's Gallery this afternoon, of visiting county assembly staff from Lamu County. The County Assembly staff is here on a one week attachment programme. They will be attached to the Directorate of Committee Services, the Directorate of Legislative and Procedural Service and the Directorate of Information and Research Services. I request each one of them to stand when called out so that they may be acknowledged in our great Senate tradition.

- (1) Mr. Ali Ahmed Said, Principal Clerk Assistant;
- (2) Mr. Swaleh Rubea, Clerk Assistant III;
- (3) Mr. Athman Elema Molmocha, Clerk Assistant III;
- (4) Mr. Yasir M. Sheyumbe, Clerk Assistant III; and,
- (5) Ms. Fatma Athman Haji, Records Management Officer.

On behalf of the Senate and on my own behalf, I welcome you to the Senate and wish you a fruitful engagement for the remainder of your stay. I thank you.

*(Applause)*

**Sen. Haji:** Mr. Speaker, Sir, I wish to join you in welcoming the delegation from Lamu County because I am their neighbour. I welcome them to the Senate and hope that they will learn something during their stay here. I wish them best of luck when they go back home.

**Sen. Hassan:** Bw. Spika, naungana nawe kuwatakia ndugu zetu kutoka Lamu ambapo kitovu chao na cha Mombasa kimeshikana kabisa kwa undugu. Ninawatakia wakati mwema katika Seneti. Natumai watakuwa washikadau wakubwa katika mstari wa mbele kutetea ugatuzi kwa kuondoa watu wetu katika hali ya dhulma kwa sababu Lamu ni mojawapo ya kaunti ambazo zimedhirika na kudhulumiwa kwa miaka mingi.

Wana fursa, kupitia ugatuzi, kuhakikisha kuwa wamerekebisha yote ili yaambatane na matarajio ya watu wao. Karibuni! Mungu awape wakati mwema katika ziara yenu katika Seneti ya Kenya.

**PETITION****ALLEGED CORRUPTION AND WASTAGE OF  
PUBLIC FUNDS BY NANDI COUNTY GOVERNMENT**

**The Speaker** (Hon. Ethuro): Hon. Senators, I have a Petition to the Senate by the Nandi County Civil Society Network and the Nandi County Chamber of Commerce and Industry concerning alleged corruption and wastage of public funds by the Nandi County Government.

*(Sen. Hassan spoke off record)*

Order! Sen. Hassan, stop imputing improper motives on Members.

*(Laughter)*

Hon Senators, pursuant to Standing Order Nos. 220(1)(a) and 225(2)(b), I hereby report to the Senate that a Petition has been submitted through the Clerk by the Nandi County Civil Society Network and the Nandi County Chamber of Commerce and Industry concerning alleged corruption and wastage of public funds by the Nandi County Government. In their Petition, the petitioners have raised a number of grievances relating to the Nandi County Government, among them:-

(a) THAT the Nandi County Executive has failed to facilitate public communication and access to information by the public as required under Article 35 of the Constitution and Sections 93, 94, 95 and 96 of the County Governments Act No.17 of 2012.

(b) THAT the County Executive has failed to establish a County Budget and Economic Forum for County Budget Consultation Process as required under Article 10 of the Constitution and Section 137 of the Public Finance Management Act No.18 of 2012.

(c) THAT the County Assembly has failed to facilitate public participation in carrying out its mandate including the consideration of Bills before the Assembly as well as in the County Budget making process.

(d) THAT the County Executive has failed to put in place an appropriate mechanism for provision of civic education in the county as required under Sections 98, 99, 100, and 101 of the County Governments Act.

(e) THAT the County Executive has presided over corrupt practices, wastage of public funds and abuse of office particularly in procurement of goods and services and in construction projects being carried out at the county.

The petitioners, therefore, pray that the Senate undertakes an investigation into the matters raised in the petition and recommends appropriate action thereon.

Senators, pursuant to Standing Order No. 226 I shall now allow observations or clarifications in relation to the Petition for not more than 30 minutes.

**Sen. Khaniri:** Mr. Speaker, Sir, I thank the two patriotic groups from Nandi County; the Nandi County Chamber of Commerce and the Nandi County Civil Society Network for their vigilance. Although the responsibility of oversight on what is happening in counties is vested in the county assemblies, and to some extent the Senate, it is absolutely important that members of public participate in this oversight exercise.

They should be vigilant because we want devolution to work. We will not entrust this job to the county assemblies alone. When they see things like the ones they have observed, it is important that they bring it to the Floor of this House. The issues raised are very grave because they involve corruption, mismanagement of public funds and abuse of office.

Mr. Speaker, Sir, we ask that you refer this matter to the relevant Committees as required by our Standing Orders so that they can expedite the investigations and unearth the truth. If this is happening, it has to be stopped.

I support.

**The Speaker** (Hon. Ethuro): Members will not talk for more than two minutes.

**Sen. (Prof.) Anyang'-Nyong'o:** Thank you, Mr. Speaker, Sir. I will definitely not talk for more than two minutes. Following the footsteps of my dear neighbour, Sen. Khaniri of Vihiga County, the many requests coming to the Senate through petitions will demonstrate to the nation the faith that the people of Kenya have in this House to put devolution on its right course.

Secondly, in most county governments, what comes out clearly is that the structures of devolution have not been fully put in place. If I was to do a survey, I would find that few counties have established village councils so as to be accountable to *wananchi* up to the village level.

Mr. Speaker, Sir, if they have not done this, the people feel divorced or alienated from the county government, hence the many petitions. We welcome this Petition and I hope we shall look at it expeditiously.

Thank you.

**Sen. Hassan:** Mr. Speaker, Sir, I join hands with my colleagues in acknowledging the faith Kenyans have in the Senate. This shows that we are developing our democracy in a manner that is robust and meets the threshold that the people of Kenya want oversight to be discharged. In the Petition, the investigations sought are extremely broad in nature without specificity. They are asking for investigations into corruption, abuse of office and wastage of public resources. That is like an audit of the entire office of a county. In petitions, is it not in order to be specific from what I have seen in the petitions from Kisumu, Wajir and Mandera counties, where it pointed to particular areas of abuse of office and wastage of public funds? My appeal is that we need to be more specific in such petitions.

**The Speaker** (Hon. Ekwee Ethuro): For your information, there is an attachment from the petitioners. We have only summarised the details to the attachment.

**Sen. Musila:** Mr. Speaker, Sir, I join in congratulating the patriotic Kenyans who have brought this Petition. You will note that, recently, we have been receiving a lot of petitions to the Senate to look into issues of misappropriation of funds in counties. Misappropriation of funds in counties is so rampant. I dare say that I know of no county that is not misappropriating funds. This is an indictment on the part of the Auditor-General because he is not doing his job properly and that is why *wananchi* have to resort to petitions on misappropriation because he is sleeping on the job.

Mr. Speaker, Sir, may I appeal to the Auditor-General to cause offices to be opened in all counties and audit our counties so that devolution may succeed.

Thank you.

**Sen. Ndiema:** Thank you, Mr. Speaker, Sir. I also thank those citizens from Nandi County for finding it fit to petition the Senate. I encourage all citizens in all counties to follow this example. There are counties where mismanagement is occurring, resources are being misused and the public do not know where to seek assistance. Sometimes they blame the Senators individually and collectively for not doing much yet they have not brought the facts to the Senate. I encourage them to follow suit and have confidence in the Senate that can deliver.

**Sen. Hargura:** Mr. Speaker, Sir, I thank the two groups from Nandi County for bringing this issue to the attention of the Senate because they are serious matters. Devolution is about prudent use of resources but if there is corruption, wastage of public funds and abuse of office, then it affects devolution negatively because we may not succeed when money is channeled to

the wrong direction. I urge the House that the Petition is given the necessary attention so that we can stem this kind of misuse at the counties.

**Sen. Sang:** Mr. Speaker, Sir, like my other colleagues, I congratulate these two organizations for taking up the matter with the Senate. Some of our counties are facing serious challenges. Last weekend, I visited one of the water projects that have been allocated over Kshs.5million only to find nothing. Therefore, there is reason to believe that there is need for us to support our residents in our counties in addressing these issues.

I support.

**Sen. G. G Kariuki:** Thank you, Mr. Speaker, Sir. My concern here is that all the county governments have problems. The day they will know that we are capable of dealing with their protests, they will bombard this place with a lot of petitions. My question is whether we have the personnel to deal with this matter other than what I see when we go to the Committee. They just come and present themselves with those against the system putting their case and inviting those defending.

Mr. Speaker, Sir, we are doing a great job where we are capable of taking a serious decision that will be taken as a deterrent to others or we just talk and receive petitions.

Thank you.

**Sen. Wako:** Mr. Speaker, Sir, I wish to thank the National Chamber of Commerce of Nandi and the civil society for bringing this Petition to us. We indeed encourage all Kenyans to be doing that. This shows that the systems at the county level are not working. These are some of the things that ought to be settled at the county level; by the county assembly or the county governments. Therefore, there is realization that the Senate is the fall back position, which is good realization for the place of this Senate in the well-being of this country.

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

**Sen. Murungi:** Mr. Speaker, Sir, first, I would like to encourage my brother, Senator number one, not to be so pessimistic about the work of the Senate. Many petitions have been brought to my Committee and we have done a thorough job. We have invited all the people involved and we have made very good recommendations, some of which have been acted on by the Government. For example, the Task Force on Tea has been gazetted by the Minister. This means that we are achieving something.

Mr. Speaker, Sir, let me say that it is our duty as the Senate to encourage public participation in all the functions of the Senate. Under Article 118(1) (b) of the Constitution, one of the functions of the Senate is oversight and, therefore, it is our duty to involve members of the public and the civil society. We might not have the capacity to be in every corner of this country but when we get petitions like this, we should encourage petitioners to communicate with us.

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

Sen. Karaba!

**Sen. Karaba:** Mr. Speaker, Sir, I also want to join other Members of the Senate in appreciating Nandi County. Nandi County is setting the pace and I would like other counties to emulate them. There are many counties suffering from the same problem but it is only that for fear of the unknown, they are not able to come out forthright to tell us what is ailing the counties. The problems are immense. Let us congratulate Nandi County and ask other counties to wake up.

**Sen. Nabwala:** Mr. Speaker, Sir, I want to join my colleagues in supporting and encouraging the groups from Nandi who have raised the Petition to the Senate. This Petition is very important because it touches on very pertinent issues like corruption and wastage of funds in the county. It is our job to oversight and when an issue like this comes to the House, it is our duty to make sure that we look at it critically and take corrective measures. Other counties should follow suit. We are having many problems and the country is facing a cash crunch. Therefore, issues of corruption and wastage of funds should be taken seriously by this House and we should come out and pronounce ourselves.

**Sen. Wamatangi:** Mr. Speaker, Sir, as I join my colleagues in supporting the Petition, what comes to mind as I listen to the Petition and knowing that there have been several petitions including from my own county, Kiambu, regarding wastage of funds, I think it is time for us not to wait for a crime or misappropriation to occur then we lament or complain at the end. We should take pro-active actions.

This House formed a Committee to look into the aspects of the Constitution which require to be amended to strengthen the Senate. One of the main aspects is that we lack pro-active powers to stop the pilferage and the wastage before it occurs. As a House, we should recommend to the relevant Committee of this House to engage the Committee that was formed to look into the aspects that can be reviewed and include powers to stop this theft or pilferage before it happens so that we can play our role according to Article 96 of the Constitution.

**The Speaker** (Hon. Ethuro): The numbers seem to be increasing but I want to close. Finally, Sen. Keter and then Sen. Kembi-Gitura!

**Sen. Keter:** Mr. Speaker, Sir, from the onset, I want to thank those Kenyans from Nandi County for being bold enough and having confidence in this Senate. Those issues highlighted are not only in Nandi but across most counties. It is only strong people like those ones of Nandi who can save our counties. I want to encourage all people to be bold enough so that they can highlight issues affecting them. I want to assure the people that the issues that have been raised will be dealt with accordingly so that the people of Nandi can get what they deserve. Therefore, I support the Petition.

**Sen. Kembi-Gitura:** Mr. Speaker, Sir, listening to you reading that Petition on behalf of the people of Nandi, I read frustration on their part and the fact that they know their rights but they are frustrated because either the county assembly is not playing its oversight role properly as per Article 185 of the Constitution or there is no public participation at all in Nandi County.

My thinking is that it is time the Senate decided to take up a pro-active role and to see whether we can work out and have outreach programmes because what is lacking with our people is the knowledge about the actual role of the Senate. I am very happy to see the people of Nandi appreciate the role of the Senate.

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

**Sen. Kembi-Gitura:** Thank you very much, Mr. Speaker, Sir, although you gave me less than two minutes which you had promised everybody else.

**The Speaker** (Hon. Ethuro): Sen. Kembi-Gitura, I absolutely have no reason to discriminate against you. You sit here often and know how this thing counts time.

Order, Senators! Subject to Standing Order No.227(1), the Petition stands committed to the relevant Standing Committee which is the Committee on Legal Affairs and Human Rights.

I also notice that there are many issues to do with finance, and so, I want to direct both Committees to work together.

According to Standing Order No.227(2), you should deliver your report to the Petitioners through the House in not less than 60 days from today; the sooner the better.

Hon. Senators, I have one last Communication to make from the Chair.

### **COMMUNICATION FROM THE CHAIR**

#### **CONVENING OF A SPECIAL SITTING OF THE SENATE TO HEAR CHARGES AGAINST THE GOVERNOR FOR MURANG'A COUNTY**

I wish to inform Senators that this morning, I gave notice to all Senators through the Kenya Gazette that pursuant to Section 33(3) of the County Governments Act and Standing Order No.68(1)(a) of the Senate Standing Orders and, further, upon receipt of a letter from the Speaker of the County Assembly of Murang'a dated 21<sup>st</sup> October, 2015, received in the Office of the Speaker of the Senate on 22<sup>nd</sup> October, 2015, by which the Speaker of the County Assembly of Murang'a informed the Speaker of the Senate of the approval of a Motion for the removal from office by impeachment of Governor Mwangi wa Iria, the Governor of Murang'a County;

Therefore, I have convened a sitting of the Senate, tomorrow, Wednesday morning, commencing 11.00 a.m. The business to be transacted at the sitting shall be the hearing of the charges against Mwangi wa Iria, the Governor of Murang'a County. This is to give adequate notice to all Senators. You have a responsibility to be here. I am also directing that any committee will not sit beyond 11.00 a.m.

Hon. Senators, looking at the Order Paper, the next Order is No.8 but I do not think we have the requisite numbers. That applies to Order Nos.9 and 10.

### **COMMITTEE OF THE WHOLE**

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

*(Deferred)*

#### **THE COUNTY EARLY CHILDHOOD EDUCATION BILL (SENATE BILL NO.32 OF 2014)**

*(Deferred)*

#### **THE UNIVERSITIES (AMENDMENT) BILL (SENATE BILL NO.31 OF 2014)**

*(Deferred)*

**The Speaker** (Hon. Ethuro): I, therefore, direct that we move to Order No.11. I am also directing that, tomorrow, you will dedicate all your time. We will take the roll call seriously. In the morning we will deal with the impeachment and in the afternoon we will dispose all business for the Committee of the Whole and for any votes that have to be taken.

Tomorrow, failure by any Senator will lead to dire consequences from the Chair.

*(Laughter)*

*(Sen. Boy Juma Boy spoke off record)*

Order, Sen. Boy Juma Boy!

What is it, Sen. Mutula Kilonzo Jnr.?

*(Sen. Mutula Kilonzo Jnr. spoke off record)*

What is it Sen. Adan?

Sorry, what is it, Sen. Mutula Kilonzo Jnr.?

**Sen. Mutula Kilonzo Jnr.:** Mr. Speaker, Sir, I had pressed the button for the Bill, not as a point of order.

**The Speaker** (Hon. Ethuro): Sorry; for Order No.11?

**Sen. Mutula Kilonzo Jnr.:** Yes, Mr. Speaker, Sir.

**The Speaker** (Hon. Ethuro): Okay, hold your horses for now.

Proceed, Sen. Adan, then Sen. (Prof.) Anyang'-Nyong'o.

**Sen. Adan:** Mr. Speaker, Sir, on Thursday last week, I was asked by the House to report on when the Cabinet Secretary for Interior and Coordination of National Government can appear before it to respond to some of the issues that are pending. I wish to confirm to the House that I had a meeting with him yesterday. We went through all the issues that are pending before the House. I asked them to look at the HANSARD. He has told me to inform the House that on Thursday he will give a definite date when he will appear before the Senate.

**The Speaker** (Hon. Ethuro): Thursday you will report back.

What is it, Sen. Musila? I know this matter is very close to your heart.

**Sen. Musila:** Yes, Mr. Speaker, Sir. However, I just want the Vice Chairperson to clarify if the Cabinet Secretary will come on Thursday or did she say she will tell us? If it is on Thursday, I will not be around.

**The Speaker** (Hon. Ethuro): Sen. Adan, if I understood you; you met the Cabinet Secretary yesterday arising from last Thursday's request by Members, and he gave you a firm undertaking on which date he will appear before the House. So, he will not appear on Thursday, but we hold you responsible. The rest are details. We hold you responsible and not the Cabinet Secretary; you will inform this House, as you have done today on the date the Cabinet Secretary will come to the House, preferably, at the earliest time possible next week.

Proceed, Sen. Adan. Just confirm.

**Sen. Adan:** Mr. Speaker, Sir, let me confirm that I will do that on Thursday. I wish to inform---

**The Speaker** (Hon. Ethuro): Order, Senator! You will do what?

**Sen. Adan:** Mr. Speaker, Sir, let me confirm to Sen. Musila that one of the issues we discussed with the Cabinet Secretary yesterday concerns his. I hope and believe that when he appears before us, he will give us a definite solution to the issues affecting Sen. Musila's County.

**The Speaker** (Hon. Ethuro): Order, Senator! You are exceeding your brief which is: Is the Cabinet Secretary appearing on Thursday or the following week, a date to be determined and which you will communicate on Thursday this week?

**Sen. Adan:** Mr. Speaker, Sir, I will confirm on Thursday when he will appear before the House.

**Sen. (Prof.) Anyang'-Nyong'o):** Mr. Speaker, Sir, I was waiting to speak on the next Order; on the Bill, not now.

**The Speaker** (Hon. Ethuro): Order, Members! I appreciate the enthusiasm. So, let us go to Order No.11.

## BILLS

### *Second Reading*

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

*(Sen. Wako on 13.10.2015)*

*(Resumption of Debate interrupted on 21.10.2015)*

**Sen. Mutula Kilonzo Jnr.:** Mr. Speaker, Sir, thank you, for the opportunity. I rise to support the Office of the County-Attorney Bill, (Senate Bill No. 37 of 2014). The Committee on Legal Affairs and Human Rights, through Sen. Wako, has conducted public hearings on this Bill. It has been received with a lot of enthusiasm at the governors' level, the county assembly level and other organs of the county.

Mr. Speaker, Sir, in drafting the County Governments Act, there appears to have been a lacuna in Section 43 which suggests that the counties can seek the assistance of the Attorney-General when they require legal services. The only problem with Section 43 is that it is discretionary. Therefore, the county governments have taken advantage, obviously not in the right way, in hiring private legal counsels. I am not ashamed to say that there is a battery of lawyers who are making a killing out of county governments.

It is also in the public domain - and is being investigated by the Senate County Public Accounts and Investments Committee - that all counties have or are contributing Kshs18 million to a kitty of the Council of Governors ostensibly to hire lawyers who would defend these counties. That turns out to be a lot of billions of shillings which counties, in my view, have been exploited in order to get legal representation.

Mr. Speaker, Sir, this is the answer to the plunder of resources for hiring lawyers when they do not need to do so. We are aware that the only county in this Republic that has a Bill on Legal Counsel is Bomet County. As a result, it has managed to save a lot of legal resources by hiring external lawyers.



My county is under investigation for paying a legal counsel Kshs9 million for a period of not less than eight months. That amount of money would have been enough to sink boreholes, pay school fees and many other things that residents of Makueni County are asking for but it went to a private lawyer.

The problems that our counties are facing would be solved if we had a county attorney office in every county to solve and advise county governors; first, before they pass Bills and secondly, before they make some of the pronouncements that they have made. The County of Kiambu is an example. If there was a legal counsel sitting in Kiambu, the Finance Act that ended up being challenged in court would not have happened. This is so in many other counties. It is possible that the money that has disappeared through collections by counties, for example, Mombasa, Nairobi, and many others would not have disappeared if we had a county attorney office advising county governments. As a principle, this is one method that will strengthen the work of counties by ensuring that they have an equivalent of an Attorney-General at every county.

Mr. Speaker, Sir, this is also in line with what we think should be the application of justice where we have stated that every county should have a high court. It is the same principle that every county must have a legal counsel. It is the same principle that every county must have a legal counsel. I also support the principle where it is proposed in the Bill that the qualifications of that attorney be a person of five years' experience, either as a judicial officer or a practising lawyer. Speaking for the young lawyers who have graduated or have less than five years of experience, these people are struggling to look for work to do and to survive. This is also an opportunity to provide good labour for our good legal counsel who are slightly above five years in experience in the Bar.

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

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

Madam Temporary Speaker, you are aware that under Article 199(1) and (2), the Committee on Legal Affairs and Human Rights has proposed to have the County Printer Bill where we have contemplated having a County Attorney who will be responsible for legislation. May be, at some point, we must ask ourselves as a Senate, do we know how many Bills have been passed in our county assemblies? I travelled to Taita-Taveta County sometime back and I was pleasantly surprised – most likely also as a legal practitioner – that they had contemplated that one of the ways of dealing with the rampant abuse of girls and women in that county, was to have a law seeking to castrate men. I am convinced that if Taita-Taveta County had a county attorney, he or she would have advised about conflict of laws and quality of Bills under the Constitution. Also, he would have told them that even when we pass laws in the counties, they must comply with the United Nations (UN) conventions because counties are also not exempted from Article 62(5) and (6) of the Constitution, which seeks to adopt the conventions that Kenya is a signatory to in the international arena.

In conclusion, in the next county governments, I expect that we will have better Bills and notices issued and county governments will not spend money to pay external lawyers. I have no problem with external lawyers but the money that we send to counties should be used for

delivery of services and not paying legal fees where it is not necessary. The quality of legislation that has been passed at the county level, including my own county, will now have a method of quality control because this county attorney will advise both the county government and the county assembly. The Bill has provided for a method of appointment and removal of this person. Therefore, I am happy to say that this Bill complies with the law.

I support.

**Sen. (Prof.) Anyang'-Nyong'o:** Madam Temporary Speaker, I rise to support this Bill; the Office of the County Attorney Bill, 2014, brought to this House by the Committee on Legal Affairs and Human Rights. This Bill is extremely important as, indeed, my dear friend, Sen. Mutula Kilonzo Jnr., has been saying. It will not only serve to reduce the temptation by county governments and assemblies to outsource legal work to private practitioners who bleed counties of substantial resources, it will also domesticate legal work within the county executive and county assemblies, to such an extent that there will be a depository of legal practice in counties that will provide continuity in dealing with cases within counties and between counties and other institutions.

We know quite often that the speakers of county assemblies as well as county governors, need legal advice specific to issues arising in the county. When they pay for such services from private legal practitioners, there is a delay in time because these legal practitioners do not know the internal workings of the counties which are not necessarily legal, but quite often are loaded with political overtones. An inside counsel or lawyer to the workings of the county government and assembly will be in a better position to understand the political goings on and undertones which supersede legal resolutions. Therefore, the Senate is taking an extremely important step to ensure that the current gridlock in counties in dealing with legal problems is overcome, by developing an internal capacity for legal work within counties. This Bill, therefore, is very important in terms of capacity building in counties.

If we had had this institution in counties, the slow motion in establishing proper structures and institutions in counties would not have occurred. Previously in the House today, I pointed out that there are extremely very few counties which have fully established the requisite structure within counties.

*(Loud consultations)*

Madam Temporary Speaker, may I appeal to you to protect me from Senators who have turned this House into a market place.

**The Temporary Speaker** (Sen. Ongoro): Order, Senators! This is a debating Chamber. If you have to consult, do it in low tones

**Sen. (Prof.) Anyang'-Nyong'o:** Thank you, Madam Temporary Speaker. I was competing against vendors of ideas rather than listening to the great speech that I am giving.

*(Laughter)*

**The Temporary Speaker** (Sen. Ongoro): Order, Sen. (Prof.) Anyang'-Nyong'o. You are now spoiling a very good debate--- I had already saved you and the House was quiet. Withdraw that statement of vendors of ideas. These are hon. Senators who are just consulting.

**Sen. (Prof.) Anyang'-Nyong'o:** Madam Temporary Speaker, I withdraw that statement and apologise.

**The Temporary Speaker** (Sen. Ongoro): Okay, proceed.

**Sen. (Prof.) Anyang'-Nyong'o:** Madam Temporary Speaker, let me take you to Clause 13 of the Bill which I think is very important, but I would like to plead to the Committee on Legal Affairs and Human Rights to amend. It deals with the power of the governor to remove the county attorney from office. I would like to read this clause because it is an extremely important clause for the attention of lawyers like Sen. Sang, Sen. Mutula Kilonzo Jnr. and Sen. Hassan who sit in that Committee. The clause says:-

“The governor may, with the approval of the county assembly, remove the County Attorney from office only for:-

- (a) Serious violation of the Constitution or any other law;
- (b) Gross misconduct whether in the performance of functions of the office of the county attorney or otherwise;
- (c) Physical or mental incapacity to perform the functions of office;
- (d) Incompetence; and
- (e) Bankruptcy.

(2) Notwithstanding the provisions of subsection 1 above, the governor may upon election under the Constitution appoint a person who is qualified as county attorney in accordance with the provisions of this Act.

In other words, the governor has the powers to appoint and remove the county attorney as stated in Article 13(1).

Madam Temporary Speaker, I want to add a rider. We have had two-and-a-half years of experience with devolution. We have known powers of governors to emasculate county assemblies and do their bidding. I am not saying that this is going to be perpetuated to infinity but I am saying it is a possibility we need to legislate against or we need to have some control in this Bill that will not make that possible. I am, therefore, proposing that we add - and I hope I can work with the Committee on Legal Affairs and Human Rights to bring this amendment - and add Article 13 (3), which will say:-

“Notwithstanding the provision of Article 13 (1) and (2), after the governor has reported his action to the county assembly and in the event that the county assembly sustain the proposal for removal by the governor, a report shall be made to the Senate to review the decision by both the governor and the county assembly, and establish whether or not the County Attorney should be removed from office.”

Madam Temporary Speaker, I am adding this provision because I think the county attorney should enjoy security of tenure and independence that gives him or her have the ability to render services and advice to the county, both the executive and the assembly, without fear or favour. The role of an Attorney-General,- Sen. Wako can recall- is to be in a position to render advice to government with a degree of independence that makes such an Attorney-General objective and capable of guiding the county on matters and principles of law and not bending himself or herself to the transient preferences of politics.

Madam Temporary Speaker, I think this is very important and I hope the Committee on Legal Affairs and Human Rights will draft an amendment to that effect together with me, and I

am prepared to move that amendment in this House at the appropriate time, but I would like to work with the Committee so that there is no contradiction between my aspiration and their good legal minds.

Madam Temporary Speaker, let me also go further and commend this Bill for another positive quality that it is bringing to the running of county governments. County governments have been slow in passing Bills that will help institutionalize devolution and effect good governance at the county level. If you look at the records of county governments and county assemblies so far, the number of Bills that have been passed to improve good governance and good performance at the county level are not very impressive. I would not blame county governments and county assemblies for these poor records, but I would say there are two things here: First, is the problem of being pioneers and secondly the problem of being “tender class”. I think there has been too much attention at the county level, given to issuance of tenders for projects implementation without paying attention to the proper legal framework in which projects implementation at the county level will take place.

Madam Temporary Speaker, this Bill not only establishes the Office of the County-Attorney and the Office of the Deputy County-Attorney, and provides them with necessary functions, but it also lays a lot of emphasis on county legal counsel. In other words, there are going to be lawyers at the county level who will carry out legal work at the county, to help county governments not only fight cases in court - I think that is another defensive way of looking at the legal work- but also be creative in making laws. Coming from both the Committees of Devolution where I served for two years and the Committee of County Public Accounts and Investments as well as the Committee of Finance, Commerce and Budget which I am still serving, one of the things that has struck us in these Committees, is the fact that a lot of faults are committed, not by acts of commission, but by acts of omission.

Madam Temporary Speaker, it seems to me as if certain things are done quite often not intentionally but because Members of County Assemblies or the governors just do not know what they are doing. As Jesus said, sometimes it is possible to pray for them saying; “Father, forgive them for they do not know what they are doing.” This prayer will be saved when we have these county legal counsel who should wade through the needs of county governments in making certain relevant laws or legal framework or implementation of the projects in the county; a function that now is haphazardly outsourced to private legal counsels, and as my friend, Sen. Mutula Kilonzo Jnr. said earlier, these legal counsels charge the counties an arm and a leg.

Finally, Madam Temporary Speaker, the present bad practice where county governments give jobs to their law friends by creating funds that anticipate legal battles in the future, will definitely be discouraged when we have both the office of the county attorney and the legal counsel. In the event of a legal battle, however huge that legal battle is, county governments will just source legal resources or expertise from their own attorneys. This is extremely good, not only in saving money, but making county governments much more respectable in the eyes of the public. After all, the Constitution says that we have two levels of government; the national Government and the County Government. If the national Government is operating through the use of the Attorney-General’s office and a battery of lawyers employed by the State, there is no reason why the county governments should not replicate what happens at the national level, so that they do behave as a government and gain the respectability that a government needs from its people.

Madam Temporary Speaker, I would like to support this Bill, and hope that with the amendments that are proposed, we shall protect the office of the county-attorney from unnecessary political harassments either by the governor or the county assemblies.

I beg to support.

**Sen. Hassan:** Thank you, Madam Temporary Speaker, for this opportunity. There is very little that I can say because much has been said. First and foremost, as many Members have said, I commend the stewardship of Sen. Wako for coming up with this flagship Bill. I have always said that we, as the Senate, one of our principle obligations is to be innovators. This is an innovation that will go a long way in strengthening the mandate of county governments and ensure that we offer specific directions in terms of how devolution will be ultimately institutionalized in the counties.

This Bill provides a template that we can use. When counties were established, we realized that many governors were given an opportunity to take a wide array of advisors. For example, they brought on board legal, political and economic advisors. However, what we have seen is that rather than using this opportunity to infuse a certain level of competence that would direct the transaction of his or her office, in a manner that discharges its functions in conformity with the law, many of them ended up appointing a litany of colleagues who are zealots and campaigners.

Madam Temporary Speaker, this Bill lifts the threshold in terms of the kind of person who will be appropriate to advise counties on legal matters. Clause 7 of this Bill says that the county attorney is the principal legal advisor to the county government. In this case, the county government means the county assembly and the executive. This is, therefore, an opportunity for both the county assembly and executive to draw from that profession. This is because we have set a certain mark of professionalism and experience that we believe is sufficient to discharge the functions of this office in a manner that meets the challenges of devolution and the legal elements.

This Bill, apart from setting the minimum criteria of appointment, gives every county an opportunity to attract some of the most experienced lawyers. For example, a county government will hire the services of senior counsel based on the challenges of the county because the challenges vary from county to county. There might be counties that need people with high capacity while others have more severe legal challenges. Clause 20 states that the county legal counsel appointed under this Act shall in consultation with the Salaries and Remuneration Commission (SRC), give a wide array for us to also bring in a litany of counsel who have a certain capacity of minimum qualifications that can be important in the discharge of the various elements of the county work.

Madam Temporary Speaker, there has been lamentation by the Office of the Attorney-General in Nairobi that the quality of legislation coming out of the county assemblies is wanting. It is for this reason that the Attorney-General wanted to ascribe himself certain powers literally to be an auditor or clearing house for legislation before they are gazetted into law. However, establishing county attorney offices takes away these aspirations, which according me, would undermine devolution. From the outset of any legislative process, the county attorney's office and his establishment is able to input the constitutionality and legality of Bills and ensure that drafting is made to those standards such that when it goes through the processes of the county

assembly and is enacted as legislation and signed by the governor, it then automatically becomes law.

That is why the other Bill that is before the Senate that intends to create the county printers offices simply complements this legislation. Therefore, once the county assembly has passed a law and the governor has assented to it, then the county printers can simply publish it and it becomes a law. We have heard of a myriad of frustrations that counties encounter when they try to bring their legislations to the Government Printers here in Nairobi for publication. The county printers' office is, therefore, part of the chain of the legislative processes that will capacitate county governments to start discharging their duties in a manner that meets the expectations of the Constitution and becomes the clearing house in terms of the constitutionality and quality of drafting that shall go into the processes of legislative action.

Madam Temporary Speaker, it is on that note that I borrow a cue from the Senator for Kisumu County, (Prof.) Anyang'-Nyong'o, that these county attorney offices must then resist the temptation of being translated into some kind of sycophancy or busybodies that will revolve around a county governor. I think that is precisely the reason the county attorney is the principal advisor to the county government. Therefore, the person is expected to discharge his duties in a manner faithful to the Constitution and to his calling. That is why this law proposes an oath. When you take an oath, it means that you have been given a higher threshold of responsibilities. Therefore, the county attorney shall be expected to take an oath to discharge his duties diligently and to perform the functions of his office to the best of his judgment and advise the county government in a manner that serves the end of justice. That solemn oath also makes higher the responsibility that we shall expect from the county attorney

Clause 7(b) says that the county attorney, in his *ex-officio* capacity, shall attend the county executive committee meetings, but shall not have a right to vote. This is in tandem with the practices of the national Government where the Attorney-General attends Cabinet meetings. Therefore, if the office is elevated to that extent, he or she is able to stand his ground on matters because you have given him a capacity of respect and function within the arrangement of the county that goes in tandem with the kind of work that he has to discharge. He can, therefore, tell a County Executive Member (CEC) that his or her Bill is unfavorable and give advice with a lot more gravity and intervene in a matter when he feels county executive or assembly has lost direction on issues about the constitutionality or legal mandate of the county government.

Madam Temporary Speaker, one thing that we must celebrate about this Bill is that---

*(Loud consultations)*

The consultation by Senators is so loud. They are making it difficult for me to talk.

**The Temporary Speaker** (Sen. Ongoro): Senators, kindly allow the Senator for Mombasa to conclude his contribution.

Please, proceed, Sen. Hassan.

**Sen. Hassan:** Madam Temporary Speaker, thank you for the intervention. As I conclude, I reiterate a point that was raised by other Senators before me; that this is a flagship legislative where the Senate intends to avoid or mitigate the massive legal cost that counties are incurring. I have seen counties give briefs to lawyers on payment of up to Kshs15 million or Kshs20 million on very basic issues that can be done even by an intern. I have seen certain county governors

constantly using the same lawyers day in, day out, with a certain legal capacity or value known to this country. Remember we debated here about the affordability of those lawyers because the Senate is conscious that it needs to mitigate the costs it attains from the taxpayers. However, I have seen certain counties where, whenever the governor is asked to reply to small queries, they hire senior lawyers and pay massive deposits for issues that could have been handled at a different level for much less cost.

This Bill, therefore, stops this avenue of corruption. I do not believe that a small brief can attract the hefty fees that we have seen. We have, therefore, given ourselves the opportunity to mitigate these costs. We want to go beyond the county attorney and his establishment in any county because everybody must show cause as to why he or she has gone for a senior counsel and not because of the intricacy or complexity of a matter. There must be some justification in terms of how they procure lawyers outside the provisions of this Bill.

In the Committee, it was discussed that out there, lawyers are fairly unhappy with this Bill. They know that they might end up not getting some of the briefs they have been getting from county governments. Even if you have been pre-qualified and you are a great lawyer, you must also be humane. Counties are allocated a couple of billions. I know counties that have debts in legal fees amounting to Kshs1 billion or Kshs2 billion. I know the county debts in terms of legal fees in Nairobi and Mombasa counties.

If you look at the kind of fees that are paid and the kind of work that was discharged, there is no comparative. We have allowed ourselves to fleece our counties on account of hiring lawyers. I have the greatest respect for the legal profession. I believe it is profession of decorum. People who come from this profession are some of the best politicians in this country. They are also some of the best governance experts and they have given life to this Constitution and capture the aspirations of the Kenyan people. However, we also need to ensure that we keep our conscience by ensuring that we get value for money. This Bill is a value for money kind of a Bill. We have given that capacity to the county attorney. In addition, we have given him or her capacity to have an establishment that shall be able to discharge the functions of the county in a manner that also mitigates the costs.

This Bill is also a flagship; it sets a code of conduct, because we realise the sanctity of this particular profession and the calling of this particular office. We have put in place ethical values and principles as an appendage to this Bill, as contained in the Second Schedule. It talks about the issues of loyalty, dedication, responsibility, competence and honesty, quality of service, fairness, confidentiality and integrity. We have literally captured the spirit of the Constitution in this Bill. That is why I recommend this Committee which I sit in because in terms of its flagship, it has tried to create a Bill that, if it becomes law, ascribes to nothing but total fidelity to the law, and total competence in the discharge of the functions of this office.

Madam Temporary Speaker you will realise that when you get your act right according to your legal framework, this country has got a lot of debate around the office of the Attorney-General, as it is now. We have been interrogating whether that office sometimes has input to Bills that have been partly suspended by the Supreme Court in terms of the constitutionality test. I think we will have somebody to take responsibility; we will be able to tell this county attorney that he or she must be faithful to this Constitution and to this law. This law translates the spirit of the Constitution to give competence to an office, that now; we can look forward and say, for example: Did the Mombasa County Executive have to act in the way they did? We can always

point a finger at the county attorney and say: “Where were you when such poor piece of legislation was being drafted?”

In his mandate, he must be an audacious human being. He or she must be able to summon legislation which he or she thinks goes against the grain of the Constitution and public interest. In fact, he needs to have some right to be heard. We should have allowed him to have some space to commentate, in fact, at some point, to publish the advice that is ignored in the event where county governments err. When we ask him, we call him to account and he can publish to us the kind of advice that he gave that county.

Where he thinks there is an oblivious violation of the Constitution like values that we have in Article 10 of the Constitution that; every public servant has an obligation to interpret this Constitution in discharging his or her functions. He or she can say: “I stand against this Bill, law, against this action;” even where his advice is ignored.

I remember once when I was in Government and serving in the Office of the Kenya National Commission on Human Rights, (KNHCR), I was told at that time in the Public Service when we offered an advice that an advice is simply an advice. However, the person who is being advised can decide to ignore it. When an advice is ignored and the error is committed, then we can speak on to that.

I beg to support.

**Sen. Ndiema:** Thank you, Madam Temporary Speaker, for allowing me to contribute to this important Bill, which seeks to set the counties on a proper footing, particularly legislative wise. The role of the county attorney is very important; there has been a vacuum in that we have county governments right now which have got no legal minds to advise them. County assemblies and the county executive require advice. No wonder for the few years that we have been having devolution, we have seen many situations where things have not been done in an accountable manner; that we can in all cases, defend as being legal.

The coming into place of a county attorney is timely and I do fully support. The other area in the county assembly that I feel should be considered is the issue of accountability. The audit results we are getting are that in some counties, the audit reports and the statements do not conform to international standards. This means that the persons employed to do accounting in counties are not professional accountants. In some cases, counties have not been able to legislate as fast as we would wish them to do, and effectively as they should, because they lack legal minds to assist them in drafting Bills and also in advising. Right now, there are many cases, conflicts and stalemates, between county assemblies and the executive especially on budget issues. In my county, for instance, there is a budget stalemate.

I imagine that if there was a county attorney in the county, he would have been in a better position to advise the assembly and the executive on how to settle that conflict; because each side is arguing that they are on a legal right. The county assembly thinks that they are the ones to decide the budget; while on the other hand, the executive thinks that they are the ones who have the final say on the budget. The coming into place of the county attorney will be of great use to counties.

Counties are incurring a lot of costs, engaging consultants in almost every field; planners, political advisers, lands surveyors and so on, yet, some of them could be housed in-house in the counties. A lot of funds have been used to hire lawyers to defend the simplest of cases. The worrying part of it is that counties are signing contracts committing counties to colossal sums of



money, signing contracts which have not been properly vetted by legal minds and commercial lawyers to ensure that the interest of the public is protected. Very soon, we shall end up in situations of litigations where counties will be called upon to incur costs or pay damages for contracts which were faulty. The sooner this attorney gets into office the better.

I only have one issue that I would like to comment on, in respect of appointment. I would want to imagine that a person appointed as attorney should be independent, and should not feel like he owes anybody an apology or favour, because an individual appointed him or her. I would wish that this appointed person is recruited through a competitive process. Perhaps advertise the position, let interviews be done by the Public Service Board and two or three names are submitted to the governor to choose from. Finally, when he has chosen, it goes to the county assembly so, that the county assembly where this person will serve will own the process.

I want to imagine that such a person, appointed, will not serve only in the term of the governor, but he will serve any governor who will be elected in the future. There is need for security of tenure, but if his or her position is tied to the time of the governor, I am afraid that there may be compromises that this person may not feel secure. He or she may think that he or she will only serve for five years, and whoever will be elected will come with his own attorney. This will then compromise the situation. I wish that this person is completely independent, and feel that he or she was not recruited by any individual but he is answerable to Kenyans and that county.

With those few remarks, I support.

**Sen. Nabwala:** Madam Temporary Speaker, I rise to contribute to this very important Bill, The Office of The Attorney Bill, 2014. The Bill seeks to establish offices for the attorney in the counties. This is long overdue. We should have started this maybe in 2013 when we set pace for devolution, because we are aware of the challenges that county governments have been going through. The capacity of legislation in some counties is wanting.

Therefore, the introduction of the office of the county attorney will support county assemblies in drafting and legislating their laws. When we have good laws in place, that is the only way that the Senate would oversight because our main mandate is to oversight counties and see to it that they have good laws in place in order to manage their financial affairs.

This Bill, therefore, seeks to replicate the duties of the Office of the Attorney-General to counties in view of decentralised governance. I, therefore, support it. However, I will add that it should be an independent office because if governors are the ones who will appoint the attorneys, then, it means that the attorneys will be answerable to the governors and will have to sing the governors' music. If we want to help counties, let the office be independent so that the county attorney can represent the county without being intimidated.

The Bill also outlines ethical values and principles, something which is very important. As we are aware, there is a lot happening. Sometimes when you go to court, you will not find fairness in the judgments delivered. Therefore, if ethical values and principles are adhered to, I think, we will be moving in the right direction to try and improve the quality of legislation and drafting of laws in counties.

In the past, we have seen governors coming with lawyers they have hired when they appear before a committee of the Senate and that is costly. If we have the office of the attorney in the counties, we will cut out on huge costs which governors incur while hiring the attorneys. Sometimes, they pay very huge amounts for legal fees which cannot be justified. Once we have

attorneys, we shall tell that an attorney earns such amount of money for representing a county. Therefore, there is no way that he or she will be paid fees which he or she determines depending on the nature of the case.

Madam Temporary Speaker, I, therefore, support the Bill. It is a good Bill which will go a long way in helping counties to establish even proper structures and good laws in counties.

Thank you, Madam Temporary Speaker.

**The Temporary Speaker** (Sen. Ongoro): Thank you, Senator. I now call upon the Mover of this Bill to reply. Could you move to the Dispatch Box?

*(Sen. Wako moved to the Dispatch Box)*

**Sen. Wako:** Madam Temporary Speaker, I profusely thank Senators who have very ably contributed to this important Bill. We had the Vice Chairman, Sen. Sang, Sen. (Prof.) Lonyangapuo, Sen. (Dr.) Khalwale, the number one Senator – the oldest Senator who is still in this House – Sen. G.G. Kariuki, who made a very effective contribution on the matter which lasted more than 15 minutes up to the time we adjourned and he still had ideas to go but he could not to do so, Sen. Mutula Kilonzo Jnr., Sen. (Prof.) Anyang'-Nyong'o, Sen. Hassan, Sen. Ndiema and our own, Sen. Nabwala. They have all made very important contributions on this Bill. They have all reminded us that this Bill will reduce the cost of legal services.

Madam Temporary Speaker, when we did our first case, we wanted certain lawyers to represent us. However, because we were getting money from the public coffers, it had to go through procurement process and the amount was limited. We ended up having one advocate only against governors who, because they have a kitty where they have put a lot of money for legal counsel, hired a number of senior counsel, senior advocates and so on. We won because the law was on our side. However, I believe that the amount of money that must have been spent on that case was more than Kshs100 million. That was just on legal costs. There are also costs of entering into investment agreements, costs of contract and so on. Therefore, that will save a lot of money for county governments to devote to the welfare and wellbeing of the people of the counties.

Madam Temporary Speaker, a number of ideas have been mooted. One of them revolves around the issue of security of tenure for the county attorney. There have been those who believe that the county attorney should have security of tenure that outlasts the governor. I believe Sen. Ndiema is one of them. We also have those, like Sen. (Prof.) Lonyangapuo, who believe that the county attorney should go with governor. If the governor can appoint him or her, then, the governor can still reappoint them. Therefore, there are conflicting ideas. However, the spirit behind the County Attorney's Bill was to line the provisions of the Attorney-General at the national level with the county attorney. At the national level, the Attorney-General is appointed by the President. He is a Member of the Cabinet and goes with the President.

As opposed to the previous situation under which I served, in the old Constitution, the Attorney-General had security of tenure. I managed to serve as the Attorney-General for 21 years only. I left when we got the new Constitution. We have conflicting ideas but I feel that we should align the appointments with the national Government where the county attorney will come in with the governor and go with the governor. We can improve a bit on the issue of who to appoint. However, we must realise that the President, just like the governor also elected by the

people, should have a free hand in who to be appointed. The only thing that we can do is to put qualifications of the person to be appointed. I believe we shall bring amendments to the Floor of this House to streamline the qualifications of the persons to be appointed as county attorney, deputy county attorney and county legal counsels.

In our hearings, it came out clearly that an advocate of five years experience is not experienced and senior enough to withstand the pressures that may come from the governors, executive committee members or the county assemblies. So, we are raising the five year experience to a 10 year experience. This will be the same qualification that the judge of the High Court or the Court of Appeal must have. This is the same experience that most commissions especially those that need a secretary lawyer require. The responsibility that the county attorney will have at the county level requires an attorney of at least 10 years standing.

Madam Temporary Speaker, another amendment is streamlining the qualifications. For instance, we have stated that the county attorney must have been a legal practitioner or a judicial officer for at least five years and the deputy county attorney must have been an advocate of so many years. We shall amend that to be consistent with the Constitution. The Constitution provides that an advocate of many years standing; it provides for a person who has been a judicial officer for long. We shall amend it for both offices to be in line with the provisions of the Constitution.

Madam Temporary Speaker, when The Office of the County Attorney Bill goes through, we shall and if the proper county attorneys are appointed, they should guide the county government properly. In one of the committees, I was surprised to see a governor accompanied by three lawyers. One was called the Governor's Legal Adviser like we have the legal advisers of the President. They also have county legal advisers. He was also accompanied by the county chief legal officer who is not in the personal staff of the governor but is in an office somewhere. He was also accompanied by two private advocates. That accompanying alone makes one think that the governor is guilty. Why does he have so many lawyers of good standing for something that is *prima facie* a small matter?

On the security of tenure, the term of the county attorney should terminate with the governor's term. As long as the county attorney has been appointed and the governor is still in office, he should, during that period, enjoy the security of tenure in order to give proper legal advice to the county government. We will achieve this by stating as we have stated in The Office of the County-Attorney Bill, the grounds upon which he can be dismissed. Specified grounds are there. This is achieved by providing that there will be an approval by the county assembly.

However, Sen. (Prof.) Anyang'-Nyong'o pointed out that from the experience, county assemblies cannot be relied upon to provide security of tenure to the county-attorney who, maybe, in the process of discharging his duties, disagree with some of their issues. In order to protect this, the approval by the county assembly needs to be confirmed by the Senate. Once it goes through the process at the county level, the resolution must be brought to the Senate to confirm. If the clause is introduced on the confirmation by the Senate, the county-attorney will feel independent to give proper legal advice without fear or favour to the county government and the county assembly.

Madam Temporary Speaker, we know what has been going on in the county assemblies to the extent where we are receiving many petitions from the members of public because their elected Members are not doing the oversight role that they are tasked with. Even the Members of

the County Assemblies feel obligated to petition this House. They have the right to do that but the trend is disturbing. How can a member of the county assembly petition the Senate to discharge matters which they are supposed to do at their level? The county assemblies have become weak and, therefore, the Senate must step in. In this Bill, I agree that the Senate must confirm any dismissal of the county-attorney taken by the MCAs.

I thank Members who contributed. We shall introduce some amendments at the Committee of the Whole.

*(Sen. Wako stood in his place)*

**The Temporary Speaker** (Sen. Ongoro): Sen. Wako, you are aware that this Bill affects counties and we do not have the numbers in the House. I expect you to put a request.

**Sen. Wako:** Thank you, Madam Temporary Speaker, for reminding me. Sometimes you forget when you are standing. The faithful Members of this Senate are only five. If we have to vote, the three of us who are elected can lead our delegations. Sen. Mugo and Sen. Omondi can be nominated to lead the delegation of Nairobi and Kakamega counties respectively.

I move under Standing Order No. 54 (3) that we defer putting of the question of voting on this matter to the following day.

**The Temporary Speaker** (Sen. Ongoro): You put the request but the decision on when to put the question lies with the Chair. Proceed to put your request.

**Sen. Wako:** Madam Temporary Speaker, I ask that putting of the question be deferred to the following day pursuant to Standing Order No.54 (3) or any other day that the Chair may deem fit but definitely not today.

**The Temporary Speaker** (Sen. Ongoro): Very well, you have communicated your request and we are going to defer putting the question to the next sitting, tomorrow at 2.30p.m.

*(Putting of the Question deferred)*

**Sen. Wako:** Madam Temporary Speaker, much obliged.

**The Temporary Speaker** (Sen. Ongoro): Before we proceed, I still want it to be on record of the Senate that this trend of ending up with an empty Senate when we are discussing matters affecting counties which are very weighty that we have an obligation to debate, is very disturbing. The leadership of this Senate, especially the Whips, the Majority and Minority leaders should do something about it. It is disturbing.

Next Order!

*Second Reading*THE COUNTY GOVERNMENTS DISASTER MANAGEMENT BILL  
(SENATE BILL NO.40 OF 2014)

Again, we do not have the Chairperson and I do not see anybody with a request to represent, so we move to the next order.

*(Deferred)*

*Second Reading*THE KENYA NATIONAL EXAMINATIONS COUNCIL (AMENDMENT)  
BILL (SENATE BILL NO.7 OF 2015)

**Sen. Musila:** Madam Temporary Speaker, I beg to move that the Kenya National Examinations Council (Amendment) Bill (Senate Bill No.7 of 2015) be read a Second Time.

This is a matter that has lasted for long. Parliament has addressed itself to it severally but, unfortunately, we appear not to have come to a solution to the problem.

Madam, Temporary Speaker, without tiring the House, allow me to give a short history of this matter. On 3<sup>rd</sup> November, 2004, Parliament, then the National Assembly passed the following Motion:-

“THAT, noting the with concern that students who have sat for the Kenya Certificate of Secondary Education (KCSE) continue to be denied their certificates on account of school fees balances; aware that the bursaries allocated to schools are inadequate to cater for all the needy students; conscious that academic testimonials are statutory requirements for career and job opportunities; appreciating that schools require adequate funds to meet the cost of their maintenance; this House recommends that all certificates held by schools on account of fees balances be released forthwith; that no more certificates shall be withheld by schools on account of fees balances in future; that the Ministry finds ways and means of compensating the affected schools.”

Madam Temporary Speaker, this was on 3<sup>rd</sup> November, 2004. I am very happy that some of the people in this House were present when we passed that Motion. I appreciate that Sen. Mugo was, in fact, the Assistant Minister for Education and my good friend, the Senator for Kirinyaga, Sen. Karaba, was the Chairperson of the Committee on Education.

Madam Temporary Speaker, following the passage of that Motion, the Government dragged its feet in implementing it to the extent that in 2007, three years later, and after persuading the Government privately and officially, I decided to take the Government to court to release certificates of my constituents which had been held for over 10 years. I am glad that I hired Sen. Mutula Kilonzo Jnr. as a lawyer. He prosecuted the case in court as a petition.

In addition, in the same year, I presented a petition addressed to none other than His Excellency President Mwai Kibaki, signed by Members of the National Assembly; petitioning on behalf of the students whose certificates had been held. I would like to emphasize that we did this because we have seen students suffering, finishing their examinations and not getting their

certificates hence missing opportunities. As you are aware, those who do not collect their certificates are from poor families. Some of them are orphans. Therefore, they go without certificates and never avail themselves for job opportunities.

I wish to go to my brief story. After 45 Members of the National Assembly signed a petition to former President Mwai Kibaki and when it was clear to the Government that the case I had filed in court was succeeding, the Government rushed, issued a statement and ordered that all certificates be released. So, the certificates were released on the instructions of former President Mwai Kibaki, who I thank very much for that action.

However, only all certificates that were held up to 2006 were released. I think it was political because we were going to elections but I thought since the President was supposed to implement the Motion that had been passed by the House, that no more certificates would be released. I thought that was the end of the matter but little did I know that certificates continued to be withheld by schools from 2007 to date. Therefore, you can imagine the enormous loss that this country has suffered and the suffering that those who have graduated and have been unable to collect their certificates have gone through; including, recently when recruitment of the armed forces was going on, many of them did not avail themselves because the conditions are that you must produce the original certificate.

Madam Temporary Speaker, I did not give up on that. In December, 2012, with the assistance of the late Minister for Education, hon. Mutula Kilonzo, I introduced an amendment to the Kenya National Examinations Council Act. It read as follows:-

“10(b) award of certificates or diplomas to candidates in all examinations and such certificates or diplomas shall not be withheld from the candidate by any person or institution.”

That amendment was passed unanimously by the 10<sup>th</sup> Parliament. Again, I thought that the matter was settled. You may recall that during our election campaigns for 2013, we promised parents that there would be no more withholding of certificates because the National Assembly had passed this amendment. However, we were not done yet. As we speak, this law notwithstanding, heads of schools continue to unlawfully keep these certificates against the law. So, it is against this background that I felt that the war that we started in 2004 has not been won yet, although Sen. Karaba and I thought that we had won.

Madam Temporary Speaker, this is why I felt it is necessary to do a further amendment to the Kenya National Examinations Council (KNEC) Act, so that we can get this matter finalised once and for all. I appeal to Senators to assist in putting this matter to a stop. The matter of teachers withholding certificates of students must end. It is this House that has this opportunity now to take advantage of this amendment and put this to a stop.

I thank the Standing Committee on Education, chaired by Sen. Karaba, because they have deliberated on this matter for a long time. They even invited stakeholders and we had a meeting together and received very useful information and suggestions. However, let me go back to what I said earlier, that the law is very clear. Section 10(a)(b) of the KNEC Act sets out the functions of the Council as follows:-

“(a) set and maintain examination standards, conduct public academic, technical and other national examinations within Kenya at basic and tertiary levels;

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

The law is there. I am told by stakeholders, that I erred in not putting a sanction on this amendment, that after you withhold a certificate, what happens? Later on, when we go to the Committee Stage, I will introduce an amendment to this clause, so that we penalize the person who withholds certificates from students. I say this because everything has been done by the Government.

Madam Temporary Speaker, I forgot to say that on 5<sup>th</sup> June, 2014, while sitting in KICC, the Senate, passed a Motion again, urging the Government to have these certificates released. That was followed immediately by the Cabinet Secretary (CS) for Education, Prof. Kaimenyi, issuing a directive to all heads of schools to release these certificates. A few weeks later, none other than His Excellency the President Uhuru Kenyatta, issued a directive that schools should release these certificates. Another pronouncement was made by the Deputy President but nothing happened. The teachers unions issued a Statement to say the certificates will not be released unless the Government paid whatever fees that was pending. Here, we have a situation whereby the authority of the law is being defied by heads of schools; the authority of the Executive is being defied by heads of schools and unions.

Therefore, I urge that this House puts a full stop to this. People have argued that schools are owed money and, therefore, they have the right to keep these certificates. However, the certificates cannot be lien. There is no security to the bills that are unpaid by students. Furthermore, this contravenes the Constitution. Article 43 sets out the economic and social rights of our new Constitution that accrue to every person. In particular, Article 43(1) of the Constitution confers on every child the right to education. The right to education ends with completion of the requisite examinations and award of certificate. Therefore, this article recognises education as a basic socio-economic right for every person. Therefore, the practice of withholding certificates - I repeat - from students is a clear limitation of this right as enshrined in the Constitution. Let me emphasize again that the certificate of a poor child cannot be a lien or security. The school enters into contract with a parent and not a student. Therefore, the student cannot be punished because the parent has not paid school fees.

Madam Temporary Speaker, I will propose that the KNEC, after it gives and passes examinations and these students have already paid the fees for the examination, it is, therefore, their right to receive their certificate. I have suggested in Clause 45(a) that the certificates by pass heads of schools, who have become notorious for refusing even to obey the Executive in releasing the certificates. Further, the Executive takes responsibility of these certificates by directing them to County Directors of Education.

Each candidate would collect his or her certificate from the County Director who has jurisdiction over the area where the examination centre was. That, in my view, would cure this problem of teachers withholding certificates. Unless this House comes up with a better solution, I see no other solution. We had meetings with TSC and the Principal Secretary (PS) over this matter, and I was amazed that all of them appeared helpless and that there is nothing that they can do because the teachers have refused to release these certificates. This is a country that respects the law. The law is there that, certificate should not be withheld. For how long will we plead?

I have met former students of secondary schools who are now old men and have never seen their certificates. Some of them got As and Bs but they could not go for higher education because they had no certificates. Some of them are orphans. I have met ladies who finished Form Four, waited to get their certificates but never got them and so they never went to any college. They got married and now they cannot show their children that they ever went to school. When one of them heard that I was spearheading this issue of certificates, she congratulated me about it and I said, but you do not need it because you are already married. She said: “No, I need this certificate. I need to prove to my children that I went to school.”

Madam Temporary Speaker, some say that people do not collect certificates because they do not want them or because they do not just want to pay fees arrears. Let me tell you that there is poverty in this country. Some of the fees have accumulated to thousands of shillings. The parents who are being asked to pay, say Kshs20,000 or Kshs30,000 for their children to get a certificate, have never seen a Kshs1,000 with their own eyes.

Madam Temporary Speaker, are we being fair to the children from the poor background by taking them through education system, at the end of the day, they do examinations, but we withhold their certificates? After doing their examination, we only tell them thank you very much, you were very clever, but we are very sorry we are keeping the certificate here because your parents have not paid fees. By the way, those from very poor families are very clever.

Madam Temporary Speaker, I have been to a school and I can name it because I used to be the Chairman of the Board. It is called Miguani High School. It is in my former constituency. I went there and I saw huge cartons collecting dust and I asked the Principal what they contained. He said they were certificates of children, some dating as far back as 10 years ago. The Principal is doing nothing with them. They are not useful to the school, but he told me he cannot release them until he is paid. I can tell you some of those certificates have been there for decades and the owners have forgotten about them. They will never collect them. If the schools are owed money and if they hoped to collect money from those certificates, they are wasting their time.

Madam Temporary Speaker, as a responsible country and government, why do we not put a stop to this? I know in future the Government intends to make secondary school education free. Why? It is because the Government realizes the poverty and the suffering that the parents go through. These are not many certificates. Why are we depriving our students or our children opportunities to go for further education or even to get jobs because of a few shillings? We have heard the President announcing the writing off of Agricultural Finance Corporation loans (AFC), coffee loans and all kinds of loans of people who otherwise are able to pay those loans.

What about these poor children who went to school innocently and their parents in good faith agreed with the Principals that they will pay? All the Principals had mercy and allowed the child to finish. Finally, the child languishes in poverty. The same poverty that the child inherited from the father and the mother is continuing in that family. When are we going to eradicate that poverty from that family if we continue to withhold these certificates?

Madam Temporary Speaker, I will be pleading with the House that we pass this Bill, and I will be welcoming proposals for amendments. I, for one, will be proposing some two or three amendments when we come to the Committee Stage to make it workable. If you feel that there is a clause that is not workable, you are all welcome to bring in proposals for amendments when we come to the Committee Stage. However, for goodness sake, I plead, that by the grace of God, I have been around to carry out this thing through since 2004 till now, consistently.



Leaders who have worked with me on this matter, for example, Sen. Karaba is still sitting here and he is and was still the Chairman of Education Committee then. We had Sen. Mugo who is here; she was the Assistant Minister for Education at that time. I am sure she will give it the boost that it deserves. Sen. Mutula Kilonzo Jnr. is here; he went with me to the High Court to fight for this matter in 2004. I pray and ask Sen. Chelule to help me in praying, that this time round this matter will come to an end.

I beg to move.

I want to give the honour to my lawyer who took this matter to court, Sen. Mutula Kilonzo Jnr. to come and second.

**Sen. Mutula Kilonzo Jnr:** Thank you, Madam Temporary Speaker. I rise to support this amendment. Allow me to congratulate Sen. Musila, who we have walked with through this journey since 2004. Allow me also to revisit its history because I remember it very well. We had filed a court case. However, the then President Mwai Kibaki was clever enough at that time to issue an order waiving all rates for students and somehow stole the thunder from Sen. Musila and the matter that we were fighting with the Attorney-General was spent.

Madam Temporary Speaker, I have this experience because I have attempted to get certificates for various students in Makueni County using this law. The only reason principals and head teachers do not budge is because they get this strength to resist this law from their unions and they allege that the students owe money. I have grappled with this thing even in my capacity as a Senator, but have wondered and continued wondering. Every weekend we have harambees for schools and harambees of this nature or the other. Every weekend and every week, Members of Parliament are giving through Constituency Development Fund (CDF) cheques for building this or the other. What I am so much against is what is called “brick and mortar” sought of investment which does not help this country.

Madam Temporary Speaker, the reason is because it does not make logical sense to spend so much money building libraries, schools, and yet when these people who you want to get into these classrooms are through with their education, they cannot get their certificates because they are poor. We must change the narrative. This is the narrative that a child who is 17 or 18 years old and the time that they are in Form Four, does not have an earning capacity. So, when you deny that child the certificate because the parent who is unlike me or the rest of the Senators here, cannot raise money in order to get their certificate, and then we advocate for rights of children, a contradictory position, a fallacy, a nation of hypocrisy and pretense. The national Government has waived the fees for examination yet after you waive that fees, that student will not get the certificate. The certificates remain in cartons for many years.

Madam Temporary Speaker, I have similar examples. At the time that we filed the petition in 2004 - that is why I think Sen. Musila is passionate about this - the number of students in Makueni and Kitui at that time was 350,000 who had withheld certificates. At that time, the Ministry of Education gave us the statistics. The chances are that the number is either the same or it has increased. The owners of these certificates also do not have an opportunity of obtaining an Identification Card (ID), a leaving certificate, a job and *et cetera*. The tragedy that continues to befall this nation is something that ought to be discussed as a matter of national importance.

Students in university can borrow through the Higher Education Loans Board (HELB). Some Members of Parliament - even some seated here - have not finished paying their loans for university. I recall distinctly that there was a move by HELB suggesting that Members of

Parliament or other elective positions will not be cleared to contest until they pay their HELB loans.

Madam Temporary Speaker, we rejected those amendments. It is, therefore, true as it is said in the Bible that; those who have more will be added more, and those who have less, even the little they have, will be taken away from them. This matter needs a little more attention because it is not enough passing so many laws, going to court and issuing declarations. There is lack of political goodwill in matters of this nature because majority of the students are from poor families. Therefore, while we celebrate, Karl Marx said that the road to hell is paved with good intentions. I see very good intentions and nice things that are done by the national Government to try and help the youths. However, why is it that everybody wants to sweep this subject under the carpet?

I am convinced that the schools where these certificates are withheld, even if it is for a period like Sen. Musila said, since 2006, they had not been offering food or basic facilities to the students. If we were to get statistics on how much is owed to these schools, *vis a vis* the support that the national Government is giving through disbursements, to the secondary schools and look at our budget and what we are spending money on in terms of priorities, I can assure you, Sen. Karaba, that your Government will get a little more votes by supporting the 17 or 18 year old children from poor families who just need certificates to show that they sat for their Kenya Certificate of Secondary School (KCSE) examinations.

If I went into an exam room knowing that my parent will not afford to pay school fees by the time I am through with exams, what then will be my incentive of doing the examination? We had some pride and joy in 2012 when the Kenya National Examination Council (KNEC) found itself into an Act of Parliament. It was the first time that had ever happened. We thought that these people would consider our children in terms of examination by making them an independent body and giving them a budget and mandate yet today, as I speak, we have a crisis in this nation. Head teachers are calling people like me every day to report that the exams have leaked. They do not know what to do. We do not have an exam this year. It will never be an exam. What will happen when the exams results are released is that KNEC will ban some schools and blacklist students. We have warned them against doing that.

Madam Temporary Speaker, these people have let us down in more ways than one. Article 53 of the Constitution says that we shall protect the rights of children. The Constitution goes further in Article 53(2) to say that:-

“A child’s best interests are of paramount importance in every matter concerning the child.”

The withholding of certificates by any head teacher is in violation of the Article 53(2) of the Constitution. Sooner rather than later, I am ready together with Sen. Musila, to file a similar petition for a similar declaration. Unlike in his time, we placed an advertisement for all the students in this country whose certificates have been withheld to come forth and join the petition. You should have seen the paper work; they were thousands upon thousands. We will do the same because there is no value of being here, legislating to help this country, picking allowances every time we sit or stand yet the people who are the future of this country and voters cannot have a simple basic document showing the grades they attained.

I support this amendment because I am convinced that it will help many children whose certificates are still withheld in schools. This is an argument we had in 2004 that there is no

relation between a certificate and school fees. There is no relation whatsoever. The two are mutually exclusive and are not related. Therefore, for penalty to be imposed where there is no offence is in itself illegal; you are punishing somebody who has not committed any offences. This is the only category of persons who I know are suffering in this country for an offence that is not theirs.

Sen. Mugo has represented Dagoretti Constituency and knows the level of poverty there. She knows the interventions that the national Government is making. However, what is the value of such interventions if we cannot guarantee the future of our children?

As President Barack Obama, said in his speech, it is as if we have borrowed this nation from somebody else. It is not ours. Therefore, this is a matter of national importance. If there is something that ought to be discussed as a matter of national importance, this is one of them. If statistics of the number of certificates withheld were to be tabled in this Senate, we would shed tears. Not tears of sadness, but shame that we are leaders of this nation and yet we have not defended a vulnerable group of children who do not have an alternative or voice like us.

I beg to support this Bill and I am ready, together with Sen. Musila, to go a step further to make sure that the children of this country are defended by somebody. If that somebody is you, so be it. Let us go for it.

*(Question proposed)*

**Sen. Mugo:** Madam Temporary Speaker, from the outset, I thank Sen. Musila and congratulate him because he has from time to time revisited this issue without tiring. It is true that I was in Parliament when the Acts were passed and I was the Assistant Minister for Basic Education then. I support this amendment unreservedly and say that nobody has a right to deny children the right to education. The whole reason for education is not the end. The end is for those children to finish their education and get their certificates. Those who have an opportunity to pursue higher education and get employment should be facilitated.

Madam Temporary Speaker, this cannot happen if their certificates are not released to them because they have to prove to institutions of higher education and employers their performance. I do not think there is anyone even in the Ministry of Education, Science and Technology who is not in agreement with that. Sen. Musila knows that I strongly supported this Act and that the Government and the Ministry wrote to all head teachers directing them to release all the certificates. I say it here without any fear of contradiction that the Government is fully in support of this issue. I want to put the whole blame on the teachers and the unions. As Sen. Mutula Kilonzo Jnr., has said, if the Government gives a direction, it should be adhered to. Again, they are supported by the unions to defy those directions.

I want to very much support this amendment that proposes the establishment of a tribunal, or a body that will look into this issue very deeply. I also support the fact that this tribunal be given teeth so that it can even prosecute the teachers who do not adhere to directions given by the Government. This tribunal must have powers similar to those of a court of law.

Madam Temporary Speaker, most of the time, the children who are denied these certificates come from homes which are not very well to do. They are the ones who really need help the most. The whole purpose of free primary education, and subsidized education in secondary, is that everybody can get an equal chance of accessing education and improving their

lives. I want to repeat that children are not poor. There are no children who are poor. Every child has a right to education and tomorrow that child will improve him or herself and the family at large. Education is an equalizer; it gives everybody a chance to live a better life. When anyone, teachers or whoever, gives themselves reasons that because somebody has not paid the fees, they have a right to hold their certificates, they are playing God; they do not have a right to hold any one's certificate. They are going against the Constitution.

If they have an issue of payment or money to run their schools, if that is the argument, then they should deal with the Government. They should say you have directed us to give these certificates then how do we run the school? We all know that the schools receive grants, through the CDF. I have evidence when I was the Member of Parliament for Dagoretti, we supported many children and schools. This is an excuse teachers give for not releasing certificates and God knows why they want to have that money in their hands.

My challenge is really to the schools and the unions. When the unions fight for the welfare of teachers, they should also take the welfare of students into account because those students are the ones who give teachers a job. Without children to be educated, even the unions will not have all that power they exercise when it comes to the welfare of teachers. They have a right to look at the welfare of teachers, but it cannot be the welfare of teachers and schools at the expense of children, and going against the Constitution.

Madam Temporary Speaker, I do not think the children in one single school, who are not able to pay for the fees and most of it is subsidized by Government, will make that school not to run. If those certificates are in the boxes, they are not receiving any money. How comes they continue to run the school? It is really punishing the children; they do not close the school. I would like to assure the parents, especially the needy families, and those whose certificates have been held for a long time, that directives were issued. Therefore, there is no reason as to why those certificates should not be released.

Madam Temporary Speaker, if the Government provides free education and waives examination fees, then what is the point of holding those certificates? The argument which some of the teachers gave is that if they allow certificates to be released, then more and more parents will now default. This was not proved. Everybody knows which families are capable of paying and which families cannot.

I want to urge that Members of the National Assembly to use some of the CDF money to have these certificate released as soon as possible. The tribunal we envisage to create will stand for the under privileged people who have suffered for reasons which are not of their own. The head teachers are frustrating the efforts of the Government to give education to the citizens of this country. I assure Sen. Musila, whatever it is that we have to do, some of us are ready to stand with you as we have stood all along and to make sure that every child in this country has his certificate. Article 55 of the Constitution requires the State to take measures and ensure that youth access relevant education, training and employment and that they are protected from harmful cultural practices and exploitation.

When a girl child is not going to school the next thing she will do is to get pregnant or marry very early, sometimes, get into prostitution because she wants to get a sugar-daddy to give her some money. When that child stays at home, you cannot sustain her for long. The same applies to boys. They will get stressed, start smoking *bhang* and get involved in all those harmful practices. Therefore, head teachers should do the honorable thing and release all those

certificates, instead of keeping them to gather dust in the drawers, which is not benefiting the children or the school.

I support.

**Sen. Karaba:** Thank you very much, Madam Temporary Speaker, for giving me this chance to contribute in support of the Bill which is on the Floor of the House.

I thank my friend, Sen. Musila, for consistently finding time and not losing patience in pursuit of what we will call “the necessary step”. This is the right thing in the right direction. As the Chairman of the Committee on Education, I have pushed for clauses which I believe will be of use and could be used in the education sector in Kenya where nobody will exploit the other one.

Madam Temporary Speaker, when the Bill was tabled, I was the only one who opposed it. Later on, we agreed with the Senator on modalities of how to approach such issues. By then, I had come from school and I knew what heads were saying. I had come from a headship position and I knew what it meant to release certificates. However, with time, I have realised that it is necessary to change the tune and think about what happens when a child is not issued with a certificate.

Personally, I have had quite a number of cases where I had to intervene at the KNEC or a school to implore a head teacher to release a certificate to a given child because of needy problems. We are talking about a school which allowed a child to join Form One on admission and they paid money to be admitted. The same child is allowed by the same head teacher to go to Form Two, despite having not completed fees. My earlier argument was that, what would happen if the head teacher refused the boy or girl to proceed to Form Two, so that he or she could claim a certificate?

That issue was solved by the introduction of free primary and secondary education. The Government did quite well to introduce free education to that level and we thank it for that. The Government also came up with guidelines of how much money should be paid by each child in secondary schools and colleges. The same Government also waived examination fees and we thank it for that because that was another problem. Students would be taught, but they would not get the examination fees when it came to registration. That still added the burden to the parent.

Madam Temporary Speaker, a certificate is a paper issued upon completion certifying that someone has been to Form Four or Standard Eight. That is the only paper that one can show to prove that they went to school up to those levels. The certificates are required by employers and for transition to other levels of education like colleges and universities. Therefore, it is important that we discuss about certificates because without them, somebody cannot join the next level of education. They cannot even secure courses which could lead to employment. For example, one cannot sit for the Kenya Accountants and Secretaries National Examinations Board (KASNEB) in order to get the necessary accounting abilities without a Form Four certificate.

The certificate is very important, but it has been misused and abused by some of the parents who have failed to pay fees for their children in schools. For that reason, head teachers have found it very difficult to provide facilities and services for the same children who are supposed to sit for the Form Four examinations in order to acquire certificates. For somebody to get a certificate, they must have been taught and studied in a school with a library. Therefore, books, equipment and chemicals for various practical in the laboratories must be bought. Laboratories must be put in place and the necessary environment provided. If that can be

provided for by the parents and the country at large, so be it, so that head teachers find it easier. They will not claim that they used money from parents to buy books or food.

Madam Temporary Speaker, firstly, part of the amendment should ask the Government – because we are here under the mercy and courtesy of the Government – to make sure that education is free, leave alone the kind of cosmetic freedom which we have in the provision and waiving of examination fees. Let education be free from Form One to Form Four. If that is the case, then we will not have certificates piling in schools.

Secondly, students are given loans by the Higher Education and Loans Board (HELB) when they get to universities. Nowadays, apparently anybody can get HELB loans as long as they can repay. That policy should be thought about because not everybody who gets to the university qualifies for HELB loan. HELB loans should be given to people who cannot afford to pay fees at the university. The surplus amount of money, if there could be any, should be channeled back to secondary schools so that we give HELB loans to secondary schools students who cannot afford to pay fees because that is a National Fund. If that happens, I am sure that we will not have problems of students completing Form Four without paying fees. Fees is statutory. People have to pay it so that it caters for their upkeep. They have to pay for education as a service. Without fees, it would be very difficult for a person to do the examination in order to get a certificate which would be required later.

As much as we say that certificate should be released, it is also important for us, as the Senate, to come up with ways and means of helping the Government on how to retrieve certificates. The moment somebody is in Form Four and upon completion of examination, then, the next stage would just be to issue him or her with a certificate. However, surprisingly – I am telling you this because I have been a headmaster for a long time – you will find that some of the people who are able would never pay fees. I am telling you the truth. Some people would also hide and claim to be poor yet they are very rich. Some of them would claim that they are not employed yet they are self-employed or in businesses. We should be honest about that so that our children in school see that we are genuine and saying the truth. That is the society we want to live in and that is the Kenya we want. That is the spirit of this Motion.

With that retrospect, we also need to blame the headship or leadership of schools because they need to understand who is not paying fees. This amendment will catch up with that person who thinks that he or she cannot pay fees. The person should be identified by the head teacher very early, according to the amendment by Sen. Musila. Fees should have been cleared by the time a boy or girl leaves Form Four to go the university or other jobs. The commitment would, therefore, be for a parent to pay for the services of education. By that time, a head teacher of a school would find it necessary to release certificates because it would be the commitment of the parent to pay fees later just like it happens with the HELB loan.

HELB gives you a loan and after you complete your university education and get employment, you start repaying the loan three years later. That should also be the case for Form Four students so that we do not encourage parents who would not pay fees even when they have money. To me, that is a very sensitive issue. I would rather go for the amendment so that certificates are all issued.

I do not understand what makes head teachers not to issue certificates even after several pronouncements in the country. There must be a reason for that. Let there be a probe to find out what makes head teachers not to release certificates. If it is about money which has not been paid

by parents, particularly in form of fees, let part of the CDF money be used. We should decide how much of the money should go to schools because schools must have used money from somewhere. They must have either borrowed loans from banks or from parents so that we waive and issue certificates urgently.

Madam Temporary Speaker, I am aware that there are some schools which even after Form Four, a student will not have a problem because they have committees. For example, Alliance Boys, Alliance Girls, Mang'u, Kenya High and Loreto High Schools, have a system where as soon as you finish Form Four, they know how much money parents would have paid. They have a way of trying to help those who cannot afford to pay. Parents in these schools help one another. If the Government understands such a policy, then part of the money allocated to the CDF kitty can be spend on paying school fees. Life would be better for both the parents and the students.

The blame should not go to parents for having not paid. The head teachers are expected by the Ministry to collect fees. If they fail, they can be surcharged or penalised. Therefore, head teachers collect because it is an offence not to. They also commit another offence if they release a certificate yet they have been trying to help the child get to Form Four. There should be a compromise so that we all understand the situation and get the position that the head teachers, students and parents have. Part of the money allocated for development can be given to waive the certificate issues. Once this is implemented, there will be no problem of certificate issuance.

I support.

**Sen. Omondi:** Thank you, Madam Temporary Speaker, for the opportunity to add my voice to this important Bill. I thank the Mover of the Bill because this is a matter that touches on the life of Kenyans. The issue of certificates is like a thorn in the flesh of Kenyans who do not have a voice for themselves. Sometimes I flash back and ask myself many questions. When the Government makes directives without any follow up, Kenyans feel it was mere talk and they cannot follow the instructions.

The directives from the Government have also affected the issue of waiving taxes or payment of health services to persons with disabilities. The argument is that there is no written communication from the Government. I support that this matter must be put to consideration because it makes Kenyans who have struggled to get education look like they never entered a classroom. For most opportunities for employment, the qualification is a secondary school certificate. This makes Kenyans to lose such opportunities. This happens to people from poor backgrounds.

It is important that we, as legislators, help voiceless Kenyans to address these issues so as to get relief; for instance, sensitising them through meetings in the national and county levels. I am sure we have illiterate parents who cannot understand what the Government is paying and what they ought to pay. At the end of the day, you will find they are paying everything when the Government has paid part of the school fees. I came to learn about this when I was pushing for CDF bursary for learners with disabilities. You find that where you take a CDF cheque from the office to schools without notifying the parents, they are again expected by the school to pay the whole amount.

Kenyans are suffering even when the Government is paying for Orphans and Vulnerable Children (OVC) from the Ministry of Education kitty. We have funds from CDF and other Non-Governmental Organisations (NGOs) that are paying school fees for these students. Since

Kenyans believe in corruption, they do not disclose this money paid. At the end of the day, a parent is burdened to pay the whole amount.

Madam Temporary Speaker, we, as legislators, it is high time we stood in the gap to represent the people who elected us to this Senate on matters of education. Many things happen in this country, but at the end, the Kenyan who cannot voice suffers. As we are talking about cheating in examination, we have genuine students who have been struggling, but their efforts are a waste because a few people have used their money to buy examinations and to ensure that the lives of these poor Kenyans cannot see the light of the day.

I came from a poor background and I understand when someone talks about the inability to raise a penny to pay for an examination. However, for how long is this going to happen if the Government is supporting this initiative? The issue of certificates was directed long time ago, but it has been ignored. For it to become a reality, we must have legislation to cushion Kenyans from being disadvantaged, and giving an equal level ground where all Kenyans can compete in seeking employment.

My fellow Senators have stated earlier that it is only education that can lift somebody to reach the level of the other. Denying these Kenyans certificates after their Fourth Form is a justification that there is no single day this person will rise to the level of other Kenyans. It is like breaking the foundation that they have been struggling for. These citizens have a constitutional right to raise their families that have been left out.

I urge my fellow Senators to support this Bill. We need to ensure that when the Eleventh Parliament comes to an end, we can count on something important that has been hindering Kenyans from prospering and take credit for solving it. It will show how passionate we, as leaders, are, our unity of purpose and that we have been struggling to reduce the gap between the rich and the poor.

Madam Temporary Speaker, I believe that if this is the spirit that can salvage the lives of innocent Kenyans, then we can say: “Yes, we have done it.”

With those remarks, I beg to support.

*(Applause)*

**Sen. Chelule:** Madam Temporary Speaker, I thank you for giving me this opportunity to add my voice to that of the Senators who have contributed to this amendment. First, I thank Sen. Musila for bringing this amendment to this House. It is a matter that affects most people. Representation is one of our roles. We represent the people who cannot pay school fees for their children. One reason these certificates are being withheld is because of school fees balances. These two are not related in any way because during the days when examination fees were being paid, I thought it was paid for the certificates. Therefore, there is no reason the certificates should be withheld because of fees arrears. These students should be given their certificates because this is not related to school fees.

Madam Temporary Speaker, we are aware that very many parents are going through many problems. It is not news to us. There are single mothers, poor people and maybe sometimes a parent cannot pay school fees because of a climate change related problem. It could be a produce marketing problem. Therefore, it is not reasonable for a student to be denied his or her certificate. A certificate is a resource, not only to the owner, but to the whole family. It is a



very important document. It is the only document that will enable anybody, anywhere to have an opportunity to be employed or show that one has gone to a particular level of education. There is no way one can explain himself or herself without a certificate. It is a very important document. I support Sen. Musila and urge my fellow Senators to support this amendment.

Sen. Musila has mentioned the issue of a tribunal. It could be for the purpose of investigation; whether a parent is too poor to pay school fees. Again, a school must run. We know the problems that head teachers are facing with the school fees balances. It is the only way to run an institution, but it should be investigated because there will be no point to withhold a certificate that may not be collected due to fees arrears, forever. It will not help anybody; neither the candidate nor the institution.

Therefore, it will be wrong for school fees not to be paid, but it will also be wrong for the head teachers to withhold the certificates. So, two wrongs will not make a right. In that case, I support the amendment that has been brought by Sen. Musila. If there is a day that I feel we are here to represent and exhibit our role of representation, it is today that we are speaking on behalf of those who cannot speak for themselves.

Madam Temporary Speaker, with those remarks, I beg to support.

**The Senate Minority Leader** (Sen. Wetangula): Madam Temporary Speaker, I start by congratulating the distinguished Senator for Kitui because he has been very painstaking on this matter. I remember him bringing a Motion in the last Parliament where he wanted to obligate head teachers to release certificates to students after sitting examinations without any delay or conditions.

As we know, Motions are not as enforceable as an Act of Parliament. I am happy that he did not lose directional hope on the matter. He has brought this amendment to the Kenya National Examination Council Act so that we can embolden into the law that we need to help students.

Madam Temporary Speaker, you may recall that when we went to elections in 2002, the agenda was to give universal primary education which was done. In 2007, each of the competing sides promised to give universal secondary education. We ended up with partial free secondary education because the Government then, agreed to give a subsidy of Kshs10,200 per student. They started off only with Government schools, but now they have expanded to more schools.

It is meaningless, however, to purport to give any child free education when the end result in a country where the Alpha and the Omega of education is a certificate--- to let children go through school for eight years, another four years and now this disease has crept into the universities. I urge the distinguished Senator for Kitui to find a way of bringing – I know universities are autonomous, but he can also obligate universities to release certificates and degree certificates to students.

Madam Temporary Speaker, I have quickly scanned through the Bill and I want to suggest to Sen. Musila that, at Committee Stage, he should look at Clause 3 where he is trying to amend Section 45(a) to remove the unnecessary bureaucracy of going through district education officers. You are just creating another bottleneck and with the levels of corruption in this country, you are simply making it possible for those education officers to set up a toll station to collect money from every student who goes there to collect their certificates.

I want us to obligate head teachers of schools with strict timelines, that immediately after the exam results are announced, the result slips of students should be in schools within two weeks. Those result slips should then be released to the students within another two weeks. Two months after the announcement of the outcome of examination results, the certificates must be in the schools where students sat examinations. Those certificates must be released unconditionally to the student who sat for the examination within a month of their receipt in school. That way, there will be no excuse for KNEC to say that they are still holding the certificates and doing this and that. They are obligated as soon as they announce the results, within two weeks, the result slips must be in schools and within two months, the certificates must be in all schools.

Madam Temporary Speaker, I do not want these Sub-County Directors of Education to be involved because it is always a sense of pride for a head teacher to hand over certificates to his or her own students, especially when the school has done very well. It is even normally a public event. Many schools will even invite us, as leaders, to go and witness the handing over of certificates to these students. So, the event should be school based because that is the venue where everything has occurred in the life of a student. Education officers will be adding very little value to this. In fact, they have been part of the problem in some of these difficulties that Sen. Musila is trying to resolve.

I also agree that there must be penal sanctions for those who do not release these certificates. The fine proposed in Clause 45(a)(8) is a bit too harsh for school teachers. A teacher who fails to release a certificate, as you saw when we were discussing teachers' salaries, and the highest paid school teacher in top schools like Alliance and Mang'u High Schools, is just Kshs109,000. That is how unfair this Jubilee regime has been to teachers. So, to fine Kshs800,000 – I have been a magistrate before – the courts will be tempted to think that if the fine is Kshs800,000, even fining half of it is fair. You can imagine fining a head teacher Kshs400,000 with an alternative of an imprisonment of one year or both. One year is not too harsh, but still it then obligates the teacher, for fear of the unknown, to release the certificates.

Madam Temporary Speaker, I propose that Sen. Musila considers reducing the fine. None of those teachers even the headteacher of Alliance High School can afford a fine of Kshs100,000. If you can reduce it to, say, between Kshs100,000 to Kshs150,000, that would be commensurate with the offence that we are trying to deal with, so that the head teachers can be driven into knowing that as and when such a situation occurs, there are severe consequences.

I would also want Sen. Musila to bring in a clause about the Government having committed itself to free universal education because we must also look at the welfare of schools. Schools without money will collapse. We must obligate the Government that when these certificates are released- again Sen. Musila can put a clause,- that the Government must meet the cost of that certificate. In school, there is the fee and there is the examinations fee. The withholding of the release of the certificate as we want to cure now must be pegged on the examinations fees.

Madam Temporary Speaker, for the school to release the certificate, the Government is obligated to compensate the school within a specified period, not more than two months. If they have released 1,000 certificates to their students and each is Kshs1,000, they expect the Government to send them a cheque of Kshs1 million immediately so that the school can function. It is the duty of the Government to look after its people. We cannot pretend that we are giving free education by sending Kshs10,000 to school, when we cannot pay Kshs1,000 to

release the certificate. This is because the certificate is not generated in the school; it is not the property of the school. In fact, it is the property of the candidate, transmitted from KNEC only via the school.

Madam Temporary Speaker, the school does not own any certificate. The only certificate the school gives to a student is the school leaving certificate which is normally free. So, we must obligate that examination money covers also the certificate. If the Government meets that, and we must obligate them to meet it - there is no point in sharpening a student through school for four years- because if they are day scholars, they will be able to go through school at that Kshs12,000 per annum. If the Government can pay that, I cannot understand how we cannot pay Kshs1,000 for examinations which covers the process of examination. If they are paying, then if there is any charge to the certificate, it should not be tied to whether a student has paid his fees or not, because that is not an examination of the school. The school does not set the examinations, it does not invigilate, it does not mark and it does not grade the students. So, on what basis would they hang on the certificates of the students? There is no basis whatsoever.

Madam Temporary Speaker, the school is simply a conveyer belt, a centre where a student has to come and pick their certificates. As we say this, a lot of young Kenyans have suffered. Many have lost opportunities and many things in life. We are in a country and in a system where a certificate is everything. You can be as clever as Isaac Newton, as clever as Einstein, but if at the end of the day, you do not have the certificate, you are nothing. You cannot go and compete for a job, you have seen a lot of people who even hire lecturers to sit for exams for them and give them distinctions, and they go and get jobs which they cannot even do because of the sanctity of the certificate.

Madam Temporary Speaker, to withhold a certificate from a candidate is like telling you all your four years in school have come to a dead end. It is like a student who goes to the university to study engineering and after four or five years, he gets no certificate. Therefore, he cannot go and look for a job and say he studied engineering for four years and he be given a job. Nobody will listen to him. He must produce a certificate.

When they are recruiting people to go to the army, even a certificate of Grade D plain gets one a job. The basic *askaris* in the army are being recruited at Grade D level. To some people, Grade D looks like a failure, but it gets one a job in the army and the police. So, when a school tells you that you cannot have your certificate, it is like taking life out of you. You wasted your time, you mark-timed in school, and you go back to start life from where you were when you went to Form One.

Madam Temporary Speaker, I hope that KNEC will cooperate with this law. In fact, in the penal clauses, we should have a penal sanction for KNEC if they do not send the certificates within the two months that we have suggested so that they do not procrastinate on issues and say that it is only the school head teacher who will go to jail for it, as they have nothing to do with it. At times, KNEC sits on certificates up to a year. They must have an obligation and duty to release the certificates as quickly as it is practically possible in any case and not later than two months as we have said, with clear penalties where there is a default. The person to go for in KNEC is not the junior clerks, but the Chief Executive Officer (CEO). He must be the culpable person in the event of failure.

Madam Temporary Speaker, we also need to have a clause to cure another common problem: Students suffer when the KNEC releases certificate with misprinted names or

misspelled examination centres. Therefore, you will find a child with an identity card whose names do not correspond with the names on the certificate. Where KNEC makes such mistakes, Sen. Musila should bring a further amendment to say that the correction must be done within not more than a month at the cost of KNEC and not the candidate. Therefore, when certificates go to school and some are found with errors or misspelling or posting of the results, they are immediately forwarded to KNEC for correction and brought back to schools.

There is no point for a student to have a certificate and start roaming from lawyer to lawyer to swear affidavits that their name was, for example, Wekesa and now they are called Wangila and that it needs to be corrected that Wangila and Wekesa are one and the same person. We do not want those kinds of things. We want a situation where people own up in cases where there are mistakes, correct it at their own cost and send the certificates to the students.

Madam Temporary Speaker, once this Bill is passed and assented to, it must apply to examinations that were done in the past, present and the future. We do not want to have instances where schools say that they are owed Kshs2 million by people who sat for examination before this law was passed and, therefore, it does not apply to them and that they still would want their money paid before they can release certificates.

We must obligate the Government to pay for even those certificates that are still being held in schools now so that there is retroactive application of this law to cover the past, today and tomorrow. It must ensure that all the students whose certificates are still in schools get them once this Bill is assented to. They should majestically walk to schools and collect their certificates without any hindrance.

Madam Temporary Speaker, we would also like to encourage that once this Bill is passed and assented to, we, as the Senate, should not be obligated in law, but in our duties, circulate it around the country. Sen. Musila and every one of us should speak to it so that teachers know that there is a new law and, consequently, a new sheriff around the corner and that they should not in future plead ignorance.

This law should be sent to all CECs of education to circulate to schools. Seminars should be held to obligate teachers to know what the new law pertains and how it will help students. This must also be made very clear. Sen. Musila should also mention that this law covers students' certificates regardless of the school in which they have done their exams because we have a group called private schools owners who will resist.

They will come up and say we are private schools, we are licensed to do business and, therefore, we cannot release certificates because we are owed money. We are saying that what they are owed for children going through their school for four years has nothing to do with the certificate they did not generate. It is not their certificate. The law must be abundantly clear to cover even the so called academies and private schools, so that they do not swing around and say, we are an association and organisation of business people, and our duty is to make money and if you do not pay us money, you are not getting your certificate. We do not want to see or hear such a thing.

Sen. Musila, if you can have a description of a school to mean and include a public school, a private school or any school howsoever described under the law, so that there is no escape route for anybody to hang on onto certificates of children of poor helpless people, who have got no way of ever raising money---

Madam Temporary Speaker, I am sure you were born in the village and you have seen families that sell their entire possessions to educate one child. I know families with five or six children and they say, let us pick one, take him through school and he will help others. They end up selling family land, family possessions like chicken, goats and cows to see this child through school. At the end of school, there is a recruitment exercise for the armed forces, yet the child cannot participate because he has no certificate.

Madam Temporary Speaker, these things have been so painful to all of us who represent constituents. For example, the Medical Training Colleges (MTCs) are recruiting for their intake, the number of Short Messages Service (SMS) we are getting are overwhelming. Many of our students cannot apply to be admitted to MTC because they do not have certificates. They are telling us they owe the school Kshs18,000 and so on. How do I get my certificate? Even if you were generous and you have money, you have something like 300 students queuing at Sen. Karaba's house, and each has a burden in school of Kshs.20,000; where will he get money to give them? He cannot. This is a State obligation.

Now that we see Sen. Musila's passion on education matters, He should also start looking at the possibilities of when exam results are out and students have result slips and there is opportunity for employment, they should be employed on the basis of result slips because certificates will come anyway. They do not lose opportunities. You will find that you have a result slip and the certificate has delayed to come. Maybe it will come after two months and there in between there is an opportunity. Normally when exam results are released, they are released simultaneously with the result slips that should enable you to go and compete for an opportunity. The certificate will eventually follow when it gets to school and you pick it.

We should make it easy for children of this country to get employment; we do not want situations where only big people have their lineage set for juicy jobs. I know of senior people in the Jubilee administration, who as soon as Jubilee came into power, their daughters and sons were posted to Australia or Vienna missions. They did not even qualify, but because they are the daughters and sons of who and who in Jubilee administration, they were posted in those missions. If we are going to run a country like that, then how is *mama pima*, *mama mboga*, a hawker or a *boda boda* child going to get an opportunity to serve this country?

We set up a Public Service Commission (PSC) that has been here for years. It is now an elitist club. One shudders when you look at how they are employing people in this country. I do not know whether Sen. Musila, Sen. Hargura, Sen. Omondi Godliver and Sen. Karaba saw what happened three weeks ago when the PSC appointed 350 parastatal directors. Among those appointed, 97 of them are from one community and 65 from another community, respectively. It is a pity that two communities took over 50 per cent of those appointments. Other communities in the whole country got tokenism of 3 to 7 appointments.

After that, they claimed to stand for national unity and cohesion. They insisted the appointments had brought Kenyans together. How can they say 97 is equal to 3? Are they trying to build a cohesive country? These contradistinctions will destroy our country. It is myopic thinking and selfishness. Utter selfishness! They think they are the Alpha and Omega of our country. They hold the view that if you do not come from a particular mountain, you have no place in this country. Those of us who come from lesser mountains have nowhere to go. Sen. Hargura could say that he comes from the Green Hills of Marsabit. However, he would be told

those are hills not mountains and that he has no room there. That is not the country we want to build.

When we are fighting to give education to our children, we are also fighting for equal opportunities. The race belongs to the strong, but everybody must be given a fair start to compete. A big man of Sen. Karaba's stature and a small man of Dr. Khalwale's stature cannot be taken into a boxing ring and they you ask them to have a fair fight. It cannot be a fight. Also, one of the competitors' hands cannot be tied at his or her back, and the other one asked to hit his or her opponent wherever he wants. It would be unfair.

If this country has to move forward with all the problems we are seeing, we must exorcise the nightmare of ethnic exclusivity. I feel sorry for a very good man we voted three times to be a Speaker of the National Assembly, Hon. ole Kaparo, because he has become an unlucky tool for Jubilee Government. He is being sent like a German Shepherd to chase around CORD people for everything they say. Free speech is a cornerstone of democracy. That is why the law allows you to go to court to defend your name, when you are maligned. The law of libel, slander and defamation takes care of reckless tongues - those of the likes of Hon. Moses Kuria. Free speech is not a crime.

I have a lot of salutation for former President, Mzee Moi. Kenneth Matiba, in the heat of multi-partism, stood up and said Moi was suffering from HIV/AIDS. That was false and defamatory. However, former President Moi just ignored him. He did not send the police to arrest him. Today, when one says that money has been stolen from NYS or the President and his Deputy have shared the country between their communities, the police are at your doorstep. Everybody can see these things. I invite them to read the Bible. Jesus said, even the blind can see and the lame can walk. How come those with eyes do not see? How come those with ears do not hear? How come those with mouths do not talk.

**Temporary Speaker** (Sen. Ongoro): Sen. Karaba, you are supposed to log in. Are you requesting?

**Sen. Karaba:** On a point of order Madam Temporary Speaker. We are discussing amendment of the Kenya National Examinations Council (KNEC) and the Kenya Certificate of Secondary Education (KCSE). However, I am surprised that Sen. Wetangula is taking us to greater heights which are not even related to education. Is he in order?

**Temporary Speaker** (Sen. Ongoro): Order, Senator! The Senate Minority Leader is giving his opinion. He can relate it to any issue that he feels is relevant. He is expressing himself.

**The Senate Minority Leader** (Sen. Wetangula): Pardon me, Madam Temporary Speaker. Education is meaningless if a child in El Moro can get his or her certificate, that Sen. Musila is fighting for, and cannot get a job because, people from the mountains have taken the jobs. Education is meaningless if after you get the certificate Sen. Musila is fighting for, you cannot even enter a queue for a job.

I beg to support.

**ADJOURNMENT**

**Temporary Speaker** (Sen. Ongoro): Senate Minority Leader, if you wanted to continue, you still had 30 minutes. However, in case you have concluded, so be it.

Hon. Senators, we have come to the end of today's sitting. Therefore, the Senate stands adjourned until tomorrow, 28<sup>th</sup> October, 2015, at 11.00 a.m. when the Senate will convene for a Special Sitting.

The Senate rose at 6.30 p.m.