

NATIONAL ASSEMBLY

OFFICIAL REPORT

Tuesday, 15th November, 2016

The House met at 2.30 p.m.

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

PRAYERS

MESSAGE

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

Hon. Speaker: Hon. Members, this is Message No.16 of 2016 on the passage of the County Governments (Amendment) Bill (Senate Bill No.4 of 2016).

Pursuant to the provisions of Standing Order No.41 (4), I wish to report to the House that I have received a Message from the Senate regarding the passage of the County Governments (Amendment) Bill (Senate Bill No. 4 of 2016).

The Bill seeks to amend the County Governments (Amendment) Act, 2012 by relocating the headquarters of Kirinyaga and Taita Taveta counties. The Senate passed the said Bill with amendments on Tuesday, 1st November 2016 and is now seeking the concurrence of the National Assembly on the said Bill.

I hereby refer the Bill and the accompanying documents to the Departmental Committee on Administration and National Security for consideration. I also direct that the Bill be scheduled for First Reading in the course of this week. The Clerk is accordingly instructed.

PETITION

UNFAIR DISMISSAL OF EMPLOYEES BY LAVINGTON SECURITY LIMITED

Hon. Speaker: Let us have the Member for Dagoretti North.

Hon. Simba: Thank you, Hon. Speaker. This is a Petition by former employees of Lavington Security Limited regarding unfair dismissal by the employer.

I, the undersigned, on behalf of former employees of Lavington Security Limited, draw the attention of the House to the following:

THAT, Article 41(1) and (2)(b) of the Constitution entitles every person to fair labour practices and the right to form, join or participate in the activities and programmes of a trade union;

THAT, in full enjoyment of these rights under the said Article, several employees of Lavington Security Limited joined a trade union for purposes of championing their labour rights;

THAT, in disregard of this constitutional provision, the management of the said security firm began victimising and oppressing employees who subscribed to trade unions;

THAT, the management of Lavington Security Limited is allegedly subjecting employees to underpayment; delayed salaries; denial of leave, including the most deserved maternity and paternity leaves; and non-remittance of their Pay As You Earn (PAYE), National Social Security Fund (NSSF) and National Health Insurance Fund (NHIF) dues;

THAT, the said employer has declined to issue confirmation letters to permanent employees, thus exposing them to incessantly serve the firm's interests on contractual terms, contrary to the provisions of the Employment Act, 2007;

THAT, on 6th September, 2016, the Lavington Security Limited dismissed over 50 unionised employees for advocating for fair labour practices at the security firm, in full contempt of a court order restraining that action and the provisions of the Labour Relations Act, 2007;

THAT, efforts to address and resolve the matter have been futile;

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

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

- (i) Investigates Lavington Security Limited for engaging in labour malpractices and non-compliance with constitutional and statutory provisions relating to fair labour practices, with a view to recommend appropriate action, if found culpable;
- (ii) Recommends that Lavington Security Limited ceases circulating names and photographs of the unfairly dismissed employees who never engaged in any criminal activity to warrant circulation of their details to the public and potential employers; and,
- (iii) Make any other orders deemed fit in mitigating the plight of the petitioners.

Thank you, Hon. Speaker.

Hon. Speaker: Hon. Arati, in one of the statements in support of that Petition, you indicated that Lavington Security acted in total disregard of a court order. Did you say that? In the event that people disobey courts, they do not come to Parliament. They should go to the courts. We have contempt of court. When you avoid that avenue and come here, who will enforce the court order?

Hon. Simba: Hon. Speaker, at the moment, we do not have a case before the court.

Hon. Speaker: You said that Lavington Security acted in total disregard of a court order.

Hon. Simba: Hon. Speaker, there was an earlier court order but it was dispensed of.

Hon. Speaker: So, the issues raised in this Petition are not pending before any court or a constitutional body?

Hon. Speaker: Yes.

Hon. Speaker: Member of Parliament for Kiminini.

Hon. Wakhungu: Thank you, Hon. Speaker. I want to comment on the Petition by Hon. Simba Arati. Some of the employees who have been dismissed from Lavington Security are from my constituency. It is very unfortunate because employees have a right to fair labour laws. The conditions under which the employees were dismissed are contrary to labour laws. This House discusses and resolves issues that affect the people. We want to call upon the Departmental Committee on Labour and Social Welfare to investigate this matter. As you are aware, the same company does not submit the National Social Security Fund (NSSF) and National Hospital Insurance Fund (NHIF) deductions. I would like to request the Committee chaired by Hon.

Were, who is not in the House, to move with speed to find out the directors of that company.

That company has won many Government contracts. Have they been getting those contracts in a fair way? We want to know the real owners of Lavington Security Company, who claim they are the untouchables. They are in Government officers. I want to request the relevant Committee to move with speed so that this matter is resolved as quickly as possible.

Thank you, Hon. Speaker.

Hon. Speaker: Member for Chuka/Igambang'ombe.

Hon. Njuki: Thank you, Hon. Speaker, for giving me this opportunity to comment on this Petition that has been brought by Hon. Arati. I hope the issues that have been raised in this Petition are not before any court of law. We have many underprivileged Kenyans who are desperately looking for jobs like those of house-girls and watchmen. They have a right to be paid the minimum wages as required by the labour laws. They have a right to join trade or workers unions so that their rights are protected. As much as we do not want to force people to take back the rotten or rebellious employees, it is important that the Committee looks into the issue of intimidation by the employers who want to make sure that they have very docile people doing a lot of work for them with very little pay. This is not an isolated case, but only that the employees of Lavington Security Guards were courageous enough to present a Petition through their Member of Parliament. The Committee should find a permanent solution to this problem. It should be a warning to companies that want to do easy business by just registering a security firm and underpaying their workers.

In our houses and farms, we have employees who do not get minimum wages and statutory deductions and yet, they have nowhere to go. It is an important issue because many Kenyans in that level of employment are suffering.

I support.

Hon. Speaker: Member for Makueni.

Hon. Maanzo: Thank you, Hon. Speaker. Once those employees lose their jobs under those circumstances, their names are published in the newspapers. They are no longer employees of that company and are branded names such that no other employer is likely to take them on board. That amounts to unfair labour practice.

Those kinds of employees in Kenya do not earn much and yet, they have families and pay school fees. I would like to attend those Committee sittings so that I can contribute to the protection of those employees. There should be measures to ensure that bourgeois who want to mistreat their employees are brought to book. There should be protection of employees in law. This House should amend the existing laws so that those people who are driving our economy are paid better.

I support.

Hon. Speaker: Member for Tiaty.

Hon. Abongotum: Thank you very much, Hon. Speaker. I just want to inform the House that in the corporate world, I have the privilege of having some contacts in that company. I can confirm that, that company is one of the most professionally run in this country. It is not an international company like KK Security or G4S and the rest. I want my friend, Hon. Were, who is a high ranking member of this House, to conduct thorough and objective investigations so that he can get to the bottom of this issue. What I want to confirm is that, that company is professionally run. I can give it the benefit of the doubt. So, the Chairman must conduct very professional investigations and bring the information to this House.

I thank you, Hon. Speaker.

Hon. Speaker: Member for Kitutu Chache South.

Hon. Onyonka: I would like to support my brother, Hon. Simba Arati for bringing this Petition before the House. If you look at the way we treat Kenyans who are working in those kinds of jobs, as a society, we have not been very sensitive to their needs and wishes. Like my colleagues have said, you will find that the National Hospital Insurance Fund (NHIF) deductions are not remitted. You will find that those individuals are not even given sick or leave days. Any time they raise those critical issues - as the Petition by Hon. Simba Arati has stated - there is victimisation and they are chased away from the areas they are working. Why those companies advertise the pictures of those workers and say that they have now been unceremoniously dismissed is because they do not want them to get jobs anywhere else. Those are Kenyans of good behaviour and who have been serving diligently. Some of them do not even get promotions.

I would like to ask the Departmental Committee on Labour to take this matter expeditiously and make sure that they get to the bottom of the issues. It is not about Lavington Security only. Let us look at all the security companies that are working in Kenya and make sure that they accept best practices and pay our workers the amounts they deserve.

Hon. Speaker: Hon. Chepkong'a, did you want to comment on this Petition?

Hon. Chepkong'a: Yes, Hon. Speaker.

Hon. Speaker: Do it very briefly.

Hon. Chepkong'a: Thank you, Hon. Speaker, for giving me the opportunity. I rise to confirm that, that is a very reputable security company. I am surprised by Hon. Simba Arati. This is an investor in his constituency. I thought he will protect investors who employ his people. Now, he comes here and wants to harass an investor in his constituency. This is a properly licensed company.

The second thing that Hon. Arati must know is we are not an industrial court. The matters he is raising properly fit within the Industrial Court. We have been dealing with petitions and all petitions are just in form of comments which will be sent back to Hon. Arati and his constituents. I want to advise him as a lawyer. If he wants action to be taken, he needs to go to the Industrial Court where the rights of those people will be protected and enforced. So, he is trying to seek something that is in vain and he is not going to get any rights enforced in this House.

Therefore, I think we are wasting a lot of parliamentary time. We can use it for something different. Hon. Speaker, I oppose this Petition.

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

Hon. Speaker: If you want to rise on a point of order, you have to press the intervention button. What is your point of order?

Hon. Simba: Hon. Speaker, is it in order for Hon. Chepkong'a to claim that, that investor is not subject to Parliament scrutiny when he knows he has inflicted a lot of pain to my constituents? Whereas Hon. Chepkong'a---

Hon. Speaker: Hon. Simba, you know that is not a point of order. That is a point of argument. I know there are people who take slightly longer than others to understand the difference between arguments and points of order, but yours is a point of argument. The Petition will be dealt with by the Departmental Committee on Labour and Social Welfare, which you have prayed it be taken to.

Next Petition is by Hon. Isaac Mwaura. I do not seem to see him. He is absent without apology and not desiring to be present. The Petition will be skipped to tomorrow.

Next Order!

(Petition deferred)

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 Tuesday, November 15th 2016:

The Ministry of Environment and Natural Resources Memorandum to Parliament on the Ratification of the Paris Climate Change Agreement.

The Consolidated National Government Investment Report for the Financial Year 2015/2016 from the National Treasury.

Sessional Paper No.3 of 2016 on the National Housing Policy from the Ministry of Land, Housing and Urban Development.

The Reports of the Auditor-General on the Financial Statements in respect of the following institutions for the year ended 30th June 2014 and the Certificates therein:

- (i) Garissa University College; and
- (ii) Dedan Kimathi University.

The Report of the Auditor-General on the Financial Statements of the Constituencies Development Fund in respect of the following constituencies for the year ended 30th June 2015, and the Certificates therein:

- (i) Kiharu Constituency
- (ii) Uriri Constituency

Hon. Speaker: The Report on climate change ratification is referred to the Departmental Committee on Environment and Natural Resources. The Consolidated National Government Investment Report for Financial Year 2015/2016 is referred to the Public Investments Committee (PIC). Sessional Paper No. 3 on National Housing Policy is referred to the Departmental Committee on Transport, Public Works and Housing, accordingly.

Hon. Keynan.

Hon. Keynan: Hon. Speaker, I beg to lay the following Paper on the Table of the House today Tuesday, November 15th 2016:

The Report of the Parliamentary Service Commission on procurement of a professionally qualified accountant to audit and report on the accounts of the Auditor-General.

Hon. Speaker: The Chairperson, Departmental Committee on Administration and National Security, Hon. Kamama.

Hon. Abongotum: Hon. Speaker, I beg to lay the following Paper on the Table of the House today Tuesday, November 15th 2016:

The Report of the Departmental Committee on Administration and National Security on the vetting of Lt. Col (Rtd) Julius Ayub Githiri, nominee for the appointment to the position of Chairperson of the Board of the National Authority for the Campaign Against Alcohol and Drug Abuse (NACADA).

Hon. Speaker: Chairperson, Departmental Committee on Agriculture, Livestock and Co-operatives.

Hon. Mbiuki: Hon. Speaker, I beg to lay the following Papers on the Table of the House today Tuesday, November 15th 2016:

Reports of the Departmental Committee on Agriculture, Livestock and Co-operatives on:

- (i) Its consideration of Sacco Societies (Amendment) Bill 2016.
- (ii) The 32nd Session of the Committee on Fisheries held in Rome, Italy from 11th to 16th July 2016.

Next Order!

NOTICES OF MOTIONS

ADOPTION OF REPORT ON APPOINTMENT OF M/S BAKER TILLY MERALI'S TO AUDIT ACCOUNTS OF THE AUDITOR-GENERAL

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

THAT, pursuant to the provisions of Article 226(4) of the Constitution, this House approves the appointment of the audit firm of M/s Baker Tilly Merali's to audit and report on the accounts of the Auditor-General for the financial years 2014/2015, 2015/2016 and 2016/2017.

APPOINTMENT OF LT. COL. (RTD) JULIUS GITHIRI AS CHAIRMAN OF NACADA

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

THAT, this House adopts the Report of the Departmental Committee on Administration and National Security on the vetting of Lt. Col. (Rtd) Julius Ayub Githiri, nominee for the appointment to the position of Chairperson of the Board of the National Authority for the Campaign Against Alcohol and Drug Abuse (NACADA), laid on the Table of the House on Tuesday, 15th November 2016 and pursuant to the provisions of Section 8 of the Public Appointments (Parliamentary Approval) Act, 2011 and Standing Order No.45 the House approves the appointment of Lt. Col. (Rtd) Julius Ayub Githiri as the Chairperson of the Board of NACADA.

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

DELEGATION FROM GAUTENG LEGISLATURE, SOUTH AFRICA

Hon. Speaker: Before you rise on your point of order, Hon. Lempurkel, allow me to introduce our guests who are Members of the Standing Committee on Public Accounts (SCOPA) from Gauteng Provincial Legislature in South Africa. The Members are:

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| 1. Hon. Mbongeni Radebe | - | Leader of the Delegation |
| 2. The Hon. Glenda Steyn | - | Member |
| 3. Hon. Lindiwe Lasindwa | - | Member |
| 4. Hon. Mpapa Kanyane | - | Member |
| 5. Hon. Graham Gersbach | - | Member |
| 6. Hon. Christina Mabala | - | Member |
| 7. Mr. Thabelo Ravhugoni | - | Committee Researcher |
| 8. Mr. Simon Magolego | - | Senior Committee Co-ordinator |

The Delegation is in the country to share experiences and broaden its understanding and knowledge on the workings of our Parliament. On my own behalf and that of the House, I wish

to welcome them to the National Assembly of the Republic of Kenya and wish them fruitful deliberations during their stay in the country.

Member for Laikipia North.

Hon. Lempurkel: Thank you, Hon. Speaker. I stand to request the adjournment of the House on a matter of urgent national importance regarding---

Hon. Speaker: Hon. Lempurkel, for you to do that, you need to present what you have to me so that I go through it and approve. As far as I am concerned, I have not seen any such desire expressed either in writing or otherwise before me to approve. That is ambush. So, you will have to relax. Sit and present it to me later on for consideration and approval. It is never done that way. It is not just about walking on your two feet into the Chamber and then you start saying that you want to move the House, No! It is never moved like that.

Next Order.

BILL

Third Reading

STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL

Hon. Speaker: Hon. Members, debate on this Bill was concluded when the House last sat. What remains is for the Question to be put and I confirm that we quorate for purposes of the Question.

(Question put and agreed to)

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

Next Order!

MOTION

REPORT ON THE PARLIAMENTARY SERVICE (SENATE MONITORING AND EVALUATION) (PROCEDURES FOR MANAGEMENT OF FUNDS) REGULATIONS

THAT, this House considers the Report of the Committee on Delegated Legislation on the Parliamentary Service (Senate Monitoring and Evaluation) (Procedure for Management of Funds) Regulations, 2016, laid on the Table of the House on Thursday, 27th October, 2016 and pursuant to the provisions of sections 18 and 19 of the Statutory Instruments Act, 2013 and Standing Order 210(4)(b), resolves to annul the Regulations entirely.

Hon. Speaker: Is the Chairperson of the Select Committee on Delegated Legislation, Hon. Cheptumo present? What about the Vice-Chairperson? It appears that the Chair and the Vice-Chair of the Departmental Committee on Delegated Legislation are absent. This is a Committee with no Members present. Who is moving this Report?

We will therefore skip that one and move to the next Order.

BILLS

Second Reading

THE COUNTY ASSEMBLY SERVICES BILL

Hon. Speaker: Hon. Kamama, this is your Bill from the Senate.

Hon. Abongotum: Hon. Speaker. I beg to move that the County Assembly Services Bill, (Senate Bill No. 27 of 2014) be now read a Second Time.

The County Assembly Services Bill, (Senate Bill No. 27 of 2014) was passed by the Senate on 5th May, 2016. It seeks to make further provisions and amendments to the County Assembly Service Board. The County Government Act No. 17 of 2012 establishes a County Assembly Service Board for each county in this country. This Bill further provides for the composition and the functions of the board. Among the functions, the board is to perform other functions as may be prescribed by a national legislation. The County Assembly Services Bill of 2014 seeks to give effect to Section 12(7) (e) of the County Government Act No.17 of 2012. The County Assembly Services Bill (Senate Bill, No. 217 of 2014), read for the First Time on 30th June 2016 in this House, provides as follows:

One, to establish a legal framework for the County Assembly Service Board which is established under the County Governments Act No. 17 of 2012.

Two, to establish a county assembly service and to describe the values to be adhered to by all members serving in that board.

Three, establish a County Assembly Fund. This is a new phenomenon which all monies appropriated for the county assembly will be kept. The Bill provides for the preliminary provisions, including the establishment of the county assembly service for each county.

Part II of the Bill sets out the county assembly service values which include peace, honesty, impartiality, cooperation, public confidence and respect for the county assembly. This Part provides as follows:

“The board may prescribe a code of conduct for the service”, which is quite important. The code of conduct is equivalent to the one that governs civil servants.

Part III of the Bill provides for the County Assembly Service Board. In nominating or appointing a person as a member of the board, regard shall be given to the national values and principles of governance as well as community and cultural diversity of the country. The Bill emphasizes regional balance and that all the communities especially the ones residing in that county as well as those beyond should be considered.

Part III also sets out the qualifications and procedure for appointment to the board. This will ensure that they will not just be appointed haphazardly, but must meet certain criteria before they are appointed.

The circumstances for removal from office are also provided for under the new Act and the procedure for the removal of a member of the board shall be prescribed in the standing orders of the county assembly. This will ensure that things are not done in a haphazard manner or people are removed the way it is done by some members of the county assemblies. We have seen this in Nairobi, Embu and many other places.

The functions and the powers of the board are also set out. Additionally, this part sets

out the functions of the secretary of the board who shall be the Chief Executive Officer (CEO) of the board.

Part IV provides for the Clerk and other staff of the County Assembly Service to be competitively recruited and shall be approved by the county assembly. This part also sets out the functions of the Clerk as well as suspensions and procedures for removal of the Clerk.

This Bill also gives powers to establish such offices in the services as it may consider necessary. This Bill provides that the staff of the service shall retire on attaining the age of 60 years and may resign from service and given the time, one can retire under the 50 year rule. So, they are all taken into account.

Part V provides for the financial provisions, including the financial estimates, accounts and audit as well as remuneration of the staff of service and it establishes the County Assembly Fund whose purpose shall be to pay such administrative expenses as may be incurred by the board under this Bill or any other existing law.

Part VI provides for the miscellaneous provisions and provides that Members of the board shall take an oath of office before assuming their offices. The Bill sets out to protect members and staff of the board from personal liability in respect of all acts done in good faith in the performance of their duties. It also gives the board the power to make regulation for the better carrying into effect the provisions of this Act.

The Bill further proposes to make amendments to the County Governments Act No.17 of 2012. It proposes to amend Section 13 of the County Government Act to provide that the functions and the powers of the Clerk of the County Assembly shall be set out in this Bill.

The Bill also amends Section 12 of the County Government Act by restructuring the composition of the County Assembly Service Board.

Hon. Speaker, this is a Bill of immense significance to the people of this country and, more specifically, to the county assemblies. Once enacted, this Bill will enhance independence of the county assembly from the county executive and, hence, improve the oversight role of the county assembly over the county executive. The Bill will also contribute towards the realization of the objectives of devolution as stipulate in Article 174 of the Constitution.

I will, therefore, urge Hon. Members to support the County Assembly Services Bill (Senate Bill, No. 217 of 2014) because it has gone through all the requisite stages. The House should fast track its approval so that this Bill can be assented to in the shortest time possible and devolution can roll out so that the people of Kenya can benefit.

Hon. Speaker, I will call upon my Vice-Chairman, Hon. Washiali to second this amendment Bill. I beg to move.

Thank you.

Hon. Speaker: Let us have Hon. Washiali.

Hon. Washiali seconded.

(Question proposed)

Hon. Speaker: Hon. Members, I hope that many of you have familiarised yourselves with the provisions of this very important Bill as we appreciate what it is proposed. It will only be fair if we understand what is in it. We do not just think it is about county assemblies. The Member of Kiminini appears like he is reading it for the first time but he is equal to the task.

Please take the Floor.

Hon. Wakhungu: Thank you, Hon. Speaker. At the outset, I support this Bill which has been long overdue. We have had a lot of chaos in the county assemblies because we never had such a Bill to provide a clear framework. We have had many problems in many counties in the establishment of the county funds. When it comes to opening accounts, funds are deposited under the Clerk or the Speaker and there is a lot of misappropriation.

I thank the Senate for coming up with this Bill although it is long overdue. It should have come like yesterday. This Bill will bring a clear framework, sanity and sense so that these funds are not misappropriated.

This Bill talks about the establishment of the County Assemblies Service Board (CASB) and has provided a clear framework of qualifications. Many counties have nominated people on those boards who have not even completed Standard Eight. There is a problem when it comes to interviews as they are not competent to conduct interviews.

Hon. Speaker, I am happy with this Bill because it is going to ensure that Members of this Board are qualified. It provides for certain academic qualifications. It says that one should be a holder of a degree from a recognized university. I have a problem with this degree. I had an opportunity to go to some disadvantaged counties such as Samburu and Turkana. How I would have wished that we amend it to a diploma. This is because Part III (8) (b) talks about community and cultural diversity of the county.

This means whoever will be in-charge must have expertise in matters culture. In this case you may find somebody is conversant with cultural diversity but is not necessarily a degree holder.

I can see my friend, Hon. Serut from Mt. Elgon, is nodding his head in agreement. In some areas, getting that degree is a problem. Maybe when we go into the Committee of the whole House we can amend it to a diploma because in terms of cultural diversity some counties might not have people who are qualified in cultural diversity and are degree holders.

Hon. Speaker, most of these counties have been employing their relatives. In Trans Nzoia County, I saw a report where those employed were wives of MCAs while others were their sisters or girlfriends. That is why it is important that Article 10 of the Constitution be put in place so that we look at issues of national values and principles of governance.

It is clearly stipulated under Article 10 that the issue of accountability and regional balance is very critical. A county like Uasin Gishu has many tribes. If we have all the 42 tribes present, they must be incorporated but the majority must have the lion's share so that these positions are shared proportionately. That is why this Bill is important, and we are requesting all Hon. Members to support it so that we pass it with speed and correct this mess at the counties.

Hon. Speaker, the advantage of having County Assemblies Fund is that we have separation of powers at the county level. This is because we have the executive and the legislature. A county assembly is the legislature. We have a problem in counties where county assemblies rely heavily on the executive even when it comes to control of funds. You will find that when MCAs are discussing issues, they are working under duress and at the interest of a governor.

So, the establishment of a fund will help them act independently and not under duress, fear or favour. In many counties, MCAs are at the mercy of governors. Some of them have taken loans that are guaranteed by governors. So, in case of any minor amendment for the interest of the public, you find a governor giving threats. He may withdraw that guarantee that he has given them. Therefore, the MCAs cannot debate a matter objectively because they are at the mercy of a governor.

The independence of this Fund will ensure that there is separation of powers between the executive and the legislature. This is something that will bring light at the end of the tunnel so that MCAs can work well.

Hon. Speaker, many times MCAs would sack clerks at their will but right now we have some conditions. There is a clear framework on how clerks can be removed from their offices. It cannot be an issue of witch-hunt the way they have been doing. For you to sack somebody it must be on issues of integrity or under the provisions that are provided here. Sacking of those officers will not be because of nepotism, tribalism or witch-hunt. This is very critical because it will bring sanity in county assemblies in the long run.

We know that a county assembly plays the same role as the national Parliament. It exercises the three roles of legislation, oversight and representation. If this Bill passes, county assemblies will operate independently and without fear or favour. I request Hon. Members to support this Bill and pass it quickly so that we can have some sanity on the ground once it is implemented.

Hon. Speaker, I thank you for giving me this opportunity. I request Hon. Members to support this Bill.

Hon. Speaker: Let us have the Member for Kipipiri.

Hon. Gichigi: Thank you, Hon. Speaker. I also support this Bill. Devolved structures are fairly young and are experiencing teething problems such as the establishment of the Civil Service. The biggest challenge we have is appointment of officers not necessarily based on merit but other factors that can be easily challenged under the Constitution.

Hon. Speaker, I am happy that this Bill is providing certain requirements. There are certain core values that the County Assembly Public Service Board is supposed to follow based on the Constitution.

I have been wondering whether, perhaps, we did not make a mistake by attempting to duplicate the structure that is at the national level at the county level. Instead of focusing on devolving resources and development to counties, we are focused on devolving the Civil Service structure. Therefore, most of the money that goes to the devolved units is spent on recurrent expenditure. It is, therefore, right that a Bill that controls how employment at the county is governed be passed and be passed quickly.

I have, in my county, very many officers. Some of them are not sure about what they are supposed to do. I have heard complaints from across the country that people are being employed just because some people want to give jobs to their friends and relatives. I urge Sarah Serem and her Salaries and Remuneration Commission (SRC) to be very careful. The SRC should be vigilant so that we do not continue spending money that was spent on development before devolution on recurrent expenditure.

I also support the provision that gives some protection to the clerks so that they are not dictated by either the board or the county assembly. I can only urge the county assemblies, when they are approving this position as provided under this proposed law, to have in mind the interest of the county. They should get somebody who can give the best to the county instead of being swayed by political considerations.

I support this Bill and urge my colleagues to do so as well.

Hon. Speaker: Let us have the Member for Ugunja.

Hon. Wandayi: Thank you, Hon. Speaker.

I wish to support this Bill that has emanated from the Senate. It goes without saying that this Bill has come at the most opportune time. The county assemblies play a key role particularly

in the entrenchment of devolution. As we all know, devolution is one of the greatest gifts that have been bequeathed to us by this new Constitution. Unless we entrench it, Kenyans might not benefit from it.

The county assemblies have been operating in some kind of vacuum, legally speaking. This Bill goes a long way in creating an enabling structure or framework for the county assemblies to operate effectively.

The three key roles of the county assemblies, just as it is for the National Assembly are legislation, representation and oversight. For the county assemblies to undertake these three very vital roles there needs to be a structure and framework, which has been lacking. This Bill is going to cure this very sad anomaly.

If I may dwell on oversight a bit, it is very important because for the first time we are aware that a lot of funds are being taken to counties. They are funds that have in the past been managed or administered from Nairobi. It is the first time since Independence that these funds are going to the counties. However, they are going to the counties without a clear framework of how they are to be managed.

It is also true that one of the greatest cancers in this country is corruption. It is equally true that with the coming in of devolution, corruption has found its way to the counties. The county assemblies as currently constituted have a problem. First, is lack of adequate capacity. Secondly, it is lack of framework - I have talked about it - to enable them undertake their oversight role effectively. This Bill is going to enable and empower the county assemblies to do their work more effectively.

I have seen the Senate somewhat transforming itself into a county assembly. Why do I say so? In my understanding, and I may be wrong, the work of overseeing county governments vests in the county assemblies. It vests in the county assemblies and they do not share that role with any other institution least of all the Senate. The role of the Senate is largely supposed to protect the interests of the counties and their governments. They do not do so necessarily by starting to oversee county governments on a daily basis.

If this Bill is passed, I believe county assemblies shall be adequately empowered to undertake their oversight role so that the Senate can continue doing the role it has been given by the Constitution. This will ensure that there is no duplication of duties and we do not have the Senate and county assemblies scrambling or fighting each other over oversight to county governments.

It is also important, just like it was pointed out by my friend, Hon. Wamalwa that when these boards are constituted, we ensure we put in place people who have the requisite knowledge, skills and experience. That is so, so that they are able to play the role they are required to play in those very important boards.

I was talking to one speaker of a county assembly the other day. To be frank, it is the Speaker of the County Assembly of Siaya. That is when I learnt that speakers of county assemblies do not even have budgets. If they have any, it is something that has been dictated by the SRC. We would like a situation where speakers of county assemblies enjoy the latitude that the Speaker, for instance, of the National Assembly or the Senate, enjoys so that they have a budget they can operate within to be able to play their roles effectively and equally. The boards need to have a budget which must be appropriated by county assemblies and not by the SRC. These should be budgets which will enable them do the work they are empowered by the Constitution to do so that order is finally created or restored in county governments.

I want to conclude by saying that even though we have had very many issues, I believe they have arisen as a result of these weak structures. I hope that the coming into being of this Act - when it is finally assented to by the President - and the structures created will enable county governments operate more optimally, effectively and efficiently. This will ensure that we stop talking about corruption which is devolved once and for all. It is sad to talk about corruption which has killed this country for the last 55 or so years. Because we have devolution which is God sent, instead of devolving services and resources, we devolve the same corruption.

With those few remarks, I support this Bill.

Hon. Speaker: Let us have the Member for Makueni.

Hon. Maanzo: Thank you, Hon. Speaker for giving me an opportunity to comment on this very important Bill. County assemblies have been working without laws. They have been operating like a plane without instruments. This is to the extent that they borrow without a legal structure. This is against the practices in the National Assembly and the Senate.

This law is very good. I support it so that the assemblies may have their own board just like the way we have the Parliamentary Service Commission (PSC). It is just a replica but at a different level.

Devolution is very important. It is a reality in this country. County assemblies are one of the units of devolution. The work of a county assembly is to check the executive at the county level and the governor and his team. It is also a law making body for a local county. Therefore, it is similar in many ways to the National Assembly or the Senate.

A county assembly has to be structured. It should have laws and employees who have to be treated in a certain manner – they have to comply with certain regulations. The situation at the county level - at the governor's office - is a bit different from the situation of the Speaker's Office. This is in terms of employees.

Governors who are no longer serving may as well leave with many employees. This is because most of them are on contract basis. Some have a five-year contract. These employees have to be permanently employed and pensionable. Pension for MCAs has been a big issue. There are many former councillors in the defunct councils who have no pension. Most of them are languishing in poverty after many years of serving people earnestly.

The MCAs and former councillors are very close to the people because they interact with them on a daily basis and participate in various matters on the ground. Therefore, the office supporting the structure of county assemblies is very important so that you have a clerk there and a service board.

The issue of having a degree or not is a bit contentious. In Kenya, I do not believe that we have an assembly without sufficient degrees today. It is a moving point. Probably, we may have to reconsider it during the Third Reading after getting views from the county assemblies so that Kenyans can tell us more and what they think will make county assemblies serve them better.

Otherwise, this is a very important law and it is long overdue. It should have been one of the first laws passed in 2013 so that county assemblies could operate with a proper structure which has been missing all these years.

We really have to move with speed and pass this Bill. I believe a speaker of a county assembly will automatically become the chairman just as the Speaker of the National Assembly is. If you follow a similar structure, then it is easier for a county assembly to borrow from the National Assembly and the Senate so that they have a precedent to work on and is easier to relate. Of course, you cannot have this board, these employees and a structure which is not coordinated and synchronized in the whole country. Therefore, Sarah Serem and her

Commission which is very important can come in handy so that we have uniformity in county assemblies and where there are errors they are corrected. What is the situation when employees are on contract or permanent and pensionable? What benefits do they have? Most importantly, on the retirement benefits of MCAs who happen to go home, what are their savings and how will they survive after they have served for two or three terms? Is it similar to the two-term situation in the National Assembly for one to enjoy retirement benefits or is it one-term? This is because there are many gaps missing in this law.

I believe we will seal them at the Third Reading. Consultations are important after the First Reading. This debate is going on in the Second Reading. Consultations with assemblies are ongoing and I am sure there will be feedback. I am more than ready to assist Makueni County Assembly so that it can serve the people of Makueni better. I believe this is a good law. I have seen that there are penalties for offences in the event one breaks one of the laws or this Act. It is well regulated and carefully thought. I really urge the National Assembly to support this law.

Thank you for giving me an opportunity to contribute

Hon. Speaker: The Member for Ndhiwa, you have the Floor.

Hon. Oyugi: Thank you, Hon. Speaker for giving me this chance. This is one of the best pieces of legislation that has emanated from the Senate. I really think that you need to laud them for this particular legislation. The only thing I would like to say about it is that it is a legislation coming too late in the day.

We have done a lot of disservice to county assemblies. For the assemblies to work or operate without a proper framework it is totally unfair. You appreciate that corruption has been rampant among counties and some could have been facilitated by the lawmakers both at the National Assembly and the Senate.

This Bill has one of the most important provisions and that is the creation of the County Assembly Fund (CAF). The MCAs have had serious problems with both remuneration and getting small allowances because they have been subject to the various county governors. It has not been possible for county assemblies to check county governors as the law anticipates. The Minority Chief Whip has spoken to the fact that it is the check and balance system. You cannot check the Executive if you do not have a budgetary provision or if you do not have money.

Hon. Speaker, autonomy and independence cannot come if it is not backed by budgetary allocations. I think the provision on the CAF will go a long way in terms of making sure that county assemblies are autonomous. I believe that the next crop of MCAs will be Members who will have sufficient autonomy. I think it is something that they may be looking forward to. I am sure that as soon as we pass this Bill, county assemblies will move forward to check the things that we should be doing.

Hon. Speaker, county assembly boards have done a lot of disservice to county assemblies across the country. The manner in which they were brought to office raises many questions. I appreciate that presently, there is already a provision in terms of the qualifications and the manner in which county assembly boards should be constituted. What we had in the past is that the boards were constituted by people's friends, relatives, grandmothers and girlfriends. Therefore, nepotism was rife in county assembly boards.

If you look at the calibre of people who work in county assemblies, you will find that half of them are not qualified. This is because county assembly service boards were not properly constituted. Creating a framework in terms of how the boards will be constituted is very good.

This Bill, however much we laud it as good ought to be supported because it is timely. I think it has several fundamental flaws. Some of them are superfluous, unnecessary repetitions

and things that should be tidied up and sent to regulations. I will be mentioning a couple of the sections.

I think Members of County Assemblies (MCAs) should really appreciate that we are passing, at long last, a law that will give them a fund and money that can make them operate and not to be subservient and operate under the whims of county governors. The onus is upon them, as MCAs, to check county governors in the manner they are supposed to be doing as per the law.

On specific provisions of this Bill, Clause 3 speaks to the objects and purposes of the Act. It provides and gives further the provisions of Article 232 of the Constitution. I think a provision like that is not adding any value to a particular law, because the provisions under Article 232 are good enough. But there is a good provision under Clause 4 of this Bill that says:

“Every member of county assembly shall respect the non-partisan and apolitical character of the service and shall not seek to influence the employees of the service in the discharge of their functions

I just spoke earlier that part of the problems we have had with the current county assemblies is the fact that half the employees of the boards did not come in in the proper manner, and the manner of their selection was wrought with undue procedures. Having a provision like we have under Clause 4(4) of this Bill is interesting. This is a good provision that I support.

Clause 5(2) of this Bill is redundant and superfluous because it seeks to add onto Article 10 values. A good reading of Article 10 on values and Article 232 of the Constitution requires you to spread those values without adding anything else and then you have very good values that you can run any government on.

Clause 6(2) of this Bill seeks to add things they are calling values and code of conduct. Being a member of the Committee on Delegated Legislation, I think the provisions of Clause 6(2)(a) of being patriotic and loyal to Kenya, conducting yourself with honesty, using the resources of the county conscientiously, respecting and observing the law of the land, and cooperating with all lawful agencies need to be observed. With due respect, those provisions should find themselves in regulations as opposed to being in the body of a law. Yes, it is true that these are the things we need to spell out, but that spelling out ought to be in the regulations as opposed to being in a law as important as this.

Clause 7 of this Bill talks about the code of conduct provided here and the various provisions. I think some of those things are already stated, so that you have sections of the Bill that are really important. However, there are sections of the Bill that are superfluous given the fact that they have already been provided for elsewhere in the Bill and in the Constitution.

If you look at the qualifications of the members of the board and the procedures, you will agree with all the qualifications that they have put there. But with regard to Clause 9(1)(c) of the Bill which says that a member should have, at least, 10 years' experience in public affairs, I think that is not fair to the people of this country. There are young people who are very good and who may not have 10 years' experience in managing public affairs. These people also qualify to be members of the board. Yes, it is good to put standards and qualifications, but there needs to be a melange of both young and old. Restrictive provisions in terms of age and experience ought not to be included.

Clause 11 of this Bill is interesting as it gives the board powers, and I think that is a fairly good provision. But clause 11(2) speaks to the same thing that I was talking about. It is fairly repetitive because it still talks about Articles 10 232(1) of the Constitution. Yes, this Bill needs to be tidied up.

Clause 12 of this Bill speaks to the fact that the board is being given a chance to acquire, hold, charge and dispose of movable and immovable property. That is a good provision. We only need to safeguard it so that we guard against primitive accumulation. We also need to see how we are going to have transition between one board and the next so that the property and assets of various boards are not lost in the course of transition.

Lastly, because I can see my time is up, I would like to speak to Clause 18 on the clerk and other staff of this service. This Bill stipulates how clerks are going to be appointed and the manner of their dismissal. That is a good provision.

Above all, I think this Bill should be supported because it carries one very important provision. That is the provision of the county assembly fund which will go a long way in making the county assemblies autonomous.

Hon. Speaker, thank you for giving me a chance. I support this Bill.

Hon. Speaker: Hon. Dennitah Ghati, you have the Floor.

Hon. (Ms.) Ghati: Thank you, Hon. Speaker for the opportunity to contribute on this very important Bill. I am also happy with this Bill from the Senate that seeks to ensure that our counties are run somehow independently. As you are aware, we at the National Assembly, have the PSC that basically looks at our welfare and other issues that we have to talk about.

Looking at the various counties, devolution provided immense opportunities for our people at the grassroots to be represented at that level. Unfortunately, most of our counties have not performed very well. Most of the MCAs have been discharging their duties at the mercy of the governors. I am very sure and confident that with this Bill, we are now going to have serious county assemblies that are working and the assemblies are going to have their boards which are going to dictate and inform how they are going to work.

What I am happy about the Bill is the fact that it will have its own budget which is going to assist in the running of these assemblies. What I wish to see and what I am still very happy about is that the various county assemblies are going to align themselves with the national values that we all ascribe to as legislators and as MCAs. I support. But we still have a few things that we have to fine tune and which we will definitely talk about when it comes to the Committee of the whole House stage.

One of them which I have an issue with is Clause 9 which talks about the qualifications and procedure of appointment of the county assembly service board. It is good. Clause 9(1)(b) talks about one having to hold a degree from a university. We are all aware that most of our counties are not at the same level, especially when it comes to education. That is why when we talk about degrees and diplomas, we have to go back to our various counties and look at our history. We have to go down to the communities which have been disadvantaged in terms of access to education. Those are the small things that put our people back when it comes to competitive politics.

I have an issue with Clause 9(1)(b) that says that one has to hold a degree from a recognised university. It is not always the same. Our counties are not homogeneous. We have counties where MCAs are still struggling to upgrade their education. We may be cutting out other potential members who could have formed these boards. If you look at my community, the Kuria community, you will find that it is no doubt we are trying to put our education levels a bit high.

Migori County that I represent here, for example, is cosmopolitan. What I am happy about is the fact that if we are looking at the issue of national values, we are going to include issues of gender. We look at gender and diversity. What I am happy about, for example, is the

fact that the county I represent in this House is cosmopolitan and divergent. With this Bill looking at issues of diversity, I am very sure even members of minority communities who constitute a county are going to be considered.

Hon. Speaker, I have an issue with the provision on a degree. We need to look at the composition and say that it has to be a diploma and above so that MCAs who do not have degrees can form the CASB at the county level.

Clause 9(c) discriminates against young people. There is no way you can say that a person to constitute the County Assembly Services Board should have, at least, 10-year experience in public service. Where do young people get experience? Those are the few things that are already discriminating against young people who constitute a county assembly. If you look at the Constitution of this country, you will realise that we denied young people an opportunity to be nominated. If you also look back, you will find that slots for nomination of youths in this country at the county assemblies are just two: a man and a woman. We have already discriminated against them.

We should have a way of ensuring that young people who are to be nominated in the counties are, at least, three the same way we have women nominated to the National Assembly or the Senate. This clause is talking about somebody who is to constitute the Board to have, at least, 10-year experience. If there are youth at the county level, how will they form this CASB? We are already locking them out. These are some of the things that I can see will take us back.

We also need to ensure that even as we constitute this Board there is representation from persons with disabilities. These are some of the small issues that we need to immediately put in place. There is no representation in the Board at the county assembly level of a person with disability and there is no representation of a youth because we are talking about 10-year experience. Where do young people fall? At this level again, we are talking about education. We still need to go back and look at this Bill very seriously at the county level.

We are all aware that county assemblies are the first entry points through which our people in the village have seen some devolution. Again, we need to ensure that devolution is working for our people. If we talk about 10-year experience, it means that people who sit in Nairobi and go back to the community when they have retired will be the same people to form the CASBs because they have 15 or 20 years of experience. Where are the opportunities for persons with disabilities, youths and minorities in the counties?

As much as this is a good Bill, there are a few things that we need to tie up or fine tune so that it becomes complete. This is a Bill that has originated from the Senate. It is in good taste and we are going to ensure that in our counties, just like the PSC that we have, it will serve our people at that level.

With those few comments, I wish to support the County Assembly Services Bill.

Hon. Speaker: Yes the Member for Westlands.

Hon. Wetangula: Thank you Hon. Speaker for giving me a chance to also support this County Assembly Services Bill. This is a milestone in trying to move away from the erstwhile local government hangover which the county governments inherited a great deal of functionalities. This Bill will also bring order in the counties because it will create the Service that will not generate some things that have bedeviled governors. They have been held to ransom by MCAs. The Board that comes into force will be like the PSC and MCAs will no longer be at the mercy of a governor. This Board is going to be independent and will perform its functions as highlighted under this Bill.

There is also the oversight role that the county assemblies are supposed to perform. There will be a framework for them to follow when dealing with issues of overseeing the county government's performance. If you look at the way the Board will be constituted, you will realise that we shall have to relook into some of the things mentioned because I know the way counties are established is not the same way the National Assembly and the Senate are constituted. Some of them are far flung in the rural areas and if we insist on this criterion, very many people will be discriminated against. They will be locked out because some counties may be lacking in these areas, and will not have people to fill these positions.

The County Assembly Services Bill has highlighted that MCAs will respect the non-partisan and political character of the Service and shall not seek influence. This is very important because unless this Board is set on its own principles and independence, you will find that it will be thrown left, right and centre and will be influenced to make decisions that are not popular. If they make such decisions with MCAs, its members will be ejected. It is very important that county assembly members should respect the non-partisan manner that any member who has been appointed to this Board should serve in a way that is not serving any political interest of anybody.

The performance and functions of the Board are also highlighted. Employees shall not seek or receive direction from any source external to the Service. This is also very important because if the members of the CASB are allowed to carry out their functions without anybody's influence, they will make decisions that are well articulated. They will also set standards on how to manage the affairs of the county assemblies

Clause 6(2)(e) sets out the code of conduct. It says that they will treat all persons with respect and courtesy and in particular protect persons with disabilities and other vulnerable groups against any form of abuse, harassment or ill treatment. It is important that we have a code of conduct that respects the rights of people and will make sure everybody gets equal treatment when they come to get service from the Board. This is also in line with the Constitution that every person should be treated with respect and should be accorded due diligence when it comes to the service of the Board.

We have Clause 11 which promotes ideals of parliamentary democracy as set out under Article 127(d) of the Constitution. This is also a very important component that the service board will perform and try to further implement the Constitution at the lowest level of devolution. It will make devolution more efficient. There has been chaos at the county level because of lack of this service. This will bring in professionalism and make sure that county assemblies perform their role with discipline and respect for the rule of law.

With those few remarks, I beg to support the Bill. It has come at the right time. It is a milestone that will move county assemblies away from the defunct local government. Most county assemblies borrowed heavily from the local government which was bedevilled by corruption and inefficiency.

I beg to support the Bill.

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

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

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Let us have Hon. Gideon Ochanda.

Hon. Ogolla: Thank you, Hon. Temporary Deputy Speaker. I did not know there was that change of Chair.

I wanted to draw the attention of the House to the fact that in as much as this Bill is good, it serves to the extent that there is a void and there is nothing in existence. Towards my conclusion, I will draw the attention of the House to the fact that there are certain things that we are doing which are not good in terms of what the Constitution mandates us to do. Our counties are supposed to be distinct and there are certain things that are expected of them including legislating in terms of how they want to handle their issues as county assemblies.

That aside, it is important to remember that one of the biggest contributions to the history of the Kenyan Parliament that indicates growth is when the 9th Parliament brought in the Parliamentary Service Commission (PSC). We can go back to that time and see that Parliament reasserted itself to the extent that it was able to do certain things in a manner that the Bill is trying to propose for county assemblies.

We are very much aware that a lot of advantages that we see as Parliament have been brought about by virtue of the PSC. We are able to run certain things in a manner that gives a defined direction. This is what is required of county assemblies in this country. We can work on our Budget, our personnel and all manner of things as a Parliament that indicate the element of independence in as much as we are supposed to be interdependent. To that extent, if we see the advantages, usefulness and benefits that we derive as Parliament through the PSC, it is important that county assemblies have a semblance of that.

County assemblies are miniatures of the national Parliament. That is exactly where the Bill comes in, in a manner that is useful, but not in the sense that I indicated earlier, namely, due to a void. This void ought not to have been there if we managed our transition in a proper manner.

As it is now, Parliament is new in relation to the new laws that we have in the country. Parliament managed to move ahead to an extent that we were able to look at our Standing Orders and readjust appropriately. In as much as there could be some weaknesses here and there, there was enough element in terms of moving forward and trying to catch up with the new laws that are now in place as we changed our Standing Orders. This was completely forgotten when we were forming county assemblies and county governments. We forgot the usefulness of a PSC or the National Assembly in running the affairs of the country particularly those of oversight. This now brings us to the situation where we have these difficulties where the Senate has to come in, in a manner that is not clearly indicated in law because of the weaknesses that pertain to the workings of county assemblies, particularly in terms of oversight.

They are completely dependent on the Executive in terms of what they are to do. It becomes very difficult for a county assembly to oversee what the county is doing. It is important that the Bill gives us that kind of space that county assemblies can operate in and obtain some good element of independence. Normally, you only get to know that you are independent when you have two things, namely, you are able to make your decisions on one hand and to prosecute your decisions in terms of the wherewithal on the other hand. You also have your own funds to execute some of your decisions. That is when an indicator of independence is visible. It is important that this is allowed to happen in county assemblies and county governments.

The strength of devolution is dependent on the strength of county assemblies. If we go the way we are going and try to assign certain things to the Senate rather than strengthening the

capacity of county assemblies, then this devolution will be doomed in future. There has to be a check in how county governments are working. If we do not do that, we will keep complaining and the issues of corruption will be entrenched. There will be no checks and the executives of county governments are going to run amok if this is not done particularly if we do not move fast like in our current situation. The future of devolution is wholly dependent on the strength of county assemblies.

We are currently complaining that there is a big loss in terms of wastage and money being squandered. That is happening because county assemblies are not worth what they are at the moment. I have difficulties when people sympathise with the kind of people who are supposed to constitute the board. This board needs to be constituted by very firm people who have gone to school. We should not be in a situation where we sympathise with those who have not gone to school. In my view, this is not right.

County governments have all manner of resources. Our rural economies are wholly dependent on what county governments do. If we cannot push some people with good capacity towards that direction, we will not be very useful as a country. That is why I do not sympathise with people who refuse when we say that we need experience and people who have gone to school. Sometimes school is not just the issue of degrees. Schools normally play one critical role in opening the world view of people. We need people in the devolved governments who have an idea of what happens in the rest of the world and whose world views are a little bit wider than what we see at the moment. That is why I do not sympathise with this idea that we need young people who have not gone to school. Diversity is necessary, but it cannot be the justification for not going to school with regard to the kind of qualifications that are required and that we need to sympathise with.

Finally, I wanted to state this point for purposes of records in this House: We are overdoing things for county governments against the law. Our Constitution requires county governments to legislate for themselves. When we do them, we are making the county governments to operate like our National Assembly. Some of them would have been better than our Parliament, but when we restrict them to follow what we are doing, we limit them in terms of how they are supposed to do things.

The 47 county governments plus the national Government are distinct. County assemblies have a clear role of legislation. They need to legislate on these things that we are trying to do for them. My county government, I believe, can do much better if it was given a chance. It can come up with a better arrangement beyond what we are recommending or what the Senate has brought around if they had the chance, the right people and the right minds.

I want to bring out this idea for purposes of record that we are over-legislating and that counties cannot do anything because their laws are subordinate to national legislation. It will not be fair for this country to come up with a national legislation that restricts them.

Thank you, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. (Dr.) Nyikal.

Hon. (Dr.) Nyikal: Thank you, Hon. Temporary Deputy Speaker for giving me the opportunity to contribute to the County Assembly Services Bill. I support this Bill and marvel at how we have managed our devolution. Whereas I appreciate the work that the Senate has done, I do not understand how our county assemblies have worked without a proper legal framework and structure. I am happy that the Bill is here, but somehow sad that we had visitors listening to this. During the process of devolution, we should have had the Fifth Schedule in the

Constitution, which should have indicated to us the point that laws should have been in place for the county assemblies to operate.

Not long ago, we passed the County Assembly Privileges Bill. It is surprising that county assemblies have worked for three years without any protection in terms of privileges. The Senate has done a good job to come up with this Bill that works on the legal framework and the structure. As other Members have indicated, the danger with this is that it borrows what is happening in the National Assembly and having relatively little input from the county assemblies. That tends to weaken the assemblies. It is important that this Bill brings in basic issues as values. We have many complaints and noise on corruption. Looking at the legal structures in county assemblies, we do not have values like competence, integrity and honesty. We thought we would infer them from what applies in the Constitution and what applies at the national level. The Bill brings in the code of conduct. How did we expect county assemblies in the whole country to run for three years without a stated code of conduct? On what basis are we blaming them?

The Bill also establishes the County Assembly Services Board. How would it have been in the National Assembly without the Parliamentary Service Commission? We have done a lot of disservice to our country. We are now in the right direction. This Bill puts in place clear criteria for appointment of members to this board.

There have been complaints that the qualifications are too high and that we are insisting on members having degrees. That should be the way to go. We have qualified and well trained people in this country. When we say that the expertise and knowledge required at the county level should be less than at the national level, we will be demeaning the counties. Services to the people are rendered at the counties and that is why we want people who have great understanding of how things should be run. That should not worry us. The Bill clearly states how members of the board can be removed including petitions, where members of the public get opportunity to make input if they think that certain members are behaving inappropriately.

The provision that members can be co-opted is extremely important. Looking at the functions, administration and supervision of services in counties, you wonder how we have been operating all these three years. The structures that have been set up are important. How were the members and employees' terms of service and disciplinary matters being handled? It is important that these issues have been brought into this Bill. That provision is desirable and long overdue.

The Bill also establishes the office of the Secretary to the Board who is the Chief Executive Officer (CEO) and the Accounting Officer. There are counties that have had great struggles between the governors and the speakers because the financial structures are not clear. The office of governor is executive. Dealing with the provision of service and the running of the county assembly needs fund of its own, as is established in this Bill. What rationale is used to determine these issues when people go to court? How comes we did not realise that we have a big lacuna that is causing problems? We have the same problem across all the counties. That clearly indicates that we have problems in terms of guiding structures that can give basis for proper decisions to be made.

I do not understand how county assemblies have been working without the office of the clerk. Who has been carrying out the legislative work? Who has been organising the speaker's office? How has the office of the speaker been managing all the work without the office of the clerk? Who has been the custodian of the legislative work?

This Bill is timely. We will, however, consider amendments in the Third stage. The County Services Fund is long overdue. How were the decisions made to the funds allocated to

the legislative arm of the county government? Who was preparing estimates for them? Who was determining the remuneration? Who was doing the audit? Were all these functions left to the office of the governor, which should otherwise be overseen by the county assembly?

I would like to ask my colleagues to support and pass this Bill quickly, so that a major legal framework is available for the counties. We should not continue to blame the counties while the deficit is on the structures that we should put in place.

Thank you, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Member for Butula.

Hon. Onyura: Thank you, Hon. Temporary Deputy Speaker for this opportunity. I rise to support the County Assembly Services Bill. I am very convinced that the vehicle for the future development of this country is devolution and the counties.

I strongly believe that the way to develop our country is through devolution. I am a strong supporter of devolution. For us to succeed and achieve what we set out to do and objectives of devolution, we need to create structures and put in place policies, systems and guidelines that can make operations in the counties as predictable as possible, so that we do not just have people groping around in the dark or through guess work. This Bill creates the stability and predictability that is needed for operations at the county level. I am happy it is being modelled around a bit of Public Service Commission and the Parliamentary Service Commission to give professional work and support to county assemblies which is lacking at the moment.

One area that has pleased me is that the responsibilities of this board will be on matters of human resource development. We need to invest in human capital. We need to invest in providing human capacity for the counties both for the current need as well as for the future in terms of succession planning. The board will be charged with the responsibility of developing capacities, schemes of service and looking at the terms and conditions of service, including important issues like pension. These are some of the things that motivate staff and create stability and good working environment, which may be lacking in the counties. We need to strengthen the counties and I am happy to know that some of the aspirants for the member of county assembly (MCA) position have professional background. We need this kind of support for the counties because the amount of resources that they control is enormous.

For example, my county, Busia, controls over Kshs4 billion every year. That is just what comes from the National Treasury. I believe they should generate at least Kshs1 billion. The county has a lot of resources and a very high potential. We need people with the ability to look into this potential and develop it for the county to be self sustaining instead of relying on resources from the National Treasury.

The welfare of the county staff needs to be addressed clearly and seriously. This Bill gives mandate to the Service Board to deal with these issues that have been lagging behind. There are issues of disciplinary processes. Should there be need for disciplinary action, the processes should be clear to the staff and there is a good way of doing these things.

I strongly support this Bill. It is going to be very useful as a guideline. It will strengthen the counties and their operations, which have been lagging behind.

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

Hon. Wamunyinyi: Thank you, Hon. Temporary Deputy Speaker, for the opportunity to make my remarks and contributions on this important Bill that is before the House.

From the outset, I support this Bill. It is intended to remove ambiguities and provide clarity on issues related to the running of counties. Obviously, we all appreciate that devolution

is one of the major milestones that we realised from the Constitution of 2010. Devolution assures every Kenyan that they will benefit from the national cake. It assures distribution of resources to all parts of Kenya irrespective of their affiliations in terms of politics. Devolution also ensures that where there have been gaps in terms of development in the respective areas of our country, the leadership and the people will sit down and decide how to fill those gaps through devolved funds at the devolved units. This Bill is timely. We need to support it and make sure that it is passed and implemented without delay.

We have seen the problems experienced in our counties across the country. While county assemblies have the constitutional mandate of representation, legislation and oversight over county governments, it has not been possible for them to implement this mandate in the best way because of lack of capacity and clarity in terms of procedures, financial management and accountability. This Bill provides for the financial management at the counties, the establishment of the board and the Fund for the county assemblies. It also clearly provides for procedures in appointment and remuneration of staff, including the requirement for various positions at the counties. This is going to deal with the ambiguities that have existed and will ensure that proper human resource is acquired to support the implementation of management activities at the county assemblies.

Hon. Temporary Deputy Speaker, it has been emphasised by my colleagues who spoke before me that with devolution, good management is necessary to ensure that we succeed. For us to succeed in having proper service delivery to our people, we require qualified personnel. We also need to empower our people, so that they are in a position to perform the duties. The assignments that are given to our people to implement development projects at the counties are enormous. It is, therefore, important not just to give the mandate, but also to prepare the officers to do the work. We must get qualified people. Proper guidelines and laws should be set out for the implementation of these functions.

I, therefore, join my colleagues who spoke before me and emphasise the point that it is necessary for us to move forward and pass this bill, so that our people can enjoy the services. There has been mismanagement and theft of resources at our counties and some officers have hidden under the ambiguity of the laws at the assemblies. This has prevented successful investigation and prosecution of suspects. The provisions of this bill will ensure that the management of county activities is in accordance with the law. For example, we have seen that some MCAs, who are responsible for oversight and undertaking similar functions like those of the national assembly, have no capacity to do so, yet they are expected to oversee the county governments. Some of them have not been able to implement the functions. In fact, it would have been necessary for us to ensure there are minimum requirements for one to be an MCA. This is where we deal with basic issues that relate to the people at the grassroots.

We, therefore, need to have people who have a certain level of understanding, can interact and identify what the people need, so that these issues are factored in the development agenda of the counties through the devolved funds. For instance, in Bungoma County, some of the items that have been procured at abnormal costs are said to have been approved by the county assembly by way of budget estimates. Even when they have investigated those misappropriations, the reports have endorsed them. My county has been popular with wheelbarrows which were bought at KShs110,000 each. A wheelbarrow is used on construction sites and it is the one that when you push and stop, it cannot move alone until you push it again. We are told that it cost KShs110,000. We have had shameful expenditure. I am told when the anti-corruption team visited Bungoma, one officer was found with about KShs10 million under

his mattress. We have not heard of any charges preferred against these officers. We have not heard of any action taken against them. There have been various reports of theft, looting and even robbery of public resources in Bungoma County, but no action has been taken.

I do not know whether the people who have been given the responsibility to act on such matters have neglected their duties or something is wrong with our system. Either there is a cover up or a deliberate effort to protect thieves in our counties. This is not going to help our people to achieve what we wanted. Therefore, I support this bill and urge my colleagues to support it. We need to pass it and have it implemented to clear the way for proper management of resources at the counties.

With those few remarks, I thank you for giving me the chance.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Members, I now want to call the Mover to reply. On behalf of the Chair of the Committee, Hon. Protus, Member for Loima Constituency, will be replying.

Hon. Akujah: Thank you, Hon. Temporary Deputy Speaker. Before I reply, I have a few comments to make based on this Bill. I have listened to the Members who have contributed and supported this Bill and I want to thank them for their contribution and their support. I have heard Members raising some issues that are not in tandem with the Bill. We hope we will incorporate the issues in the next stage.

The way in which county assemblies have operated in the past without this law has been an avenue for corruption. In absence of this law, I do not know how county assemblies have been operating. You might have heard from other Members that it has taken almost four years without this law. I do not know how they have been operating. There has been a gap in the county assemblies. The MCAs, in the past or even currently, because this law has not been there, have used the gaps in the existing law to siphon funds from the speakers and the clerks. There was nothing which was guiding that. I know there is the County Assembly Board in which the majority and the minority leaders, the clerk and speaker are members. These are the leaders of county assemblies. I do not know exactly how they oversee these funds yet they are the people who authorise the appropriation of the same funds. There has been a big problem.

This law sets out procedures on appointment to the board as well as circumstances that may lead to removal of office bearers. That guides the operations in county assemblies which will streamline what has been going on. The clerk will also be competitively recruited and approved by the county assembly, his procedural functions set as well as his removal or suspension. In some county assemblies, the MCAs have resorted to the old version of the former county councils where the office of the clerk was locked in the morning as a way of removing him. When the clerk comes, he fails to access his office. He is harassed and in the process, he has to cough out something in order to access his office. With this law in place, such kind of behaviour will not be condoned in county assemblies.

With these remarks, I beg to reply.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Members, that is the closure of debate on this Bill. We will be putting the Question at the appropriate time.

(Putting of the Question deferred)

Next Order.

THE CONSTITUTION OF KENYA (AMENDMENT) (No.3) BILL

(Hon. Chepkongá on 25.10.2016)

*(Resumption of Debate interrupted on
26.10.2016 – Afternoon Sitting)*

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Members, on the Floor was Hon. Sunjeev Birdi and she is not in the House. I do not see anybody with a request to contribute, unless Hon. Member for Kanduyi wants to contribute to the next Order.

Hon. Wamunyinyi: Hon. Temporary Deputy Speaker, when we passed the Constitution of Kenya 2010, it was agreed then that it was very good. It was a Constitution that was ambitious, one that was looking forward to the development of our country and one that would unite our country. It was, therefore, necessary to look at it in that context and also in areas that we needed to polish up and make improvements.

At that time, it was agreed that although we had a very good Constitution, there were some areas that needed to be improved. This Constitution of Kenya (Amendment) (No.3) Bill is one such important one. I want to thank the Departmental Committee on Justice and Legal Affairs for the good work they have done to ensure that this piece of legislation comes before the House. As we make our comments on this Bill, I want to urge that there are other constitutional Bills, including the ones that have timelines, which are necessary, yet are pending up to now. They should be looked into to ensure full implementation of the Constitution. It is necessary for us to put together our efforts as a House especially the Committees concerned. Some of the Committees that have not made their reports on Bills which are pending need to move with speed, so that we play our role in this Parliament and ensure the full implementation of the Constitution.

As I support this constitutional Bill, I urge my colleagues in their respective Committees which have some pending Bills or legislations that are required for the full implementation of the Constitution, to deal with them, so that we can move on. Our country needs to enact laws which will ensure the full implementation of the Constitution. At the same time, we do not want to remain in suspense with provisions which cannot be implemented because there is no enabling legislative framework. I support this constitutional Bill and call on colleagues to support it. We should also bring other legislations which are required and which have timelines.

With those few remarks, I support.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Members, we do not have the Mover to reply. So, I will give the Mover the opportunity when this Order comes back on the Order Paper.

Next Order.

THE PUBLIC PRIVATE PARTNERSHIPS (AMENDMENT) BILL

(Hon. A. B. Duale on 19.10.2016)

(Resumption of Debate interrupted on 19.10. 2016 - Afternoon Sitting)

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Members, there is nobody who is interested in contributing to this Bill at this time. I order that it be put back on the

Order Paper next time.

(Bill deferred)

Next Order.

THE CONTEMPT OF COURT BILL

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Members, again, there is nobody interested in contributing at this time. So, we move that Order to the next Order of business in this House.

(Bill deferred)

Next Order.

THE NATIONAL YOUTH SERVICE (AMENDMENT) BILL

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Once again, no Member is ready to debate. So, we move that Order to the next session of this House.

(Bill deferred)

Next Order.

THE PERSONS WITH DISABILITIES (AMENDMENT) BILL

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Members, I can see the Member for Kanduyi wants to contribute on the Persons with Disabilities (Amendment) Bill. The Member for Kanduyi, I apologise since it has not been moved. It needs to be moved.

Hon. Members, the Movers of all the other Orders from Order No.16 to Order No.23 are not in the House. So, we cannot move on with the business all the way to the end of the Order Paper because the Movers of the particular Orders are not in the House.

ADJOURNMENT

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Members, the time being 4.55 p.m., this House stands adjourned until tomorrow, Wednesday 16th November, 2016 at 9.30 a.m.

The House rose at 4.55 p.m.