

NATIONAL ASSEMBLY

OFFICIAL REPORT

Wednesday, 17th February, 2016

The House met at 2.30 p.m.

[The Speaker (Hon. Muturi) in the Chair]

PRAYERS

COMMUNICATION FROM THE CHAIR

Hon. Speaker: Hon. Members, I have two short Communications to make.

SIXTH LEADERSHIP RETREAT OF THE NATIONAL ASSEMBLY

Hon. Members, I wish to notify you that the National Assembly has planned a two-day retreat for the leadership of the House under the theme: “Lessons Learnt and Consolidating the Gains.” The retreat will be held from 18th to 21st February 2016 at the Serena Beach Hotel in Mombasa.

The retreat is held with a view to availing an opportunity for the Majority and Minority Party office holders, Members of the House Business Committee, Committee Chairpersons and Parliamentary Service Commissioners to review the progress made in fulfilling our constitutional mandate. The highlight of the retreat will be the discussions with the Chairperson of the Independent Electoral and Boundaries Commission (IEBC), the Cabinet Secretary for the National Treasury, the offices of the Registrar of Political Parties and the Political Parties Dispute Tribunal on the preparations for the next Parliament. This will include consideration of the administrative, legal and budgetary requirements which ought to be facilitated by Parliament to ensure free and fair elections in 2017. The Secretary to the Parliament of South Africa has also agreed to attend and make a presentation. Thereafter, the resolutions of the retreat will be presented to the House next week.

The second Communication relates to a piece of proposed legislation titled: “The Military Veterans Bill, National Assembly Bill No.34 of 2013.”

THE MILITARY VETERANS BILL, 2013

Hon. Members, you will recall that the Military Veterans Bill, National Assembly Bill No.34 of 2013 sponsored by the Member for Eldas Constituency, Hon. Adan Keynan, was introduced in the House on 14th November 2013.

The Bill seeks to provide for the welfare and benefits of military veterans and their dependants and also to establish the department of military veterans and an advisory council in the Executive. You may also recall that the House considered and passed the Bill at the Second

Reading on 4th December 2014. The Bill is now, therefore, due for consideration in the Committee of the whole House.

Hon. Members, the foregoing notwithstanding, my attention has been drawn to letters from the Cabinet Secretary for Defence and the Chairperson of the Departmental Committee on Defence and Foreign Relations dated 20th January 2016 and 11th March 2014, respectively, questioning the constitutionality of the Bill. Their contention is that the said Bill is a money Bill in terms of Article 114 of the Constitution in so far as it proposes to establish a Government department headed by a Director-General, an advisory council and a military veterans appeals board. They further contend that the establishment, administration and operations of those bodies will inevitably occasion imposition of charges on a public fund and may offend the provisions of Article 132(4)(a) of the Constitution regarding the establishment of departments in the Executive.

It is my considered view that the issues raised in this respect are, indeed, very fundamental and will determine how this House will proceed with the said Bill.

Standing Order No.114(3)(a) states:-

“Where the Speaker is of the opinion that a legislative proposal is a draft money Bill in terms of Article 114 of the Constitution, he may direct that the legislative proposal be referred to the Budget and Appropriations Committee and shall be proceeded with only in accordance with the recommendations of the Budget and Appropriations Committee after taking into account the views of the Cabinet Secretary responsible for finance and examining the manner in which the legislative proposal affects the current and future budgets”

In this regard, I approved the publication of the said Bill on 28th October 2013, having been guided by the recommendation of the Departmental Committee on Defence and Foreign Relations vide letter dated 29th August 2013, which indicated that the Committee had no objection for its publication and on the strength that the Budget and Appropriations Committee’s recommendation that the Bill be renamed the “Veterans Societies Bill”, would not accord with the substance of the Bill.

Hon. Members, upon publication of the Bill, constitutional objections have since been made as aforementioned not only by the relevant Committee, but also by the office which is being obliged to implement the Bill upon passage into law. It is now apparent that the recommendations of the Budget and Appropriations Committee may not have been fully incorporated prior to publishing of the said Bill. The Budget and Appropriations Committee had stated in their Report that:-

“The Committee noted that the Bill has expenditures that shall be borne by the Exchequer and the spiral effect it might have on the economy and the retirement benefits of other retired public servants. The Committee recommended the following:-

- (i) The draft Bill should be renamed the “Veterans Societies Bill”.
- (ii) The sponsor of the Bill should study existing policies regarding pensions and see how the Bill can be improved to be in tandem with such other policies.
- (iii) The proposal incorporating the above amendments can proceed as drafted.”

The Bill, having been published in the format that had been presented to the two Committees and taking into consideration the comments of the Budget and Appropriations Committee vide their letter of 22nd October 2013, it follows that the provisions of Article 114 of the Constitution must apply.

It is worth noting that the question of constitutionality of a Bill can be entertained at any stage before the passage of a Bill. In this regard, I hereby defer any further proceedings on the said Bill in the House until the Budget and Appropriations Committee addresses itself on the money status of the Bill and makes its recommendation known to the House in accordance with the provisions of Article 114 of the Constitution.

In addition, the Departmental Committee on Defence and Foreign Relations is at liberty, in carrying out its business, to consider the other issues of constitutionality in the Bill, while taking into account the matters raised in the letter from the Cabinet Secretary for Defence. More particularly, the Departmental Committee is to consider the facts of the establishment of Government departments by the legislature as opposed to the constitutional provision that is a function of the Executive.

In the consideration of the Bill, the Budget and Appropriations Committee should invite the Cabinet Secretary for the National Treasury in accordance with Article 114 of the Constitution, while the Departmental Committee on Defence and Foreign Relations will also be required, among other things, to invite the Cabinet Secretary for Defence and the Office of the Attorney-General to shed light on other issues of constitutionality surrounding this Bill. Thereafter, I will guide the House on how to proceed with the consideration of the said Bill in its next stage, while taking into account the recommendations of the two Committees.

I thank you.

PETITIONS

WAIVER OF TAXES ON SANITARY TOWELS

Hon. Mule: Thank you, Hon. Speaker.

I, the undersigned, on behalf of citizens of Kenya and in particular, concerned parents of this country, draw the attention of the House to the following:-

THAT, Kenya, as the most developed economy in East and Central Africa, has a manufacturing industry which is largely characterized by the export of raw materials and import of goods which have already been value-added;

THAT, the Government has exempted duty on the supply or importation of sanitary towels and tampons for young girls and ladies in this country;

This gives importers of sanitary products an upper hand in the industry, while also bringing about tax inequity. The local manufacturers incur input Value Added Tax (VAT) and duty upon importation of raw materials for production. They face higher tax implications than those who import finished products.

Those extra costs and the possible losses incurred by the manufacturers may lead them to opt to import or relocate their manufacturing plants to more favourable business environments within the region. Due to the taxation imbalance, various multi-national companies in the country have relocated from this country. Examples are Johnson and Johnson who were producing drugs, and Eveready East Africa. Because of the taxation imbalance, those companies

have relocated thus leading to loss of jobs by our young people. They move to countries like Uganda and Egypt where tax regimes are better.

I indulge the House to listen to me very carefully because all of us have this problem.

Hon. Speaker: Present the Petition. You can give those other stories there in the village.

Hon. Mule: I stand guided, Hon. Speaker. That has led to loss of revenue to the Government and jobs for locals in the country.

The supply of sanitary towels promotes education, productivity, hygiene and a self-health environment for the girl-child, which ultimately boosts economic development in the country, and is in line with Government initiatives to promote girl-child education.

The matter in respect of which this Petition is being brought to this House is not pending before a court of law. The prayer we seek in this Petition is the Assembly, through your Chair, to direct the Departmental Committee on Finance, Planning and Trade to intervene to ensure that Parliament exempts, in law or administratively, VAT and custom duties on raw materials specifically for the manufacturers of sanitary pads in the 2016/2017 Financial Year.

The second prayer is to urge the Government to zero-rate the supply of sanitary pads in Kenya to reduce the cost of the final product within the country. The third prayer is to ensure that VAT exemption is implemented not only in the 2016/2017 Financial Year, but also in the future years, for the continued prosperity of the girl-child education in this country.

Hon. Speaker, can I give a brief presentation?

Hon. Speaker: Please just present the Petition. You cannot be presenting and then you want to debate.

Hon. Mule: Hon. Speaker, I kindly present this Petition to be considered at this period of budget-making. We should ensure that we have value for money as a country and create more jobs. We should also make sure that we maintain more girls in school to get better education.

Thank you, Hon. Speaker.

Hon. Speaker: The presenter has taken too long. I totally decline to allow comments. Let us proceed to the next Order.

PAPERS LAID

Hon. Speaker: Leader of the Majority Party.

Hon. A.B. Duale: Hon. Speaker, I beg to lay the following Papers on the Table of the House today, Wednesday, 17th February 2016:-

The Annual Reports and Financial Statements in respect of the following institutions for the year ended 30th June 2015:-

1. The Kenya Electricity Generating Company Limited (KenGen)
2. East African Portland Cement Company Limited.

The Annual Report and Financial Statements in respect of the following institutions for the year ended 30th June 2014:-

1. Kenya Industrial Estate Limited
2. New Kenya Cooperative Creameries Limited.

The Annual Report and Financial Statements of the Insurance Regulatory Authority for the year ended 31st December 2014.

The Board Report on Project Proposal Approvals, Disbursement Status and Restrictions imposed on Constituency Account for December 2015 and January 2016.

The Report of the Auditor-General and Financial Statements in respect of the following institutions for the year ended 30th June 2015 and the certificate therein:-

1. Public Service Commission.
2. Media Council of Kenya.

(Hon. A.B. Duale laid the documents on the Table)

Hon. Speaker: Hon. Naomi Shaban.

Hon. (Dr.) Shaban: Hon. Speaker, I beg to lay the following Paper on the Table of the House today, Wednesday 17th February 2016:-

The Report of the House Business Committee on its benchmarking visit to Rome, Italy between 23rd and 27th November 2015.

(Hon. (Dr.) Shaban laid the document on the Table)

Hon. Speaker: Hon. Chachu Ganya.

Hon. Ganya: Hon. Speaker, I beg to lay the following Paper on the Table of the House today, Wednesday 17th February 2016:-

The Report of the Departmental Committee on Environment and Natural Resources on its consideration of the Senate amendments to the Climate Change Bill, 2014.

(Hon. Ganya laid the document on the Table)

Hon. Speaker: Hon. Ndungu Gethenji.

Hon. Gethenji: Hon. Speaker, I beg to lay the following Paper on the Table of the House today, Wednesday 17th February 2016:-

The Report of the Departmental Committee on Defence and Foreign Relations on its consideration of:-

1. The Kenya Regiment (Territorial Force) (Repeal) Bill, 2015.
2. The Kenya Defence Forces Amendment Bill, 2015.

(Hon. Gethenji laid the documents on the Table)

Hon. Speaker: Hon. Racheal Nyamai.

Hon. (Ms) R.K. Nyamai: Hon. Speaker, I beg to lay the following Paper on the Table of the House today, Wednesday 17th February 2016:-

The Report of the Departmental Committee on Health on its consideration of the Biomedical Engineers Bill, 2015.

Thank you, Hon. Speaker.

(Hon. (Ms.) R. K. Nyamai laid the document on the Table)

Hon. Speaker: I direct that the Petition by Hon. Mutinda Mule be referred to the Departmental Committee on Finance, Planning and Trade for its consideration in the usual manner.

Next Order!

NOTICE OF MOTION

REGISTRATION OF PEOPLE WITH SERIALISED WAITING CARDS AS VOTERS

Hon. F.K. Wanyonyi: Hon. Speaker, I beg to give notice of the following Motion:-

THAT, aware that voter registration is a crucial exercise in the electioneering process, further aware that for one to register as a voter he requires a National Identification Card; and concerned that thousands of youth do not have identity cards due to the long and tedious process involved in the processing of those cards and further compounded by the centralisation of the process; noting that once a person applies for identification card it is issued with serialised waiting card; further aware that the serial number on the waiting card appears in the identity card; mindful of the fact that many people, especially the youth have applied and been issued with serialised waiting cards; concerned that the ongoing voter registration exercise which commenced on 15th February 2016 is likely to come to a close in a month's time and in effect those youth with serialised waiting cards would not have received their identity cards, this House resolves that the Independent Electoral and Boundaries Commission (IEBC) be authorised to allow all the people who have successfully been vetted and issued with serialised waiting cards to register as voters in the ongoing and future voter registration exercises.

Thank you.

Hon. Speaker: Next Order!

STATEMENT

VIOLATION OF NUCLEAR TEST-BAN TREATY BY NORTH KOREA

Hon. Onyonka: Hon. Speaker, as the House is aware, as a signatory to the Comprehensive Nuclear Test-Ban Treaty (CNTBT), Kenya is deeply concerned by the news that the Democratic Republic of Korea carried out nuclear tests on 6th January, 2016. If this claim is confirmed, a fourth nuclear test would be a drastic violation of the UN Security Council Resolutions 1718, 2006, 1874, 2009, 2087, 2013. The safeguards of the agreement, which exists within the International Atomic Energy Agency, would be violated.

Such provocative act will invariably lead to further tensions in the region and seriously hamper efforts to find a solution to the nuclear problem on the Korean Peninsula. The tests have been threatening international peace and security. Kenya, therefore, calls on all states to refrain from conducting nuclear tests and urges all that have not yet signed the Comprehensive Nuclear Test-Ban Treaty to sign it as soon as possible. We, therefore, as a country, should urge North Korea to cease its nuclear and ballistic programme and to engage constructively with the international community to achieve peace and security in the North East and the world at large.

Thank you, Hon. Speaker.

Hon. Speaker: Hon. Members, before we proceed to the next Order, in keeping with the Speaker's Communication of 14th October, 2015, we continue receiving updates on business

pending before Committees. Today we will get an update from the Chairperson of PAC, who will be represented by Hon. Abdikadir Omar Aden, Member for Balambala.

STATUS OF BUSINESS BEFORE HOUSE COMMITTEES

Hon. Aden: Hon. Speaker, on behalf of the Chairman of PAC, I would like to update the House on the business pending before the Committee.

The Committee completed examination of the Special Audit Report of the Auditor-General on the Judicial Service Commission (JSC) and the Judiciary and tabled its Report on 7th July 2015, which has since been discussed by this House. I am happy to report that the debate on the JSC Report was concluded yesterday, Tuesday 16th February 2016 and adopted by the House with amendments. It is our belief that the various organs of the Government will expeditiously implement the recommendations contained in the PAC Report on the Special Audit of the JSC and the Judiciary.

Hon. Speaker, the Committee completed investigating procurement of equipment and devices by Independent Electoral and Boundaries Commission (IEBC); namely, Biometric Voter Registration (BVR) equipment, Electronic Voter Identification Devices (EVIDs), Electronic Result Transmission Devices (ERTDs), Optical Mark recorders and Metal Detectors for security checks at polling stations for use during the 4th March 2013 General Elections.

The Committee completed tours to countries whose companies had interest or had participated in the procurement of the electronic voting devices. The Committee is now at the tail-end of receiving witness submissions and has written the first Draft Report, awaiting certain crucial documentation to complete the Report for tabling in the House. The Committee envisages tabling the Report by the first week of March, 2016.

Hon. Speaker, the Committee is also considering the Auditor-General's Annual Report on the Appropriation of all Government Accounts for the national Government for the Financial Year 2013\2014. The Committee is currently on the tail-end of receiving defence of audit queries from the accounting officers and will table its report by mid-March, 2016. The Committee notes with concerns the inability of some ministries, departments and Government agencies, for example, the Ministry of Devolution and Planning and the Agricultural Sector Coordination Units to provide certain documentation for verification as pointed out in the Auditor-General's Audit Report.

The Committee is contemplating taking appropriate action in order to compel the affected ministries and departments to produce the required documents. In this case, we have a number of departments which have failed to provide the necessary documentation. The Committee wishes to give particular attention to the Ministry of Devolution and Planning with regard to the infamous Asset Register and on expenditures incurred by the National Youth Service (NYS) totalling to Kshs16 billion which, to-date, have no documentation to account for it. This is holding back the Committee's Report.

Hon. Speaker, the Committee, being the secretariat of the African Regional Association of Public Accounts Committees (ARAPAC), is organising the first annual conference and annual general meeting expected to take place in Nairobi in April 2016, subject to availability of funds.

On behalf of the Chairman and Members of PAC, I beg to submit the matters pending before the Committee.

Thank you, Hon. Speaker.

Hon. Speaker: Next Order!

MOTION

ADOPTION OF REPORT ON CRISIS FACING THE SUGAR INDUSTRY IN KENYA

THAT, this House adopts the Report of the Departmental Committee on Agriculture, Livestock and Co-operatives on the Crisis Facing the Sugar Industry in Kenya, laid on the Table of the House on Thursday, 12th March 2015.

(Hon. Nooru on 16.2.2016)

(Resumption of Debate interrupted on 16.2.2016)

Hon. Speaker: Hon. Members, this is resumption of debate. I had directed that before the commencement of the debate, we shall dispose of the proposed amendments. There is an amendment by Hon. Benjamin Washiali.

Take the Floor, Hon. Washiali.

Hon. Washiali: Thank you, Hon. Speaker. I rise under Standing Order No.54(1) to move the following three amendments to the Report of the Departmental Committee on Agriculture, Livestock and Co-operatives on the Crisis Facing the Sugar Industry in Kenya. The first amendment is intended to clean up the Report because Paragraphs 92 and 101 are similar, word for word, point by point and comma by comma.

Therefore, I beg to move:-

THAT, the Motion be amended by deleting the full stop at the end and inserting the following words:- “subject to amendment of the Report by:”

(a) deletion of Paragraph 101;

We want to have a Report that is well written. I want to propose that we delete Paragraph No. 101 which is a duplication of Paragraph No. 92.

Hon. Speaker, the second amendment---

Hon. Speaker: Maybe, because of the import of all this, it is fair that you deal with one after the other. That is because if you move all of them at the same time, Members will not be able to follow. The first one is that you are proposing the deletion of Paragraph 101 and you have said that the reason is because it is similar word for word to Paragraph 92. Are you being seconded on that one?

Hon. Washiali: I would request my brother and friend, Hon. Maanzo, to second. He is seriously agitated. I would not mind him seconding this amendment.

(Loud consultations)

He is a member of the Committee.

Hon. Maanzo seconded.

Hon. Speaker: To be fair, Hon. Washiali, I can see several Members have just walked on their two feet here. I cannot see them carrying their report. Read that which is in Paragraph 92,

so that when Members are voting, they can know that they are voting on something that they agree with or they do not. What is in paragraphs 92 and 101?

Hon. Washiali: Thank you, Hon. Speaker. Allow me to read Paragraph 92 and then Paragraph 101. Paragraph 92 reads:-

“In view of the fact that Mumias Sugar Company (MSC) made exports to the regional markets through various companies mentioned above, there is glaring disparities between records from MSC and the respective exporting companies. For example, Nesredin Mohamed of Addis Ababa wrote to MSC to purchase 500 metric tonnes for export and the records from MSC indicate a summary total of 5,882 metric tonnes, which still has a bigger variation from the detailed records submitted by MSC indicating a total of 117,641 metric tonnes, having been traded by Nesredin Mohammed as export to Ethiopia between the year 2006 and 2009. Records at MSC indicate a total summary of all exports by MSC for the period 2006/2012 as 520,284 metric tonnes, while the detailed itemized list to individual exporting companies totalled to 30,204.37 metric tonnes, which is a big variation from records held at the Kenya Revenue Authority (KRA) indicating 70,431 metric tonnes as exports of brown sugar by MSC over the same period. That is shown under Annex 1 and 11.”

(Loud consultations)

“MSC” stands for Mumias Sugar Company. I am reading the Report as it is written and that is why I am insisting on MSC. This is the evidence under Annex (ii) (a) to (h), (iv) (a) and (v) (a).

Paragraph 101 is exactly what I have read. Therefore, to just clean up the Report--- I am sure many Members do not have it. For the benefit of those Members who do not have the Report, allow me to read.

Hon. Speaker: Can we get a comment from the Chair of the Departmental Committee on Agriculture, Livestock and Cooperatives? It may help us to dispose of. Are they the same? You know what the Report is. You are the one who moved the Report.

Hon. Nooru: That one is just the same. It is duplication.

Hon. Speaker: It is the same. It is a repetition. So you are in agreement? Very well! You want to say something? The Chairman has confirmed that it is the same. You see, Hon. Kaluma believes he can always say something even when he has not seen that the Chairman has the Report. So, you see you have been disapproved. He has a copy of the Report. Hon. Wamalwa, are you suggesting that you want to say something?

Hon. Wakhungu: Yes.

Hon. Speaker: Contradicting what the Chairman has said or what?

Hon. Wakhungu: I want to support.

Hon. Speaker: No. There is no need of supporting. You know, in a political rally, one can say: “We want to sing the same song”, and support. But when you are here, if the Chairman of the Committee has confirmed that what Hon. Washiali is saying is correct and, therefore, the deletion is merely to clean up, does that require the support by the Deputy Minority Whip? We will not allow that. We must use our time much more prudently here. So, Hon. Washiali, there is no need of proposing the Question. We will be putting the Question.

(Question, that the words to be added be added, put and agreed to)

Hon. Members, I have explained that I want Hon Washiali to move each of these amendments because they relate to various paragraphs. So, please, proceed.

Hon. Washiali: Thank you, Hon. Speaker. I want to move my second amendment now that the House has agreed to delete 101. I want to propose a new observation because this is under our observation. That is Chapter 3.3 under paragraph 101 (a).

I beg to move:-

THAT, the Motion be amended by deleting the full stop at the end and inserting the following words:- “subject to amendment of the Report by:

(b) insertion of the following new Paragraphs immediately before Paragraph 102 (Observations of the Committee):-

101A. The key conclusion from investigations on Mumias Sugar Company’s exports was that it was a ploy to defraud the Government of the realizable Value Added Tax (VAT). Neither the Management nor the Board of the Company could confirm that the sugar actually left the country.

101B. Although the former Mumias Sugar Company Managing Director Dr. Evans Kidero submitted that documents proving that the consignment indeed left the country in the custody of the Company, the current Mumias Sugar Company management was at pains to prove that indeed the sugar left the country. Documents provided by the management in an attempt to prove that the sugar was indeed exported were not verifiable. The Board of Directors, through the Chairman Mr. Dan Ameyo, submitted that the Board would carry out a forensic audit on the exports, like it had done on company sugar imports, and give its findings to the Committee within six months.

That is the second amendment and I ask my brother Hon. Kabando wa Kabando, MP for Mukurweini, to second.

Hon. Speaker: Hon. Washiali, this is by way of observation? Is that correct?

Hon. Washiali: Yes, Hon. Speaker.

Hon. Speaker: The Committee has done its work and made observations. Are you, therefore, amending the Committee’s observations or are you adding a new observation?

Hon. Washiali: Hon. Speaker, you realize that I have not signed this Report. The initial observation of the Committee was subsequently removed. That is why I have not signed this Report. This is an observation that was made by the Committee in its earlier Draft Report, but it was subsequently removed from the final Report. I am, therefore, re-introducing the observation in this Report, so that the recommendations I am proposing can make sense.

(Several Hon. Members stood up in their places)

Hon. Speaker, I can see the reactions of my colleagues on the Opposition side. This reaction speaks a lot.

(Applause)

Hon. Speaker: Hon. Members, the best thing in a matter of this nature is to allow every person to prosecute their position. We will now begin to have altercations. We will not go far. I raised this point because I wanted to understand the issues involved. This is an observation. We may need to go to some length to explain certain things because it is not a recommendation; it is an observation. A Member of a Committee is at liberty to do a minority report or an observation. That is perfectly within Members' rights. At this stage, Hon. Washiali wants to introduce an observation in the House. This will, therefore, be an observation of the House and yet, the House has not observed anything. The House is now being asked to observe something. Is that so?

Hon. Onyonka: On a point of order, Hon. Speaker.

Hon. Speaker: Hon. Onyonka, what is your point of order?

Hon. Onyonka: Hon. Speaker, Hon. Washiali is an old Member of this House. First of all, when you look at the Report, it is clear that he dissented. Secondly, regarding any changes or inhibitions he may have about the Report, he would have done a minority report, which then would have come in with the amendments or any other issues which he wanted to raise. Introducing the amendment here---

(Loud consultations)

Hon. Speaker, you need to protect me! Hon. Washiali, if you introduce the amendment now - and this is purely on principle, it is not about the issue at large - you will change the import and the meaning of the full Report. So, we are suggesting that you either do a minority report with the Speakers permission or you disregard that Report.

(Several Hon. Members stood up in their places)

Hon. Speaker: Hon. Members, just a minute. For convenience and for avoidance of doubt, Hon. Washiali, since you are introducing a new observation, we should allow you because those observations seem to be a building ground for a different recommendation that you have proposed, based on your observation. So, we should allow you to move the observations that you have, so that we can proceed to the next bit of this business, which appears to be listed as (c) on the Order Paper, and which seeks the deletion of Paragraph 115 – a recommendation of the Committee – and substitute therefore that new recommendation, which goes up to the next page.

Hon. Members, let us allow Hon. Washiali to proceed and move his amendment. Those of you who have issues to raise can do so after he finishes moving his amendment.
Proceed, Hon. Washiali.

(Applause)

Hon. Washiali: Hon. Speaker, I thank you for your guidance. I want to proceed because what I read out earlier was the recommendation that I had proposed, which should have been included in this Report. In this observation, I am also proposing a recommendation, which is in line with the observation.

Hon. Speaker, I beg to move:-

THAT, the Motion be amended by deleting the full stop at the end and inserting the following words:- “subject to amendment of the Report by:”

(c) deletion of Paragraph 115 (Recommendations of the Committee) and substituting therefor the following:-

115. In view of the fact that there is little evidence that Mumias Sugar Company did make any sugar exports to the regional market between 2006 and 2009, the House recommends that:-

(i) the Government recovers from the then Managing Director of Mumias Company, Dr. Evans Kidero, the lost VAT revenue amounting to Kshs577 million which it would have realized had the Company made the exports;

(ii) the then Managing Director Dr. Evans Kidero takes full responsibility and be barred from holding public office since the fraudulent transactions took place during his tenure as the Chief Executive Officer; and,

(iii) the Ethics and Anti-Corruption Commission and the Directorate of Criminal Investigations investigate the owners of all the trucks that apparently ferried the sugar from Mumias Godowns supposedly for export together with the directors of companies associated with them, namely YH Wholesalers, Paleah Stores Ltd, International Relief Services with a view to preferring charges against them if found culpable.

Hon. Speaker, I chose to use names because “Managing Director” would mean anybody else. This was a case when Dr. Evans Kidero was the Managing Director.

I want to justify my proposal before I look for secondment. I am a Member of Parliament for Mumias East Constituency. The constituency is where that company is located, and the people who are suffering today are the ones who elected me to this House. I want to tell you for free that this House has an opportunity to play its role in the fight against corruption. We have always complained that the Executive is not doing enough, but I want to find out from hon. Members whether they support the Executive in the fight against corruption. I would like them to stand individually as Members of Parliament to tell us whether they are out to fight corruption or not.

Exports were happening against the policy of the company. The policy of the company demands that no truck shall leave the company carrying more than 560 bags, which translates to 28 metric tonnes of sugar. Because those people were reckless, at one point, they were loading 1,000 bags onto a particular lorry, translating to 50 metric tonnes, which is against the company’s policy and the National Transport and Safety Authority (NTSA) Regulations. They became reckless because they had successfully done it several times.

In the Report, there is even a case where one truck carrying 3,360 bags of sugar, each weighing 50 kilogrammes, was indicated as having exported sugar to Uganda. We did a lot of fact-finding as a Committee, and the Chairperson will support me on this. The Kenya Revenue Authority (KRA) could not confirm whether the sugar that left Mumias Sugar Company was exported. If we were to go by the records of Mumias Sugar Company, the quantity of sugar that was exported to Uganda at one point was three times more than the quantity of sugar that was produced in Uganda in the same year. That is not possible. It is true that, that sugar could leave

the gates of Mumias Sugar Company and then be sold in the local market to earn someone, who in this case is Dr. Evans Kidero, money that has made him who he is today.

I request my colleagues to support me because history will judge you. I see you because you are looking at me. Some of you are looking surprised. History is going to judge you. If you came to Mumias where I come from, people have died, students are not been able to go to school and people lead very poor lives just because of one individual who has made Mumias Sugar Company go down. He did it single-handedly. My brothers in this Parliament, I want you to support me.

Hon. Members: What about the sisters?

Hon. Washiali: Yes, thank you so much for the correction. My brothers and sisters in this Parliament, I want you to support me to put that gentleman where he rightfully belongs, which is in the cells. That way, the other people who are intending to bring down other companies should know that Parliament will save the weak and the poor.

Hon. Speaker, I request Hon. Kabando wa Kabando to second my amendment. Thank you, Hon. Speaker.

Hon. Kabando wa Kabando: Thank you, Hon. Speaker. I rise to very proudly second the amendment.

Hon. Midiwo: On a point of order, Hon. Speaker.

Hon. Speaker: What is your point of order?

Hon. Midiwo: Hon. Speaker, on a point of order before the amendment is seconded. Hon. Benjamin Washiali comes from a sugar-growing area just like me. This is a House of rules. Before a Member moves such an amendment, first of all, the Member must declare if he or she has a personal interest.

(Loud consultations)

Hon. Speaker, I want to table a document in this House. I beg you to allow me to raise two points of order. The first one is this: I want to table before you a document that shows that Hon. Benjamin Washiali was a trader with Mumias Sugar Company.

(Applause)

The document shows money transfers to his personal account from a company owned by his own former personal assistant. The former personal assistant is saying that he is willing and ready to swear an affidavit that the company is not his and that the company belongs to Hon. Benjamin Washiali.

(Loud consultations)

Hon. Speaker: Order, Members! Order, Members!

(Loud consultations)

Hon. Midiwo: Hon. Speaker, protect me! I need protection!

Hon. Speaker: Yes, you are protected!

Hon. Midiwo: Hon. Speaker, I want to prove to this House that the assertions and motives of Hon. Washiali are not innocent. Before I come to my second point of order, I want to table this document so that you can look through it and Members can have a chance to discuss its contents.

Hon. Speaker: Proceed and table the document.

(Hon. Midiwo laid the document on the Table)

(Applause)

Hon. Midiwo: Hon. Speaker, Standing Order No. 48 says:-

“The Speaker may permit a Member to move in amended form a Motion of which notice has been given if, in the opinion of the Speaker, the amendment does not materially alter any principle embodied in the Motion of which notice has been given.”

Hon. Speaker, I have taken my time to read this Report. This Report found its way into this House by way of a Petition. This is what the Petition requested. First of all, the terms of reference (TORs) for the Committee were to:-

- (i) Investigate and inquire into the current state of the sugar industry in the country;
- (ii) Investigate and inquire into the issue of cheap sugar imports and smuggling;
- (iii) Investigate and inquire into the alleged exports by Mumias Sugar Company between 2006 and 2012;
- (iv) Look into the glut in the sugar market, which has, among other causes, contributed to the current crisis in the industry;

Hon. A.B. Duale: *(Inaudible)*

Hon. Midiwo: Hon. Speaker, you may ask Hon. Duale, who does not grow but only imports sugar, to keep quiet. I grow sugar and so, I know.

Lastly, it says:-

- (v) Report on the findings of the Committee’s inquiry.

Those are the TORs for the Committee, arising from the Petition.

First of all, the amendment which Hon. Washiali wants to bring says that there is a responsibility of non-payment of Value Added Tax (VAT) and he wants Dr. Evans Kidero to take responsibility. That might be good. However, in the Report of the Committee to which Hon. Washiali is a member, the Kenya Revenue Authority (KRA) was called and said there is nothing like that. This is what KRA said---

(Loud consultations)

Hon. Kabando wa Kabando: *(Inaudible)*

Hon. Midiwo: I am not debating. I am making a point.

Hon. Speaker: Hon. Members, if you want to be heard, allow him to say what he has to say.

Hon. (Dr.) Pukose: *(Inaudible)*

Hon. Midiwo: I am on a point of order.

Hon. Speaker: Hon. Pukose, you have no right to speak from where you are seated. Remember that Hon. Midiwo has claimed that his point of order is based on Standing Order No. 48. You must allow him to make his point if you understand what that Standing Order says. He read it out. He has to explain his point so that we can find out whether what he is saying is correct or not.

Hon. Midiwo: Thank you, Hon. Speaker. I am questioning the admissibility of that particular amendment to this Report. Remember I do not oppose the Report because it is not time for debate yet. Hon. Speaker, you know some of your Members are new and so, we will just keep teaching them.

On page 24 of the Report, the Committee says that:-

“KRA was aware Mumias Sugar Company imported 10,000 metric tonnes of sugar in 2012 through a third party called Dantes Peak Limited and that Mumias paid all the duty for the consignment which was cleared in 2013. (Annex IV).”

That is from KRA.

Hon. Washiali: On a point of order, Hon. Speaker.

Hon. Midiwo: I am on a point of order.

Hon. Washiali: *(Inaudible)*

Hon. Midiwo: I am talking about Value Added Tax (VAT). Who is responsible for VAT? Is there another body responsible for VAT?

Hon. Washiali: On a point of order.

Hon. Speaker: Hon. Washiali, you are the Mover! Why not allow him to say what he has to and if it is wrong, you will get another chance. Hon. Pukose and hon. Members, please, desist from telling me what I should do. Every one of you who has something to say will be given an opportunity to contradict or controvert.

Hon. Midiwo: The Report says that the Commissioner-General admitted that KRA did not have the capacity to verify all containers of commodities imported, but does random verification and scanning of cargo before release. That is the Commissioner-General of KRA who was talking. How then could a Member who sat in the Committee derive that there is capability of non-payment of VAT, if the Commissioner-General said there was no verification? They do it randomly and, in that case, they never did it.

I lead you to the submission of the Board of Management of Mumias Sugar Company. They go further to say that the Board of Management was aware that the company exported sugar to several European and African countries between 2006 and 2012, and that the sugar may not have left the country and revenue and VAT payable could have been lost. Based on that speculation even by the Board of Management itself, how then does a Member of a Committee come here with finality that something was lost?

We cannot use the Floor of this House for unnecessary politics. Hon. Washiali cannot purport to be the only MP from the sugar growing area. This investigation was in all sugar growing areas and not Mumias only.

(Loud consultations)

Hon. Speaker: Hon. Members, familiarize yourselves with Standing Order No.48 please!
It reads:-

“The Speaker may permit a Member to move in amended form a Motion of which notice has been given if, in the opinion of the Speaker, the amendment does not materially alter any principle embodied in the Motion of which notice has been given”.

So, he cannot prove that without having to make reference. That is why I allowed hon. Washiali to also make reference so that everybody is on board.

Hon. Midiwo: Hon. Speaker, you may be in a hurry but what this Parliament must not be used for is unnecessary things which are of a political nature. Hon. Speaker, under your watch, you must make a ruling on what I am requesting you. On admissibility because we have been accused of so many things as a Parliament and if something has more than meets the eye, you must make a ruling under considered rules.

The recommendations of this Committee are that investigations should be carried out on Mumias Sugar Company and its agent KRA or importers and their agents who imported sugar from Mumias Sugar Company between the periods of 2006 to 2012. That KRA should be held responsible for loss of VAT taxes amounting to Kshs.577 million. Then it says that any officer from the Board of Management of Mumias Sugar Company and KRA responsible for the fictitious exports of sugar between 2006 and 2012 should be held responsible. Mumias Sugar Company between that particular time had two managements.

Hon. Members: No.

Hon. Midiwo: Yes, and then rising from everything that I have read - and I stand to be corrected - where is the name of Dr. Evans Kidero? I do not like the guy but I am telling you there is more than meets the eye in what is trying to happen before us. Hon. Speaker, I beg you to scrutinize the admissibility of this amendment. It looks cooked up; it is cut from a tree; it does not belong here and is one of those things that somebody is being sent when they should have done those things in the Committee.

He is a member of the Committee. Where is this minority report? Why is he making recommendations on a Report which he has disowned? He disowned it! The gentleman has given recommendations and I want you to give a ruling. He himself is a contractor of Mumias Sugar Company.

Hon. Members: Yes.

Hon. Midiwo: I dare him if I am lying! Let him dare me! This is not the kind of place where you do those things on the Floor of this House. Hon. Speaker, I want you to give a considered ruling because it will set precedent. We are too many Members. That way, Members may know how to properly use the Floor of this House. They should not use it to hurt people or kill careers. But if somebody is a criminal, there is a court of law.

Thank you, Hon. Speaker.

Hon. Member: On a point of order.

Hon. Speaker: Just before I allow anybody else, Hon. Washiali, there is a document that appears to be addressed from Mumias Company Limited. It has the name of a company called Warm & Barn Hill Co. Ltd. Would you wish to comment anything about that.

Hon. Washiali: Thank you, Hon. Speaker, I would want to, first of all, admit that Hon. Midiwo is a friend of mine, and he is my former boss in the 10th Parliament. I respect him to that level. Hon. Midiwo knows the procedures of this Parliament; that for you to discuss a Member of Parliament, you must bring one, a substantive Motion. But, two, and which I want to respond to and I hope my colleagues will give me time---

(Loud consultations)

Hon. Speaker: Order, Members! Hon. Washiali must be heard in silence.

Hon. Washiali: Correct! Whether you like it or not, the issue at hand is between Mumias Sugar Company and Dr. Kidero against hon. Washiali. The Company mentioned Warm & Barn Hill or something---

Hon. Speaker: Hon. Washiali, do you wish to comment on this?

Hon. Washiali: I have no idea who owns that company.

(Laughter)

Hon. Speaker: No! Hon. Washiali, you have no idea what this company is?

Hon. Washiali: I have no idea at all, Hon. Speaker!

Hon. Speaker: You are not in anyway connected to it?

Hon. Washiali: It is not in anyway connected to me and it is very easy for us to establish the ownership of that company.

Hon. Speaker: Absolutely?

Hon. Washiali: No Member of Parliament can just come here and purport---

Hon. Speaker: Absolutely?

Hon. Washiali: Thank you, Hon. Speaker.

Hon. Speaker: Hon. Members, all I wanted was to hear hon. Washiali's comment about the company whose name appears here. It appears to have received certain payments from Mumias Sugar Company which are also shown in some copies of vouchers here. They reflect the name of Hon. Benjamin Washiali.

(Laughter)

It is for that reason that I wanted hon. Washiali to comment so that even as we move on, we know that the documents which hon. Midiwo has tabled have the name of that company. The documents also attach some copies of payment vouchers from some banks showing the beneficiary as Hon. Washiali. That is what is shown here. That is why I wanted you to comment so that--- Hon. Washiali denies that he is in any way connected to this company. That is the position, Hon. Washiali. You are not in any way connected to this company and those deposits. These documents that indicate that you are the beneficiary are, therefore, not correct?

Hon. Washiali: Thank you, Hon. Speaker. I want to confirm again for the second time. I want to be on record that I am not---

(Hon. Wamunyinyi spoke off the microphone)

I am already here on oath so there is no need for me to take an oath, Hon. Wamunyinyi. I want to confirm again that I, Hon. Benjamin Jomo Washiali, am not in any way connected to the company that is mentioned in the papers you are currently holding, Hon. Speaker. I cannot even remember the company name.

Hon. Members: On a point of order, Hon. Speaker!

Hon. Speaker: Very well. Let us have Hon. Duale commenting on the question of Standing Order No.48.

Hon. A.B. Duale: Thank you, Hon. Speaker. We are again dealing with recanted evidence. Rule 68 has come back to the House. I want to go on record to say that this sugar has become 'sour.' This Report has been lying in this House and with the House Business Committee for over eight months. It would be brought to the Floor of the House and then disappear. I am happy that today, we are dealing with a matter that concerns over 6 million Kenyans, whose lives are at stake and whose factories have collapsed. That is why, as the representatives of the people of Kenya, we must make a decision on the way forward and do it honestly without the interference of politics and other issues.

With regard to Standing Order No.48, I disagree with my former colleague and current leader. What Hon. Washiali was trying to do within his powers as a Member of Parliament in bringing this amendment either as a Member of a Committee or not, was to first amend the observations so that his next amendment would make sense. He started by amending the observations. It is very clear. There is no way that his amendment is contrary to the principle both in context, observation and in recommendation of what he wants to bring. The matter we are dealing with is not about imports. Let us make it very clear. It is about fictitious sugar exports of Mumias Sugar Company. When dealing with the crisis in the sugar sector, Mumias Sugar Company is at the top. That factory has collapsed! We must deal with it.

Looking at the observations, there are 18 private companies that have been alleged to have been involved in that fictitious export scheme, which is similar to the Goldenberg Scheme. In the recommendations of this Committee, Kenya Revenue Authority (KRA) Value Added Tax (VAT) officers stationed at Mumias Sugar Company and in various export exit points have been indicted. That is because KRA, through VAT remissions, has lost Kshs577 million. It is not a lie. It is the recommendation. The indictment is made on Page 115 where the Report recommends that the Board of Management and KRA officers responsible for this fictitious sugar export, which took place between 2006 and 2012, be held responsible for abuse of power and should be prosecuted. Between 2003 and 2012, who was the Managing Director of Mumias Sugar Company? The Managing Director of Mumias Sugar Company was none other than my very good friend, the Governor of Nairobi.

Hon. Members: No!

Hon. A.B. Duale: Hon. Speaker, they can say no, but the truth will set you free one day. I am a serious consumer of sugar.

Hon. Members: On a point of order, Hon. Speaker!

(Laughter)

Hon. A.B. Duale: Hon. Speaker, I am not a sugarcane farmer, but I am a trader in sugar. My community trades in sugar. I am not diabetic and so, I use sugar.

(Loud consultations)

Hon. A.B. Duale: I am coming to the principle.

Hon. Speaker: Hon. Members, if we do not listen to one another, we will not be able to follow the argument. The Committee has a recommendation which touches on the management

of Mumias Sugar Company. That is what Hon. Duale is enumerating. The recommendation touches on the management, the board and the KRA officers. That is the recommendation that Hon. Washiali is replacing, is it not? Hon. Washiali does not want the recommendation to sanction the management, staff of KRA and the board. He wants it to be Dr. Evans Kidero. That is the long and short of it. That is what we need to understand. He is seeking to replace that recommendation with his own recommendation.

Hon. A.B. Duale: Hon. Speaker, as you put it very well, there are 18 private companies involved in the fictitious export scheme. It is confirmed in this Report, as a recommendation by this Committee of the House, that KRA was part of the collusion and Kshs577 million was lost. Further, in the recommendations, it states that everyone, including the board and the management, were involved in the collusion and it gives a specific period, namely, 2006 to 2012. Hon. Washiali wants to name those who were on the Board of Management between 2003 and 2012.

This is a parliamentary practice. We have done it before in this Parliament. It was done in the 10th Parliament where Hon. Keynan of Public Investments Committee brought a Report which was passed by this House - about a former Permanent Secretary Nyoike and his team on the Kenya Petroleum Refineries Limited (KPRL), where the sitting Governor of Taita Taveta was mentioned for investigation. There is nothing out of the ordinary.

Today is the day when those who will stand with the 6,000 sugarcane farmers will be known and those who will stand with corruption will be known.

(Loud consultations)

Hon. Speaker: Hon. Members, I want to urge that we allow everyone an opportunity to make their point. It is for that reason that I will take as much time as possible because Hon. Midiwo is urging me to make a determination on the basis of Standing Order No.48. Let us have Hon. Nyenze. You are aware of the usual order of recognition.

Hon. Nyenze: Thank you, Hon. Speaker for giving me this chance to contribute to this emotive but important Motion. The Committee did a good Report and we have findings. Although I do not come from a sugar growing region, I sympathise with the lives of the farmers, children who cannot go to school, suffering and poverty that sugar farming has brought to this country. As a citizen and people's representative, I want to do everything possible to make sugar farming lucrative. This loss is not small by any means. The Kshs577 million was lost within a period of less than 15 years from 2003 to 2012. I agree entirely with the Committee's recommendations that those who are responsible should be brought to account.

On the Committee's findings, I am sure Hon. Washiali who never signed it knows that the Committee took a lot of time to go deeper and find out--- In this Report, there is no mention of Dr. Kidero as a person. The Committee realised there was a Board of Management which should be held responsible. The idea of Hon. Washiali bringing in one person in the name of Dr. Kidero and singling him out to be responsible for this loss should be rejected by the House for the reason that it is an individual Committee Member's observation. He called it an observation. This observation should have been discussed in the Committee, but it was never. Kenya has become a net importer of sugar because we produce 600 metric tonnes and consume 800 metric tonnes. So we import about 200 metric tonnes.

The regulatory authority should be held responsible. I have seen that the Committee has also recommended that. They have flooded this country with imported sugar and made farmers not only in Mumias, but in sugarcane growing areas poor. Sugarcane growing is not attractive at all. I support exactly what the Committee has said. I do not have to repeat the recommendations because Hon. Washiali has brought them forward. I refuse and urge this House to refuse the singling out of Dr. Kidero for punishment because the recommendations of the larger Committee never did that.

Hon. Speaker, now that there are very many candidates competing for the Nairobi gubernatorial seat, we can read politics in this matter. This is a divergence because it came from outside as it was not in the Committee's Report. This may be something that has been cooked and an afterthought to block Dr. Evans Kidero from contesting.

What if the Committee's findings are that Dr. Kidero is not culpable and yet you have recommended that he should not hold public office? Are you not destroying someone's career? It is good to follow due process. The recommendations are very clear like day and night. Let us follow the Committee's recommendations and not those of an individual assumed to be working and getting contracts from Mumias Sugar Company.

With those few remarks, thank you Hon. Speaker.

Hon. Speaker: Hon. Members, let us remember that what was raised by Hon. Midiwo is what is now being addressed. Hon. Duale went ahead and read the recommendation that Hon. Washiali wants to delete which is Recommendation No.115. He read it clearly. Maybe somebody could read it out once again.

Let me allow the Chairman of the Departmental Committee on Agriculture, Livestock and Cooperatives to read out Recommendation No.115 so that the point raised by Hon. Midiwo in relation to the amendment by Hon. Washiali is captured by everybody in context.

Hon. Nooru: Hon. Speaker, the issue raised by Hon. Midiwo is mixed up. There are two issues in Mumias Sugar Company.

(Loud consultations)

Hon. Members, if you have any interest, I have no interest. I want to put issues in their proper perspective. The issue raised by Hon. Midiwo is a bit mixed up because Mumias Sugar Company did two issues. One, they imported sugar. Hon. Midiwo read 800 metric tonnes that the company imported. That was one issue. There is also an issue of export by Mumias Sugar Company. Do not get mixed up on the two issues. The second issue---

Hon. Speaker: Hon. Members, Recommendation Number 113 reads:-

“THAT, investigations should be carried out on MSC - which was explained by Hon. Washiali to mean Mumias Sugar Company – and/or its agents, KRA and all importers and/or their agents who imported sugar from MSC in the period between 2006-2012 and appropriate action taken.”

Recommendation Number 115 reads:-

“THAT, any officer from the Board and management of MSC and KRA responsible for the fictitious exports of sugar between 2006-2012 be held responsible for abuse of procedures and abuse of office.”

Hon. Washiali is proposing to delete this and replace it with “Dr. Evans Kidero”. We must look at this issue in relation to the point raised by Hon. Midiwo.

Hon. Member: On a point of information.

Hon. Speaker: No! No! You cannot inform me. You are incapable! Let us have the Chairman now.

Hon. Nooru: Hon. Speaker, I know where the controversial issue in this Report took us. It is just by putting the name “Kidero” here. That was the issue that has landed us, as a Committee, in the Ethics and Anti-Corruption Commission (EACC).

Let me put it in proper perspective. There are four parties involved in this exportation. The four parties which are involved are: Mumias Sugar Company, the Kenya Revenue Authority (KRA), the importers and the regulator which is the Kenya Sugar Board (KSB). Out of the 22 witnesses that we called to compile this Report, none of them mentioned the name “Kidero”.

Hon. Members: Yes!

(Loud consultations)

Hon. Nooru: None mentioned Kidero! Just a moment please. Let us understand the whole issue - where we are coming from. Just hold on. Hold your horses. You cannot just do with Kidero. If you read the last sentence of the amendment that Hon. Washiali moved, you will find it says:-

“The Board of Directors through the chairman, Dan Amayo, submitted that the board will carry out a forensic audit on the export like it had done with the company sugar imports and it will give its findings to the Committee in six months.”

This has not been done to date.

Hon. Members: Yes!

Hon. Nooru: So, we could not name names and investigate the institution concerned because we did not know who was involved. Yes, Kidero is an exporter and there is an importer who is supposed to take the sugar to the countries where it belongs. There are people who are supposed to ensure that the sugar crosses the borders and that is the KRA, the police and the KSB. So, there are many parties involved in these things. That is why we left the investigating agencies to do investigations and bring the culprits to book.

(Applause)

So, it is up to the House to judge. We have made the disparities very clear in observation 92. Order!

(Laughter)

Hon. Speaker: Proceed, Hon. Chairman.

Hon. Nooru: If you read observation 92 in the Report, you will find that we have mentioned all those disparities in exports, what crossed and what we were told. The KRA informed us that they only had the forensic issue that was captured but they do not know up to date the amount of sugar that crossed the border and the amount that did not. That was the KRA. I do not understand that. If the KRA that is supposed to collect taxes has not done that and it does not know where the sugar is, who is Kidero to know? Kidero is not a tax collector. So,

recommendations 113, 114 and 115 capture the issue of exports alone. If that is not enough, it is up to the House to add the name “Kidero” or the name “Nooru” if it has evidence to add the name individually.

Thank you, Hon. Speaker.

(Loud consultations)

Hon. Speaker: Let us now have Hon. Kaluma.

Hon. Kaluma: Hon. Speaker, I stand to strictly address you on Rule 48. My idea about Standing Order No.48 is that we must have a report of a Committee that flows from the beginning to the end. That is the reason why, in terms of our Standing Orders and the writing of reports, you will have evidence and submissions. The findings flow from them and then you have observations to be picked or drawn from those findings. You will then have recommendations coming from the observations. So, that chain must be followed in keeping with our prayer to treat all those who are the subjects of our charge fairly. That is the prayer we hearken to every time we start.

If you look at the proposed changes to the observations, permit me only to look at 113, 114 and 115. Having taken evidence on the matter and listened to the submissions, the Committee is saying that based on their inquiry there are some things which could not have happened right. The Committee is also saying that there are entities involved. Let us be truthful.

Mumias Sugar Company, even assuming it engaged in a wrong, it was not the Managing Director. As any other corporation, Mumias Sugar Company is run and administered by a board of management or board of directors. If you remove or delete a clear recommendation in the manner in which Hon. Washiali is proposing, the danger is that we have undertaken that investigation that the Committee is recommending. You also limit the purview of the investigations and actions to an individual instead of going for all the entities in the board and all the officers and agents who ought to have been dealt with.

In fact, my view is that Hon. Washiali is very right to propose the observations and recommendations, but they do not flow from the findings. This is why when an individual is dissenting on a committee report, he or she has the purview of being a minority. His or her dissenting report can flow contrary to the Committee's. You cannot branch from the findings which do not mention Hon. Kidero and then you go with changes that do not investigate everybody else. We would have been a bit partial. In fact, we could be losing the public more. We do not know the other individuals who are being covered up.

I will on that account say that this amendment should not be accepted by the House. If you also look at Recommendations 113 and 115, you will find that they are talking about investigations being carried out against the company. We are not saying that we are defending Kidero at this stage. By the way, I will support this Report if it is confirmed later that in these investigations--- Parliament has no machinery to undertake these investigations. If it is confirmed that one of the individuals who engaged in this action was Dr. Kidero, so be it. Let him go but let us not go for Dr. Kidero and forget others. Look at these; Mumias Sugar Company, its agents, the KRA and others. As you look at the recommendation also consider Standing Order No.90 on the documents Hon. Jakoyo Midiwo produced before you.

Hon. Washiali has not denied that the account into which the monies were being deposited into are not his. Hon. Washiali is also not telling us whether he knows the people who

were depositing the money. It is common knowledge and I can substantiate this. If this amendment is approved it could be excluding people who should be investigated including Hon. Washiali himself. People know that Hon. Washiali is among the top clearing and forwarding agents of Mumias Sugar Company this time. If this requires substantiation, I will do so. If we remove the agents and all the other entities, there will be a possibility and danger of Hon. Washiali diverting investigations to a single individual from who monies and contracts were passing.

On account of those submissions, we should be fair and allow investigations to be carried out on everybody. We should not use the Floor of Parliament to purvey personal interests whether proprietary or otherwise in the manner being proposed

Thank you.

(Hon. Washiali raised his hand)

Hon. Speaker: Hon. Washiali has raised his hand by way of point of order. Let us hear him for the simple reason that Hon. Kaluma has mentioned him.

Hon. Washiali: Thank you, Hon. Speaker. Before I defend myself, I urge my colleagues who are Members of Parliament to cool down and look at this Report soberly. It is like we are out to defend this Report and not look at it the way we are supposed to.

I would like to tell my friend, Hon. Kaluma that I do not know how we are going to prosecute what has been mentioned on this Floor. It has been mentioned that I was a director of a company that has been trading with Mumias Sugar Company. The sugar company gave this company contracts. We need to constitute a proper committee to establish the truth behind that. Hon. Kaluma has just said a few minutes ago that I have a clearing and forwarding company and that is true.

(Laughter)

However, I have never even cleared a spoon of Mumias sugar. There is a lot of evidence from the KRA when you are clearing. Hon. Speaker, I also want you to order the relevant Committee of this House to go ahead and investigate these funds because, in a way, my name has been tarnished. I am not going to allow this because according to the Standing Orders, you cannot debate a Member of Parliament without bringing a substantive Motion on the Floor of this House. Should I be found innocent in this matter, I want you to take necessary steps to punish these Members and any other Member who will make fictitious claims against a Member of this House. With me are the tallying sheets of export. I want to justify why I strongly feel that Dr. Evans Kidero was culpable in this matter.

Dr. Kidero was the Managing Director of Mumias Sugar Company between 2003 and 2012. I hope that all members will have time to look at the tallying sheets. It is the policy of the company that there is no truck that leaves Mumias Sugar Company today that can have more than 560 bags. This translates to 28 tonnes. In these tallying sheets, we have trucks that left Mumias with a total of 3,360, 1,000 and 1,200 bags. This translates to more than 50 tonnes, and this is against the National Transport and Safety Authority Act. I know that the one who may have authorised that kind of transaction to go on was none other than the manager, who by that time was the Managing Director of Mumias Sugar Company.

I wish that we debate these amendments after this Motion has been seconded because I have moved them and they need to be seconded so that we can open up the debate for everybody else to contribute.

Thank you, Hon. Speaker.

Hon. Speaker: Hon. Members, the only thing I wanted us to address is the issue of Standing Order No.48, the observation and the recommendation by Hon. Washiali.

Let us have Hon. Nyamweya.

Hon. Nyamweya: Thank you, Hon. Speaker for giving me a chance. I would like to refer you to Standing Order No.48. Fortunately, the Hon. Member is very conversant with clearing. He knows very well that a prepared export document is like money. It is logged at the KRA central system. When goods reach the other side, the system clearly shows that they have reached.

The Report is not complete because Mumias Sugar Company is saying that they need time to investigate and provide evidence. Clearly, from the knowledge you have, they have the information which is not available. They need more time to investigate. How do you then come and do a determination on an issue which we are being told requires more time for determination? We cannot do it as the National Assembly. As a House, let us be fair to everybody. The issue of sugar is serious because it touches on the life of common Kenyans.

As far as I am concerned, it is not fair for a Member to bring a Motion for us to discuss somebody who cannot even come to the House and on allegations which he cannot authenticate. I wish he would have brought export entry documents to prove that money was lost. We need evidence. The evidence we need here is in terms of the export documents which show that these are the entries, these are the vehicles and this is the revenue which was lost. That attachment is missing in the Motion which you want to move an amendment. More importantly and fundamentally, the investigation is not complete. With that, we cannot sit here to condemn somebody.

Thank you, Hon. Speaker.

Hon. Speaker: Hon. Members, sooner than later, I will make some determination on the way forward. I quite appreciate what Hon. Manson Nyamweya has said, but it is also important for us to bear in mind what the Chairperson of the Committee has just said relating to the observation. In fact, it is for that reason that I am keenly looking at this observation. Indeed, I feel the fairest way ought to have been a minority report. This is because you are saying that you want to replace the observations by the Committee. The House is then being called upon to concur. By assuming that this is a minority report, the House will be assuming that it has made the observation.

Hon. Olago Aluoch, please address me on that issue of Standing Orders.

Hon. Aluoch: Thank you, Hon. Speaker. I am sorry to say this. Members who have been addressing the House after Hon. Midiwo have lost the substance of what he said. He raised two issues only. One was on personal interest, which has been addressed. The second one was whether or not you, as the Speaker, you are satisfied, in your opinion, that matters raised here are so substantial that they should be raised or not.

Hon. Speaker, that is for you to address and it is not for us to address. It is not for "Yes" or "No". It is for you to decide. I say so with authority because Standing Orders are not just there for the sake of it. They have their foundation under Article 124 of the Constitution. It is as

serious as that. When you are asked to make a ruling under Standing Order No.48, it behoves upon you and nobody else in this House to make that ruling. Standing Order No.56(1) says:-

“Every amendment shall be relevant to the Motion which it seeks to amend and shall not raise any question which, in the opinion of the Speaker, should be raised by a substantive Motion after notice is given.”

The amendment by Hon. Washiali is different from the Report of the Committee as day and night. Clearly, what Hon. Washiali is trying to do is to upset the Report of the Committee. He cannot do that the way he has done. Hon. Speaker, I urge you that instead of prolonging debate on this issue, make a ruling as is required by Standing Order Nos.48 and 56.

Thank you, Hon. Speaker.

Hon. Speaker: Let us have somebody from this other side. Yes, Hon. Kenta.

Hon. ole Kenta: Thank you, Hon. Speaker. On this one, I would like to join my colleagues on the other side. Why am I saying so? I say so because I believe this is a fair House that does not act in vain. I have looked at the amendments and I do not know why conclusions should be reached when they are still awaiting the decision of the Board of Mumias Sugar Company. When you say you are waiting for a report and the report has not come, how do you reach at conclusions?

The other issue that should be looked at is that this is a company. I presume a company has a memorandum and articles of association. This was a premier company. I remember trading in shares of the company. How do you make an individual whether a board member, manager or Managing Director to be responsible for the actions of a limited liability company? It cannot and will never work. I believe it is wrong for anybody to say that Dr. Kidero should be held responsible. Are we saying that all the other parties should go scot-free? The Hon. Member has mentioned other institutions like the Kenya Revenue Authority and limited companies which were trading with Mumias Sugar Company. How do we just let them off the hook? Do we have the authority, as a House, or we are being told that that is the target and we forget the others? I believe that we should be fair on this one. It is not a political contest and it should not be used in such a manner. Let us just reach a conclusion that is fair, just and which will assist this country. I believe that the conclusion under Paragraph 115 should not be allowed in this House at this time. That is my position, Hon. Speaker.

Thank you.

Hon. Speaker: Yes, Hon. Millie Odhiambo

Hon. (Ms.) Odhiambo-Mabona: Thank you, Hon. Speaker, for giving me this chance to contribute. I do not come from the sugar belt but we do not put fish in our tea. We use sugar. So, in a way, we are also beneficiaries.

From the outset, I want to say that I am a Member of the Departmental Committee on Agriculture, Livestock and Cooperatives. The Members of this Committee have complained very bitterly because the Committee has been held to ransom. The issues of livestock and fisheries that we are dealing with have become an issue of the sugar industry and very specifically, Mumias Sugar Company and Dr. Kidero. It is not the first time. We were even taken to the EACC. Some of us were taken there for anti-corruption issue for the first time because of this issue.

One of the things that I need to inform the House is that after we were taken to the EACC, Hon. Washiali retracted and said that he was fighting his personal wars. That is why he even alleged that the Committee was bribed. So, I would like to say that an issue has been raised

about Standing Order Nos. 48 and 90. Even though we have not made reference to Standing Order No.90, I want to agree with Hon. Olago Aluoch. We are persuading you to make this decision. I want to say that, as a House, we are being called upon to make a very serious determination, which is: “When a Committee has made an observation, can an individual member come and substantially change it?”

If we allowed such, we would be creating a very dangerous precedent in this House because an observation is different from a finding. An observation cannot be an issue of perception. It cannot be an issue where the House makes a decision. It is an issue that is really personal to that Committee that was able to look at the demeanour of the witnesses who physically attended. So, I urge that you help this House and declare that the amendments that are being pushed by Hon. Washiali will not be allowed under Standing Order No.48.

I also want to speak on Standing Order No.90. Hon. Washiali has said that, based on the documents that have been presented by Hon. Jakoyo, he is not in any way associated with the company that is in the Report. If you read Standing Order No.90, you will find that it is very clear that it does not require you to be a director. Standing Order No.90 says:-

“(1) A Member who wishes to speak on any matter in which the Member has a personal interest shall first declare that interest.

(2) Personal interests include pecuniary interest, proprietary interest, personal relationships and business relationships.”

What has been inferred is that he has a personal and business relationship with the director of that company. It would be in order for Hon. Washiali to denounce on the Floor of the House that he does not know the directors of that company and not whether he is a director of that company. We do not want a situation where we will denounce and very shortly we start seeing affidavits being sworn. This has become the trend in Kenya - short messaging services (sms) going round and facebook things which have been covered where he is with the director of that company.

From personal experience and knowledge, as a Member of the Departmental Committee on Agriculture, Livestock and Cooperatives, I know that there is a very serious crisis facing the sugar industry in this country. As a Committee, we have tried to deal with it but we have been distracted by personal interests of sugar barons in this industry. If he really minds about the sugar industry, let him step aside and let those of us without interest deal with the sugar industry.

I will call upon you, Hon. Speaker, to make a ruling in relation to the issues which I have raised under Standing Order Nos. 48 and 90. I know that you were a bit distracted but I am sure that they will advise you on what I have said in relation to Standing Order Nos. 48 and 90. I am glad you have heard me.

Thank you, Hon. Speaker, for indulging in my submission.

Hon. Speaker: Hon. Members, I can see that there is a lot of interest in this matter. Allow me to say one or two things.

One, I want to take this opportunity to thank Hon. John Olago Aluoch because he has contextualised this matter. Hon. Members, Standing Order No.48 reads as follows:-

“The Speaker may permit a Member to move in amended form a Motion of which notice has been given if in the opinion of the Speaker the amendment does not materially alter any principle embodied in the Motion of which notice has been given.”

Hon. Members, if you capture the first line which is, “The Speaker may permit a Member to move in amended form,” you will find that it refers to the Mover of the Motion. It is only the Mover of a Motion who may move it in an amended form. Hon. Washiali is not the Mover of this Motion. The reason why I started by saying that I thank Hon. John Olago Aluoch is because he has brought out some very pertinent issues captured under Standing Order No.56.

Hon. Members, I have listened to you address me on the issue of the proposed amendment which has not been seconded. The point of order was raised before it was seconded. I would like you to oust this debate. I will give a considered ruling on this matter tomorrow at 2.30 p.m on the question of admissibility of the proposed amendment or otherwise based on the provisions of Standing Order No.56 against the contents of the Motion, the recommendation and observations that the Motion seeks to amend.

(Applause)

Hon. Members, I would have been persuaded to say that I will make the ruling on Tuesday but as it has been said, this matter of sweet things gets destructive. So, allow both the staff and I to go through these matters tonight. We will stay and debate on the aspect of the proposed amendment. I direct that this business appears on the Order Paper tomorrow at 2.30 p.m. For the time being, I will not make any determination of any matter that has been raised touching on Standing Order No.90 on declaration of interest until such a time as any Member brings sufficient material, even if it is tomorrow. Hon. Washiali has, on the Floor of the House, denied any association with the company named in the document. Therefore, we cannot proceed to make a determination under Standing Order No.90. If any Member has any material which would prove and it must be admissible--- I am sure Hon. Peter Kaluma appreciates what I am talking about, “if it is admissible”.

Hon. Members, it must be admissible but let us proceed on the basis of Standing Order No.56 because it is absolutely important that we make a ruling that has proper bearing and captures what this House, Members and committees do. For the time being, let us put the matter to rest at this point. Let us not have any more discussions on this unless somebody wants a clarification. Let me start with Hon. Washiali and then Hon. John Mbadi.

Hon. Washiali: Thank you, Hon. Speaker. I would not want in any way---

Hon. Speaker: In the clarifications try to assist me in making this determination.

(Laughter)

Hon. Washiali: Thank you, Hon. Speaker. I want to agree with the way you have planned to prosecute this. I also request three issues that touch on my personal reputation.

First, is the relationship between me and that company. No one has mentioned who the directors are. Therefore, it is not very easy to know who they are.

Secondly, I want Hon. Kaluma to furnish and substantiate before this House the claims that my company has cleared things that belong to Mumias Sugar Company. I want Hon. Kaluma to specifically do that because he said this before this House.

Thirdly, it is very important that we establish the truth from defence that has no basis. It is very important that we establish if there was any transaction because Hon. Millie has claimed that I have a personal relationship with the company. Let her also furnish this House with that

information so that my name is cleared over these allegations that we have heard. This House is going to treat you harshly because you are out to defend someone who has completely brought down a company that most of us relied on.

Hon. Speaker: Hon. Kaluma, are you in a position to bring substantiation on your allegation that Hon. Washiali is referring to?

Hon. Kaluma: Hon. Speaker, I am a lawyer and I never speak out of the blues. Tomorrow will be my happiest day in life to confirm to the country that Hon. Washiali is using the Floor of this August House to purvey personal interest. However, when you make that determination, would you also determine whether an individual, be it a Mover or otherwise can seek to amend observations in a Report of a committee without corresponding or amending the findings because observations flow from findings and downwards?

Hon. Speaker: That will be part of the determination. You will also provide us with the substantiation tomorrow.

Let us have Hon. John Mbadi

Hon. Ng'ongo: Thank you, Hon. Speaker. First, I want to thank you for that informed ruling made partially but very quickly. Really, you were thinking on your feet. There were two clarifications that I wanted to seek from you although Hon. Kaluma has already asked one and so, I will not repeat.

Hon. Speaker, a document has been tabled because this House requires that when you make allegations against another Member you do so. By the way, I want to inform my colleague, Hon. Washiali that we are not discussing him. What Hon. Jakoyo did was to challenge him to declare his interests. Hon. Jakoyo went ahead to do the honourable thing to table a document.

I take it that the document is admissible and that is why the document has not been returned or you have not made a ruling that that document is not admissible. Therefore, if the document is admissible and, I heard you read the name of Hon. Washiali, the question that I want to ask now is: When a Member is asked to substantiate and the Member has substantiated, does the matter end there? So that we do not abuse the privileges of the House, that if a Member has determined that another Member is contributing to a Motion without declaring his personal interest, that is contrary to the Standing Orders and he should be found to be out of order---

So, we must find a way of determining if it is true that Hon. Washiali has an interest in that company and if that document is authentic, then Hon. Washiali must be found out of order and this House must make a ruling that he is out of order and bear the consequences. We cannot just allow Members to deny the document and *kumbe*---

(Laughter)

---only to find that the document is genuine.

Hon. Speaker, I think I was thinking in *Kisuba* but allow me to come back to English.

Hon. Speaker, Kenyans are fond of denying even the obvious. So, for us to be clear in our minds that Hon. Washiali truly does not know this company and yet the documents have his name--- In fact, Hon. Washiali should be very disturbed that someone has documents bearing his name, bank account and where the money went.

Finally, as I sit down I want to seek another clarification and I wish Hon. Washiali listens. Hon. Millie raised a very important matter. Hon. Washiali made an allegation on

Members of this Committee and that issue has not been settled. Up to now members of that Committee have not been cleared by Kenyans on corruption matters.

So, Hon. Washiali has a responsibility to tell Kenyans whether the serious allegations he made against Members of the Departmental Committee on Agriculture, Livestock and Cooperatives are true or he was playing politics. How sure are we that he is not continuing to play politics even now?

Thank you, Hon. Speaker.

Hon. Speaker: Hon. Members, let the matter end there. I have already said that Standing Order No.48 does not apply. I will make a determination on the basis of Standing Order No.56.

(Loud consultations)

There is no Motion. I have directed that the Motion will be on the Order Paper tomorrow. I will make a determination on Standing Order No. 56.

(Motion deferred)

Let us move on to the next Order

BILLS

Second Reading

THE LEGAL AID BILL

(Hon. A. B. Duale on 10.2.2016)

(Resumption of Debate interrupted on 10.2.2016)

Hon. Speaker: Hon. Members, the following Members have contributed to this Bill. They are Hon. Aden Duale, Hon. Priscilla Nyokabi, Hon. Manson Nyamweya, Hon. Charles Njagagua and Hon. Millie Odhiambo. Any other Member may contribute.

Hon. Ogolla: Thank you, Hon. Speaker. I rise to support the Bill based on a number of observations I have made in the past and in the present.

We have had historical problems based on miscarriage of justice. We have had people in jail for long periods of time only to be discovered later that there were problems in terms of how the cases were handled either in court or in the understanding that some of the culprits did not know the judicial processes.

I want to reiterate that most of the people we have in jails are victims not because of what they committed, but based on their misunderstanding of how to present themselves in court and lack of knowledge that they could get support in terms of *pro bono* services or otherwise. The Bill now comes with a form of procedure that makes it clear that convicts can access legal aid, and can be supported to the extent that they do not accept or agree to circumstances they find themselves in, in case they fail to know what exactly goes on in court. There has been a big problem, particularly in terms of cost. Most people have been avoiding or have been unable to

access justice, because in their understanding, it is costly and tedious. They also feel like once you are in court, it is like you are sentenced or jailed. This Bill now gives opportunity to those who will have to go to court to understand that they can be represented in court, and that they cannot be sentenced before they have a clear understanding of the charges they face.

The other thing that I wanted to bring out is that we have had *pro bono* support in the past. This was not known. *Pro bono* services can be accessed to deal with issues of public interest, criminal or civil. Information has not been available that one can be represented through a *pro bono* process. I support this Bill at this particular time because it becomes clearer that one does not just get to court without clear knowledge of what is likely to befall them, whether they represent themselves or are represented by other people. These are the things that need to be looked at because we have had challenges before. This kind of arrangement has been there, particularly in terms of capital offenses. To what extent have we looked through to see how representations were done, particularly with regard to capital offense cases? One of the main problems is that the state has been reluctant to provide mechanisms, information and make arrangements for people to access legal aid.

As I mentioned earlier on, most of the convicts are in jail because sometimes the state did not facility them to access legal aid. This Bill will be useful in understanding and handling the challenges that have been there before.

There is a miss in the Bill in terms of an institutional experience layout in the sense that if the State was supposed to do this in the former regimes before the promulgation of the Constitution of Kenya 2010 and before the thinking of this Bill, how sure are we that the State will now provide clear mechanisms for accessing legal aid? This is a challenge that should have been brought out clearly, particularly in terms of timelines. This is once this Bill is adopted, such that we are clear that an accused person can access legal aid.

The other thing is how the legal aid will be spread across the country. Sometimes we only look at these things in Nairobi. People go to court and are supposed to access justice all over the country. So, we will have a problem if we will have legal aid structures only placed in urban centres. The Bill needs to look at the issue of legal aid structures being spread out so that one can get the services in Bondo, Lamu or Busia. This will ensure that people do not just get to court and be imprisoned, when they have no idea of what goes on in court.

There is the other issue of lost cases. We have a number of cases that are lost not because of anything else but because of relying on the prosecution. We have seen this in the Attorney-General's Chamber and in the Office of the Director of Public Prosecutions (DPP). The public has lost many cases before. There are people who have had cases against the State, and when that happens, most of the time, we realise that the prosecution is not able to build enough evidence. Hence they lost many cases.

Currently, there is a series of cases that we are losing through public prosecution. In my view, if at this particular time we enhance public prosecution, we should ensure that we have more support to public prosecution and not necessarily the people who are employed at the public prosecution to defend the State.

These are some of the things we ought to have included in the Bill, so that we do not restrict it to individuals but to where there are limitations on the side of the State to prosecute public cases properly.

This Bill is long overdue. We need to have a mechanism for supporting our people, particularly those who have very little idea about legal processes and who do not know the consequences of not being represented.

With those remarks, I beg to support.

Hon. Speaker: Yes, Hon. Jared Opiyo. If he is not in, let us hear Hon. Wamunyinyi.

Hon. Wamunyinyi: Thank you, Hon. Speaker for giving me the opportunity to also contribute to this Bill.

At the outset, I want to state that I support this Bill which seeks to introduce and establish a framework within which legal aid may be provided to Kenyans who need such support. Many Kenyans have ended up in jail when they ought not to have been in prison. Legal aid is one of the important requirements in a court case. It is an element of rights of the people. There are several reasons – including ignorance or lack of information and poverty, among others – that can lead a member of the public not to seek legal aid. The issue of introducing a legal aid scheme is one of the things that are critical in administration of justice in this country. The board which is being proposed in this Bill will guide the operations of the scheme, including formulation and review of policies.

(Hon. Speaker (Hon. Muturi) left the Chair)

[The Temporary Deputy Speaker (Hon. (Ms.) Shebesh) took the Chair]

It makes it easy for people to access not just legal aid, but legal aid that is affordable and is available to help Kenyans so that real justice is seen to have been accorded to every Kenyan.

Apart from the support by way of provision of legal aid, this Bill also seeks to establish mechanisms which will ensure disputes are resolved; dispute resolution mechanism which would not necessarily be pursued in court and even out of court settlement or even measures that would put in place technical people to help resolve disputes at any given time.

I have looked at this Bill. It also seeks to establish a State corporation. There will be a fund which will ensure that there is financial support to the system to ensure that the legal aid framework is successfully undertaken.

Going forward, the legal aid fund is what we want to make sure that we put in place measures to tighten its operations to ensure it is not abused. This will ensure that deserving people or Kenyans who are eligible and are entitled to this service are accorded help.

There are issues which have happened in some of our courts like in Bungoma Court. We all fight illicit brews and indulgence in abuse of alcohol and so on and so forth but some magistrates have sentenced some people accused of just taking *busaa* to two or three years in jail or have fined someone Kshs100,000 for taking *busaa* which costs Kshs10. This is not something commercial or is in huge amounts. This is in small tot. People plead guilty because they think it is a simple matter. They are not defended, they do not know their rights and have no information on their defence. So, it is something I am sure is going to deal with this kind of issue.

However, as we endeavour to put this in place, our judicial system should also be mindful because our prisons are full. You send people to jail, you are going to feed them and spend money on them for all that they require like treatment. Why send someone to jail for two years for a small offence like taking *busaa*? Why fine an ordinary peasant at home who does not do

anything that generates Kshs100,000, Kshs75,000 or Kshs150,000? This Bill should also help us address this. The Judiciary should be considerate. You will find people in prison who ought not to be there for petty crimes.

So, as I support this Bill. I also appeal that magistrates, particularly those in Bungoma should respect the Judiciary in spite of the other issues which have been said against them. It is an important institution in our country and anywhere else. As they administer justice, they should also ensure that they are considerate.

With those few remarks, I wish to support the Bill. I will be proposing some amendments which I had talked about with the Mover. I will bring them at the right time. I thank you, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): I now give the Floor to the Member for Mvita.

Hon. Nassir: Asante sana, Mhe. Naibu Spika wa Muda. Ninataka kutoa pongezi kwa Mswada huu ambao umeletwa katika Bunge. Huu ni Mswada ambao unatekeleza masharti ya Katiba ya Kenya kulingana na vipengele 19(2), 48, 50(2)(g) na (h). Katiba ya Kenya inaeleza wazi kuwa kila Mkenya ana haki ya kupatiwa msaada katika masuala ya kisheria. Pia, ni muhimu Serikali iweke jopo litakalosaidia wasiojiweza katika masuala yanayohusiana na mahakama.

Historia ya Kenya inaelezea wazi wakenya wamefungwa kwa muda wa miaka, na wote kwa sababu wamekosa uwakilishi katika mahakama. Ukiangalia watoto na akina mama utakuta kwamba wamepata dhuluma za aina tofauti kwa sababu hawana watu wa kuwawakilisha katika mahakama. Kama vile wenzangu wamezungumza, tunaukubali na kuunga mkono Mswada huu ili tutekeleze masharti ambayo yako katika Katiba. Lile tu ambalo tunataka kulieleza ni kama Kenya inataka kusonga mbele tusiwe watu wa kuyazungumza mambo leo kisha tunaanza kuyajadili tena na inachukua muda kuyatekeleza. Tunaomba kwamba katika Bajeti ya mwaka huu, fedha za hii kamati zianze kutengwa kuanzia sasa ili watu wafaidika kutokana na masuala ya kisheria.

Kuna mashirika ambayo yamejitolea kusaidia akina mama, vijana na hususan kupigania haki za kibinadamu. Pia, mtu anapodhulumiwa katika mahakama mashirika haya yamejitokeza na kuwa katika mstari wa mbele kupigania haki za huyo mtu. Ni muhimu ikiwa Serikali itaunda jopo hili na kutenga fedha hizi ili zisaidie mashirika kama haya yasiangamie bali yaendeleo na kazi zile.

Pia, kuna umuhimu wa jopo la mawakili ambao watawekwa katika sekta hii wawe katika kila kaunti. Wasiwe ni watu wa kusumbua. Kwa mfano, mtu akihukumiwa na anahitaji usaidizi katika kaunti ya Kilifi ni lazima afike Mombasa ilia pate usaidizi, ama mtu anahitaji usaidizi Mombasa lakini mpaka afike Nairobi ndio apate usaidizi. Tukifanya hivi tutakuwa tunaenda kinyume na vile Katiba inavyozungumza.

Vile vile kuna kipengele kinazungumzia vile ile bodi itakavyokuwa. Ni nani atakaa katika hii bodi? Mwenyekiti wa bodi hii atachaguliwa na Rais wa Kenya. Ningeonelea, na nina imani kuwa ni fikira za wenzangu pia. Ili kuimarisha demokrasia katika Kenya, tuko na mkono wa Serikali ambao ni urais na Baraza la Mawaziri, mahakama na wale wenye kuangalia na kutunga sheria yani Mabunge mawili - Bunge letu na Bunge la Seneti. Kwa hivyo, ninaonelea kuwa Rais asiingilia jopo hili, bali aliache lihusike na maswala ya mahakama. Isiwe kuwa kuna mkono wa inje ambao unaingilia mambo haya. Pia, bodi hii imetaja watu tofauti tofauti kuanzia kipengele cha 9(a) mpaka (o). Ukiangalia kwa kina, utakuta kwamba wengi ni wawakilishi

kutoka kwa Serikali. Lakini kuna umuhimu wa kupata uwakilishi wa vijana na akina mama katika bodi hii.

Yangu yatakua ni hayo. Tutaleta maoni yetu na fikira zetu ili tuweze kubadilisha Mswada huu, ili ukipita uwe ni kwa minajili ya wakenya vile inavyostahili.

Asante sana kwa nafasi hii, na nina imani kuwa wenzangu vile vile wataweza kuunga mkono.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): I now give the Floor to Hon. Ken Okoth of Kibra.

Hon. Okoth: Thank you, Hon. Temporary Deputy Speaker. It is my pleasure to rise in support of the Legal Aid Bill for myself and members of Parliament who represent places like Kibra and other urban constituencies. It is going to be a Bill that comes in very handy as we fulfill the requirements of Article 50 of the Constitution.

You will find that in places where Kenyans do not have enough money, chances of getting justice are very limited. This is because if you do not have a good lawyer, the court process is very confusing. Some things that actually should be diverted and do not make it to court because they could be taken to alternative dispute resolutions end up being contentious court issues. I am excited that this Bill is before us and I am happy to support it. We have required the Legal Aid Bill and framework for a very long time. Access to justice, equal representation and equal justice is a cardinal principle of human rights.

I am happy that it is in our Constitution and we are now enforcing it. Even before we got there, there have been organizations that have taken upon themselves to enforce it and I want to thank them. They are the Federation of Women Lawyers (FIDA) and the International Commission of Jurists (ICJ). Hon. Millie is in the House. We also have Cradle Children's Foundation that has fought for children's rights. Organizations in Kibra such as the Human Rights Forum and Kituo cha Sheria have been doing a lot of good work. This is the time to bring that work that they have been doing outside the support of Government into a formal framework that is a right of every Kenyan to get legal representation if they need it.

On the Government side, there has been a pilot programme which has been very fruitful and encouraging - the National Legal Aid and Awareness Programme. This programme has shown the need to go ahead and do this. So, I want to thank all the stakeholders in the Government who have taken part in that.

I am concerned about a number of things in the Bill. I would like to speak to them just now. I am sorry. Some of us are digital and I need to look at some of the notes. I am not reading a speech because these are notes that I had prepared earlier. First of all, legal aid needs to be affordable, accessible, sustainable and credible. It should also be very accountable. The way this Bill is set-up will allow us do many of those things. The needy persons and the poorest have a right to access justice. If you look at the sustainable development goals that Kenya has committed to follow, you will find that one of them is access to justice. I think we are making good steps towards that end. It is the poor, women and other vulnerable people in Kenya who do not often get access to justice. This Bill will go along way in doing that.

The National Legal Aids Service that is envisioned under this Bill will do many important things. We must make sure that it is set-up in a way that it will be managed well and that all people who are illegible can get support from it. When I look at the Bill, section by section and detail by detail I have a number of things that I think could be improved. One of them is on Section 7 of the Bill that talks about the functions of the service which will be to

advise the Cabinet Secretary on matters relating to legal aid in Kenya. It is not clear which Cabinet Secretary we are referring to in this new dispensation because we only have the Attorney-General and a Solicitor-General. We do not have the Ministry of Justice and the Cabinet Secretary for Justice and Legal Affairs. That is something we need to talk about, whether it will be easy to advise the President, the Chief Justice and the Government in general. That is the question that needs to be asked. I know the Bill has been in the pipeline for many years and some of the drafting may have happened before we got to the new constitutional dispensation.

Clause 9 of the Bill talks about administration. Those are the same things that I would like to echo and they have been said by Hon. Abdulswamad, the Member for Mvita. It says that the chairperson of this board shall be a person appointed by the President. This is the case and yet this is a judicial and justice issue. Why should that not be changed to say that the chairperson of this board shall be appointed by the Chief Justice because it is a legal sector issue?

Secondly, most of the people listed there will be representatives of different agencies of Government. Where is the two-thirds gender rule in this?. I think we need to have an amendment that says that the board shall be constituted in a manner that reflects the Article of the Constitution on the two-thirds rule. We do not want to end up with a board that will be purely made of male, female or unbalanced. It needs at the very least to meet a two-thirds gender requirement. So, it will be up to that board and the nominating bodies to see how they achieve that balance.

If you look at Clause 9(c), you will find that it also talks about a Principal Secretary in the Ministry responsible for matters relating to legal aid. This is the case and yet the Ministry of Justice does not exist. So, we need to ask ourselves what that really means because part (f) talks about the Attorney-General or his representative. So, we may end up with the Attorney-General having two slots to cater for parts (c) and (f) or his representatives. That is something to be concerned about.

Part (j) talks about one person nominated by the public universities that have established legal aids clinics. Our universities and learning institutions can actually provide a lot of support to people through legal aid as happens in other jurisdictions, for example, the United States of America (USA). Why only public universities? What will happen to universities such as Riara, Strathmore or the United States International University (USIU) that are now offering legal aid clinics and legal training programmes? Will you deny them participation in this? I think that aspect needs to be re-looked at.

My two last comments on the board membership issue are related to the two-thirds gender rule. We need a nominee of the National Gender and Equity Commission being given a chance to nominate somebody to give a gender and women's perspective on these issues. This is because they are normally marginalized. Most importantly is one young person to be nominated by the National Youth Council or another body. This is because when you think about young people in places like my constituency Kibra, being held for petty offences whether it is drunkenness or use of drugs it is common and they need legal representation. The board is oriented in its focus on other things and you will find that the interests of the youth and their legal rights will not really be held in the policy priorities of this board. So, I wanted to mention that.

As we move through the Bill, we need to discuss Clause 39(2), which talks about alternative dispute resolution. It says:

“An alternative dispute resolution service may be provided by-

(b) a personal or institution with expertise in the area---”

I think we just need to broaden that and say an approved legal aid provider to provide those services, engage and broaden the skills set or the pool of available people to support on alternative dispute resolution issues.

Last but not least, I would like to mention that when it comes to the payment of the legal service provider, the definition and the role of who are the *bona fide* and approved legal service providers--- We want to make sure that the law has a mechanism that makes sure that we do not end up with a system where a few legal firms are favoured. We have seen a system where a few law firms benefit from all the important Government legislative bills and representation opportunities and make a lot of money representing State corporations when we already have state counsel. My fear is that if this board is not properly constituted and the law does not have a mechanism in it, which I have not yet figured out, but it is an issue that concerns me, we could end up with a law firm of “Aghostinho and Okoth” being favoured by the Government to get all the contracts and tenders to provide legal services in half of this country and we get away like bandits. We want to make sure that that does not happen. Legal aid providers are vast and can represent the different interests of people. It should also create opportunities for young people coming into the profession to practise, serve and promote the course of justice in this country.

I am happy that this has happened. It is exciting that we have had a pilot that has been successful. I am thankful to all the private providers and the Civil Society Organisations (CSOs) that have been doing this work even before we could set up a legislative framework. We will be setting history for the poor of this country to benefit from legal representation.

With that, I beg to support the Bill.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): I now give the Floor to Hon. Alice Chae.

Hon. (Ms.) Chae: Thank you, Hon. Temporary Deputy Speaker for giving me the opportunity to also contribute to this Bill.

It is time that we looked for a legal framework to ensure legal representation of the poor. You seated there, you know what women are going through in our constituencies. They are too vulnerable. We have many rape cases, domestic violence and other issues that women face. Most people fear making a complaint because when you seek representation and you happen to be vulnerable or poor, you may not get these services. The enactment of this Bill is going to help the poor to access justice, which is a right.

Looking at the formation of the board, I concur with what my brother, Hon. Okoth, has said. They have only mentioned women in terms of the chair in that if the chair is male, then the vice-chair will be a woman. They should also ensure that there is gender balance in the nomination of the board members. The two-third gender rule has to prevail, so that when they deliberate on issues that affect various people across the country, decisions are well thought out and they benefit the people at the grassroots who need services.

One of the functions of the National Legal Aid Service is accreditation of legal aid providers. They should ensure that this is distributed across the counties, that the legal aid providers are available. People should be sensitised, so that they can know that these services are available. People should be aware of where to go to access justice. Many people have been offering these services, but sometimes, we tend to think they are doing it because they are funded from outside. This framework is going to ensure that legal aid is offered from our Kenyan perspective. We are going to ensure that justice is accessed by all categories of people, from

those who are able to those who are not able to access this fundamental right. The National Legal Aid Service should be affordable, accessible, sustainable, credible and accountable. However, without this framework, it will not be felt.

This Bill has come at the right time. As Members of Parliament, we should ensure that the gaps that have been mentioned are worked on. Once the National Legal Aid Service begins to function, everything should be in place and working properly to enable our people to get what they deserve. It would be perceived that the Government and legislators remember the people who sent us here to represent them.

The issue of appointment is also contentious because it is a matter for the Judiciary. When we leave it to the President to appoint, we will be narrowing the perspective. It should be wide. The Judiciary should determine the people who are credible and can properly manage legal aid services in order to manage the divides that we have in the country. We should address these divides as much as possible. We should deviate from the divides and ensure that legal aid services penetrate down to marginalised groups who need to be assisted.

I support the Bill.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): I now give the Floor to Hon. Aghostinho Neto.

Hon. Oyugi: Thank you, Hon. Temporary Deputy Speaker. It is nice seeing you in the New Year on the Chair. I appreciate.

This Bill is of great importance to the Parliamentary Caucus on Human Rights that I am a Member of. I am happy that the Member for Ol Jorok, Hon. John Waiganjo and Hon. Ken Okoth, Members of the caucus, are all here. The co-conveners of the Parliamentary Caucus on Human Rights are all here to give support to this Bill.

This Bill will help very many Kenyans. I like the definition of the word “indigent” because it simply shows that the people who are targeted by this Bill are Kenyans who need justice, and their issues prosecuted in courts of law, but they are not able to afford it. The Long Title of the Bill shows that the Bill is supposed to give adherence to Articles 19, 48 and 50(2) of the Constitution. Those are Articles in the Bill of Rights, which essentially means that this Bill gives effect to Articles that enumerate human rights issues.

Having said that, the reason why I tried to underscore that particular importance is because of some of the provisions of the Bill, which I will be speaking to slightly later on. Some of the provisions of this Bill seek, in one way or the other, to deny the cardinal role which the Bill is supposed to be playing, which is denying legal aid because of several provisions. You want to bear me witness that Article 24 of the Constitution shows how limitation of rights ought to happen. Article 50 of the Constitution makes the right to a fair hearing a constitutional right. The best way to limit this is under Article 94 of the Constitution which shows that you can do that within the meaning of law, which this Bill tries to do. This shows that you cannot limit that particular right by taking away the core content of that very right. That is why I have certain issues with sections of this Bill, which I will now be speaking to.

Hon. Temporary Deputy Speaker, having said that, Article 25 of the Constitution speaks to some rights that are non-derogable. There are some rights that you cannot take away. Whatever you want to do to them, you cannot take them away. The right to fair hearing is one of those rights that you cannot derogate. Essentially, it simply means that once you qualify for legal aid, then that particular right cannot be denied. You can only show that you are a member in

need, prosecute, and go ahead to make demands for these particular rights. Provisions that will go contrary to Article 25 of the Constitution ought to be deleted.

Looking at the definitions of this particular Bill, I have issues with provisions that want to include resolving of disputes using alternative dispute resolutions. The use of alternative dispute resolution (ADR) in law is in a world of its own. You cannot reduce the work of ADR to the work of a Legal Aid Bill. It is an important inclusion, but the provisions of the inclusions were not properly thought through.

The fact that the persons who are listed to be legal aid providers in Section C of that definition are specifically a firm of advocates, my colleague, Hon. Ken Okoth, has spoken to the fact that this could be a subject of misuse. In my opinion, if the service is keen in terms of having a group of advocates, it should be advocates in the employment of the service as opposed to a bunch of advocates or a company of advocates. With that, you can end up with a legal service scheme that just looks at particular groups of advocates like Waiganjo and Ken Advocates, or Aghostinho and Ken advocates, which would not give the rights or it would be subject to misuse or abuse that a few advocate firms are getting the work. These advocates should be advocates who are in the employment of the service. An omission is in definition of “legal Aid Fund” which ought to be included. It is something we should do in terms of making amendments. Also, not included in the definitions is what a legal aid scheme ought to be. That should also be worked on.

Clause 7 of the Bill speaks to the functions of service. There are a few things that I think the drafter of the Bill was just throwing in there. In Clause 7(c) of the Bill, you cannot have that part of the work of the service will be to encourage and facilitate the settlement of dispute resolutions. That is not the work of a legal aid service. Taking steps to promote public interest litigation should not be part of their work because that is a whole world of helping you realise interests, so that you cannot only limit the service to be the one in charge of trying to ensure that public litigation is encouraged.

There is an interesting inclusion which I think is a good thing. Clause 9(j) includes one person nominated by the public universities that have established legal aid clinics. I believe it will go a long way in terms of helping our universities ensure that part of the practical work that students do is engaging in legal aid awareness. It is one of the things that law students engage in and give them practical examples to deal with legal problems that people face in villages.

In Clause 9(6) of the Bill, there is discrimination of sorts. The drafter thinks that a person in the board of the legal service should not be a member of a governing body of a political party or an employee of a political party. My colleague, Hon. Sakaja, should be a member of the board of the legal aid scheme. I do not understand why because he is a member of a governing body of a political party, then he ought to be discriminated in case he told us he has interest. My very good friend, Hon. Mbadi, could actually be one that qualifies. I think this discrimination is not one that is well thought through.

I think there ought to be an inclusion in terms of how the service offices are going to be located. The service ought to have its headquarters in Nairobi, but also moves in a manner that goes to give effect to Clause 65 of the Bill, which I will later on speak to. You cannot have a legal service that is central in Nairobi and then people across the whole country need legal aid. We need to think about decentralising the offices of the service in a manner that will give service to the people who are indigent.

Clause 14 of the Bill has a very dangerous inclusion. If you allow me, I will read a part which provides that:-

“The validity of any proceedings of the Board shall not be affected by a vacancy among its members or by any defect in the appointment of any member or by the fact that the person who was not entitled to do so took part in the proceedings of the Board”.

What if the person who is part of the board proceedings is one that tilts the whole discussion of the board? There ought to be a deletion of various sections, so that a person who is not a member of the board ought not to participate in the functions of the board because they can be tilting the decisions of the board in a manner that affects how it proceeds.

Clause 26 of the Bill gives power to the director, but again takes away that power. It gives the director power of delegation, but on the same arm, it wants the director, having been given the power to delegate duties to still seek the board’s approval. That is something you can deal with, so that the director is left to use the discretion in a manner that makes him have the wherewithal. This is because they will be directly culpable in terms of misuse of that particular power.

Hon. Temporary Deputy Speaker, I like Clause 36 of this Bill because it talks about people who are refugees under the Refugees Act. These are stateless or indigent persons. Remands and prisons in Kenya are full of persons who are stateless, refugees and people who cannot speak for themselves. To have indigent people included in this category of persons is an interesting inclusion. We ought to support that.

Clause 36(4)(a) of the Bill moving downwards has dangerous provisions. This section speaks to things I would like to highlight: It says that:-

“The cost of the proceedings is justifiable in the light of the expected benefits”.

This is a constitutional right. You cannot tell me that the cost of helping me earn my right are so costly or ought to be justifiable. It is a right that you cannot limit within the meaning of Article 25 of the Constitution because it is non-derogable. My time is running out, but I would like to summarise. We had a lot of interest in this Bill. I will run to catch up on one. My colleague, Hon. Ken Okoth, is asking me to request your indulgence for about two more minutes to prosecute a couple of these things.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): I will add you two more minutes.

Hon. Oyugi: Thank you, Hon. Temporary Deputy Speaker. With those two minutes, I will seek to summarise.

Clause 49 of the Bill speaks to the fact that a decision ought to be made in terms of a person’s application for legal aid. That is a violation of this Bill. You cannot tell a maximum of a grant or anything else that ought to be done in a manner that only costs because once you are within the meaning of the definition of ‘indigent’, then you ought to benefit from the scheme.

Clause 71 of the Bill is key and perhaps, I will stop here. It says that:-

“Where the Service of an advocate who is accredited under Section 59(1) has assisted an aided person who has been awarded costs in any proceedings, the aided person is deemed to have surrendered the costs to the Service, and the Service shall be entitled to such costs”.

You could have the service represent you in a civil proceeding. If for example, my hand was cut by machines at Mumias Sugar Company, God forbid, or someone else, then I am

awarded costs, it is not fair that all that money goes to the service. The service was representing me because I was not able to. Clause 71 ought to read “portion of the award goes to the service for purposes of supporting the service, but also some of the money which is accrued be compensation or then goes to the person who is being aided”.

Hon. Temporary Deputy Speaker, thank you for indulging me. There are fairly good provisions in this Bill, but we will canvass most of them in the Committee of the whole House. All in all, it is a good and timely Bill, and we will support it as a Human Rights Caucus.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): I now give the Floor to Hon. Isaack Mwaura.

Hon. Mwaura: Asante sana, Mhe. Naibu Spika wa Muda. Ninasimama hapa kuunga mkono Mswada huu hususan kwa sababu mimi nimekuwa nikijaribu kuwasaidia watu wengi ambao wanakuja kwenye afisi yangu wakitaka usaidizi hususan wa kisheria na kuweza kupata haki yao.

Mhe. Naibu Spika wa Muda, namkumbuka sana aliyetuacha, Oscar King'ara, ambaye alikuwa na Oscar Foundation ambayo ilikuwa na kiosk pale nje ya Mahakama ya Supreme Court wakati ule ilikuwa ni High Court. Kwa sababu ya kujihusisha ma maswala haya akaletewa kesi za watu ambao walikuwa wameuwawa bila ya kujulikana kama vile *Mungiki*. Mwishowe, kwa sababu ya kujitolea kwa kazi yake, hata yeye mwenyewe aliuwawa.

Hili ni jambo ambalo linafaa kutuelezea kwamba kumekuwa na changamoto nyingi sana kwa wale ambao wamejitolea kuwasaidia maskini, walalahoi, watu ambao wanaitwa vikaragosi na watu ambao wanaonekana hawana mbele wala nyuma hususan ukifika katika mambo ya mkono wa sheria.

Nchi hii yetu imekuwa taabani kwa sababu inaonekana ni kana kwamba wenye hela wanaweza kupata haki. Wenye hela wanaweza kuhonga mahakama na wanaweza kuwa na mawakili wazuri ambao wanaweza kuwasaidia kujikwamua hata kama wao wenyewe wamekisiwa kwamba wamewaua watu. Na kuna aina nyingi sana za kesi ambazo tumeona watu ambao wangepaa kuhukumiwa hata baada yao wenyewe kukubali kwamba wamefanya makosa, wanawachiliwa. Kesi ambayo inakuja kwa akili yangu ni kesi ya Simon Ole Sisina katika lile swala la Delamare.

Katika afisi yangu, ninakutana na watu wengi sana. Kwa mfano, Rockefeller Okeyo, ambaye ni mlemavu, alifanya kazi katika shule moja kule Asumbi na wakati pesa zilipotea akiwa mhasibu wa shule, akazingiziwa ilhali yeye ni mlemavu na watu walikuwa wamevunja ufa na kuingia kule ndani. Amefuatilia ile kesi lakini amekuwa na mawakili matapeli ambao wanahongwa na mwishowe wanamuachia ile kazi. Mwishowe, kumekuwa na kesi ya mama mwingine anayelitwa Lucy Wangeci, ambaye ako na ulemavu wa kutokuona. Ameachiwa shamba kubwa kule Kirinyaga lakini kwa sababu yeye hajaolewa kwa sababu ya ulemavu wake, anayimwa lile shamba na linauzwa na ndugu yake na hana afueni. Hapati hata mtu wa kumwakilisha. Nakumbushwa pia kuhusu Tabitha Wairimu ambaye mtoto wake, Kuria, aliuawa kupitia ajali ya barabarani lakini bado anafuata kesi hii kwa sababu wakili ameshakula pesa baada ya kulipwa na ile kampuni ya bima. Yeye hajawahi kupata haki yake. Kuna mambo mengi tu ambayo yamewasomba watu wetu wakitafuta haki yao lakini hususan hawawezi wakapata msaada wa kisheria wa uwakilishaji. Mwishowe, wanaendelea kutokota katika biwi la umaskini na simanzi.

Pia, kuna jambo jingine. Kuna watu, hata sasa tunapozungumza katika hili Bunge la Kitaifa, ambao wako korokoroni kwa sababu hawakuwa na uwakilishwaji mwema. Hilo ni

jambo ambalo Mswada huu unajaribu kuangazia. Kwa muda mrefu, mawakili katika afisi ya Mwanasheria Mkuu wa Serikari ndio wanafaa kuwasaidia watu ambao hawana usaidizi. Wao wanazembea kazini kwa sababu hawana ari au motisha ya kuweza kufanyia watu ambao ni maskini kazi. Mwishowe, hizo kesi zinatupiliwa mbali. Kwa mfano, unakuta hawaji kortini na hawana wakati wa kumpatia wasia yule muadhiriwa. Kwa hivyo, kesi inapotelekezwa, basi yule mtu hana nafasi yoyote ya kuridhia mambo yake.

Ninapoangalia Mswada huu, naweza kuupigia upato zaidi na niseme kongole kwa wale wameufikiria kwa muda mrefu. Mwanzo, Mswada huu umetoa mkakati ambao unafaa kufuatiliwa wakati tunatafuta watu ambao watatetea maskini. Mwanzo, kuna mfuko wa fedha ambao umetengwa lakini ningependa kusema kuwa ni jukumu la Bunge hili kuhakikisha kwamba pesa za kutosha zimetengwa mle kwa sababu ile ada ambayo inatozwa na mawakili ni ya bei ghali mno.

Nikiuangalia huu Mswada, naona ile huduma ya kuwapatia Wakenya huduma za kisheria bure inaweza kutoa ada fulani. Lakini ningependa kusema kwamba hilo ni jambo ambalo tunafaa kuliangazia kwa sababu ukiseme kwamba ni lazima yule ambaye anafaa kusaidiwa alipishwe pesa, inamaanisha pia hicho ni kikwazo kingine. Watu wengine, hata kupata shilingi mia moja jameni, hata ile nauli ya kwenda katika zile afisi itakuwa ni mhali sana. Kwa hivyo, ningependa kusema kwamba tusiweke vipengele katika sheria ambavyo vitakuwa vyenyewe ni vikwazo kwa wale ambao tunajua kwa kweli hawana uwezo. Watu wengi wanaishi chini ya dola moja kwa siku katika nchi hii. Kama mtetezi wa wanyonge, ningependa kusema kwamba tusiangazie tu kwamba eti kwa sababu unataka kuwa mtu aweze kujihuzisha na kesi ya kwake, ni lazima atoe hela. Wakijitolea, waje, watoe malalamishi yao, basi litakuwa jambo la muhimu.

Pendekezo katika sheria hii ni nzuri sana kwa sababu kuna uwakilishwaji wa hali ya juu sana wa mashirika tofauti na watu tofauti tofauti. Kwa mfano, ninafurahi kuona kwamba kuna ile Tume ya Haki za Kibinadam, Kenya National Commission on Human Rights. Pia, kuna ile halmashauri ama Baraza la Kitaifa Kuhusu watu wenye Ulemavu; National Council for Persons with Disabilities. Lakini ningependa kuunga mkono kwamba ingalikuwa ni muhimu pia kuwa na masuala ya jinsia na vijana, kwa sababu hao ndio wanapata dhuluma kila wakati na unyanyasaji, pia, tungehakikisha kwamba hii sheria inawiana na ile nyingine ya Victim Protection, kwamba waadhiriwa waweze kulindwa. Mara nyingi, wale ambao pia watahitaji msaada ule wanaweza kuwa ni watu ambao wamedhulumiwa kwa njia moja ama nyingine. Kwa hivyo, kama kungeweza kuwa na uwakilishaji ambao unafaa, basi ingelikuwa ni muhimu. Pia, swala sugu ambalo linajitokeza ni kuwa ni nani atakayekuwa mhusika wa jambo hili. Mwanasheria Mkuu ama Afisi na Mwanasheria Mkuu wa Serikari na Katibu mhusika, wawe ndio wanaangazia shirika la huduma hizi za kisheria ndiposa kusiwe kuna mwanya katika Serikali kuhusu ni nani anayefaa kuwa akipata hizi ripoti.

Pia, kuna changamoto nyingine kuhusu ada za wanasheria ambao watahusika. Najua wenzangu wamezungumzia kuhusu kuwa pengine watu wengine watapendelewa kupata hizi kazi zote. Hilo ni jambo ambalo linafaa kuangaliwa katika kanuni za sheria hii, isiwe kuna watu ambao wanapendelewa. Fauka ya hayo ni kuhakikisha kwamba kila wakati ambapo swala hili linazungumziwa, ukipeleka kesi kortini, hizo ada zifuatiliwe na ziwekwe vizuri kwa wino ambao unaonekana ndiposa tusianze kupata habari kuwa kuna wakili fulani ambaye alimwakilisha Isaac Mwaura, Tabitha Wairimu ama Rockefeller Okeyo halafu mwishiwe anaitisha mamiloni ya fedha ambazo haziwezi kulipwa na Serikali. Tunafaa kuhakikisha kwamba hakuna utapeli wa pesa za Serilaki iwe kwamba watu wanawapatia wengine hela ndiposa waweze kupata mlungula, chai au

pesa kidogo kwa kisingizio kwamba wanasaidia maskini. Katika nchi hii yetu, tumewaona watu wengi sana wakijitoza kwamba ni watetezi wa maskini lakini mwishowe wanajaribu kuwatapeli wale ambao wanafaa kuwa ni wanyonge zaidi. Tumeona mambo ya IDPs na kadhalika.

Hii ni sheria nzuri sana. Naona muda wangu umeyoyoma. Asante.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): I now give the Floor to Hon. Onyango Oyoo.

Hon. Oyoo: Thank you, Hon. Temporary Deputy Speaker, for giving me the opportunity to contribute to this very valuable Bill. The Bill has come at a very good time. It is long overdue. There is a saying that if God likes you, there are two things he must help you skip, namely, bad health and anything that draws you near to something that entails that you get legal attention. This is because legal services have become too costly. This step should have been taken long time ago to remedy the situation of the downtrodden, who are very many in this country. Unlike other concepts that the Government has started in frivolous manner and then they have been dropped by the roadside for lack of proper budgetary provision or focus, I believe this will be taken with vigour and seriousness that it deserves. In the absence of this, a considerable number of the populace have had to rely on few NGOs that have been providing similar concepts, little known to Kenyans that this has been to the benefit of those NGOs. They have been using the plight of the downtrodden to elicit a lot of funding from donors abroad. They have had very little time and arrangement for the perceived beneficiaries.

With regard to the composition of this legal body, I suggest that in making appointments, the Government should go in tandem with the new constitutional dispensation. In the new constitutional dispensation, we have eliminated the role of the President as the appointing authority for serious organisations. This being a legal concept, I urge my colleagues that the Departmental Committee on Justice and Legal Affairs should advise the Attorney-General to make sure that at the tail end of the Bill, this body is supervised by the Chief Justice or the Judicial Service Commission (JSC) together with the Members of the Departmental Committee on Justice and Legal Affairs of the National Assembly and that of the Senate. This should be done in a way that will ensure that the beneficiaries are those who are cannot afford legal services. Their plight should be taken care of. The Fund should grow. It should not be underfunded. Competent officers should be appointed to man it, so that we do not have a body that comes into effect tomorrow and lacks funds to run its affairs. We should not have lawyers who are not equal to the task to man the body.

I support this Bill and beg Members to ensure that it is expressly passed, albeit with amendments as other Members have prescribed. It should have control gadgets to ensure that it is people friendly. Otherwise, I support.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): I now give the Floor to Hon. John Waiganjo.

Hon. Waiganjo: Thank you very much, Hon. Temporary Deputy Speaker for giving me this opportunity to also add my voice on the Legal Aid Bill. I am happy to debate this Bill because, first of all, it is long overdue. Secondly, it is dictated by the Constitution that Parliament should legislate on matters that protect the fundamental rights of its citizens. The Articles that give rise to this piece of legislation are basically within Chapter Four of our Constitution, which primarily dwells on the Bill of Rights, the rights and freedoms and human rights protection. So, it is an important Bill in that it also dictates that we promote social justice. As you know, social justice is the backbone of fundamental freedoms and rights and has great impact on Kenyans

who not only access justice, but who are a far cry to even recognition as citizens of this country or who are nowhere supported by any of our institutions. This Bill guarantees access to justice, which is primarily what Kenyans lack. Indeed, you would be surprised at how many Kenyans suffer because of lack of access to justice. Our remands are full. We do not even have proper registers for the people who are in remand. Some people end up in remand because they could not raise the bail or bond money, but they still cannot go back to court to apply that their bond/bail terms be altered, so that they can have certain freedoms. They would still go back to court for the mention or hearing of their cases.

Such simple issues are the ones that make Kenyans suffer. Most ordinary Kenyans do not understand the formalities, language and conduct of our courts. Even though we have the court users committees, we have not seen them actualising access to justice. It is important that this piece of legislation becomes law, so that ordinary Kenyans can know how to access justice. This Bill gives duties to Officers in Charge of Police Stations (OCPD) in Clause 42. I am very happy about this because the Bill now dictates that every person who is held in any remand prison or police station must be informed of the existence of his or her right of access to justice.

Previously, people would be held incommunicado without even knowing whether their names have been entered in the Occurrence Book (OB). You would not even know that you are supposed to be taken to court within 24 hours and you have no one to ask. With the operation of this Bill, the OCPD will be the first to tell a suspect that “by the way, there is the Legal Aid Bill and you are entitled to an advocate”. Then the answer the remandee gives must also be entered in a record. So, it will be very easy to track police stations that are holding people unlawfully or beyond 24 hours or even holding minors. With this kind of information, it will be easy when that person appears in court to raise the issue in the first instance before the judge or the magistrate and say that he has not been informed of his rights, or has been informed of the right and has not been provided with legal aid.

More importantly, Clause 42 gives a fundamental duty to our courts. That whenever a suspect appears before a magistrate or a judge, that judge or magistrate is duty bound to also inform the suspect that there is legal aid and ask whether the suspect is in need of legal aid. If a suspect is not informed of this right at the first instance, then that can be a ground of appeal in the event that that person is convicted. Therefore, this Bill seeks to expand our legal jurisprudence and the rights of people to fair trial. That is why Article 50(2) of the Constitution is about a right to a fair trial. However, the right to a fair trial cannot be given to a person who has no capacity to defend himself. That is why the Constitution is very clear that, in the first instance, in Article 50(2)(g), a person has a right to choose or to be given an advocate and to be informed that an advocate can be provided for him, promptly. In (h), an accused person should have an advocate assigned to him at State expense.

Therefore, we already have advocates who are in the Panel of the Chief Justice and I want to thank them. Those are the advocates who handle *pro bono* matters which are normally handled without pay. Even if they are given stipends, you can imagine the matters that they handle. *Pro bono* lawyers are normally given to murder suspects. Robbery with violence suspects do not have legal representation, but the sentence is the same, which is death. If we do not have a law of this nature, then we leave these rights of suspects to *pro bono* lawyers, who are also commercial. So, a lawyer will choose whether to represent a client *pro bono* or to engage in their commercial business. I would propose that once this law comes into operation, the first

people to be accredited to give legal aid should be the advocates who are already in the Panel of the Chief Justice giving *pro bono* services.

The accreditation of the service providers is an important aspect of this Bill because we have a lot of groups that offer legal aid. Some of them are genuine while others are fake. We have good ones like the Federation of Women Lawyers in Kenya (FIDA) who have done a lot of work for the women of this country. Unfortunately, we do not have any agency that supports men in this regard. We already know that men are suffering the most in terms of child support and family matters.

Therefore, once we have an agency giving legal aid, we must also give this service provider the mandate to accredit these groups, so that any group that is accredited becomes a genuine group. It becomes a group that has advocates who will carry to finality the cases that come before the court. I see the people that qualify under this Legal Aid Bill and I hope we will expand this because even when we say the child, we want to know the quality of legal representation that the child gets. What about the mother of that child who perhaps is an indigent, but with a child? I am very happy about the refugees under the Refugees Act. Under victims of human trafficking at this period in time, I think the country is entertaining human trafficking openly. We have our young sisters who are held hostage in foreign counties. We hear cries of these foreign agencies pretending to be people who are giving jobs to our women, but when they go to the Middle East they are held there. That is human trafficking. We do not seem to realise this and we ignore it.

I am aware that in our remand prisons, Stateless persons are Kenyans who do not have Identity Cards (IDs), but who are grouped as Stateless persons. Clause 37 talks about the people who should not be granted legal aid. I am a little worried about Clause 37(g) which says that this category cannot be given legal aid. It says that:-

“The Service shall not provide legal aid services in respect of civil proceedings—

(g)In which a company, civil society or non-governmental organisation or other artificial person is a plaintiff in the proceedings.”

Does that mean that an indigent person cannot be a defendant in specific proceedings? It is a good Bill, but it requires some amendments, so that once we roll it out, we can be sure that Kenyans will access justice.

I also want to point out Clause 13 on the filling of a vacancy of the board. We are throwing this back to the Cabinet Secretary (CS) forgetting that within this board, there are representations of the Law Society of Kenya (LSK), the Kenya National Human Rights Commission (KNHRC), Paralegal bodies, the Public Benefits Organisations (PBOs) and religious bodies. I do not see how the Cabinet Secretary will give these replacements without the input of these agencies that will sit on the board.

Hon. Temporary Deputy Speaker, I support the Bill and I thank you.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): I now give the Floor to the Hon. Member for Samburu North. Hon. Ken Okoth and Aghostinho Neto, I do not know how you are appearing on my screen again.

Hon. Lentoimaga: Thank you so much, Hon. Temporary Deputy Speaker for allowing me this opportunity to support this Bill. I am not a lawyer, but this Bill is important for our communities especially the marginalised communities in this country where justice is not

accessed, not so much because of ignorance and inability to reach the courts or lawyers, but because of poverty. This Bill has come at the right time.

First of all, the formation of a State Corporation to administer this legal aid is very important and this Bill needs to be fast-tracked, so that we can form this State Corporation and all these other organisations to manage legal aid.

This particular organisation must be highly funded, so that all the people who require legal aid can access it. We are all aware of what NGOs have been doing in providing legal aid, but either they do not have enough funds or they do not reach the marginalised groups in this country. The formation of a legal aid corporation will go a long way to support what NGOs have been doing.

Most Kenyans have suffered because of lack of funds and lack of awareness as regards accessing justice and getting legal support. When seeking justice in land related issues, or when one is wrongly convicted, people suffer. Some people even die before they get justice. Some people take even more than 10 years in search for justice that is not forthcoming due to lack of finances. This Bill will assist such people.

Another issue is that there are Kenyans who are languishing in prison. They may have the right to be released from jail, but because they do not have access to legal aid, they suffer in prison for a long time. This Bill empowers prison officers to create awareness amongst the persons in custody, so that they can access legal aid. The Bill seeks to establish the National Legal Aid Services as a State Corporation. The most critical issue there is that the Bill seeks to establish a national legal aid scheme that is affordable, accessible, sustainable, credible and accountable in order to encourage settlement of disputes by alternative dispute resolution methods. Sometimes lawyers use cases to enrich themselves. They will never tell you even if they know that you are going to lose a case. They will always encourage that you will win. You end up spending a lot of money thinking that you will win. Just because lawyers want to enrich themselves from clients, they make their clients spend all their resources. Some people even sell their land in search of freedom. At the end of the day, the lawyers want to enrich themselves.

With those few remarks, I support this Bill.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): I now give the Floor to the Member for Marakwet East.

Hon. Bowen: Thank you, Hon. Temporary Deputy Speaker. First, I want to state that I am a Member of the Departmental Committee on Justice and Legal Affairs. I rise to support the Bill, which is very important, especially to the many poor Kenyans. The biggest problem to people in low cadres in this country is access to justice. For instance, in my constituency, we have to travel over 100 kilometres from Iten or Eldoret to access courts. This Bill will be helpful to the people of Marakwet East, whom I represent, as well as many other Kenyans who do not even know where to access legal services or what the Constitution provides.

The Bill also establishes the Legal Aid Fund, which is a very important part of the Bill. However, we need to be very careful at this point because money has been a source of corruption. So, we need to make sure that the people who are going to administer this Fund are beyond reproach and are people of high integrity. We have seen a lot of funds being misused. The famine relief funds have been misused while many Kenyans are dying. If we pass this Bill and appoint the right people to manage the Fund, this is going to help our people to access justice.

The Bill provides that the people who will be accredited to provide legal aid services will have a chance to go round to sensitisation the people on some new Bills that we are going to pass in this House. We have many pieces of legislation that touch on the people, but they do not understand. If people can go round the country to provide free legal service, educate the people and sensitise them, it is going to be important.

I have a concern about the creation of boards. The provisions of this Bill and the administration of the Fund should be implemented using the already existing Government legal institution. I am of the idea that we should not create some more boards because this also comes with administration costs and employment of staff. Again, we are struggling with the issue of the wage bill in the country. If this Bill is passed by this House, we should use the already existing Government legal institutions like the Office of the Director of Public Prosecutions (DPP), the Kenya Law Reform Commission and others. This is going to be cheaper. Otherwise, if we create other boards where we have to get a chief executive officer (CEO) and board of directors, this is going to be an additional cost on an already burdened wage bill.

We also need to be very careful on the criteria of choosing the people who are going to provide legal aid services. We have seen so many quacks and NGOs pretending to be assisting our people. We have seen many of them saying that that they want to employ our youth. We seen others who pretend to be giving educational bursaries and such kind of support to our people, but in a way, they are using our people to get money from donors and benefit themselves without benefitting our people. So, we need to vet these people very seriously. There is also need to have a framework within which they will be submitting their annual reports on their expenditures and how they have used the money from the donors. We should not allow the use of the poor Kenyans by the NGOs to get money.

We should also have an elaborate plan on the criteria of choosing the beneficiaries of legal aid. What evaluation criteria are we going to use so that we can decide that certain people deserve to be given legal aid and not others? If we put all these things together and make sure that we have the right people to administer the Fund, this is a very important Bill. It is going to assist many Kenyans who are very poor. Access to justice has become very expensive, especially in Kenya. If what we read in newspapers is true that some people pay millions of shillings, so that they can get released, then the poor cannot access justice. Just the other day, the Public Accounts Committee (PAC) Report showed what is happening in the Judiciary and the massive corruption that we saw there.

If it is true that millions of shillings were lost, people bribed in the Judiciary and the massive corruption exists, then it has become very expensive to access justice. This Bill will go a long way to assist the many people who are languishing in prisons and those who travel every week from upcountry to Nairobi to hear their cases, which is very expensive.

I support this Bill. We will make some amendments when time comes.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): I now give the Floor to Hon. Zuleikha Juma.

Hon. (Ms.) Juma: Asante sana, Naibu Spika wa Muda kwa kunipatia nafasi hii kuchangia kuhusu hii sheria ambayo itaweza kuwasaidia maskini kupata msaada wa mawakili wa Serikali.

Hii sheria ingepitishwa kama juzi. Kwa hakika, ni miaka 50 tangu tupate Uhuru. Pia, ni vizuri kuwa tumeweza kufungua macho yetu kwa wakati huu kuweza kuleta sheria kama hii humu chini. Kwa mfano, hata leo, nimepigiwa simu na mama mmoja kutoka Kaunti ya Kwale

ambaye mtoto wake amebakwa. Kijana mshukiwa alishikwa kisha akawachiliwa. Kesi ni kesho na haelewi atafanya nini ama ataenda vipi kumsaidia mtoto wake na yeye mwenyewe waweze kupata haki.

Kwa hivyo, tukiwa na mawakili ambao wanalipwa na Serikali itawasaidia sana wale walalahoi nchini kwetu ili kupata msaada, hususan wale ambao wanadhulumiwa kiasi kama hicho na zaidi. Kwa mfano, pia, kuna wanawake wengi Kwale ambao mara kwa mara wanakuja kwa sisi viongozi wakitaka msaada kuwatoa vijana wao ambao wameshikwa na wamefungwa gerezani na hawajui vipi watawatetea watoto wao. Wengi ambao wanashikwa huwa ni vijana wa kiume kwa bahati mbaya na afisa wetu wa polisi kwa maswala ambayo hayaeleweki mara nyingi, katika mambo ambayo tunayaita misako. Maafisa wa polisi wakimpata kijana anatembea tu, wanamshika. Wakati mwingine wanamua kwa muda kushika watu ama kuingia kwa nyumba za watu na kushika vijana bila hatia yoyote. Halafu kina mama ndio wanaumia kwa sababu hawawezi kuwatetea vijana wao.

Kitu ambacho nitaomba kabadilishwe, na pamoja na wenzangu tutaleta mabadilisho, ni Ibara 9(a) ambayo inasema kuwa Rais aweze kuandika mkurugezi wa bodi ambayo itasimamia sheria hii. Tunaona ni afadhali Jaji Mkuu aweze kumchagua atakayesimamia bodi kama hii. Pia, tunaona kuwa Wakili Mkuu wa Serikali amewekwa hapa pamoja na Wizara ya Haki, ambayo hivi sasa hatuna. Kwa hivyo, pengine angewachwa mmoja peke yake.

Kuna jambo lingine ambalo limenifurahisha sana. Huko Kwale, tuna kabila linaloitwa Makonde. Makonde ni watu ambao wanatoka Mozambique ambao walikuwa hapo miaka na mikaka. Wamezaliwa hapo na wanaishi hapo. Jambo la kusikitisha ni kuwa Serikali ya Kenya bado haijaamua kuwatambua watu hawa ijapokuwa hivi sasa tuko kwenye harakati za kuwasaidia watambulike kama Wakenya. Karibu wote hawajui vile watarudi. Hawana mtu wanaomjua huko na nchi yao ni Kenya. Hivi sasa, hawana vitambulisho na hawatambuliki kabisa.

Jambo nzuri katika sheria hii ni kuwa watu ambao hawana nchi ama kwa Kiingereza “stateless persons”, wataweza kupata msaada wa mawakili ili kusaidika katika kesi zao tofauti tofauti. Pia, ingekuwa vizuri kama wangeweza kupata msaada ili kuwatetea pia wao waweze kutambulika kama Wakenya. Makonde hapa nchini wako kama 10,000, watu wengi sana ambao wanaumia na wameoana na Wakenya hapa nchini. Watoto wao wanapata shida wakitaka kuandika karatasi za usajili wa kuzaliwa, kupata vitambulisho au hati za kusafirika kwa sababu pengine mzazi wao mmoja hatambuliki kama Mkenya.

Kabla sijaketi, ningetaka kuiomba, kwa sababu nina hakika hii sheria itapita katika muda usio mwingi, Serikali ifuate maelezo ya sheria hii ili isiwe kama ile Sheria ya Baraza la Vijana la Kitaifa, ambayo Serikali imekataa kutaimbua na kuwapatia vijana pesa ili waweze kuendeleza maswala yao kama vile walivyoruhusiwa na Sheria ya Baraza la Vijana la Kitaifa ya 2009.

Kwa hayo machache, nasema shukrani.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): I now want to give the chance to the Mover to reply, the Leader of the Majority Party.

Hon. A. B. Duale: Thank you, Hon. Temporary Deputy Speaker.

As I reply, this is a very important Bill. It has taken the House more than three Sittings to discuss it. It talks about how to establish the National Legal Aid Service, how to make justice accessible, affordable, sustainable, credible and accountable and to encourage and facilitate the settlement of disputes using alternative dispute resolution methods. It promotes research. It undertakes research in the field of legal service, legal awareness and access to justice with

specific reference to the poor. I am sure all the concerns and issues raised by the Members will be found in the HANSARD and if possible, turned into amendments that will enrich this Bill at the Committee of the whole House stage.

With those few remarks, I beg to move.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Members, for reasons that are obvious, I will not put the Question. Let us move to the next Order.

THE CONTROLLER OF BUDGET BILL

Hon. A.B. Duale: Hon. Temporary Deputy Speaker, I beg to move that the Controller of Budget Bill (National Assembly Bill No.21 of 2015) be now read a Second Time.

I want to go on record stating that this is one of the most important Bills. There are only six Members in the Chamber. I want to go on record on the HANSARD that there are three Members from the CORD Coalition and more so, from the Human Rights Caucus, and three Members, led by myself and the Vice-Chairman of the Departmental Committee on Justice and Legal Affairs, Hon. Bowen, from the Jubilee Coalition.

This is the problem with the Members of this House. They are not present when we are debating this Bill or at the Committee of the whole House stage. They are not present when the President assents to the Bill because they cannot access State House. After the law is enacted and the Act is gazetted, they remember the Bill during their political rallies and funerals and you will find them challenging it in court. This is a very important Bill. Having said that and having been to the House of Commons a month ago where I saw only two Members present when a serious debate was going on, I will forgive them.

The proposed Controller of Budget Bill gives effect to certain provisions of Articles 225, 228 and 252 of the Constitution as far as the functions of that office are concerned. The current holder of that office, Agnes Odhiambo, is up to the task. Before she got this job, she was the Chief Executive Officer (CEO) of the Constituencies Development Fund (CDF) Board. On the basis of that, I am sure Ms. Agnes Odhiambo is doing a wonderful job in making sure that the roles as stipulated in Article 228 of the Constitution are implemented. Over the last eight years, our country has experienced a broad-based economic growth and this has resulted in certain reductions in key economic parameters. This performance reflects that we enjoy sound macro-economic and structural policies that have been implemented over a long period in the last Government, the previous one and this Government.

I want to confirm that the country has maintained a regime of a prudent fiscal policy and that has led to the creation of a significant improvement in how we manage our public financial systems. An efficient and effective public finance management system is a cornerstone or a condition for achieving Vision 2030 and various developmental objectives.

Hon. Temporary Deputy Speaker, investors, both local and foreign, require assurance from any Government, the Government of Kenya included, of existence of a country's public finance management system which is reliable and maintains good financial fiscal discipline. They want to see a country that can at all times contain its public debt, both at the management and the fiscal levels. Investors also want to look at the ability of a country to borrow and attract donor funds. I am sure today the rating of our country is very high.

Coming to specific Bill, because the above observations that I have made essentially set the stage for the Controller of Budget Bill, 2015, which is divided into the following:-

- (i) It gives the general provisions applicable to the Office of the Controller of Budget.
- (ii) There are provisions that specifically deal with the administration of the Office of the Controller of Budget in terms of the administrative structures.

Hon. Temporary Deputy Speaker, if you look at Article 228 of the Constitution, under the sub-heading “Controller of Budget”, it talks about having a Controller of Budget who shall be nominated by the President with the approval of Parliament. It outlines the qualifications of the Controller of Budget. The Controller of Budget shall be subjected to Article 251 of the Constitution. The term of office of the Controller of Budget is pegged at eight years just like the term of the Director of Public Prosecutions (DPP). The powers of the Controller of Budget is to approve and withdraw public funds from all the accounts including the Consolidated Fund Account unless she is satisfied that the withdrawal will not take effect. More importantly, the Controller of Budget is under obligation to submit her reports, every four months, to the both Houses of Parliament. That is what the Constitution talks about under Article 228. This Bill is trying to create an Act of Parliament on basic administration and how that office can be governed. When I go to the specifics, Part I of the Bill relates to the normal preliminary provisions of the Bill that cites the Act and defines words and expressions that are used in the Bill, just like any other Bill. It talks about the objects of the Bill.

Hon. Temporary Deputy Speaker, if you go to Part II, it provides the general administration of the Office of the Controller of Budget. For the first time, this Bill, under Clause 3, provides for the appointment of the Controller of Budget which shall be in line with the Constitution. So, Clause 3 basically talks about how the Controller of Budget should be appointed. In discharging the duties of Controller of Budget as provided in Article 228(4) to (6) and Article 252 of the Constitution, the Controller of Budget is under obligation, as provided in Clause 4 of this Bill, to ensure prudent and efficient use of public resources. This is where I want Madam Agnes, if she is watching, to listen to me and to look me in the eye from her television screen. Under Article 228(4) to (6), it is her business to ensure prudent and efficient use of public funds. As a good Muslim and I do not want to lie, public funds are not utilised well in all the counties. There is misuse of public resources. We have officers from the Office of the Controller of Budget in every country including mine and only God knows what they do or what they report to Madam Agnes. She must fulfill that constitutional obligation.

The Bill recognises the principle of delegation of powers for better performance of office functions under any circumstance. So, it recognises the principle of delegation of duty. To this end, Clause 8 of this Bill expressively provides for the delegation of powers and duties by the Controller of Budget to the colleagues who work under her. The Controller of Budget may, for the first time under this Bill, delegate her powers in writing to any of the employees in the Office of the Controller of Budget. Secondly, under delegation in Clause 8, the Controller of Budget now has the powers to instruct in writing any of her staff to perform any duties of his or her Office as long as that officer is competent enough to do it. The Controller of Budget is empowered again, under Clause 9, if you look at the Bill, to recruit and appoint staff to the Office of the Controller of Budget in consultation with the Public Service Commission (PSC) to decide on the remuneration and the benefits of such salaries and commissions.

Yes, the Controller of Budget is an independent Office like the Auditor-General, the Judiciary, the Office of the Director of Public Prosecutions (DPP), the Ethics and Anti-

Corruption Commission (EACC), the Inspector-General of Police and the National Police Service Commission (NPSC), but the Constitution has provided, and this Bill is stating it, that they consult the only body in the country that has the function in terms of recruiting and that is the PSC.

Hon. Temporary Deputy Speaker, Clause 8 provides for a common seal for the Controller of Budget which shall be kept in such custody as the Controller of Budget shall direct and shall not be used except on his or her order in case of his absence. Maybe the next Controller of Budget might come from the opposite gender. So, there will be a seal to create.

This office is important and that is why you see many people out there saying that the Eurobond cash has been stolen. This Bill provides that the Controller of Budget must have a common security seal. To insulate the holder of this office from personal liability in the course of performance of his/her duties, Clause 12 of the Bill provides for the protection of the holder of this office from liability on anything if it is done in good faith for the purpose of executing the powers, the functions and the duties of the Controller of Budget under the Constitution and under the Independent Office Appointment Act or under any other Act. This immunity shall also apply to officers or agents working in this office.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Duale, Leader of the Majority Party, you have 32 minutes more to move this Bill.

ADJOURNMENT

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Members, the time being 6.30 p.m., this House stands adjourned until Thursday, 18th February at 2.30 p.m.

The House rose at 6.30 p.m.