

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Wednesday, 21st October, 2015

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

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

PRAYERS

COMMUNICATION FROM THE CHAIR

VISITING DELEGATION OF STAFF FROM MANDERA COUNTY ASSEMBLY

The Deputy Speaker (Sen. Kembi-Gitura): Hon. Senators, I have a Communication to make.

I would like to acknowledge the presence in the Speaker's Gallery this afternoon of visiting county assembly staff from Mandera County. The county assembly staff are here on a one week attachment programme at the Directorate of Committee Services, the Serjeant-at-Arms and the Hansard Department. I request each member of the delegation to stand when called out so that they may be acknowledged in the Senate tradition. They are as follows:-

- | | |
|---------------------------------|-------------------------|
| 1. Mr. Hassan Abdullahi Abdulla | - Clerk Assistant I |
| 2. Mr. Abdi Shakur Dakane Maow | - Clerk Assistant I |
| 3. Ms. Fatuma Alio Sheikh | - Serjeant-at-Arms |
| 4. Mr. Bashir Ibrahim Gabow | - Serjeant-at-Arms |
| 5. Mr. Abdifatah Ali Ibrahim | - Deputy Hansard Editor |
| 6. Mr. Ahmed Ali Mayow | - Hansard Recorder |

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

(Applause)

Sen. Murkomen: On a point of order, Mr. Deputy Speaker, Sir. In one minute, I would like to join you in welcoming the staff of the assembly. Early this year, my committee visited Mandera County. It is one of those counties where they are working hard. We visited the county assembly and noted that they are putting a lot of effort to

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ensure that they carry out their oversight responsibility and legislation. I am glad that the staff have come here to learn from the Senate.

As the Chairperson of the Committee on Devolved Government directly responsible for the intergovernmental relations and matters related to the county governments, I welcome the team from Mandera County and wish them the best as they go through this process. As the founding team in the County of Mandera, they have a huge task to ensure that they build the necessary capacity in the county for now and the future.

Sen. Omondi: Mr. Deputy Speaker, Sir, I want to take this time to join you in welcoming the staff of Mandera County Assembly. On behalf of other Senators, this is a good indication that staff from the counties are eager to learn and give quality services to the people from the counties where they come from. As they learn from what is happening at the National Assembly and the Senate, I wish them a fruitful learning process.

Sen. Adan: Mr. Deputy Speaker, Sir, I take this opportunity to welcome the staff from Mandera County. On my behalf and on behalf of the Senate, I wish them a fruitful programme.

Having visited Mandera County, I know that they have a lot of challenges especially in the area of security, which we have discussed here as the Senate on several occasions. I hope that within their programme, they will sit with the Committee of the Senate on National Security and Foreign Relations so that they can understand the recommendations given by the Committee in various areas. I wish to take this opportunity also to request them to take their work seriously and carry the knowledge they will learn back home.

The Deputy Speaker (Sen. Kembi-Gitura): Thank you, Senators. Staff from Mandera County, you are very welcome and we hope you will learn from what you see here.

Next Order.

MESSAGE FROM THE NATIONAL ASSEMBLY

REJECTION OF SENATE AMENDMENTS TO BILLS AND APPOINTMENT OF MEDIATION COMMITTEE

The Deputy Speaker (Sen. Kembi-Gitura): Hon. Senators, I have a short Message from the National Assembly on the Statute Law (Miscellaneous Amendments) Bill, National Assembly Bill No.33 of 2013 and The Political Parties (Amendment) Bill, Senate Bill No.3 of 2014.

Hon. Senators, I wish to report to the Senate that pursuant to Standing Order No.40(3) and (4), I have received the following Message from the Speaker of the National Assembly regarding the rejection by the National Assembly of the Senate amendments to the provisions relating to the Transition to Devolved Government Act, 2012 as contained in the Statute Law (Miscellaneous Amendments) Bill, National Assembly Bill No.33 of 2013 and The Political Parties (Amendment) Bill, Senate Bill No.3 of 2014.

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“Pursuant to the provisions of Standing Orders No.41 and 142 of the National Assembly, I hereby convey the follow Message from the National Assembly.

Whereas the National Assembly on Wednesday, 30th September, 2015 concurred with the Senate on its amendments to the Statute Law (Miscellaneous Amendments) Bill, National Assembly Bill No.33 of 2013 save for the part of amendments in respect of the provisions relating to the Transition to Devolved Governments Act, 2012, and;

Whereas the National Assembly in the same sitting rejected The Political Parties (Amendment) Bill, Senate Bill No.3 of 2014 at Second Reading; now therefore, in accordance with the provisions of Article 112 of the Constitution and Standing Order No.142 of the National Assembly Standing Orders, I hereby convey the said decision of the National Assembly to the Senate and seek the appointment of a Mediation Committee in respect of the two Bills.”

Hon. Senators, in accordance with Article 112(2)(b) and Article 113 of the Constitution, the Speaker of the National Assembly has appointed the following Members to represent the Assembly in the Mediation Committee which will attempt to develop a version of the two Bills that both Houses will pass. These are:-

1. Hon. Samuel Chepkonga, MP
2. Hon. Njoroge Baiya, MP
3. Hon. Timothy Bosire, MP
4. Hon. Daniel Maanzo, MP

Similarly, I also appoint the following Senators to represent the Senate in the Mediation Committee:-

1. Sen. Amos Wako, MP
2. Sen. Stephen Sang, MP
3. Sen. Kipchumba Murkomen, MP
4. Sen. (Dr.) Khalwale, MP

Sen. (Dr.) Khalwale: On a point of order, Mr. Deputy Speaker, Sir. If I heard you right, one of the amendment Bills was in respect of funding of political parties. I am not too clear about that Communication because the Communication is that the National Assembly has rejected the same. However, our understanding of that particular Bill was that after we sent the Bill to the House, the House set it aside, they then---

The Deputy Speaker (Sen. Kembi-Gitura): Order, Sen. (Dr.) Khalwale. I have given a Communication. Your name is among the four mediators. So, please, go and find out whether it is a mistake or if that is the actual position and then report back to the House. You are one of the four people who have been appointed to the Mediation Committee, so I think it should be pretty easy for you because you should be able to follow up the issue. Are you satisfied?

Sen. Mutula Kilonzo Jnr.: No!

The Deputy Speaker (Sen. Kembi-Gitura): Order! Well, I did not ask you, Sen. Mutula Kilonzo Jnr.

Sen. (Dr.) Khalwale: On a point of order, Mr. Deputy Speaker, Sir. I have heard you very clearly. However, if you had just given me a few seconds, I would have directed you where my mind was going. I know what you have done is the standard procedure. However, what is not clear is that the fate of our Bill in that House was not that they failed to agree with it. What happened is that they set it aside, got their own version

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which we discovered eventually that they had plagiarised the one that had come from here and developed a different Bill.

There was an attempt earlier on for their version to be brought here for concurrence. I remember raising the issue in this House and asking for directions from the Chair on how we would treat that particular stalemate. Maybe, we will find the answer in the meetings. But that is exactly where I was leading the House to.

The Deputy Speaker (Sen. Kembi-Gitura): Are you talking about The Political Parties (Amendment) Bill or are you interested in the other one? This is in quotes, inverted comas stating that “This is the Message from the National Assembly.” I do not know whether we are together. It says:-

“Whereas the National Assembly in the same sitting rejected the Political Parties (Amendment) Bill, Senate Bill No.3 of 2014 at Second Reading.”

Within the provisions of Article 112, they appointed a Mediation Committee. What is the problem there? They rejected our amendments at the Second Reading. That is why we want to go to mediation and see whether we will find a middle of the road solution.

What I find difficult to fathom here is that you, Sen. (Dr.) Khalwale, are a member of the Mediation Committee. In my view, the right point at which you will canvass the issues you are now talking about are in that Committee. As it were now, what we have proposed has been rejected. That is why we want you to go and mediate in the normal course of Article 112 of the Constitution. I cannot understand why you are protracting this issue.

Sen. Mutula Kilonzo Jnr.: On a point of order, Mr. Deputy Speaker, Sir, I concur with Sen. (Dr.) Khalwale. The minute we discovered that the National Assembly had plagiarised our Bill and brought their Bill here, the Speaker agreed to remove it from the Order Paper. To then send a Committee from the Senate on a mediation of a Bill which they plagiarised is the contradiction and dilemma that Sen. (Dr.) Khalwale and myself are in. That is the sort of direction that you ought to give us so that we do not appear as if our Bill was taken away by the National Assembly yet we are discussing the same Bill which we are objecting to.

The Deputy Speaker (Sen. Kembi-Gitura): At the risk of repeating myself, let me say this; what I have read to you as a Message from the Speaker of the National Assembly, I have read it to you faithfully, verbatim. That is why when I was coming to a close, I told you that the inverted comas had started because I had not said in inverted comas at the word “Pursuant to the provisions”. So, you must take that body of my message to you as what has come from the Speaker of the National Assembly. That includes the issue that you, Sen. (Dr.) Khalwale and Sen. Mutula Kilonzo Jnr., are taking issue with. It says this:-

“Whereas the National Assembly in the same sitting – I reckon it is the sitting that we are referring to – rejected The Political Parties (Amendment) Bill, Senate Bill No.3 of 2014 at Second Reading”

Do you want me to go behind it and ask for the HANSARD and see whether it was rejected at the First, Second or Third Readings? I am reproducing what the Speaker of the National Assembly is saying. If it was rejected, as he says it was, what is the course of action? Where do we move from there except mediation?

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Sen. (Dr.) Khalwale: On a point of order, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. Kembi-Gitura): Order, Sen.(Dr.) Khalwale. We will not protract this issue anymore. You are a Member of the Committee. If you are seeking to withdraw from that Committee then, I will have to reconstitute it. But the moment the Speaker thinks that the four of you should be able to sort out this issue, should you go and find out that what you are saying is correct – I have no way of knowing at the moment as I sit here – then you will come and report and say: “The Mediation Committee cannot go on because there was plagiarisation of our Bill and, therefore, we are at *status quo ante*. That must be the position. However, as I sit here, I have constituted a committee.

Yes, Sen. Judith Sijeny?

Sen. Sijeny: Yes, Mr. Deputy Speaker, Sir. I just want to thank you for the cooperation that we are getting from the National Assembly. My only concern is that there is an issue of gender in the membership of the Committee. It would be more appropriate if a lady would be selected.

The Deputy Speaker (Sen. Kembi-Gitura): Order! I have given a communication. We will not discuss gender now. We are not going to revisit the Communication I issued.

Sen. Murkomen: Mr. Deputy Speaker, Sir, I know the rules and I am not challenging your communication---

(Sen. Wako and Sen. Kilonzo Mutula Jnr. consulted)

The Deputy Speaker (Sen. Kembi-Gitura): Order, Sen. Mutula Kilonzo Jnr.! Order, Sen. Wako! Let us have some order. You have canvassed an important issue. I do not want you then to tell me you did not follow what went on. Sen. Wako has come in late and he is in that Committee. Therefore, I do not want him to drag us back.

Sen. Murkomen: Mr. Deputy Speaker, Sir, considering the issues that have been raised by my colleagues from the other side, just for the record, do you not think, moving forward, we need to put in place an Act that guides the mediation process? I saw in your communication; it says that the Bill was rejected at Second Reading. In the future what will happen? If a Bill is rejected at Second reading, what does that mean? Does it mean that it now goes to mediation, or does it collapse?

Those issues have arisen from what they said, and my observation of the law. Perhaps, going forward, it will be important for us to have a law on that issue of mediation.

The Deputy Speaker (Sen. Kembi-Gitura): You are talking about the future not the specific communication, is that right?

Sen. Murkomen: Yes, Mr. Deputy Speaker, Sir. I cannot challenge your communication. You are the Deputy Speaker.

The Deputy Speaker (Sen. Kembi-Gitura): That is an issue on which you can bring a substantive Motion.

Sen. Kagwe: Mr. Deputy Speaker, Sir, I support what Sen. Murkomen said. However, when an issue was going into mediation, my understanding of it, at least, it is because one part of the Bill, a clause, a word, a sentence or the entire Bill has been

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rejected. Nowhere do we say, that, this is the range in which we reject so we that can go into mediation. We can go into mediation even as things are at the moment. One of the discussions that would be there at the mediation is; why was the Bill rejected in its entirety?

Even without belabouring the point or going back to your ruling, I would ask the Committee to go in good faith and seek to succeed where we had failed through the mediation process.

The Deputy Speaker (Sen. Kembi-Gitura): Very well. That settles the issue. Both Sen. Kagwe and Sen. Murkomen have put it very well.

Even if there was plagiarism, and I am not making a judgment on that; they looked at the plagiarised Bill which you say was your Bill; they rejected It and adopted their own. That is a rejection. That is what the message says. Therefore you must go and tell them: “You plagiarised our Bill. We are either going to reinstate our Bill or we are not going along with yours.”

That is why you are going to mediate. At the end of the day, you want a Bill that satisfies the need for which the issue has been brought here, in the first instance.

PETITION

VIOLATION BY THE NATIONAL REGISTRATION BUREAU OF THE RIGHTS OF RESIDENTS OF VIHIGA COUNTY TO REGISTRATION AND ISSUANCE OF NATIONAL IDENTITY CARDS (IDS)

Sen. Khaniri: Mr. Deputy Speaker, Sir, I rise pursuant to Standing Order Nos. 220(1)(a) and 225(2)(b).

I HEREBY present to the Senate, a Petition from the Justice and Legal Affairs Committee of Vihiga County Assembly, concerning alleged violation by the National Registration Bureau of the rights of residents of Vihiga County to registration and issuance of National identity cards (IDs).

In the Petition, the Committee wishes to bring to the attention of the Senate;

- a) THAT, it is the right of every Kenyan, upon attaining the age of 18 years, to be issued with a national ID.
- b) THAT, lack of national IDs denies one the full enjoyment of other rights granted under the Constitution. Among them:
 - i. The right to vote and participate in the political process.
 - ii. The right to own property.
 - iii. The right to seek and obtain employment.
 - iv. The right to marry and found a family.
- c) THAT, the Committee has received numerous complaints from the residents of Vihiga County concerning the challenges and frustration they face in seeking to be formally registered as citizens of Kenya and to be issued thereon, with national IDs.
- d) THAT, upon inquiring into the complaints, the Committee identified the following as among the challenges facing the National Registration Bureau officers in seeking to register residents of the County:

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- i. Inadequate funding and staffing.
- ii. Shortage of materials for application and processing of IDs.
- iii. Delays in processing and production of IDs from the Headquarters in Nairobi.
- iv. Lack of sufficient, secure accommodation in some sub-counties and divisions.
- v. An official cost charged to applicants and blamed on corruption.
- vi. Lack of transport to enable efficient mobile registration
- vii. Poor ID collection rate due to prolonged delays in processing of the IDs.

- e) THAT, for the period of July 2014 to June 2015, out of the 28,365 applications made for IDs in Vihiga County, only 17,179 had been processed and received from the headquarters.

The petitioner, therefore, prays that the Senate investigates this matter and intervenes to address the issue raised. Among the proposals submitted by the petitioner Committee are;

- a. Increased funding for the National Registration Bureau to enable the Bureau recruit additional staff and put in place mobile registration units to increase accessibility by citizens.
- b. Acquisition by the National Registration Bureau of materials and equipment for more efficient processing of IDs and deployment of the same to the counties.
- c. Increased publication and relaying of information on ready IDs to enable collection of the same by the concerned citizens. I thank you and hereby lay the document.

(Sen. Khaniri laid the document on the Table)

The Deputy Speaker (Sen. Kembi-Gitura): Hon. Senators, before I allow comments on the Petition, the Senate is in the process of considering The Registration and Identification of Persons Bill (Senate Bill No.39 of 2014) which addresses some of the challenges identified in the petition.

Accordingly, I would like the Standing Committee on National Security and Foreign Relations to speedily conclude consultations with stakeholders with regard to the Bill to enable the same to be scheduled for the Second Reading.

Pursuant to Standing No.226, I shall now allow comments, observations or clarifications in relation to the petition, for not more than 30 minutes. This is debate. If you want to contribute to it, place your requests.

Musila: Mr. Deputy Speaker, Sir, I thank you and the distinguished Senator for Vihiga, Sen. Khaniri, for bringing this petition on behalf of his people to the Senate. This is not the first time we are receiving a petition of this nature. We have received such petition from many other places. This is a common national problem. This Senate owes it to the people of Kenya to look seriously into the issue of IDs because registration of IDs is a continuous process.

This leads me to the next issue, the voter's cards. People are being denied IDs so that they do not get voter's cards. The two are related. In my county, during the last general election, applications for registration of IDs were sent long time before the elections. However, people could not get them for months. Immediately after the elections, all the IDs were released. Part of this is rigging elections in advance. Every Kenyan must get an ID card immediately and this should be followed by a voter's card.

The Deputy Speaker (Sen. Kembi-Gitura): Hon. Senators, I request you to be brief. There are a lot of requests.

Sen. Hassan: Mr. Deputy Speaker, Sir, I feel the pain of the petitioner and the pain of Sen. Khaniri. I come from a county and communities that have felt particularly discriminated in matters of issuance of IDs. Kenyans of Arab-Somalia origin have had untold discrimination on the issuance of IDs.

In addition, we need to appreciate the provisions of Article 12(1)(b) which states:-

"Every citizen is entitled to a Kenyan passport and any document of registration or identification issued by the State to citizens."

Issuance of IDs is not at the discretion of the Registrar of Persons. It is a right enshrined in the Constitution. We must interrogate the inefficiencies that have bedeviled the issuances of IDs. Why are people from certain ethnic backgrounds, particularly those of ancient Somali and Arab origin being subjected to multiple criteria in the issuance of IDs, despite court orders?

Equally, as Sen. Khaniri has alluded to, these IDs open doors to a lot of other rights that accrue as a consequence, including the right to vote. Therefore, a lot of hosts of rights are denied on account of denial of IDs. This petition should go a step further to demonstrate actual discrimination and sheer incompetence in the issuance of IDs. That will ensure sanctions against officers who are charged with the responsibility to ensure this citizenship right is upheld and respected as per the Constitution.

Sen. Adan: Mr. Deputy Speaker, Sir, first, let me commend the petitioner. I know this matter is going to come before our Committee.

The Deputy Speaker (Sen. Kembi-Gitura): You do not know that, do you?

Sen. Adan: Mr. Deputy Speaker, Sir, the issue of IDs is a pertinent issue. An ID is a very important document. In Kenya today, you cannot get a job without an ID. In Isiolo County, where I come from, the concern is similar. Some of the youths there are over 22 years and yet they do not have IDs. That denies them the right to employment in the country.

I am sorry to say that, it is very easy for foreigners to get IDs and passports in this country while Kenyans are suffering at the hands of civil servants. It is really important that we investigate this matter properly and come up with a proper resolution and recommendation that will be implemented.

Sen. Obure: Mr. Deputy Speaker, Sir, first I want to thank Sen. Khaniri and Vihiga County Assembly for raising this very important petition. There is a very serious problem with the registration of persons. The petition by Vihiga County Assembly is a reflection of the level of dissatisfaction by the citizens in a number of counties especially those neighbouring Vihiga County. The effects of the failure to issue identity cards to citizens denies them their rights as clearly stated in the petition; the right to own property, seek employment, vote and so on and so forth.

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Recently, I looked at the statistics relating to registration of voters in my county. This is a continuous exercise which has been going on since April 2014. In a number of wards in my county, not a single additional voter had been registered. All this is due to the fact that identity cards are not being issued to people. For various reasons, materials are not available and the staff who are supposed to do this exercise are not equipped. Additionally, the registration process is very slow. I wish to appeal to those responsible for the issuance of identity cards and to remind them that the issuance of identity cards is a fundamental right of every citizen.

If you go to my county, married women are moving around looking for identity cards, which they have not been able to get for years. Young people leaving school end up getting to the ages of 25 to 27 and they are unable to get these identity cards. Therefore, their movement is restricted. Their capacity to do several other things is also limited because of that very fact. I wish to appeal to those responsible to ensure that this important duty is performed so that people have access to this important document.

Sen. Kagwe: Mr. Deputy Speaker, Sir, I rise to support the petitioner and Sen. Khaniri for bringing this petition to this House. As a matter of fact, last weekend, I had a meeting in my county with the youth who are basically complaining of the same situation. Their identity cards have delayed. Some of them wanted to participate in the Armed Forces recruitment. However, they could not do so because of the fact that they do not have identity cards.

In this time and age, it ought to be possible through information technology to process an identity card in the shortest time possible. It ought to be possible to combine an identity card with other forms of identification such as the National Social Security Fund (NSSF) card and driving licence. These documents ought to be within the same databank. The idea of a databank behind an identity card would solve the problem that Sen. Adan has raised here where there are suspicions that a person who is not a Kenyan could be registered. We must be alive to this; it is a fact that there are people who will try to get Kenyan IDs and yet they are not Kenyans.

The type of identity card we should be talking about today should be one that has got other documents behind it. If we have the birth certificate, if you type the name of an individual such as Sen. Murkomen, the data should show where he was born, where he came from, who his father was, who the chief was and other information that can eliminate the problem of suspicion that goes around and denies many Kenyans their birth right of getting a proper identification card.

We are appealing to the relevant departments to invest in information technology so that they will be able to fast track any application for an identification card and to have relevant data and information to ensure that only the right people get identity cards on a timely basis.

Sen. Murkomen: On a point of order, Mr. Deputy Speaker, Sir. I want to make a brief contribution on the petition about the ID issue.

The Deputy Speaker (Sen. Kembi-Gitura): Order! There are many Members who want to contribute to this issue. If you want to talk, press the request button not the intervention one. Those of you that are on intervention, you are going to queue for a very long time because, I told you that this is a debate and, therefore, if you want to talk, make your request. There is no shortcut to this, Sen. Murkomen.

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I have more than ten requests. If each of you takes two minutes that will be 24 minutes. We do not have 24 minutes because we have about 10 minutes remaining so I will give you one minute each.

Proceed, Sen. (Dr.) Khalwale.

Sen. (Dr.) Khalwale: Mr. Deputy Speaker, Sir. The Constitution speaks to the issue of freedom from discrimination. For some of us who come from communities that border other countries in East Africa, our sons marry from Uganda. According to our culture, once that girl is married in Luhyaland, she becomes a Luhya and, therefore, a Kenyan. We would like this Committee to go and establish whether it is a policy that the wives of our sons who come from Luhya families across the border should be denied an opportunity to be given an ID card.

Secondly, many of our people in Trans Nzoia County are squatters. When a boy applies for an ID, he is told to produce his father's ID, which he does. After that, he is asked to bring the title deed of the father. We would like this Committee to come clean on whether the production of a title deed is a requirement for somebody to be registered as a citizen of this country.

Finally, this Committee must come up with full data of how registration is on going in the whole country because some of us feel that certain communities are being disfranchised deliberately so that they do not participate in the 2017 General Election. We would like to see the spread.

The Deputy Speaker (Sen. Kembi-Gitura): I hope the Clerks-at-the-Table are doing the timing because Sen. (Dr.) Khalwale has spoken for too long, much longer than I had allowed him to speak.

Proceed, Sen. Leshore.

Sen. Leshore: Thank you, Mr. Deputy Speaker Sir, for giving me this opportunity first to congratulate the people of Vihiga County for coming up with this very important petition. This problem occurs not only in Vihiga but all over the country. Many of my colleagues have said that some of us feel that we are discriminated, especially the pastoralist communities. Our young men and girls do not get the opportunities to be employed in any institution because they lack identity cards. I would like to request this Committee to see how those young men could automatically get identity cards in their own counties instead of applying for them there then they are brought to Nairobi. They end up delaying for even up to one year.

I would like the Committee to streamline how our youths get identity cards.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Leshore, your minute is over.

Please, proceed, Sen. Abdirahman.

Sen. Abdirahman: Mr. Deputy Speaker, Sir, I join my colleagues in thanking the Senator for Vihiga County and by extension, the Vihiga County Assembly's Legal Affairs Committee. This is a nationwide problem and worse in areas where some of us come from. Last Friday, I visited a centre called Hele and communities coming from as far as 200 kilometres were forced to come to the centre at a common place to apply for national identity cards which is really inconveniencing. Some of the communities that we come from are subjected to two vetting exercises; one at the grassroots level and another at the national level. It is very discriminative. The Committee must go beyond Vihiga County and cover the nation as it is a national problem and report back. I am not

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appealing to the Committee like my colleagues, I am demanding. This is our right and we must be given what we deserve.

Sen. Karaba: Mr. Deputy Speaker, Sir, I wish to remind Kenyans that when a person is born, he is issued with a birth certificate. When he marries, he is issued with a marriage certificate. When he attends school and completes his studies; he is issued with a school leaving certificate. We have available data in Kenya. Therefore, when it comes to the issuance of identity cards, it is very easy for the Government to do so because they have all the information that they require. Why do they say that they do not have sufficient information? There are also so many identity cards lying idle in the County Commissioners' offices and chiefs offices. What is the Government doing to make sure that identity cards are issued to the right people? I rest my case.

Sen. Mutula Kilonzo Jnr.: Mr. Deputy Speaker, Sir, they say that facts are very stubborn animals. Almost 65 per cent of Kenyans are eligible to vote. This translates to roughly 26 million yet registered voters are 14 million. That means that the balance does not have identity cards. They have been discriminated. As Sen. Karaba said, when someone is born, he is issued with a birth certificate. When he dies, his next of kin are given his death certificate. When they leave school, they receive a school certificate. When they get married, they receive a marriage certificate. However, when they are 18 years of age, they are unable to get an identity card.

Mr. Deputy Speaker, Sir, in an effort to determine what the problem is in Makueni County, I visited the national registration office. I urge the Committee to go to the national registration offices. I am sure they will discover that Parliament has allocated the National Registration Bureau a quarter of the budget they require for registration of Kenyans. That is where the problem lies.

Sen. Kisasa: Bw. Naibu Spika, nampa hongera Sen. Khaniri kwa kuleta jambo hili. Kitambulisho ni stakabadhi muhimu sana. Kule Kilifi, kuna vitambulisho vingi sana ofisini kwa chifu. Watu wetu hawajui pa kuvipeleka vitambulisho hivyo au labda watu hawana akaunti za benki au uajiri. Kamati hii ni lazima ihakikishe kwamba vitambulisho hivyo vimepewa wenyewe. Najua wengi wetu wataenda kuvitafuta kura itakapowadia. Kama kawaida, sisi huenda mbio dakika ya mwisho kutafuta stakabadhi za kutumia kupiga kura.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. M. Kajwang, you must organize your thoughts and finish in exactly one minute.

Sen. M. Kajwang: Mr. Deputy Speaker, Sir, I wish that the petition be broadened a little bit because the Senator for Vihiga County, has narrowed it down to discrimination in Vihiga County. I wish it could go further and look into alleged discrimination of communities that live in border counties; that involves 21 counties.

Secondly, the petition should also investigate the alleged discrimination of our women, particularly the young women who we marry. The petition should also go further to investigate why we cannot decentralize issuance of identity cards. If we can open bank accounts on our phones, what is so special about the identity cards that issuance has to be done in Nairobi?

Sen. Murkomen: Mr. Deputy Speaker, Sir, on the issue of identity cards, apart from the question of being used for voting, we need to check and see why it is not possible for us to issue an identity card to every child when they are born so that the card

can then be used for different purposes at different times. It can be as an identity card when the child is taken to a public hospital for purposes of insurance and all things that one wants to do. When the holder gets to 18 years, the card can be used for other reasons. I propose that all children of Kenya be given identity cards at birth. I believe that will solve the problem of registration among the counties and discrimination. That is the voice of Elgeyo-Marakwet County which is a highly marginalized area on that matter.

Sen. Ndiema: Mr. Deputy Speaker, Sir, I also thank the people of Vihiga County for bringing up this issue. This is an issue that I have spoken about previously. The youths in my county have problems getting identity cards. It is not only the youths who are affected, but the old men with the old generation identity cards as well; they are not being facilitated to convert the old generation identity cards to the new generation. If registration at birth is compulsory and we have the data, there is no reason identity cards cannot be issued online. In a country like Singapore, even application for identity cards and passport one does not need to go to any office. In fact, one pays a fine if they go to register at the registration offices.

Sen. Wako: Mr. Deputy Speaker, Sir, I wish to thank the Senator for Vihiga County for having brought this matter which concerns, not only Vihiga County, but is cross cutting as a number of Senators have stated. I plead with you that in view of the fact that the petition came from the Justice and Legal Affairs Committee of Vihiga County, the Committee on Legal Affairs and Human Rights of the Senate should also be involved in this petition together with any other Committee that is necessary. If you read the mandate of the standing Committee on Legal Affairs and Human Rights, we are also concerned with elections. As Sen. Musila said, this is an issue that touches on elections. However, more importantly as most of the speakers have stated, an identity card is a fundamental right that affects the other rights.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Wako, by virtue of you being the Chairperson of the Committee on Legal Affairs and Human Rights, I give you an extra minute to finish.

Sen. Wako: Mr. Deputy Speaker, Sir, some Members have stated here, that identity cards should be issued at birth. However, I state that it should be issued at the time one is applying to be registered for the national exams. They should apply in their respective schools to get identity cards so that they get them before they leave school. To me, that will reduce the cost involved in the movement of people from one place to another for registration. I, therefore, propose that students should leave high schools with their identity cards.

Thank you.

Sen. Sijeny: Mr. Deputy Speaker, Sir, I also congratulate the Senator who has brought this Petition. I urge the Committee to pay special attention to women because women have very unique issues and Sen. M. Kajwang has mentioned that. For the few that I have interacted with, you will find that their parents were born and brought up here in Nairobi and they have never regularised their documentation. They are also married to young men of Nairobi who do not have proper identification. When they apply for identification (ID) cards, they are required to have affidavits, their fathers ID cards and other documents. Therefore, due regard should be taken for such unique situations so that

women are not left behind because, we know, they are the ones who vote and they are the majority in the country.

The Deputy Speaker (Sen. Kembi-Gitura): Finally, Sen. Omondi.

Sen. Omondi: Mr. Deputy Speaker, Sir, I thank the petitioner. I also add my voice on behalf of persons with disability. Most persons with disability do not have ID cards simply because they are not given an opportunity and the bureaucracy does not allow them. I propose that the Committee should also work on plans on how to allow door to door voter registration for persons with disability to allow Kenyans with disabilities have this right of birth and participate in other issues where an ID card is required.

There is also the issue where women are forced to get their parents' ID cards. That is an area of concern that should be addressed to allow more women---

(Sen. Omondi's microphone went off)

The Deputy Speaker (Sen. Kembi-Gitura): Order, Senator. Time is up!

Hon. Senators, pursuant to Standing Order No.227(1), the petition shall stand committed to the relevant standing committee, in this case, the Standing Committee on National Security and Foreign Relations. I have heard Sen. Wako's sentiments about this issue being directed to the Committee on Legal Affairs and Human Rights. However, I commit it to the Committee on National Security and Foreign Relations although I agree with Sen. Wako that it could be enriched very much if there is consultation between the two committees. However, the committee of committal is the Committee on National Security and Foreign Relations.

In terms of Standing Order No.227(2), the Committee will be required, in not more than 60 days from the time of reading the prayer, to respond to the petitioner by way of a report addressed to the petitioner and laid on the Table of the Senate. Thank you very much.

Next Order.

STATEMENTS

The Deputy Speaker (Sen. Kembi-Gitura): There are a number of statements to be issued. However, there are also a number of statements being requested for. Therefore, we shall start with requests.

KILLINGS IN KITUI COUNTY

Sen. Musila: On a point of order, Mr. Deputy Speaker, Sir. Last week, on 15th October, 2015, I raised a point of order on a matter that is very important to this House. You are aware that I have been raising the issue of security in Kitui-Tana Border where over 25 of my people have been killed. The Chairman of the Committee on National Security and Foreign Relations and his Vice Chairperson did their best to respond to that until they said that they could not provide the right answers. The Chair ruled that the Cabinet Secretary (CS) in charge should meet the whole House and explain these matters,

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among others, because there are other Members who are concerned with security matters in their areas.

The CS was asked to come and he confirmed that he would come on Thursday, 15th October, 2015. I congratulate Members of this House because they came in large numbers. You also came. Unfortunately, after waiting until 1.00 p.m., the CS never showed up. The matter seems to be ending there. Would I be in order to ask you to use your powers to get the CS for the Ministry of Interior and Coordination of National Government in this House so that we deal with the matter because we have tried our level best through the normal channels but we have failed? I plead that you use your authority to get the CS, Maj. (Rtd.) Nkaissery, here to answer our questions.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Khaniri, are you on the same point?

Sen. Khaniri: Yes, Mr. Deputy Speaker, Sir. I have realised that the distinguished Senator is requesting you to summon the CS. I just want to bring to the attention of the distinguished Senator the provisions of Article 125(1) and (2)(a) and (b). We have established a tradition that whenever there is a request for a statement, the committee writes to the relevant CS. If he or she does not respond, we normally do a reminder. We invite them if they do not respond. If they do not come, they are summoned by the Committee. However, we have not gone through all those procedures. If we have, then, the right thing to do would be for the Committee to use the powers provided for in the Constitution and issue summons to this particular CS. It should not appear as if it is a hopeless situation and that we are helpless. We have powers given to us by the Constitution. It is upon the committees and their chairpersons to ensure that they use the powers in such cases.

The Deputy Speaker (Sen. Kembi-Gitura): The Vice Chairperson of the Committee is here. Could she explain to the House why they have not had the CS here?

Sen. Adan: Mr. Deputy Speaker, Sir, I take this opportunity to respond to the concern of the House. Several Members turned up on Thursday, 15th October, 2015 to interact with the CS. I appreciate the concerns raised by Sen. Musila and others in terms of security matters that have been pending for a very long time.

Mr. Deputy Speaker, Sir, on that particular day, the CS was appearing before the National Assembly Committee almost at around the same time. I appreciate that Members took time to wait for the CS to appear before the Committee. Unfortunately, he took so long. He came immediately we had left. He did not refuse to turn up but he was held up in the National Assembly Committee meeting.

Therefore, Mr. Deputy Speaker, Sir, I request the House to allow me until tomorrow so that I get another appointment for him to appear before the Committee. If that fails, then, we will, as a Committee, summon him.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Adan, Sen. Musila has raised a very pertinent issue; that is, whether or not the issue has died because the CS did not come and there has been no further communication from your committee on when he will appear before the Committee and other Senators who are interested in the matter. I think that is the issue being raised. It is not enough to tell this House that the CS was appearing before another House. We do not know about that because the request was for this

Senate. The truth of the matter is that he did not come when Senators were expecting him and no explanation was made.

Therefore, the issue at hand is; have the matters that were raised abated or are they still live? If they are still live, when will they be dealt with? Only you can tell us because you are the Vice Chairperson of the Committee. These are important issues concerning security. The reason we had called the CS to appear before – not just the Committee but any other Senator interested – was that instead of raising the same issues in the House, Senators could raise issues directly with the CS.

I think this is an important issue and your Committee needs to tell us when the Cabinet Secretary will appear before this House, not with commitments to other Houses but before this House, to deal with the issues that can be specifically raised by this House. That is the answer I would like to hear from you because it is important.

Sen. (Dr.) Khalwale: On a point of information, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. Kembi-Gitura): Who do you want to inform?

Sen. (Dr.) Khalwale: Mr. Deputy Speaker, Sir, Sen. Adan.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Adan, do you want to be informed? It does not seem she wants to be informed. Sen. Leshore, do you have a point of order?

Sen. Leshore: Mr. Deputy Speaker, Sir, it is not a point of order. I support strongly the sentiments aired by my good colleague Sen. Musila. Sen. Musila has been crying for too long and we---

(Laughter)

The Deputy Speaker (Sen. Kembi-Gitura): Order, Sen. Leshore. Proceed, Sen. Adan.

Sen. Leshore: Mr. Deputy Speaker, Sir, give me a minute.

Sen. Adan: Thank you Mr. Deputy Speaker, Sir. Let me confirm to the House---

Sen. (Dr.) Khalwale: On a point of information, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. Kembi-Gitura): Order, Senators. You see, you cannot give information by force. Sen. Adan has not indicated that she wants to be informed and you cannot force her to be informed. Hold your peace until you have an opportunity, if any. Do you want to be informed Sen. Adan?

Sen. Adan: Mr. Deputy Speaker, Sir, it seems he has a burning issue. Let him inform us.

Sen. (Dr.) Khalwale: Thank you, Mr. Deputy Speaker Sir. Sen. Adan is a Chair of an important Committee like most of the Chairs in this House. At a great cost to the Senate, this matter remains vexing to our Committee when governors started defying us to the extent that we were forced to outsource legal advice. We were advised that we must start exercising the powers of the High Court as provided for under Article 125 of the Constitution. We were told that we should issue a warrant of arrest for---

The Deputy Speaker (Sen. Kembi-Gitura): Order, Sen. (Dr.) Khalwale. If you were following this debate, and I am sure you were, you would have heard Sen. Khaniri read Article 125. I do not think you are giving any new information to the Senator because that has been read. The HANSARD will bear me out. I am sure Sen. Adan

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knows provisions of Article 125 but I want her to explain and to tell us when the Cabinet Secretary will come here.

Sen. Adan: Mr. Deputy Speaker, Sir, I wish to confirm to the House that the matters are still alive and for us, as a Committee, it is important to have the Cabinet Secretary appear before us because he will clarify so many things that we are unable to clarify when we are answering these Statements.

I request the House to give me until tomorrow so that I can give a definite date when the Cabinet Secretary will appear before us because the matter of appointment was between the Cabinet Secretary and the Chairman who is now away. So, I request the House to bear with me so that I can give feedback on when he should appear before this Committee.

The Deputy Speaker (Sen. Kembi-Gitura): Thank you, Sen. Adan. Sen. Musila, I have heard you and the Chairperson of the Committee. I request that you raise the issue tomorrow afternoon so that the Vice Chairman of the Committee can give us a definite date when the Cabinet Secretary will appear before the Senate. If it does not happen, then, we can deal with the issues of Article 125 of the Constitution.

We have a few Members seeking Statements.

KILLING OF MR. ELIUD WACHIRA GACHOKI

Sen. Karaba: Thank you, Mr. Deputy Speaker, Sir, for allowing me to rise, pursuant to Standing Order No. 45(2) (b), to seek a Statement from the Chairperson of the Standing Committee on National Security and Foreign Relations relating to the killing of Mr. Eliud Wachira Gachoki on Sunday, 25th January, 2015. In the Statement, the Chairperson should:-

- (a) Explain whether he is aware that Mr. Eliud Wachira Gachoki was found lying in a pool of blood dead at his doorstep in Kimuri Estate, Kerugoya Town, on Sunday, 25th January, 2015 and that he had a deep cut on his head and a fractured skull.
- (b) Explain whether he is aware that his son immediately reported the matter at Kerugoya Police Station and informed close relatives.
- (c) Explain whether he is aware that the home perimeter fence was also found broken, the door to his house wide open and the household items including a 21inch television set, laptop computer, gas cylinder, mobile phone, 3inch DVD player, safaricom airtime cards and other personal items in the pocket stolen.
- (d) Clarify whether the police have conducted investigations into this grievous matter and specify whether the perpetrators of this heinous act have been apprehended.
- (e) If the perpetrators have been apprehended, state their identities and explain what action has been taken against them.

Thank you.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Adan, when are you going to issue that Statement?

Sen. Adan: Mr. Deputy Speaker, Sir, I request to be given up to Thursday next week to respond.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Karaba is that okay?

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

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The Deputy Speaker (Sen. Kembi-Gitura): Thank you. Thursday next week.

CAUSES OF OIL SPILLAGE INTO RIVER THANGE
IN MAKUENI COUNTY

Sen. Mutula Kilonzo Jnr.: Thank you, Mr. Deputy Speaker, Sir. Pursuant to Standing Order No. 45(2) (b), I rise to seek the following Statement from the Chairperson of the Standing Committee on Energy regarding the oil spillage into River Thange in Makueni County. In the Statement, the Chairperson should state the following:-

- (1) The date when the leakage commenced.
- (2) Explain the cause of the spillage.
- (3) State the reason the said leakage and/or spillage has not been repaired or stopped.
- (4) Whether the National Environment and Management Authority (NEMA) was notified of the above incident.
- (5) State whether an Environmental Impact Assessment (EIA) has been conducted on the underground water by the National Environment Management Authority.
- (6) Explain the remedial action taken to address the leakage and the spillage.
- (7) Whether there is any mechanism that the Kenya Pipeline Company has set up to deal with the oil leakage and emergencies that arise out of such leakage and/or spillage in Makueni, particularly along the pipeline.
- (8) State the remedial action(s) taken on the underground water and cleaning of River Thange.

Thank you.

The Deputy Speaker (Sen. Kembi-Gitura): Is that the Committee on Energy?

Sen. Mutula Kilonzo Jnr.: Mr. Deputy Speaker, Sir, yes.

The Deputy Speaker (Sen. Kembi-Gitura): Any Member from the Committee on Energy?

Sen. Murungi: Thank you, Mr. Chairman. I will communicate---

The Deputy Speaker (Sen. Kembi-Gitura): The Chairman of which Committee are you referring to?

Sen. Murungi: Mr. Deputy Speaker, Sir, I am not the Chairman of the Committee on Energy but a Member of the Committee. I will communicate and get the Statement delivered to the House in two weeks' time from now.

Sen. Mutula Kilonzo Jnr.: Mr. Deputy Speaker, Sir, may be the tone of my voice disguised the fact that this is an emergency. The people of Thange in Makueni are unable to fetch water because every time you dig, you get oil. Fourteen days is too long. Last week, the residents of Thange blocked the Nairobi-Mombasa Highway for a period of not less than eight hours. They are going to do it again. We need the responses particularly on what they can do to remedy the cause of this spillage even before we---

The Deputy Speaker (Sen. Kembi-Gitura): You think two weeks is too long?

Sen. Mutula Kilonzo Jnr.: Mr. Deputy Speaker, Sir, it is too long.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Murungi, do you hear him?

Sen. Murungi: Mr. Deputy Speaker Sir, I undertake to communicate to the Chairman of the Committee who will liaise with the Cabinet Secretary and the Cabinet

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Secretary will liaise with the Managing Director of the Kenya Pipeline Company. It is a long process and I think it will be too ambitious for us to expect their Statement within one week. I plead with my colleague for two weeks. If we are able to do it earlier, we will inform you accordingly.

The Deputy Speaker (Sen. Kembi-Gitura): Hon. Senators, this matter is to do with environment because he was talking about contaminated underground water.

Sen. Murungi, let us make it ten days from today. Let us get an answer then. Is that okay?

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

The Deputy Speaker (Sen. Kembi-Gitura): Of course, it is a compromise. If the emergency continues, you can raise it again.

NON PAYMENT OF SEPTEMBER SALARIES TO TEACHERS

Sen. Khaniri: Mr. Deputy Speaker, Sir, I rise pursuant to Standing Order No.45(2)(b) to seek a statement from the Chairperson of the Standing Committee on Education regarding the delayed payment of teachers' salaries for the month of September, 2015. In the statement, the Chairperson should explain the following:-

(1) Why the Government, through the Teachers Service Commission (TSC), has ignored the Labour Court ruling of 25th September, 2015, that directed teachers' unions to call off the strike and in return the Government to pay the teachers who were on strike their September salaries.

(2) Explain whether the Cabinet Secretary for Education, Science and Technology is aware that secondary school students are currently sitting for their Kenya Certificate of Secondary Education (KCSE) which are supervised by the same teachers, majority of whom have not been paid their salaries yet they are expected to ensure smooth conduct of examinations.

(3) Explain what the Ministry of Education, Science and Technology and the TSC seeks to achieve by continuously ignoring court orders and dragging the country through lengthy legal battles at the expense of taxpayers and stakeholders.

(4) Enumerate the amount of money that was used or has been used so far as litigation fee by the Ministry of Education, Science and Technology and the TSC in the numerous court cases which could have been avoided.

(5) State when the teachers will be paid their September salaries.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Karaba, that one is for you.

Sen. Karaba: Yes, it is for me, Mr. Deputy Speaker, Sir.

I will respond after two weeks. We want to await the court decision which is on 6th November, 2015 on the same.

Sen. (Dr.) Khalwale: On a point of order, Mr. Deputy Speaker, Sir. I request that you allow me to ride on the statement so that the Chairman could clarify to Kenyans whether the real reason teachers are not being paid is not because the Government has over-borrowed, over-spent---

The Deputy Speaker (Sen. Kembi-Gitura): Order! You requested me for the Floor, but you just started riding. That is not the way things are done here. You first

request. If you are allowed, you go on. If you are not, you do not go on. You just cannot say you want to ride and then go on and ride.

Sen. (Dr.) Khalwale: I request, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. Kembi-Gitura): Okay, you have one minute.

Sen. (Dr.) Khalwale: Mr. Deputy Speaker, Sir, I was asking whether the real reason is not because this Government has over-borrowed, over-spent and over-stolen, the way the party leader of---

The Deputy Speaker (Sen. Kembi-Gitura): Order, Sen. (Dr.) Khalwale! You know, most times, you raise important issues then you water then down when you use a word like “stolen”. You have been in Parliament for long enough to know that you cannot use certain words in certain contexts. I do not need to remind you.

Sen. (Dr.) Khalwale: Mr. Deputy Speaker, Sir, may I replace the word?

The Deputy Speaker (Sen. Kembi-Gitura): It is not enough for you to then say you want to correct it. You often do that, because you did the same thing last week.

Sen. (Dr.) Khalwale: Mr. Deputy Speaker, Sir, I withdraw the word “stolen” and say “have obtained through corrupt means to the extent that they are broke” so they are hiding in not paying teachers when they know very well that they do not have the money. Is that the reason?

The Deputy Speaker (Sen. Kembi-Gitura): Sen. (Dr.) Khalwale, there is one thing I would like to bring to your attention and you know it better than most people. That even when you ride on an issue, it should be relevant. If you want to know whether the Government has “stolen”, to use your word, or has corruptly done things that have made it impossible to pay teachers, you raise your own statement and you will get an answer accordingly. If you want to ride, it should be on a matter that is relevant to the question or the statement sought. That is the rationale under which the Speaker allows people to ride on other people’s statement. Otherwise, the correct thing would be to ask you to seek your own statement. That should be the correct position.

In the same way, you cannot raise a completely irrelevant issue whether important or not, when a statement is being issued then many times a person issuing the statement tells you that you have an open window of asking for a specific statement. This is important because it is what is advising the continuous view that the issue of riding on other people should not be encouraged in the House. That is a matter that has to abide by the ruling of the Speaker.

Sen. Khaniri, you did not say anything about the two weeks given. Is it okay with you?

Sen. (Prof.) Lonyangapuo: On a point of order, Mr. Deputy Speaker, Sir. My point of order is on the manner in which the Chairman was responding and giving the duration. It looks as though he does not take this problem with the weight it deserves. No teacher has been paid and yet they are working. I would expect the Chairman to say one week or less.

The Deputy Speaker (Sen. Kembi-Gitura): How can you discern the tone of the Chairman; that he is not taking the matter seriously? You have to be fair to him also. The fact that he asked for two weeks--- I am asking Sen. Khaniri whether that is sufficient or too long.

Sen. Khaniri: Mr. Deputy Speaker, Sir, you will definitely agree with me that given the nature of this matter, two weeks is too long. First, this is an ongoing matter, it is a current matter. I am sure the Ministry has ready answers. I am sure they are working on solutions to this matter. Therefore, there is no research to be undertaken for him to come up with an answer.

Secondly, the exams are on and that makes the matter a little bit more urgent. I would be happy if he is compelled to make a statement, if possible, by the end of this week. The latest should be next week so that we can know the way forward because this is an important matter to the nation.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Karaba, see what you can do by Thursday, next week. Try and give it on Thursday next week.

Sen. Karaba: Much obliged, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Wako, are you seeking a statement?

Sen. Wako: Mr. Deputy Speaker, Sir, I would like, if possible, in addition to what has been asked, to be informed how much the country has suffered during those five weeks teachers were on strike. In addition to the legal cost, what really has been the cost to the country because we are now hearing of orgies by children? This is being attributed to them being idle for five weeks. We are now hearing of a number of youth dying. The other day, they reported that somebody became a *bodaboda* rider because he was idle at home and he wanted to earn something. Unfortunately, he was killed.

Secondly, I want a confirmation as to whether the 50-60 per cent salary increment was, in fact, taken from a government document which was submitted to the court. A document submitted by the TSC by the Ministry of Education, Science and Technology and signed by the treasurer and so on---

The Deputy Speaker (Sen. Kembi-Gitura): Order, Sen. Wako! You heard me clearly, and the HANSARD will bear me out that, maybe, you are raising an important issue, but absolutely different from what Sen. Khaniri had raised. So, that will not be a proper rider if you ask me.

Sen. Karaba, you are going to deal with the issue raised by Sen. Khaniri and as also partly by Sen. (Dr.) Khalwale by Thursday, next week. Is that right?

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

The Deputy Speaker (Sen. Kembi-Gitura): Before we go to the next Order, there are some statements to be issued. If you go in sequence, the first one No.2(a) sought by Sen. Omondi. Sen Fatuma Dullo.

THE SECURITY OF PERSONS LIVING WITH ALBINISM IN THE COUNTRY

Sen. Adan: Mr. Deputy Speaker, Sir, I do not have this statement ready, but we have discussed with Sen. Omondi to give us until Wednesday, next week, to be able to respond to her statement.

Thank you.

The Deputy Speaker (Sen. Kembi-Gitura): Very well. With regard to No.2(b). Sen. Murungi has a statement to be given. Chairperson of Lands and Natural Resources Committee; Sen. Kivuti.

ISSUANCE OF TITLE DEEDS IN MERU COUNTY

Sen. Kivuti: Thank you, Mr. Deputy Speaker, Sir. I will need guidance from the Chair because we are running into perennial problems with the Cabinet Secretary for Lands, Housing and Urban Development. We have four matters which have been pending, including the subject matter on this item.

Mr. Deputy Speaker, Sir, you know even there is a statement which you sought on the property development in Loresho Ridge. There is an old statement which Sen. Murungi sought on the status of the sub-county Lands Control Boards in Meru County which was requested on 19th May, 2015 and 2nd June, 2015. The third statement which is the subject matter on today's Order Paper on the issuance of title deeds in Meru County from Sen. Murungi which was due on 6th October, 2015.

Mr. Deputy Speaker, Sir, we have written on all the occasions to the Ministry of Lands, Housing and Urban Development, we have not been able to get a response. My attempts to make telephone calls have not been fruitful and we have written reminders which we have not gotten replies to. The latest reminder which covered the three statements was dated 13th October, 2015. I seek your guidance on this matter.

The Deputy Speaker (Sen. Kembi-Gitura): Well, I do not know whether there is any more guidance. I cannot give you more than what is already in the book because if any person fails to comply with the request from a Committee of this House, then your recourse is to the Standing Orders and to Article 125 of the Constitution. Article 125 of the Constitution gives you the power of the High Court and it gives you the power to enforce attendance of witnesses or to compel the production of documents and so many other things.

So, if your Committee is satisfied that something is not going right, then it is up to your Committee to invoke the provisions of Article 125 of the Constitution. That is the only guidance I can give you because if issues take too long to be sorted out and you are not able to communicate, then the House suffers and it expects answers from you. I am happy that you have indicated your constraints in the issue, but my view would be that you take advantage of Article 125 of the Constitution and compel attendance.

Sen. Murungi, you have a point of order on this issue?

Sen. Murungi: On a point of order, Mr. Speaker, Sir. I really sympathize with my fellow Chairman. He has shown me all the letters that he has written and which have gone unresponded to by the Cabinet Secretary. I was of the view that you look at Article 153(3) of the Constitution which states that:-

“A Cabinet Secretary shall attend before a Committee of the National Assembly, or the Senate, when required by the Committee, and answer any question concerning the matter for which the Cabinet Secretary is responsible.”

Mr. Deputy Speaker, Sir, I do agree with you that the committees have those powers that you have talked about under Article 125. In the past, Cabinet Secretaries have been asked to come before this Chamber in the Senate and all the Senators have

been able to interact and raise issues with them. My request would be whether the Cabinet Secretary could be requested to attend a *Kamukunji* of the Senators so that all of us could have an opportunity to raise issues with him. Sometimes the Committee sits in a room where all of us cannot participate in its proceedings. This is a very serious matter for a Cabinet Secretary to ignore the Senate. I suggest dire consequences should follow that kind of belittling of the Senate.

The Deputy Speaker (Sen. Kembi-Gitura): Hon. Senators, I agree with Sen. Murungi. You have brought to my attention Article 153 of the Constitution which obliges a Cabinet Secretary to attend, but you see that can only be enforced by Article 125 of the Constitution.

For the enforcement of Article 125, I do not even have to make a ruling from the Chair because it is administrative. Therefore, it is for the Committee to decide that it has become necessary for it to invoke Article 125 of the Constitution. The importance of telling us here in the House is so that we are able to know as a House that you do not have an answer for Sen. Murungi because the Cabinet Secretary has not been able to appear before you after many requests.

Next time you come and give me the same answer, I will ask you what you have done regarding the constitutional provisions of Articles 153 and 125 of the Constitution.

Sen. Kivuti: Mr. Deputy Speaker, Sir, I believe my Committee is up to the task. Let us leave it at that. We will do what the Constitution empowers us to do.

The Deputy Speaker (Sen. Kembi-Gitura): It is important that the authority of the House has to be respected.

Sen. Murungi, it appears that you have to wait longer for your answer. However, I am happy you appreciate because you drew our attention to Article 153.

Sen. Murungi: Mr. Deputy Speaker, Sir, most obliged.

The Deputy Speaker (Sen. Kembi-Gitura): However, Sen. Kivuti, having said that, I do not want that matter to go past that. I want you to report to this House by Wednesday, next week, on how far you have gone with realizing what you want to achieve in this. The answer must be given to the House; it is the property of the House. It is up to you, but I expect that you will make a report to the House on Wednesday, next week, or as soon as possible thereafter, on how far you have gone on this issue. That is fair.

(Sen. Kivuti stood up in his place)

Sen. Kivuti, are you seeking the microphone?

Sen. Kivuti: Mr. Deputy Speaker, Sir, I stand guided and most obliged.

DETENTION OF MR. DON BOSCO OOGA GICHANA
IN ARUSHA, TANZANIA

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Okong'o is expecting a statement from the Committee on National Security and Foreign Relations.

I thought Sen. Adan was here just now.

(An hon. Senator spoke off record)

Proceed, Sen. Okong'o.

Sen. Okong'o: Mr. Deputy Speaker, Sir, it is a surprise that Sen. Adan was around - she had a small conference with Sen. Omondi on her issue and it seems that she has mysteriously disappeared. I believe there are other Members of the Committee here because this statement is long overdue. I request that whoever sits in that Committee be mandated to give us an answer in the shortest time possible.

The Deputy Speaker (Sen. Kembi-Gitura): Let us hold it in abeyance for a few minutes.

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

The Deputy Speaker (Sen. Kembi-Gitura): Raise the issue again after we have gone through the statements.

Where is the Chairperson of the Committee on Agriculture, Livestock and Fisheries? Sen. Murungi, do you have an answer for Sen. Sang who I note is not here.

DECLINING PROFITS IN THE TEA INDUSTRY

Sen. Murungi: Mr. Deputy Speaker, Sir, I am sorry. I am facing the same problem as Sen. Kivuti on this matter. We, as a Committee, met this morning and decided to write yet another reminder to the Cabinet Secretary for Agriculture, Livestock and Fisheries. Could I request for another weeks to see whether I will get the response because it is only this morning that our Committee decided to write a reminder.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Sang is not here, so, I will allow you two weeks.

Finally, Sen. Obure, do you have an answer for Sen. (Dr.) Khalwale?

CONSTRUCTION OF KAKAMEGA-KABURENGU- WEBUYE ROAD

Sen. Obure: Mr. Deputy Speaker, Sir, there were two parts to this question. One was raised by Sen. (Dr.) Khalwale in respect to Kakamega-Kaburengu-Webuye Road and supplementary questions requested by Sen. Wetangula.

I have a letter from the Ministry of Transport and Infrastructure requesting that they be given more time to submit answers in respect to the question by Sen. Wetangula.

I have also received a request from the Senator for Kakamega, Sen. (Dr.) Khalwale, suggesting that it would be better if the two were answered at the same time.

Mr. Deputy Speaker, Sir, I stand guided.

The Deputy Speaker (Sen. Kembi-Gitura): Well, first, Sen. Wetangula is not here. Secondly, you have discussed with Sen. (Dr.) Khalwale who is happy with the proposition that you answer at a future date. That is the guidance I would give. When will you do it? How long does the Ministry want?

Sen. Obure: Mr. Deputy Speaker, Sir, I will table this information. The Ministry has just requested to reschedule. We will press them to make sure that this is available by Wednesday, next week.

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(Sen. Obure laid the document on the Table)

The Deputy Speaker (Sen. Kembi-Gitura): Sen. (Dr.) Khalwale, is Wednesday, next week okay?

(Sen. (Dr.) Khalwale nodded)

I was made to understand that the answer to part of your question is ready. However, the question of the rider was not ready. So, we just have to wait. Let us agree that we wait which is good with me.

(Sen. (Dr.) Khalwale nodded)

Thank you. That is the end of Statements Time.
Next order.

(The Deputy Speaker consulted the Clerk-at-the-Table)

The Deputy Speaker (Sen. Kembi-Gitura): Just a minute Sen. Okong'o.
What is your point of order, Sen. Okong'o?

Sen. Okong'o: On a point of order, Mr. Deputy Speaker, Sir. You asked me to wait for a while regarding my statement and yet we are moving on to the next Order.

The Deputy Speaker (Sen. Kembi-Gitura): I am sorry. However, Sen. Adan is not here, neither is anybody from the Committee.

What is it, Sen. Ongoro?

DETENTION OF MR. DON BOSCO OOGA GICHANA
IN ARUSHA, TANZANIA

Sen. Ongoro: Mr. Deputy Speaker, Sir, I sit in that Committee. So, I will undertake to inform the Chairperson that the answer be brought on Tuesday, next week.

Sen. Okong'o: Mr. Deputy Speaker, Sir, this statement concerns a Kenyan who is languishing in a foreign country. The Chairperson in the previous meeting has said she has no answer. I do not know whether the Member will keep her word that by Tuesday, next week, we will have an answer to this statement. If that is the case, I will indulge her.

The Deputy Speaker (Sen. Kembi-Gitura): Well, just for the record, she did not say that. She said that she will inform the Chairperson so that they can try and get an answer by Tuesday, next week. She did not say that there would be an answer by that time, if I heard her right. However, I know that this has been outstanding for a long time. I also sit in this House and I know that Sen. Okong'o has been raising it for a very long time.

(Sen. Murkomen consulted loudly)

Order, Sen. Murkomen! Consult, but in low tones so that we can transact business.

Sen. Ongoro, could you give us something more definitive?

Sen. Ongoro: Mr. Deputy Speaker, Sir, I undertook earlier that I will consult my Chairperson. In view of the fact that this has been a long standing issue, we will give the answer that will have been forwarded to us by Tuesday afternoon, next week.

The Deputy Speaker (Sen. Kembi-Gitura): What if it will not have been forwarded to you by Tuesday?

Sen. Ongoro: Mr. Deputy Speaker, Sir, I would like to be optimistic because I am aware that my Chairperson has been trying to get the response from the line Ministry for some time. We will put more effort to ensure that we bring a response on Tuesday, next week. Let us be optimistic.

The Deputy Speaker (Sen. Kembi-Gitura): No! I do not want to go beyond that myself. That is not acceptable. You are not giving us any indication. You are just giving us hope which has been given continuously because, as I said, I have been here. I direct that tomorrow during Statement Time, either you or the Chairperson of the Committee gives an actual indication of whether or not we will get this response on a specific day or whether or not, you are having problems getting the response. That is important so that we know for sure because it has taken a very long time.

Sen. Ongoro: Mr. Deputy Speaker, Sir, in view of those circumstances, maybe tomorrow may not be realistic.

The Deputy Speaker (Sen. Kembi-Gitura): I am not saying that you give the answer tomorrow. I am saying that tomorrow you stand in your place and tell us whether you are in a position to give us a response or whether you are having problems getting the response, so that then the House can give directions on the way forward. Whether you or the Chairperson, let us get a kind of a response on the issue.

Sen. Ongoro: Mr. Deputy Speaker, Sir, obliged.

The Deputy Speaker (Sen. Kembi-Gitura): On Order No.8, the Motion is not affecting counties and there are no more indications requesting for the Floor.

Sen. Murkomen, I do not know whether you want to reply or not.

MOTION

ADOPTION OF THE REPORT OF THE SELECT COMMITTEE OF THE SENATE ON CONSTITUTIONAL AND LEGAL REVIEW

THAT, this House adopts the Report of the Select Committee of the Senate on Constitutional and Legal Review, laid on the Table of the House on Wednesday, 23rd September, 2015.

(Sen. Murkomen on 14.10.2015))

(Resumption of Debate interrupted on 15.10.2015)

Sen. Murkomen: Mr. Deputy Speaker, Sir, I thank hon. Senators for their very weighty contributions and support for this Motion. We, as a House, have been left to just writing lamentations for a long time. The Constitution provides mechanisms for resolving every problem that comes. There is no need to continue writing other books of lamentations. It is time for us to take our responsibilities more seriously, provide direction for the country and ensure that we have a Constitution that is responsive to the challenges of our time.

I know there are many people who have wondered whether this is the right time for us to amend the Constitution. I have said before that five years down the line, we, the wearers of the shoe are now convinced that it is time to adjust the areas that we think are pinching us and also add certain areas that we think can bring more benefit to the people of Kenya. The Constitution provides clearly that when interpreting it, we must look at it from the perspective of a living document that can grow and meet certain expectations.

Even then, there is a limit to how and what you can do in terms of interpreting the Constitution. Therefore, this is why it is important that even if the courts were to stretch their interpretation to whatever extent like they did in the Supreme Court Advisory Opinion on request of this House, there is a limit to that. Therefore, we, as a House, must provide the tools and legal provisions that will support and strengthen the senate.

Mr. Deputy Speaker, Sir, many people have also asked if it is the right time for us to go to a referendum and whether it is a question of Jubilee or Coalition for reforms and Democracy (CORD). Historical processes and documents require unique persons who are willing to stand in the gap during challenging times. This House has the necessary skilled persons to provide leadership at the moment. I have said this and I repeat without any fear of contradiction, that there is a reason the calibre of persons elected to this House are those of immense knowledge and experience like the two senior counsels who are consulting there, Sen. Orengo and Sen. Wako.

If the people of Kenya had doubt about the seriousness and importance of this House, they would have definitely never elected Sen. Wako and Sen. Orengo. They would have never elected you, a renowned lawyer and former ambassador. They would have never elected many of the other people like Sen. (Prof.) Kindiki who is the Senate Majority Leader and a professor of law. You can see the king of Meru County, Sen. Murungi; a Harvard trained lawyer. They are all in this House.

You can see Sen. (Prof.) Lonyangapuo, a professor of mathematics, and the Pokots were not ignorant when they decided to elect him. They did so, because they believed that this is a serious House. You can see the renowned surveyor from Embu County, Sen. Kivuti, one of the most hard working Kenyans. You can see Sen. Karaba sitting here and the most experienced and well-travelled teacher all over the world. You can see Sen. Ong'era, a dedicated public servant and an astute politician. I can say a lot about so many of us here, including Sen. Omondi, a very serious defender of persons with disability and very many other vocal persons who earned their positions to be here.

Even the bull fighter himself – although once in a while I think because of his experience in bull fighting – is a renowned doctor.

The Deputy Speaker (Sen. Kembi-Gitura): Are you willing to be informed, Sen. Murkomen.

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Sen. Murkomen: Mr. Deputy Speaker, Sir, I am willing to be informed by the senior counsel.

Sen. Wako: Mr. Deputy Speaker, Sir, my point of information is that if the Senate was a mistake, the voters would not have elected a young, intelligent, and upcoming Senator whom they knew had drafted most of the devolution laws. They would not have elected him to come to this House. That is one Sen. Onesmus Kipchumba Murkomen.

Sen. Murkomen: Thank you, Mr. Deputy Speaker, Sir. Particularly coming from a senior counsel in my profession, I am really encouraged and I appreciate the words of Sen. Wako who is the Chairperson of the Select Committee.

The Deputy Speaker (Sen. Kembi-Gitura): I thought you would say that you are humbled.

Sen. Murkomen: Mr. Deputy Speaker Sir, I am extremely humbled. Do you know that in my Geography, History and Civics (GHC), one of the questions that I answered – I want Sen. Wako to listen to this – was who the Attorney-General (AG) of Kenya was. You cannot believe it. I answered, Amos Wako. I never dreamt in all my life that I would be sitting with him in the Senate. So, I am extremely honoured. I appreciate and I am humbled by his comment. The reasons Kenyans elected the *crème de la crème* to this House, including the medical doctor who has a point of order---

The Deputy Speaker (Sen. Kembi-Gitura): What is it, Sen. (Dr.) Khalwale?

Sen. (Dr.) Khalwale: On a point of order, Mr. Speaker, Sir. We appreciate that Sen. Murkomen went through the 8.4.4 System of Education; that you and many other Senators do not understand any subject called GHC. Could he clarify to the House what GHC is?

The Deputy Speaker (Hon. Kembi-Gitura): Order! Senator, when you were busy consulting and not listening he actually said that GHC means Geography, History and Civics. It is just that you were not listening.

Sen. Murkomen: Mr. Deputy Speaker, Sir, you know the art of bull-fighting has robbed the medical doctor of his listening skills.

There is a reason as to why people elected us to come here. I do not want in the next election that people get disinterested in coming to this House, just because they see too many frustrations in the Constitution itself and in the manner which this House is being enabled to perform its functions. We want this House, in the next elections, to attract far much qualified Senators who will prosecute matters that are very serious for this country. That is why we have said that all Bills will come to the Senate if this Motion is passed and if the people of Kenya will finally adopt the proposals in the Motion.

Mr. Deputy Speaker, Sir, we have said that more resources should go to the counties; that is, 40 per cent, so that we can equalize this country. We have said that it is important that constitutional office holders are vetted by the Senate because of the seriousness of the vetting process and also the calibre of the people in this House. There is also the desire that a smaller and more focused House can focus more on looking at the qualification of the persons who are going to hold constitutional offices. That is why we have said that matters related to removal of governors and deputy governors are so serious that they must be in the Constitution. They must also be decided expeditiously by ensuring that if you have a complaint in so far as removal of a governor is concerned, then it must go to the Supreme Court and must be decided within 60 days.

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Mr. Deputy Speaker, Sir, talking of the Supreme Court, I have read in the news flash, and I am surprised that the Law Society of Kenya (LSK), where I am an active and paid up member, where the Chair and other senior Members of this House are also members, has just announced to the public that we need to scrap it. Although there is freedom of thought and expression, every public officer who is going to speak on behalf of others in the absence of a special Annual General meeting (AGM) or in absence of consultation, then must be warned that they cannot say that the Supreme Court should be scrapped on behalf of members. That is a very serious point.

Those of us who believe in the Supreme Court and the responsibility it has, particularly in resolving disputes related to matters of devolution, constitutional offices and interpretation of the Constitution, are very careful not to mix the persons who are serving today and the institution called the Supreme Court.

There is a chorus in this nation that every time one is aggrieved by the decision of a particular institution - if it is the Senate - they say scrap it; if it is the county assembly, they say scrap it. If it is the National Assembly which has aggrieved them, they say "scrap the National Assembly". It is now the Supreme Court and they are saying "scrap the Supreme Court". We cannot be a country that is always thinking of mob justice and lambasting institutions of governance because you do not agree with their decision. There are people who are grieved and actually do not agree with the Supreme Court's decision as far as the term of judges is concerned, but they are not calling for the scrapping of Supreme Court from our Constitution. The issue of four years is an important one. However, it cannot be a basis for us to lambast and fight an institution that will be there for more than 100 years.

Justice J.B. Ojwang' is one of the most distinguished professors of constitutional law. He was my teacher and my dean. All the distinguished scholars are serving in this institution and we must respect their opinion. We can disagree with their decisions, but we must do so, respectfully. That is what we are trying to do here. We are building institutions that will serve this nation effectively without such interference, where, if the Senate does anything they say scrap the Senate and so on. We believe in our counties. We believe that counties are the centre for development in this country. We believe that more resources should go to the counties. That is not for political reasons. It is bi-partisan.

That is why when we were discussing the formula of allocation of revenue, it was not CORD verses Jubilee, because each one of us is fighting for an entity called "county government". We must also ensure that oversight responsibilities of county assemblies are not interfered with. That is why we have given the county assemblies the independence and the autonomy for them to run their affairs as county assemblies and be held accountable for whatever resources they are going to have.

The Senate still has the overall oversight of the county assembly. The Senate will do oversight over all the counties. However, the county entities will be oversighted by the county assemblies. We must warn the county assemblies against complacency, going to bed with the county executive or being lured by little resources, so that they can support scandals in the county. Giving my county assembly as an example, they sat down last week and debated a report that was related to mis-appropriation of public funds, misuse of funds related to building of the governor's house, the location of the governor's house, the laws that were flouted and so on. The committee came up with a report and tabled it in the assembly.

Mr. Deputy Speaker, Sir, members of the public in the county of Elgeyo-Marakwet have sent me a message on *WhatsApp* complaining that the Senator is sleeping. They are asking me why I am not reining in members of the county assembly who were compromised to throw out a report that was well documented in relation to that process. I told them that I am a man who sticks with the law, and will fight corruption within the procedures of the law. I requested those members of the public who are complaining that they should now write a petition to the Senate stating that the county assembly threw out the report that was well documented. It will be received in this House, committed to the Committee headed by Sen. (Dr.) Khalwale and I will read it.

That is when we will descend on those who are stealing public funds in Elgeyo-Marakwet. We will land in Iten and listen to the county assembly members, listen to the people and read the HANSARD to find out why they threw out the report. We will determine the intelligence of their communication, their consistency and, finally, agree whether there was misappropriation of funds or not. This is a House of reason. This is a House that is willing to follow the procedures.

That is why I am saying that for the sake of relations between county assemblies and this House, it is important that we allow county assemblies to go through their processes; then this being a House of wisdom, the Upper House and the final House of appeal on matters of county government, we can now descend on that county, look at the procedure and the issues at hand. We do not want to condone corruption. We want to ensure that corruption is rooted out from both national and county governments. It should not just be lip service. The tools that are going to be applied in fighting corruption in this House must be enabled. That is why this Motion is providing for the independence of this House. It is very important because it can be frustrating from other quarters, especially if it is going to be managed by those who do not understand the rigors and the difficulties of fighting corruption in counties.

For example, it is difficult and cumbersome in fighting corruption in a county like Kakamega with 12 constituencies or a county like Kiambu with a large population of over 2 million people or a county like Nairobi with a population of over 4 million people. They do not understand. People blame the Senator, but deny him or her tools. The commission that is now there; called the Parliamentary Service Commission (PSC) is composed of people who may not appreciate our work. While they are sitting in one constituency in Kakamega, there is a Senator who is sitting in 12 constituencies. We need a commission that is responsive to the needs of this House. We need a commission and it is the responsibility of this House to serve the people of Kenya. It is of no use in this country that we continue putting resources into an entity that is not accountable. That is why we need this House to be enabled to fight corruption.

Mr. Deputy Speaker, Sir, in conclusion, like the Senator for Makueni said last time when we had a press conference, it is inevitable that this process and amendment require a referendum. This House must now not go to sleep. I am beginning to suspect that this House is operating on “hot and cold” basis. Today, we are “hot” because an issue has been decided in the National Assembly or because the courts have made an unfavorable decision and tomorrow when we go to sleep, we are “cold” because we are not committed in following the issues to a conclusion.

This Motion requires that we ultimately must have a referendum. This House needs to retreat, sit and ask itself the following: How are we going to go to the referendum? Who will constitute the referendum committee? Where will we get the resources for the process? When will we go for that referendum? What are the political challenges we are facing? Who will be our collaborators? Which institutions are we going to work with? Who will be a threat to this process? We must do a Strength Weaknesses Opportunities and Threats (SWOT) analysis to see all the strengths that we have, the weaknesses we have in achieving what we are amending, the opportunities that are available for us to achieve the amending of the Constitution and the threats that will face this House.

Mr. Deputy Speaker, Sir, once we sit down and do a SWOT analysis, we will come to a conclusion on how we can achieve the referendum in a bipartisan manner. This document is for posterity. There are so many other people who have come up with referendum documents, but they are debating in hotels, *barazas* and market places, which is okay. However, the only document that is being discussed in a constitutional institution, the Parliament of Kenya, is this one. This document and this process will provide leadership to all other processes that are related to the referendum. We will have to carry all along. We must achieve this as a nation.

Sen. Orendo said this passionately at one time in this House, that this nation must be willing on many occasions to put down our partisan agenda and political competition. This is the time for us to think as Kenya and Kenyans so that we can provide solutions to the issues that are bedeviling our people and our country in a manner that is bipartisan like it is done in many countries. We have done that before. We did it in 2010, and that is why we have this Constitution. We also did it in 1963 and that is why we gained Independence. We can do it again so that we have a document that is responsive to the needs of this country and is useful for our children and grandchildren.

Sen. (Dr.) Khalwale: On a point of order, Mr. Deputy Speaker, Sir. I am sorry to interrupt the Chairperson of the Committee who was also my Chair during the process. In his response, he seems to be in fear that we will be expected to look for funding. As far as the Constitution is concerned, if---

The Deputy Speaker (Sen. Kembi-Gitura): Order, Sen. (Dr.) Khalwale! That is not a point of order, but a point of argument.

Sen. (Dr.) Khalwale: Mr. Deputy Speaker, Sir, he is misleading the House.

The Deputy Speaker (Sen. Kembi-Gitura): Order! Sen. Murkomen is exercising his right of reply. You had a right to debate and I am sure that you used it very well.

Sen. Murkomen: Mr. Deputy Speaker, Sir, those are issues that I have suggested which will be important for us; that we are within time to know the resources we need. Some of the resources will require direct budgeting by Parliament while some will require sacrifice by us, individually, in terms of time and personal resources so as to get the one million signatures and sensitize members of the public. There are many resources that we will require. We have to sit down and understand where to get the resources and how to go about it so as to achieve the final Constitution that is responsive to the challenges of our time.

I thank everybody for their contribution and more so the Members of my Committee who did a fantastic job without whom we could not have been able to have

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this document. I also thank the staff of the Senate led by the Director of Legal Services in the Senate, Ms. Eunice Gichangi, who was also my lecturer of Criminology and Penology. I appreciate the staff because they all worked tirelessly to ensure that we have a document that is responsive to the needs of this House and the people of Kenya.

Mr. Deputy Speaker, Sir, I beg to reply.

The Deputy Speaker (Sen. Kembi-Gitura): Hon. Senators, this is not a matter affecting counties in terms of the Standing Orders No.72. Therefore, I am going to put the question.

(Question put and agreed to)

Hon. Senators, I have to reorganize the Order Paper. We do not have the threshold to have the Committee of the Whole. Therefore, we will defer Order Nos.9, 10 and 11. We shall move on to Order No.12 which is a resumption of debate. Please, call the next order

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 UNIVERSITY (AMENDMENT) BILL
(SENATE BILL NO.31 OF 2014)

(Deferred)

BILL

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 13.10.2015)

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Wako, you have 58 minutes to go.

Sen. Wako: Mr. Deputy Speaker, Sir, I continue to move that the Office of the County Attorney Bill, (Senate Bill No.37 of 2014) be read a Second Time.

This Bill is long overdue because the office of a person with the responsibility to advise the Government on all matters relating to law and legal affairs is extremely important for any government. In fact, if one has to look at the history of how governments came into existence, he will immediately know that some of the offices are very critical to the Government. The Office of the Attorney-General, Treasury and Security are the most important. Therefore, for any Government to succeed, the three offices, I have mentioned are very important.

If you looked into the legal affairs of any government, you will find that, for example, the kings in the United Kingdom were very prominent. Our Constitution talks of two levels of government; the national Government and the devolved government. County governments should operate properly under our Constitution. Therefore, county governments are very important for proper implementation of the Constitution.

Mr. Deputy Speaker, Sir, the drafters of the current Constitution took into account that county governments will need legal advisors. Under our Constitution, the Attorney-General is a legal advisor to the Government. That is an indication that the Attorney-General of the Republic of Kenya is supposed to advise, not only the national Government, but also county governments.

Mr. Deputy Speaker, Sir, if you look at Article 156 which provides for the functions of the Attorney-General, you will see that Article 156(4)(c) states that:-

“The Attorney-General shall perform any other functions conferred on the office by an Act of Parliament or by the President.”

Apart from being the Principal Legal Advisor to the Government, the Attorney-General shall represent the Government in court, promote the rule of law and the observance of human rights and so on.

Mr. Deputy Speaker, Sir, the County Government Act was enacted. The Act provides in Section 43 that a county government can request the Attorney-General to represent it in court or any other legal proceedings in which it is a party. In other words, under our Constitution, any county government can request the Attorney-General to act for it in any legal proceedings. However, we know that the Attorney-General is focused on the national Government. In fact, from what I know and I even checked yesterday, the situation is still the same although it has improved slightly. It is more or less the same because the work of the national Government has quadrupled since members of the public are now aware of their rights. Our Constitution is complicated and its implementation required a lot of advice from time to time.

The Attorney-General is already inundated with a lot of work. Therefore, it will be too much if all county governments asked the Attorney-General for advice. We are talking about 47 county governments, particularly at this time when we are implementing provisions in our Constitution. We are like a trailblazer because everything and any step requires legal advice. Therefore, the office of the Attorney-General cannot cope with whatever would be required by the various county governments by way of legal advice.

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Although it is stated that a county government may ask for advice, when it comes to practical terms, it is very difficult for the Attorney-General to advise all the county governments on their legal requirements. I believe that is partly one reason under the Kenya Law Reform Commission Act, it was envisaged that county governments will also need advice.

County governments are like the national Government in terms of the structures. There are governors and deputy governors elected by people of the counties. A county government has a governor with his executive council which is equivalent to a Cabinet. In fact, if you may recall, we went for public rallies during the first year of implementation. We would hear people mention that “our Minister for Health should do this.” You could not see the Minister for Health if you looked around. Somebody would tell you that they were talking about the “Minister for Health” at the county level. When they mention “our Speaker,” they mean the Speaker at the county level. Whereas they are County Executive Committee (CEC) members as far as counties are concerned, they are popularly referred to as “Ministers.” We had to pass an Act to stop them from being referred to as “Ministers.” Instead, they should be referred to as CEC members responsible for education, agriculture and so on.

Mr. Deputy Speaker, Sir, there are county assemblies which are miniatures of the national Parliament. That is the Senate and the National Assembly. Under the Constitution, county assemblies have the responsibilities to enact legislation. The legislations are far-reaching and very wide under the Fourth Schedule of the Constitution. The legislations cover agriculture, health and literally everything of endeavour. While the national Government may be concerned with policy, the county government is concerned with the implementation and that requires legislation. Therefore, a lot of legislation is required at the county level.

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

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

That was envisaged under the Kenya Law Reform Commission Act; that the Kenya Law Reform Commission will provide technical assistance to not only the national Government, but also county governments with regard to reforms or amendments of any branch of law; formulate, by means of draft Bills or otherwise, any proposals for reform of county government legislation and make proposals for review and reform of county legislations.

Mr. Temporary Speaker, Sir, I am glad to report that the Kenya Law Reform Commission has tried its level best. As I speak now, it has drafted over 60 model draft legislations which county governments and county assemblies can modify to suit their own peculiar circumstances, depending on a particular county, and enact it. Therefore, to that extent, it has made it easier for them. However, there are still many areas where county governments do not have model legislations. Just the other day, our committee was looking at reports from various counties. We discovered that most counties –

whether the executive or the legislative assembly – are actually hiring private lawyers do draft legislations for them.

Mr. Temporary Speaker, Sir, what I saw there was that three private lawyers, by way of the usual procedures of procurement, submitted and they were picked. Lawyers are submitting bills of at least Kshs1million on straightforward legislations and so on. County governments also require the services of legislation. The procedure that we have under the Constitution, which I have outlined, is that the Attorney General and the Kenya Law Reform Commission are required to assist. This does not make the county governments really independent yet they are supposed to function independently in terms of legislation. It becomes necessary that we have the office of the County Attorney who is like the Attorney General of the county. That is why the Standing Committee on Legal Affairs and Human Rights came up with the draft of the office of the County Attorney Bill.

Mr. Temporary Speaker, Sir, its purpose as an Act of Parliament is clearly set out; to provide for the functions and powers of the County Attorney, to provide for the discharge of the duties and exercise of powers of the County Attorney and for connected purposes. This Bill is more or less, modeled with necessary amendments *mutatis mutandis* with the office of the Attorney General Act that we currently have.

It provides for the County Attorney and county legal counsel. In other words, just like we have State Counsel who vary from State Counsel I, State Counsel II, Senior State Counsel, Principal, and Senior Principal up to the Director of a department. Similarly, at the county level, we shall have the county legal counsels. Just like we have a Solicitor-General at the national level here, there will be a Deputy County Attorney. Those are the offices that have been created under Clause 4 of the Bill.

We have the qualifications of the people occupying these posts. The County Attorney must have five years experience as a judicial officer or legal practitioner. This compares favourably with the Attorney-General whose qualification is at least 15 years experience; with the Court of Appeal and High Court judges, at least 10 years experience. This becomes almost like the Chief Magistrate or the Senior Principal Magistrate level which is a good comparison to that of the County Attorney.

Mr. Temporary Speaker, Sir, we have the functions of the County Attorney which compares with some modifications and amendments with the Attorney-General of the Republic. Under Clause 7(a) the County Attorney shall be the principal legal adviser to the county government. Under our Constitution, the Attorney-General is the Principal Legal Adviser to the national Government. The County Attorney shall also attend county executive committee meetings, but shall have no right to vote on any matter before such committee. Here, it is like what I was before. You are an *ex-officio* member of the Cabinet with no right to vote but you attend. However, most of the government decisions are reached by consensus. In fact, in all my years as Attorney-General, there was never any one occasion where the Cabinet had to vote. The Cabinet always reached a consensus or went by what the President said, but they were never called upon to vote. The Cabinet always discusses until they agree. It is important that the County Attorney attends the county executive committee meetings.

Mr. Temporary Speaker, Sir, the County Attorney shall also represent the county government in court in civil proceedings and constitutional matters. This is important

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because this is an age of going to court. We have seen cases where county governments have gone to court and the amount of fees that lawyers have charged are in millions because they are constitutional cases. The members of the bar are making something out of it. At one time, I thought I should resign as a Senator and go into private practice to earn that amount of money. The devolved money which should be assisting the poor in the county and for development of projects, a lot is used to pay advocates who are acting for county governments. Therefore, it is important that the County Attorney together with county counsels handle most of those cases without engaging private advocates.

Mr. Temporary Speaker, Sir, the other important aspect is to advise the county departments on legislative and other legal matters. On the issue of legislation, the Bill not only provides for the executive arm, but also the county assembly. Whereas the Attorney-General is the legal adviser to the Government, the county attorney shall be the legal adviser to the county executive and the legislature. The County Attorney shall also negotiate, draft and interpret legal documents. That is an important role. Many counties are holding investment fora. In many of these, a number of them are genuine investors, without any fear of contradiction. Most of the people who come around the counties to meet the governors and other people are not serious. These are what we call “international crooks”. Who are they to get what they want without delivery of services that are required? This country has suffered---

The Temporary Speaker (Sen. Murkomen): What is it, Sen. Sang?

Sen. Sang: On a point of information, Mr. Temporary Speaker, Sir.

The Temporary Speaker (Sen. Murkomen): Do you want to be informed by Sen. Sang?

Sen. Wako: Mr. Temporary Speaker, Sir, I want him to second me. May be he can make the remarks when he will be seconding me.

The Temporary Speaker (Sen. Murkomen): Okay.

Sen. Wako: Sen. Sang stay put and do not go away. I was very happy when you walked in because I knew the Seconder has arrived.

Mr. Temporary Speaker, Sir, a number of the scandals that we have had since Independence is because of the so called international crooks who come dressed well, speak well and do all manner of things. If these can happen at the national level, how much more can happen at counties which do not have the expertise and the experience? Therefore, the need to have a County Attorney, at least as a starting point, there will be other measures to ensure that they do not go very far but a proper advocate at the county level will be very good.

Mr. Temporary Speaker, Sir, we are also giving the function of the County Attorney the duty to liaise with the office of the Attorney-General (AG) when need arises. There can be many needs, as I have said; the County Attorney is an Attorney of five years experience. A few of the issues that may arise may be issues which are of very complex nature not only in terms of the subject matter of the issue but on how they relate to our Constitution. Therefore, there is need for a County Attorney in an appropriate case to seek the advice of the AG. In many of these cases, as you know, when it comes to borrowing and so on, the county government cannot just go and borrow, there must be some liaison. They have to liaise a bit with the National Treasury. Therefore, that liaison

duty has been given to the County Attorney to be able to liaise with the AG of the national Government.

Mr. Temporary Speaker, Sir, we have Clause 8 which is very important and which gives the County Attorney the right to appear at any stage of the proceedings of the court. He can require an officer in the County Public Service to furnish him with information. Not just require but can also summon that officer to give him that information and he can issue directives to officers. All these powers are necessary for the County Attorney to have. If he does not have those powers and the governor is very strong, the officers can decide to ignore, and this has happened even at the national level. They can decide to ignore the advice of the AG. They can decide to ignore the AG when he requires some information to enable him go and defend in court. In fact, they can decide to ignore him even on any investment agreement that is being formulated.

So, it is necessary and important that the County Attorney has these specific powers and authority backed by an Act of Parliament to be able to summon and tell the officer that he is summoning him or her in accordance with the Act. He has the power to summon and, therefore, he must come. That officer has to undergo the pain of prosecution.

Mr. Temporary Speaker, Sir, I talked earlier about the County Attorney also advising the county assembly and there is a specific Clause which says:

“The County Attorney may upon request appear before a Committee of the county assembly.”

These are more or less the same powers as the Cabinet Secretaries appearing before us which we were referring to this afternoon in Article 153 of the Constitution.

Mr. Temporary Speaker, Sir, it is also necessary to give the County Attorney some measure of authority so that he can decide without fear or favour that he is insulated from criminal proceedings from the work that he does as the County Attorney, not just him but also the officers under him. These days, you can easily have a private prosecution being mounted against you and you are doing a very good job. That is a way of fighting you because you are doing a very good job so that the cartels can get away with their criminal activities.

Mr. Temporary Speaker, Sir, we are also giving the power of removal. We do not want a County Attorney General to be just removed, although he is appointed by the governor. He should not just hear on the one o'clock local radio that he has been removed. So, the county assembly has to approve his removal. His removal must be on specified grounds such as serious violation of the Constitution, gross misconduct, physical or mental incapacity, incompetency and bankruptcy. We have also provided for a delegation of some of the powers of the County Attorney to his officers who are working within the office.

There are some requirements under law; for example, when I was the Attorney-General, only I could approve a rape case under my signature, only the Attorney-General could enter a *nolle prosequi*, only the AG could approve a case involving corruption and so on. There were many grey areas; by the time a file comes from Malindi to Nairobi to approve a rape, incest or a corruption case, a number of months have elapsed. There have been many delays in court. So, under Article 14, we have provided for some delegation of

those powers. The County Attorney can delegate some of those powers to officers who are operating under him.

It provides that:-

“The county government cannot engage the services of a consultant to render any legal services relating to the functions of the County Attorney General.”

Mr. Temporary Speaker, Sir, what used to happen, and I am glad when I became the AG in May, what had been happening before my appointment was that the practice had developed where the accounting officers of the various Ministries on various projects could go ahead, identify and procure the services of somebody to undertake some projects and so on, and actually conclude an agreement without reference at all to the AG. That became a gateway to looting money from the government. The project man, the accounting officer and the advocate hired by that accounting officer may collude with him and the AG is not involved. I am glad that the President of the day stopped that practice and said now all agreements must be approved by the AG.

In the last three years before my appointment, that practice had developed. So, no one actually in government knew the agreement that had been entered into by the various accounting officers of the various Ministries. We had to do a check on it. You never knew until something went wrong, and it always went wrong and now the AG was asked to defend them. By that time, if you looked at the agreement, it was so badly drafted that there was no legal basis on which you could challenge whatever had happened.

Mr. Temporary Speaker, Sir, we are here saying that the various officials, the Members of the Executive Council, the Chief Officers and so on, cannot go ahead on their own, get some private advocates and enter into agreements without involvement of the County Attorney. If they have to hire somebody, then the County Attorney has to be involved and a normal approval would be on the basis that he is kept informed of what is going on in terms of negotiations by that advocate who has been hired. Before any agreement is concluded, the County Attorney must know and go through that agreement and approve it.

Mr. Temporary Speaker, Sir, there is Part 4 which leads to appointment terms and conditions of service of the County Legal Counsel. I do not really have to go into all of that. Apart from the County Attorney, the Deputy County Attorney, all the county legal counsels are appointed by the County Public Service Board. Their terms and conditions are to be set after consultations with the Salaries and Remuneration Commission (SRC). In addition, we have miscellaneous provisions such as giving the power of custody of the public seal of the county to the County Attorney and so on.

There is also a section dealing with funds. There is an assurance that this is not a Money Bill. What is important in this draft, which may not have been there before, particularly with the Attorney-General previously, was that there was an oath of office which everybody subscribes to. However, what is important here is that we have a second Schedule; that we have a code of conduct for the county attorney and all officers operating under him; where loyalty, dedication, responsibility, honesty, competence, fairness and diligence are outlined.

Mr. Temporary Speaker, Sir, Clause 9 states that the County Legal Counsel shall not be influenced in any manner whatsoever by any individual or body of individuals in

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the discharge of his duties. That gives him independence. If the county government has to get the best legal advice, it is very important that the advice is based on nothing but the law, the county interest and national interest. It should not be based on any other extraneous circumstances. Therefore, the issue of integrity becomes very important when it comes to matters of the County Attorney. He or she should not allow any interest to compromise in any way or jeopardize the integrity of his legal opinion.

Mr. Temporary Speaker, Sir, just like in the Constitution, the Attorney-General is the safeguarder of public interest, human rights and so on. Here also, the County Legal Counsel, at page 640, has a duty to promote respect for the rule of law and administration of justice. He has a duty to treat the court with courtesy and respect. He also has a duty to deal with other lawyers fairly, courteously and in good faith.

His behaviour has also been outlined in this Bill. Amongst other issues that have been discussed about personal conduct is that the County Legal officer and all the people who are employed in that office must refrain from indulging in habits and behaviour that infringe upon the performance of official duties or tarnish the image of the office and not to use the county government resources for personal purposes and benefits.

One may wonder why we put all these here. The Chairman of the Law Society of Kenya (LSK) said recently that the type of services that the advocates are giving to their clients have fallen drastically. The type of behaviour of the advocates in Kenya today has gone down and something has to be done. We are approaching a crisis situation when it comes to matters of discipline, amongst others. Therefore, if we are not very careful and unless we are very strict on matters of professional conduct and etiquette, even persons occupying the post of county attorneys and officers, can easily start behaving like the advocates that the Chairman of the LSK was talking about.

Whereas in Nairobi you can hide a bit, it takes time for you to be involved. The temptation of doing so at the county level is even higher. Therefore, we thought it proper that the code of conduct of legal officials of the county should be specifically mentioned in an Act of Parliament so that in addition to Chapter 6 of the Constitution, the Public Officer Ethics Act and so on, we do not just refer to it glibly. Each officer should have this Act of Parliament, so that they can quickly refer to it and say, this conduct is not suitable. Any person who wants to challenge the conduct of the County Attorney or any officers against him can easily look at this one Act and ascertain that the conduct is not in accordance with the professional conduct and etiquette that is required of the attorneys.

Mr. Temporary Speaker, Sir, under the code of conduct, we have something regarding conflict of interest. The County Legal Counsel shall not advise on a matter where there is conflict of interest. This is important for a number of public officials particularly sitting at the county. It can be the county attorney and maybe he or she was appointed an attorney from a legal firm and now he is a county attorney and the legal firm is still operating. Although he or she resigned, he may still be enjoying some secret profits from the legal firm, therefore, there might be temptation of channeling some work through that legal firm. So, there should be no conflict of interest.

With those remarks, I beg to move that the Office of the County Attorney Bill (Senate Bill No. 37 of 2014) which is long overdue – It should have been there from the word go because a lot has happened but we hope that if it is passed by the Senate, it will go a long way in helping our county governments be on a strong footing when it comes to

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dealing with matters concerning the law thereby contribute a lot in the proper implementation of our Constitution.

Mr. Temporary Speaker, Sir, I would ask that my Vice Chairperson, who is the youngest Member of my Committee but very active - he contributed a lot to the draft and ideas to this Bill - seconds the Bill. One Sen. Sang, *Omukhongo wa Banandi*.

The Temporary Speaker (Sen. Murkomen): Sen. Wako, what did you say?

Sen. Wako: He is the Senator for Nandi. That is what I said.

The Temporary Speaker (Sen. Murkomen): Proceed, Sen. Sang.

What is it, Sen. (Dr.) Khalwale?

Sen. (Dr.) Khalwale: On a point of order, Mr. Temporary Speaker, Sir. I heard Sen. Wako very well. He said: *Omwana wa Banandi*. Could the Chair guide the House how the HANSARD will capture *Omwana wa Banandi*, and what does it mean?

The Temporary Speaker (Sen. Murkomen): Sen. Wako, is that what you said? I missed that too.

Sen. Wako: Mr. Temporary Speaker, Sir, if you check the HANSARD, I did not say *Omwana wa Banandi*. I did not say that. I said something like---

An hon. Senator: *Omwami!*

Sen. Wako: Mr. Temporary Speaker, Sir, I said *Omwami wa Banandi*.

The Temporary Speaker (Sen. Murkomen): Which translates to?

Sen. Wako: Mr. Temporary Speaker, Sir, we Senators are *Abaami*, in Luhya. If you translate Senator to *Kiluhya*, we are *Abaami*; we are the rulers. So, *Omwami wa Bakachimeka*; that one, *Omwami wa Banandi*, *Omwami wa Elgeyo-Marakwet*; the people of Elgeyo-Marakwet.

The Temporary Speaker (Sen. Murkomen): Sen. Wako, you know that you are only allowed, in a brief sentence, to quote a particular language, whether it is Luhya, Kikuyu, French, Spanish or Latin but you must say what it means. You must know that this is what it means in a particular community but it must also be brief. Otherwise, if we continue like that, you will speak in tongues here for a very long time.

Sen. Wako: Thank you very much, Mr. Temporary Speaker, Sir. That is why I hastened to add---

The Temporary Speaker (Sen. Murkomen): Order, Sen. Wako!

Sen. Karaba: On a point of order, Mr. Temporary Speaker, Sir. We are wondering whether it is within the Standing Orders that we have resorted to even speaking vernacular. If that has to be the case, then we are turning the Senate into a very local House and we might not get anywhere. Which languages do we go by?

The Temporary Speaker (Sen. Murkomen): Order, Sen. Karaba! Our Standing Orders allow reference to any other language but it has to be very brief and translation be provided. That is exactly what I have told Sen. Wako. That is why we quote in Latin. Why would you want to say that the use of a Latin word here is more acceptable than a Kikuyu word? As long as somebody says that, in Luhya, we could call him this and that, which means this. However, it cannot be a whole sentence or speech for the whole afternoon. Sen. Wako, I think we rest that there.

Sen. Wako: Mr. Temporary Speaker, Sir, I agree with your interpretation of the law. That is why I hastened to add: "Which to me means, the Senator for Nandi County."

Sen. Sang: Mr. Temporary Speaker, Sir, I rise to second this Motion. I thank the Chairperson of the Standing Committee on Legal Affairs and Human Rights, Sen. Wako – *omwami wa Baluhya*, which means the leader of the Luhya – for guiding the Select Committee into developing this very important Bill. We are lucky as a House that the Chairperson of the Committee is one of the longest serving Attorney-Generals (AGs) in the entire Commonwealth, I am told. We could not have had a better person experienced in matters of legislation and more specifically, developing a Bill to establish the County Attorney Office. Therefore, even in his remarks as he moved the Bill, he has gone into the details.

We have had several impeachment Motions against various county governors in this House. In each of them, one of the fundamental issues being raised is outright contravention of the law. When we interrogated and took governors through what they have committed against the law, many of them kept telling us that apparently, they got wrong legal advice. Right now in counties, the office that would be an equivalent to what we are trying to establish is the office of the Legal Advisor to the Governor. Most of these positions have been filled through political machinations. You are one person who strongly supported governors that a legal advisor should not be a person who has a diploma in law from a small college in town that is on top of a shopping centre. Somebody has a certificate or diploma and he is appointed to be the legal advisor to the governor because there are no qualifications for that position. This is the person you expect to give independent legal advice to a governor or county government.

Mr. Temporary Speaker, Sir, in one of the impeachment Motions, we had a situation where a governor literally mortgaged his entire county. He committed several hectares of land in his county to some briefcase company abroad in the name of an investment of Public Private Partnership (PPP) towards establishing a solar plant in the county. Unknown to the governor, the agreement that they signed allowed that particular company to use the title or the lease agreement between them and the county government to acquire a loan anywhere in the world. When that was interpreted to the governor, he was shocked.

You realise that the governor received wrong legal advice. We went on to establish the qualifications of the very legal advisor and realized that it was just a person who had gone through paralegal training in a small college in town and was masquerading in the village as a lawyer. I think this will save our counties.

The Mover of the Bill, our very own Attorney General *Emeritus*, pointed out that one of the key components of this Bill is to establish an independent office of the County Attorney within the county. This will ensure that we have a properly trained and qualified person to man and run this office within the county; and that county governments receive the best legal advice available.

Mr. Temporary Speaker, Sir, some of the Bills and legislations being developed and enacted within counties are obviously unconstitutional and contradict already existing national laws. We have seen county assemblies developing or county executives proposing to county assemblies legislations on matters that are not even devolved to the counties. We have seen county assemblies passing legislation to establish a university within the county and saying that it is part of their County Integrated Development Plan

(CIDP). Since the public was asked what it is that they wanted established within the county, you would easily find them saying that they need a public university.

You cannot blame them because they are ordinary *wananchi* who do not understand the specific details of the Sixth Schedule on the distribution of functions between the national and county governments. Therefore, just because in a public forum the public said that they want the county government to establish a public university, then you find members of the county executive and county assembly legislating the establishment of a public university within the county. Constitutionally, that is obviously not their mandate.

Mr. Temporary Speaker, Sir, you will find in another public participation forum, the public saying that they need an airport in their county and the following day, you will find a budget has been drafted by the county government establishing an international airport using public resources. These are obvious flaws that would be remedied if we had the County Attorney office with a properly trained and qualified person, to guide counties that, this is a national Government function. You can negotiate, petition, discuss and approach the national Government to set up a public university within your county but that does not mean that you have to establish the university yourself because that is not your mandate.

If you look at The Public Finance Management Act and The County Government Act, the process of establishing a county budget is very detailed, procedural and specific. However, we have had situations where county governments are passing their county budgets in a very awkward and weird manner of cutting deals outside the provisions of The Public Finance Management Act and The County Government Act.

Mr. Temporary Speaker, Sir, tomorrow, a county assembly or a county government forwards to the Controller of Budget a budget that has not gone through the due process as provided for by the law. Some of them have even gone to the extent of publishing their budgets in some commercial printers in River Road and saying that instead of queuing at the Government Printer, they want to find their way into some of those funny printers in Nairobi, in the villages and print their budgets and purport to have had it published.

Some of these challenges are by design, but we have some mischievous governors, county assemblies – we might be having some mischievous staff within the finance departments who design some of these means of achieving an end that is not in accordance with the law. Sometimes it is lack of proper legal advice. Once you have a County Attorney, then no county will have an excuse because they will be having an in-house legal person who is competent enough to guide the county in terms of the legal matters within the county.

Mr. Temporary Speaker, Sir, the Constitution under the Chapter on land provides that all the land leases that were supposed to last 999 years under the operation of the Constitution were brought down to 99 years. If you go to most of the counties, some of the multinational companies that were holding these leases, most of these leases are coming to an end. Right now, the governors, the county governments, the county assemblies are discussing on ways and means--- Sometimes you go to a forum and you hear an MCA saying: “When the leases come to an end, we will subdivide that land and allocate ourselves and ensure it reverts back to us.”

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Of course that is wrong and it is not the law. You will hear others saying they will renew, others saying they will not renew. The whole debate is a political debate devoid of the provisions of the Constitution and the law. Therefore, this Bill will help our counties to obtain the right legal advice. We hope that with the passage of this Bill, we will ensure that our counties are run professionally. If you look at the appointment process, it is the governor who appoints and then the person must be approved by the county assembly. This is to ensure we get the right people to these offices.

Mr. Temporary Speaker, Sir, however, if you look at some of the provisions they state:-

“No county government entity shall engage the services of a consultant on matters legal without the approval of the County Attorney”.

This is important because some of the governors, when given legal advice by either their legal advisers or even the County Attorneys, if they are not happy with the kind of advice that they are given, they will go out there, solicit for a lawyer or a legal consultant, give them instructions and ensure they return whatever decision or position they want.

Mr. Temporary Speaker, Sir, with this law, we are saying that any engagement of a consultant on legal matters must be approved by the County Attorney. This will ensure that we are able to curb the potential mischief where people will be able to shop for the legal advice that they want. If the County Attorney cannot give them that particular legal advice, they go out there shopping for one. Therefore, that is important and it is captured within the law.

On the issue of qualifications, I think some amendments will come into this. We are providing for five years experience but I think in subsequent amendments that we will bring before this House, we will want to raise that so that we have a very immensely qualified person to man and run this office.

Mr. Temporary Speaker, Sir, we hope that our county governments will realize that they are running not just political entities in the name of counties but that these entities are governed by the Constitution and the law. We do not have to see the kind of funny dealings that are going on within the counties, where you have governors awarding themselves tenders, county assemblies awarding themselves tenders and circumlocuting some of the provisions of The Public Procurement Act to avoid some of these loopholes. We hope that the establishment of this office will help us ensure that our counties are professionally run, more particularly with regard to legal advice.

Absurd things are happening in the counties, where we have seen in Busia, Kakamega and Nandi counties, people resorting to outright theft of public resources.

The Temporary Speaker (Sen. Murkomen): I add you one minute to conclude.

Sen. Sang: Thank you Mr. Temporary Speaker, Sir. We have had situations where officers within the county are avoiding and circumlocuting and going behind legislations and the law to try and achieve their desires which are contrary to what the law provides.

Mr. Temporary Speaker, Sir, I urge the Senate that we pass this Bill in the shortest time possible. We hope that Members of the National Assembly will appreciate the

need for independent and quality legal advice by the county government so that we are able to have this addressed once and for all.

I beg to second.

(Question proposed)

Sen. (Dr.) Khalwale: Mr. Temporary Speaker, Sir, I rise to support this Bill. I want to thank you for giving me this chance and, more importantly, thank Sen. Wako, Attorney-General *Emeritus* in this House and my brother at home.

I want to agree with the mover and the seconder that this legislation is long overdue. I say this because for the three years that we have looked at the accounts and reports of the Auditor-General, there are glaring instances where, if an Attorney for the county had been in office, the mistakes, omissions and commissions that we have observed and which have been reported by the Auditor-General would not have arisen.

Mr. Temporary Speaker, Sir, sometimes when you look at what is going on in the counties, you cannot help but conclude that there is serious wastage, excessive and sometimes abuse of public funds. Stories abound that already, the Council of Governors (CoG) has, in fact created a kitty for themselves so that when they are challenged as individuals or collectively, they go into this kitty to hire some of the most expensive legal minds in this country. You witnessed in the case that the governors had in court when they were resisting coming before our Committee of the County Public Investments and Accounts. They were using some of the best brains in the country and these brains are not cheap.

Mr. Temporary Speaker, Sir, we have got cases where governors, because of lack of legislation, have resorted to legal services from friends, relatives and cronies, purely for purposes of creating a job through which these people of theirs can earn some easy money. There are cases in the country where this has happened. For instance, there is a case in Kakamega County where money was paid to a law firm which was supposed to look into a boundary dispute between Kakamega and Nandi counties. We all live in this country and know that there have never been boundary disputes between the said two counties.

If anything, we had elements of public unrest in an area in Kakamega called Khuvasali where an individual went and killed a member of a family on the Nandi side. That family, in the traditional way that Nandis respond, demonstrated their anger by moving towards the Luhya side and torching houses. If that had happened on the other side, the converse would have been the same. That provoked a governor who went ahead and hired a legal firm to look into a boundary dispute where there is none. Luhyas live very happily in Mosop same to Nandis on the Luhya side. We have never fought over boundary disputes.

Mr. Temporary Speaker, Sir, when you look at the officers that these people have hired, you wonder how suitable they are. Some of the legislations that have failed to come from the governor's office so as to create various pieces of legislation within the county assembly or those that have come from the county assembly leave a lot to be desired. When you look at the quality of the pieces of legislation, you wonder what legal

mind is in the office of the governor. Who does quality assurance before the governor appends his signature once the county assembly has passed a particular Bill?

One hopes that we shall have a County Attorney as envisaged by Sen. Wako. This officer will be the legal mind that will ensure quality assurance. He will ensure that any Bill passed by the county assembly will not be at variance, but must remain congruent with the provision of national legislation and the Constitution of Kenya.

Mr. Temporary Speaker, Sir, we have some cases that I can cite. For example, when we visited Turkana County, we found out that there was very little legislation going on. Nothing came from the office of the governor to the county assembly for them to act on. We also found the same situation in Nakuru County. The Attorney- General *Emeritus* is speaking to a really felt need.

Over and above what I have said, we have got obvious cases of criminal activities. For example, in my home County of Kakamega, the Auditor-General found out several shadowy accounts were being operated by the office of the governor. The people who were operating those accounts were not public officers. If we had a county attorney in Kakamega, he would have guided the governor. Alternatively, it makes me wonder what the legal qualification is of the man who is currently advising the governor who allows such obvious criminal activities to be committed. How do you open active accounts operated on behalf of the county by people who are not officers? They are shadowy followers. That is just part of the story.

Mr. Temporary Speaker, Sir, allow me to look at a few specific issues in the clauses. I would like Sen. Wako to guide me by thinking about what is disturbing me. Given that he is a man of outstanding legal experience, he should propose the necessary amendments to make sure my appeal is also on board. Clause 4 talks about the establishment of the office of the County Attorney in each county. Clause 4(2)(c) says that the office of the County Attorney shall consist of other county legal counsels as the County Attorney may in consultation with the County Public Service consider necessary. Please, watch out. You are now opening it up for manipulation.

According to me, we should limit this. If we do not, there is no way we can avoid abuse so that we have a bloated office and start crying about the wage bill the same way we are doing in the national Government which is not manageable by the county and have counties spend a lot of money that they could have put into development.

Mr. Temporary Speaker, Sir, what I am saying is not just theory. Last week, the Governor of Mandera County, appeared before our Committee on Finance, Commerce and Budget to respond on issues of audit through a petition by the people of Mandera who had based their petition purely on the report of the Auditor-General. When Gov. Roba arrived, he came with his legal advisor who is a qualified lawyer. He also had a second legal advisor, County Government of Mandera, who is also a qualified lawyer. The governor also arrived with one of the most outstanding legal minds in the country, Mr. Kioko Kilukumi; who we know is not a cheap lawyer. I told the Governor of Mandera that it seems that we are giving him so much money that he can afford to hire three legal minds in triplicate on a straight forward case where he is expected to answer 'yes' or 'no' on whether he spend money or not.

Clause 7(c), which talks about the function of the County Attorney says that the office shall represent the county in court or in any other legal proceeding to which the

county government is a party, other than criminal proceedings. I want the Attorney-General *Emeritus* to guide us because the county governments do not have a director of public prosecution who will deal with criminal cases. Who will deal with criminal court proceedings concerning the county government? Maybe I understand this Clause wrongly but you need to clarify to me who will represent the county government.

Mr. Temporary Speaker, Sir, in Clause 8(c), Sen. Wako prescribes the powers of the County Attorney. He says that the County Attorney shall, in discharging the functions under this clause, have the powers to summon any officer in the County Public Service to explain any matter which---

The Temporary Speaker (Sen. Murkomen): Sen. (Dr.) Khalwale, did you ask Sen. Wako who will represent the county in criminal matters? Are you insinuating that the county could be sued for criminal activities?

Sen. (Dr.) Khalwale: Mr. Temporary Speaker, Sir, I have seen many cases where members of the public have sued the Republic of Kenya. If I am wrong, please correct me. They either go for specific officers like the Attorney-General and others. My fear is that, should somebody choose to sue the County Government of Kakamega, who will represent us? Might we now be creating a loophole for the procurement of very expensive legal services that could be taken care of by the County Attorney?

The Temporary Speaker (Sen. Murkomen): I am sure that the Attorney-General *Emeritus* will tell you later that the county government cannot have a criminal mind; it can only be an individual. It is the governor who will be sued for criminal activities. When a governor is sued for criminal purposes, he will defend himself individually. It is not on behalf of the county because a county cannot have a criminal mind.

Proceed, Senator.

Sen. (Dr.) Khalwale: Mr. Temporary Speaker, Sir, I hope that the Senator for Busia, in his response, will respond to these issues. I am raising concerns that are in my mind. I suspect that these concerns could be shared by many Kenyans who would want it to be clear.

Clause 8 seeks to allow the County Attorney to summon any officer in the County Public Service (CPS) to explain any matter which is a subject of litigation by or against the county government. This is very important, and I want to underline it. I thank the Attorney-General *Emeritus*, Sen. Wako, for this because, already, cases abound in the country. There is a case – Sen. Omondi will tell you – in Kakamega where her own cousin from Matungu, Mr. Paul Otsola, was removed from office for being involved in the embezzlement of Kshs200 million from Kakamega County Government. He was the County Executive Committee (CEC) member in charge of finance. There is no way whatsoever, the officer would have walked away with Kshs200 million without prior knowledge of the governor. You will find that young professionals like Paul Otsola being sacrificed to create a window through which the “big man” of the county can escape.

Mr. Temporary Speaker, Sir, we want that case to be pursued so that the young man, Paul Otsola, does not answer for the crimes of other people. This is a clear case of fraud where the governor authorised Kshs200 million to be wired into a private account of private businessmen on the pretext that they were to pay farmers who were not paid. For the few who were paid, it was supposed to be a revolving fund but the fund has never revolved from round one.

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Mr. Temporary Speaker, Sir, in the same Clause 8(3), the County Attorney may, upon request, appear and advise on---

(Sen. (Dr.) Khalwale's microphone went off)

The Temporary Speaker (Sen. Murkomen): Your time is over. I add you one minute only.

Sen. (Dr.) Khalwale: Thank you, Mr. Temporary Speaker, Sir. The County Attorney may, upon request, appear and advise on any matter in any committee of the county assembly. I thank Sen. Wako for this because there is an animal in the counties called "public land." County governments are targeting those pieces of land. In Kakamega, for example, there is a tract of land outside Bukhungu Stadium. Now that Bukhungu Stadium is being renovated, private people have grabbed land where vehicles are supposed to be parked. If we had a County Attorney, he would have stopped that.

Finally, we have Kakamega Level 5 Referral Hospital with a large piece of land. Private individuals – some of them closely related and associated with the governor – have curved off land from the hospital and they are putting up flats. I advise people of Kakamega not to interfere with the construction of the flats but let them complete the flats because that is public land. When we change government – that change is coming – we will convert those flats into public houses that will house our doctors at the General Hospital.

Sen. (Prof.) Lonyangapuo: Mr. Temporary Speaker, Sir, I join my colleagues in thanking Sen. Wako, the Attorney-General *Emeritus* – the longest serving Attorney-General in the Republic of Kenya – for coming up with this Bill which intends to introduce the office of the County Attorney and hence the Bill which is the Office of the County Attorney Bill, 2014.

Mr. Temporary Speaker, Sir, we created units called county governments as a result of the enactment of the new Constitution. If you can recall what happened on 27th August, 2010, at exactly 10.27 a.m.; the Attorney-General at that time lifted up the Constitution to promulgate it. I was seated not very far from where the Attorney-General *Emeritus* was. The joy that was witnessed on the faces of Kenyans was like we were getting into "Canaan."

In the Bible, Canaan is described as a land full of milk and honey and where there are no diseases. Now, we are witnessing heavy challenges that have come as a result of the enactment of the Constitution. We were supposed to have already created this piece of legislation then, so that whatever we are introducing now should be in line with the Constitution because many things have gone wrong in the counties.

Mr. Temporary Speaker, Sir, to start with, there are a lot of challenges in my own county. I do not know where they copied from the idea of the county attorney; they quickly went into recruitment spree and picked anybody purporting to have a degree in law and referred to them as such without an Act of Parliament that creates the office. It, therefore, means that if we fast-track this Bill to become an Act of Parliament and it is assented to, some people will lose jobs.

Occasionally, when we deal with the issue of wayward doctors, we tell people such as Sen. (Dr.) Khalwale that there are some people masquerading as doctors in the

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profession. We refer to them as quacks. I do not know what such people who masquerade as lawyers are referred to because there are people who pretend to be lawyers. I do not know whether there is a different name or they are also referred to as quacks because there are quite a number of them who have inserted themselves into offices. We can see the fruits which are abnormal because of the kind of advice that county governments are getting. For example, there are Bills purported to have been done by Members of County Assemblies (MCAs) and there is no refined lawyer or legal expert that has gone through them. Some of the Bills, it is, as if they were written by school children yet there are people who are supposed to do that.

There is somebody who resembles that in my county. I am told that there are integrity issues. People who are sacked in the national Government insert themselves into jobs in county governments before their names are cleared. You will never get anything sorted out in such scenarios.

Mr. Temporary Speaker, Sir, counties have gone into litigation with people who are supposed to be paying old rates. There are people who hid money during the defunct local authorities' era. In Samburu County, the Senate County Public Accounts and Investment Committee dealt with a case where some of the culprits made themselves senior members of the county government so that they could influence the case from inside. If we had established the County Attorney office with enough expertise as has been given, we would not be having the challenges that we have.

We keep talking of lost money in counties. If these people were in place, most of what we are seeing would not be there. For instance, counties are constructing and they give out projects which they purport to have come from the Ministry of works experts. As soon as the experts exit, the procurement experts pick it up under the guidance of ruthless persons in the office of the governor or the governor himself and amend everything. You might have had the privilege, two weeks ago, to see very interesting sheds called market stalls in West Pokot County which look like improved sizes of cattle dips. Each cost over Kshs17million and if you do the actual audit of its cost, it is not more than Kshs500 000. Where was this County Attorney if there ever existed one there?

Mr. Temporary Speaker, Sir, if this law existed before, together with the Attorney-General's office in Nairobi, it would have been very easy to know who advises the county government. We got very interesting people like we have very interesting Senators here. We have some governors who never sat in any office before but through the processes of election, they found themselves in those offices and without the supporting documents, they are doing things which you would never imagine anybody alive can do.

Mr. Temporary Speaker, Sir, if we had the County Attorney, the errors we are seeing would have not been there. Today we are using the County Governments Act to prescribe some interesting positions like legal adviser to the governor. About nine officers are working for the governor. If you scrutinise those in my county, one of them was employed before graduating. What certificate was used other than 'this is my person?' The officer can talk of few law terminologies without owning any certificate.

I understand there is a school of law in Karen where after law undergraduate studies, one attends a further nine month training to be qualified as a legal officer. We have a number of them who finish on Monday morning and on Tuesday they are in

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office. Those are the realities on the ground. There is a big challenge and things have fallen apart yet these were some of the laws that we were supposed to have in place.

Mr. Temporary Speaker, Sir, the Committee on Labour and Social Services is dealing with an amendment on “passengers” called ward, village and sub-county administrators; I have realised that their duties are strictly to serve one soul in the county; the governor at night, in the morning, noon and in the evening. If you have five constituencies, all the five are roaming with the governor everywhere. If we had a County Attorney’s office, they would have read the job description to these people to the letter and say should they fail, they have failed as a county.

Mr. Temporary Speaker, Sir, although we are introducing this office, there are some offices we may close in this Senate like the ones I have just mentioned which are serving one soul. We already gave the nine advisers. When I look at the clauses indicated here, I read through and I saw like Clause 5, which says:

“The County Attorney shall be appointed from among persons who have:-

- a) At least five years experience as judicial officers or legal practitioners; or
- b) At least five years experience in any other legal field.

Which other legal fields? I am not a lawyer, but was there any need to bring part (b) or you could have just put everything in part (a) and see what we really need as an Attorney in charge of a county when you say other legal field?

Part 7 (b) says:-

“The County Attorney shall attend the county executive committee meetings but shall have no right to vote on any matter before such committee”. That is okay just like the other ones.

Part 7 (h):-

“Shall represent the county government in matters before courts and tribunals within the county.”

This one I like because it is going to safeguard the county. The counties will continue to exist beyond these fellows who are inaugural governors.

Mr. Temporary Speaker, Sir, part 13 (1) says:-

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

(d) Incompetence.

How do you describe incompetence here? Suppose the county governor goes at variance with the County Attorney just like now some County Executive Committee Members (CECs) who are supposed to be talking with the Senator. I hear they are being sacked. I do not know whether it is happening to you. Three of mine have been thrown out because they were seen picking a phone call from their Senator.

So, that incompetence needs to be described, and when we say “incompetence”, we need to know so that we do not have anything else. I also have realized we are saying when we are employing this fellow, we say the governor employs. I would prefer just like you have indicated in Part 18, talking about the deputy, they must pass through the County Public Service Board even if you are looking for the other one, so that we get somebody that can give

allegiance to the county than to give an allegiance to one person. I know after that it has to pass through the county assembly, which is okay.

Mr. Temporary Speaker, Sir, I look at this and say it is important that we have this with regard to the deputy, we said he shall have at least five years experience as an advocate of the High Court of Kenya. Why are we varying for this one and I thought the deputy and the other one must have almost the same experience except may be years? Here, you are talking about an advocate of the High Court which I did not see in the other, you only talked of judicial officers, legal practitioners and other legal field. So, what is the distinction between these two?

Why can you not make it uniform so that it meets the requirements? You also did not say it meets the requirements of Chapter 6 of the Constitution. This one you have mentioned for the deputy and you did not mention for the County Attorney in order to make sure we have people of integrity there.

Like I told you, we have an individual purporting to be the County Attorney in West Pokot county; but this is somebody who had been sacked by the Kenya Meat Commission (KMC), the case is in court. So, when you tell the governor that such a person has been found unfit, he says he is the boss. When you have those things, we need to have a law that can easily put sense into some of these people or if somebody breaks the law, that same appointing authority, who is the governor, should be the one being arrested, because he is breaking the law by bringing people who are not competent.

Mr. Temporary Speaker, Sir, as I conclude, we need to move and enact some of these laws so that we can align and safeguard devolution to what we wanted. This is vital so that we can safeguard and become the real custodians of the interests of the people by enacting these laws. We would ask Sen. Wako and colleagues who have a wealth of experience in law and legal practice that they may need to suggest some of the laws for us to move and put these people in place. We want to see some governors and some people who have messed up go to court before 2017 rather than wait until after. Waiting for what? It does not assist us at all as a nation.

With those remarks, I beg to support.

Sen. G.G. Kariuki: Mr. Temporary Speaker, Sir, first of all, I congratulate the Committee which is headed by none other than Sen. Wako, whom we respect for the experience he acquired when he was Attorney-General and before.

The Committee discovered one of the problems that we have in our county governments. There are many problems but I must say that it is important for one to wake up in the morning and suggest that there is something that needs to be done. I believe that one of the Members of a Committee of this House woke up in the morning and decided that there is need for this office.

We do not need to elaborate about it so much, for example, in terms of its importance. You can have a very good lawyer and, in fact, you can even import a Queen's Counsel (QC) to become an advisor to the county government. That is not the major problem; it is ignorance of members of the county government and the underground movement that is going on in all places with the governor heading all kinds of misdeeds.

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What is important is whether we will change the county governments, particularly governors and Members of County Assembly (MCAs), to appreciate the rule of law. Not just the rule of law but at the same time for them to understand that there is need for honesty in whatever each individual is doing. That is not only in the county governments, it is even here in the Senate; we have to be clean in our dealings.

Mr. Temporary Speaker, Sir, many things have happened, for instance, employment of county attorneys. If you bring a Motion to suspend a governor or discuss him, they go to the same court, and spend the same money; in fact, I do not think that a governor will accept to use his officer to defend him in any court of law. He would prefer to employ a private lawyer so that in the same act, there will be many underhand dealings. Therefore, it is important for the Senate to start looking at issues like the one we are discussing now. We know that devolution did not come just like a flower; it is a job to be done. It will take us several years before we are all convinced that it is here to stay. At the same time, the aim was to revolutionize our economy and also our politics, at least, to ensure that we all understand the rule of law and deal with what we do using the existing laws.

Mr. Temporary Speaker, Sir, my biggest question in this Bill is; where is the security of tenure for the person who will be appointed county attorney? If he has no security of office and is working under the governor, will he be more important than the clerk of the county government who is not followed by the governor and whom the governor does not care about? What makes us believe that we will find somebody who will be untouchable by the governor? Unless we have an office guaranteed that his removal will not just be an easy thing, even if you take the matter to the county assembly, they are the same people that we know.

There should be 90 per cent of Members of the County Assembly (MCAs) when they agree to remove him or not. This is because we are dealing with our brothers and sisters whom we have lived with and are still with us. We know that in this country what is taking us where we are economically and many other issues is not because the law is not existing, good fellows are not employed or that we do not have qualified people in this country. I do not know which country you can go to look for a qualified person that Kenya does not have today, after 52 years of Independence.

Therefore, we have to all think beyond. Is it a discovery that we will now heal the wounds in county governments by having the County Attorney? He will be an officer like any other officer. I do not know when we shall think of trying to create offices there which are independent from the county government but answerable to the Senate. If there is such an avenue, I suggest that it is very important that we explore that avenue. That way, no officer shall be obligated to misbehave or commit an illegality just because the governor has directed him. Just now, put my friend here, the professor, a county attorney. How long will he sit to direct the governor? It is not easy.

Mr. Temporary Speaker, Sir, we have to look deep down and ask ourselves if we are doing the right thing. This is an attempt to do the right thing and nobody will criticize this move because it is important. The question is, will he deliver? We are here in this House and they will be employed by the end of the year or may be June next year but before the House is dissolved for the next General Election, you will hear how many Attorneys will have been suspended or thrown out of the county government. This is

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because they will be a hindrance to governors trying to make their own money. Any governor would feel comfortable to hire a lawyer and share the fees with that lawyer because that is what is going on.

I think we have done our best because we have to do something. While supporting this Bill, I know that there are many other things that need to be thought about deep down. Without fear or favour, we need to come out with a County Attorney whom we think will be important enough to give power and security of tenure and not just somebody who will be moved around. You cannot have someone who has been practicing or teaching law for five years and then when he or she goes to a particular county he or she finds the governor who is fresh from the university and is taken round in circles. We need to do something about that.

We should support county governors when they are doing the right thing. Today, few people talk about governors who are doing well. I am not so sure there is anyone doing well for various reasons. I know governors will complain and go to courts. Is there any way the Standing Committee on Legal Affairs and Human Rights can sit down again and find a way that this House can play a part in the management of the county governments?

County governments have failed us. Many locals feel that their expectations have not been met. We all support the Constitution. In the next few years, there will be no better Constitution in the east and south of Sahara. This Constitution will be adapted by many other countries because it aims to resolve major problems which our people are suffering from. However, we have to give ourselves time because getting there is not easy. We should not blame ourselves.

The Standing Committee on Legal Affairs and Human Rights needs to concentrate on nothing else, but how this Senate can get involved and control matters in the counties, using all the methods we can; methods that are acceptable in the law. I am very sure that Sen. Wako will do his best to capture the advice we are giving.

Let us show the country that we have done up to a certain level but the system does not give us a chance, other than sitting and lamenting that we have no power and other things. The moment you accept even in your house that you have no power, then the little power you have disappears and you become very weak. Let us say we have power. I still believe we do. When a lawyer says that this House has no power, I wonder whether they know that the Constitution does not belong to them. It is a public document given to them to interpret. However, not all lawyers can interpret it. It is interpreted by people who knew the reasons various clauses were put in there.

I am happy that we are doing this today. There are many Bills that come here. At times, I feel a bit reluctant to say anything about the pieces of legislation which circulate here every now and then. We still expect some of those pieces to be signed into law. That is why they are all lying in the National Assembly.

Let us change our position, become a different people and claim what we have. We have the power. We can move on to any direction. However, we cannot sit here lamenting, saying we will fight with a certain group of people. We were not brought here by the people to fight or quarrel with any institution. We were brought here to oversight on other institutions.

We must be the best not to claim to be the best. We are not the best, but we claim out there that the Senate is a House of *wazees*, a House of people with a lot of decorum, good people and so on. Time has come for us to look at every law that will help this nation through this House for it to have a good name.

I did not wish to speak, but when you mentioned my name, I was delighted to contribute.

Thank you very much.

ADJOURNMENT

Temporary Speaker (Sen. Murkomen): Hon. Senators, it is now time for the interruption of the business of the House. Therefore, the Senate stands adjourned until tomorrow, Thursday, 22nd October, 2015, at 2.30 p.m.

The Senate rose at 6.30 p.m.