

NATIONAL ASSEMBLY

OFFICIAL REPORT

Wednesday, 30th November, 2016

The House met at 2.30 p.m.

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

PRAYERS

QUORUM

Hon. Speaker: Ring the Quorum Bell. I have established that we do not have a quorum.

(The Quorum Bell was rung)

Very well. You may stop ringing the Bell. I will be making a communication later on around Order No. 7.

PETITIONS

REINFORCEMENT OF SECURITY ALONG KISII/NAROK COUNTY BORDERS

Hon. Moindi: Thank you Hon. Speaker, for giving me this opportunity to present this Petition before the House. It is a Petition by the residents of Nyaribari Masaba Constituency on the enforcement of security along Kisii and Narok Counties.

I, the undersigned, on behalf of residents of Nyaribari Masaba Constituency, draw the attention of the House to the following:

THAT, Chapter 14 of the Constitution on national security, specifically Article 238 (1), envisages national security to entail protection against internal and external threats to Kenya's territorial integrity and sovereignty, its people, their rights, freedoms, property, peace, stability and prosperity, and other national interests.

THAT, in the recent past, a number of cases of insecurity have been reported in Kisii County and in particular along Nyaribari Masaba border at Ikorongo area and Narok County border at Ole Milili area.

THAT, members of the Kisii community residing along the Ole Milili region are living in fear due to incessant border clashes between the Kisii and Kipsigis communities.

THAT, there have been rampant tribal conflicts between the Kisii community and the said neighbouring communities, thereby breeding tension, instability and uncertainty which has affected social-economic development in the area.

THAT, the Government has failed to deploy security personnel in the area hence exposing the residents to insecurity leading to loss of lives and property.

THAT, efforts to persuade the relevant Government agencies to restore order have been futile.

THAT, the Government has failed to settle the victims of tribal clashes who were evicted from Emurua Dikirr area by the Kipsigis community;

THAT, the matter presented in this Petition is not pending before any tribunal or court of law.

Therefore, your humble Petitioners pray that the National Assembly, through the Departmental Committee on Administration and National Security:

- i) Recommends immediate deployment of more security personnel to enforce law and order along Kisii and Narok County borders;
- ii) Ensures that the Petitioners' plight is addressed; and
- iii) Makes any other order or direction that it deems fit in the circumstances of the matter.

And your Petitioners will ever pray.

Thank you.

Hon. Speaker: Member for South Mugirango Constituency, Hon. Nyamweya.

Hon. Nyamweya: Hon. Speaker, thank you for giving me a chance to comment on this. This is a serious issue that is taking place between the Kisii and Kipsigis border. Lives of people have been disrupted. We are a farming community. We rely on farming but more importantly we produce milk. What has happened across the border is that people are not sleeping. They are not carrying out their economic activities. Children are not going to school as they should. Even now you are aware that students have sat for their Form Four exams but at the border area, the students there, because of these conflicts, did not prepare for their exams properly.

What is apparent is that this issue keeps recurring when we approach elections. If you check the calendar to see when we have these clashes, they normally coincide with elections. We have a Government which is responsible for protecting property of citizens at all costs. We are urging, as hon. Members, that the committee concerned recommends strongly given that we are heading for elections, that the General Service Unit (GSU) is permanently based there. The Anti-Stock Theft Unit and the Regular Police should also be there, not only at Ikorongo Location but across the border. We have experienced these issues in various places along the border. We are saying this because I believe strongly that there could be some political connotations because why should this happen. Why should people fight as we approach elections? It is happening every time but I am urging the Government and more importantly the Minister in charge of internal security to take immediate steps to help restore order and security.

We are also urging Members to take this issue seriously because the people at the border do not sleep even as I speak. They stay awake with their cows. They do not go to *shambas* because they are scared of being attacked in their *shambas*. So this is a serious issue. We, as the Kisii community, are very concerned with this issue. Last time, the cows that were stolen were never returned.

Another issue here is that when the cows cross the border and go to the other side, even the Provincial Administration or the police cannot pursue the animals yet they can see them on the other side. Are we two countries? If you can see your cows on the other side yet you cannot cross until you report so that the other people can take action--- By the time you do that, the cows have been turned into meat. So we have a big concern. There is a disconnection in the way

the Government is working, especially the Provincial Administration. We are not working as one unit. We are not going anywhere. We are one country.

Hon. Speaker, if in---

Hon. Speaker: You see now you are debating. The comments should not be more than two minutes at the very most.

Hon. Nyamweya: I stand guided, Hon. Speaker. We urge Members of the committee concerned to take immediate action so that peace is restored at the place and people become productive as they have always been.

Thank you.

Hon. Aluoch: Hon. Speaker, indeed, this Petition raises issues that need to be addressed quickly but allow me to play the devil's advocate. The way this Petition is presented is likely to raise temperatures and cause more chaos. I believe that as Members of this National Assembly, it is our responsibility to act as members of the Kenya National Assembly. Where there are conflicts like this, we must apply our skills in conflict resolution, contact our colleagues and address the conflict. The way it is being addressed here is likely to cause more chaos on the ground. I believe the best way would have been for the Member to contact his colleagues on the other side so that they sit together as leaders because it is not just happening in this constituency. It is happening even between our borders in Kisumu County and Nandi County but I believe now we must rise as Members of this National Assembly to address this issue as nationalists. If we do not do it, then as we approach the elections, these tensions are going to rise and violence will escalate.

Thank you.

Hon. Speaker: Absolutely. On account of that, I allow no further debate until the matter is handled by the committee because the essence of presenting a petition is that the intention cannot be to inflame further passions on the ground. Depending on what you say here, it could very well make the situation on the ground much worse.

Member for Laikipia North, are you saying something? Why do you not use the next microphone? Maybe there is a problem with your microphone.

ESTABLISHMENT OF NPS TRAINING CAMP ON MORPUS GROUP RANCH

Hon. Lempurkel: Hon. Speaker, thank you for giving me this opportunity. Before I read this Petition---

Hon. Speaker: No! Read the Petition.

Hon. Lempurkel: Hon. Speaker, this is a public Petition regarding alleged use of Morpus Group Ranch land by the National Police Service Commission (NPS) for training purposes.

I, the undersigned, on behalf of the members of the Morpus Group Ranch in Laikipia County draw the attention of the House to the following:

THAT, in the late 1960, the NPS, then Kenya Police, established a training camp in Morpus area in Laikipia County. The Petitioners allege that no formal agreement was made prior to the establishment of the police training camp. The activities carried out by the trainees have resulted in a number of lives being lost and residents maimed causing permanent disabilities.

THAT, use of explosives has negative effect to the residents including miscarriages, loss of livestock, loss of land, environment degradation and pollution.

THAT, the local community has been displaced without following the principle of public participation or compensation. The National Police Service Commission (NPSC) has not embraced the aspect of community social responsibility hence the community has not benefitted in any way despite having forfeited their land for training purposes to the Government.

THAT, the issues in respect of which this Petition is made are not pending before any court of law, constitutional or statutory body.

Therefore, your humble Petitioners pray that the National Assembly, through the Departmental Committee on Administration and National Security:

- (i) investigates and inquires into the matter and recommends a lasting solution to this persistent problem;
- (ii) recommends compensation for the families who have lost their kin due to the training activities and those injured during the trainings; and,
- (iii) makes any other order and/or directive that it deems fit in the circumstances of this plight of traders.

Your Petitioners will ever pray. Thank you.

Hon. Speaker: Nobody else can give you permission; not even the Member for Meru County. So, ignore what she may be urging you to say. If the Member for Meru wants to comment on the Petition, this is the appropriate time to comment.

(Consultations)

It cannot be on anything else and the comments must also be guided by the rules of relevance. You cannot bring other things. Let us have Hon. Rasso.

Hon. Dido: Thank you very much, Hon. Speaker. I want to comment on that Petition. It is very important. However, there are many petitions that have been brought before this House. As leaders of this country, we must be careful to guard everything good, including security of this country. The police are a national good and so is the military. If we deny them training opportunities and land, how do we expect them to provide the public good? That is why these petitions are important. We must look at it from either side, that is the interests of the community and the national good.

Hon. Speaker: I want to make an observation. I am sure Members have noticed that there is an increase in the number of petitions. We cannot as Parliament gag Members. It looks like petitions are replacing Questions. My appeal would be to those that present, to the Budget and Appropriations Committee, the budget of Parliament, to take into account this particular development because when a Petition comes it will be referred to a Committee and in many cases, committees have to travel out of Parliament to go and investigate and bring reports that address the issues raised in those petitions.

There is nothing wrong with anybody bringing whatever kind of Petition as long as it is within the rules. But I am instructing the Clerk's department to deny any Member who brings petitions that appear to likely stoke tribal or communal animosity. This House, like the Hon. Member for Kisumu West said, must rise to be the National Assembly of the Republic. When we are discussing issues, whether they touch on whatever community, let us keep in mind that they are Kenyans. Let us not bring issues to the Floor of the House which could turn situations on the ground worse off.

Member for Kibra!

Hon. Okoth: I thank you, Hon. Speaker. I rise to support the Petition. As Hon. Rasso said, this issue of ensuring that our police and security forces are best trained does not apply to this pertinent issue right now of allocation of land and site, but it is also in the nature and mentality of their training. We happen to be in a new constitutional dispensation in which we expect that our police forces, apart from the basic skills and security skills they have, bear the mentality and attitude about promoting human rights, protecting human rights and ensuring Kenyans enjoy fully all the freedoms and human rights.

You have seen some of the regrettable conduct of the police force in the Mumias issue. The police acted contrary to the spirit of the Constitution. The issue of Mumias does not specifically touch on the physical space and the resources for police to train and do their work rather it touches on the style, approach, methodology and understanding of what it is to be a security service in Kenya, how to protect the Kenyan citizens and help them enjoy their human rights. The police should not be in the lead in violating people's human rights in the course of doing security work.

So, I support this Petition. We are right in the middle of 16 days of activism against gender violence. I know that Members of this House have been involved in issues related to gender-based violence recently that do not in any way uplift the honour of this House. These are matters of security. It has touched within the inclination and ---

Hon. Speaker: The comments are limited to a maximum of two minutes and they are guided by the rules of relevance.

Hon. Okoth: Thank you, Hon. Speaker and I hope that we all uphold respect for our colleagues and do not participate in gender-based violence.

Hon. Speaker: Hon. Members it is not just anything that excites that is relevant. The issue of gender-based violence appears to be a matter that the Member for Kibra is very passionate about and obviously seems to excite the Member for Meru County. Let us have the Member for Igembe Central

Hon. Kubai Iringo: Thank you, Hon. Speaker for giving me this opportunity to comment on this Petition. In as much as we would like to get grounds for our forces to train so that they can be effective in their work, they should also be careful when they are handling weapons like grenades and military machinery, which are a danger to the communities in the areas where they train. They should be careful because they cannot live in isolation with the community. It is the community that gives up this land and so they should also benefit from the activities which go on there. In as much as officers are trained, the communities should also benefit. More so, they should guard the community. They should not dispose of material that could expose the communities to danger.

I support.

Hon. Speaker: That Petition, as well as the earlier one by Hon. Muindi, will go to the Departmental Committee on Administration and National Security. The next Petition is by the Member from Kiambu.

Hon. Njomo: Thank you, Hon. Speaker. This is a public Petition by the civil servants working in Kiambu County on the need for a review of house allowances for public servants.

REVIEW OF HOUSE ALLOWANCES FOR PUBLIC SERVANTS

I, the undersigned, on behalf of civil servants working and residing in Kiambu County, draw the attention of the House to the following:-

THAT, the public service policy entitles all public and civil servant to house allowance.

THAT, Kiambu County is a metropolitan area and is classified as “others” in categorisation of regions for allocation of the stipulated house allowance.

THAT, civil servants working in Kiambu earn a meager house allowance as compared to civil servants working in the neighbouring Nairobi County, and the rates are not commensurate to the rent rates charged in Kiambu County.

THAT, due to the County’s proximity to Nairobi most of the people working in Nairobi County in both public and private companies reside in Kiambu County, therefore, creating a high demand for housing.

THAT, the high influx of people has led to extremely high rental rates and increased cost of living with no commensurate review or adjustment in the house allowance of Kiambu County public servants.

THAT, there is growing discontent among the civil servants working in these areas as they are unable to afford decent housing.

THAT, efforts to resolve the matter with the Salaries and Remuneration Commission (SRC) have been futile and that, the issues in respect of which this Petition is made are not pending before any court of law, constitutional or statutory body.

Therefore, your humble petitioners pray that the National Assembly, through the Departmental Committee on Labour and Social Welfare:

- i) investigates the circumstances that led to the disparities in payment of house allowance for public servants in Kiambu and Nairobi County;
- ii) recommends that the Salaries and Remuneration Commission harmonizes payment of house allowance for public servants working in Nairobi City and Kiambu county and makes any other order or direction that it deems fit in the circumstances of the matter.

Hon. Speaker: Is any Member interested in commenting on the petition? Let us have Hon. Maanzo.

Hon. Maanzo: Thank you, Hon. Speaker. I would like to comment on the petition by Hon. Jude Njomo. This problem does not just touch on Kiambu County but other areas including Mavoko, Ongata Rongai and Kajiado. The Committee should consider all the regions that are affected by this problem so that the matter is not brought back to Parliament. There is a prayer for any other orders. These other regions could be covered under that request.

Hon. Speaker: Hon. Members, as we look into this petition, I do not know whether Hon. Jude Njomo has addressed the issues of Article 230(4) (b) of the Constitution on the functions of the Salaries and Remuneration Commission (SRC). The SRC’s functions with regard to other public servants are to advise both the national Government and the county governments on the salaries and benefits payable to public servants. Does the petition suggest that the SRC has been unable to perform that function and, therefore, the petitioner wants Hon. Were’s Committee to step in and force the SRC to do so when we know that in performance of their functions, the SRC are not subject to control or direction by anybody, person or authority?

Hon. Njomo, you can canvass along those points before the Committee. I want us to move faster because we have another petition by Hon. Lessonet.

Hon. Speaker: Member for Eldama Ravine.

Hon. Lessonet: Thank you, Hon. Speaker. Members might be thinking that I want to talk about the National Government Constituencies Development Fund (NG-CDF) but today I have a petition.

RE-OPENING OF KISII UNIVERSITY'S ELDAMA RAVINE CAMPUS

I, the undersigned, on behalf of the Kisii University, Ravine Campus in Eldama Ravine Constituency, draw the attention of the House to the following:-

THAT, Kisii University, Ravine Campus is located in Eldama Ravine Constituency, Baringo County;

THAT, in November 2015, the Commission for University Education conducted a technical inspection on the standards of academic resources at the campus;

THAT, the findings satisfied standards for accreditation of a university campus in Kenya;

THAT, on 31st February 2016, the Commission for University Education allegedly issued directive for the closure of Eldama Ravine Campus;

THAT, the impending closure of Kisii University, Eldama Ravine Campus, shall greatly affect the students, community and business environment noting the positive impact the campus has had on the Eldama Ravine Community, especially social and economic aspects;

THAT, the closure of the campus will also affect the education standards in the county and further infringe on Article 43(1)(f) of the Constitution of Kenya, which guarantees that education is a fundamental human right;

THAT, the closure of the campus will greatly disadvantage over 400 students currently enrolled in various programmes at the university.

THAT, the Eldama Ravine community is supportive of the university and has allocated five acres of land in Kamelilo area for construction of a fully-fledged campus; and,

THAT, the issues in respect of which this petition is made are not pending before any court of law, constitutional or statutory body.

Therefore, your humble petitioners pray that the National Assembly, through the Departmental Committee on Education, Research and Technology—

(i) Recommends that the Ministry of Education, Science and Technology, through the Commission for University Education, grants Kisii University, Ravine Campus, adequate time to comply with all requirements set by the Commission;

(ii) Ensures that the petitioners' plight is addressed; and,

(iii) Makes any other order or direction that it deems fit in the circumstances of the matter.

Your petitioners will ever pray.

Hon. Speaker: The petition by Hon. Lessonet is referred to the Departmental Committee on Education, Research and Technology.

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

Hon. Speaker: Hon. Lentoimaga, what is it?

Hon. Lentoimaga: Thank you, Hon. Speaker. Yesterday, you tasked me with the responsibility of getting a petition filed by the Member for North Imenti, Hon. Dawood. I checked our records and found out that Hon. Dawood brought a petition to the Committee, through the House, on 8th August 2014 on compensation of the late John Murungi Nderia, a policeman who died while on duty. However, Hon. Dawood withdrew the same petition on 17th

February, 2015. We do not have any pending petition from Hon. Dawood. You can confirm that from the HANSARD.

Hon. Speaker: Hon. Dawood, did you withdraw your petition?

Hon. Dawood: Hon. Speaker, the Vice-Chairman is talking about the petition that I withdrew in 2015. I am talking about a petition I presented to the House on 1st March 2016 regarding two police officers who went on retirement but have never received their benefits. The Committee says that they do not have that petition. I approached the Table Office in September, when I was told that the petition was found and that I should just wait for the reply. On 6th October, 2016 I was told that the CS would be here on 11th October, 2016, and that he would respond to my question. The petition that the Vice-Chairman talked about had been overtaken by events. That is why I withdrew it. I want to know the fate of the petition that I tabled on 1st March, 2016.

Hon. Speaker: Hon. Lentoimaga, is your Committee in receipt of that petition?

Hon. Lentoimaga: Hon. Speaker, we only have a request from Hon. Dawood, seeking to appear before the Committee for his questions to be answered.

Hon. Speaker: I order that the Clerk establishes whether the petition assumed the nature of a Question and therefore converted to be a matter to be responded to. An explanation will be given tomorrow in the afternoon. Should it still be a petition, then the Committee will be properly served.

PAPERS LAID

Hon. Speaker: Let us have the 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, 30th November, 2016:

The Annual Report and Financial Statements of Kibabii University College for the Financial Year that ended 30th June, 2015

The Report of the Auditor-General and the Financial Statement of Kibwezi Makindu Water and Sanitation Company Limited for the year that ended 30th June, 2014

The Report of the Auditor-General and the Financial Statement of the Judiciary for the year that ended 30th June, 2015

The Report of the Auditor-General and the Financial Statement in respect of the following constituencies for the year that ended 30th June, 2015 and the certificate therein:

- (i) Endebes Constituency
- (ii) Konoin Constituency
- (iii) Sigowet/Soin Constituency
- (iv) Tiaty Constituency
- (v) Eldama Ravine Constituency
- (vi) Naivasha Constituency
- (vii) Nakuru Town East Constituency
- (viii) Narok South Constituency
- (ix) Kinangop Constituency

Hon. Speaker: There is a Paper to be laid by Hon. Wilber Ottichilo.

Hon. (Dr.) Ottichilo: Hon. Speaker, I beg to lay the following Paper on the Table of the House today Wednesday, November 30th 2016:

The Report of the Departmental Committee on Environment and Natural Resources on the inquiry into the impact of the Standard Gauge Railway on the environment of the Tsavo Conservation area.

Hon. Speaker: Let us have the Chairperson of the Departmental Committee on Agriculture, Livestock and Cooperatives.

Hon. Nooru: Hon. Speaker, I beg to lay the following Paper on the Table of the House today Wednesday, 30th November, 2016:

The Report of the Departmental Committee on Agriculture, Livestock and Cooperatives on genetically modified food and food products (GMO).

Hon. Speaker: Next is the Chairperson of the Select Committee on Regional Integration.

Hon. (Ms.) Kajuju: Hon. Speaker, I beg to lay the following Papers on the Table of the House today Wednesday, 30th November, 2016:

The Report of the Select Committee on Regional Integration on its consideration of:

- i) The Protocol to operationalise the extended jurisdiction of the East African Court of Justice
- ii) The East African Community Protocol on Privileges and Immunities.
- iii) The Ratification of the Nile Basin Cooperative Framework Agreement.

Hon. Speaker: Next is the Chairperson of the Departmental Committee on Labour and Social Welfare.

Hon. Were: Hon. Speaker, I beg to lay the following Paper on the Table of the House today Wednesday, 30th November, 2016:

Report of the Departmental Committee on Labour and Social Welfare on the Rio 2016 Olympic Games in Brazil and inquiry into the alleged mismanagement of Team Kenya

NOTICES OF MOTIONS

ADOPTION OF REPORT ON IMPACT OF SGR ON ENVIRONMENT

Hon. Speaker: Let us have Hon. (Dr.) Ottichilo.

Hon. (Dr.) Ottichilo: Hon. Speaker, I beg to give notice of the following Motion:

THAT this House adopts the Report of the Departmental Committee on Environment and Natural Resources on the inquiry into the impact of the Standard Gauge Railway on the environment of the Tsavo Conservation area, laid on the Table of the House today Wednesday, 30th November, 2016.

Hon. Speaker: Hon. Adan Nooru.

ADOPTION OF REPORT ON GENETICALLY MODIFIED FOOD

Hon. Nooru: Hon. Speaker, I beg to give notice of the following Motion:

THAT this House adopts the Report of the Departmental Committee on Agriculture, Livestock and Cooperatives on genetically modified food and food products (GMO), laid on the Table of the House today Wednesday, November 30th 2016.

Hon. Speaker: Hon. Florence Kajuju:

Hon. (Ms.) Kajuju: Hon. Speaker, I seek to be allowed to give notice tomorrow in the afternoon.

Hon. Speaker: Very well.

Hon. (Ms.) Kajuju: Thank you, Hon. Speaker.

Hon. Speaker: Hon. Were.

ADOPTION OF REPORT ON RIO 2016 OLYMPIC GAMES

Hon. Were: Hon. Speaker, I beg to give notice of the following Motion:

THAT this House adopts the Report of the Departmental Committee on Labour and Social Welfare on the Rio 2016 Olympic Games in Brazil and inquiry into the alleged mismanagement of Team Kenya, laid on the Table of the House today Wednesday, November 30th 2016.

Hon. Speaker: Next Order!

COMMUNICAITON FROM THE CHAIR

APPLICATION OF STANDING ORDER 176 ON DISCHARGES OF MEMBERS FROM COMMITTEES

Hon. Speaker: Member for Ainabkoi is likely to remain standing for a long time. Hon. Members, I had indicated that I was going to make some communication. It is a little long, but I have realised that a few of us have already done their work today and left. So, if we sit beyond this time, we are likely to have fewer Members.

Hon. Members, this Communication is on the application of Standing Order No. 176 on discharges of members from Committees.

Hon. Members, on Thursday, 27th October, 2016 during the afternoon sitting, the Leader of the Majority Party, Hon. Aden Duale, MP, rose on a point of order seeking direction from the Speaker on the de-whipping of Members from Committees by parliamentary parties pursuant to Standing Order No. 176. Specifically, he sought a determination of the question as to whether political parties can invoke the provisions of Standing Order No. 176 against certain Members despite the provisions of the Constitution; in particular Article 47 on the right to fair administrative action; Article 50 on the right to fair hearing, and Article 236 (b) on the protection of public officers.

Additionally, the Leader of the Majority Party sought guidance whether the House has a role in the process of the discharge of a Member from a Committee to which it considered and approved his or her appointment.

He also sought guidance on whether our current practice of actualising the provisions of Standing Order No. 176 would be unconstitutional to the extent that, in some cases, the discharges are necessitated by matters external to the proceedings or business of the House. He also contended that even if that particular Standing Order did not exist, political parties would still have the liberty and lawful avenues to punish or instill discipline on their members within the confines of internal party mechanisms and the Political Parties Act.

From the issues canvassed by Leader of the Majority Party, the following issues arouse for thoughtful consideration:

- i) Whether and to what extent Standing Order No. 176 may be used as a mechanism for enforcing party discipline for breaches outside the proceedings of the House or its Committees;
- ii) Whether the provisions of Standing Order No. 176 is to be applied against Members of the House by instigation of or order of persons other than Members of the House;
- iii) Whether Standing Order No. 176 adequately protects the rights of Members in the performance of their functions in the House. Related to this is the question of whether in the practice of Standing Order No. 176 without instituting a formal fair hearing forum within a political party setting in the confines of the precincts of the Parliament, we have been exposing Members to some form of injustice and unfair prejudice.

Hon. Members, you will recall that in reserving the concerns of the Leader of the Majority Party for a considered ruling, I did mention that the Procedure and House Rules Committee has been actively dealing with the issue of the review of Standing Order No.176 in light of formal concerns raised by Members and various suggestions for amendment of the Standing Orders. Undeniably, this matter has caused disquiet in the House and specifically the leadership for a long time. Indeed, the Member for Lunga Lunga, Hon. Khatib Mwashetani had earlier in the Session raised matters along the same lines. The concerns raised with regard to the application of Standing Order No.176 and the interventions sought have been threefold:

- i) The need for the affected Member to be notified before discharge;
- ii) The need to subject the aforementioned notification to a forum of Members of the parliamentary party in the House; and
- iii) The need for the affected Member to be afforded a practical and fair hearing within the parliamentary party set-up by his or her parliamentary party.

Hon. Members, you may also recall that this is not the first time that Parliament is being faced with the issue of discharge from committee membership. Indeed, as I indicated in a Communication on 14th April, 2016, the Tenth Parliament was severally confronted by a similar issue. Notably, the Departmental Committee on Justice and Legal Affairs, then chaired by Hon. Ababu Namwamba, MP, remained moribund for more than one year as one of the coalition partners attempted to de-whip its Members from the Committee. The then Speaker, Hon. Marende, noted that he could not effect the discharge as the Standing Orders were silent on the matter. The then Standing Order No. 176 provided that, and I quote:

“A vacant position occasioned by the resignation, removal, or appointment of a Member to the Government shall be filled within seven days after the National Assembly next meets.”

The ensuing disagreements saw the mandate of the Committee being taken over by the Constitutional Implementation Oversight Committee, then chaired by Hon. Abdikadir Mohamed. I am sure the matter is very fresh to Members who served in the House then. To demonstrate the active debate that ensued, the HANSARD records shows that on 27th October, 2011, the then Leader of Government Business who was also the Vice-President and Minister for Home Affairs was taken to task by the then nominated Member, the Hon. Shebesh to explain why he had not effected the removal of certain Members from the Departmental Committee on Justice and Legal Affairs following her party’s decision. In the debate, the then Member for Chepalungu, the Hon. Isaac Ruto contended that since the Standing Orders did not define what comprised the removal

process, or who was to commence or effect the removal, the Leader of Government Business had no authority to remove any Member from a Committee.

Hon. Members, in the subsequent review of the Standing Orders, records indicate that the House was unanimous in passing the new provision giving parties powers to remove individual Members in Committees and replace them as in other multi-party jurisdictions. The Deputy Leader of the Minority Party, Hon. Midiwo, may recall the push for change of the rules to empower parties to discharge their Members from Committees which he fervently spearheaded together with the then Member for Gichugu, Hon. Martha Karua.

Hon. Members, in parliamentary practice, party discipline is integral in the management of parliamentary party affairs and whips play an important role. For votes on key issues, it is imperative for the Majority Party and the Minority Party to maximize the turnout of their Members. As such, the whips try to ensure that every Member from their party turns out to vote. The duties of whips include keeping Members and peers informed of forthcoming parliamentary business, maintaining the party's voting strength by ensuring Members attend important debates and support their party in parliamentary divisions, passing on to the party leadership the opinions of Members and ensuring party discipline. Party discipline is a mechanism, political parties use to keep their Members functioning as a cohesive group rather than as an informal collection of individuals. It encourages party loyalty among Members who may be tempted to act individually. The question that arises with regard to the current concerns raised by the House is: To what extent and in what manner can a parliamentary party enforce party discipline by de-whipping Members from committees of the House?

Hon. Members, in the Third Edition of *Parliamentary Practice in New Zealand*, David McGee writes that permanent changes in replacing Members on select committees may be made by the House itself but, more commonly, they are made by the Business Committee. However, while the Business Committee formally appoints Members to committees, it is normally concerned with the party proportions rather than the individual Members proposed to serve on each committee, which is regarded as a matter for each party to determine according to its internal arrangements. Until 1972, replacing Members on select committees could only be effected by the House on a Motion with notice. The practice in New Zealand has since changed and making changes to committees is a largely administrative matter dealt with off the Floor of the House and formally effected by the Business Committee without question. The only instance where the Business Committee exercises its own judgment on a proposal, is where a party proposes to vary its proportions to a committee by replacing its Member with a Member of another party. In our context, the mandate of considering these proportions and proposing appointments is vested in the Committee on Selection.

Hon. Members, in the House of Commons of the UK, the general rule is that a Member has to be notified before appointment to or discharged from a committee. Indeed, in the UK Standing Order NO.121 states---

Hon. Members I would like to pause and allow Members to come in.

(Hon. Members walked into the Chamber)

Hon. Members making your way in, I just paused to allow those who were coming in to come in. Take your seats please.

Let me continue. I began by explaining that in the House of Commons in the UK, the general rule is that a Member has to be notified before appointment to or discharge from a committee. Indeed, Standing Order No. 121 (1) states as follows and I quote:

“Any member intending to propose that certain members be members of a select committee, or be discharged from a select committee, shall give notice of the name of the member whom he intends so to propose and shall endeavour to ascertain previously whether each such member will give his attendance on the committee, and shall endeavour to give notice to any member whom he proposes to be discharged from the committee.”

The key words to be emphasised here are “shall endeavour to give notice to any Member whom he proposes to be discharged from the committees.” Obviously, this implies that for discharges, the rule of natural justice and fair hearing needs to apply in the discharge process.

Hon. Members, that brings us to the next question, which is: What is a notice? In a ruling made by the United States of America (USA) Supreme Court on 24th April 1950 in the case of *Mullane versus Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950) the court held that notice must be “reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections”.

It will be also noted that in the United Kingdom, both the Labour Party and the Conservative Party have a code of conduct that requires Members to behave in a way that is consistent with the policies of their party, to have a good voting record and not to bring the party into disrepute. Indeed, in the Sixth Edition of *How Parliament Works*, Robert Rogers and Rhodri Walters write that a Back-Bencher’s cardinal sin is to abstain or worse vote against his or her party without giving any warning. Notwithstanding the fact that the code for both the Labour and the Conservative parties contain a conscience clause, which recognizes a right of dissent on matters of deeply held personal conviction, Members who vote against their party position are usually perceived as having committed a serious breach of party discipline.

In a study of the House of Commons, when asked to rank “acts of disloyalty” in order of seriousness, both party leaders and Back-Benchers rated cross-voting as the most serious violation of party discipline. In addition to being either excluded by party associates or refused party funds or organizational support in election campaigns, parties have other mechanisms to punish Members that they deem to be errant. These include refusal for promotion to Cabinet; denial of decent office accommodation and adequate staff; being overlooked as members of certain prestigious parliamentary committees; denial of opportunities to be part of travelling parliamentary delegations; denial of opportunity to ask a question during prime time such as Question Period; or refusal of party assistance in performing services for constituents and discharge from party caucuses.

Likewise, in the German Bundestag, parliamentary groups play a key role in placing members to serve in committees as they appoint committee members, and may also remove individual members and replace them at will with another of its members.

In the United States Congress, the Senate, by a resolution, appoints chairs and members to serve in standing committees and to fill vacancies thereon. However, while the Senate Rules are fairly clear regarding how nominations are to be approved as stated above, they do not address how nomination of senators to committees by parties is to be made. In practice, each party vests this authority to their parliamentary group meeting, popularly referred to as “conference”. The Republican Party has the Committee on Committees comprising of the party

leader and senators that nominates members to committees, who are then approved by the Republican Conference. The Democratic Party on the other hand has the Democratic Steering and Outreach Committee comprising the Democratic Party Leader in the House, the Democratic Whips and most senior Democrats, who make nominations to committees before they are approved by the Democratic Conference – which comprises all Democrats in the Senate. Nominations and replacements made by these panels are rarely challenged on the Floor because it is in the parties' forum where decisions are made.

Hon. Members, in our case, the law relating to internal party disciplinary measures has since been radically changed by the Constitution and the enactment and amendment of our electoral laws. Article 47 of the Constitution, Sub- Article 1, provides that every person has a right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair. In addition, Committees are established pursuant to Article 124 of the Constitution for the orderly conduct of the proceedings of the House. Consequently, membership to a committee forms part of the endeavour to ensure the orderly conduct of the proceedings of the House.

In my opinion and as is the practice in comparative jurisdictions, for a parliamentary party to de-whip its members, the reason for the action must necessarily relate to an act or omission by the members that relates to the business of the House. This is particularly as espoused in my preceding examples of the United Kingdom Labour and Conservative parties' codes of conduct that require members to behave in a way that is consistent with the policies of their parties, to have a good voting record and not to bring the party into disrepute in the House. The decision to deny a member the right to actively participate in committees without a right to fair administrative action and for reasons unrelated to the business of the House would, in my opinion, offend the letter and the spirit of Articles 74 and 124 of the Constitution.

Hon. Members, though the decision to de-whip a member from a committee is one to be made internally by a parliamentary party, the current Standing Order No.176 neither incorporates the need for the decision of the party to be based on any grounds nor does it provide for a procedure affording the affected member a right to be heard. When compared against the extensive provisions under the Political Parties Act with regard to the discipline of members by parties that sponsored them to the House, the inadequacy of the Standing Order, which parliamentary parties would use to discipline their members within the House, becomes apparent. You will agree that this clear disparity calls for an urgent review of the text of that Standing Order.

Hon. Members, the issue of enforcing party discipline within the House through discharge of members from Committees is indeed a serious issue that requires conscious consideration by all. I am aware that the Procedure and House Rules Committee, which I chair, is considering the matter at length. Since I will be expected to preside in the House during the debate on the matter at hand, I request to excuse myself from the Committee until the end of that process. In the meantime, I request the Members of the Committee to ensure that the report on the consideration of these concerns is tabled soonest possible to allow the House to substantively consider the recommendations arrived at and deal with this recurring concern.

In the meantime, until this House addresses the question of the appropriate process for the discharge of members from committees, including putting in place formal mechanisms for notification and eventual removal of members from committees, I will not admit any further requests for the discharge of any member from a committee unless the whip of the party proposing the action demonstrates the following:

1. That, the parliamentary party has given the affected member notice of his or her intended discharge. The notice referred to here has the meaning ascribed to it by the USA Supreme Court Ruling quoted in this communication.
2. That, the parliamentary party has afforded the affected member a prior right to be heard on the issue. In this regard, it is not for the Speaker to dictate who will constitute neither the panel nor its procedure but it suffices to say that some form of a hearing must have taken place.

Hon. Members, for avoidance of doubt, this communication is not intended to amend the current Standing Order No.176 but to supplement the matters not provided for, which is requiring parties to comply with the constitutional standards of notification and fair hearing. In this regard, the decision of a party to discharge a member from a committee, having accorded him or her formal hearing, is final and ought not to be challenged or subjected to a vote in the House.

Next Order.

PROCEDURAL MOTION

APPROVAL OF A MORNING SITTING ON THURSDAY, 1ST DECEMBER 2016

Hon. Speaker: The Leader of the Majority Party.

Hon. A.B. Duale: Hon. Speaker, I beg to move the following Procedural Motion:

THAT, pursuant to the provisions of Standing Order No.30(3)(b), this House resolves to hold a Morning Sitting on Thursday, 1st December, 2016 commencing from 9.30 a.m. to 1.00 p.m. for purposes of considering urgent Business before the House.

Hon. Speaker, this Procedural Motion emanates from last night's discussion of the House Business Committee (HBC) that you chair. As we come to the close of the 4th Session and as per the calendar of the National Assembly, the House is set to go on recess tomorrow afternoon. The HBC has felt that we can have a morning session so that we wind up any urgent pending Bill, Report or Motion that we feel is important. It is just for contingency purposes. We felt that we have a sitting tomorrow morning so that tomorrow afternoon Members can break for their recess. We have a large number of Members of Parliament who are going to Mombasa to attend the Kenya Private Sector meeting which is being hosted in the South Coast. We have over 100 Members of Parliament who are going for games taking place at the Coast from 4th December 2016.

We did not see that the House can sit next week. Basically, over 200 Members of Parliament will be missing next week. So, we felt that we give time to the Office of the Clerk and Leadership that if there is any urgent matter, we can deal with it tomorrow. One of the urgent matters is the ratification by the House of the Climate Change Policy which we need to do as a country and any other issue. It is a Procedural Motion to cater for urgent business. At the end of the day, tomorrow afternoon, we will have to put the Question. From experience, after 4.00 O'clock rarely do we have quorum. So, we will deal with urgent business in the morning then we put the Question in the afternoon.

I ask my friend Hon. Jakoyo Midiwo who was also in the HBC to second. It is a straightforward Procedural Motion. I beg to move.

Hon. Speaker: Hon. Midiwo.

Hon. Midiwo: Hon. Speaker, I beg to second. The reasons have been well articulated by the Leader of the Majority Party. The only thing he has not said is that we needed to also deal with some issues so that we can have time next week to deal with the Budget Policy Statement (BPS) by engaging the various ministries. We need to clear our desk tomorrow morning and afternoon and next week we will be here in Committees to deal with what is pending bearing in mind that we have to finish the budget process by March in order for us to go for elections in August. That is the big reason.

I second.

(Question proposed)

(Question put and agreed to)

Hon. Speaker: Hon. Members, it is important then we know that the sitting hour will be 9.30 a.m. so that we do not ring the Bell and there is no quorum at 9.30 a.m. Note that.

MOTIONS

THE REPORT OF THE WHOLE COMMITTEE ON THE COMPETITION (AMENDMENT) BILL

(Several Hon. Members walked in the aisle)

Hon. Speaker: Order, Members! Why do you not take your seats? Hon. Fatuma, why do you not want to participate in the business of the House?

Debate on this Motion was concluded yesterday. What remains for me to do is to put the Question and I confirm there is quorum for me to do so.

(Question put and agreed to)

Hon. A.B. Duale: Hon. Speaker, I beg to move that the Competition (Amendment) Bill, National Assembly Bill No.24 of 2016 be now read the Third Time.

I request Hon. Washiali to second.

Hon. Washiali: Hon. Speaker, I beg to second.

(Question proposed)

(Question put and agreed to)

*(The Bill was accordingly read the
Third Time and passed)*

THE REPORT OF THE COMMITTEE OF THE WHOLE HOUSE ON THE CONTEMPT OF COURT BILL

(An Hon. Member walked in the gangways)

Hon. Speaker: This Member who is walking from corner to corner, remain standing.

Hon. Members: Freeze!

Hon. Speaker: Again, debate on this Motion was concluded. What remains is for me to put the Question. I confirm that we have quorum for me to do so.

(Question put and agreed to)

Hon. A.B. Duale: Hon. Speaker, I beg to move that the Contempt of Court Bill, National Assembly Bill No.32 of 2016 be now read the Third time.

I also request Hon. Washiali to second.

Hon. Washiali: Hon. Speaker, I beg to second.

(Question proposed)

(Question put and agreed to)

*(The Bill was accordingly read the
Third Time and passed)*

BILLS

Second Readings

THE NATIONAL HONOURS (AMENDMENT) BILL

(Hon. Abongotum on 24.11.2016)

(Debate concluded on 29.11.2016)

Hon. Speaker: On this, what remains is the Question to be put for the Second Reading, which I hereby do.

(Question put and agreed to)

*The Bill was read a Second Time and committed
to a Committee of the whole House tomorrow)*

THE LAND VALUE INDEX LAWS (AMENDMENT) LAWS BILL

(Hon. A.B. Duale on 29.11.2016)

(Resumption of Debate interrupted on 29.11.2016)

Hon. Speaker: On this, the Mover was to reply.

Hon. A.B. Duale: Hon. Speaker, I beg to reply.

Hon. Speaker: Hon. Members, the Mover having replied, I will put the Question.

(Question put and agreed to)

*The Bill was read a Second Time and committed
to a Committee of the whole House tomorrow)*

Hon. Speaker: Next Order.

COMMITTEE OF THE WHOLE HOUSE

(Order for Committee read)

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

IN THE COMMITTEE

*[The Temporary Deputy Chairman
(Hon. Cheboi) took the Chair]*

THE WITNESS PROTECTION (AMENDMENT) BILL

The Temporary Deputy Chairman (Hon. Cheboi): Order, Hon. Members! We are now going to start with the Witness Protection (Amendment) Bill (National Assembly Bill No.12 of 2016).

(Clauses 2 and 3 agreed to)

Clause 4

Hon. Chepkong'a: Hon. Temporary Deputy Chairman, I beg to move:

THAT, the Bill be amended by deleting clause 4.

The Witness Protection Agency was seeking to remove itself from the application of the State Corporations Act. You cannot run away from legislation that this House has passed. You must be within it. So, we are proposing that they must continue to respect the provisions of the State Corporations Act.

(Question of the amendment proposed)

*Question, that the words to be left out be left out,
put and agreed)*

(Clause 4 deleted)

Clause 5

Hon. Chepkong'a: Hon. Temporary Deputy Chairman, I beg to move:

THAT, the Bill be amended by deleting paragraph (a).

What this Witness Protection Agency was seeking to do was to give itself powers to establish, reconstitute and abolish instruments as maybe necessary. We do not think that is their function. It does not have any power to abolish any instruments or to constitute anything. We cannot give that power to them as Parliament. So, we propose that it be deleted.

(Question of the amendment proposed)

*Question, that the words to be left out be left out,
put and agreed)*

(Clause 5 deleted)

Clause 6

Hon. Chepkong'a: Hon. Temporary Deputy Chairman, I beg to move:

THAT, clause 6 of the Bill be amended by—

(a) deleting paragraph (e) and substituting thereof the following paragraph—

(e) by inserting the following new subsection immediately after subsection (7)-

(7A) The Board shall consider the petition and, if it satisfied that it discloses a ground under subsection (6), the Board shall dismiss the Director.

(b) deleting paragraph (f) and substituting thereof the following new paragraph-

(f) by deleting subsection (8);

(c) deleting paragraph (g) and substituting thereof the following new paragraph-

(g) by deleting subsection (9);

(d) deleting paragraph (h) and substituting thereof the following new paragraph-

(h) by deleting subsection (10); and

(e) inserting the following new paragraph immediately after paragraph (h)-

(i) by deleting subsection (11).

The import of this is to streamline the process of removal of the Director of the Witness Protection Agency so that the Board is given the authority and the power to do so if the Director for any reason has not performed in accordance with his or her instrument of appointment. We are saying that the Board shall consider the petition, and if satisfied, that it discloses a ground

under sub-section (6), the Board shall dismiss the Director. So, it must be within the law itself. The dismissal must follow the law. That is basically what we are seeking to do. What we have done is just to streamline the rest. It was not making sense.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Cheboi): I see Hon. Oyoo.

Hon. Oyoo: The intention of this leeway is good given that these are some of the new constitutional bodies that were formed and the Board and the Director may have been picked without a rigorous, competitive process.

I support.

*(Question, that the words to be left out be left out,
put and agreed)*

*(Question, that the words to be inserted in place thereof be inserted,
put and agreed to)*

(Clause 6 as amended agreed to)

(Clauses 7, 8 and 9 agreed to)

Clause 10

Hon. Chepkong'a: Hon. Temporary Deputy Chairman, I beg to move:

THAT, the Bill be amended by deleting clause 10.

What the Agency was seeking to do is to bring itself within the ambit of a security organ. The clause that we are seeking to delete states:

“The legislative and regulatory provisions of auditing of national security organs and classified procurements and disposals shall, with necessary modifications, apply to the Agency.”

What we are saying, Hon. Temporary Deputy Chairman is, the Witness Protection Agency is not a security agency. So, it cannot bring itself within the ambit of the security organs so that it can avoid being audited and their audits being presented in public. We are saying that be deleted because they are not a security agency. This is where corruption comes through, if we leave it like this.

I thank you, Hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Cheboi): Okay.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Cheboi): I see the Leader of the Majority Party. Do you want to speak to this?

Hon. A.B. Duale: I support the Chairman of the Departmental Committee on Justice and Legal Affairs.

As we legislate on the war against corruption and witness protection, there is an overlapping of agencies that is, agencies taking over functions of other agencies. You will even see this when we come to the Proceeds of Crime and *Anti-Money Laundering (Amendment) Bill*. I am happy the Departmental Committee on Justice and Legal Affairs has bridged it. That function belongs to another institution, by law.

I support the deletion. Maybe it was an oversight when we were preparing the Bill.

*(Question, that the words to be left out be left out,
put and agreed)*

(Clause 10 as amended agreed to)

Clause 11

Hon. Chepkong'a: I beg to move:

THAT, Clause 11 of the Bill be amended –

(a) in paragraph (a) by deleting the word “Attorney General” and substituting thereof the word “Solicitor General”;

(b) in paragraph (b) by deleting the word “Cabinet Secretary” and substituting thereof the word “Principal Secretary”; and

(c) in paragraph (c) by deleting the word “Cabinet Secretary” and substituting thereof the word “Principal Secretary.”

What we seek to do is replace the chairperson of the board and the Cabinet Secretaries thereof. What was being proposed is that the Attorney-General (AG) shall be the chairperson of the advisory board. As you know, the AG appoints a number of persons to this Board. So, you cannot appoint people and become the chair again. We are saying that it should be the province of the Solicitor General.

The other one we are seeking to amend is to delete the “Cabinet Secretaries” as appearing thereon and replacing with Principal Secretaries (PSs). The Cabinet Secretaries cannot be sitting in small agencies like this one. It is not the work of the Cabinet Secretaries to sit in boards. It is for them to make policies. The work of PSs is to sit where Government policies are being implemented. We think this is the correct place for PSs. Therefore, the Solicitor General should be the chair of this agency.

I thank you.

The Temporary Deputy Chairman (Hon. Cheboi): Okay.

(Question of the amendment proposed)

*(Question, that the words to be left out be left out,
put and agreed)*

*(Question, that the words to be inserted in place thereof be inserted,
put and agreed to)*

(Clause 11 as amended agreed to)

(Clauses 12 and 13 agreed to)

Clause 14

Hon. Chepkong'a: I beg to move:

THAT, Clause 14 of the Bill be amended in the proposed new section 3U (6) by deleting paragraph (a) and substituting therefore the following new paragraph –

(a) by regulations provide guidelines for the operation of the committee;
and

What we are seeking is just to regularise an anomaly that we notice in the Bill. That is allowing this Agency to prepare guidelines. As you know, there is no one who has power to make law except this House. What we are saying is that, if they have to issue any guidelines, it must be in form of regulation. So, we are proposing that they must prepare regulations which will be brought to this House. They will go to the delegated Committee of this House.

I thank you.

The Temporary Deputy Chairman (Hon. Cheboi): Very well.

(Question of the amendment proposed)

*(Question, that the words to be left out be left out,
put and agreed)*

*(Question, that the words to be inserted in place thereof be inserted,
put and agreed to)*

(Clause 14 as amended agreed to)

(Clauses 15, 16, 17 and 18 agreed to)

Clause 19

Hon. Chepkong'a: I beg to move:

THAT, Clause 19 of the Bill be amended in the proposed new paragraph (b) by deleting the word “Attorney General.”

What we are seeking is to remove the AG. It is not the AG who investigates. He advises the President. The people who investigate for any crimes are the Director of Public Prosecutions (DPP), the National Police Service (NPS) and other law enforcement agencies like the Ethics and Anti-Corruption Commission (EACC). The AG does not investigate. He has no power to investigate.

I thank you.

The Temporary Deputy Chairman (Hon. Cheboi): Very well.

(Question of the amendment proposed)

I see the Leader of the Majority Party has something.

Hon. A.B. Duale: I hope the AG of the Republic of Kenya is watching me. Just because the Bills come through him, he wants to do everything and all under the sun. The AG has no powers and he cannot purport to take the powers of the DPP, he cannot purport to take the powers of the NPS and any other law enforcement agencies like the EACC. He is the legal advisor of the President and the Executive. So, I support the Chairman. I want to thank the Departmental Committee on Justice and Legal Affairs because they have really looked at this Bill seriously and got hold of where the AG wants to be a squatter. He wants to be a squatter where he can control all agencies. I hope he is watching me, my good friend Githu Muigai. We have denied you this one and we have denied you many other places. You must us space where the Accounting Officer is supposed to be, it is the Solicitor General; not the AG.

*(Question, that the words to be left out be left out,
put and agreed)*

(Clause 19 as amended agreed to)

(Clauses 20, 21, 22 and 23 agreed to)

(Clause 1 agreed to)

(Title agreed to)

The Temporary Deputy Chairman (Hon. Cheboi): Now, we are through with that one. Therefore, I call upon the Mover to move for reporting.

Hon. A.B. Duale: Thank you, Hon. Temporary Deputy Chairman. I beg to move that the Committee doth report to the House its consideration of the Witness Protection (Amendment) Bill, 2016 and its approval thereof with amendments.

(Question proposed)

(Question put and agreed to)

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Members, we will move to the next one. It is the Bribery Bill (National Assembly Bill No. 16 of 2016).

THE BRIBERY BILL

(Clauses 3, 4, 5,6,7,8 and 9 agreed to)

Clause 10

Hon. Chepkong'a: Hon. Temporary Deputy Chairman, I beg to move:
THAT, Clause 10 of the Bill be amended by deleting sub clause (2).

We are seeking to delete Sub-clause 2 of Clause 10. What we want to do, and which we think will not be appropriate, is to allow a private entity to prove that it had in place adequate procedures designed to prevent bribery and corruption. That is a matter that should be adduced in form of evidence. It cannot be by way of an Act of Parliament; we are just giving someone a waiver so that he does not adduce evidence. It cannot be on the face of it. Someone must adduce evidence and the court must assess whether the evidence is true. However, it cannot be provided and be given in law.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Cheboi): Leader of the Majority Party.

Hon. A.B Duale: Hon. Temporary Deputy Chairman, the Chairman needs to convince me on this. This Bill anticipates that all private entities have a code of ethics in as far as bribery is concerned. I got what the Chairman was saying, which is that the burden of proof is not with the institution. It is for them to provide evidence. Is that not what you were saying, Mr. Chairman? Hon. Temporary Deputy Chairman, I want the Chairman of the Departmental Committee to explain to us this matter. This is because the intent of the people who drafted this Bill is that the private sector must have its own measures and procedures that are internally built for fighting corruption within their institution.

The Temporary Deputy Chairman (Hon. Cheboi): Okay, as the Chairman regurgitates on that one, let me give a chance to Hon. Birdi who has been waiting for a long time.

Hon. (Ms.) Sunjeev: Thank you, Hon. Temporary Deputy Chairman. I tend to agree with Hon. Duale because this clause is the reason I was really holding this Bill in high regard. In as much as trying to curb corruption, we need to give private entities the room, space and the benefit of the doubt so that they can fight this vice. So, I do not support this deletion.

The Temporary Deputy Chairman (Hon. Cheboi): Let us hear what the Chairman of the Committee has to say.

Hon. Chepkong'a: Thank you. I have had some conversation with the Leader of the Majority Party. We do not want the people to say that bribery happened in their place and the law excludes it. If bribery takes place, you should have put in place measures to ensure that it does not happen. It will be you to persuade the court that, indeed, you had put measures but unfortunately you do not know where the thieves came from. So, it is an evidential issue. It cannot be a legal question that you are given a waiver that it occurred and so you are saying: "There is nothing I could do."

The Temporary Deputy Chairman (Hon. Cheboi): So, are you fortifying your position or you are withdrawing it?

Hon. Chepkong'a: No, I am fortifying my position.

The Temporary Deputy Chairman (Hon. Cheboi): Now, it is up to the membership to make the decision. I will give two more Members an opportunity. Let us start with Hon. Gaichuhie then lastly, I will give Hon. Kenta the last one.

Hon. Gaichuhie: Thank you, Hon. Temporary Deputy Chairman. I want to agree with the Chairman that if an institution has put up measures to protect bribery, they should not go scot free. In the event bribery happens in an institution, they are still liable. That is why I want to support what the Chairman is saying.

The Temporary Deputy Chairman (Hon. Cheboi): Okay. Hon. Moitalel ole Kenta, the Member for Narok North.

Hon. ole Kenta: Hon. Temporary Deputy Chairman, I would like to support the Chairman's position. At the end of the day there is a situation where there are two entities; the individuals employed by the organisation and the organisation itself. There must be that distinction. So, I believe the co-operation of the organisation will not suffer because of the activities of individual employees. I think it is right.

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Members I am going to put the Question and I want Members to pay attention.

*(Question, that the words to be left out be left out,
put and agreed to)*

(Clause 10 as amended agreed to)

(Clauses 11, 12, 13, 14 and 15 agreed to)

Clause 16

Hon. Chepkong'a: Thank you, Hon. Temporary Deputy Chairman. I beg to move:

THAT, Clause 16 of the Bill be amended in sub clause (2) by deleting the words "to be proceeded against and punished accordingly" and substituting therefor the words "for prosecution".

We are seeking to clean the clause by removing the words which we thought did not correctly capture the spirit of the clause. So, "to be proceeded against and punished accordingly" should be replaced with "for prosecution".

(Question of the amendment proposed)

*(Question, that the words to be left out be left out,
put and agreed to)*

*(Question, that the words to be inserted in place thereof be inserted,
put and agreed to)*

(Clause 16 as amended agreed to)

Clause 17

Hon. Chepkong'a: Thank you, Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 17 of the Bill be amended in sub clause (1) by inserting the words "partners and the" immediately after the words "name of the".

We are seeking to clean it up by inserting the word "partners." As you know these are offences relating to partnerships. So, if the partners are not brought in, there is nothing like

partnership in itself. A partnership is composed of partners, so the people to be prosecuted ought to be the partners.

(Question of the amendment proposed)

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

(Clause 17 as amended agreed to)

Clause 18

Hon. Chepkong'a: Thank you, Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 18 of the Bill be amended —

(a) in sub clause (1) by deleting the word “one” appearing in paragraph (a) and substituting therefor the word “five”;

(b) in sub clause (5) by deleting the word “behaviour” and substituting therefor the word “offences”;

(c) in sub clause (9) by deleting the word “less” and substituting therefor the word “more”;

(d) in sub clause (10) deleting the word “less” and substituting therefor the word “more”;

(e) in sub clause (11) by inserting the words “not more than” immediately before the words “ten years after conviction”; and

(f) deleting sub clause (13)

As you know corruption has become a very serious problem. We are seeking to increase the penalties and to give discretion to courts. If you tell one to pay Kshs1 million when they have stolen Kshs50 million, what really is that in relation to the amount that they have stolen? So as to become a deterrent, we give the courts discretion to levy a penalty of a maximum of Kshs 5million.

They can levy Kshs2 million or Kshs3 million but that is at their discretion. We want to increase the penalties to Kshs5 million.

We are deleting the words “less than” and replacing them with the words “not more than”. Ordinarily, it should not be “not more than”. That is the correct drafting process. We are cleaning up the Bill.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Cheboi): I will give two Members an opportunity to speak to this amendment. Let us first have the Leader of the Majority Party.

Hon. A.B. Duale: Hon. Temporary Deputy Chairman, I support this amendment. However, I should have moved a further amendment to increase the figure to Kshs10 million. In this case, we are dealing with the private sector, which has a lot of money. The proposed Kshs5 million is little money to a corporate body in the oil industry or a multinational corporation like Coca Cola Company or the British American Tobacco (BAT) Limited or the big banks that are

now involved with the Public Accounts Committee (PAC). We are having this law for the first time. If after its implementation it is felt that the figure is not sufficient, we can amend it after six months.

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Gaichuhie.

Hon. Gaichuhie: Hon. Temporary Deputy Chairman, I oppose the amendment because it should be “not less than Kshs5 million”. If I am being given a bribe of Kshs50 million and I know that my fine will not be more than Kshs5 million, what will deter me from receiving the bribe? I agree with the proposed figure but disagree with the words “not more than”. It should be “more than”. We do not have small or big bribery.

The Temporary Deputy Chairman (Hon. Cheboi): Hon. ole Kenta.

Hon. ole Kenta: Hon. Temporary Deputy Chairman, on the deletion of Sub-clause 13---

The Temporary Deputy Chairman (Hon. Cheboi): Hon. ole Kenta, we are dealing with Clause 18. I will allow Hon. (Ms.) Birdi to comment as you prepare yourself.

Hon. (Ms.) Sunjeev: Hon. Temporary Deputy Chairman, I support the proposed amendment by Hon. Chepkong’a. He moved Clause 18 as a whole but we were consulting with Hon. ole Kenta on Clause 18(f) on the deletion of Sub-clause 13.

The Temporary Deputy Chairman (Hon. Cheboi): I now realise where the confusion came from. Hon. ole Kenta wanted to talk about deletion of Sub-clause 13. You probably got so involved in the discussion that you missed the train.

(Laughter)

Hon. A.B. Duale: On a point of order, Hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Cheboi): Hon. A.B. Duale, I will not allow a point of order on that one. I know where you are heading to. Let us have Hon. ole Kenta.

Hon. ole Kenta: Hon. Temporary Deputy Chairman, I support the deletion of Sub-clause 13. It might have been an oversight. By giving courts that leeway, we were giving them a responsibility of making laws.

I support the deletion.

*(Question, that the words to be left out be left out,
put and agreed to)*

*(Question, that the words to be inserted in place thereof be inserted,
put and agreed to)*

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

(Clause 18 as amended agreed to)

(Clauses 19 and 20 agreed to)

Clause 21

Hon. Chepkong'a: Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 21 of the Bill be amended—

(a) in Sub-clause (1) by inserting the word “informant” immediately after the word “whistleblower”;

(b) in Sub-clause (2) by deleting the word “unfavorable” and substituting therefor the word “unfavourable”; and,

(c) in Sub-clause (3) by deleting the words “on a case by case basis” immediately after the words “Witness Protection Agency”

Hon. Temporary Deputy Chairman, we are introducing some generics here. The clause provides for a whistleblower but we also have informants. Therefore, we are adding an extra category of those who can report bribery.

Under Sub-clause (3), we are saying that the Witness Protection Agency shall consider the extent that a whistleblower is entitled to protection on a case by case basis depending on the gravity of the allegations made against the accused person.

(Question of the amendment proposed)

Hon. (Dr.) Kibunguchy: Hon. Temporary Deputy Chairman, I want clarification on part (b) of the proposed amendment.

The Temporary Deputy Chairman (Hon. Cheboi): Hon. (Dr.) Kibunguchy, we are dealing with Sub-clauses (1), (2), and (3) unless you are talking about what is in the Bill but is not subject of an amendment.

Hon. (Dr.) Kibunguchy: I meant Sub-clause (2). Why are they deleting the word “unfavorable” and substituting therefor the word “unfavourable”?

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Chepkong'a, please respond to that request. Doctors are sometimes very precise with what they are looking for.

Hon. Chepkong'a: Hon. Temporary Deputy Chairman, that must have been a typographical error by the clerk.

The Temporary Deputy Chairman (Hon. Cheboi): Do not bother about it because it minuses itself. Therefore, it becomes obsolete. You should just be careful about it. If the position stands, I will proceed to put the Question.

*(Question, that the word to be inserted be inserted,
put and agreed to)*

*(Question, that the words to be left out be left out,
put and agreed to)*

*(Question, that the word to be inserted in place thereof be inserted,
put and agreed to)*

(Clause 21 as amended agreed to)

(Clauses 22, 23, 24 and 25 agreed to)

Clause 26

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Chepkong'a, do you have an amendment to this clause?

Hon. Chepkong'a: Hon. Temporary Deputy Chairman, I beg to move:

THAT Clause 26 of the Bill be amended in sub-clause (2) by deleting the word "commenced" and substituting therefor the word "instituted".

What we seek to do is to substitute two words. We are deleting the word "commenced" and replace therefor with the word "instituted". You do not commence criminal proceedings. You institute criminal proceedings. That is the correct terminology in terms of legal language that is used in criminal matters.

(Question of the amendment proposed)

*(Question, that the word to be left out be left out,
put and agreed to)*

*(Question, that the word to be inserted in place thereof be inserted,
put and agreed to)*

(Clause 26 as amended agreed to)

New Clause 23A

The Temporary Deputy Chairman (Hon. Cheboi): Let us have the Mover to move Second Reading.

Hon. Chepkong'a: Hon. Temporary Deputy Chairman, I beg to move:

THAT the Bill be amended by inserting the following new clause immediately after clause 23-

Amendment of section 56 of No. 3 of 2003 23A. Section 56 of the Anti-Corruption and Economic Crimes Act, 2003, is amended in sub-section(1) by deleting the words "on evidence" and substituting therefor the words "if it is satisfied that there are reasonable grounds to suspect"

Hon. Temporary Deputy Chairman, many a times, it is very difficult for, say, the Director of Public Prosecutions (DPP), the Ethics and Anti-Corruption Commission (EACC) or the Directorate of Criminal Investigations (DCI) to have evidence so that it can investigate somebody who is suspected to be involved in corruption. What normally happens is that if you are suspected on reasonable grounds that you are involved in corruption, then you should be investigated and not on the basis of evidence. That is when you collect evidence so that you can prosecute the person. It can only be right to say that if the agency is satisfied on reasonable grounds and believes that you are a suspect or you are involved in corruption--- As you know, corruption is a very difficult thing to fight. As you have seen, many a times, people even hide. They are mentioned here at the Public Accounts Committee (PAC). People even swear affidavits to say: "I took money in sacks," then a person comes and says: "I do not know this person." Surely, how do you expect a house help to trade and have companies. That is the reason we

should allow EACC on reasonable grounds because that person is a reasonable suspect. You talk about billions of shillings having got lost in National Youth Service and you claim that the buck stops with me and now you are saying the buck does not stop with me, it stops with housemaid. That is even criminal in itself. We should not allow such conduct.

(Question of the new clause proposed)

(New clause read the First Time)

*(Question, that the new clause be read a Second Time,
proposed)*

The Temporary Deputy Chairman (Hon. Cheboi): I give a chance to two Members, the Leader of the Majority Party and Hon. Kenta in that order.

Hon. A.B. Duale: Hon. Temporary Deputy Chairman, this is a very good amendment. It seeks to insert the words “if it is satisfied that there are reasonable grounds to suspect.” You remember the other day I produced evidence of serious money laundering and there are serious leaders in this country who are suspected to have received that money. As Hon. Chepkong’a said, there are many suspects out there in the streets reasonable enough to be called suspects. There is enough reasonable ground but the law was not there. Today we are going to put this law that the EACC and the DPP must go after these people who appeared before PAC, particularly those who I am told are doing some cat walk.

You came before PAC and said that Hon. Duale is a beneficiary of the NYS loot and when a member of PAC asked you if you have evidence or enough thresholds, you did not even respond, but went to something else. This is very important for our country. We in the Jubilee Party are very serious and committed to the war against corruption. We have done it. We have sacked some of our best Cabinet Secretaries (CS) and Principal Secretaries (PS). We have sacked even the Chief of Staff of the Deputy President. So, now the ball is in the other group’s court that will be satisfied that there are reasonable grounds to suspect them.

I support.

The Temporary Deputy Chairman (Hon. Cheboi): Let us have Hon. Kenta.

Hon. ole Kenta: Hon. Temporary Deputy Chairman, I object this amendment. First of all, I believe it is unconstitutional. If we are not careful, we will open a door for people who blackmail others for all the wrong reasons. Honestly, how can you just come and say you suspect so and so and you put the investigative resources into that activity? The most important thing is you cannot have reasonable grounds without evidence. In criminal law or any law that affects somebody’s rights, there must be evidence. We cannot do things politically. What the Leader of the Majority Party is saying is that there were people who were cat walking. They have the agencies. Who has stopped them to investigate them if they have investigated others? It will be witch-hunt. In fact, it will be so dangerous. What are the parameters? That is the question.

The Temporary Deputy Chairman (Hon. Cheboi): What I will do is put the Question. I can see Hon. Lati has not spoken this afternoon. Let me give him that opportunity.

Hon. Lati: Hon. Temporary Deputy Chairman, we cannot say everything is unconstitutional even when the evidence looks like day and night. You have somebody who is charged of something. Harry Truman said the buck stops at the top. If money was stolen in

Waiguru's Ministry and she was the CS, what other evidence do you need? Let us also think of the public that is ripped off by these people. If you are sympathetic to the person who is suspected, we should also equally be more sympathetic to the people of Kenya whose money was taken.

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Members, I will put the Question. Be very keen because I see there is a lot of contention in this. Therefore, I will have to be very clear.

*(Question, that the new clause be read a Second Time,
put and agreed to)*

(The new clause was read a Second Time)

*(Question, that the new clause be added to the Bill,
put and agreed to)*

Clause 2

The Temporary Deputy Chairman (Hon. Cheboi): Order, Hon. Members! Committee Chair, you seem to have an amendment to Clause 2 unless you do not want to pursue it anymore.

Hon. Chepkong'a: Sorry, Hon. Temporary Deputy Chairman. I apologise. There is animated discussion that is going on here.

The Temporary Deputy Chairman (Hon. Cheboi): There should be no animal at all close to where you are. Did you say animated or animal besides you?

Hon. Chepkong'a: I said animated and the animation is because of a Member here who claims to be an independent member while he was elected on the Jubilee Party. That is the only reason why he won. If he tries the next time as an independent candidate, he will not see this House.

Hon. Temporary Deputy Chairman, I beg to move:

THAT Clause 2 of the Bill be amended in the definition of "Cabinet Secretary" "by deleting the words "the prevention of bribery" and substituting therefor the words "to justice".

What we seek to do is that with regard to issues of bribery, the CS responsible for it is the Minister for Justice. For the time being it is the Attorney-General but if we are going to have a minister then it should be the Minister for Justice. I thank you.

(Question of the amendment proposed)

Hon. Irea: On a point of order, Hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Cheboi): I will give one Member a chance. Member for Central Imeni, Hon. Irea.

Hon. Irea: Hon. Temporary Deputy Chairman, I was rising on a point of order. The Member who has just spoken is threatening the other with Jubilee and an independent party, which is wrong. Whether he comes from an independent party, Jubilee has not been tested. We will test it next year.

The Temporary Deputy Chairman (Hon. Cheboi): Well, I can tell you for sure that the Member for Narok North has been severely tested for legislative purposes. We are not in court, but it would have been a judicial notice. He participated in the 2007 elections with very good votes. He is here courtesy of the votes that he was given by the constituents of Narok North in the last elections. So, he is tested. Let us leave it at that. I do not want us to reopen this now. It is gone. Let us proceed legislating.

What defence do you need, Hon. ole Kenta. ?

Hon. ole Kenta: I think it is important that it goes on the HANSARD. I wanted to go on record that I was elected on a The National Alliance Party (TNA) ticket. They dissolved their party and joined an amorphous party, which we did not even understand what it is for. The law is very clear. I had a choice to either go to the new party or remain in another party. What I did was my constitutional right and I believe it was the right decision.

The Temporary Deputy Chairman (Hon. Cheboi): Let us hear what the Leader of the Majority Party has to say. I knew this was going to take that direction.

Hon. A. B. Duale: Hon. Temporary Deputy Speaker, I speak for Jubilee and you know I am his senior. I am his senior both in terms of ranking in the House and in leadership. This House amended the Political Parties Act. The TNA and the United Republican Party (URP) transited to a party called Jubilee. Dissidents and rebels like Hon. Kenta have in law been given 30 days. To the knowledge of the Speaker, he has not left. So, he is in Jubilee. He is a pastoralist like me and he has to consult the clan. He told me he will do it by January. If by January the clan tells him to join Jubilee, he will have no choice. Even where we come from, it is the clan that matters. We have serious and strong clans.

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Leader of the Majority Party, you have clearly indicated that the Member for Narok North is a pastoralist. You know he can move from one place to another, without having left, to go anywhere. He will probably come back to the same homestead that he was before. Let us leave it at that.

Hon. Lati: On a point of order, Hon. Temporary Deputy Speaker.

The Temporary Deputy Chairman (Hon. Cheboi): What is it Hon. Lelelit?

Hon. Lati: Hon. Temporary Deputy Chairman, Jubilee can never be an amorphous party. It is a party with all these Members of Parliament. You cannot call a party where all of us are in, amorphous. Is the Member in order to call a party that we all belong to an amorphous party? The party has all these Members and many governors than any other party in the country. The Member is more amorphous than anybody else.

(Laughter)

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Lelelit, that is the beauty of the game. You can be seated very close to the Member for Narok North and you do not want to tell him quietly. You have to go to the microphone. That is the beauty of the game in this House.

Let us proceed, we have had enough of that.

*(Question, that the words to be left out be left out,
put and agreed to)*

(Question, that the words to be inserted in place thereof be inserted,

put and agreed to)

(Clause 2 as amended agreed to)

(Title agreed to)

(Clause 1 agreed to)

THE BRIBERY BILL

The Temporary Deputy Chairman (Hon. Cheboi): We are now calling on the Mover to move reporting; the Leader of the Majority Party.

Hon. A.B. Duale: Hon. Temporary Deputy Chairman, he wants to join Jubilee and so, he was talking to me. He told me to talk to the President and the Deputy President, which I have agreed. So, he is coming back since he has realised he is going home.

The Temporary Deputy Chairman (Hon. Cheboi): You had indicated that he was a pastoralist and he is going to be in many places at one go.

Hon. A.B. Duale: Hon. Temporary Deputy Speaker, I beg to move that the Committee does report to the House its consideration of the Bribery Bill and its approval thereof with amendments.

(Question proposed)

(Question put and agreed to)

The Temporary Deputy Chairman (Hon. Cheboi): We will go to the third one, the Committee of the whole House on the County Assembly Services Bill (Senate Bill No.27 of 2014).

THE COUNTY ASSEMBLY SERVICES BILL (SENATE BILL NO.27 OF 2014)

The Temporary Deputy Chairman (Hon. Cheboi): There is only one amendment to this one. Let us proceed, Hon. Members.

*(Clauses 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18,
19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33,
34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45,
46 and 47 agreed to)*

Clause 48

Hon. Chepkong'a: Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 48 of the Bill be amended in Sub-clause (2) by deleting the expression “12(3) (d)” wherever it appears and substituting therefor the expression “12(3)(b), (c) and (d).”

Those are transitional provisions that will ensure that once this law comes into place, the persons who occupy those positions are not dismissed or removed under the operation of this law. They will continue to hold those offices until the end of their current term, which is 8th August, 2017.

I thank you.

(Question of the amendment proposed)

Temporary Deputy Chairman (Hon. Cheboi): I will give a chance to two Members to contribute on this one. Member for Mavoko, do you want to speak to this one?

Hon. King’ola: No, Hon. Temporary Deputy Chairman.

*(Question, that the words to be left out be left out,
put and agreed to)*

*(Question, that the words to be inserted in place thereof be inserted,
put and agreed to)*

(Clause 48 as amended agreed to)

(Schedules 1, 2 and 3 agreed to)

(Title agreed to)

(Clause 1 agreed to)

The Temporary Deputy Chairman (Hon. Cheboi): Let us have the Mover to report.

Hon. Gaichuhie: Hon. Temporary Deputy Speaker, I beg to move that the Committee do report to the House its consideration of the County Assembly Services Bill, 2014 and its approval thereof with amendments.

(Question proposed)

(Question put and agreed to)

(The House resumed)

*[The Temporary Deputy Speaker
(Hon. (Ms.) Mbalu) in the Chair]*

REPORTS

Disclaimer: *The electronic version of the Official Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor.*

THE WITNESS PROTECTION (AMENDMENT) BILL

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon. Members, I call upon the Chairperson to report on the Witness Protection (Amendment) Bill.

Hon. Cheboi: Thank you, Hon. Temporary Deputy Speaker. I beg to report that the Committee of the whole House has considered the Witness Protection (Amendment Bill) 2016 and approved the same with amendments.

Hon. Gaichuhie: Hon. Temporary Deputy Speaker, I beg to move that the House do agree with the Committee in the said Report.

I request Hon. Chepkong'a to second the Motion for agreement with the Report of the Committee of the whole House.

Hon. Chepkong'a: Hon. Temporary Deputy Speaker, I second.

(Question proposed)

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Members, I am not in a position to put the Question. Therefore, I defer putting the Question to an appropriate time.

(Putting of the Question deferred)

THE COUNTY ASSEMBLY SERVICES BILL

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Could the Chair of the Committee of the whole House report on the County Assembly Services Bill (Senate Bill No.27 of 2014)?

Hon. Cheboi: Hon. Temporary Deputy Speaker, I beg to report that the Committee of the whole House has considered the County Assembly Services Bill (Senate Bill No.27 of 2014) and approved the same with amendments.

Hon. Gaichuhie: Hon. Temporary Deputy Speaker, I beg to move that the House do agree with the Committee in the said Report.

I ask Hon. Chepkong'a to second.

Hon. Chepkong'a: Hon. Temporary Deputy Speaker, I second.

(Question proposed)

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon. Members, again, for obvious reasons, I defer putting of the Question to the most appropriate time.

(Putting of the Question deferred)

THE BRIBERY BILL

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon. Cheboi, can you report on the Bribery Bill?

Hon. Cheboi: Hon. Temporary Deputy Speaker, I beg to report that the Committee of the whole House has considered the Bribery Bill (National Assembly Bill No.16 of 2016) and approved the same with amendments.

Hon. Chepkong'a: Hon. Temporary Deputy Speaker, I beg to move that the House do agree with the Committee in the said Report.

I ask Hon. Gaichuhie to second.

Hon. Gaichuhie: Hon. Temporary Deputy Speaker, I beg to second.

(Question proposed)

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon. Members, putting of the Question on this Bill is again deferred.

(Putting of the Question deferred)

BILLS

Second Readings

THE PUBLIC PRIVATE PARTNERSHIP (AMENDMENT) BILL

(Hon. (Dr.) Shaban on 19.10.2016)

(Resumption of Debate interrupted on 19.10.2016)

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon. Members, Hon. Shaban had finished moving. She took about 20 minutes. The seconder is not in to second the Bill. Therefore, I defer it to the next appropriate time.

(Bill deferred)

Next Order!

THE PUBLIC SERVICE COMMISSION BILL

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Is the Leader of the Majority Party in the House to move the Public Service Bill, National Assembly Bill No.36 of 2016? We have communication that he is fully represented by Hon. Lentoimaga. Hon. Member, you can move the Bill.

Hon. Lentoimaga: Hon. Temporary Deputy Speaker, thank you for giving me this opportunity. I was here to second, but now that the Leader of the Majority Party is not there, I will move.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon. Member, are you prepared to move the Bill?

Hon. Lentoimaga: Yes.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Do you have someone to second?

Hon. Lentoimaga: Yes. Hon. Temporary Deputy Speaker, I beg to move that the Public Service Commission Bill, National Assembly Bill No.36 of 2016 be now read a Second Time.

The Bill seeks to operationalise the provisions of Article 234(2) of the Constitution by providing the principles and framework for uniform norms in the Public Service. The existing Bill is limiting as it provides for the Public Service Commission (PSC) to issue guidelines on public service matters.

Part XVI of the Bill seeks to replace guidelines with regulations which will have a superior force as the former are only applicable internally and have no legal basis for enforcement.

Clause 44 of the Bill provides that the Commission shall regulate employment of casuals in the public service. This will alleviate the unregulated and exploitative terms of casuals in the public service.

Clause 42 of the Bill provides for secondment of public officers. Currently, the process of secondment of public officers is not well regulated. The Bill provides that the Commission shall approve the secondment of officers in writing.

Clause 43 provides for all transfers and dismissals to be effected by the Commission. This will remedy the current unregulated and punitive transfers in the public service. The transfers will also take into account the interests of children of the officers if the affected officers have children. Authorised officers will not have authority to dismiss public officers.

Clause 75 concerns one of the major objectives of the Bill which is to operationalise Article 158 of the Constitution by making provisions for the procedure to be followed in a petition for the removal of the Director of Public Prosecutions (DPP). The Commission shall issue guidelines on the removal of the DPP.

Clause 47 provides for recommendation for appointment of Principal Secretaries (PSs). The Committee intends to propose an amendment to stipulate that the Commission shall, in making the recommendation under this section, submit to the President three nominees for every position for appointment paying attention to inclusiveness in terms of gender, Kenya's diverse communities, persons with disabilities and the youth.

Part V is supposed to be on delegation. This is missing. It should be included under Clause 31. The whole Clause 31 should be in Part V. The provisions of Clause 31 are distinct from the preceding Part IV. The Committee will propose some amendments after finalising deliberations on the Bill with the stakeholders particularly the PSC.

I beg to move.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon. Member, after moving, you have to get a seconder. Be on record that you have requested him to second. Give him the microphone. Hon. Lentoimaga, you need to use the microphone to pronounce the seconder. You can proceed to the Dispatch Box. Your microphone is not working. Is it Hon. Gaichuhie to second? These microphones are not working. You can still proceed to the Dispatch Box.

Let us get the technician to rectify the situation. This is a House of records and it is always important for us to pronounce ourselves on the HANSARD. Bear with the team that is looking into it. It is now working.

Hon. Gaichuhie: Hon. Temporary Deputy Speaker, I beg to second the Public Service Commission Bill, National Assembly Bill No.36 of 2016.

This Bill is trying to regularise the PSC and the employment of casuals in the PSC. We employ casuals in the PSC and it will be a good thing to have laws that will regulate their employment.

This Bill also seeks to regulate the PSC which normally issues guidelines instead of regulations. Regulations are better defined than guidelines. Guidelines are a way of guiding people. Regulations are better, strict and can be followed to the letter.

On secondment of public officers, we will have a law that determines how civil servants should be seconded to other Ministries or even parastatals other than being seconded to parastatals without even an increase in their pay. Civil servants are seconded when a parastatal is formed and are taken there without even giving them the terms of conditions in the parastatal. So, this Bill is trying to provide a way of seconding officers in a structured manner. It is going to improve the Civil Service.

Currently, transfers in the Civil Service are just done from the departments, but when they say that they will be involving the PSC to transfer and dismiss staff, it will be a better structured manner because one can petition and have his case heard rather than when they are transferred from the Ministry.

It is a progressive Bill which will make the PSC better and take care of the welfare of civil servants.

With those few remarks, I beg to second.

(Question proposed)

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): The Bill has become an asset of the House. The House is free to debate it. Before that, there is a Report of the Departmental Committee on Environment and Natural Resources on the ratification of climate change agreement. So, we are going to allow Hon. Ottichilo to lay the Report and give a notice for the consideration of the Report tomorrow or at the most appropriate time.

PAPER LAID

Hon. (Dr.) Ottichilo: Hon. Temporary Deputy Speaker, I beg to lay the following Paper on the Table of the House:

Report of the Departmental Committee on Environment and Natural Resources on the ratification of the Paris Climate Change Agreement.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): You can also give notice of the same.

NOTICE OF MOTION

RATIFICATION OF PARIS CLIMATE CHANGE AGREEMENT

Hon. (Dr.) Ottichilo: Hon. Temporary Deputy Speaker, I beg to give notice of the following Motion:

THAT, this House adopts the Report of the Departmental Committee on Environment and Natural Resources on the ratification of the Paris Climate

Change Agreement, laid on the Table of the House today, Wednesday 30th November 2016.

*(Resumption of debate on the Public
Service Commission Bill)*

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon. Members, let us go back to Order No. 15; Second Reading. The first one on my request list is the Member for Mavoko, Hon. Patrick Makau.

Hon. King'ola: Thank you, Hon. Temporary Deputy Speaker. I stand to speak on the Public Service Commission Bill. I have received the regulations that will replace the guidelines. When you look at Clause 42 on the introduction of casuals in the public service, I am glad this is going to regulate the sector. Casual jobs have been given by the public service, particularly on *Kazi kwa Vijana* Programme and the guidelines were that youths from some parts of this country were paid differently from youths from other areas. The regulations provided in this clause are going to introduce a baseline and it will be difficult to abuse the labour laws in this country.

Clause 43 talks about transfer of officers. Some time back, there was a requirement that not more than three people from the same ethnic group should work in one office. That has since been abused. When you go to offices, you find a whole block of offices occupied by officers from the same ethnic background. I hope this will address that problem. We also hope that it will instill accountability and transparency when it comes to transfer of officers. Without regulations, some officers are discriminated against. This Bill is going to address some of those issues. It is going to check on abuses of labour laws.

Again, on introduction of casuals in the public service, most of the students who go for attachments are misused. If there were proper regulations, our students who go on attachment to these institutions would earn some money.

On Clause 43, officers have been seconded to parastatals, but have not been considered in remuneration. That is discrimination against a public officer. For example, if you are working in the Ministry of Energy and you are attached to the Kenya Power Company, it is not clear whether your salary will be increased. These regulations will ensure that the officers earn what is due to them.

With those few remarks, I support the Bill.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Next on my request list is the Member for Likuyani, Hon. Enoch Kibunguchy.

Hon. (Dr.) Kibunguchy: Thank you, Hon. Temporary Deputy Speaker. I would also like to add one or two words concerning the Public Service Commission Bill. The Mover mentioned that this Bill would have regulations. I am sorry I have not read it, but the Mover said that this Bill defines how the DPP can be removed from office. If my reading of the Constitution serves me well, I thought the Office of the DPP has security of tenure. If you want to remove from office anybody who has a security of tenure, you have to go through the route of a tribunal. I did not understand it. Perhaps, when the Mover comes to reply, he might want to clarify that bit.

I am excited to see that the PSC has been given powers. For appointment of PSs, they will forward three names to the President and it is up to the President to pick one out of the three. That, to me, is good and progressive. I hope that in the process, we will remove what is now being witnessed in this country. One of the cries of Kenyans out there, especially when they look

at the Jubilee Government, is that most of the workers in the public service, parastatals and the Cabinet come from two communities. As we give the PSC powers to pick three people, it will be important for the President to remember that he is the President of Kenya. He is President of those people who voted for him and those who did not vote for him. He is the President to the regions that voted for him and those that did not vote for him.

Indeed, if I were a first-term President, I would tend to lean towards the people who did not give me their support, so that when the second term comes, it becomes easy for me to go through. But when you concentrate on the people who supported you, then all the other communities that did not support you are left out.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon. Kibunguchy, discuss the Public Service Commission Bill. Just try to be a bit relevant.

Hon. (Dr.) Kibunguchy: Probably you are not following me. I am talking about the Commission giving three names to the President. That is what the Bill provides.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): You can import, but try to be relevant.

Hon. (Dr.) Kibunguchy: Thank you, Hon. Temporary Deputy Speaker. Let me also talk about secondment. It is good that now it has been defined. As we have transited from the old Constitution to the new Constitution and with the advent of county governments, there are quite a number of public servants who were transferred to the counties. Most of them have gone through a lot of problems. Once there is a law in place that defines what we need to do with these public officers, it becomes easier. I know of some of them who have gone to county governments and in the process, the governors and county executive committee members tend not to consider them that much because they want to come in with a new crop of people, especially those who supported them. When there are regulations to deal with that, it becomes better. I will support the Bill for that. I have seen many public servants who have gone through a lot of problems once they are seconded to county governments.

Finally, on the issue of casuals, once the law is there that provides for how long somebody can be a casual, how much they need to be paid, then it becomes very important because some of these so-called casuals tend to be misused.

As I complete, as we form the next cadre of PSs, it is important that we have the face of Kenya in that cadre of workers. With three people being proposed to the presidency, that can go a long way in curing that problem.

Hon. Temporary Deputy Speaker, I am going to look at the Bill properly and I think I will come up with one or two amendments, especially on the aspect of the DPP. I know he has security of tenure.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Your amendments are welcome at the Committee of the whole House stage. The Member for Bomet Central, Hon. Ronald Tonui.

Hon. Tonui: Thank you, Hon. Temporary Deputy Speaker, for this opportunity to add my voice to this Bill. I support the Bill because I believe it is good. The Chapter of the Constitution on public service is a very good section which encourages transparency and accountability. Now that it has not been operationalised, those sections may not work well. That is why it is important to have this Bill to operationalise it, so that it can come into effect.

This Bill encourages the provision of uniform principles and similar frameworks for all public servants. I believe that is a very good provision. The schemes of service for all public

servants are going to be uniform, so that we do not have one commission with a different set of conditions which the officers work under. We should have similar ones.

I also want to support the idea of employing casuals in the public service. Currently, there is a big challenge in terms of unemployment. If we can have seasonal jobs for some people as they wait for permanent jobs, I believe that can be good. We need to have the issue of attachment captured in Clause 44, so that students in colleges can have an easy time in getting attachments as part of their training.

I support Clause 42 because it brings clarity on the issue of secondment, so that we do not have cases of disputes between county governments and the national Government in terms of deployment of staff. I believe if we have a smoother way of dealing with issues of secondment, cases such as the one we witnessed recently of quack doctors being seconded by the national Government to county governments may not arise. Hopefully, there will be a clear law to be followed in dealing with issues of secondment.

On the issue of petition and the procedure that should be followed to remove the DPP, I think it is important to have this in law. I am not sure if it is not there currently, but it is good to have it properly put in law, so that the person sitting in that office will not sit pretty without fighting issues such as corruption. The biggest problem we have in this country currently is corruption. Resources which could be used to improve the standards of living of our people and service delivery are being squandered. The DPP is quite comfortable in office because there he has security of tenure. Those issues need to be addressed.

I am also happy to see that transfers and dismissals in public service are going to be regulated properly, so that whoever is in charge of any department will not easily dismiss junior staff. This is well provided for in the Bill. Mistreatment of junior staff will not arise or it will be reduced.

On the appointment of PSs, the President will choose a PS from three nominees. I believe this is a good provision. The President will have some room to appoint people whom he thinks can assist him to deliver on his election pledges. At the same time, it is not an open cheque. It has to be people who have met certain minimum qualifications.

Therefore, I support this Bill.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon. Peter Weru, the Member representing the people of Mathira Constituency, you can have the Floor.

Hon. Kinyua: Thank you, Hon. Temporary Deputy Speaker, for giving me this opportunity to support this Bill. The provisions of this Bill are quite elaborate and they take care of the many concerns that Kenyans have had in the past in the PSC. I come from a constituency where I represent the former Chairman of the PSC, one Titus Gatere, whom we respect. I am happy that the provisions herein also say that the Government in certain instances can get the rich knowledge of retired citizens of this country.

I also come from a constituency with very many retirees, some of whom retired just before the 1992 crunch. This Bill realises the necessity for the PSC to keep reviewing the benefits being received by retired citizens of this country, so that it does not mean that once you retire, your issues are not being addressed. I think that is a very rich provision to ensure that we keep pace with inflation, particularly when it comes to addressing the needs of retired officers.

This Bill is very rich in providing for the financial administration of the Commission, something that we have had an issue with, in the past. They are supposed to have their Budget cycle ending sometime before the end of the financial year so that the way the Commission deals

with its revenue or money provided in the Budget is consistent with the provisions of good financial management.

Also, the fact that this Bill gives the commissioners the opportunity to serve six years uninterrupted as full-time jobs is also very rich. It ensures they perform their role in terms of streamlining the public service in this country, which is one of the key things that the Jubilee Government committed to, so that the competencies and skills of public servants are matched with the duties that they perform every day. That is also a very good provision in this Bill.

This Bill gives us an opportunity to wholesomely look at the public service, look at placement, look at discipline, look at ethics for our public servants and ensure that we keep in trend with the global and other practices that are acceptable in the public service.

I support.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon. Wilbur Ottichilo, the Member for Emuhaya, take the Floor. You are the last one on the request list.

Hon. (Dr.) Ottichilo: Thank you, Hon. Temporary Deputy Speaker. I rise to support this Bill. This Bill gives the PSC enough powers to function effectively. Otherwise, the PSC, being just a department within the Office of the President, has not had the powers and staff to function effectively. This Bill gives enough powers to the PSC. It also expands the mandate of PSC, so that they can effectively undertake their responsibilities.

I am particularly happy with quite a number of clauses that have been included in this Bill. Among them is Clause 4 where the Bill gives the PSC powers to abolish some of the offices that have been established in the public service for many years. They have become irrelevant to the current PSC's mandate, but those positions are still there. This Bill gives the Commission powers to abolish some of those offices, knowing that technology has changed and the way of management has changed. Therefore, PSC should move in tandem with the changing environment as regards management and leadership.

The other aspect that is of importance is the code of conduct. Those of us who worked in the public service years back had very strict code of conduct which every member of the Civil Service had to adhere to.

One of the conditions was to memorise your code of conduct, but right now all this is no longer effective or being effected. Most of the civil servants do not know even know the code of conduct. So, this Bill is also bringing this issue back. This will make the Civil Service more progressive and effective.

Hon. Temporary Deputy Speaker, the other issue which I think is very important is promotion. We have some civil servants who have stagnated in their positions since they joined the Civil Service because there has never been a clear-cut process on promotion. Therefore, some civil servants who were lucky to join the Civil Service but have nobody to push for their promotions have just remained in one job group for the last 10 or even 20 years. Some even retire in the same job group. With this procedure for promotion clearly defined, it now gives equal opportunity to most members of the Civil Service.

The other area which I think is important is the issue of dealing with principles and values of good governance. Before, the best or good governance practices were practised in the Civil Service but with time things have deteriorated to a level where the worst principles of good governance are being practised in the Civil Service. So, it is important that the Public Service Commission brings these principles back so that the Civil Service becomes the best example of

how good leadership and good governance is undertaken. The Civil Service is the foundation of leadership in any country. So, the issue of good principles and values is very important.

On disciplinary actions, we have some members of the Civil Service who, for one reason or another, have been unfairly interdicted or suspended for years without their cases being reviewed. You will find civil servants who were interdicted getting half of their salaries for 10 years. This Bill now gives the procedure on how disciplinary issues will be undertaken and their timeframes.

Hon. Temporary Deputy Speaker, there is also the issue of resignation. Normally, when you are a civil servant and you resign, you do not get any benefits until you have completed a certain period in the Civil Service. But this Bill is, at least, giving opportunity to the people who resigned from the Civil Service to be entitled to certain benefits. This is fair because previously, once you resigned from the Civil Service even if you had been there for whatever number of years but had not completed the period required, you had no benefits. So, this is a very important provision in the Bill. I think it will go a long way in improving service delivery in the Civil Service.

The other area which I think is very important is the issue of retirement. My colleague over there has said that when people retire, some retire at lower salaries but as the cost of living increases and salaries are improved, those who retired are still paid the same pension over the years. So, you find people who have contributed significantly to this country earning Kshs2,000 in the villages. This is the case and yet these were the senior most people in the Civil Service. I think it is important that as salaries are increased according to our socio-economic development, even the civil servants who have retired should have their pensions increased appropriately.

Finally, the other provision that I find very interesting and very good in this Bill is that you can resign from the Civil Service but can later on join it. The normal practice has been that once you resign from the Civil Service, the chances are you will never join again. Now, there is a provision which allows you, that over time, you can reapply for any other job within the Civil Service. This is a very good and progressive provision of this Bill.

Hon. Temporary Deputy Speaker, I wish to support this Bill very strongly.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu: You wish to support the Bill very strongly. Next is the Member for Garissa Township, Hon. Duale, who is also supposed to be the Leader of the Majority Party.

Hon. A.B. Duale: Not supposed to be!

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu: We have moved the Bill procedurally. So, you can make your comments.

Hon. A.B. Duale: Thank you, Hon. Temporary Deputy Speaker. I want to thank my colleague, the Vice-Chairman of the Departmental Committee on Administration and National Security and the Vice-Chairman of the Departmental Committee on Finance, Planning and Trade for living up to the task of sharing duties in as far as the running of the Chamber is concerned.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu: And not the Leader of the Majority Party in the running of the Chamber? They did not take your seat.

Hon. A.B. Duale: Hon. Temporary Deputy Speaker, I want to say that this is part of the constitution-making process where the PSC within the reading of Article 234(2) of the Constitution is established. Now, we need legislation to effect the Act and make operational that said Article. We also need to create and provide principles and frameworks for uniform norms and standards in the Public Service.

Public Service is a very important institution in every country globally because it is the heartbeat of human resource. So, what does this piece of legislation do? Because the existing pieces of legislation are very limiting in terms of providing for the PSC to issue guidelines on public service matters, this Bill will deal with the structure of the PSC. It will also deal with the functions and the powers of the PSC as provided for under the Constitution.

If you look at the PSC in our country today, you will find that it has a serious disjointed effort. If you look at the Salaries and Remuneration Commission (SRC), you will realise that what they are basically doing is a function of the PSC. Ideally, we did not anticipate why we created the SRC. They do job evaluation which is a function of the PSC. They also do reviews which is a function of the PSC. So, I am sure, Parliament, in its wisdom, maybe in the 12th Parliament, will look at whether we need it.

Look at the selection panel that is interviewing people to be the Chairman and officials of the Independent Electoral and Boundaries Commission (IEBC). Just because of the mistrust within the political class, we decided to bring members – I am not casting aspersions – as a panel, who have no capacity in terms of managing the work they have been given of selecting the next officials to manage the elections.

So, the PSC is important now that we have a devolved system of government. We have counties where we have similar county service boards. It is only in this country where you see a fresh graduate employed by the county government at the same scale as a county commissioner. It is very sad. They are in the same scale without any experience just because there is no proper structure in the county service boards.

I am sure and I want to go on record that the validation of certificates of the many people who work in county governments has not been done. Some of them have fake certificates. I am aware of one county that did validation of certificates and found 35 per cent of their top staff including the County Executive Committee Members presented fake degrees.

This is the function of the PSC. The Member for Subukia is talking about Nakuru County and I do not want to speak about that county. I am speaking generally. There must be harmonization. It is very sad that the person representing the national Government at the county is the County Commissioner, but in terms of salary, a junior officer of the county, fresh from the university, is on a better salary scale than that of the County Commissioner. These are serious issues that are happening within the public service.

This Bill also deals with the matter of delegation of powers of the Commission. If the Commission wants to delegate its powers to the County Public Service Board, that must be done in a formally structured way. This Bill is creating a section at Part V which deals with delegation of powers of the Commission. At what stage and to whom should the Commission provide a secretariat for an entity? That is what it seeks to address.

The functions of appointing, confirming, and transferring public officers are also vested in the PSC. Today, you will find ECMs and most of them are my colleagues, having many advisors. They have advisors on, say, gender and so on yet in the same Ministry you have members of a serious technical team who have worked in that Ministry for many years. However, because an ECM wants to create a job for a friend, he will appoint another person to be an advisor on contract when he can get the same technical advice from a member of that Ministry. So, the Bill is dealing with that.

The development of human resource in the public service is well captured in this Bill. It highlights the Commission's functions relating to how it investigates, monitors and evaluates

other organizations. The administration of personnel practices of the public service borrowed from the best practices globally is also well documented in this Bill.

Finally, this Bill is dealing with public service delivery. Do we have value for the public servants working in our nation? What is the percentage of service delivery? Do we have ghost workers? We are looking at the public service's efficiency and effectiveness in every department. That is why we have performance contracting in Government. So, they will deal with efficiency and effectiveness, including assurance of sound financial management; internal organisation processes in public service and human resource needs. Above all, the question to ask is: Are citizens happy with the way the public service of our country is delivering service to the people?

I am happy the Vice-Chair and all the other colleagues have done very well. I am sure it is a very important piece of legislation. As usual, we are hardly 10 in here, but I am sure we will go on. I know more Members are coming. I will go out and whip them.

I beg to support.

The Temporary Deputy Speaker (Hon. Mbalu): Thank you, Hon. Leader of the Majority Party and the representative of the people of Garissa Town. Let us have the Member for Kanduyi, Hon Wafula Wamunyinyi.

Hon. Wamunyinyi: Thank you, Hon. Temporary Deputy Speaker for giving me the opportunity to make my contribution on the Public Service Commission Bill, 2016.

Members may not realise, but this is one of the most important Bills before the House. It is not just giving effect to the Constitution. Any country, world over, that wants to keep its stability and harmonise relationships within its people and ensure that peace is maintained at all times even under unique circumstances, must have a stable public service. There is need to have a public service that will ensure that there is adequate delivery of service to the people; one that will manage the affairs of the public at all times and one that is non- partisan and is well-resourced. The public service needs to have a human resource that is equipped properly to deliver those services.

Therefore, this Bill is very important to us as it will ensure that this country has a public service, which should undertake its functions effectively to the satisfaction of the people. We have experienced challenges in our country.

During President Mwai Kibaki's reign, the Government increased the retirement age to 60 years. Those who were due for retirement at the time, that is 55 years old, had to continue up to 60 years. When they attained the age of retirement at 60 years and were retiring, there was a problem of settlement of pensions, gratuities and so on. It would appear that there was no planning. We have experienced shortage of personnel in the public service, the military, the National Police Service, and the Teachers Service Commission (TSC).

In Bungoma, some schools have only a principal, one teacher and others Form Four leavers who are employed by the board to teach in high schools. You will get some primary schools with 800 pupils have a headmaster and one teacher. It is like people never knew that we need adequate staffing. We must prepare ourselves.

What makes me happy is the fact that we are trying to put in place what this Bill is seeking to do. We want to give effect to the structure, functions and powers of the PSC. We have talked about this but if you do not determine the level of staffing, and you do not plan your staff well within the ministries and public service, it will be very difficult to operate. So, this Bill sets out the minimum requirements in terms of training, recruitment, planning, staffing, policy development and guidelines that are required by the PSC.

We have seen a conflict in our country. We have been victims here in the House. We have the Parliamentary Service Commission on one hand and the SRC on the other hand, trying to determine how Parliament should operate and how the members of staff of the Parliamentary Service Commission should be remunerated.

The PSC should develop human resource development guidelines and policies. Ms. Sarah Serem is now working to determine what needs to be banned in public service. We must remove this confusion. If we pass good laws, we will be able to solve this confusion. This conflict is not good for our country because at some point, we will face litigation. People will go to court to challenge what the SRC, the PSC and other commissions are doing. We must be clear on roles.

The PSC must play its responsibilities and roles as the lead unit in ensuring delivery of public service to citizens. Our young graduates need to be well trained to be good citizens who can contribute to the development of our country. Unless such measures are put in place by a well organised institution like the PSC, it will be very difficult for us to deal with that problem.

It is the responsibility of the PSC to determine the instruments and procedures to be followed by the Public Service. It is their responsibility to determine the needs of staff. They should make projections of the number of staff they will require in the next 10 years. They should also look for adequate compensation to ensure retention of personnel.

Doctors have left our country to look for greener pastures in countries like South Africa, Botswana and Namibia. It is a shame that our properly trained medical officers are now moving to countries with small economies, but which can hire expatriates. That must be looked into. We must have a unit that benchmarks with the developed countries to find out how they manage their personnel. They should also find out how they have dealt with the challenges to do with staff so that as we provide good education from high school to universities, we produce good people who are well trained and can contribute to the society and in nation building.

The PSC should also come up with mechanisms of ensuring that it gets jobs for young people and retain them. There should be continuous review of what is required of them and the kind of support and appropriate training that they need. If we continue having the analogue PSC, and public servants who cannot boot a computer, we will not move forward. The PSC should be empowered and given appropriate legislation that will make them fully functional to ensure that Kenyans are properly served.

With those few remarks, I support.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): I have the last request from Hon. Ng'eno.

Hon. Kipyegon: Thank you, Hon. Temporary Deputy Speaker for giving me the opportunity to contribute to this Bill, which seeks to ensure that all parts of the Constitution are properly operationalised.

The Bill provides for the operationalisation of Article 234 of the Constitution, which talks about principles and framework for uniform norms and a way of looking into the salaries of public servants. We should harmonise the terms of employment in the national Government and the county governments because the academic qualifications, and other qualification, for jobs at both levels are uniform. Some people in the county governments earn more than those working in the national Government. This provision will ensure that there is uniformity in terms of employment and how people work.

There are areas which have not been addressed. There are counties that are categorised as hardship areas. Some employees in those counties receive hardship allowance. For instance,

teachers in my county earn hardship allowances and yet other employees working at the district or the county governments are not paid that allowance. This Bill will bring uniformity in terms of how remunerations are made. All employees working in hardship areas should be paid hardship allowances.

Clause 44 of the Bill says that the Commission will regulate the employment of casuals in the public service. In the morning, we talked about the Free Primary Education (FPE) Programme but we did not mention shortage of teachers. Parents are normally asked to pay PTA teachers and it is very costly.

Clause 44 of the Bill caters for employment of casuals. Teachers who have not been employed by the TSC can be referred to as casuals. This clause also talks about the Commission making regulations and allocating money to pay those casuals so that we do not exploit their services. Teachers employed by PTAs will be covered under this clause.

This clause also caters for students on attachment. Most of our students who are through with college and university education always seek for attachments but they are not paid. I also went on attachment when I was pursuing my undergraduate degree in law but nobody paid me.

There are engineering students who also go for attachments. In fact, they do heavy work. Some students who come to do attachment in Parliament are not paid. This clause will give regulations on these students or people who are on attachment and who may have cleared their university studies so that they cannot be exploited, misused and overworked. We are making them do jobs that some people call dirty or some work which is very heavy in regard to what they earn or what they do not even earn.

This clause will look into this fact so that we can also reduce unemployment. The percentage of the unemployed people in this country is very high. This provision will help those who are on attachment and on casual basis. It can also help reduce unemployment. The provision will also help those people who have been in areas where they have not had proper salaries.

Lastly, I wish to also look at Clause 42. It talks about the secondment of public officers. The Chair can remember the introduction of the counties. I have heard most of the public servants being seconded by the national Government, but the regulations on how these people are normally seconded have not been put in place.

I remember there was an assistant chief in my constituency who was seconded to the counties to work as an administrator. You can imagine an assistant chief who is supposed to be performing different duties other than those of the administrator in the county government--- So, the services which were offered by the assistant chief could not be offered anymore because that position was not vacant. Therefore, it meant that the position was to remain like that but nobody was to offer services. It was like seconding a teacher.

With teachers, you can employ another teacher or transfer another one to take the position of that teacher who was seconded to another position but you cannot transfer an assistant chief from somewhere to come and work on behalf of the assistant chief who was still working there. Unless that position is declared vacant and a new assistant chief is employed, the people of that sub-location will not get services. This issue took us almost a year to sort out.

I think with these regulations, we can know the positions which are meant to be seconded. For example, you cannot second a police officer to go and work in the counties. There are positions which, obviously, you cannot second. You can second teachers, people who are working in ministries and people whose positions can be replaced with another person by transferring, but you cannot second positions like those of police officers, chiefs and assistant

chiefs. You can second an Assistant County Commissioner or a Deputy County Commissioner because they can be transferred from one place to another.

Therefore, I support this Bill because that regulation will ensure that this issue has been sorted out. I wish to just end there. I can see the mood of the House is that we end. I will end by saying I support.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): You ended because you are willing to end. Allow me to call upon the Mover to reply. The Bill has been procedurally debated and ended. It is your discretion. If you want, you can donate a minute to Hon. (Eng.) John Kiragu of Limuru and any other Member you wish.

Hon. Lentoimaga: Thank you, Hon. Temporary Deputy Speaker. Before I reply, I want to donate two minutes to Hon. Denis Waweru, Member for Dagoreti South.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon. Waweru, you have two minutes.

Hon. Waweru: Thank you, Hon. Temporary Deputy Speaker. I am very happy for those two minutes. I will maximise them.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Order, Hon. Lentoimaga! You do not just point. I can see you are becoming philanthropic to another Member.

Hon. Lentoimaga: I am sorry about that, Hon. Temporary Deputy Speaker. There is pressure on me. I will also donate two minutes to Hon. Kiragu of Limuru.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon. Kiragu is also a beneficiary of two minutes. Do not just point, Hon. Lentoimaga.

Hon. Waweru: Thank you, Hon. Temporary Deputy Speaker. At the outset, I want to state that I fully support this Bill because it gives hope to millions of Kenyans who have been seeking public service jobs in this country.

As the Chair is aware, we have had a public service that has been wanting. It has to be modernised to be able to address the various concerns of Kenyans of the 21st Century. We have had a public service that has been overtaken by events. If you look at the technological advancement, you will find that the new Constitution and the many laws that we have passed in this House--- We needed to look at how best we can modernise and put the new public service into perspective.

Among the things I have noticed are good for this country is to align the new public service with the provisions of the new Constitution. That will ensure that there is efficiency in service delivery to the millions of Kenyans.

Another example is the internal relationship of various parts of the public service, the functions of the commission, the appointment of various holders of positions in the Commission, confirmation, transfer and promotion provisions that clearly needed to be outlined. Also of importance is the remuneration and disciplinary measures that needed to be clearly outlined.

Among the various things that I also feel are critical is the code of conduct, particularly the provisions on the removal of the Director of Public Prosecutions (DPP). I think it is something that we needed to look at. We are going to bring this so that we ensure that we address the issues and challenges we face in this country, especially now that we are fighting corruption. I fully support this Bill because I feel it is long overdue.

With those few remarks, I say thank you and I fully support.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon. (Eng.) John Kiragu, you can have your two minutes.

Hon. J.K. Chege: Thank you, Hon. Temporary Deputy Speaker. I would like to start by saying that I support this Bill. For me, this is a very important moment in this nation that finally we have a mechanism to make sure that everybody who wants to develop a career can do so without fear.

In engineering, it has been a tendency that even the students who do engineering may end up becoming accountants because there has not been a way of ensuring that they get practical training so that they can get registration as required in the profession.

It is also important that now, the public service has a way of assessing our skills and making sure that we address the issue of our development plan, particularly Vision 2030 and all the other things that have been a problem in streamlining the service.

In the past, retrenchment has been used and we have lost skilled labour but we are now constructing the Standard Gauge Railway (SGR). In the past, we have laid off experienced people who have been working in the railway sector and now it will cost us a lot of money to get the skills back.

I believe in this Bill because it will encourage us to sustain the skills that are important and make sure that we protect the people who are doing commendable jobs. It will also make sure that we can address the needs of this nation every time so that we have a service that can take this country to another level.

Once again, I say thank you for all the contributions that have been done. This is a very important moment in this nation.

Hon. Lentoimaga: Thank you very much, Hon. Temporary Deputy Speaker. I beg to reply.

Just as my colleagues have said, this is a very good Bill and it will go a long way to modernise the Civil Service in general. One important issue is about the transfers. Currently, transfers are done by the Ministry and they just inform the public service after they get the transfers.

One thing that has been abnormal because I have worked in the Civil Service for more than 29 years is that some civil servants are transferred to areas on disciplinary grounds without regard to the period that somebody stays in a hardship area. For example, the policies state that one should stay in one area for not more than three years. But because of lack of regulation or the PSC not being involved in these transfers, some civil servants stay for about seven years in one area. They then register low production. When you are taken to an area, you will face challenges and work well. But there are no challenges when you overstay in a place. This is because you become a local person.

The other issue is that of the DPP. It is easy to remove him now. That makes him fear to face challenges of that office. A petition can be done to the PSC which will make recommendations to the President who will form a tribunal and he will go away. It is necessary to look into the manner in which the DPP is removed from office.

On secondment to other organisations such as county governments, a number of civil servants since devolution came have been seconded to the counties. Some of them get frustrated when they go there because there is no proper legislation on how they are seconded. A number of them have cases from national Government when they go to counties. They get frustrated because they feel like foreigners in a county and seek for ways to go back to where they were before.

There is also the issue of discrimination. They cannot work well and, therefore, they cannot be productive. This law will definitely address those challenges and I am sure it will come up with a proper manner in which secondment is done.

With those few remarks, I beg to reply.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Well done. Hon. Members, I am not in a position to put the Question. I order that the Question be put at the most appropriate time as it will be indicated by the House Business Committee in the Order Paper.

Next Order!

(Putting of the Question deferred)

MOTIONS

ADOPTION OF REPORT ON OWNERSHIP OF MOMBASA CEMENT LAND

THAT, this House adopts the Report of the Departmental Committee on Lands on its investigation into the ownership of Mombasa Cement Limited Land in Kilifi County, laid on the Table of the House on Tuesday, 24th November 2015.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): I cannot see the Chairperson of the Departmental Committee on Lands in the House. I order that this Motion be deferred.

(Motion deferred)

Next Order!

ADOPTION OF REPORT ON WILDLIFE POACHING IN KENYA

THAT, this House adopts the Report of the Departmental Committee on Environment and Natural Resources on the Investigation into Wildlife Poaching in Kenya, laid on the Table of the House on Thursday, October 01, 2015

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): This is a Motion by the Chairperson, Departmental Committee on Environment and Natural Resources. He is not in the House and I order the same be deferred.

(Motion deferred)

ADOPTION OF REPORT ON GARISSA UNIVERSITY COLLEGE TERRORIST ATTACK

THAT, this House adopts the Report of the Departmental Committee on Administration and National Security on the Investigation into the Garissa University College Terrorist Attack, laid on the Table of the House on Tuesday, November 17, 2015.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): I can see the Vice-Chair of the Departmental Committee on Administration and National Security. Are you ready to move the Motion?

Hon. Lentoimaga: Hon. Temporary Deputy Speaker, I am not ready to move the Motion. I anticipated that Motion Nos. 16 and 17 would be debated today. I thought mine would come later on. Therefore, I am not ready to move the Motion today.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon. Members, the Vice-Chairperson is not ready to move the Motion. Therefore, I defer it to the next appropriate time. Next Order!

(Motion deferred)

ADOPTION OF REPORT ON PROCUREMENT
OF APRON BUSES BY KAA

THAT, this House adopts the Report of the Departmental Committee on Transport, Public Works and Housing on the Inquiry into the Procurement of the Apron Buses by the Kenya Airports Authority, laid on the Table of the House on Thursday, November 19, 2015.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): I am sure that because of the same reason of anticipation on the order of the Motions, the Chairperson of the Departmental Committee on Transport, Public Works and Housing is not ready to move this Motion. He is not in the House. Therefore, the Motion is deferred.

(Motion deferred)

ADOPTION OF REPORT ON IMPORTATION OF FERTILIZERS

THAT, this House adopts the Report of the Departmental Committee on Agriculture, Livestock and Co-operatives on the Inquiry into the Importation of a Consignment of Fertilizer by the Ministry of Agriculture, Livestock and Fisheries through the National Cereals and Produce Board, laid on the Table of the House on Tuesday, November 24, 2015.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): The Chairperson of the Departmental Committee on Agriculture, Livestock and Cooperatives is not in the House. He might not be ready to move the Motion. Therefore, the Motion is deferred.

Next Order!

(Motion deferred)

ADOPTION OF REPORT ON DE-GAZETTEMMENT OF GOVERNMENT
LAND BELONGING TO CHORLIM COOPERATIVE SOCIETY

THAT, this House adopts the Report of the Departmental Committee on Lands on degazettement of Government Land belonging to Chorlim Co-operative Society, laid on the Table on Tuesday, December 2, 2014.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): The Chairperson of the Departmental Committee on Lands is not in the House. I believe it is because of the assumption that we will not get to this Motion today. Therefore, I defer the Motion.

(Motion deferred)

ADJOURNMENT

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon. Members, there being no other business, the House stands adjourned until tomorrow Thursday, 1st December, 2016 at 9.30 a.m.

The House rose at 6.30 p.m.