

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Wednesday, 5th October, 2016

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

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

PRAYER

PETITIONS

PAYMENT DUE TO NAIROBI CITY COUNTY GOVERNMENT FOR LAND ALLOCATED TO DOD

The Deputy Speaker (Sen. Kembi-Gitura): Order, Senators! We have a good number of Petitions. We will see what we can do about them.

Hon. Senators, the first petition is by Dr. Evans Kidero, the Governor of Nairobi City County, concerning payment due to the Nairobi City County Government on account of a parcel of land in Embakasi allocated to the Department of Defence.

Pursuant to Standing Order No.221(a) and 225(2)(b), I hereby report to the Senate that a petition has been submitted through the Clerk by Dr. Evans Kidero, the Governor of Nairobi City County, regarding payment due to the Nairobi City County Government on account of a parcel of land in Embakasi allocated to the Department of Defence.

In the petition, the Governor states as follows:

THAT, in 1997 or thereabouts, the City Council of Nairobi purchased the property known as Land Ref. No.11344 from Kayole Estates Limited. The land comprised by measurement 1,246.7 hectares, which is about 3,078.12 acres;

THAT, shortly thereafter, the Department of Defence applied to be allocated 400 hectares or 988 acres of the said parcel of land. This application was considered and approved by the then Nairobi City Council with a condition that the Department of Defence pays the Council a standard premium of Ksh40 million within 30 days of the said allotment;

THAT, contrary to the letter of allotment, the Department of Defence entered and took possession of the entire property without paying the standard premium to the Nairobi City Council;

THAT, consequently, the then Nairobi City Council filed a suit against the Department of Defence as well as the Attorney General and the Minister of State for

Defence. The Nairobi City County demanded compensation in the sum of Kshs61.5 billion, being the commercial value of the land in question.

Prior and after filing the said suit, there were several rounds of negotiations between the Nairobi City Council and the Department of Defence. These were conducted through the relevant line Ministries; the Ministry of Defence, the Ministry of Local Government and the Ministry of Finance. These negotiations did not yield any positive outcome for the Nairobi City County;

THAT, the Nairobi City County Government has likewise been unsuccessful in having the said negotiations completed and the sums due paid to the County Government. This has tied up a lot of funds that would otherwise have been utilized to develop Nairobi into a world-class capital.

THAT, additionally, the various properties continue to incur unnecessary and unsustainable legal costs as this matter drags in court. The pendency of the matter between the two governments in court is contrary to Article 89 of the Constitution, as read together with Section 31 of the Intergovernmental Relations Act 2012; and,

Having made their best efforts to have the matter resolved, the Governor and the Nairobi City County Government believe that the Senate, pursuant to its mandate under Article 96 of the Constitution, should now intervene to have the matter resolved.

The Governor, therefore, prays that the Senate investigates this matter and makes appropriate recommendations on the same. Among the interventions proposed to the Senate are;

(a) That the Senate convenes and facilitates structured negotiations between the Nairobi City County Government and the Ministry of Defence and other concerned National Government Ministries towards ensuring payment to the Nairobi City County Government of the sum owed to it of Kshs61.5 billion; and,

(b) That the Senate enacts legislation setting out a procedure for an amicable and expeditious resolution of disputes between the national and county governments, to avoid lengthy and costly litigation processes between the two levels of government.

Hon. Senators, before I allow comments on the petition, I note that this is the first petition filed with the Senate by a county governor since inception of the current Senate in 2013. The Senate has also received various petitions from Speakers and Members of County Assemblies. These petitions go to the heart of our mandate under Article 96 of the Constitution, which is to represent counties and protect the interests of the counties and their governments. I believe these petitions are submitted in recognition of and as a testament to the relationships we have nurtured and continued to build with county governments and their institutions.

Indeed, as I have often said, the Senate is the guardian angel of county governments and the devolved system of Government in Kenya. I also note that the issues of establishing a dispute resolution mechanism, firstly, between the national government and county governments, secondly, between two or more county governments and thirdly, between county executives and county assemblies is an issue we have had extensive discussions about at the Senate. This includes during consideration of the various Motions that have come before the Senate for impeachment of county governors as well as when the Senate was called upon to intervene to resolve disputes in Isiolo and Makueni counties.

I, therefore, direct that the Committee that shall be tasked with considering this Petition, being the Standing Committee on Legal Affairs and Human Rights, should give sufficient attention to this matter, including where necessary, proposing enactment or amendment to legislation to establish effective engagement and dispute resolution mechanisms as aforesaid.

Hon. Senators, pursuant to Standing Order No.226, I shall now allow comments, observations or clarifications in relation to the petition for not more than 30 minutes. In the past, we have not quite adhered to the rule of 30 minutes. I have a good number of petitions here and may have to spread them out. I will, therefore, enforce the 30 minutes strictly. If there is a lot of interest in the matter, then we will restrict time, so that as many as possible of those who want to speak to this issue can have a chance.

Thank you.

Sen. Musila: Mr. Deputy Speaker, Sir, I stand to support this petition. It is not only the Nairobi City County Government that is suffering as a result of national Government's failure to honour obligations due to the county governments. It is only the other day that the Nairobi City County Government published a schedule of debts owed by the national Government in terms of land rates within the city.

Virtually, all the county governments in this country are owed monies by the national Government, particularly with regard to land rates. One wonders why the national Government is not kind to the young county governments that have been established by ensuring that they provide the necessary money, particularly with regard to debts, so that they can stand on their own. Why can the Government not get money transmitted to these counties?

Mr. Deputy Speaker, Sir, going specifically to the issue of the petition that has been raised by His Excellency the Governor of Nairobi City County, it has been stated that the national Government applied for this particular plot. The particular plot was allocated to the national Government and precisely the Department of Defence. There was a standard premium that was to be paid. However, according to me, it appears as if the Government is just abusing its powers. It moved into the land and ignored to pay the standard premium as had been prescribed. Therefore, I support that the Committee that you have just mentioned looks into this matter seriously.

There is need, as you advised, that we ensure that legislation is enacted by this Senate in order to carry out our mandate as stipulated in Article 96 of the Constitution. We should ensure that not only Nairobi County Government but all county governments that are owed monies by the national Government are paid promptly so that they carry on the mandate that has been given to them in the Constitution.

I thank you.

The Deputy Speaker (Sen. Kembi-Gitura): Thank you, Senator. It is going to be two minutes for all the other speakers.

Sen. Wangari: Mr. Deputy Speaker, Sir, I join Sen. Musila in congratulating the Governor for taking that route because it a constitutional right under Article 119 of the Constitution which provides that anyone has a right to petition the Senate. Most important is that this issue had been raised in some of our committees. I know it was before the County Public Accounts and Investments Committees (CPAIC). This is the route we advised and I congratulate the Governor for taking it.

Mr. Deputy Speaker, Sir, my concern will be on the legal framework. We have even had presidential decrees on this issue because it has been persistent also in the public domain but it has not been implemented. I can see the Chairman of the Committee that will deal with this, Sen. Wako, has just walked in. They should look at the legal framework so that it is not an act of benevolence but it should be implementable in real time.

The other one is the issue of timeline. I know Standing Orders give the leeway of submission of reports of the petition within 60 days. However, what we have seen in the past is that petitions have dragged too long because we have always sought extension. I pray that the Committee prioritises this issue and gets us an implementable report within 60 days. That can even be done within the first one month. We can use that as a case study in order to deal with other issues that have been raised by Sen. Musila. I thank you.

The Senate Minority Leader (Sen. Wetangula): Mr. Deputy Speaker, Sir, I join my colleagues in supporting this petition. This petition has two limbs. The first limb is to assist the County Government of Nairobi to recover monies owed by the national Government. The second limb is futuristic in that it begs the Senate to legislate on similar cases for the future. On the first limb, I would encourage the leadership of the Majority Party in the House – I can see the Deputy here – that this is a matter which the Majority leadership in the House should advise the national Government to honour its obligations to the county governments. There is hardly any county in this country that is not owed colossal sums of money by the national Government; monies that would go into the improvement of the lots of lives of Kenyans by providing services to them and other necessities in life.

Mr. Deputy Speaker, Sir, the petition also brings to the fore the question of official impunity in this country. A Department of Government could be allocated 1,000 acres of land or thereabouts. However, it may proceed in total disregard of all written laws and commonsense and annex and take over entire 3,000 acres of land. Over and above that impunity, it may decline to pay for it or even to pay standard premiums until it is taken to court. If the Department of Defence or any other Government Department for that matter can display this kind of impunity---

(Sen. Wetangula's microphone went off)

One more minute please.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Wetangula, the request for one minute does not mean you have got it.

The Senate Minority Leader (Sen. Wetangula): Mr. Deputy Speaker, Sir, I beg for extra two minutes.

The Deputy Speaker (Sen. Kembi-Gitura): You will have one but not two minutes.

The Senate Minority Leader (Sen. Wetangula): Mr. Deputy Speaker, Sir, thank you. If a state agency or a Department of Government and more particularly a Department as important as Defence can display such impunity, then what is expected of an ordinary citizen faced with an obligation to obey the law?

Mr. Deputy Speaker, Sir, finally, the story and history of petitions in this House has not been a very good one. There are petitions pending before committees for as long as six or eight months yet the Standing Orders require that we dispose of petitions in 60 days. I urge your office to look at each and every petition and see what the committees are doing to dispose of the petitions, so that it does not become an exercise in futility for members of the public to petition the Senate---

(Sen. Wetangula's microphone went off)

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Wetangula, your time is up. Actually, the last point raised by Sen. Wetangula is very important. There are petitions pending in committees for a very long time. I direct the Clerk's Office to prepare a matrix of all the petitions that have been brought to the Senate since inception indicating those that have been delivered, when they were delivered and those that are pending and for how long and why. So, I would like to see that by latest Tuesday next week. This is because petitioners are out there still waiting. I am sure that maybe they do not know the Standing Orders state that petitions should be responded to within 60 days. Therefore, they could still be waiting out there hoping that they will get the results of the petitions. So, on Tuesday, I would like to have a complete matrix of all the petitions and when they were delivered and those that have not been delivered, for how long and why.

Sen. Karaba: Mr. Deputy Speaker, Sir, it appears as if you knew what I was going to say.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Karaba, if I said it for you, then you can take your seat.

Sen. Karaba: Mr. Deputy Speaker, Sir, I still have something to add. In fact, a petition was brought to this House by the Elders of Mihiriga Kenda from Kirinyaga. It was discussed and then the relevant committee was tasked with the responsibility of looking into it. I think it took almost a year. So, I am confirming what you have said and the fears because people out there think that it is only the Senate that can solve some of the problems. We need to fast-track all the petitions so that such petitions are not overtaken by time or events.

Mr. Deputy Speaker, Sir, even after the ruling, we need to find out whether the rulings are implemented by the relevant departments of the Government of the day because what happens is that a recommendation could be given out by a committee but nothing happens on the ground regarding the implementation. For example, there is the case of Mwea Trust land. The issue of title deeds was supposed to have been resolved but the process is still going on. People are being issued with title deeds yet this House ruled out that the issuance of title deeds be stopped forthwith. So, that was a very wise ruling. Keep it up!

The Deputy Speaker (Sen. Kembi-Gitura): Thank you, Sen. Karaba.

Sen. Okong'o: Mr. Deputy Speaker, Sir, from the outset, I would like to commend the Governor for Nairobi City County for bringing such a petition and ask other governors to bring such petitions. Last week, we called for a meeting with the Intergovernmental Technical Committee to look at issues which are global in nature. We invited the Treasury who never attended and they did not give any reason. We wanted

them to address issues especially where the national Government deducted colossal amounts of money for ghost workers and there is no such provision in the law. We are looking at that as the CPAIC.

There are some people in the Treasury who believe in centralism. Those are the people who are out to kill devolution. It is incumbent upon this House, which is mandated to defend counties, to act on such issues. The Governor of Meru gave us an example whereby a transfer of property worth Kshs100 million was hurriedly transferred to the national Government for a debt of Kshs30 million. These are matters which we need to address as it is the nerve and core mandate of our being in this House.

Sen. Wako: Mr. Deputy Speaker, Sir, thank you for giving me this opportunity. First of all, allow me to thank you for having taken the right decision to refer this matter to the appropriate committee which is the Committee on Legal Affairs and Human Rights. I can assure you that we will act with due speed on this matter which is a matter of national importance and which even goes beyond the dispute between Nairobi City County Government and the national Government. Actually, it goes to the heart of the relationship between the national Government and various county governments because there is no county government which is not owed money by the national Government.

Mr. Deputy Speaker, Sir, we shall also look into the laws which are involved regarding this matter, including the role of the Intergovernmental Relations Committee to ensure that national and county governments deal with these issues expeditiously and properly if county governments have to manage issues in order to deliver services to the people of this country.

I also like your ruling on the issue of six months. In fact, it sort of supplements the Committee which is attended to by all the Chairs of the various committees where issues pending, including petitions pending, normally come before. We are tasked to find out what is happening to the various petitions particularly by *wananchi*. Petitions are important because they show the confidence that has been reposed by members of the public to the Senate and we should not let that down.

Sen. Adan: Mr. Deputy Speaker, Sir, thank you for giving me this opportunity. First, I must congratulate Governor (Dr.) Kidero. We have a similar problem in Isiolo because we have three military camps and we face a lot of challenges. This issue has been raised several times to the national Government and the leadership of this country but, unfortunately, we have not resolved it. If it is possible, once this petition goes to the relevant committee, they should look into the issue of Isiolo County because it appears as if there is a lot of encroachment and further land is being used for the purpose of practice.

In certain cases, a lot of violation takes place where the military harasses members of the public. If that is not possible, then I will make sure that we bring a petition to this House to address the issue of Isiolo County regarding the military lands that affect the community.

Sen. Ongoro: Thank you, Mr. Deputy Speaker, Sir, for allowing me to also pronounce myself on this matter. We are all aware of the provision of the Constitution which is contained under Chapter 2, Article (6). It states that the two levels of governments; that is the national Government and the county governments are distinct and inter-dependent. That provision puts a lot of weight on the issue of mutual relations on the basis of consultations. When the National Government takes 3,000 acres from a

county government and refuses to negotiate or even to pay, then they are not leading by example. This takes us back to the issue of absence of the Transition Authority (TA) and the fact that the national Government should lead by example. If they fail to do that, then they have no moral obligation as a national Government to put any other county government to task when anything like this is done by the Government.

Lastly, in the recent past, we have heard people from the Jubilee administration talking about non-performance of the Nairobi City County Government when actually the national Government that they belong to is withholding Kshs61.5 billion. How do we then expect that kind of a governor and a county government to effectively provide services?

The Deputy Speaker (Sen. Kembi-Gitura): Thank you, hon. Senators. Pursuant to Standing Order 227(1), the petition stands committed to the relevant Standing Committee. In this case, it is the Standing Committee on Legal Affairs and Human Rights. Where necessary, the Standing Committee on Lands and Natural Resources as well as the Standing Committee on National Security and Foreign Relations may give their input during the consideration of this petition.

In terms of Standing Order 227(2), the Standing Committee on Legal Affairs and Humans will be required in not less than 60 days from the time of reading of this prayer to respond to the petitioner by way of a report addressed to the petitioner and laid on the table of the Senate.

Sen. Wako, as the Chairman, I am happy that you had to give your own commitment that you will deal with this matter within the 60 day period. I heard you commit yourself on the Floor of the House.

COMMUNICATION FROM THE CHAIR

VISITING DELEGATION FROM FARASI LANE PRIMARY SCHOOL, NAIROBI COUNTY.

Hon. Senators, I wish to recognise the presence of visiting pupils and teachers from Farasi Lane Primary School, Westlands, Nairobi City County. They are seated at the Public Gallery. In our usual tradition of receiving and welcoming visitors to Parliament, I extend a warm welcome to them. On behalf of the Senate and my own behalf, I wish them a fruitful visit.

Hon. Senators, as you are aware and as has come out in the House before, it is not mandatory that we should recognise pupils in the Public Gallery. I remember that has been raised by Sen. (Dr.) Khalwale. However, when pupils and students are in our Public Gallery, I find it incumbent upon myself to recognise them because, for them, this is a learning curve. They have come here so that they learn something and that is why you find that, invariably, when pupils and students are here with their teachers, we take the time to recognise their presence because they have come here for the specific purpose to learn from us. So, I would like to welcome them very much to the Senate.

Sen. Murkomen: Mr. Deputy Speaker, Sir, permit me to welcome the students from Farasi Lane Primary School, Nairobi. To ride on what you said last about recognising students, I remember when I was a student at the University of Nairobi, not

High School, I walked from the Kenya School of Law in Parklands to come and sit in the Gallery and watch leaders like the Senate Majority Leader, Sen. Wetangula; Sen. Orengo, Sen. Wako and others debating in the House. I remember the inspiration I had and the feeling in my heart that one day I would step inside this Parliament. So, correctly, this is the right place to inspire, encourage and motivate young people to dream again and to believe in their country and to understand and appreciate the story of their country.

Mr. Deputy Speaker, Sir, inviting young people from schools and colleges to come and sit in the gallery to listen to our debates and presentations is one way of preparing them for the future. I am a testimony that the people I saw the other day in the gallery are the same people we share seats with, together in this House. It is also a privilege to be the Deputy Majority Leader. So, I support what you said last.

The Deputy Speaker (Sen. Kembi-Gitura): Thank you, Sen. Murkomen. Sen. Wetangula. Please, let us make it brief.

The Senate Minority Leader (Sen. Wetangula): Mr. Deputy Speaker, Sir, I am pleased to welcome the pupils and their teachers from Farasi Lane Primary School in Westlands, Nairobi. It is a constituency that is represented very ably by my younger brother, hon. Tim Wanyonyi. I want to encourage them as they come to learn to know that the future leaders of this country lie among them.

As Murkomen said, I remember when we were at the university, we came to Parliament and there was a Motion or a Bill that had been highlighted to be contributed by Sen. Orengo and hon. George Anyona. When we arrived at Parliament, we were violently beaten up and chased away by the police. Times have changed. As a House, we should continue to encourage pupils, students and other members of the public to come and witness and feel what it means to be in a legislative chamber.

Sen. Karaba: Mr. Deputy Speaker, Sir, it is also important for me to tell the House that when the students come to the National Assembly and, moreso, to the Senate, it is part of the learning which is already inscribed in the syllabus. So, it is not just a walk-in, walk-out exercise. It is something that is examinable and it is in the syllabus. I would encourage those students and schools which have not visited this Chamber to make sure that they come. They could be missing something that is in the syllabus and that they need to know more about the Speaker and where he sits, about the Members and House procedures. Those questions come quite often in the examination. So, the visits are important.

I thank you very much for that ruling.

The Deputy Speaker (Sen. Kembi-Gitura): Thank you. Finally, we have Sen. Ongoro.

Sen. Ongoro: Thank you, Mr. Deputy Speaker, Sir. May I also take this opportunity to welcome the pupils and teachers from Farasi Lane Primary School in Westlands, Nairobi? Apart from being one of the most populated schools in Nairobi County, this school also stands out as one of the best performing over the years. To see pupils from that school visit the Senate is an encouragement that at least in Nairobi City County, we have a generation that is ready to get this mantle from us. Amongst them, I see many Senators and leaders in the next generation. Since they have come here to learn and it is in the “upper” House where we are legislating, I also want to just thank the management and also the Senate leadership for giving them that opportunity.

(Sen. (Dr.) Khalwale stood in his place)

The Deputy Speaker (Sen. Kembi-Gitura): Hon. Senators, I have another Petition. Order Sen. Wako! Sen. (Dr.) Khalwale, take your seat if you will.

(Sen. (Dr.) Khalwale took his seat)

PETITIONS

ANNULMENT OF PFM REGULATIONS 25(1)(F), 37 AND 38

The Deputy Speaker (Sen. Kembi-Gitura): Hon. Senators, pursuant to Standing Order No.1 (a) and 225 (2) (b), I hereby report to the Senate that a petition has been submitted through the office of the Clerk by 23 members of the Society of Clerks at the Table (SOCATT) in Kenya calling for annulment of regulations 25 (1) (f), 37 and 38 of the Public Finance Management (PFM) (County Governments Regulations) 2015.

The said regulations relate to:-

(1) Establishing a ceiling for the approved expenditures of a county assembly at 7 per cent of the total revenue of the county government or twice the personal emoluments of the county assembly, whichever is lower.

(2) Establishing a cap of 1 per cent on variations that may be effected by a county assembly to a vote item in the annual county government budget estimates.

(3) Permitting the Controller of Budget to authorize withdrawals from the county revenue fund of up to 50 per cent of the last approved budget in instances where the county assembly has not approved the budget estimates at the beginning of a financial year.

The petitioners contend that these regulations are not in consonance with the parent Act, that is, The Public Finance Management Act 2012, as well as the Constitution.

The petitioners, therefore, pray that the Senate urgently considers this matter and annuls the stated regulations in accordance with the powers conferred on it under Section 19 of the Statutory Instruments Act.

Hon. Senators, pursuant to Standing Order No. 226, I will allow comments, observations or clarifications in relation to the petition for not more than 30 minutes.

The Senate Minority Leader (Sen. Wetangula): Thank you, Mr. Deputy Speaker, Sir. In fact, this petition is long overdue. It is a petition that will test the goodwill of this House, in accordance with Article 96 of the Constitution, as protectors and defenders of counties and their governments.

Mr. Deputy Speaker, Sir, Article (6) (2) of the Constitution reads as follows:-

“The governments at the national and county levels are distinct and inter-dependent and shall conduct their mutual relations on the basis of consultation and cooperation.”

What we have now are structures that make county governments subordinate to the national Government, yet the Constitution says ‘distinct’ and ‘inter-dependent’. An

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example is the manner in which Government affairs are conducted. A Speaker in this House and a Speaker in the National Assembly are automatically conferred upon the honour of Elder of the Golden Heart (EGH). I do not know what you, as the Deputy Speaker, has been conferred upon. The Speaker in the National Assembly and the Speaker in the Senate are automatically entitled, together with their spouses, to diplomatic passports. The speakers of county assemblies are not recognized in any way, yet they are speakers of legislative houses.

I would want to see a situation where what is available at the national Government is also available at the county government. Restrictions on finances at the national Government must be identical to restrictions at the county government because they too are governments. Today, county governments are treated as graduated county councils. This is a total antithesis of devolution.

Mr. Deputy Speaker, Sir, I support this petition. I believe that, again, it is likely to be forwarded by you to the Committee on Legal Affairs and Human Rights chaired by Sen. Wako or the Committee on Finance, Commerce and Budget chaired by Sen. Billow. Whichever Committee you send it to must act expeditiously and bring to the fore the meaning, spirit and letter of Article 6 (2) of the Constitution; both governments are distinct and interdependent.

The Deputy Speaker (Sen. Kembi-Gitura): I will give each Member two minutes to contribute.

Sen. Murkomen: Mr. Deputy Speaker, Sir, I totally agree with the petitioners, particularly because Sen. Hassan and I objected to those ceilings being provided to the county assemblies. It is for good reasons; it is not that there are no good manners or intentions. When it comes to the independence of the county assembly, while operating within the county government, it is anticipated by the Constitution that the people who will be elected to be Members of the County Assemblies (MCAs) are reasonable, intelligent and mean well for the county. We cannot then micromanage the MCAs in terms of what they do or not do in so far as legislation on finance is concerned because that is not what the Constitution anticipates.

I know of a few county assemblies and MCAs, like the ones from Nairobi County, who have portrayed an image of hooliganisms and lack of intelligence. However, that does not mean that all the 1,450 elected MCAs across the country are of the same manner, including those who are nominated. Therefore, I strongly believe that the petitioners have a point; that curtailing the roles and powers of county assemblies is unconstitutional. To the extent that these regulations try to micromanage the county assemblies is unconstitutional, like I said in 2014. It is unconstitutional now and shall remain so in future.

Sen. Hargura: Thank you, Mr. Deputy Speaker, Sir. I would like to support this petition and ask the relevant Committee to move with speed. First of all, the regulations that were made are discriminatory because they affect the county assemblies and not the executive. We passed ceilings during the division of revenue. For example, in the case of Marsabit County, what they were given in the ceilings is much better. Now, they are being told that it is either they get 7 per cent of the budget or twice the personal emoluments which in this case means that the county assemblies are technically being crippled. They cannot do any oversight because over and above the personal emoluments,

which they have to get, the sittings will not be covered. They cannot even travel around the county to check what the executive is doing.

The relevant Committee should, therefore, move with speed to see how some sections of the regulations can be nullified because they override what this House has passed. The Controller of Budget is now insisting that county assemblies have to comply with the regulations and ignore the ceilings that we passed.

Sen. (Dr.) Khalwale: Mr. Deputy Speaker, Sir, I also support the petitioners and their petition. This Petition calls to mind two things; one, that we are all aware that in this House there is a Committee on Delegated Legislation, ably chaired by the Senator for Nandi, Sen. Sang. We also know that before these regulations got the force of law, they were approved in the National Assembly and in this House. It is, therefore, regrettable that at the time of approval, the Committee chaired by Sen. Sang did not do thorough research to advise the Plenary. In fact, if anything, this is a straightforward matter that should just be taken over by the Committee chaired by Sen. Sang. They should look at the regulations that we passed with regrets and recommend otherwise, without us going through the long route of the petition, because it simply means that the Committee failed.

I support the petition and urge the Committee to be hawkeyed next time, because they research for us.

Sen. Wako: Thank you, Mr. Deputy Speaker, Sir, for giving me this opportunity. The issues raised here appear to be straightforward. It is just a question of interpretation of the various sections of the law, but the Committee charged with the implementation of finance issues is best placed to go into it. Whichever Committee you refer this Petition to, whether the Committee on Budget and Finance, or the Committee on Delegated Legislation, they can rest assured that I or the Committee on Legal Affairs and Human Rights will appear before them and give them the interpretation of the law that we think applies.

One of the distinguished Members of that Committee, Sen. Murkomen, has already spoken and I think he speaks for most people. Mine is to say that whichever Committee it goes to, we will be there to support them and give them the correct interpretation of the laws and find out whether these regulations are not *ultra vires* the Constitution and the Act itself.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Orengo you have two minutes.

Sen. Orengo: Mr. Deputy, Speaker, Sir, I lend my support to the Petitioner. It looks to me a very straightforward matter that should be regularized. However, I would like to point out that the spirit of the law in terms of financial control is normally very important and a county assembly just like the National Parliament may have its mandate of performance controlled by putting financial barriers or limitations which then eat upon its own authority.

The Constitution gives legislative authority to the county assemblies by dint of the first Article of the Constitution. Therefore, if barriers of this nature are placed against the county assemblies, then willy-nilly, they will be an appendage, not only of the National Government, particularly the Treasury, but also of the county executive which is not equally restricted. To that extent, there is merit in this petition, and we hope that this work can be carried out expeditiously without going through the normal procedure as in other Petitions.

I support.

The Deputy Speaker (Sen. Kembi-Gitura: Thank you, Sen. Orengo. Finally, let us have Sen. Billow.

Sen. Billow: Mr. Deputy Speaker, Sir, our Committee had planned to summon Treasury to explain why they failed to effect the decision made by the Committee with regard to both issues that are raised in the petition. I think this is a matter we had discussed, deliberated on and passed in this House that both of them contravene the law. The one of 7 per cent contravenes the Public Finance Management Act which gives the Senate the mandate to come up with the limits every year, through the County Allocation of Revenue Bill. The 1 per cent contravenes the Constitution which allows the county assemblies to approve the budget with or without amendments.

We made it very clear to them and we should not waste time on this matter. It is clearly an attempt by Treasury to serve the interests of the governors. We have repeatedly told them that they cannot undermine the institution of the Constitution which confers those powers on the assemblies to approve budgets with or without amendments in the same way that the National Assembly approved the national budget with or without amendments.

The National Assembly is not restricted in any way by statute on how, but to what extent. These regulations are, therefore, in conflict and we have told them so. They agreed but they have not implemented. It is a matter that I strongly support, and we need to move expeditiously to throw it out so that they do not in any way limit the powers of the assemblies.

The Deputy Speaker (Sen. Kembi-Gitura): Hon. Senators, pursuant to Standing Order No. 227(1), the petition is referred to the Standing Committee on Finance, Commerce and Budget. In terms of Standing Order 227(2), the Committee will be required, in not more than 60 days from the time of reading this prayer, to respond to the petitioner by way of a report addressing the petitioner and laid at the Table of the Senate.

I have another petition by Mr. Gedion Kiprotich Keter a resident of Kericho County on the mode of distribution of subsidized fertilizer and free seeds to farmers.

THE MODE OF DISTRIBUTION OF SUBSIDIZED FERTILIZER AND FREE SEEDS TO FARMERS

Pursuant to Standing Order Nos. 221(a) and 225(2) (b), I hereby report to the Senate that a Petition has been submitted through the Office of the Clerk by Mr. Gedion Kiprotich Keter, a resident of Kericho County concerning the mode of distribution of subsidized fertilizer and free seeds to farmers in Kenya.

In the petition, the petitioner states that the existing mode of distributing fertilizer and free seeds to farmers through the National Cereals and Produce Board (NCPB) has not achieved the stated purpose of making these inputs easily accessible to farmers at the stated prices.

The petitioner states that this is because the distribution model has many loopholes, which have led to the loss and diversion each year, of hundreds of thousands of bags of fertilizer and seeds from NCPB stores to persons who are not the intended beneficiaries.

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The petitioner proposes that this model be reviewed to:

- (a) Have primary schools as the distribution points of these inputs.
- (b) Establish a verifiable database of farmers in the country and their annual requirements for subsidized fertilizer and seeds.

The petitioner, therefore, proposes that the Senate investigates and takes measures to address this situation. Among the interventions proposed to the Senate is an amendment to the National Cereals and Produce Board (NCPB) Act to provide for primary schools as distribution points for these inputs.

Hon. Senators, pursuant to Standing Order 226, I now allow comments, observations or clarifications in relation to the Petition for not more than 30 minutes. Let us have ,Sen. (Prof.) Lesan.

Sen. (Prof.) Lesan: Mr. Deputy Speaker, Sir, farming is a seasonal event and beyond what the petitioner has said, there is difficulty among the farming community as to the timing at which they get this fertilizer, particularly if it is subsidized. It arrives sometimes during the harvest season when this fertilizer is not required. Farming being a seasonal event, the distribution of fertilizer whether subsidized or not, should coincide with the planting season within the various areas in the country.

I know the planting season in the eastern part of the country is not the same with what happens in the western or the central part. I, therefore, support this petition that the mode in which this fertilizer is distributed is not only to be done in the suggested mode, but also paying special attention to the seasons and the farming times within the various parts of the country.

I support.

Sen. (Dr.) Khalwale: Thank you, Mr. Deputy Speaker, Sir. I would like to support this petition and it is true that the model in its current form is wrong. One, in places like Kakamega County, Lugari to be specific, Bungoma County and Trans Nzoia County, when this subsidized fertilizer comes – and that is if it comes at all – it is deliberately brought late when farmers have already planted. In other incidences, you find that elements within the provincial administration have created structures that they use to hoard the fertilizer and it is not usually surprising that you find the fertilizer being sold or repackaged at some of the hardwares in town.

Mr. Deputy Speaker, Sir, as we attempt to create a new model, we must remember that under the new Constitution, agriculture is a fully devolved function. It is important that we remove the role of the provincial administration from this important function and give it to the office of the governor and hope that the CEC in charge of agriculture in the county government will be more up to it than the current status.

I support.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Karaba!

Sen. Karaba: Mr. Deputy Speaker, Sir, this is not the first time such concerns have been expressed in the Senate. Even in the National Assembly, I am briefed; they are discussing about the fertilizer both the distributors and the issuance. I think we need to be a serious House and once we have made a resolution here, it should be implemented. I think a similar question was asked here and I also have a question coming tomorrow over the same issue of fertilizer because the concern is that Kenya is an agricultural country.

Industries are supposed to be agro-based. So, if we mess up with agriculture, where are we going? It is like we are just joking and wasting time here.

So, if the agricultural officers are not functional, then they get sacked because they are all sleeping on the job. What is so interesting for them not to avail the fertilizer on time? Like now, the rains have already started and we have no fertilizer. To our dismay, fertilizer comes after the planting season is over. What is it for?

In Mwea where they are now planting rice, there is no fertilizer and then we are expected to produce enough rice to feed the country. No way. We need to be given enough inputs and there is somebody in the Ministry of Agriculture who is sleeping on his job. Why do we not recommend an overhaul or we go the way Sen. (Dr.) Khalwale is saying; of devolving the whole function of agriculture thing to the counties so that we give enough fertilizers to Mwea, enough to the coffee growing areas, enough to the pineapple growing areas and so forth so that we can be independent of our own self and the climate.

I support the petitioner.

The Senate Minority Leader (Sen. Wetangula): Mr. Deputy Speaker, Sir, when the Government decided to give subsidy to farmers, we all lauded it. In all jurisdictions, when you decide to subsidies to farmers, you subsidies farmers across board and you make sure you enable farmers to farm. Like my colleagues have said, where we do come from in the west, a county like Trans Nzoia represented by Se. Ndiema and where Sen. Nabwala comes from, it statistically produces one-third of the county's cereals; maize. But this fertilizer arrives after the second weeding. Then it is distributed in a very haphazard manner and ends up in the hands of profiteers who then hold it for the next season. They pick it at a subsidized price and sell it at market price.

Mr. Deputy Speaker, Sir, agriculture once it is completely devolved, the only reason money for subsidize in agriculture is held at the centre is for the obvious reasons; corruption and kickbacks. Procurement of fertilizer, we know who controls it. We also know who controls the distribution of that fertilizer. Unless this is changed, we are not subsidizing the farmer but we are fueling corruption and enriching the usual suspects in this country.

I want to encourage that the committee looks into the entire structure for farming subsidies.

I beg for one minute.

(Sen. Wetangula spoke off record)

The Deputy Speaker (Sen. Kembi-Gitura): Your time is up. Sen. Billow!

Sen. Billow: Thank you Mr. Deputy Speaker, Sir. The whole idea behind subsidies to farmers on fertilizers and seeds was to make the price of flour and maize affordable but it has not worked. Despite all the money put into fertilizer and seeds every year by this Government, the price of maize is still unaffordable to the ordinary Kenyans. The reasons are what has just been said; that it is because of the corruption involved in the procurement and the mode of distribution where certain farmers and certain regions of this country do only read about it. I am not a farmer but I have small farmers in my area. They have never heard of a Government assisting people with seeds and fertilizers.

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Mr. Deputy Speaker, Sir, this thing goes to a certain part of this country and there is zero value added. In fact, in my view, this petition will look at the whole impact of this programme so that we can make a decision whether we should continue subsidizing farmers when the price of production is still expensive compared to Uganda, Tanzania and any other country in this region. We are still the single most expensive producers of maize and other cereals. So, it does not make sense despite all this money that we are putting into this venture.

So, it is a good petition, and I support it.

Sen. Ongoro: Thank you, Mr. Deputy Speaker, Sir, for allowing me this opportunity to also give my sentiments on this petition. We are all aware that agriculture is one of the economic pillars of this nation. Kericho County and other counties are the breadbasket of this nation. Therefore, the mode of distribution of fertilizers must be transparent and tailor made to suit that particular county.

Now that we all know that this function is already devolved, I still wonder why matters agriculture have not been devolved. It is time that we must pronounce ourselves as a Senate on this matter that all matters agriculture including the purchase and distribution of fertilizer must be left to the county governments because they know the specific needs of their farmers and how to come up with tailor made distribution modes specific to some particular counties.

Mr. Deputy Speaker, Sir, just to comment about what Sen. Billow has talked about, it does not make sense if all taxpayers from this nation are contributing to the national kitty and when it comes to distribution of things fertilizer, areas that need this fertilizer the most like the arid and semi arid regions of this nation do not access it. Unless we want to have them continuing in that vicious circle of poverty and lack of food, I think it would be in order if we allowed all counties to have a say, to have the same amount of fertilizer allocated to them so that they can come up and become breadbaskets of this nation.

Sen. Sang: Mr. Deputy Speaker, Sir, I want to join my colleagues in congratulating Mr. Gideon Keter for bringing this petition to the Senate. Agriculture as indicated by our colleagues is what sustains the economy of this country. I come from Nandi County where farmers spend a lot of their resources in acquiring fertilizer. We want to laud the Government for subsidizing fertilizer. However, the mode of distribution needs to be relooked. It is a challenge that you have situations where when farmers need these subsidized fertilizers, the queues are so long that at the end of the day farmers decide to go to commercial businessmen to buy fertilizer as opposed to using the subsidized fertilizer that is available and provided by the Government just because of the bureaucracy in terms of distribution.

We have seen situations where businessmen and conmen collude with Government officials to access this subsidized fertilizer and, later on, sell it at commercial rates to farmers. Therefore, the whole distribution mechanism must be looked into. It does not make sense that the Government spends resources to subsidize fertilizers which will then be only available to farmers after the planting season. This is a very serious Petition. I hope the Agriculture Committee will spend time to find out from the farmers, county government, co-operative societies and farmers associations across

the country on how best we can distribute this subsidized fertilizer which is the original intention of the Government of Kenya.

Sen. Nabwala: Thank you, Mr. Deputy Speaker, Sir. I also support this important Petition. I want to thank Mr. Gideon for raising this issue of subsidized fertilizer and seed to the farmers. I come from Trans Nzoia County where the economy has collapsed due to expensive inputs.

The farmers are not able to access these subsidized fertilizers or they are brought at the wrong time. There are times when they find their way on the shelves of business people and the farmers are forced to buy the fertilizers and seeds at a very high cost. When the farmers use these expensive inputs to grow maize, you find that they cannot make profit which has led to the collapse of the Trans Nzoia economy.

Trans Nzoia was seen as the food basket of this country. It used to feed the whole nation. The Government is now focusing on Galana Irrigation Scheme where they are trying to grow maize using irrigation instead of trying to support the farmers who come from the counties that grow maize and counties such as Kericho that grow tea. We shall not have food insecurity if we fail to support agriculture in our country.

I support the Petition and I pray that the Committee will look at it and even visit Trans Nzoia County to be able to establish where the rain started beating us.

Sen. Kanainza: Thank you, Mr. Deputy Speaker, Sir, for giving me this opportunity. I want to congratulate and appreciate my friend, Mr. Gideon Keter, who is seated in the Gallery for bringing this Petition. Trans Nzoia County as well as Likuyani Constituency are referred to as food baskets of Kenya. However, the level of production of food has gone down because the farmers are not able to benefit from this incentive from the Government.

Sen. Ongoro brought a Motion here sometimes back on how we can support the farmers, including the coconut farmers, from the coast region. I believe we can solve this problem if the Agriculture Committee looks into this matter. This is because fertilizer is currently sold through middlemen who repackage and re-sell it to the farmers.

It would be important for the National Government to support the devolving of this function as well as the fund because agriculture is a devolved function. This will help county governments to register all the farmers so as to help them benefit directly from the County Executive Committee (CEC) Member in charge of Agriculture. This will also include the structures that have already been laid down like the ward administrators and the village administrators in some counties. I believe they can play a big role in distributing this fertilizer. We also talked about conditional grants for free seeds to our farmers, but this has not been implemented. It would be good that we do away with the National Cereals and Produce Board (NCPB) for farmers to benefit from the fertilizer and seeds.

The Deputy Speaker (Sen. Kembi-Gitura): Hon. Senators, pursuant to Standing Order 227(1), the Petition stands committed to the relevant Standing Committee. In this case, it is the Standing Committee on Agriculture, Livestock and Fisheries.

Standing Order No.227(2) states that the Committee will be required, in not more than 60 days from the time of reading this prayer, to respond to the Petitioner by way of a report addressed to the Petitioner and laid on the Table of this House.

ALLEGED CORRUPTION IN APPOINTMENT, PROMOTION
AND RE-DESIGNATION OF STAFF IN NYAMIRA COUNTY

Hon. Senators, this is the final Petition today. It is a Petition by Mr. Reuben Kibegwa Mageuzi concerning alleged corruption in appointment, promotion and re-designation of staff in Nyamira County.

Pursuant to Standing Order 221(a) and 225(2)(b), I hereby report to the Senate that a Petition has been submitted through the Office of the Clerk by Mr. Reuben Kibegwa Mageuzi, a resident of Manga Ward in Nyamira County, regarding the alleged corruption in appointment, promotion and re-designation of staff in Nyamira County.

In summary, the Petitioner states that the appointment, promotion and re-designation of staff in Nyamira County Government is carried out on the basis of cronyism and fraught with corruption as opposed to the criteria set out in Section 65 of the County Governments Act No.17 of 2012. Section 65(1) of the said Act, sets out the criteria that shall be considered by the County Public Service Board (CPSB) in effecting appointment, promotion and re-designation of staff within the county.

Section 65(2) further provides that “in determining whether an appointment, promotion and re-designation has been undertaken in a fair and transparent manner, the overriding factors shall be merit, fair competition and representation of the diversity of the county.”

The Petitioner further alleges that proper procedure was not followed by the county government in the appointment of the Secretary to the CPSB, one Mr. Robert Mochache as well as the County Secretary, one Mr. Eric Onchana. The Petitioner, therefore, prays that the Senate investigates this matter and makes appropriate recommendations on how the same may be addressed.

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

There does not appear to be any interest on this Petition.

Sen. Sang: Mr. Deputy Speaker, Sir---

The Deputy Speaker (Sen. Kembi-Gitura): Who pressed the button for you because you were not there?

Sen. Sang: Mr. Deputy Speaker, Sir, I requested my colleague via SMS to press it because I knew that this is a very important matter.

The Deputy Speaker (Sen. Kembi-Gitura): At least, you are honest.

Sen. Sang: Thank you Mr. Deputy Speaker, Sir. I want to---

The Deputy Speaker (Sen. Kembi-Gitura): What is your point of order, Sen. Obure?

Sen. Obure: Mr. Deputy Speaker, Sir, I thought you were still handling the issue of the Petition from Nyamira County resident.

The Deputy Speaker (Sen. Kembi-Gitura): Exactly. I had allowed you 30 minutes, but you were talking very intently with Sen. Musila so you did not hear me calling for people who wanted to comment.

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

[The Temporary speaker (Sen. Mositet) took the Chair]

Sen. Sang: Mr. Deputy Speaker, Sir, I hope my five minutes are reserved. Two minutes.

I want to congratulate Mr. Reuben for bringing this Petition. The aspect of appointment in our county governments is a very serious matter. This is where serious corruption is going on and merit has no place. I will give the example of my own county where job advertisements are issued out by the CPSB, people are interviewed and at the end of the day the merit list is forwarded to the executive. It happens that none of those people who were interviewed and topped in the list have ever been appointed. Our CPSB is being used to rubberstamp positions of the county executive. This is, therefore, a very important Petition.

Mr. Temporary Speaker, Sir, I hope the Committee of the Senate that will handle this matter will not restrict itself to this particular county but will pronounce itself broadly.

Sen. Billow: Mr. Temporary Speaker, Sir, a very important matter is being raised by this Petition. This is the case in nearly all the counties. The issue of appointments, promotions and designation of staff in the counties leaves a lot to be desired. We have had many complaints. In nearly every petition that has come to this House, issues have been raised regarding the manner in which the county governments have been engaging the staff, designating them and establishing offices.

I seek the indulgence of the House that in arriving at the conclusions in examining this Petition, the relevant Committee should look at it broadly. A policy or legal decision should come out of their report which will be used to amend the relevant laws. That will benefit all the counties.

Mr. Temporary Speaker, Sir, this is critical because it is a common problem. It is part of the reasons why doctors strike all the time and employees have low motivation in some counties. The outcome should impact on the legislation or policy regarding counties.

Sen. Karaba: Mr. Temporary Speaker, Sir, this Petition concerns the entire country. I wish that Mr. Mageuzi would have said, “not only in Nyamira but in every county government in Kenya.” That is the normal practice. It is common in every county. It has even been declared so by none other than hon. Kaparo who is the Chairman of the National Cohesion and Integration Commission (NCIC). He has come up with a report which indicates that some counties have employed more members of staff from their ethnic communities. This is against nationalism. It should be discouraged.

Therefore, we should take this as a case study. This is a sample for Nyamira County. However, it should spread to the other 46 counties so that every county is investigated and exposed. We will be able to know which county is behaving like Nyamira County. This is a good case study. It reflects what is happening in other counties.

With those remarks, I beg to support.

Sen. Obure: Mr. Temporary Speaker, Sir, I rise to support the Petition by Mr. Reuben Kibegwa Mageuzi. I am glad that he has pointed to irregularities, corruption and other ills relating to employment in the county governments. This complaint should not

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be limited to Nyamira County. I believe it is a widespread phenomenon which is found practically in every county.

As we speak about this matter, there is serious discontent and dissatisfaction because there is no transparency or openness. There is nepotism, employment of relatives, sons, daughters and so on. This is what happens because the system is completely rotten. The County Public Service Board (CPSB) and the County Assembly Public Service Board (CAPSB) are two organs which have subjected themselves to the whims of the county executive; the governors, County Executive Committee Members (CECs) and so on.

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

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

There is need for this Senate to investigate what is going on in respect to appointments, promotions and so on, so that it can come up with recommendations.

Sen. Leshore: Mr. Temporary Speaker, Sir, I congratulate Mr. Mageuzi for the Petition he has brought to this House. This is the scenario in all the counties. In my County, very many young graduates are relatives of the executive. They are given plum jobs with big salaries leaving those with experience and dedicated officers to do menial jobs. Corruption is ripe in the county with regard to appointment, promotions and designations.

I would like this to be a case study. The Committee should fast-track it. As a Senate, we should ensure that in all counties, the CPSB and county assemblies are not used as rubber stamps by the executive.

Sen. Musila: Mr. Temporary Speaker, Sir, I congratulate the Petitioner from Nyamira County regarding employment. I echo the sentiments of my colleagues. The Committee that is investigating and enquiring into this Petition should cover the entire Republic of Kenya.

We are currently carrying out an exercise in all counties regarding village administrators. In the case of my County, Kitui, I have evidence that the Service Board recommended seven people to the position of village administrator but the governor through certain Members of County Assembly (MCAs) has hand-picked people from villages and appointed them as village administrators. This means that they will not be administrators but campaigners and militias for the governor.

Therefore, I urge that when the Committee goes into this, even if you will not go throughout the country, please, for goodness sake, include Kitui County in this investigation.

Sen. Njoroge: Mr. Temporary Speaker, Sir, I join my colleagues in supporting the Petition. It is unfortunate that to date, these malpractices are taking place in our counties. I still wonder, if such muscled men are complaining or having this kind of petition, what of Persons with Disabilities (PWDs) within counties? I think they are facing serious problems. I curse the persons who denied this House funds for oversight. If we had this Fund, I would be moving in all the counties to inspect what is happening to PWDs as far as employment and appointments are concerned. I suspect that it is a sad

story in the counties. When I imagine that people like the petitioner are crying, what is happening to the marginalised PWDs? I think it is worse for them.

I support the Petition.

Sen. Hargura: Mr. Temporary Speaker, Sir, I join my colleagues in supporting this Petition. I thank Mr. Reuben Mageuzi for coming up with this Petition which is an example of what is prevailing throughout the country. We should have independent County Public Service Boards (CPSBs). We have seen the boards become subservient and being used by governors to employ their own unqualified relatives.

In my county, people are recruited temporarily at the instruction of the Governor. Once they are in office, the CPSB will be asked to advertise and at the end of the day, they confirm the same unqualified persons. I think this situation needs to be checked and the relevant Committee should move with speed and not restrict itself to Nyamira County and come out with solutions. This is because we receive reports from these counties which we submit to the National Cohesion and Integration Commission (NCIC). You will be surprised that the NCIC says that the recruitment is fair even in terms of distribution of jobs. However, we need somebody to go into the records of these counties and establish who these officers are and their qualifications. The report submitted to NCIC is just numbers, names, tribes and nothing else.

Sen. (Dr.) Khalwale: Mr. Temporary Speaker, Sir, thank you for this opportunity. I thank Mr. Reuben Mageuzi from Nyamira County, Manga Ward. With this Petition, he has, in fact, spoken for everybody and in respect of all the counties. The intention of the CPSB was never to create an instrument to be manipulated by governors. Governors are the ones who control all CPSBs in their respective counties. It is a shame.

The situation in Nyamira County is very bad. However, it is nothing compared to what obtains in Kakamega County today. It is sad that the Governor has not only done what is going on in Nyamira County but has now created opportunities for only his clan called Namukhula. Go to Wanga land where even sweepers in Mumias Town which is far away from the governor's home are from the Governor's clan.

In Harambee Market, Lumakanda which is 150 kilometres away, in Malinya where I was born, there are many unemployed young people and yet it is members of the governor's clan who are employed there. We should not accept this. In fact, governors should know that they have offended Senators so much that I encourage as many Senators as possible to either sponsor candidates to remove governors or do it themselves. They are not small gods to keep on abusing public services. What is worse---

Sen. Wako: Mr. Temporary Speaker, Sir, recently, we ---

The Temporary Speaker (Sen. Sang): Sen. (Dr.) Khalwale, I am sure Sen. Wako will finalise your comment.

Sen. Wako: Mr. Temporary Speaker, Sir, add me one minute, then. Recently, this House on good constitutional grounds rejected the Bill of Sen. (Prof.) Lonyangapuo. He had brought it to the House on the basis that ward administrators were being used by governors to campaign for them. I regret to say that the opinion of Sen. (Prof.) Lonyangapuo applies throughout Kenya including Busia County. In fact, in my county, the Governor has gone out to speak in all rallies that you cannot fight the incumbent because the ward and village administrators are part of his campaign team.

I, therefore, take this opportunity to alert the Independent Boundaries and Electoral Commission (IEBC) to alert CPSBs and everybody else to inform county and village administrators that they are there as independent public officers to serve wananchi and not serve as campaign managers for governors. Governors must also be warned that if they persist in that – my Governor has said so publicly – it is a violation of the Constitution and our laws. On that ground alone, we may stop him from even vying as a governor because the record is there. So, he should desist from saying: “These are my campaign managers.” In fact, he should say: “These are independent public officers serving the general public---”

The Temporary Speaker (Sen. Sang): Add him one and a half minutes.

Sen. Wako: Mr. Temporary Speaker, Sir, thank you for adding me the time. So, that is the main purpose of this.

I thank the petitioner for having brought out this matter. However, I ask the Committee that will look into this Petition not to just take it as a matter of Nyamira County but one which applies in the whole country and make recommendations to ensure that there is proper appointment and that those appointed act independently as professional civil servants serving the people of those counties; they should not be manipulated and used by governors in power.

The Temporary Speaker (Sen. Sang): Sen Karaba, you have the Floor.

Sen. Karaba: Mr. Temporary Speaker, Sir, I had contributed earlier. I think there is something wrong with this machine. It keeps on cheating.

The Temporary Speaker (Sen. Sang): Fine.

Hon. Senators, pursuant to Standing Order 227(1), the Petition stands committed to the relevant Standing Committee. In this case, it is the Standing Committee on Labour and Social Welfare. In terms of Standing Order 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. We are done with the Petitions. Based on the consultations between the leadership of the Senate, we will defer the other Petitions to tomorrow. So, the other Petitions will appear on tomorrow’s Order Paper.

REJECTED GARISSA COUNTY GOVERNMENT BUDGET
ESTIMATES FOR FY 2016/2017

(Petition deferred)

Next Order!

PAPERS LAID

COUNTY REVENUE BASELINE STUDY, 2015

Sen. Billow: Mr. Temporary Speaker, Sir, I beg to lay the following Paper on the Table:-

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The County Revenue Baseline Study Report by the office of the Controller of Budget.

(Sen. Billow laid the document on the Table)

THE 2015/2016 ANNUAL REPORT OF THE IEBC

Sen. Wako: Mr. Temporary Speaker, Sir, I beg to lay the following Paper on the Table:-

The 2015/2016 Annual Report of the Independent Electoral and Boundaries Commission.

(Sen. Wako laid the document on the Table)

The Temporary Speaker (Sen. Sang): Order Senators. We are done with Papers. Next Order!

STATEMENTS

The Temporary Speaker (Sen. Sang): Hon. Senators, we have three Statements to be issued. Do we have Senators seeking Statements?

PREPARATIONS FOR PLANTING SEASON
DURING THE SHORT RAINS

Sen. Karaba: Mr. Temporary Speaker, Sir, pursuant to Standing Order 45 (2) (b), I rise to seek a Statement from the Chairperson of the Standing Committee on Agriculture, Livestock and Fisheries regarding preparations for the planting in the approaching short rains season.

In the Statement, the Chairperson should state:-

(a) Measures the Government is taking to ensure adequate supply of seeds and fertilizers to farmers throughout the country.

(b) Measures the Government has put in place to cushion farmers in the event of depressed short rainfall, that is the *La nina*, as predicted by the Meteorological Department.

It is predicted that there will be short rains called *La nina*. What is the Chairperson of Agriculture, Livestock and Fisheries---

The Temporary Speaker (Sen. Sang): Order Senator. You are supposed to seek a Statement in accordance with the wordings of the Statement. You do not need to explain.

Sen. Karaba: Okay, that is the end of the Statement.

The Temporary Speaker (Sen. Sang): Is the Chairperson of the Committee here or any Member? If there is none, let us listen to the Senate Majority Leader.

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Temporary Speaker, Sir, I will convey the message to the Chair. On behalf of the Chair, I suggest that given the rains are expected any time from now, we request for one week to bring the Statement.

Sen. Karaba: Mr. Temporary Speaker, Sir, one week is appreciated.

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

We have no other Statements to be sought and we now proceed to the Statements to be issued.

STREET FAMILIES AND URCHINS IN KENYA

Sen. Kisasa: Mr. Temporary Speaker, Sir, as Committee we made contact with the Ministry of East African Affairs, Labour and Social Protection in order to reply to this Statement. It was established that this matter of street families and the policies related are under the purview of the Ministry of Devolution and Planning. We are in the process of finalizing the matter and a comprehensive Report will be laid on the Table within one week.

Thank you.

Sen. Leshore: Mr. Temporary Speaker, Sir, this Statement has been lying in their offices for the last four months. This is a serious issue and is a threat to you and your children and the country. It is sad that the Statement has been lying there for the last four months. Now they are coming to tell us that it falls under the Ministry of Devolution and Planning. Why has it taken them four months to state that it falls under Ministry of Devolution and Planning?

I expected them within one or two weeks to give me the Statement. The street children are a shame and it is not a joke. It is a serious threat to Kenya.

Thank you.

The Temporary Speaker (Sen. Sang): Sen. Kisasa, I hope you appreciate the sentiments and the position of Sen. Leshore.

Sen. Kisasa: Mr. Temporary Speaker, Sir, I have talked of a comprehensive Report which we will deliver immediately.

Thank you.

Sen. Leshore: Mr. Temporary Speaker, Sir, is it from the Ministry of Devolution and Planning or the Ministry of East African Affairs, Labour and Social Protection?

The Temporary Speaker (Sen. Sang): She clearly said that the request for a Statement was forwarded to the Ministry of East African Affairs, Labour and Social Protection and they were redirected to the Ministry of Devolution and Planning. The Statement we are expecting will be from the Ministry of Devolution and Planning.

Sen. Leshore, since you have waited for four months, another one week would be a reasonable request. I, therefore, direct that the Statement be brought within the next one week.

Sen. (Dr.) Khalwale: On a point of order, Mr. Temporary Speaker, Sir. Since Parliament is a House of records, I get concerned when a Statement is intended to achieve a particular purpose but it does not bring it out in black and white. In this case, a Statement is sought about street families. It is okay. They then say “and urchins”. Who is

an urchin? An urchin is simply a small boy or a youngster. So, if they wanted to talk about the mischievous boys on the streets - the ones that we called street boys - they should have said so. We might get a little boy coming from Moi Primary School walking on the streets and classify him as such.

Could the Statement to be issued reflect the intention of the Statement sought?

The Temporary Speaker (Sen. Sang): Order Sen. (Dr.) Khalwale! What is your point? This is a Statement that was already approved by the Speaker and sought on the Floor of the House. What we are expecting is a response. Therefore, you are taking this House back to the semantics of the Statement when that was already approved by the Speaker. Therefore, you are completely out of order.

Let us go to the second Statement by the Chairperson of the Standing Committee on Finance, Commerce and Budget?

Sen. Ongoro, what is your point of order?

Sen. Ongoro: On a point of order, Mr. Temporary Speaker, Sir. Thank you for allowing me to pronounce myself on this matter. Honestly, as a nation, individuals and leaders, a Statement was sought and forwarded to the Senate on the matter of street families. Four months down the line the Government tells us that they really do not have an answer. As a mother, how am I supposed to feel about these children? They die every day. We have a Jubilee administration complete with departments and Ministries with full mandate and budgetary allocation and they cannot simply tell us why these Kenyans are suffering.

The Temporary Speaker (Sen. Sang): Order, Sen. Ongoro! I have pronounced myself on this particular matter. I have already given direction and there will be no debate on this particular matter.

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

The Temporary Speaker (Sen. Sang): Who are you informing Sen. (Dr.) Khalwale? You cannot inform the Chair.

Sen. (Dr.) Khalwale: Sen. Ongoro.

The Temporary Speaker (Sen. Sang): Order! She is already seated. There is no information because there is nobody on the Floor. Your point was overtaken by events. Sen. Ongoro, you are a Member of the Speaker's panel and you know the rules of this House. Sen. (Dr.) Khalwale cannot purport to inform a Member who is not on the Floor unless it is a point of order. Sen. (Dr.) Khalwale you are a very good student of the Standing Orders.

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

Sen. (Dr.) Khalwale: On a point of order, Mr. Temporary Speaker, Sir. With all due respect, Sen. Ongoro has been ruled out of order with good reasons. However, if we reflected and remembered on the budget of last year, there was a budget of Kshs300 million lined up for street families. Would you still want to rule her out of order? The Jubilee Administration has instead pocketed the Kshs300 million meant for street families and now they do not want to talk about it.

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

Sen. (Dr.) Khalwale: My point of order is that, we would like the Jubilee Government not to sit on the Statement for four weeks. They should come here on Tuesday and give the Statement.

The Temporary Speaker (Sen. Sang): Sen. (Dr.) Khalwale, that is not a point of order. You are very familiar with the Standing Orders. That is not a point of order. It is a point of argument. Let us wait for the chairperson of this committee to bring that response then on that basis you will be able to have an opportunity to interrogate the Statement.

The second Statement is by the Standing Committee on Finance, Commerce and Budget.

KENYA'S COMPLIANCE WITH THE EU DEADLINE FOR
EPA PROGRAMMES

Sen. (Prof.) Kindiki! You just pressed the button and did not indicate what your request is. Are you responding to the Statement?

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Temporary Speaker, Sir, the Chairperson, Sen. Billow is not here. We had a discussion with him on this matter. He informed me that they had already discussed this issue with Sen. Kagwe who had requested for the Statement. Sen. Kagwe is out of the country on Parliament duties; thus they requested if they can be indulged such that the Statement can be deferred until next week.

The Temporary Speaker (Sen. Sang): Very well, we have established that tradition; that once a Member who sought the Statement is not around, we always give that indulgence. I therefore, direct that the same Statement be on the Order Paper next week.

Sen. Obure!

Sen. Obure: Mr. Temporary Speaker, Sir, this question has been rescheduled for next week in line with your direction. Could I understand the reason for this? Is it because the Statement is not ready or is it because Sen. Kagwe is not in the country? Is the Statement actually ready?

The Temporary Speaker (Sen. Sang): Senate Majority Leader, I hope you got Sen. Obure's question for a clarification as to whether you are requesting that this Statement be on the Order Paper next week because Sen. Kagwe is out of the country or whether it is because the Statement is not ready. You will respond to that later.

Sen. (Dr.) Khalwale, is it on the same?

Sen. (Dr.) Khalwale: Yes, Mr. Temporary Speaker, Sir. I want to draw the attention of the Majority Leader to the deadline of 1st October, 2016. We have gone beyond that deadline. The intention of that Statement is that we are concerned about Kenya losing out on the negotiated partnership since we are supposed to go there as a team; the East African Community region. Given that that it is in the public domain that Tanzania and Burundi are reluctant to sign this, it is important that Kenyans know.

Could you consider bringing the Statement inspite of Sen. Kagwe not being around?

Sen. Ongoro: Mr. Temporary Speaker, Sir, I know you have already pronounced yourself on this matter. I do not wish to contradict you. However, did I hear well when the Senate Majority Leader stated that one of the reasons why they are not presenting this

Statement is because the Chairperson has already consulted with Sen. Kagwe outside this House?

I am fully aware that anything that has already been presented to this House becomes a property of this House and any consultations outside this House do not constitute part of what we are supposed to discuss. Is he in order really to make that kind of statement about consultations out of this House? This is something that is already a property of the Senate and not an individual's any more. Actually, it does not now concern Sen. Kagwe. It concerns us as Senators.

Let me just add my voice to this 1st October deadline, on a matter as heavy as this; the European Union Economic Partnership Programme. Is it really in order for the Majority Leader, a well-informed lawyer and a Member of the Senate leadership to make such a statement?

The Temporary Speaker (Sen. Sang): Sen. (Prof.) Kindiki, you will respond to the request for clarification by Sen. Obure, Sen. (Dr.) Khalwale and Sen. Ongoro. The other concern by Sen. Ongoro is whether it is possible for the chairperson and the Senator who sought a Statement to discuss outside this House, those consultations have always been there.

On several occasions, a chairperson would indicate to the Member that the Statement is not ready. I am a vice chairperson of a committee myself. Any chairperson or vice chairperson of a committee in this House appreciates that that has been the practice. Therefore that is not really unique.

Sen. (Prof.) Kindiki respond to the other three concerns.

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Temporary Speaker, Sir, I thought that they were two. Now that you have disposed of the third one, my understanding is that the request for clarification from the Senator for Kisii, Sen. Obure, is whether the Statement cannot be issued because it is not ready or because Sen. Kagwe is away.

The discussion I have had with the Chair of the Committee did not indicate at all that the Statement is not ready. Rather, the Chairman said that Sen. Kagwe really pleaded with him. Going by the tradition of this House, when a statement is requested, it is good to be issued when the one who requested it is present. Now that this question had not been raised by the time I was giving my response, I cannot absolutely say that the Statement is ready but I did not get any indication that it is not ready. If the Chair wants us to confirm that, we can always confirm and there is no problem with that.

Mr. Temporary Speaker, Sir, secondly, the request by Sen. (Dr.) Khalwale about the deadline is very important. Kenya has been struggling for the past several years to ensure that the East African Community (EAC) negotiations with the European Union (EU) continue as it has been the context of the East African bloc. That has been the case before but it has been extremely difficult to bring everybody on board. As late as two weeks ago, the Deputy President who was representing the President in Arusha, Tanzania had a very difficult time trying to convince, especially two member states, namely Tanzania and Burundi to come on board.

The information I got from that latest effort by Kenya to bring those two countries on board is that the negotiations are very tough on that issue. Tanzania seems to have made its mind and it is convincing Burundi. So, without really pre-empting the Statement

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from the Chairman, the information I have is that Kenya, Rwanda and Uganda are willing to sign. This should not be conflicted with the broader issues of policy and the issues that I have been there between Kenya and neighbouring countries; the so called “coalition of the willing”.

The key argument from Tanzania and Burundi is that even if the Economic Partnership Agreements (EPAs) are not signed by the date that Sen. (Dr.) Khalwale has raised, they will suffer no harm because there is a fallback. They are still considered as Least Developed Countries (LDCs) which allows them to export everything but arms to the EU. So, I agree with Sen. (Dr.) Khalwale that something has to be done because we are past the deadline. However, I think we have broken very many deadlines before. This is a commercial issue. It is not an issue that can get generate criminal repercussions.

Mr. Temporary Speaker, Sir, my own thinking is that given Sen. (Dr.) Khalwale’s concern which I share, this Statement should be perhaps brought strictly on Tuesday rather than next week. You can direct that it is brought on Tuesday so that we have this matter settled once and for all.

I thank you.

Sen. (Prof.) Anyang'-Nyong'o: Mr. Temporary Speaker, Sir, I would like to plead with the House. I know that my friend, Sen. Kagwe, has had a long experience on this matter and has very well-informed views on this issue. I would rather that we have a discussion when he is here so that we can benefit from his points of view.

Mr. Temporary Speaker, Sir, I hold the view that there is no hurry trying to sign the EPAs now, notwithstanding that we are not an LDC. We have been grouped as a middle-income country. After those simple processes of just changing our GDP, I do not know how that makes us a middle-income country. Nonetheless, the groupings of the Treasury have pushed us there. There are a lot of European countries who also believe that Kenya is better off not signing the EPAs because the EU is gradually disintegrating. It is better for Kenya to sign treaties with individual companies or states rather than the EU.

Mr. Temporary Speaker, Sir, there are too many things we give in to when we sign the EPAs. When I was in the Ministry of Planning and National Development, I was involved in the EPAs discussions in Brussels and so on and they told me the truth. Let us not discuss this issue either in a populist manner or in a manner that just plays to the galleries. Let us get the facts particularly from the Committee on Finance, Commerce and Budget when Sen. Billow and Sen. Kagwe are here. Let the Committee come up with some well-informed position that can inform the House for a sensible discussion. I do not see anything we shall gain by doing it next Tuesday.

We will have no more information than we have today. Even after two weeks, people in this House will still have the same information they have today. So, I see no reason, whatsoever, to advise this House to hurry up the discussion. I thank you.

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

The Temporary Speaker (Sen. Sang): What is it Sen. Obure, former Minister for Finance?

Sen. Obure: Mr. Temporary Speaker, Sir, the reason I earlier raised a point of order on this matter is because of the amount of interest which farmers have on this matter, especially the strong bearing of this subject on the performance of the Kenyan

economy. Therefore, I am of the view that the matter should be discussed in this House even in the absence of Sen. Kagwe. However, Sen. (Prof.) Anyang'-Nyong'o has made a very informed contribution.

In the light of what you had ruled earlier and what Sen. (Prof.) Anyang'-Nyong'o has said, maybe we could wait a little longer to obtain all the facts and information relating to this matter.

The Temporary Speaker (Sen. Sang): Now that we are talking about former, let us hear from the former Attorney-General, Sen. Amos Wako.

Sen. Wako: Am I the one?

The Temporary Speaker (Sen. Sang): Yes, Senator for Busia.

Sen. Wako: No, I am Attorney-General *Emeritus*.

The Temporary Speaker (Sen. Sang): Okay.

Sen. Wako: Mr. Temporary Speaker, Sir, we should take this opportunity to do a sort of educational thing for not just we Members but also for the public. The Statement should be wider or cover a larger area than the ones specifically asked regarding why we have not complied. It should try to answer the issues that have been raised both by the Senate Majority Leader and the eminent professor, Senator and Governor *mtarajiwa* wa Kisumu because the issue involved---

The Temporary Speaker (Sen. Sang): Order, Sen. Wako. You know the Standing Orders. You cannot use two languages at the same time.

Sen. Wako: *Mtarajiwa* is being incorporated in the English language but I stand corrected. Thank you very much.

Mr. Temporary Speaker, Sir, LDCs have issues and we are now a middle-income economy. How does that affect this situation? What are the advantages and disadvantages of not entering into this agreement particularly in the light of what the professor has said? He said that when he was Minister for Economic Planning, he was always coming to a conclusion that we try to negotiate with other countries individually rather than as collectivity of the so called EU.

What has been the effect of the vote by her majesty's Government to exit the EU? The Prime Minister made a statement two days ago saying that the negotiations will start in April next year and they will take two years before the actual exit. What will be the effect of that on Kenya?

The Statement should cover a wider area so that we know exactly where we are headed to. Therefore, I believe that Tuesday, offered by the Senate Majority Leader, may be too soon because the Statement may have only aimed at why we are not complying without looking into other issues that have arisen out of the compliance.

I would rather have a fuller statement in two weeks' time, educating all of us on these issues rather than being told we have not complied because Tanzania does not want to sign. No one can just come up with one line like that which does not help us. We require a fuller Statement. Also, why has Burundi, for example, refused to sign; or are they just following Tanzania? What are the geopolitics within the East African region on this issue, taking into account the fact that the President of Tanzania has not come to Kenya in spite of the many opportunities that have been available for him to do so. So, is it continuation or is it a genuine decision that Tanzanians tend to benefit better by not signing?

The Temporary Speaker (Sen. Sang): I will just give clarity to the directions I gave for Thursday, next week. However, the Senate Majority Leader, if you can find out from the Chairperson of the Committee. If the statement is ready, let it be available to Members in the usual manner so that even as they prepare to discuss it next week on Thursday, they can have an opportunity to look at the response ahead of time.

Sen. Wako: Mr. Temporary Speaker, Sir, is it possible for the Senate Majority Leader to inform the Chairperson of the Committee because what is required is wider; something more with a lot of meat in it. People like the word “meat.” With a lot of meat in it rather than just a one line that---

The Temporary Speaker (Sen. Sang): Sen. Wako, which people like meat?

(Laughter)

Sen. Wako, you are completely out of order because we cannot request the Chairperson to give details beyond what was sought in the statement. So let us receive a response to the statement as was sought, then if there will be need for a follow-up statement then this House will be able to address itself when we get there. As at now, we are expecting responses to the specific statement that was sought by Sen. Kagwe.

Sen. (Prof.) Anyang’-Nyong’o: On a point of information, Mr. Temporary Speaker, Sir.

The Temporary Speaker (Sen. Sang): Who do you want to inform?

Sen. (Prof.) Anyang’-Nyong’o: Mr. Temporary Speaker, Sir, I was going to inform the House through the Speaker.

The Temporary Speaker (Sen. Sang): Such procedure does exist.

Sen. (Prof.) Anyang’-Nyong’o: Mr. Temporary Speaker, Sir, can you create it under Standing Order No.1?

(Laughter)

The Temporary Speaker (Sen. Sang): Proceed, Sen. (Prof.) Anyang’-Nyong’o.

Sen. (Prof.) Anyang’-Nyong’o: Mr. Temporary Speaker, Sir, I was going to request that notwithstanding the fact that the question asked was specifically about complying with the set deadline, following the exchange here this afternoon which was very fruitful and useful to both the House and the nation, maybe you could inform the respondent that there are likely to arise questions which go beyond the mere compliance and they should be prepared to respond to them. Since the HANSARD is there, the Senate Majority Leader can pick up the HANSARD and give it to both the questioner and the respondent.

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Temporary Speaker, Sir, the request by Sen. Anyang’-Nyong’o is very valid. I want to undertake that I will request for the HANSARD proceedings. If that is the direction of the House, I will convey that decision to the Chairman of the Committee on Kenya’s compliance with the European Union-Economic Partnership Programme tomorrow.

The Temporary Speaker (Sen. Sang): It is so directed. The Standing Committee on Education to issue a Statement on fees levied by secondary schools, teacher training colleges and medical training colleges by Sen. (Prof.) Lonyangapuo.

Sen. Karaba, Chairman of the Committee on Education.

Sen. Karaba: Mr. Temporary Speaker, Sir, if we have to go by your earlier ruling, I stand protected.

The Temporary Speaker (Sen. Sang): Sen. Karaba, what is the response to this Statement? Do you have the Statement or not?

Sen. Karaba: Mr. Temporary Speaker, Sir, I do not have the Statement right now, but even then the questioner is not there.

The Temporary Speaker (Sen. Sang): Why do you not have a Statement?

Sen. Karaba: Mr. Temporary Speaker, Sir, we are supposed to receive it from the Cabinet Secretary for Education. However, as of today, I was told has not yet been received by the office. So, can we wait for the next one week?

Sen. Abdirahman: Mr. Temporary Speaker, Sir, I am surprised that the Chairman of the Committee on Education can say that the answer is not there. In fact, he is the one to follow-up. I wonder what kind of protection Sen. Karaba is trying to seek from the Chair.

Is Sen. Karaba in order not to provide the answers and look for the Cabinet Secretary for Education himself because the Cabinet Secretary for Education does not come to Parliament? They are essentially represented by chairpersons of committees. So, is he in order to evade responding to the Statement that is being sought?

Sen. Musila: Thank you, Mr. Temporary Speaker, Sir. Appreciating that you have just ruled that the Senate Majority Leader can bring a Statement on other issues not originally covered by the requested Statement, may I, with your indulgence, ask that when the Chairman of the Committee on Education will be doing this very important Statement on fees levied by secondary schools, teacher training colleges and medical training colleges, he also gets information from the Ministry as to why the heads of schools continue to withhold certificates of Kenya Certificate of Secondary Education (KCSE) for students who completed their examinations from 2007 until now? These poor Kenyans cannot, even as we speak, access employment in the military which is recruiting today.

This is a matter, as you are aware, that even His Excellency the President, the Deputy President, the Cabinet Minister for Education have addressed themselves on, but the Ministry of Education continues to break the law. As you are aware, there is a law that bars heads of schools or any persons to withhold certificates for students who complete their examinations.

I seek your indulgence.

Sen. Obure: Mr. Temporary Speaker, Sir, I am referring to what Sen. Musila has just said; that both Houses of Parliament have passed legislation in the form of an Act of Parliament specifying issues related to issuance of certificates for school leavers. In fact, I have come across many school leavers who are stranded in the villages because they cannot access their certificates. Therefore, they cannot apply for positions even when they are advertised. What level of impunity is this? Where are we facing if the National

Government cannot enforce the laws that have been passed by Parliament, leave alone observing those laws? Where are we going? Which direction are we facing?

The Temporary Speaker (Sen. Sang): Sen. Karaba, the Chairperson of Committee on Education, you will appreciate that the Statement or the two concerns being raised by Sen. Obure and Sen. Musila are fairly different from what the Statement sought to address. However, you will also appreciate that this particular issue has been addressed in this House, especially by Sen. Musila through motions and Bills which have been approved, passed and assented to.

Therefore, as the Chairperson of Committee on Education, might you be having an answer as to the issues being raised? Why are headteachers still holding certificates of students who have not been able to complete their school fees?

Sen. Karaba: Mr. Temporary Speaker, Sir, I have no answer to that question, but I am privy to a meeting organized with the Cabinet Secretary next week. I was with him today in the morning and he agreed that he will come and address the Senate on issues pertaining to such and other statements that have been sought before. It is better that we wait until a time when the Cabinet Secretary will come to this House. We are trying to work on modalities of when he will come.

The Temporary Speaker (Sen. Sang): Sen. Dickson Karaba, you have just told us that you do not have an answer to the Statement you are supposed to respond to. Now, you are telling us that you were with the Cabinet Secretary this morning. Before we address the supplementary issues being raised by Sen. Musila and Sen. Obure, what did the Cabinet Secretary tell you about this particular Statement that you are supposed to be responding to?

Sen. Karaba: Mr. Temporary Speaker, Sir, we did not discuss this Statement; we had another discussion about the universities. The Cabinet Secretary is willing to come to the Senate not only to address us on the issue of Moi University, but also to answer other questions.

Sen. Abdirahman: On a point of order, Mr. Temporary Speaker, Sir. I had raised a similar issue when you gave me an opportunity. Is the Chairman in order not to give a definite answer to the questions that are being sought by Members? He must tell us that the Cabinet Secretary will address item (a), (b) and (c) among many others. It is what we expect. Is the Chairman in order to take us round and round without listening to your wisdom?

Sen. Musila: Mr. Temporary Speaker, Sir, I have a lot respect for the Chairman, a former principal and, in fact, a man who has never supported the issue of certificates to students. In line with what you ruled on Sen. (Prof.) Kindiki's question, can we specifically ask the Chairman to ensure that this issue of certificates is included in the answer that he will give, notwithstanding that the Cabinet Secretary may come? I am sure that he will not come to address this issue. The House prefers that the answer on certificates to students be included in the answer, in line with the ruling you made earlier.

The Temporary Speaker (Sen. Sang): Prof. Philomena Agnes Zani.

Sen. (Dr.) Zani: Thank you, Mr. Temporary Speaker, Sir. You have revealed all my names in their order, and even added the title 'professor'. I hope it is a blessing.

There are two issues here. The first issue is the legal aspect; the law and the Act that has been passed. The second issue is the lag in the implementation. When we were

debating this particular Bill, there were aspects that we talked about - the features that had already been put in place - but the real problem was the follow up. This is a problem that we also experience when it comes to capping fees. You will find that secondary schools fees have been capped, but headteachers still continue to charge higher fees.

We are moving away from the legislative aspect and more into the implementation. This is where the Cabinet Secretary comes in. He needs to crack the whip to ensure that the law is followed effectively. We have already done our bit as the Senate; we have made and passed those amendments. We only need the implementation to happen, which means that we will need some more dynamism from the Ministry.

Therefore, as we wait for the Cabinet Secretary to come and address these issues, this is the aspect we need to dwell on. It is disappointing to sit here for a long time, come up with legislation, and when it comes to implementation, it is as though we did not do any work and we are back to square one.

The Temporary Speaker (Sen. Sang): Chairperson, this is a very serious matter. Since this House has pronounced itself through both Motions and legislation, this is a matter that needs to be settled once and for all. I, therefore, direct that as you bring the Statement with regard to the fees being levied in secondary schools, teachers' training colleges and medical training colleges that was sought by Sen. (Prof.) Lonyangapuo, you should also have information with regard to the issue of withholding of certificates.

I equally direct that the Committee on Implementation to also address itself to that particular matter within the next two weeks. The Senate Majority Leader is not here, but I also know that the Chairperson of that particular Committee is a Member of the minority side. The Deputy Minority Leader should convey that particular directive, so that we can have the perspective of the Committee of Implementation and expect the same from the Chairperson of Committee on Education.

What is it, Sen. Hassan?

Sen. Abdirahman: Mr. Temporary Speaker, Sir, I want to confirm that I will relay the message to the Chairperson of the Committee on Implementation. Fortunately, I am a Member of that Committee and this was one of the issues that we dealt with today. I can confirm that before the next two weeks, we will report back to the House, particularly, on the issue of certificates.

The Temporary Speaker (Sen. Sang): Very well. The direction to the Committee on Implementation is with regard to withholding of certificates only. That is the particular matter.

Yes, Prof. Nyong'o?

Sen. (Prof.) Anyang'-Nyong'o: Mr. Temporary Speaker, Sir, on the contrary, it is Sen. (Prof.) Anyang'-Nyong'o. As a younger person, you are allowed to do a few things wrong.

I do not want to contradict anything you have said, but I would like to request the Committee to help this nation, apart from just looking at this issue of certificates. Many years ago the Nyayo Government reviewed the education system altogether and introduced the 8-4-4 system of education. After many years of experience with 8-4-4, we now feel that certain things should be looked at. One of the things we should look at is the issue of too many exams, which brings this kind of thing.

Mr. Temporary Speaker, Sir, in this modern age, there is no reason whatsoever that a 12-year-old school child should be subjected to a national examination. Basic education should be from Standard One to Form Four before students sit for exams to take them to university. The idea of having examinations in Standard Eight or Standard Seven is out of date. Many years ago, we used to have examinations in Standard Four, Standard Eight, Form Two and Form Four. After eliminating Standard Four and Form Two, we still retained examinations in Standard Eight.

Basic education should begin from pre-primary school education, which is now Early Childhood Development Education (ECDE), straight to Form Four. Every school should have the facilities like the ones in private schools. We have private schools like St. Andrews School, Turi, where a child can undergo ECDE, join Form Four, sit for exams and leave. We call it the British System. Why can we not have a similar Kenyan System, which is equally good for children, so that we do not have to be bothered about certificates?

The Temporary Speaker (Sen. Sang): Sen.(Prof.) Anyang'-Nyong'o, I do not know where to place that particular concern, but I hope that it should be one of the concerns that the Chairperson of the Committee on Education should raise with the Cabinet Secretary when he appears in the Committee or the Senate.

Sen. Karaba: Mr. Temporary Speaker, Sir, the Cabinet Secretary will appear in the Senate. I am appealing to Members to be present so that such concerns are raised directly with the Cabinet Secretary. I will pass the message to him.

The Temporary Speaker (Sen. Sang): Very well. We are done with Statements. Next order!

BILLS

First Readings

THE WAREHOUSE RECEIPTS SYSTEM BILL
(NATIONAL ASSEMBLY BILL
No. 12 OF 2015)

THE KENYA ROADS BILL (NATIONAL ASSEMBLY
BILL NO. 26 OF 2015)

*(Orders for First Reading read – Read the First
Time and ordered to be referred to the relevant
Departmental Committee)*

The Temporary Speaker (Sen. Sang): Next order!

Hon. Senators, this is a Bill whose debate on Second Reading was concluded and it will appear for Division. However, since we do not have the requisite numbers we shall defer the Order Nos.10, 11, 12, 13, 14 and 15.

Second Readings

THE PUBLIC APPOINTMENTS (PARLIAMENTARY APPROVAL)
(AMENDMENT) BILL (SENATE BILL NO. 9 OF 2016)

THE SELF HELP ASSOCIATIONS BILL (SENATE BILL NO. 2 OF 2015)

THE ASSISTED REPRODUCTIVE TECHNOLOGY BILL
(NATIONAL ASSEMBLY BILL NO. 36 OF 2014)

(Bills deferred)

COMMITTEE OF THE WHOLE

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

THE EMPLOYMENT (AMENDMENT) BILL
(SENATE BILL NO. 1 OF 2015)

THE COUNTY LIBRARY SERVICES BILL
(SENATE BILL NO. 6 OF 2015)

(Committee of the Whole deferred)

We proceed to the Next Order.

COMMITTEE OF THE WHOLE

(Order for Committee Read)

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

IN THE COMMITTEE

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

THE COUNTY GOVERNMENTS (AMENDMENT)
BILL (SENATE BILL NO.4 OF 2016)

The Temporary Chairperson (Sen. Sang): Order, Senators! We are in the Committee of the Whole with regard to the County Governments (Amendment) Bill (Senate Bill No.4 of 2016). Proceed.

Clause 2

Sen. Mwakulegwa: Mr. Temporary Chairperson, Sir, I beg to move:-

THAT, the Third Schedule of the Bill be amended in paragraph 6 by deleting the words "Wundanyi Urban Area" and substituting therefor the words; "Mwatate Urban Area."

This is because in 2012, the people of Taita Taveta County had agreed to move the county headquarters from the present location to the new location. Therefore, when this Bill was passed on 16th March, I was not in the House to make the correction. Therefore, this has brought a lot of debate, tension and people demonstrating, especially those from Mwatate Urban Area, who think that we legislators have ignored what was discussed and passed by the entire community of Taita Taveta County.

(Question of the Amendment proposed)

Title and Clause 1

(Question, that the Title and Clause 1 be part of the Bill proposed)

Sen. Obure: Mr. Temporary Chairperson, while we have dealt with the amendment as proposed by the Member for Taita Taveta, the second part relating to Kerugoya Urban Area has been dealt with satisfactorily.

The Temporary Chairperson (Sen. Sang): Hon. Senators, the amendment by Sen. Mwakulegwa captures both Kutus and Mwatate. Therefore, the entire amendment is addressed. We do not have the requisite numbers to go into the Division. However, we have to report progress. Let us have the Mover, Sen. Mwakulegwa.

Sen. Mwakulegwa: Mr. Temporary Chairperson, Sir, I beg to move that the Committee of the Whole reports progress on its consideration of the County Governments (Amendment) Bill (Senate Bill No.4 of 2016) and seek leave to sit again tomorrow.

The Temporary Chairperson (Sen. Sang): Order! Just as a procedure, the Mover of the amendment is Sen. Mwazo Mwakulegwa, but the Mover of the Bill is Sen. Karaba. So, he is the one who is going to move that we report progress. Sorry for that. Sen. Karaba proceed.

Sen. Karaba: Mr. Temporary Chairman, Sir, pursuant to Standing Order No.139, I beg to move that the Committee of the Whole report progress of its consideration of The County Governments (Amendment) Bill (Senate Bill No.4 of 2016) and seek leave to sit again tomorrow.

The Temporary Chairperson (Sen. Sang): Very well. Chairperson, Sen. Obure.

Sen. Obure seconded

(Question proposed)

(Question put and agreed to)

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(The House resumed)

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

The Temporary Speaker (Sen. Sang): Order, Senators! The Chairperson, Sen. Obure!

PROGRES REPORTED

THE COUNTY GOVERNMENTS (AMENDMENT) BILL (SENATE BILL NO.4 OF 2016)

Sen. Obure: Mr. Temporary Chairman, Sir, the Committee of the Whole is considering The County Governments (Amendment) Bill (Senate Bill No.4 of 2016) and has instructed me to report progress and seek leave to sit again tomorrow.

Sen. Karaba: Mr. Temporary Speaker, Sir, I beg to move that the House do agree with the Committee in the said report.

The Temporary Speaker (Sen. Sang): Who is your Seconder?

Sen. Mwakulegwa seconded.

The Temporary Speaker (Sen. Sang): Very well.

(Question proposed)

Sen. (Dr.) Zani: Thank you, Mr. Temporary Speaker, Sir. I support that the House do agree with the Committee in the said report and also to commend this particular amendment in terms of the dynamism that the changes within the counties and the way people are interpreting what is happening there and the issues of headquarters. Headquarters are put in a place where the functions of the counties can be well in use. This dynamism, when it comes to amendments that are made in this House, they have been made after a lot of consideration about the impact of what is happening in terms of where the headquarters are now and, secondly, the consideration to move these headquarters to another place.

Mr. Temporary Speaker, Sir, I believe that this is a process that is driven by consensus, a lot of consultation and agreement. Therefore, it has various implications like the development of counties in terms of the buildings and infrastructure. I remember some time back we heard Sen. (Eng.) Muriuki talking about county headquarters, facilities and the sort of equipment that they have. We need to make sure that these headquarters fit a particular standard. In the long term, all these facilities can be standardized across various counties. As you visit various counties, you realize there are certain counties whose headquarters are very meticulously done, advanced and modern while others are not to that particular standard.

As we move forward in making amendments about the physical and geographical location of these county headquarters, it is important for us to put that into consideration. This is because all counties must reach a level of functionality that enhance county

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devolution and the county work that happens within those particular counties. This is one of the things that are key for us, as Senate. I commend Sen. Karaba and Sen. Mwakulegwa for making these considerations for this specific amendment of the physical change of location for county headquarters.

Sen. Karaba:.....(*Words expunged at the order of the Temporary Speaker*)

The Temporary Speaker (Sen. Sang): Sen. Karaba, you are the Mover of this Motion. I allowed you hoping that you were on a point of order, but you proceeded on to contribute to your own Motion. Therefore, I direct that your contribution be expunged from the HANSARD.

(All the debate arising from Sen. Karaba's remarks on The County Governments (Amendment) Bill (Senate Bill No.4 of 2016) was expunged from the record of the House proceedings as ordered by the Temporary Speaker)

(Question put and agreed to)

Hon. Senators, we are done with the Committee of the Whole with regard to Order No.16. We are suppose now to move to the Committee of the Whole with regard to Order No. 17, The Kenya Medical Supplies Authority (Amendment) Bill (Senate Bill No.4 of 2014), but the Senate Majority Leader who is the Mover is not in the House. Therefore, we defer this particular order.

COMMITTEE OF THE WHOLE

THE KENYA MEDICAL SUPPLIES AUTHORITY
(AMENDMENT) BILL (SENATE BILL NO.4 OF 2014)

(Committee of the Whole deferred)

The next one is the Committee of the Whole with regard to The Preservation of Human Dignity and Enforcement of Economic and Social Rights Bill (Senate Bill No.8 of 2015) moved by Sen. Hassan and he is not in the House.

What is it, Sen. (Prof) Kindiki?

The Senate Majority Leader (Sen. (Prof) Kindiki): Mr. Temporary Speaker, Sir, I did not request to talk.

The Temporary Speaker (Sen. Sang): Does that mean that you are not making any appeals as to the direction to drop the Kenya Medical Supplies Authority (Amendment) Bill?

The Senate Majority Leader (Sen. (Prof) Kindiki): Mr. Temporary Speaker, Sir, this Bill which is Order No.17 was referred back to the Committee sometime last year. The Committee has been working on it. If I remember, they had sought direction on the way forward through the Senate Business Committee (SBC). The resolution at that time was that we step it down for them to look at whether that Amendment Bill takes care of county interests. I have not gotten any report until now. I requested the SBC to

reschedule the Bill for the Committee to tell us whether they have brought any proposals, or if they have any amendments. They agreed that this Bill be rescheduled.

I am sorry I am yet to speak to the Chairman of the Health Committee though the Health Committee has some short term leadership gap. The Chairman resigned two weeks ago and there will be elections for a new Chairman on Tuesday. In that respect, I have nobody to talk to, but it can be stepped down until next week. I would be happy if you can direct that it still be brought back in next week's Order Paper so that we dispose of it.

The Temporary Speaker (Sen. Sang): I direct that it be on the Order Paper in two weeks' time. This will allow the Committee to have the election that you have just indicated to us. They will then have at least a week to address themselves to the Bill. The Bill will appear in the Order Paper in two weeks' time.

The Senate Majority Leader (Sen. (Prof) Kindiki): That is in order, Mr. Temporary Speaker, Sir. Thank you very much for your direction.

The Temporary Speaker (Sen. Sang): For Order No.18, Sen. Hassan is not in the House so we defer it.

COMMITTEE OF THE WHOLE

THE PRESERVATION OF HUMAN DIGNITY AND
ENFORCEMENT OF ECONOMIC AND SOCIAL RIGHTS BILL
(SENATE BILL NO. 8 OF 2015)

(Committee of the Whole deferred)

Sen. (Dr.) Zani: On a point of order, Mr. Temporary Speaker, Sir.

The Temporary Speaker (Sen. Sang): What is your point of order, Sen. (Dr.) Zani?

PROCEDURAL MOTION

ELECTION OF SEN. OBURE TO PRESIDE OVER THE HOUSE
PURSUANT TO STANDING ORDER NO. 18 AND
ARTICLE 107(1)(C) OF THE CONSTITUTION

Sen. (Dr.) Zani: Thank you, Mr. Temporary Speaker, Sir. I stand to beg to move a Procedural Motion.

THAT, pursuant to Article 107(1)(c) of the Constitution and Standing Order No.18 of the Senate Standing Orders, the Senate resolves to elect Sen. Obure to preside over the proceeding of the Senate for the remainder of today's sitting. We still have a number of items in the Order Paper and it is a good time to have another Speaker taking the Chair so that we can proceed with this specific Orders.

I beg to move that we allow Sen. Obure to assume the Speaker's Chair. I request Sen. Mwakulegwa to second this Motion.

Sen. Mwakulegwa: Mr. Temporary Speaker, Sir, I do second this Motion considering that Sen. Obure has been in Parliament for more than 25 years. He can pride himself in having the Standing Orders at his fingertips such that he does not have to refer to the book. He is best suited to sit on the Speaker's Chair.

I second.

(Question proposed)

The Senate Majority Leader (Sen. (Prof) Kindiki): Mr. Temporary Speaker, Sir, I know this is a Procedural Motion and we should not belabour it. However, I just want to go on record as having supported it. Sen. Obure is one of the most distinguished Members of this House. He is a man of many achievements, but very humble. You would not know that he has achieved a lot. He is a great debater, always in the House, very focused and a sober leader. I do not think that there will be any greater honour than allowing our Senator to steer this House for the remainder of this Session.

I fully support.

Sen. (Dr.) Khalwale: Mr. Temporary Speaker, Sir, I support the Procedural Motion.

As the Ford-Kenya deputy Party Leader, who is obviously deputy Co-principal in CORD, I would like to confirm that the CORD coalition has no problem with our talented Member sitting on that Chair. I hope that the salivating side of Jubilee, who are hoping to have such a talented player on their side, will not take it to mean that we are letting our men to their side in any way.

I support.

(Question put and agreed to)

The Temporary Speaker (Sen. Sang): Sen. Obure, approach the Chair.

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

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

The Temporary Speaker (Sen. Obure): I would like to thank you for the kind words. I am now in the Chair. Let us move on to the next Order.

COMMITTEE OF THE WHOLE

(Order for Committee read)

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

IN THE COMMITTEE

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[The Temporary Chairperson (Sen. Obure) took the Chair]

THE PETITION TO COUNTY ASSEMBLIES (PROCEDURE) BILL
(SENATE BILL NO. 35 OF 2014)

The Temporary Chairperson (Sen. Obure): Hon. Senators, we are in the Committee of the Whole to consider the Petition to County Assemblies (Procedure) Bill (Senate Bill No. 35 of 2014).

Clauses 3 and 4

(Question, that Clauses 3 and 4 be part of the Bill, proposed)

Clause 5

Sen. Sang: Mr. Temporary Chairman, Sir, I beg to move:-

THAT, Clause 5 of the Bill be amended in sub-clause (3) by deleting the words “facilitate public participation” appearing immediately after the words “the county assembly shall” and substituting therefor the words “conduct public hearings”.

Mr. Temporary Chairperson, Sir, the reason is that the wordings of all the Bills with regard to this component of public hearings is that in the context of Parliaments and county assemblies, the requirement has always been that they facilitate or conduct public hearings. If you say “facilitate public participation” this is too broad and vague.

However, with regard to a county assembly, we said that they need to conduct public hearings, which means that, in accordance with their Standing Orders, they can schedule to give a notice to the members of the public, organise a public hearing, and receive petitions and views of members of the public as they address themselves. Therefore, this is nothing new, but just to obligate the county assemblies to conduct public hearings.

Mr. Temporary Chairman, Sir, this is the only amendment that we have on this Bill. It needs to be understood that a lot of the petitions that we receive in the Senate have been occasioned partly because there has never been an existing framework to enable members of the public in our county assemblies to engage. Regarding some of the petitions that we receive in this House, if such a procedure was available, members of the public in the counties would start with the county assemblies before they come to the Senate.

Therefore, as the Committee on Legal Affairs and Human Rights, we saw it fit to provide a national standard legislation on how county assemblies will engage with members of the public with regard to a petition. On this amendment, it is to ensure that the cardinal principle provided for by the Constitution is public participation, but more specifically by providing the manner in which that public participation will be conducted. That is by conducting public hearings.

Mr. Temporary Chairman, Sir, with those remarks, I beg to move and request this House to support this amendment and the Bill so that our county assemblies can process

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petitions in a more procedural and standardized manner, where members of the public have a right and understand how to do this.

(Question of the amendment proposed)

Clauses 6 and 7

(Question, that Clauses 6 and 7 be part of the Bill, proposed)

The Schedule

(Question, that the Schedule be part of the Bill, proposed)

Clause 2, the Title and Clause 1

(Question, that Clause 2, the Title and Clause 1 be part of the Bill, proposed)

Sen. Sang: Mr. Temporary Chairman, Sir, I beg to move that the Committee do report progress to the Senate on its consideration of the Petition to County Assemblies (Procedure) Bill (Senate Bill No.35 of 2014) and seek leave to sit again tomorrow.

(Question proposed)

(Question put and agreed to)

(The House resumed)

[The Temporary Speaker (Sen. Obure) in the Chair]

PROGRESS REPORTED

THE PETITION TO COUNTY ASSEMBLIES (PROCEDURE) BILL (SENATE BILL NO. 35 OF 2014)

Sen. (Dr.) Khalwale: Mr. Temporary Speaker, Sir, may the record of the HANSARD capture that I am aware of the unique circumstances we are operating in this afternoon, where the Chairperson would ordinarily have had to take the Chair, but because the Chairpersons' panel being thin this afternoon, I would take that responsibility.

Therefore, I beg to report progress that the Committee of the Whole has considered the Petition to County Assemblies (Procedure) Bill (Senate Bill No. 35 of 2014) and seeks leave to sit again tomorrow.

Sen. Sang: Mr. Temporary Speaker, Sir, I beg to move that the House agrees with the Committee in the said report.

I request Sen. (Dr.) Zani to second.

Sen. (Dr.) Zani: Mr. Temporary Speaker, Sir, I rise to second. This is a very important provision, especially considering the number of petitions that have been

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coming from counties and the fact that for most counties, opportunities need to be created for counties listen to those petitions. The provision is made herein to ensure that the petition is put across in proper form and that a clear structure for participation is put in place. One of the biggest tenets of the Constitution is on public participation. Most of the questions that come would not be there if public participation was adequately done. In fact, public participation then, begins to empower people. The processes of the public participation ensures that it is broad and that people have a chance to speak, get empowered in knowledge and not left at the level of tokenism, but that of proper development is very important.

I second.

(Question proposed)

Sen. (Dr.) Khalwale: Mr. Temporary Speaker, Sir, I rise to support and I am compelled to make the following remark. Now, we are reducing the baggage of petitions at the national level here in the Senate and hopefully, county assemblies will take over.

However, let us pause and think about it. Clause 3 says:

“A petition to a county assembly shall be in the form set out in the Schedule and shall:

- a. Be handwritten, printed or typed, but most importantly, be in English or Kiswahili and be written in respectful, decorous and temperate language.

We must now take note of the fact that we are taking matters to the locals. If *boda boda* boys in Kakamega County wanted to make an appeal to the Kakamega County Assembly on a matter concerning *boda bodas*, why would we restrict them to English or Kiswahili? They can do so in Kiluhya and it will in no way offend the assembly. Probably, we want to think about this for purposes of posterity. Those who think that vernacular cannot actually live to the standard, I invite your this evening to go and watch *Inooro* Television which communicates effectively and the people who speak the language I believe are comfortable with it.

So, in future, we should think of expanding this particular space so that the old women in Lumakanda who want to petition on growing of beans, should do so freely in Kiluhya. The boys in Nandi County who want to petition about the unique circumstances under which they are kept in the forest, should be free to do so in Kinandi, for example.

I support.

(Laughter)

Sen Sang: On a point of order, Mr. Temporary Speaker, Sir. While I agree with the contributions made by Sen. (Dr.) Khalwale, each culture has its unique approaches. The specific example that the Senator has alluded to, about a petition to a county assembly with regard to how the Kalenjin or Nandi circumcision is done, and, to that extent, discussing matters of the circumcision within the Nandi culture, is a taboo. Would I be in order to request Sen. (Dr.) Khalwale to give a better example other than dwell along a terrain that might lead us into discussing a taboo with regard to my culture?

Would I be in order to ask him to withdraw and particularly apologise to me who is a serious member of the Nandi?

Sen. (Dr.) Khalwale: Mr. Temporary Speaker, Sir, before I comment or apologise, may I withdraw in my statement, any word mentioning Nandi and replace it with Luhya circumcision. They can file a petition in Bungoma, Trans-Nzoia, Kakamega and Busia counties and get what they want.

As far as apologising is concerned, I have no difficulty, but since we are touching on matters culture, let us also respect it on both sides; in my culture, I am not supposed to apologise to a younger person who is the age of my son.

The Temporary Speaker (Sen. Obure): This is not a matter affecting counties and I will, therefore, put the question.

(Question put and agreed to)

MOTION

RENEWAL OF THE MANDATE OF THE COMMITTEE INQUIRING INTO THE POLICY AND LEGISLATION ON THE TREATMENT OF PRISONERS AND DETAINED PERSONS IN CORRECTIONAL FACILITIES

The Temporary Speaker (Sen. Obure): I understand that Sen. (Dr.) Zani has been given permission by the Mover, Sen. Adan. Please, proceed.

Sen. (Dr.) Zani: Mr. Temporary Speaker, Sir, I wish to confirm that Sen. Adan has given me permission to move this Motion on her behalf. Before I do so, let me just say that, that seat suits you and that we are doing very well this evening.

I beg to move:-

THAT, aware that the Senate resolved to establish a select Committee comprising eleven (11) Senators to inquire into the policy and legislation on the treatment of prisoners and detained persons in correctional facilities in Kenya on 22nd October, 2015;

APPRECIATING, that the mandate of the Select Committee lapsed and the Senate extended the same for forty five days on 7th April, 2016;

REGRETTING, that due to heavy workload and sheer magnitude of the assignment, the Committee is yet to table its report in the House and requires more time to conduct a further and thorough inquiry into the subject matter of its mandate;

NOW THEREFORE, the Senate resolves to renew the mandate of the Committee by a further period of thirty (30) days to enable it conclude its work and table its report in the House.

Mr. Temporary Speaker, Sir, this is a very important Committee that was formed to look at the treatment of prisoners and detained persons. As we know, in Kenya, we have very key arms which are the police, courts and the correctional facilities. For a long time, there has been debate about what happens, especially at the correction facilities considering that the number of inmates has been increasing and the rate of crime has also been increasing. Most of these correctional institutions have been having a problem in terms of ensuring that they are able to cater for the large number of inmates.

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This Committee has been working for the period that it had been given. Right now, the Bill and the report are ready. It is only that more time is needed so that the Committee can put this to the stakeholders so that by the time the Bill and report comes to this House, they will be completely exhausted by stakeholders who will have a chance to give their input and make meaningful contributions.

The request for more time is to enable the Committee to come up with a Report that has involvement from the specific key stakeholders. I request that the Senators contributing will allow the request for extension for 30 days in order to conclude the work.

I call upon Sen. (Dr.) Khalwale to Second.

Sen. (Dr.) Khalwale: Mr. Temporary Speaker, Sir, while supporting this Motion, I want to join Sen. (Dr.) Zani to congratulate you. This is a unique afternoon that the great Abagusii are today sitting on top of the legislature and the Judiciary. Congratulations, you are looking good.

Since I am a Member of this *ad hoc* Committee, may I inform the House that we are requesting for more time in good faith. When we started this work, we thought it was a small matter, but when we came to terms with what is going on in our prisons, it is appalling. All this is contained in our Report. We have been sufficiently challenged to go all the way to Norway to do a comparative study. Therefore, we need time for further inquiries so that we allow stakeholders to validate our Report. We do not want last minute challenges and requests for amendments immediately after we have adopted it. If the House allows us, it will go a long way in improving the prison conditions in this country.

I support.

(Question proposed)

Sen. Mwakulegwa: Mr. Temporary Speaker, Sir, I take this opportunity to support this request for extension of time of this Committee for another 30 days because they have done a lot of work. From the Member who contributed, he told us that when they started, they did not know that they were going to find a lot of work. Therefore, the Committee needs more time so that they can, not only contact the concerned people, but also get views by public participation so that the Report that they will Table is all inclusive and will improve the correctional practices that are undertaken in the Kenyan prisons.

Secondly, we also need to make sure that, indeed, correction takes place and not to punish. In most cases, the correctional facilities have been aimed to punish the prisoners. Therefore, the offenders end up going back because they are not corrected. I believe that 30 days extension will enable the Committee get adequate time to consult by way of public participation and deliver a Report that will help the concerned department improve the services to the concerned people.

Sen. Sang: Mr. Temporary Speaker, Sir, I wish to support this Motion, but before I do so, may I congratulate you for being elected the Temporary Speaker of the “upper” House. I wish to associate myself with the sentiments of Sen. (Dr.) Khalwale that there seems to be a great future coming to the people of Kisii. Now that you are the Chair of

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the “upper” House and one of your own - one of the finest Kenyans is the Chief Justice nominee - I hope that the Members of the National Assembly will approve his appointment in the shortest time possible so that he can assume office as the head of the Judiciary and put together a team within the Judiciary that will ensure Kenyans receive justice.

Mr. Temporary Speaker, Sir, I am Member of this *ad hoc* Committee. When we set up the Committee, the House did not appreciate the magnitude of the challenges faced by prisoners and the prison department. We have a lot of prisoners in this country fed by the taxpayers’ money, but a lot of them are people who could contribute effectively to the economy of this country.

Some of the best products that are sold in our country, including the Senate and the National Assembly’s seats, are products of the prison department. Therefore, there needs to be a proper legal framework that will ensure that most of the prisoners have a better environment to learn. Once they complete their terms, they become better citizens in this country. There needs to be a proper linkage between the skills that the prisoners will get in prison. If one is sentenced for three years, he or she will learn masonry or carpentry. As they get out of prison, there should be a proper mechanism of connecting them to the job opportunities and capital so that they pick up their lives afresh and move on.

Mr. Temporary Speaker, Sir, there are certain issues that must be addressed. A prisoner who has served his term, when exiting the prison, should access the certificate of good conduct. As things are now, most of them after serving their prison term, they are condemned for life because they cannot access the certificate of good conduct. Therefore, there are certain issues that must be addressed within the prison department.

When the Committee finalises the Report, we should come up with a raft of amendments to the existing legislation and even enact new legislation to ensure proper streamlining of the processes within the prison department. This will stop condemning Kenyans.

Mr. Temporary Speaker, Sir, mistakes are done in life. Some of these young people find themselves in prison because of such mistakes. The other day, we saw on television a programme showing some of the challenges that women in prison go through. A mother is convicted for three, four, five or seven years and she has a small child. As they are taken to prison, they go with their children. The person who committed the offence is the mother, but if you look at the conditions under which the children are subjected to, it appears as if even the children who are innocent have been condemned.

Therefore, there is need for us to put adequate resources to reform the Prisons Department and ensure it is not just an institution to punish people, but it is an institution actually to reform so that we have better Kenyans coming out of the prisons. Therefore, this request for an extra 30 days is very reasonable. We will conclude our discussions, deliberations and present a concrete report, not just a report, but with the attendant proposed amendments to the existing legislation to ensure that we are able to reform the Prisons Department.

With those remarks, I beg to support.

Sen. (Prof.) Lonyangapuo: Mr. Temporary Speaker, Sir, thank you for the opportunity to contribute to this Motion. I join my colleagues in congratulating Sen. Obure who is now sitting on the high seat. He is the presiding Temporary Speaker of this sitting. I worked with him. He was the most dedicated Cabinet Minister for Finance in Kenya. He is the one who renovated this Chamber. We are seated on these beautiful and wonderful seats courtesy of the strain and push of the then Cabinet Minister for Finance, hon. Chris Obure, who sought for funds and made sure that the Senators who will come here would get the best as they settle. The only thing that is missing and we had agreed on when I was his Permanent Secretary is that two seats would have been better than the rest and reserved for us because we pushed for the renovation of this Chamber. Already, I can see he has one, but I am still waiting.

Sen. Sang: Mr. Temporary Speaker, Sir, with that revelation by Sen. (Prof.) Lonyangapuo that you and him played a critical role in the designing and renovating of this Chamber, would it be possible to imagine that the two of you have agreed that you are going to be governors and that there would be something similar to this in Kisii and West Pokot counties with regard to the big chair that he is talking about? If that would be the case, would you consider also extending the same to Kakamega County where Sen. (Dr.) Khalwale and Nandi County where yours truly will also be the governor of?

The Temporary Speaker (Sen. Obure): Sen. (Prof.) Lonyangapuo, would you like to respond to that?

Sen. (Prof.) Lonyangapuo: I will request that you rule him out of order. We are the serious Senators here and we are still looking for the two seats that we actually said that they should be made, but we have not seen them. I can see one is already there; maybe mine is arriving anytime from next week before the end of this Parliamentary term. As to what will happen then, Sen. (Dr.) Khalwale is asking to see us later in private and, in confidence, and we will couch him on how he can make a better Chairman in future, if he so wishes.

The Temporary Speaker (Sen. Obure): I declare that to be a very satisfactory response. Let us proceed.

Sen. (Prof.) Lonyangapuo: Yes, Sir.

The Temporary Speaker (Sen. Obure): Wait. There is another point of order from Sen. (Dr.) Khalwale.

Sen. (Dr.) Khalwale: On a point of order, Mr. Temporary Speaker, Sir. Is Sen. (Prof.) Lonyangapuo in order to impute that I wish to be given a special chair if I became the governor of Kakamega, when he knows that I am on the frontline in fighting the opulence that leads to the waste of public funds as exemplified by my recent clash in Bungoma with the governor of Bungoma County who has bought a chair for himself for Kshs2.7 million? Is he in order?

Could you direct that he apologizes to me and withdraws the statement imputing that I want to make myself a demigod when I become the governor of Kakamega County?

Sen. (Prof.) Lonyangapuo: Mr. Temporary Speaker, Sir, Sen. (Dr.) Khalwale is my colleague and neighbour with whom we sell cows every Saturday. Over 11 lorries travel to Kakamega from West Pokot every Saturday and that is where they get bulls for

fighting. I did not mean that type of seat. We can even give you a three-legged seat from West Pokot which does not cost much.

The Temporary Speaker (Sen. Obure): Sen. (Prof.) Lonyangapuo, I have ruled that your response is satisfactory.

Please, proceed.

(Laughter)

Sen. (Dr.) Zani: On a point of order, Mr. Temporary Speaker, Sir. Are the two Senators in order to address each other across the Floor, yet we are clear about the rules in this House; that we are supposed to address the Speaker?

The Temporary Speaker (Sen. Obure): I remind them that we are in the Senate and they should address the Speaker.

Sen. (Prof.) Lonyangapuo: Mr. Temporary Speaker, Sir, I apologize on behalf of my colleague. We recognize you and operate through the Chair.

I want to echo what Sen. (Dr.) Khalwale and Sen. (Dr.) Zani said. I am also a Member of the Committee that was selected on 22nd October last year to inquire and look into issues that affect the prisons department as a whole. As mentioned by the Mover of the Motion, there are issues that have come out and shocked all of us that need to be inquired into further.

It is a pity that last year was exactly 52 years after Independence, but it looked like we had inherited the prisons department and regulations as they were prior to Independence. I have siblings, colleagues and friends who work in the Prisons department. What makes them look like officers who are working is only the uniforms. However, they stay in pathetic conditions. It is even better to stay in a veranda or the streets, like the *chokoras* than where they stay. It is such a pity.

From 1963, that department has always been domiciled or stationed in the highest office in the land; either in the Office of the President or the Office of the Vice President. It is sad that we have treated officers working there like prisoners. Their working conditions are pathetic yet they are supposed to reform people. There are also officers who have been idling there for all these years.

To the extent that we take them for reformation that is also pathetic. We also have people to idle there for all those years. You take a prisoner and the best they can do is to make seats like these. I can say for sure that most of the seats you are sitting on here were done with the help of the prisoners mostly around Nairobi.

However, far and wide in the nation; the situation is pathetic. We have people who are overburdening Kenyans. They go to prisons to eat and sleep because we have taken them there. We just contain them in a closet.

We want this Committee, with the proposal that is coming up to see how we can work with these fellows, even in their own homes to improve them. The work has been done through the leadership of Sen. Adan and the colleagues that are working for the sake of the Senate. The people who are in prisons, either as inmates or workers, all come from our counties. The Senate serves to represent counties, protect their interests and more so those we want to reform.

Mr. Temporary Speaker, Sir, it is, therefore, necessary that this Senate sees it fit to give the request as is so that work can be done in the life of this Parliament. We

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should be able to come up with a legislation to guide and direct the management of the prisons service in this nation.

I support.

The Temporary Speaker (Sen. Obure): Hon. Senators, this matter does not affect counties and I will, therefore, put the question.

(Question put and agreed to)

Next Order!

MOTION

INSTALLATION OF CCTV CAMERAS IN ALL POLICE STATIONS AND POLICE POSTS IN THE COUNTRY

THAT CONCERNED about the numerous reports of the arbitrary arrests of innocent people by the police;

FURTHER CONCERNED, that a large number of those arrested are allegedly locked up in police cells without being recorded either in the Occurrence Book or elsewhere;

DEEPLY CONCERNED, that some of the arrested people disappear without a trace and that many who are subsequently traced are found dead away from where they were known to have been locked up;

ALARMED by the recent incident where three young men were locked up for hours at Syokimau Police Post without any record indicating they had been at the police post, only for them to be found days later, in another area far from the police post, having been brutally killed;

APPRECIATING that the Closed Circuit Television (CCTV) system installed by the Government in Nairobi has helped a lot in criminal investigations;

NOW THEREFORE the Senate calls upon the National Government to-

- a) install CCTV cameras in all police stations and police posts in order to record each and every person going in and out of the station;
- b) have the CCTV system designed in such a way that it is capable of capturing the Occurrence Book entries every twelve hours; and
- c) ensure the CCTV system is connected to a central depository in order to minimize chances of subsequent tampering.

The Temporary Speaker (Sen. Obure): The Mover of the Motion does not appear to be in the House and the Order is deferred.

(Motion deferred)

ADJOURNMENT

The Temporary Speaker (Sen. Obure): Hon. Senators, there being no other business, the Senate stands adjourned until Thursday, 6th October, 2016 at 2.30 p.m.

The Senate rose at 6:20 p.m.